PHILIPPINE REPORTS

VOL. 676

NOVEMBER 14, 2011 TO NOVEMBER 22, 2011

VOLUME 676

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

NOVEMBER 14, 2011 TO NOVEMBER 22, 2011

SUPREME COURT
MANILA
2014

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2014

EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

MA. VIRGINIA OLIVIA VILLARUZ-DUEÑAS
COURT ATTORNEY VI & CHIEF, RECORDS DIVISION

FE CRESCENCIA QUIMSON-BABOR
COURT ATTORNEY VI

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY V

FLOYD JONATHAN LIGOT TELAN
COURT ATTORNEY V & CHIEF, EDITORIAL DIVISION

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY V

LEUWELYN TECSON-LAT
COURT ATTORNEY IV

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY III

MA. CHRISTINA GUZMAN CASTILLO
COURT ATTORNEY II

MARIA CORAZON RACELA MILLARES
COURT ATTORNEY II

SUPREME COURT OF THE PHILIPPINES

HON. RENATO C. CORONA, Chief Justice
HON. ANTONIO T. CARPIO, Associate Justice
HON. PRESBITERO J. VELASCO, JR., Associate Justice
HON. TERESITA J. LEONARDO-DE CASTRO, Associate Justice
HON. ARTURO D. BRION, Associate Justice
HON. DIOSDADO M. PERALTA, Associate Justice
HON. LUCAS P. BERSAMIN, Associate Justice
HON. MARIANO C. DEL CASTILLO, Associate Justice
HON. ROBERTO A. ABAD, Associate Justice
HON. MARTIN S. VILLARAMA, JR., Associate Justice
HON. JOSE P. PEREZ, Associate Justice
HON. JOSE C. MENDOZA, Associate Justice
HON. MA. LOURDES P.A. SERENO, Associate Justice
HON. BIENVENIDO L. REYES, Associate Justice
HON. ESTELA M. PERLAS-BERNABE, Associate Justice

ATTY. ENRIQUETA E.VIDAL, Clerk of Court En Banc
ATTY. FELIPA B. ANAMA, Deputy Clerk of Court En Banc

FIRST DIVISION

Chairperson

Hon. Renato C. Corona

Members

Hon. Teresita J. Leonardo-De Castro
Hon. Lucas P. Bersamin
Hon. Mariano C. Del Castillo
Hon. Martin S. Villarama, Jr.

Division Clerk of Court

Atty. Edgar O. Aricheta

SECOND DIVISION

Chairperson

Hon. Antonio T. Carpio

Members

Hon. Arturo D. Brion
Hon. Jose P. Perez
Hon. Maria Lourdes P.A. Sereno
Hon. Bienvenido L. Reyes

Division Clerk of Court

Atty. Ludichi Y. Nunag

THIRD DIVISION

Chairperson

Hon. Presbitero J. Velasco, Jr.

Members

Hon. Diosdado M. Peralta
Hon. Roberto A. Abad
Hon. Jose C. Mendoza
Hon. Estela M. Perlas-Bernabe

Division Clerk of Court

Atty. Lucita A. Soriano

PHILIPPINE REPORTS

CONTENTS

I. CASES REPORTED xiii

II. TEXT OF DECISIONS 1

III. SUBJECT INDEX 705

IV. CITATIONS 733

PHILIPPINE REPORTS

Page

Ala, Atty. Leticia E. *vs*. Judge Soliver C. Peras, etc., et al. 192
Alyansa ng mga Manggagawang Bukid ng Hacienda
Luisita, et al. – Hacienda Luisita, Incorporated *vs*. 518
Bara *y* Asmad, Asmad – People of the Philippines *vs*. 39
Bayonla, Teresita T. *vs.* Atty. Purita A. Reyes 500
Capiral, Severino S. *vs*. Simeona Capiral Robles, et al. 254
Career Executive Service Board –
Atty. Elias Omar A. Sana *vs.* 129
Castro-Justo, Lydia *vs*. Atty. Rodolfo T. Galing 139
Co (formerly doing business under the name
"Nathaniel Mami House"), Fernando *vs.* Lina B. Vargas 463
Concerned Citizen *vs.* Maria Concepcion M. Divina, etc. 166
Court of Appeals by: COC Teresita R. Marigomen *vs*.
Enrique E. Manabat, Jr., etc. 157
Court of Appeals, et al. – DUP Sound Phils. and/or
Manuel Tan *vs*. 472
Court of Appeals, et al. – Tamson's Enterprises, Inc. *vs*. 384
Cua, Guillermo E. *vs*. People of the Philippines 234
Denholm Crew Management (Philippines), Inc. –
Gilbert Quizora *vs*. 313
Divina,etc., Maria Concepcion M. –
Concerned Citizen *vs*. 166
DUP Sound Phils. and/or Manuel Tan *vs*.
Court of Appeals, et al. 472
DUP Sound Phils. and/or Manuel Tan *vs*. Cirilo A. Pial 472
Estavillo, Rogelio F. *vs*. Atty. Gemmo G. Guillermo, et al. 146
Familara, et al., Senen C. – Constancio F. Mendoza *vs*. 70
Florece, Socorro – People of the Philippines, et al. *vs*. 330
Freeman, Marites E. *vs*. Atty. Zenaida P. Reyes 47
Functional, Inc. *vs*. Samuel C. Granfil 279
Galing, Atty. Rodolfo T. – Lydia Castro-Jusot *vs*. 139
Garcia, et al., Ester – Spouses Benjamin
and Norma Garcia *vs*. 1
Garcia, Spouses Benjamin and Norma *vs*.
Ester Garcia, et al. 1
Granfil, Samuel C. – Functional, Inc. *vs*. 279
Guilalas, et al., Spouses Leon –
Republic of the Philippines *vs*. 220

Page

Guillermo, et al., Atty. Gemmo G. – Rogelio F. Estavillo *vs.* 146
Hacienda Luisita, Incorporated *vs.* Alyansa ng mga
Manggagawang Bukid ng Hacienda Luisita, et al. 518
Hacienda Luisita, Incorporated *vs.* Presidential Agrarian
Reform Council, et al. 518
Hon. Court of Appeals, et al. –
People of the Philippines, et al. *vs.* 330
Imatong, etc., Severino G. – Beatriz B. Oñate *vs.* 184
In the Matter of the Petition for the *Writ of Amparo*
and *Habeas Data* in Favor of Noriel H. Rodriguez 84
Kaisahan at Kapatiran ng mga Manggagawa at
Kawani sa MWC- East Zone Union, et al. *vs.* Manila
Water Company, Inc. 262
Macapagal-Arroyo, et al., Gloria – Noriel H. Rodriguez *vs.* 84
Manabat, Jr., etc., Enrique E. – Court of Appeals
by: COC Teresita R. Marigomen *vs.* 157
Manila Water Company, Inc. – Kaisahan at Kapatiran
ng mga Manggagawa at Kawani sa MWC- East Zone
Union, et al. *vs.* 262
Mendoza, Constancio F. *vs.* Senen C. Familara, et al. 70
Nogales, et al., Fredrik Felix P. *vs.* People of the
Philippines, et al. 486
Oñate, Beatriz B. *vs.* Severino G. Imatong, etc. 184
Padao, Dan – Philippine National Bank *vs.* 290
Pangilinan *y* Crisostomo, Bernabe –
People of the Philippines *vs.* 16
People of the Philippines – Guillermo E. Cua *vs.* 234
People of the Philippines *vs.* Asmad Bara *y* Asmad 39
Bernabe Pangilinan *y* Crisostomo 16
Rodie J. Pineda @ “Buboy”, et al. 420
Garet Salcena *y* Victorino 357
Avelino Subesa *y* Moscardon 403
PO1 Froilan L. Trestiza, et al. 420
People of the Philippines, et al. – Fredrik Felix P.
Nogales, et al. *vs.* 486
People of the Philippines, et al. *vs.* Socorro Florece 330
People of the Philippines, et al. *vs.*
Hon. Court of Appeals, et al. 330

Page

Peras, etc., et al., Judge Soliver C. –
Atty. Leticia E. Ala *vs.* 192
Philippine National Bank *vs.* Dan Padao 290
Pial, Cirilo A. – DUP Sound Phils. and/or Manuel Tan *vs.* 472
Pineda @ "Buboy", et al., Rodie J. –
People of the Philippines *vs.* 420
Presidential Agrarian Reform Council, et al. –
Hacienda Luisita, Incorporated *vs.* 518
Quizora, Gilbert *vs.* Denholm Crew Management
(Philippines), Inc. 313
Republic of the Philippines *vs.* Spouses Leon
Guilalas, et al. 220
Republic of the Philippines represented by the
Department of Public Works and Highways (DPWH)
vs. Sps. Tan Song Bok and Josefina S. Tan, et al. 337
Reyes, Atty. Purita A. – Teresita T. Bayonla *vs.* 500
Reyes, Atty. Zenaida P. – Marites E. Freeman *vs.* 47
Robles, et al., Simeona Capiral – Severino S. Capiral *vs.* 254
Rodriguez, Noriel H. – Police Dir. Gen.
Jesus A. Versoza *vs.* 84
Rodriguez, Noriel H. *vs.* Gloria Macapagal-Arroyo, et al. 84
Salcena *y* Victorino, Garet – People of the Philippines *vs.* 357
Sana, Atty. Elias Omar A. *vs.* Career Executive
Service Board 129
Subesa *y* Moscardon, Avelino – People of the
Philippines *vs.* 403
Sy, Rosemarie L. – Tamson's Enterpirses, Inc. *vs.* 384
Tamson's Enterprises, Inc. *vs.* Rosemarie L. Sy 384
Tamson's Enterprises, Inc., et al. *vs.*
Court of Appeals, et al. 384
Tan, et al., Sps. Tan Song Bok and Josefina S. –
Republic of the Philippines represented by the
Department of Public Works and Highways (DPWH) *vs.* 337
Trestiza, et al., PO1 Froilan L. –
People of the Philippines *vs.* 420
Vargas, Lina B. – Fernando Co (formerly doing business
under the name "Nathaniel Mami House") *vs.* 463
Versoza, et al., Police Dir. Gen. Jesus A. *vs.*
Noriel H. Rodriguez 84

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 169157. November 14, 2011]

SPOUSES BENJAMIN and NORMA GARCIA, *petitioners, vs.* **ESTER GARCIA, AMADO GARCIA, ADELA GARCIA, ROSA GARCIA and DAVID GARCIA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; PARTIES; INDISPENSABLE PARTY; DEFINED AND CONSTRUED. —** The Court had thoroughly discussed in a number of cases the nature and definition of an indispensable party, to wit: x x x [I]ndispensable parties [are] parties-in-interests without whom there can be no final determination of an action. As such, they must be joined either as plaintiffs or as defendants. The general rule with reference to the making of parties in a civil action requires, of course, the joinder of all necessary parties where possible, and the joinder of all indispensable parties under any and all conditions, their presence being a *sine qua non* for the exercise of judicial power. x x x An indispensable party is a party who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest, a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that

its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete, or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward. Thus, a person who was not impleaded in the complaint cannot be bound by the decision rendered therein, for no man shall be affected by a proceeding in which he is a stranger. Otherwise stated, things done between strangers ought not to injure those who are not parties to them.

2. **CIVIL LAW; ESTOPPEL BY LACHES; BEING AN EQUITABLE DOCTRINE, ITS APPLICATION IS CONTROLLED BY EQUITABLE CONSIDERATIONS; APPLICATION IN CASE AT BAR. —** Estoppel by laches or "stale demands" ordains that the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier, or the negligence or omission to assert a right within a reasonable time, warrants a presumption that the party entitled to assert it either has abandoned it or declined to assert it. There is no absolute rule as to what constitutes laches; it is addressed to the sound discretion of the court. Being an equitable doctrine, its application is controlled by equitable considerations. The CA has thoroughly explained the circumstances showing Norma's knowledge of the existence of the pending litigation involving the subject property which includes the portion registered in her name. x x x Indeed, evidence clearly shows that Norma had knowledge of the existence and the pendency of the reconveyance case filed by respondents against her husband Benjamin, Rita, and Monica and her children. She is now estopped from claiming that the RTC had not acquired jurisdiction over her and thus not bound by the decision sought to be executed. The RTC, therefore, did not abuse its discretion in denying petitioners' urgent motion to quash the writ of execution.

APPEARANCES OF COUNSEL

Pearlito B. Campanilla for petitioners.
Hizon & Miranda for E. Aguillo.

DECISION

PERALTA, *J*.:

For review is the Court of Appeals (CA) Decision[1] dated May 12, 2005 and Resolution[2] dated August 3, 2005 in CA-G.R. SP No. 41556. The assailed decision dismissed the Amended Petition for *Certiorari* with Preliminary Injunction and/or Temporary Restraining Order (TRO)[3] filed by petitioners, Spouses Benjamin and Norma Garcia, questioning the Regional Trial Court (RTC)[4] Orders[5] dated April 24, 1996[6] and July 9, 1996[7] denying their Urgent Motion to Quash Order of Execution[8] and Motion for Reconsideration,[9] respectively, in Civil Case No. Q-36147; while the assailed resolution denied petitioners' motion for reconsideration.

The facts of the case follow:

Emilio Garcia (Emilio) and Eleuteria Pineda Garcia (Eleuteria) had nine (9) children, namely: Jerameal, Jose, Rita Garcia-Shipley (Rita), respondents Ester, Amado, Adela, Rosa, David and petitioner Benjamin, all surnamed Garcia. Eleuteria died in 1927. Emilio, thereafter, married Monica Cruz (Monica), with whom he had eight (8) children, namely: Irma, Imelda, Rogelio, Emilio, Maurita, Felixberto, Violeta and Rosalinda.[10]

---

[1] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Andres B. Reyes, Jr. and Lucas P. Bersamin (now a member of this Court), concurring; *rollo*, pp. 19-57.

[2] *Id.* at 59-60.

[3] CA *rollo*, pp. 89-117.

[4] Branch 76, Quezon City.

[5] Penned by Judge Monina A. Zeñarosa.

[6] CA *rollo*, p. 75.

[7] *Id.* at 68-74.

[8] *Id.* at 78.

[9] *Id.* at 76-77.

[10] *Rollo*, p. 21.

On October 26, 1962, Emilio died intestate, survived by his wife Monica Cruz and his children of the first and second marriage. He left, among others, a 1,564-square-meter (sq m) lot (hereafter referred to as "subject property") located in San Francisco Del Monte, Quezon City covered by Transfer Certificate of Title (TCT) No. 18550 registered in the name of Emilio married to Eleuteria.[11]

On June 28, 1965, Emilio's children of the first marriage executed a General Power of Attorney (GPA) in favor of Rita. On July 29, 1971, Benjamin and Rita executed a Deed of Extrajudicial Settlement of Estate, declaring themselves as the sole and only heirs of Emilio and Eleuteria, and adjudicating unto themselves the subject property, 1,000 sq m of which to Rita and the remaining 564 sq m to Benjamin.[12] Pursuant to said Deed, TCT No. 18550 was cancelled and TCT No. 170385 was issued in the name of Rita and Benjamin. The latter title was further cancelled and two (2) new TCTs were issued, namely, TCT No. 171639 in the name of Benjamin corresponding to his share of the subject property and TCT No. 171640 in the name of Rita for her share.[13]

On July 25, 1973, Emilio's daughters (Irma and Imelda) of his second marriage filed a complaint against Rita and Benjamin for the annulment of title, docketed as *Civil Case No. Q-17933*. In addition to the annulment and cancellation of the TCT, Irma and Imelda prayed that the property covered thereby be partitioned in accordance with the law on intestate succession.[14] The parties, thereafter, entered into a Compromise Agreement[15] which was approved by the court on August 29, 1974.[16] The subject property was supposed to be partitioned among the siblings of the first

---

[11] *Id.*

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

[13] *Id.* at 22.

[14] *Id.*

[15] CA *rollo*, pp. 23-26.

[16] *Rollo*, p. 22.

and second marriage. Pursuant to the said agreement as approved by the court, the children of the first marriage were supposed to receive a total area of 1,091.90 sq m, while the children of the second marriage, including the surviving spouse Monica, were supposed to receive a total area of 472.10 sq m.[17] It was further agreed upon by the parties that the shares of Monica and her children were to be taken from Rita's 1,000-sq-m portion of the subject property.[18]

However, instead of executing the judgment based on the compromise agreement, Rita divided her 1,000-sq-m property — 555 sq m for herself and 445 sq m for Monica and her children. Consequently, TCT No. 171640 was cancelled and TCT No. 207117 was issued to Monica and her children, while TCT No. 207116 to Rita.[19]

On April 17, 1975, a permanent service road was constructed on Rita's property. Consequently, a Deed of Exchange was executed between Rita on the one hand, and Monica and her children, on the other. This resulted in the issuance of TCT No. 207210 for 445 sq m in the name of Rita and TCT No. 207211 for 555 sq m to Monica and her children.[20] On August 22, 1979, Rita sold her property covered by TCT No. 207210 to petitioner Norma Dimalanta Garcia (Norma) resulting in the registration and issuance of TCT No. 278765 in the name of Norma married to Benjamin.[21]

Respondents Ester, Adela, Amado, Rosa and David filed a complaint for reconveyance, which was later amended[22] on October 26, 1982, of the parcel of land originally covered by TCT No. 18550, against Rita, Benjamin, and Monica and her children. The case was docketed as *Civil Case No. Q-36147.*

---

[17] *Id.* at 23.

[18] CA *rollo*, pp. 24-25.

[19] *Rollo*, p. 24.

[20] *Id.*

[21] *Id.*

[22] CA *rollo*, pp. 27-31.

They alleged that Benjamin and Rita were able to adjudicate between themselves the subject property by claiming to be the only heirs of Emilio, when in fact they were not. They, thus, demanded for their shares in the subject property since, as children of the first marriage (which includes Benjamin and Rita), they are entitled to a total area of 1,091 sq m, pursuant to the August 28, 1974 Compromise Agreement.

On March 15, 1989, the RTC rendered a Decision[23] in favor of respondents, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff[s] and against the defendants as follows:
>
> 1. Defendants are ordered to convey to plaintiffs the portions corresponding to their shares in the property in question based upon the Compromise Agreement dated August 28, 1974, computed in accordance with the law on intestate succession; and
>
> 2. Defendants are ordered to pay attorney['s] fees amounting to ₱5,000.00. Costs against the defendants.
>
> SO ORDERED.[24]

The court noted that Benjamin and Rita's basis in adjudicating between themselves the subject property was the GPA allegedly executed by respondents in favor of Rita. However, the court held that the law requires a special power of attorney, not a GPA, in repudiating an inheritance. It follows that the deed of extrajudicial settlement executed by Benjamin and Rita is defective for having knowingly and willingly excluded compulsory heirs. The partition earlier made by Benjamin and Rita, and later by Monica and her children based on the compromise agreement, is incomplete. Consequently, there is a need to complete the distribution to the omitted heirs.[25]

---

[23] Penned by Judge Manuel M. Calanog, Jr.; *id.* at 32-37.

[24] *Id.* at 37.

[25] *Id.* at 34-37.

On appeal, except for the deletion of the award of attorney's fees, the CA affirmed[26] the RTC decision. When elevated before the Court, we denied the petition and, consequently, affirmed the CA decision. The decision attained finality.[27] The corresponding Writ of Execution[28] was issued thereafter.

Meanwhile on August 30, 1993, Norma filed a Petition for Quieting of Title[29] against Amado with the RTC. The case was docketed as *Civil Case No. Q-93-17396*. Norma alleged that she is the owner of a portion of the property being claimed by Amado and his siblings in a reconveyance case in which she was not made a party. She added that she bought the property from Rita.[30] The case, however, was dismissed on motion of Amado on the ground of *res judicata* considering that the title to the property claimed by Norma emanated from TCT No. 18550 which was already declared to have been fraudulently partitioned by Rita and Benjamin.[31]

On motion of respondents, an *Alias* Writ of Execution[32] in the reconveyance case was issued, the pertinent portion of which reads:

> NOW THEREFORE, the defendants are hereby ordered to convey to plaintiffs the portions corresponding their shares in the property in question based upon the Compromise Agreement dated August 28, 1974, computed in accordance with the law on intestate succession and to show proof of compliance with this writ within sixty (60) days from receipt. Likewise, the Branch Deputy Sheriff, Mr. Cesar

---

[26] Embodied in a Decision dated October 4, 1990 in CA-G.R. CV No. 21765; Penned by Associate Justice Luis L. Victor, with Associate Justices Vicente V. Mendoza and Segundino G. Chua, concurring, CA *rollo*, pp. 38-44.

[27] *Rollo*, pp. 32-33.

[28] CA *rollo*, pp. 45-46.

[29] *Id.* at 52-54.

[30] *Rollo*, p. 33.

[31] CA *rollo*, pp. 194-195.

[32] *Id.* at 58-59.

M. Torio, is ordered to return this writ into [this] court within sixty (60) days from date with your proceedings endorsed thereon.[33]

Petitioners, however, opposed the writ on the ground that the compromise agreement referred to in the decision did not cover their properties.[34] In an Urgent Motion to Quash Order of Execution,[35] petitioners insisted that in including the properties of Benjamin and Norma in the order of execution, the judge amended the judgment sought to be executed.[36] They likewise pointed out that Norma was never impleaded in the reconveyance case.

In an Order[37] dated April 24, 1996, the RTC denied the motion to quash. The RTC explained that the issue of Norma's non-inclusion in the reconveyance case had been finally settled when her case had been dismissed for quieting of title precisely because of the reconveyance case that had become final and executory. Petitioners' motion for reconsideration[38] was likewise denied in an Order[39] dated July 9, 1996.

In a special civil action for *certiorari*, the CA found no grave abuse of discretion on the part of the RTC in issuing the above orders. The CA pointed out that the assailed order of execution did not amend the March 15, 1989 decision sought to be executed.[40] It explained that the order of execution merely clarified the dispositive portion of the decision with reference to the other portions thereof.[41] It found that the parcels of land in the name of petitioners form part of the decision as they originated from

---

[33] *Id.* at 59.

[34] *Rollo*, p. 35.

[35] CA *rollo*, pp. 68-74.

[36] *Rollo*, p. 40.

[37] CA *rollo*, p. 75.

[38] *Id.* at 76-77.

[39] *Id.* at 78.

[40] *Rollo*, p. 43.

[41] *Id.* at 45.

the mother title TCT No. 18550 against which the execution may be had in favor of respondents.[42] As to the non-inclusion of Norma as indispensable party in the reconveyance case, the appellate court applied the rule on estoppel by laches, considering that Norma was very much aware of the existence of the litigations involving the subject property.[43] Finally, on petitioners' claim of the indefeasibility of the Torrens title, the CA stressed that mere issuance of the certificate of title does not foreclose the possibility that the property may be under co-ownership with persons not named in the title.[44]

Aggrieved, petitioners filed this petition assailing in general the denial of their urgent motion to quash writ of execution.

The petition is without merit.

The existence of the court's decision in Civil Case No. Q-36147 for reconveyance and the August 28, 1974 Compromise Agreement, is undisputed. In said decision, the court ordered Benjamin, Rita, Monica and her children, to convey to respondents the portions corresponding to their shares in the subject property based on the compromise agreement. In the compromise agreement, the subject property was divided as follows: 1,091 sq m as the total shares of the children of the first marriage and 472 sq m for Monica and her children. Pursuant to the final and executory decision above, the RTC issued a Writ of Execution and eventually the assailed *Alias* Writ of Execution.

Petitioners, however, opposed the implementation of the writ of execution on two grounds: (1) the compromise agreement did not include the portion of the subject property in the name of Benjamin, thus, should not be considered part of the property ordered by the court to be reconveyed to respondents; and (2) the writ of execution could not cover the portion of the subject property in the name of Norma, since she was not impleaded

---

[42] *Id.*

[43] *Id.* at 49-52.

[44] *Id.* at 53.

in the reconveyance case, and as such, is not bound by the decision sought to be executed.

We do not agree with petitioners.

To determine the propriety of petitioners' claims, it is necessary to look into the terms of the compromise agreement and the conclusions of the court in the decision sought to be executed.

First, the compromise agreement. It must be recalled that the compromise agreement came about because of the case for annulment of title instituted by Monica and her children against Benjamin and Rita. At the time of the institution of the annulment case, the subject property had been divided between Benjamin and Rita, wherein they were issued their respective titles, TCT No. 171639 in the name of Benjamin covering 564 sq m and TCT No. 171640 in the name of Rita covering 1,000 sq m. The parties later entered into a compromise agreement recognizing the rights of Monica and her children to the subject property as heirs of Emilio being the surviving wife and children of the second marriage. To facilitate the delivery of their[45] shares, it was stated in the compromise agreement that their shares shall be taken from Rita's portion covered by TCT No. 171640.

Respondents were not parties to the annulment case or to the compromise agreement but their rights to the subject property as heirs of Emilio were recognized. Of the 1,564 sq m property, 1,091 sq m was agreed upon as the total shares of the children of the first marriage which include Rita, Benjamin and respondents, and 472 sq m for Monica and her children. From Rita's 1,000 sq m share, 472[46] sq m was supposed to be given to Monica and her children. After deducting said area, 528 sq m remained for the children of the first marriage who are entitled to 1,091 sq m. Although it was not specifically stated in the compromise agreement, obviously, the shares of the children of the first marriage should be taken from the remaining 528 sq

---

[45] Monica and her children.

[46] But their actual share is only 444.60 sq m because the 27.5 sq m service road was to be deducted from their share.

m of Rita and the 564 sq m of Benjamin. Benjamin's claim that the portion of the property registered in his name is not covered by the compromise agreement, certainly, has no leg to stand on.

Second, the decision in the reconveyance case sought to be executed. The action for reconveyance was instituted by the other heirs of Emilio who were not parties to the annulment case nor to the compromise agreement. They based their claim on their entitlement to 1,091 sq m as children of the first marriage. Although several cancellations of titles had already taken place, it is clear from the decision sought to be executed that the subject property was that originally covered by TCT No. 18550. Considering that Benjamin's title which is TCT No. 171639 was derived from TCT No. 18550, the same was definitely included.

Moreover, in deciding the reconveyance case in favor of respondents, the court took into consideration how TCT No. 18550, covering the subject property, was cancelled and how TCT Nos. 171639 and 171640, in the names of Benjamin and Rita, came about. The court applied the laws on intestate succession and implied trust before it finally concluded that respondents were excluded from the partition and are thus entitled to their shares. Undoubtedly, these rules apply not only to Rita but also to Benjamin. If we were to sustain Benjamin's claim that the portion of the property registered in his name is excluded, the shares of the omitted heirs will not be completed.

Neither can we sustain petitioners' contention that the writ of execution cannot include the portion of the subject property registered in the name of Norma as she was never a party to the reconveyance case.

As clearly stated above, several cancellations of titles had taken place since the death of Emilio until the present case was instituted, which we now reiterate for a proper perspective. The subject property was originally covered by TCT No. 18550 in the name of Emilio, married to Eleuteria. By virtue of the extrajudicial settlement of estate executed by Rita and Benjamin, a new title was issued in their names, TCT No. 170385. Two

new titles were later issued, TCT No. 171639 in the name of Benjamin and TCT No. 171640 in the name of Rita. Pursuant to the compromise agreement entered into with their brothers and sisters of the second marriage, TCT No. 171640 was cancelled and new ones were issued, TCT No. 207117 in the name of Monica and her children and TCT No. 207116 in the name of Rita. A Deed of Exchange was, thereafter, executed resulting in the cancellation of the latter titles and new ones were issued, TCT No. 207211 in the name of Monica and her children and TCT No. 207210 in the name of Rita. Eventually, Rita decided to sell the portion of the property registered in her name to Norma resulting in the cancellation of her title and the issuance of the new title in the name of Norma, TCT No. 278765. In sum, at the time of the issuance of the questioned writ of execution, the subject property was covered by TCT No. 171639 covering 564 sq m in the name of Benjamin; TCT No. 207211 covering 555 sq m in the name of Monica and her children; and TCT No. 278765 covering 445 sq m in the name of Norma, the wife of Benjamin.

Respondents instituted the action for reconveyance involving the subject property originally covered by TCT No. 18550. At that time, Norma had been the registered owner of a portion of the subject property. As such, she was an indispensable party as her title to the property was affected. The Court had thoroughly discussed in a number of cases the nature and definition of an indispensable party, to wit:

> x x x [I]ndispensable parties [are] parties-in-interests without whom there can be no final determination of an action. As such, they must be joined either as plaintiffs or as defendants. The general rule with reference to the making of parties in a civil action requires, of course, the joinder of all necessary parties where possible, and the joinder of all indispensable parties under any and all conditions, their presence being a *sine qua non* for the exercise of judicial power. x x x[47]

---

[47] *Casals v. Tayud Golf and Country Club, Inc*., G.R. No. 183105, July 22, 2009, 593 SCRA 468, 490; *Galicia v. Manliquez Vda. de Mindo*, G.R. No. 155785, April 13, 2007, 521 SCRA 85, 93-94; *Arcelona v. CA*, 345 Phil. 250, 267 (1997).

An indispensable party is a party who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest, a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete, or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward.[48]

Thus, a person who was not impleaded in the complaint cannot be bound by the decision rendered therein, for no man shall be affected by a proceeding in which he is a stranger.[49] Otherwise stated, things done between strangers ought not to injure those who are not parties to them.[50]

In this case, however, as aptly held by the RTC and CA, Norma is estopped from invoking the rule on indispensable party. Estoppel by laches or "stale demands" ordains that the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier, or the negligence or omission to assert a right within a reasonable time, warrants a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[51] There is no absolute rule as to what constitutes laches; it is addressed to the sound discretion of the court. Being an equitable doctrine, its application is controlled by equitable considerations.[52]

---

[48] *Casals v. Tayud Golf and Country Club, Inc.*, *supra*, at 491-492.

[49] *Arcelona v. CA*, *supra* note 47, at 270.

[50] *Casals v. Tayud Golf and Country Club, Inc., supra* note 47, at 501.

[51] *Galicia v. Manliquez Vda. de Mindo*, *supra* note 47, at 96; *Republic v. Sandiganbayan*, G.R. No. 152154, July 15, 2003, 406 SCRA 190, 252.

[52] *Galicia v. Manliquez Vda. de Mindo*, *supra* note 47, at 96.

The CA has thoroughly explained the circumstances showing Norma's knowledge of the existence of the pending litigation involving the subject property which includes the portion registered in her name. We quote with approval the exhaustive observations and explanations of the CA in this wise:

> [Records show] that petitioner Norma D. Garcia had knowledge of the existence of Civil Case No. Q-36147 [for reconveyance] as well as the subject thereof. The Amended Complaint dated 26 October 1982 specifically mentioned petitioner Benjamin Garcia as being married to herein petitioner Norma Dimalanta Garcia. It even alleged in paragraph 14 thereof that the property covered by TCT No. 207210 in the name of Rita Garcia-Shipley was transferred to petitioner Norma Dimalanta Garcia by virtue of a Deed of Sale dated 22 August 1979 executed between petitioner Norma Garcia and Rita Garcia-Shipley and resulted to the registration and issuance of TCT No. 278765, now TCT No. 66234, in the name of Norma Garcia married to Benjamin Garcia. Likewise, in paragraph 15 of the said Amended Complaint, private respondents alleged that demands were made on Rita Garcia-Shipley, Benjamin Garcia and Norma D. Garcia for the conveyance to them (plaintiffs) of their legitimate shares.
>
> Further, the private respondents alleged in their Comment dated 10 January 1997, that petitioner Norma D. Garcia was very much aware of the existence of Civil Case No. Q-36147 as the same involves the estate of her deceased parent-in-law Emilio Garcia from which her property covered by TCT No. 66234 came from; that she knew very well that her property is involved in the litigation yet she did not take steps to have the same excluded therefrom, and that she even participated actively during the trial of the case and testified to support the theory put up by the defendants. Petitioner Norma Garcia's filing of the Petition for Quieting of Title with [the] RTC of Quezon City docketed as Q-93-17396 raffled to Branch 103 (Judge Jaime N. Salazar, Jr.) supports private respondents' assertion of petitioner Norma Garcia's knowledge of the existence and subject matter of the reconveyance case (Civil Case No. Q-36147) as she categorically stated in paragraph 6 of said Petition that said case for reconveyance of property apparently includes the property registered in her name. x x x
>
> x x x x x x x x x
>
> We, therefore, find that petitioner Norma Garcia is estopped by laches from invoking the rule on indispensable parties. Taking into

consideration the established circumstances surrounding the transfer in her name of the parcel of land covered by TCT No. 66234 (278765), her non-joinder as an indispensable party is a mere technicality that cannot prevail over considerations of substantial justice. x x x[53]

Indeed, evidence clearly shows that Norma had knowledge of the existence and the pendency of the reconveyance case filed by respondents against her husband Benjamin, Rita, and Monica and her children. She is now estopped from claiming that the RTC had not acquired jurisdiction over her and thus not bound by the decision sought to be executed.[54] The RTC, therefore, did not abuse its discretion in denying petitioners' urgent motion to quash the writ of execution.

WHEREFORE, premises considered, the petition is *DENIED* for lack of merit. The Court of Appeals Decision dated May 12, 2005 and Resolution dated August 3, 2005 in CA-G.R. SP No. 41556, are *AFFIRMED*.

SO ORDERED.

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

---

[53] *Rollo*, pp. 49-52.

[54] See *Oro Cam Enterprises, Inc. v. Court of Appeals*, 377 Phil. 469, 480 (1999).

[*] Designated as an additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152, dated November 11, 2011.

THIRD DIVISION

[G.R. No. 183090. November 14, 2011]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **BERNABE PANGILINAN *Y* CRISOSTOMO,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT OF THE ACCUSED TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM; VIOLATION IN CASE AT BAR. —** It is settled that in a criminal case, an appeal throws the whole case open for review, and it becomes the duty of the appellate court to correct such errors as may be found in the judgment appealed from, whether they are made the subject of assignment of errors or not. In this case, appellant was charged under two separate Informations for rape under Article 266-A of the Revised Penal Code and sexual abuse under Section 5 (b) of RA No. 7610, respectively. However, we find the Information in Criminal Case No. 11769 for sexual abuse to be void for being violative of appellant's constitutional right to be informed of the nature and cause of the accusation against him. x x x A reading of the allegations in the above-quoted Information would show the insufficiency of the averments of the acts alleged to have been committed by appellant. It does not contain the essential facts constituting the offense, but a statement of a conclusion of law. Thus, appellant cannot be convicted of sexual abuse under such Information. x x x The right to be informed of the nature and cause of the accusation against an accused cannot be waived for reasons of public policy. Hence, it is imperative that the complaint or information filed against the accused be complete to meet its objectives. As such, an indictment must fully state the elements of the specific offense alleged to have been committed.

2. **CRIMINAL LAW; RAPE; CONVICTION; FINDING THE ACCUSED TO BE GUILTY OF RAPE MAY BE BASED SOLELY ON THE VICTIM'S TESTIMONY IF SUCH TESTIMONY MEETS THE TEST OF CREDIBILITY; CASE AT BAR. —** A finding that the accused is guilty of rape may

be based solely on the victim's testimony if such testimony meets the test of credibility. We held that no woman, much less a child of such tender age, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars.

3. **ID.; ID.; ELEMENTS; PROOF OF HYMENAL LACERATION IS NOT AN ELEMENT OF RAPE; APPLICATION IN CASE AT BAR. —** Proof of hymenal laceration is not an element of rape. An intact hymen does not negate a finding that the victim was raped. Penetration of the penis by entry into the lips of the vagina, even without laceration of the hymen, is enough to constitute rape, and even the briefest of contact is deemed rape. x x x While it appears from AAA's testimony that she was not raped precisely on July 27, 2001 as what appellant did was kiss her lips and mash her breast on that day, however, her entire testimony in the witness stand positively shows that appellant with the use of force and intimidation had carnal knowledge of her at some other time. She testified that appellant violated her since she was seven years old. The first time was when they were still staying in Angeles City where appellant touched her private parts; the second time was when they were already in Gerona, Tarlac, where appellant pointed a samurai at her and raped her; and the third time happened on July 27, 2001 when appellant kissed her lips and mashed her breast. Indeed, appellant may be convicted for rape in the light of AAA's testimony. For in rape cases, the date of the commission is not an essential element of the offense; what is material is its occurrence.

4. **ID.; ID.; AS DISTINGUISHED FROM CHILD ABUSE; CLARIFIED; CASE AT BAR. —** In *People v. Dahilig*, wherein the question posed was whether the crime committed was rape (Violation of Article 266-A, par. 1, in relation to Article 266-B, 1st paragraph of the Revised Penal Code, as amended by RA No. 8353), or is it Child Abuse, defined and penalized by Section 5, (b), RA No. 7610. x x x Under Section 5 (b), Article III of RA 7610 in relation to RA 8353, if the victim of sexual abuse is below 12 years of age, the offender should not be prosecuted for sexual abuse but for statutory rape under Article 266-A (1)(d) of the Revised Penal Code and penalized with *reclusion perpetua.* On the other hand, if the victim is

12 years or older, the offender should be charged with either sexual abuse under Section 5 (b) of RA 7610 or rape under Article 266-A (except paragraph 1[d]) of the Revised Penal Code. However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced. A person cannot be subjected twice to criminal liability for a single criminal act. Likewise, rape cannot be complexed with a violation of Section 5 (b) of RA 7610. Under Section 48 of the Revised Penal Code (on complex crimes), a felony under the Revised Penal Code (such as rape) cannot be complexed with an offense penalized by a special law. As in the present case, appellant can indeed be charged with either Rape or Child Abuse and be convicted therefor. The prosecution's evidence established that appellant had carnal knowledge of AAA through force and intimidation by threatening her with a samurai. Thus, rape was established. Considering that in the resolution of the Assistant Provincial Prosecutor, he resolved the filing of rape under Article 266-A of the Revised Penal Code for which appellant was convicted by both the RTC and the CA, therefore, we merely affirm the conviction.

5. **ID.; ID.; WHEN EITHER ONE OF THE QUALIFYING CIRCUMSTANCES OF RELATIONSHIP AND MINORITY IS OMITTED OR LACKING, THAT WHICH IS PLEADED IN THE INFORMATION AND PROVED BY THE EVIDENCE MAY BE CONSIDERED AS AN AGGRAVATING CIRCUMSTANCE; EFFECT THEREOF IN CASE AT BAR. —** While the Information for rape mentioned AAA's minority, as well as the fact that she was a stepdaughter of appellant, it was only AAA's minority which was proven by a copy of a birth certificate issued by the Office of the City Civil Registrar of Angeles City. Conformably with the ruling in *People v. Esperanza*, when either one of the qualifying circumstances of relationship and minority is omitted or lacking, that which is pleaded in the Information and proved by the evidence may be considered as an aggravating circumstance. As such, AAA's minority may be considered as an aggravating circumstance. However, it may not serve to raise the penalty, because in simple rape by sexual intercourse, the imposable penalty is *reclusion perpetua* which is single and indivisible. Hence, the civil indemnity and moral damages

awarded by the CA must be reduced from ₱75,000.00 to ₱50,000.00 each in line with prevailing jurisprudence. Moreover, when a crime is committed with an aggravating circumstance, either qualifying or generic, an award of exemplary damages is justified under Article 2230 of the New Civil Code. The CA's award of ₱50,000.00 must also be reduced to ₱30,000.00, in accordance with prevailing jurisprudence.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is an appeal filed by appellant Bernabe Pangilinan which seeks to reverse and set aside the Decision[1] dated January 25, 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00197. The CA decision affirmed the judgment[2] of the Regional Trial Court (RTC) of Tarlac City, Branch 63, convicting appellant of the crimes of rape under Article 266-A of the Revised Penal Code, as amended, and sexual abuse under Section 5 (b) of Republic Act (RA) No. 7610[3] with modification as to the amount of damages awarded to the offended party.

Consistent with our ruling in *People v. Cabalquinto,*[4] we withhold the real name of the victim and her immediate family members, as well as any information which tends to establish or compromise her identity. The initials AAA represent the victim, the initials BBB stand for her aunt, appellant's wife, and the initials CCC refer to one of her relatives.

---

[1] Penned by Associate Justice Arturo G. Tayag, with Associate Justices Rodrigo V. Cosico and Hakim S. Abdulwahid, concurring; *rollo*, pp. 4-31.

[2] CA *rollo*, pp. 13-24; per Judge Arsenio P. Adriano.

[3] Known as "Special Protection of Children Against Abuse, Exploitation and Discrimination Act."

[4] G.R. No. 167693, September 19, 2006, 502 SCRA 419.

On October 3, 2001, the prosecution filed two (2) Informations charging appellant of the crimes of Rape[5] and Child Sexual Abuse under Section 5 (b) of RA No. 7610. The Informations respectively read:

<u>Criminal Case No. 11768</u>

That on or about July 27, 2001, at around 10:00 o'clock in the evening at Brgy. Apsayan, Municipality of Gerona, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threat and intimidation did then and there willfully, unlawfully and feloniously have sexual intercourse with [his] stepdaughter AAA, a minor, 13 years of age, against her will and consent.

Contrary to law.[6]

<u>Criminal Case No. 11769</u>

That on or about 1995 up to about June 2001, at Barangay Apsayan, Municipality of Gerona, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there willfully, unlawfully and criminally commit acts of lasciviousness upon the person of AAA, a minor subjected to sexual abuse.

That accused is the stepfather of AAA, who was born on January 29, 1988.

Contrary to law.[7]

Upon his arraignment on February 21, 2002,[8] appellant, duly assisted by counsel, entered a plea of "Not Guilty" in both cases.

Trial on the merits thereafter ensued.

---

[5] *Rollo*, p. 3; Rape under Art. 266-A of the Revised Penal Code, per Resolution dated October 1, 2001 of the Assistant Provincial Prosecutor.

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

[7] *Id.* at 7.

[8] Records, p. 20.

The prosecution presented the testimonies of Dr. Marissa M. Mascarina, the attending physician, and the victim, AAA.

Dr. Mascarina testified that she examined AAA, as the latter was allegedly raped by appellant.[9] She made physical as well as internal examinations on AAA. Based on her examination, she issued a Medical Certificate,[10] which stated, among others, that there was no hymenal laceration.

AAA testified that she was born on January 20, 1988.[11] She had lived with her Aunt BBB, first cousin of her father, and her husband, herein appellant, since she was two years old until July 27, 2001.[12] At around 10 p.m. of July 27, 2001, while her aunt was working in Angeles, Pampanga, and she was watching television in their house, appellant arrived and ordered her to cook chicken *adobo* which she did. Suddenly, appellant approached her and pointed a samurai at her. Appellant then kissed her neck and mashed her breast.[13] It was not the first time that appellant did that to her.[14]

AAA further testified that she remembered three incidents wherein appellant abused her. The first time was when appellant kissed her and touched her private parts.[15] The second time was when appellant pointed a samurai at her, took her to a room and removed her clothes and kissed her on her lips and touched her private organ. He then laid on top of her and tried to insert his penis to her private organ. His organ touched her vagina; that she felt pain in her vagina but there was no blood.[16] And the third time was when appellant kissed her and mashed

---

[9] TSN, April 30, 2002, p. 5.

[10] Exhibit "B", records, p. 9.

[11] TSN, April 30, 2002, p. 10.

[12] *Id.* at 11.

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

[14] *Id.* at 15.

[15] *Id.* at 21.

[16] *Id.*

her breast.[17] She did not tell her aunt of appellant's sexual molestations, because he threatened to kill her and her aunt.[18] She intimated that her aunt BBB and appellant treated her like their own daughter.[19]

On redirect examination, AAA testified that appellant inserted his penis to her vagina and that it was painful when he did it.[20]

On the other hand, the defense presented appellant himself, his wife, BBB, and their two neighbors.

BBB testified that she and appellant have treated AAA as their real daughter by providing her with all her needs for which reason her relatives envied AAA.[21] She was able to talk with AAA while the latter was in the custody of the Department of Social Welfare and Development (DSWD), Tarlac City, and AAA told her that it was her cousin CCC who molested her.[22] BBB intimated that her relatives were mad at appellant because he was jobless and she was the one working for her family.[23]

For his part, appellant denied the accusations that he raped or molested AAA. He testified that on July 27, 2001, he was at his neighbor's house dressing chickens. When he went home at around 10 p.m., AAA told him that CCC, a cousin, molested her.[24] Appellant and AAA were on their way to file a complaint against CCC when they met CCC's mother who forcibly took AAA by beating her with an umbrella.[25] Appellant insinuated

---

[17] *Id.*

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

[19] *Id.* at 22.

[20] TSN, June 11, 2002, pp. 18-19.

[21] TSN, October 8, 2002, p. 4.

[22] *Id.* at 7.

[23] *Id.* at 13.

[24] TSN, December 10, 2002, pp. 5-6.

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

that AAA was just forced by his wife's relatives to file the charges against him since they were against their relationship.[26]

Appellant's testimony was corroborated by his two neighbors.

On February 19, 2003, the RTC rendered its Judgment, the dispositive portion of which reads:

> WHEREFORE, from the foregoing evidence, the Court hereby finds the accused Guilty Beyond Reasonable Doubt on both cases (Criminal Case No. 11768 and Criminal Case No. 11769) for Rape and Sexual Abuse, respectively, and he is hereby sentenced as follows:
>
> I. Under Criminal Case No. 11768
>
> 1. to suffer the penalty of *Reclusion Perpetua*; and
>
> 2. to indemnify the private complainant in the amount of ₱50,000.00 as actual damages, ₱50,000.00 as moral damages, and ₱20,000.00 as fine to answer for the private complainant's rehabilitation at the DSWD, Tarlac City.
>
> II. Under Criminal Case No. 11769
>
> 1. to suffer the penalty of imprisonment of six (6) months and one (1) day of *Prision Correccional* medium, as the minimum to seven (7) years of *Prision Mayor* minimum, as the maximum; and
>
> 2. to indemnify the private complainant in the amount of ₱30,000.00 as damages.
>
> SO ORDERED.[27]

Appellant's motion for reconsideration was denied in an Order[28] dated March 19, 2003.

Appellant filed a Notice of Appeal.[29] On January 14, 2004, we accepted the appeal.[30] However, pursuant to the Court's

---

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

[27] CA *rollo*, pp. 23-24.

[28] *Id.* at 28.

[29] *Id.* at 25.

[30] *Id.* at 35.

ruling in *People v. Mateo,*[31] we transferred the case to the Court of Appeals.[32]

On January 25, 2008, the CA rendered its decision which affirmed the RTC Decision, finding the appellant guilty of the crimes charged, but modifying the award of damages, the dispositive portion of which reads:

> WHEREFORE, the instant appeal is hereby DISMISSED for lack of merit. Accordingly, the appealed Decision dated 19 February 2003 of Branch 63, Regional Trial Court (RTC), Tarlac City, Third Judicial Region, in Criminal Cases Nos. 11768 and 11769, finding the accused guilty beyond reasonable doubt in both cases imposing the sentence of *Reclusion Perpetua* for the crime of Rape and the penalty of imprisonment of SIX (6) MONTHS and ONE (1) DAY of *Prision Correccional* medium, as the minimum to SEVEN (7) YEARS of *Prision Mayor* minimum, as the maximum for the crime of Sexual Abuse, is hereby AFFIRMED with the following modifications as to the award of damages:
>
> 1. In Criminal Case No. 11768, to indemnify the offended party the amount of FIFTY THOUSAND PESOS (₱50,000.00) as exemplary damages; civil indemnity of SEVENTY-FIVE THOUSAND PESOS (₱75,000.00) and moral damages of SEVENTY-FIVE THOUSAND (₱75,000.00), instead of FIFTY THOUSAND PESOS (₱50,000.00); and
>
> 2. In Criminal Case No. 11769, to pay the offended party the amount of TWENTY-FIVE THOUSAND PESOS (₱25,000.00) as exemplary damages.[33]

In so ruling, the CA found unmeritorious appellant's argument that the allegation of "on or about 1995 up to about June 2001 was unconscionably spacious which violated his right to be informed of the nature and cause of the accusation against him." The CA ruled that the precise time of the commission of the offense need not be alleged in the complaint or information

---

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

[32] Resolution dated September 13, 2004, CA *rollo*, pp. 73-74.

[33] *Rollo*, pp. 30-31.

unless time is an essential element of the crime charged which is not so in the crime of acts of lasciviousness; and that since appellant did not move for a bill of particulars or quashal of the Information, he could no longer question on appeal the alleged defect in the Information.

As to appellant's claim that there was no evidence showing that he had carnal knowledge of AAA on July 27, 2001, the CA found that AAA was only 14 years old and had been subjected to abuse by appellant since she was seven years old; thus, she could not remember the details and the dates when she was abused; however, it was established that she was raped which happened before the Information was filed. The findings of Dr. Mascarina that there was no hymenal laceration did not categorically discount the commission of rape and full penetration was not required to convict appellant for rape. The CA found no reason for AAA to fabricate lies as she considered appellant her father who treated her like his own daughter.

The CA did not give probative value to the alleged written statement of AAA filed with it which seemed to exonerate appellant from the offense charged against him.

A Notice of Appeal[34] was subsequently filed by appellant. In a Resolution[35] dated July 23, 2008, we accepted the appeal and ordered the parties to file their respective supplemental briefs if they so desire.

Appellee filed a Manifestation[36] to be excused from filing a supplemental brief as the brief filed with the CA had adequately addressed the issues and arguments raised in the appellant's brief dated June 20, 2005.

Appellant filed a Supplemental Brief[37] wherein he alleged that assuming appellant raped AAA, the RTC gravely erred in

---

[34] CA *rollo*, p. 186.

[35] *Rollo*, p. 37.

[36] *Id.* at 40-41.

[37] *Id.* at 43-47.

imposing the penalty of *reclusion perpetua*. He claims that he should have been prosecuted for rape under RA 7610 since AAA was already more than 12 years old on that fateful day, thus, the penalty should have been *reclusion temporal* in its medium period to *reclusion perpertua*.

In his Appellant's Brief, he presented the following assignment of errors, to wit:

I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME OF ACTS OF LASCIVIOUSNESS DESPITE THE FAILURE OF THE PROSECUTION TO ALLEGE AND ESTABLISH WITH PARTICULARITY THE DATE OF THE COMMISSION OF THE OFFENSE.

II

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIMES CHARGED DESPITE THE INSUFFICIENCY OF THE PROSECUTION EVIDENCE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[38]

It is settled that in a criminal case, an appeal throws the whole case open for review, and it becomes the duty of the appellate court to correct such errors as may be found in the judgment appealed from, whether they are made the subject of assignment of errors or not.[39]

In this case, appellant was charged under two separate Informations for rape under Article 266-A of the Revised Penal Code and sexual abuse under Section 5 (b) of RA No. 7610, respectively. However, we find the Information in Criminal Case No. 11769 for sexual abuse to be void for being violative of appellant's constitutional right to be informed of the nature and cause of the accusation against him. We again quote the charging part of the Information for easy reference, thus:

---

[38] CA *rollo*, p. 90.

[39] *People v. Flores, Jr.*, 442 Phil. 561, 569 (2002).

That on or about 1995 up to about June 2001 at Barangay Apsayan, Municipality of Gerona, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there willfully, unlawfully and criminally commit acts of lasciviousness upon the person of AAA, a minor subjected to sexual abuse.

That accused is the stepfather of AAA who was born on January 29, 1988.

Contrary to law.

Under Section 8, Rule 110 of the Rules of Criminal Procedure, it provides:

Sec. 8. *Designation of the offense*. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

A reading of the allegations in the above-quoted Information would show the insufficiency of the averments of the acts alleged to have been committed by appellant. It does not contain the essential facts constituting the offense, but a statement of a conclusion of law. Thus, appellant cannot be convicted of sexual abuse under such Information.

In *People v. Dela Cruz*,[40] wherein the Information in Criminal Case No. 15368-R read:

That on or about the 2nd day of August, 1997, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously commit sexual abuse on his daughter either by raping her or committing acts of lasciviousness on her, which has debased, degraded and demeaned the intrinsic worth and dignity of his daughter, JEANNIE ANN DELA CRUZ as a human being.

CONTRARY TO LAW.[41]

---

[40] 432 Phil. 988 (2002).

[41] *Id.* at 992.

We dismissed the case after finding the Information to be void and made the following ratiocinations:

The Court also finds that accused-appellant cannot be convicted of rape or acts of lasciviousness under the information in Criminal Case No. 15368-R, which charges accused-appellant of a violation of R.A. No. 7610 (The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), "either by raping her or committing acts of lasciviousness.

It is readily apparent that the facts charged in said information do not constitute an offense. The information does not cite which among the numerous sections or subsections of R.A. No. 7610 has been violated by accused-appellant. Moreover, it does not state the acts and omissions constituting the offense, or any special or aggravating circumstances attending the same, as required under the rules of criminal procedure. Section 8, Rule 110 thereof provides:

x x x x x x x x x

The allegation in the information that accused-appellant "willfully, unlawfully and feloniously commit sexual abuse on his daughter [Jeannie Ann] either by raping her or committing acts of lasciviousness on her" is not a sufficient averment of the acts constituting the offense as required under Section 8, for these are conclusions of law, not facts. The information in Criminal Case No. 15368-R is therefore void for being violative of the accused-appellant's constitutionally-guaranteed right to be informed of the nature and cause of the accusation against him.[42]

The right to be informed of the nature and cause of the accusation against an accused cannot be waived for reasons of public policy.[43] Hence, it is imperative that the complaint or information filed against the accused be complete to meet its objectives. As such, an indictment must fully state the elements of the specific offense alleged to have been committed.[44]

---

[42] *Id.* at 1014-1016.

[43] *People v. Flores, Jr.*, *supra* note 39, citing *People v. Antido*, G.R. No. 121098, September 4, 1997, 278 SCRA 425, 452, citing RICARDO J. FRANCISCO, CRIMINAL PROCEDURE, 270-271 (2nd ed., 1994).

[44] *Id.* at 569-570, citing *People v. Cutamora*, G.R. Nos. 133448-53, October 6, 2000, 342 SCRA 231, 239 (2000), citing *People v. Bayya*, 327

The next question to be addressed is whether the prosecution was able to prove all the elements of the crime of rape under Article 266-A of the Revised Penal Code, as amended, which provides:

Art. 266-A *Rape; When And How Committed — Rape is Committed —*

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;
b) When the offended party is deprived of reason or 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.

We find that AAA remained steadfast in her assertion that appellant raped her through force and intimidation with the use of a samurai. And even after the incident, appellant threatened AAA that he would kill her and her aunt, *i.e.,* appellant's wife, should AAA report the incident. Thus, AAA's testimony on the witness stand:

Q. What did the accused do to you?
A. He aimed the samurai at me and he took me inside the room, sir.

Q. And what happened when he took you inside the room?

ATTY. MARTINEZ:
Q. What date are you referring to?
A. I can no longer remember, sir.

FISCAL DAYAON:
Q. And what happened when you were in the room?
A. He aimed the samurai at me and directed me to remove my clothes, sir.

SCRA 771, 777 (2000); see also *Balitaan v. Court of First Instance of Batangas*, 115 SCRA 729, 739 (1982), cited in *People v. Ramos*, 296 SCRA 559, 576 (1998).

Q. Did you remove your clothes?
A. No, sir.

Q. Because you did not take off your clothes, what happened?
A. He was forcing me to remove my clothes. He was able to remove my clothes, sir.

Q. After undressing you, what happened?
A. He kissed me, sir.

Q. Where did he [kiss] you?
A. On my lips, sir.

Q. Where else?
A. He was [mashing] my breast.

Q. What else?
A. On my genitals.

Q. Aside from kissing you and mashing your breast and holding your vagina, what else did he do?
A. He lay on top of me.

Q. When he laid on top you, was the accused on his dress (sic) or what was his condition then?
A. He was naked, sir.

Q. Was he wearing a shirt?
A. No, sir.

Q. Was he wearing pants?
A. No, sir.

Q. What happened when he laid on top of you?
A. He was trying to insert his penis to my vagina.

FISCAL DAYAON:

Q. Was he able to insert his organ to your vagina?
A. No, sir.

Q. Could you tell us if his organ touched your vagina?
A. Yes, sir.

Q. What part of your vagina was touched by his organ?
A. I do not know.

Q. How many times did [the] accused try to insert his organ to your vagina?
A. Many times, sir.

Q. Did you not tell your aunt about this incident that the accused was trying to insert his organ to your vagina.
A. No, sir.

Q. Why did you not tell her?
A. No, sir because he was threatening to kill me and my aunt, sir.

Q. How did he tell you?
A. The samurai was pointed at me, sir.

Q. Could you tell us how did he tell you [that he will kill] you and your aunt?
A. Don't tell the truth or else I will kill you and your aunt.[45]

On clarification made by the Court after the direct examination, AAA testified, to wit:

Q. Did you feel anything when he was trying to insert his penis to your private organ?
A. There was, sir.

Q. Where were you hurt?
A. My vagina, sir.[46]

The Court made further clarification after the redirect examination, thus:

Q. Was there any occasion that your uncle inserted his penis to your vagina?

The witness
A. Yes, sir.

x x x x x x x x x

Q. What did you feel when he did that to you.
A. It was painful, sir.[47]

---

[45] TSN, April 30, 2002, pp. 16-19.

[46] *Id.* at 21.

[47] TSN, June 11, 2002, pp. 18-19.

Indeed, AAA testified in her redirect examination that appellant had inserted his organ into her vagina and that it was painful when appellant did it. It was the penetration that caused the pain. We held that rape is committed on the victim's testimony that she felt pain.[48] This, at least, could be nothing but the result of penile penetration sufficient to constitute rape.[49] Rape is committed even with the slightest penetration of the woman's sex organ.[50]

A finding that the accused is guilty of rape may be based solely on the victim's testimony if such testimony meets the test of credibility.[51] We held that no woman, much less a child of such tender age, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars.[52]

Appellant argues that he could not be convicted of rape since based on the medical examination report, AAA's genitalia had no hymenal laceration which corroborated AAA's testimony that appellant merely kissed her and touched her breast on July 27, 2001.

Proof of hymenal laceration is not an element of rape.[53] An intact hymen does not negate a finding that the victim was raped. Penetration of the penis by entry into the lips of the vagina, even without laceration of the hymen, is enough to constitute rape, and even the briefest of contact is deemed rape.[54]

---

[48] *People v. Tampos*, 455 Phil. 844, 859 (2003).

[49] *People v. Palicte*, G.R. No. 101088, January 27, 1994, 229 SCRA 543, 547-548.

[50] *Id.* at 548, citing *People v. Alegado*, G.R. Nos. 93030-31, August 21, 1991, 201 SCRA 37. See also the case of *People v. Gabris*, G.R. No. 116221, July 11, 1996, 258 SCRA 663.

[51] *People v. Sumarago*, 466 Phil. 956, 966 (2004).

[52] *People v. Canonigo*, G.R. No. 133649, August 4, 2000, 337 SCRA 310, 317, citing *People v. Cabebe*, 290 SCRA 543 (1998).

[53] *People v. Boromeo*, G.R. No. 150501, June 3, 2004, 430 SCRA 533.

[54] *Id.*

In *People v. Bohol*,[55] we explained the treatment of medical evidence as not essential in proving rape cases, thus,

> There is no gainsaying that medical evidence is merely corroborative, and is even dispensable, in proving the crime of rape. In child sexual abuse cases particularly, normal physical findings are common due to several factors, such as delay in seeking medical examination, the rapid healing of injuries, washing, urinating or defecating after the sexual assault, the elasticity of the hymen, changes in the hymenal tissue due to estrogen effect when the victim is at the pubertal stage, or the type of sexual molestation involved, such as fondling, oral sodomy, or cunnilingus, which leaves no physical marks. The child's disclosure is the most important evidence of the sexual abuse she has gone through.[56]

While it appears from AAA's testimony that she was not raped precisely on July 27, 2001 as what appellant did was kiss her lips and mash her breast on that day, however, her entire testimony in the witness stand positively shows that appellant with the use of force and intimidation had carnal knowledge of her at some other time. She testified that appellant violated her since she was seven years old. The first time was when they were still staying in Angeles City where appellant touched her private parts; the second time was when they were already in Gerona, Tarlac, where appellant pointed a samurai at her and raped her; and the third time happened on July 27, 2001 when appellant kissed her lips and mashed her breast. Indeed, appellant may be convicted for rape in the light of AAA's testimony. For in rape cases, the date of the commission is not an essential element of the offense; what is material is its occurrence.[57]

Notably, the information alleges that the crime of rape was committed "on or about July 27, 2001," thus the prosecution may prove that rape was committed on or about July 27, 2001,

---

[55] 415 Phil. 749 (2001).

[56] *Id.* at 760-761.

[57] *People v. Macaya*, G.R. Nos. 137185-86, February 5, 2001, 351 SCRA 707, 714; *People v. Gopio*, G.R. No. 133925, November 29, 2000, 346 SCRA 408, 429.

i.e., few months or years before, and not exactly on July 27, 2001.

In *People v. Lizada*,[58] wherein accused-appellant averred that the prosecution failed to adduce the requisite quantum of evidence that he raped the private complainant precisely on September 15, 1998 and October 22, 1998, we ruled:

> The contention of accused-appellant does not persuade the Court. The private complainant testified that since 1996, when she was only eleven years old, until 1998, for two times a week, accused-appellant used to place himself on top of her and despite her tenacious resistance, touched her arms, legs and sex organ and inserted his finger and penis into her vagina. In the process, he ejaculated. Accused-appellant threatened to kill her if she divulged to anyone what he did to her. Although private complainant did not testify that she was raped on September 15, 1998 and October 22, 1998, nevertheless accused-appellant may be convicted for two counts of rape, in light of the testimony of private complainant.
>
> It bears stressing that under the two Informations, the rape incidents are alleged to have been committed "on or about September 15, 1998" and "on or about October 22, 1998." The words "on or about" envisage a period, months or even two or four years before September 15, 1998 or October 22, 1998. The prosecution may prove that the crime charged was committed on or about September 15, 1998 and on or about October 22, 1998.[59]

Appellant's main defense is denial. He claims that the charge was instigated by his wife's relatives who are against their relationship. Such defense remains unsubstantiated. Moreover, it would be the height of ingratitude for AAA, who was not even shown to have any improper motive, to falsely accuse appellant of sexual abuses especially that appellant and his wife treated her like their own daughter and the fact that appellant might go to jail. In fact, AAA suffered in silence out of fear for her and her aunt's lives if not for her cousin who saw appellant in the act of kissing her and touching her private parts. It was

---

[58] 444 Phil. 67 (2003).

[59] *Id.* at 82.

when she was brought to the DSWD that she made known appellant's abuses done to her.

Anent the alleged letter of AAA filed with the CA which sought to exonerate appellant from the charges filed against him, we find the same not worthy of belief. We quote with approval what the CA said in not giving probative value to such letter, to wit:

x x x We cannot consider the same as it has no probative value considering that it appears not to be the genuine signature of the private complainant AAA herself as compared to her signatures in the original complaint and her sworn statement. More so, it also appears that the said document is not the original one as required by the best evidence rule in criminal procedure. Lastly, it is worth noticeable that the execution of the said letter was not assisted by a counsel and it was not also notarized.[60]

In his Supplemental Brief, appellant claims that he should have been prosecuted for rape under RA No. 7610 since AAA was already more than 12 years old when the alleged rape was committed which carries the penalty of *reclusion temporal* in its medium period to *reclusion perpetua*.

We do not agree.

In *People v. Dahilig*,[61] wherein the question posed was whether the crime committed was rape (Violation of Article 266-A, par. 1, in relation to Article 266-B, 1st paragraph of the Revised Penal Code, as amended by RA No. 8353), or is it Child Abuse, defined and penalized by Section 5, (b), RA No. 7610, we said:

As elucidated by the RTC and the CA in their respective decisions, all the elements of both crimes are present in this case. The case of *People v. Abay,* however, is enlightening and instructional on this issue. It was stated in that case that if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5 (b) of R.A. No. 7610 or rape under Article 266-A (except paragraph 1 [d] of the Revised Penal Code. However, the offender

---

[60] *Rollo*, p. 28.

[61] G.R. No. 187083, June 13, 2011.

cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced. A person cannot be subjected twice to criminal liability for a single criminal act. Specifically, *Abay* reads:

> Under Section 5 (b), Article III of RA 7610 in relation to RA 8353, if the victim of sexual abuse is below 12 years of age, the offender should not be prosecuted for sexual abuse but for statutory rape under Article 266-A (1)(d) of the Revised Penal Code and penalized with *reclusion perpetua.* On the other hand, if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5 (b) of RA 7610 or rape under Article 266-A (except paragraph 1[d]) of the Revised Penal Code. However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced. A person cannot be subjected twice to criminal liability for a single criminal act. Likewise, rape cannot be complexed with a violation of Section 5 (b) of RA 7610. Under Section 48 of the Revised Penal Code (on complex crimes), a felony under the Revised Penal Code (such as rape) cannot be complexed with an offense penalized by a special law.
>
> In this case, the victim was more than 12 years old when the crime was committed against her. The Information against appellant stated that AAA was 13 years old at the time of the incident. Therefore, appellant may be prosecuted either for violation of Section 5 (b) of RA 7610 or rape under Article 266-A (except paragraph 1 [d]) of the Revised Penal Code. While the Information may have alleged the elements of both crimes, the prosecution's evidence only established that appellant sexually violated the person of AAA through force and intimidation by threatening her with a bladed instrument and forcing her to submit to his bestial designs. Thus, rape was established.

Accordingly, the accused can indeed be charged with either Rape or Child Abuse and be convicted therefor. Considering, however, that the information correctly charged the accused with rape in violation of Article 266-A par. 1 in relation to Article 266-B, 1st par. of the Revised Penal Code, as amended by R.A. No. 8353, and that he was convicted therefor, the CA should have merely affirmed the conviction.

As in the present case, appellant can indeed be charged with either Rape or Child Abuse and be convicted therefor. The prosecution's evidence established that appellant had carnal knowledge of AAA through force and intimidation by threatening her with a samurai. Thus, rape was established. Considering that in the resolution of the Assistant Provincial Prosecutor, he resolved the filing of rape under Article 266-A of the Revised Penal Code for which appellant was convicted by both the RTC and the CA, therefore, we merely affirm the conviction.

However, we need to modify the damages awarded for the crime of rape committed on AAA. The CA awarded the amount of ₱75,000.00 as civil indemnity for the crime of rape, saying that rape was qualified by the circumstance of minority. It also awarded moral damages in the amount of ₱75,000.00 and exemplary damages of ₱50,000.00.

While the Information for rape mentioned AAA's minority, as well as the fact that she was a stepdaughter of appellant, it was only AAA's minority which was proven by a copy of a birth certificate issued by the Office of the City Civil Registrar of Angeles City. Conformably with the ruling in *People v. Esperanza*,[62] when either one of the qualifying circumstances of relationship and minority is omitted or lacking, that which is pleaded in the Information and proved by the evidence may be considered as an aggravating circumstance. As such, AAA's minority may be considered as an aggravating circumstance. However, it may not serve to raise the penalty, because in simple rape by sexual intercourse, the imposable penalty is *reclusion perpetua* which is single and indivisible.[63] Hence, the civil indemnity and moral damages awarded by the CA must be reduced from ₱75,000.00 to ₱50,000.00 each in line with prevailing jurisprudence.[64] Moreover, when a crime is committed

---

[62] 453 Phil. 54, 77 (2003).

[63] *People v. Hermocilla*, G.R. No. 175830, July 10, 2007, 527 SCRA 296, 305.

[64] *See People v. Padilla,* G.R. No. 167955, September 30, 2009, 601 SCRA 385, 403, citing *People v. Remeias Begino y Grajo*, G.R. No. 181246,

with an aggravating circumstance, either qualifying or generic, an award of exemplary damages is justified under Article 2230 of the New Civil Code.[65] The CA's award of ₱50,000.00 must also be reduced to ₱30,000.00, in accordance with prevailing jurisprudence.[66]

WHEREFORE, the Decision dated January 25, 2008 of the Court of Appeals, finding appellant Bernabe Pangilinan guilty beyond reasonable doubt of rape under Article 266-A of the Revised Penal Code, as amended, and sentencing him to suffer the penalty of *reclusion perpetua* in Criminal Case No. 11768, is hereby *AFFIRMED* with *MODIFICATION* as to the award of damages. Appellant is ordered to pay the offended party, private complainant AAA, the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages, pursuant to prevailing jurisprudence.

The Information in Criminal Case No. 11769 is declared null and void for being violative of the appellant's constitutionally-guaranteed right to be informed of the nature and cause of the accusation against him. The case for Child Sexual Abuse under Section 5 (b) of RA No. 7160 against appellant is therefore *DISMISSED*.

SO ORDERED.

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

March 20, 2009, 582 SCRA 189; *People v. Elmer Baldo y Santain*, G.R. No. 175238, February 24, 2009, 580 SCRA 225.

[65] *Id.*; citing *People v. Marcos,* G.R. No. 185380, June 18, 2009, 589 SCRA 661.

[66] *Id.*; *People v. Peralta*, G.R. No. 187531, October 16, 2009, 604 SCRA 285, 291.

[*] Designated as an additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152, dated November 11, 2011.

SECOND DIVISION

[G.R. No. 184808. November 14, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ASMAD BARA *y* ASMAD,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; R.A. NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. —** In a prosecution for illegal sale of dangerous drugs, the following elements must be duly established: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. The delivery of the illicit drug to the *poseur*-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*.

2. **ID.; ID.; ID.; MERE LAPSES IN PROCEDURES NEED NOT INVALIDATE A SEIZURE IF THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS CAN BE SHOWN TO HAVE BEEN PROPERLY PRESERVED AND SAFEGUARDED; APPLICATION IN CASE AT BAR. —** Non-compliance by the police with the directive of Section 21, Article 11 of R.A. No. 9165 is not necessarily fatal to a prosecution's case, in light of the last sentence of its implementing rules expressly stating 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[.]" Simply put, mere lapses in procedures need not invalidate a seizure if the integrity and evidentiary value of the seized items can be shown to have been properly preserved and safeguarded. The procedures are there to ensure the integrity and evidentiary value of seized items, and can liberally be viewed if the attainment of these objectives is not in doubt. Jurisprudence teems with pronouncements that failure to strictly comply with

> Section 21, Article II of R.A. No. 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. To reiterate, what assumes utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as these are the critical pieces of evidence in the determination of the guilt or innocence of the accused. In this case, as discussed, the integrity and the evidentiary value of the dangerous drug seized from the appellant were duly proven to have been properly preserved; its identity, quantity and quality remained untarnished. We thus see sufficient compliance by the police with the required procedure in the custody and control of the confiscated items.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J*.:

We review the decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 01529, which affirmed the decision[2] of the Regional Trial Court (*RTC*), Branch 2, Manila, finding Asmad Bara *y* Asmad (*appellant*) guilty beyond reasonable doubt of illegal sale of *shabu* under Section 5, Article II of Republic Act (*R.A.*) No. 9165 (the Comprehensive Dangerous Drugs Act of 2002).

<u>BACKGROUND FACTS</u>

After receipt of information that the appellant was selling drugs on M. Adriatico Street, Malate, Manila, Senior Police

---

[1] *Rollo*, pp. 2-11; penned by Associate Justice Edgardo F. Sundiam, and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Monina Arevalo-Zenarosa.

[2] CA *rollo*, pp. 11-14.

Officer (*SPO*) 1 Rodolfo Ramos informed the members of the Western Police District, District Anti-Illegal Drugs-Special Operations Group (*DAID-SOG*), United Nations Avenue, Ermita, Manila, of a planned surveillance and "narcotics operation." SPO1 Ramos prepared the pre-operation report and the buy-bust money consisting of two ₱100.00 bills; he also designated Police Officer (*PO*)1 Alexander delos Santos as the *poseur*-buyer.[3]

After these preparations, the police went to M. Adriatico Street to conduct their entrapment operation. On arrival, PO1 Delos Santos and the informant alighted from their car; the other members of the entrapment team remained inside the vehicle. When the informant saw the appellant, he identified the latter to PO1 Delos Santos as the target person.

The appellant, on seeing the informant, approached the latter and talked to him. At this point, the informant introduced PO1 Delos Santos to the appellant as a buyer of *shabu*. Queried by the appellant on how much he would buy, PO1 Delos Santos replied: "*Two hundred pesos*."[4] The appellant asked PO1 Delos Santos to wait as he would get his "stuff" from an alley 15 meters away. On his return, the appellant handed PO1 Delos Santos one (1) transparent plastic sachet containing crystalline substances. PO1 Delos Santos, in turn, gave the appellant the marked money which the appellant placed in his pocket.[5]

Immediately, PO1 Delos Santos grabbed the appellant's hand and introduced himself as a police officer. The other members of the buy-bust team rushed to the scene and assisted in arresting the appellant. PO1 Delos Santos then handed the plastic sachet to their team leader, SPO1 Ramos. The police informed the appellant of his constitutional rights, and brought him and the seized item to the police station.[6]

---

[3] TSN, August 9, 2005, pp. 4-6.

[4] *Id.* at 6-7.

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

[6] *Id.* at 8-9, 16-17.

At the police station, SPO1 Ramos handed the confiscated item to the desk investigator, who marked it with the initials "*AAB*."[7] Police Superintendent (*P/Supt.*) Marcelino Pedrozo, Jr. prepared a covering request for laboratory examination and forwarded the confiscated item to the Philippine National Police (*PNP*) Crime Laboratory for qualitative analysis.[8] Police Inspector (*P/Insp.*) Maritess Mariano, the PNP Forensic Chemical Officer, examined the submitted specimen and found it positive for *shabu*.[9]

The prosecution charged the appellant before the RTC with violation of Section 5, Article II of R.A. No. 9165.[10] The appellant denied the charge and claimed that he was resting in his house when the police arrested him.[11] In its decision dated September 5, 2005, the RTC convicted the appellant of the crime charged, and sentenced him to suffer the penalty of life imprisonment. The RTC likewise ordered him to pay a ₱500,000.00 fine.[12]

The appellant appealed to the CA; the appeal was docketed as CA-G.R. CR-H.C. No. 01529. In its decision of January 31, 2008, the CA fully affirmed the RTC decision.

---

[7] *Id.* at 9-10, 16-17.

[8] Records, p. 5.

[9] *Id.* at 6.

[10] The information reads:

That on or about March 31, 2004, in the City of Manila, Philippines, the said accused, without 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 to PO1 ALEXANDER DELOS SANTOS, who acted as a poseur-buyer, one (1) heat-sealed transparent plastic sachet of white crystalline substance, marked by the police as "AAB" with net weight of **ZERO POINT ONE FOUR ZERO (0.140) gram** commonly known as "SHABU," which substance, after qualitative examination, gave positive results for methylamphetamine hydrochloride, which is a dangerous drug.

CONTRARY TO LAW. [CA *rollo*, p. 8.]

[11] TSN, August 30, 2005, pp. 3-4.

[12] *Supra* note 2.

The CA ruled that all the elements of illegal sale of dangerous drugs had been proven. The CA gave credence to the testimony of PO1 Delos Santos that a buy-bust operation had been conducted; it found no improper motive on his part to falsely testify against the appellant. The appellate court likewise ruled that the presentation of the informant is not essential for conviction. It added that coordination with the Philippine Drug Enforcement Agency is not an indispensable requirement in the prosecution of drug cases.[13]

The appellant appealed the CA decision to this Court pursuant to Section 13, par. c, Rule 124 of the Rules of Court, as amended by A.M. No. 00-5-03-SC.

THE ISSUE

In the present appeal with us, the appellant poses the issue of whether his guilt for violation of Section 5, Article II of R.A. No. 9165 has been proven beyond reasonable doubt.

THE COURT'S RULING

After due consideration, we resolve to deny the appeal for lack of merit.

In a prosecution for illegal sale of dangerous drugs, the following elements must be duly established: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. The delivery of the illicit drug to the *poseur*-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*.[14]

Our examination of the records confirms the presence of all the required elements. The witness for the prosecution

---

[13] *Supra* note 1.

[14] See *People of the Philippines v. Manuel Cruz y Cruz*, G.R. No. 187047, June 15, 2011; and *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 263-264.

successfully proved that a buy-bust operation indeed took place, and the *shabu* subject of the sale was brought to, and duly identified in, court. PO1 Delos Santos positively identified the appellant as the person who sold to him one plastic sachet containing white crystalline substances in exchange for ₱200.00. The white crystalline substances contained in the seized plastic sachet were examined and confirmed to be *shabu*, per Chemistry Report No. D-653-04 issued by the PNP Forensic Chemical Officer, P/Insp. Mariano. P/Insp. Mariano's finding was approved by the Chief of the PNP's Chemical Section, Police Senior Inspector Judycel Macapagal. Significantly, the appellant did not impute any ill motive on the part of PO1 Delos Santos that would lead the latter to falsely testify.

We also find that the totality of the presented evidence leads to an unbroken chain of custody of the confiscated item from the appellant. The records bear out that after PO1 Delos Santos received the plastic sachet from the appellant, the former handed it to SPO1 Ramos. Thereafter, the buy-bust team brought the appellant and the seized item to the police station on United Nations Avenue, Ermita, Manila, for investigation. Upon arrival, SPO1 Ramos immediately handed the seized item over to the investigator, who marked it with the appellant's initials "*AAB*." P/Supt. Pedrozo, the Chief of DAID-SOG, on the same day, prepared a request for laboratory examination and, together with this request, forwarded the seized item to the PNP Crime Laboratory for qualitative analysis. PNP Forensic Chemical Officer P/Insp. Mariano examined the contents of the plastic sachet marked "*AAB"* and found it positive for the presence of *shabu*. PO1 Delos Santos identified the plastic sachet in court to be the same item he confiscated from the appellant.

Plainly, the prosecution established the crucial links in the chain of custody of the sold and seized sachet of *shabu,* from the time it was first seized from the appellant, until it was brought for examination and presented in court. We note in this regard that the parties stipulated during pre-trial that the heat-sealed transparent plastic sachet with marking "*AAB*" and containing white crystalline substances was examined by P/Insp. Mariano,

and the examination yielded positive results for the presence of methylamphetamine hydrochloride (*shabu*). In sum, we find that the integrity and the evidentiary value of the drugs seized from the appellant have not been compromised.

If a flaw exists at all in the prosecution's case, such flaw is in the failure of the apprehending team to strictly comply with the requirements of Section 21, Article II of R.A. No. 9165. We note, however, that **at no time during trial and even on appeal did the defense question the entrapment team's alleged non-compliance with Section 21**.

At any rate, non-compliance by the police with the directive of Section 21, Article II of R.A. No. 9165 is not necessarily fatal to a prosecution's case, in light of the last sentence of its implementing rules expressly stating 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[.]" Simply put, mere lapses in procedures need not invalidate a seizure if the integrity and evidentiary value of the seized items can be shown to have been properly preserved and safeguarded.[15] The procedures are there to ensure the integrity and evidentiary value of seized items, and can liberally be viewed if the attainment of these objectives is not in doubt.

Jurisprudence teems with pronouncements that failure to strictly comply with Section 21, Article II of R.A. No. 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. To reiterate, what assumes utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as these are the critical pieces of evidence in the determination of the guilt or innocence of the accused.[16] In this case, as discussed, the integrity and

---

[15] See *People v. Domado*, G.R. No. 172971, June 16, 2010, 621 SCRA 73, 85.

[16] See *People v. Teodoro*, G.R. No. 185164, June 22, 2009, 590 SCRA 494, 507, citing *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560

the evidentiary value of the dangerous drug seized from the appellant were duly proven to have been properly preserved; its identity, quantity and quality remained untarnished. We thus see sufficient compliance by the police with the required procedure in the custody and control of the confiscated items. In the similar case of *People v. Campomanes,*[17] we held:

Although Section 21(1) of R.A. No. 9165 mandates that the apprehending team must immediately conduct a physical inventory of the seized items and photograph them, non-compliance with said Section 21 is not fatal as long as there is a justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/ seized items are properly preserved by the apprehending team. Thus, the prosecution must demonstrate that the integrity and evidentiary value of the evidence seized have been preserved.

We note that nowhere in the prosecution evidence does it show the "justifiable ground" which may excuse the police operatives involved in the buy-bust operation in the case at bar from complying with Section 21 of Republic Act No. 9165, particularly the making of the inventory and the photographing of the drugs and drug paraphernalia confiscated and/or seized. However, such omission shall not render accused-appellant's arrest illegal or the items seized/ confiscated from him as inadmissible in evidence. In *People v. Naelga* [G.R. No. 171018, September 11, 2009, 599 SCRA 477], We have explained that what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items because the same will be utilized in ascertaining the guilt or innocence of the accused.

It must be stressed that said "justifiable ground" will remain unknown in the light of the apparent failure of the accused-appellant to challenge the custody and safekeeping or the issue of disposition and preservation of the subject drugs and drug paraphernalia before the RTC.

SCRA 430, 445-446, *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA, 627, 636, and *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842-843.

[17] G.R. No. 187741, August 9, 2010, 627 SCRA 494, 506-507.

Finally, we find the penalty imposed to be within the range provided by law,[18] and was, therefore, correctly imposed by the RTC and affirmed by the CA.

WHEREFORE, premises considered, we hereby *AFFIRM* the January 31, 2008 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01529.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.,* concur.

EN BANC

[A.C. No. 6246. November 15, 2011]
(Formerly CBD No. 00-730)

MARITES E. FREEMAN, *complainant, vs.* **ATTY. ZENAIDA P. REYES,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; DISBARMENT OR SUSPENSION OF ATTORNEYS; DISCIPLINARY PROCEEDINGS; PUBLIC INTEREST IS THE PRIMARY OBJECTIVE THEREOF AND THE REAL QUESTION FOR DETERMINATION IS WHETHER OR NOT THE ATTORNEY IS STILL FIT TO

---

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

BE ALLOWED THE PRIVILEGES AS SUCH. — The object of a disbarment proceeding is not so much to punish the individual attorney himself, as to safeguard the administration of justice by protecting the court and the public from the misconduct of officers of the court, and to remove from the profession of law persons whose disregard for their oath of office have proved them unfit to continue discharging the trust reposed in them as members of the bar. A disciplinary proceeding against a lawyer is *sui generis.* Neither purely civil nor purely criminal, it does not involve a trial of an action or a suit, but rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still fit to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court, with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice, by purging the profession of members who, by their misconduct, have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.

2. **ID.; ID.; WHEN A LAWYER RECEIVES MONEY FROM THE CLIENT FOR A PARTICULAR PURPOSE, HE IS BOUND TO RENDER AN ACCOUNTING THEREFOR. —** Be that as it may, assuming that respondent acted within the scope of her authority to represent the complainant in pursuing the insurance claims, she should never deviate from the benchmarks set by Canon 16 of the Code of Professional Responsibility which mandates that a lawyer shall hold in trust all moneys and properties of his client that may come into his possession. Specifically, Rule 16.01 states that a lawyer shall account for all money or property collected or received for or from the client, and Rule 16.03 thereof requires that a lawyer shall deliver the funds and property of a client when due or upon demand. When a lawyer receives money from the client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for a particular purpose.

And if he does not use the money for the intended purpose, the lawyer must immediately return the money to his client.

3. **ID.; ID.; WHEN A LAWYER SHALL NOT ENGAGE IN UNLAWFUL, DISHONEST, IMMORAL OR DECEITFUL CONDUCT; VIOLATION IN CASE AT BAR. —** [O]n December 4, 1998, complainant gave ₱50,000.00 to the respondent for the purpose of assisting her in claiming the insurance proceeds; however, per Application for United Kingdom Entry Clearance, dated December 8, 1998, it showed that respondent's primary purpose in traveling to London was to attend the International Law Conference in Russell Square, London. It is appalling that respondent had the gall to take advantage of the benevolence of the complainant, then grieving for the loss of her husband, and mislead her into believing that she needed to go to London to assist in recovering the proceeds of the insurance policies. Worse, respondent even inculcated in the mind of the complainant that she had to adhere to the nefarious culture of giving "grease money" or *lagay,* in the total amount of ₱43,000.00, to the British Embassy personnel, as if it was an ordinary occurrence in the normal course of conducting official business transactions, as a means to expedite the visa applications. This runs afoul the dictum in Rule 1.01 of Canon 1 of the Code of Professional Responsibility which states that a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

4. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; DEGREE OF PROOF REQUIRED IN ADMINISTRATIVE CASES IS ONLY SUBSTANTIAL EVIDENCE; EXPLAINED. —** A criminal case is different from an administrative case, and each must be disposed of according to the facts and the law applicable to each case. Section 5, in relation to Sections 1 and 2, Rule 133, Rules of Court states that in administrative cases, only substantial evidence is required, not proof beyond reasonable doubt as in criminal cases, or preponderance of evidence as in civil cases. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. Applying the rule to the present case, the dismissal of a criminal case does not preclude the continuance of a separate and independent action for administrative liability, as the weight of evidence necessary to establish the culpability is merely substantial

evidence. Respondent's defense that the criminal complaint for estafa against her was already dismissed is of no consequence. An administrative case can proceed independently, even if there was a full-blown trial wherein, based on both prosecution and defense evidence, the trial court eventually rendered a judgment of acquittal, on the ground either that the prosecution failed to prove the respondent's guilt beyond reasonable doubt, or that no crime was committed. More so, in the present administrative case, wherein the ground for the dismissal of the criminal case was because the trial court granted the prosecution's motion to withdraw the information and, *a fortiori*, dismissed the case for insufficiency of evidence.

5. **LEGAL ETHICS; ATTORNEYS; THE RELATION BETWEEN ATTORNEY AND CLIENT IS HIGHLY FIDUCIARY IN NATURE; SUSTAINED. —** In *Velez v. De Vera*, the Court ruled that the relation between attorney and client is highly fiduciary in nature. Being such, it requires utmost good faith, loyalty, fidelity, and disinterestedness on the part of the attorney. Its fiduciary nature is intended for the protection of the client. The Canon of Professional Ethics provides that the lawyer should refrain from any action whereby for his personal benefit or gain, he abuses or takes advantage of the confidence reposed in him by his client. Money of the client or collected for the client, or other trust property coming into the possession of the lawyer, should be reported and accounted for promptly and should not, under any circumstances, be commingled with his own or be used by him. Consequently, a lawyer's failure to return upon demand the funds or property held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use to the prejudice of, and in violation of the trust reposed in him by, his client. It is a gross violation of general morality as well as of professional ethics; it impairs the public confidence in the legal profession and deserves punishment. Lawyers who misappropriate the funds entrusted to them are in gross violation of professional ethics and are guilty of betrayal of public confidence in the legal profession. Those who are guilty of such infraction may be disbarred or suspended indefinitely from the practice of law. Indeed, lawyering is not a business. It is a profession in which duty to public service, not money, is the primary consideration.

6. **ID.; ID.; WHEN GUILTY OF GRAVE MISCONDUCT; PENALTY. —** In some cases, the Court stripped lawyers of the privilege to practice their profession for breach of trust and confidence pertaining to their clients' moneys and properties. In *Manzano v. Soriano*, therein respondent, found guilty of grave misconduct (misappropriating the funds belonging to his client) and malpractice, represented therein complainant in a collection suit, but failed to turn over the amount of ₱50,000.00 as stipulated in their agreement and, to conceal the misdeed, executed a simulated deed of sale, with himself as the vendor and, at the same time, the notary public. In *Lemoine v. Balon, Jr.*, therein respondent, found guilty of malpractice, deceit, and gross misconduct, received the check corresponding to his client's insurance claim, falsified the check and made it payable to himself, encashed the same, and appropriated the proceeds. Law advocacy, it has been stressed, is not capital that yields profits. The returns it births are simple rewards for a job done or service rendered. It is a calling that, unlike mercantile pursuits which enjoy a greater deal of freedom from government interference, is impressed with public interest, for which it is subject to State regulation. Respondent's repeated reprehensible acts of employing chicanery and unbecoming conduct to conceal her web of lies, to the extent of milking complainant's finances dry, and deceitfully arrogating upon herself the insurance proceeds that should rightfully belong to complainant, in the guise of rendering legitimate legal services, clearly transgressed the norms of honesty and integrity required in the practice of law. This being so, respondent should be purged from the privilege of exercising the noble legal profession.

D E C I S I O N

PER CURIAM:

Before this Court is an administrative complaint, filed by complainant Marites E. Freeman, seeking the disbarment of respondent Atty. Zenaida P. Reyes, for gross dishonesty in obtaining money from her, without rendering proper legal services, and appropriating the proceeds of the insurance policies of her deceased husband. Complainant also seeks recovery of all the

amounts she had given to respondent and the insurance proceeds, which was remitted to the latter, with prayer for payment of moral and exemplary damages.

In her sworn Complaint-Affidavit[1] dated April 7, 2000, filed on May 10, 2000, complainant alleged that her husband Robert Keith Freeman, a British national, died in London on October 18, 1998. She and her son, Frank Lawrence applied for visas, to enable them to attend the wake and funeral, but their visa applications were denied. Complainant engaged the services of respondent who, in turn, assured her that she would help her secure the visas and obtain the death benefits and other insurance claims due her. Respondent told complainant that she had to personally go to London to facilitate the processing of the claims, and demanded that the latter bear all expenses for the trip. On December 4, 1998, she gave respondent the amount of ₱50,000.00. As acknowledgment for the receipt of ₱47,500.00 for service charge, tax, and one round trip ticket to London, respondent gave her a Cash/Check Voucher,[2] issued by Broadway Travel, Inc., but on the right margin thereof, the notations in the amount of "₱50,000.00" and the date "12-5-98" were written and duly initialled. On December 9, 1998, she acceded into giving respondent the amount of ₱20,000.00 for legal costs in securing the visas, as shown by the Temporary Receipt[3] bearing said date, issued by Z.P. Reyes Law Office (respondent's law firm). On December 18, 1998, she went to see respondent to follow-up the visa applications, but the latter asked for the additional amount of ₱10,000.00 for travel expenses, per Temporary Receipt[4] bearing said date, issued by respondent's law firm. After several phone calls inquiring about the status

---

[1] *Rollo*, pp. 1-8.

[2] Annex "A" of complainant's Complaint-Affidavit dated April 7, 2000, *id.* at 9.

[3] Annex "B" of complainant's Complaint-Affidavit dated April 7, 2000, *id.* at 10.

[4] Annex "C" of complainant's Complaint-Affidavit dated April 7, 2000, *id.*

of the *visa* applications, respondent told her, "*Mahirap gapangin ang pagkuha ng* visa, *kasi blacklisted at banned ka sa Embassy.*" (It is difficult to railroad the process of securing visa, because you are blacklisted and banned by the Embassy). Sometime in February 1999, respondent told her that to lift the travel ban on her, she should shell out ₱18,000.00 as "*panlagay*" or "grease money" to bribe some staff of the British Embassy. After a week, respondent informed her that the ban was lifted, but the visas would be issued on a later date, as she had convinced the British Embassy to issue resident visas instead of tourist visas. Respondent told her that to expedite the release of the resident visas, she should again give ₱20,000.00 and a bottle of wine, worth ₱5,000.00, as "grease money" to bribe the British Embassy personnel. After several weeks, respondent told her that the period for visa applications had lapsed, and that another amount of ₱18,000.00 was needed to reinstate the same. Later, respondent asked for ₱30,000.00 as legal costs, per Temporary Receipt,[5] dated April 19, 1999, to be used for booking the former's flight to London, and ₱39,000.00 for legal costs, per Temporary Receipt[6] dated May 13, 1999, to cover the expenses for the plane tickets. Both temporary receipts were issued by respondent's law firm.

Complainant said that despite repeated follow-ups with respondent, nothing came out. Instead, she received a picture of her husband's burial, sent by one Stanley Grist, a friend of the deceased. She later learned that respondent left for London alone, without informing her about it. Respondent explained that she needed to go to London to follow-up the insurance claims, and warned her not to communicate with Grist who allegedly pocketed the proceeds of her husband's insurance policy. She told respondent that she received a letter[7] dated

---

[5] Annex "D" of complainant's Complaint-Affidavit dated April 7, 2000, *id.* at 11.

[6] Annex "E" of complainant's Complaint-Affidavit dated April 7, 2000, *id.*

[7] Annex "F" of complainant's Complaint-Affidavit dated April 7, 2000, *id.* at 12-14.

March 9, 1999 from one Martin Leigh, an Officer of H.M. Coroner's Court, London, informing her about the arrangements for the funeral and that her late husband was covered by three insurance policies, to wit: Nationwide Building Society (Account Number 0231/471 833 630), Lincoln Assurance Company (British National Life Policy No. PP/85/00137851), and Scottish Equitable PLC (Policy No. 2779512).[8] Respondent offered to help and assured her that representations with the insurance companies had earlier been made, so that the latter would be receiving the insurance proceeds soon.

According to the complainant, respondent required her to affix her signature in a Special Power of Attorney (SPA),[9] dated November 6, 1998 [first SPA], which would authorize the respondent to follow-up the insurance claims. However, she found out that the SPA [first SPA] she signed was not notarized, but another SPA,[10] dated April 6, 1999, was notarized on April 30, 1999 [second SPA], and that her signature therein was forged. Later, she came across a similar copy of the SPA,[11] dated April 6, 1999, also notarized on April 30, 1999 [third SPA], but this time, additionally bearing the signatures of two witnesses. She said that without her knowledge and consent, respondent used the third SPA, notarized on April 30, 1999, in her correspondence with the insurance companies in London.

Complainant discovered that in an undated letter,[12] addressed to one Lynn O. Wilson of Scottish Equitable PLC (Policy No. 2779512), respondent made representations that her husband

---

[8] *Id.* at 13.

[9] Annex "G" of complainant's Complaint Affidavit dated April 7, 2000, *id.* at 15; Exhibit "7" of respondent's Motion for Reconsideration dated January 31, 2006, *id.* at 120.

[10] Annex "H" of complainant's Complaint Affidavit dated April 7, 2000, *id.* at 16; Exhibit "8" of respondent's Motion for Reconsideration dated January 31, 2006, *id.* at 121.

[11] Annex "I" of complainant's Complaint Affidavit dated April 7, 2000, *id.* at 18.

[12] Annex "J" of complainant's Complaint-Affidavit dated April 7, 2000, *id.* at 19.

left no will and that she had no verified information as to the total value of her husband's estate and the existence of any property in London that would be subjected to Grant of Representation. Said letter requested that complainant be advised on the value for probate in the amount of £5231.35 and the procedure for its entitlement. Respondent added therein that "As to the matter of the installments due, as guaranteed by Mr. Freeman's policy, Mrs. Freeman requests that the remittance be sent directly to Account No. 0148-27377-7 Far East Bank, Diliman Branch, with business address at Malakas St. Barangay Central District, Quezon City, Philippines under the account name: Reyes/Mendiola, which serves as her temporary account until further notice."

Subsequently, in a letter[13] dated July 29, 1999, addressed to one Andrea Ransom of Lincoln Financial Group (PP/8500137851), respondent, declaring that she is the "Counsel/Authorized Representative [of the complainant], per SPA dated April 20, 1999 [*should be* April 30, 1999]," replied that she had appended the documents required (*i.e.*, marriage certificate and birth certificate), in her previous letter,[14] dated April 20, 1999, to the said insurance company; that pursuant to an SPA[15] executed in her favor, all communications pertaining to complainant should be forwarded to her law firm; that she sought clarification on whether complainant is entitled to death benefits under the policy and, if so, the amount due and the requirements to be complied with; and that in the absence of a Grant of Probate (*i.e.*, the deceased having left no will), she "enclosed an alternative document [referring to the Extrajudicial Settlement[16] dated June 1, 1999, notarized by respondent] in support of the claim of the surviving spouse (Mrs. Freeman) and their sole

---

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

[14] *Id.*

[15] Respondent did not make any specific mention as to which SPA she was referring to.

[16] Annex "O-5" of complainant's Motion Submitting the Instant Case for Immediate Resolution with Comments on Respondent's Answer dated January 19, 2001, *id.* at 70-72.

child (Frank Lawrence Freeman)." In the same letter, respondent reiterated that complainant "requests that any amount of monies due or benefits accruing, be directly deposited to Account No. 0148-27377-7 at Far East Bank, Diliman Branch, Malakas St., Quezon City, Philippines under Reyes/Mendiola, which serves as her temporary account until further notice."

Complainant declared that in November 1999, she made a demand upon the respondent to return her passport and the total amount of ₱200,000.00 which she gave for the processing of the visa applications. Not heeding her demand, respondent asked her to attend a meeting with the Consul of the British Embassy, purportedly to discuss about the visa applications, but she purposely did not show up as she got disgusted with the turn of events. On the supposed rescheduled appointment with the British Consul, respondent, instead, brought her to Airtech Travel and Tours, and introduced her to one Dr. Sonny Marquez, the travel agency's owner, who assured her that he would help her secure the visas within a week. Marquez made her sign an application for visa and demanded the amount of ₱3,000.00. After a week, she talked to one Marinez Patao, the office secretary of respondent's law firm, who advised her to ask respondent to return the total amount of ₱200,000.00.

In her Counter-Affidavit/Answer[17] dated June 20, 2000, respondent countered that in 1998, complainant, accompanied by former Philippine Sports Commission (PSC) Commissioner Josefina Bauzon and another woman whose identity was not ascertained, sought legal advice regarding the inheritance of her deceased husband, a British national.[18] She told complainant to submit proof of her marriage to the deceased, birth certificate of their son, and other documents to support her claim for the insurance proceeds. She averred that before she accepted the case, she explained to complainant that she would be charging the following amounts: acceptance fee of ₱50,000.00, ₱20,000.00 for initial expenses, and additional amount of ₱50,000.00 on a

---

[17] *Id.* at 30-35.

[18] Affidavit of Josefina V. Bauzon dated June 26, 2000, *id.* at 39-40.

contingent basis. She said complainant agreed to these rates and, in fact, readily paid her the said amounts. With an SPA,[19] dated April 6, 1999 and notarized on April 30, 1999 [second SPA], having been executed in her favor, she made preliminary communications with the insurance companies in London regarding complainant's claims. Having received communications from said insurance companies, she stated that complainant offered, which she accepted, to shoulder her plane ticket and the hotel accommodation, so that she can personally attend to the matter. She left for London in May 1999 and, upon her return, she updated the complainant about the status of her claims.

As to the visa arrangements, respondent said that when she met with complainant, she asked her why she had not left for London, and the latter replied that her contacts with the embassy had duped her. She explained to complainant that she could refer her to a travel consultant who would handle the visa arrangements for a fee, to which the latter agreed. She stated that when complainant acceded to such arrangement, she accompanied her, in December 1999, to a travel consultant of Airtech Travel and Tours, who found out that complainant's previous visa applications had been denied four times, on the ground of falsity of information. Thereafter, complainant was able to secure a visa through the help of the travel consultant, who charged her a "professional fee" of ₱50,000.00. She added that she had no participation in the foregoing transactions, other than referring complainant to the said travel consultant.

With regard to the alleged falsified documents, respondent denied knowledge about the existence of the same, and declared that the SPA,[20] dated April 6, 1999, which was notarized on April 30, 1999 [second SPA], was her basis for communications with the insurance companies in London. She stated that in her absence, complainant, through wily representations, was able to obtain the case folder from Leah Buama, her office

---

[19] Respondent made reference to Annex "H" of complainant's Complaint-Affidavit dated April 7, 2000, *id.* at 16.

[20] *Id.*

secretary, and never returned the same, despite repeated demands. She said that she was unaware of the loss of the case folder as she then had no immediate need of it. She also said that her secretary failed to immediately report about the missing case folder prior to taking a leave of absence, so as to attend to the financial obligations brought about by her mother's lingering ailment and consequent death.[21] Despite repeated requests, complainant failed to return the case folder and, thus, the law firm was prevented from pursuing the complainant's insurance claims. She maintained that through complainant's own criminal acts and machinations, her law office was prevented from effectively pursuing her claims. Between January to February 2000, she sent complainant a billing statement which indicated the expenses incurred[22] by the law firm, as of July 1999; however, instead of settling the amount, the latter filed a malicious suit against her to evade payment of her obligations.

On January 19, 2001, complainant filed a Motion Submitting the Instant Case for Immediate Resolution with Comments on Respondent's Answer, alleging, among others, that upon seeing the letter[23] dated March 9, 1999 of the Coroner's Court, respondent began to show interest and volunteered to arrange for the insurance claims; that no acceptance fee was agreed upon between the parties, as the amounts earlier mentioned represented the legal fees and expenses to be incurred attendant to the London trip; that the parties verbally agreed to a 20% contingent fee out of the total amount to be recovered; that she obtained the visas with the assistance of a travel consultant

---

[21] Affidavit of Leah Buama dated June 26, 2000, *id.* at 36-38.

[22] The Statement of Account as of July 1999 indicated the following: Refund of ZPR's [initials of respondent] travel expenses to London (May 1999) in the amounts of: ₱45,061.00 round trip ticket, ₱5,000.00 travel tax and others, ₱20,000.00 hotel accommodation, and ₱10,000.00 representation expenses, or a total of ₱80,061.00; and professional fees in the amounts of: ₱50,000.00 acceptance fee, ₱15,000.00 legal costs/documentation research, and 10% of award/claim (to be determined later), or the total amount of ₱145,061.00, *id.* at 138.

[23] *Supra* note 7.

recommended by respondent; that upon return from abroad, respondent never informed her about the arrangements with the insurance companies in London that remittances would be made directly to the respondent's personal account at Far East Bank; that the reason why respondent went to London was primarily to attend the International Law Conference, not solely for her insurance claims, which explained why the receipt for the ₱50,000.00, which she gave, bore the letterhead of Broadway Travel, Inc. (in the amount of ₱47,500.00) and that she merely made a handwritten marginal note regarding the receipt of the amount of ₱50,000.00; that with the use of an SPA [referring to the second SPA] in favor of the respondent, bearing her forged signature, the amount of £10,546.7 [*should be* £10,960.63],[24] or approximately equivalent to ₱700,000.00, was remitted to the personal bank account of respondent, but the same was never turned over to her, nor was she ever informed about it; and that she clarified that she never executed any SPA that would authorize respondent to receive any money or check due her, but that the only SPA [first SPA] she executed was for the purpose of representing her in court proceedings.

Meanwhile, respondent filed a criminal complaint[25] for malicious mischief, under Article 327 of the Revised Penal Code, against complainant and one Pacita Mamaril (a former client of respondent), for allegedly barging into the law office of the former and, with the use of a pair of scissors, cut-off the cords of two office computer keyboards and the line connections for the refrigerator, air conditioning unit, and electric fan, resulting in damage to office equipment in an estimated amount of

---

[24] The following amounts were remitted to respondent's personal bank account by the insurance companies based in London, to wit: Per letter dated November 23, 2000, £10,489.57 from Lincoln Financial Group, *id.* at 63; and per letter April 28, 2000, £471.06 from Eagle Star Life Assurance Company Limited, *id.* at 74.

[25] Annex "M" of complainant's Motion Submitting the Instant Case for Immediate Resolution with Comments on Respondent's Answer dated January 19, 2001, *id.* at 55-58.

₱200,000.00. In the Resolution,[26] dated July 31, 2000, the Assistant City Prosecutor of Quezon City recommended that the complaint be dismissed for insufficiency of evidence. The case was subsequently dismissed due to lack of evidence and for failure of respondent to appear during the preliminary investigation of the case.[27]

Thereafter, complainant filed a criminal case for estafa, under Article 315, paragraph 2 (a) of the Revised Penal Code, against respondent, docketed as Criminal Case No. Q-02-108181, before the Regional Trial Court of Quezon City, Branch 83. On Motion for Reinvestigation by respondent, the City Prosecutor of Quezon City, in the Resolution[28] dated October 21, 2002, recommended that the information, dated February 8, 2002, for estafa be withdrawn, and that the case be dismissed, for insufficiency of evidence. On November 6, 2002, the Assistant City Prosecutor filed a Motion to Withdraw Information.[29] Consequently, in the Order[30] dated November 27, 2002, the trial court granted the withdrawal of the information, and dismissed the case.

In the Report and Recommendation[31] dated August 28, 2003, Investigating Commissioner Milagros V. San Juan of the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline found respondent to have betrayed the trust of complainant as her client, for being dishonest in her dealings and appropriating for herself the insurance proceeds intended for complainant. The Investigating Commissioner pointed out that despite receipt

---

[26] Annex "N" of complainant's Motion Submitting Instant Case for Immediate Resolution with Comments on Respondent's Answer dated January 19, 2001, *id.* at 60.

[27] Complainant's Motion Submitting Instant Case for Immediate Resolution with Comments on Respondent's Answer dated January 19, 2001, *id.* at 50.

[28] Exhibit "22" of respondent's Motion for Reconsideration dated January 31, 2006, *id.* at 140-142.

[29] *Id.*

[30] Exhibit "21" of respondent's Motion for Reconsideration dated January 31, 2006, *id.* at 139.

[31] *Id.* at 79-93.

of the approximate amount of ₱200,000.00, respondent failed to secure the visas for complainant and her son, and that through deceitful means, she was able to appropriate for herself the proceeds of the insurance policies of complainant's husband. Accordingly, the Investigating Commissioner recommended that respondent be suspended from the practice of law for the maximum period allowed under the law, and that she be ordered to turn over to complainant the amounts she received from the London insurance companies.

On September 27, 2003, the IBP Board of Governors, in Resolution No. XVI-2003-166,[32] adopted and approved the recommendation of the Investigating Commissioner, with modification that respondent be disbarred.

The Court agrees with the observation of the Investigating Commissioner that complainant had sufficiently substantiated the charge of gross dishonesty against respondent, for having appropriated the insurance proceeds of the complainant's deceased husband, and the recommendation of the IBP Board of Governors that respondent should be disbarred.

The object of a disbarment proceeding is not so much to punish the individual attorney himself, as to safeguard the administration of justice by protecting the court and the public from the misconduct of officers of the court, and to remove from the profession of law persons whose disregard for their oath of office have proved them unfit to continue discharging the trust reposed in them as members of the bar.[33]

A disciplinary proceeding against a lawyer is *sui generis.* Neither purely civil nor purely criminal, it does not involve a trial of an action or a suit, but rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein.

---

[32] *Id.* at 78.

[33] *Berbano v. Barcelona*, A.C. No. 6084, September 3, 2003, 410 SCRA 258, 264.

It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still fit to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court, with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice, by purging the profession of members who, by their misconduct, have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.[34]

Being a *sui generis* proceeding, the main disposition of this Court is the determination of the respondent's administrative liability. This does not include the grant of affirmative reliefs, such as moral and exemplary damages as prayed for by the complainant, which may very well be the subject of a separate civil suit for damages arising from the respondent's wrongful acts, to be filed in the regular courts.

In the absence of a formal contract, complainant engaged the legal services of respondent to assist her in securing visa applications and claiming the insurance proceeds of her deceased husband. There are conflicting allegations as to the scope of authority of respondent to represent the complainant. A perusal of the [first] SPA,[35] dated November 6, 1998, which was not notarized, showed that complainant merely authorized respondent to represent her and her son, in order to protect their rights and interests, in the extrajudicial and/or judicial proceeding and the possibility of any amicable settlement, relating to the estate of her deceased husband, both in the Philippines and United Kingdom. The [second] SPA,[36] dated April 6, 1999 and notarized on April 30, 1999, allegedly bearing the forged signature of

---

[34] *In re Almacen*, G.R. No. L-27654, February 18, 1970, 31 SCRA 562, 600, cited in *Pena v. Aparicio*, A.C. No. 7298, June 25, 2007, 525 SCRA 444, 453 and *Berbano v. Barcelona*, *id.* at 264.

[35] *Supra* note 9.

[36] *Supra* note 10.

complainant, in addition to the foregoing representations, authorized respondent to appear and represent the complainant, in connection with her insurance claims, and to receive monies and/or encash treasury warrants, checks arising from said claims, deposit the same, and dispose of such funds as may be necessary for the successful pursuit of the claims. The [third] SPA,[37] also dated April 6, 1999 and notarized on April 30, 1999, allegedly bearing the forged signature of complainant, but additionally bearing the signatures of two witnesses, was a faithful reproduction of the second SPA, with exactly the same stipulations. The three SPAs, attached to the pleadings of the parties and made integral parts of the records of the case, were not certified true copies and no proof was adduced to verify their genuineness and authenticity. Complainant repudiates the representation of respondent in her behalf with regard to the insurance claims; however, the admission of respondent herself, as lawyer, that she received payment from complainant, her client, constitutes sufficient evidence to establish a lawyer-client relationship.[38]

Be that as it may, assuming that respondent acted within the scope of her authority to represent the complainant in pursuing the insurance claims, she should never deviate from the benchmarks set by Canon 16 of the Code of Professional Responsibility which mandates that a lawyer shall hold in trust all moneys and properties of his client that may come into his possession. Specifically, Rule 16.01 states that a lawyer shall account for all money or property collected or received for or from the client, and Rule 16.03 thereof requires that a lawyer shall deliver the funds and property of a client when due or upon demand.

When a lawyer receives money from the client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for a particular purpose. And if he does not use the money for the intended purpose, the

---

[37] *Supra* note 11.

[38] *Spouses Rabanal v. Atty. Tugade*, 432 Phil. 1064, 1068 (2002), citing *Villafuerte v. Cortez*, A.C. No. 3455, April 14, 1998, 288 SCRA 687.

lawyer must immediately return the money to his client.[39] In the present case, the cash/check voucher and the temporary receipts issued by respondent, with the letterhead of her law firm, Z.P. Reyes Law Office, indubitably showed that she received the total amount of ₱167,000.00[40] from the complainant, in connection with the handling of the latter's case. Respondent admitted having received money from the complainant, but claimed that the total amount of ₱120,000.00[41] she received was in accordance with their agreement. Nowhere was it shown that respondent rendered an accounting or, at least, apprised the complainant of the actual expenses incurred. This leaves a quandary as to the discrepancy in the actual amount that respondent should receive, supposedly pursuant to an agreement of engaging respondent to be her counsel, as there was absence of a formal contract of legal services.

Further, on December 4, 1998, complainant gave ₱50,000.00 to the respondent for the purpose of assisting her in claiming the insurance proceeds; however, per Application for United Kingdom Entry Clearance,[42] dated December 8, 1998, it showed that respondent's primary purpose in traveling to London was to attend the International Law Conference in Russell Square, London. It is appalling that respondent had the gall to take advantage of the benevolence of the complainant, then grieving for the loss of her husband, and mislead her into believing that

---

[39] *Celaje v. Soriano*, A.C. No. 7418, October 9, 2007, 535 SCRA 217, 222, citing *Small v. Banares*, A.C. No. 7021, February 21, 2007, 516 SCRA 323, which cited *Meneses v. Macalino*, A.C. No. 6651, February 27, 2006, 483 SCRA 212 and *Barnachea v. Quiocho*, 447 Phil. 67, 75 (2003).

[40] The amounts are as follows: ₱50,000.00 for service charge, tax, and one round trip ticket to London; ₱20,000.00 for legal costs; ₱10,000.00 for travel expenses, ₱30,000.00 for legal costs; ₱39,000.00 for legal costs, and ₱18,000.00 to reinstate the lapsed application (no receipt was issued).

[41] The amounts are as follows: ₱50,000.00 as acceptance fee, ₱20,000.00 for initial expenses, and ₱50,000.00 as contingency fee.

[42] Annex "L" of complainant's Motion Submitting Instant Case for Immediate Resolution with Comments on Respondent's Answer dated January 19, 2001, *rollo*, pp. 52-54.

she needed to go to London to assist in recovering the proceeds of the insurance policies. Worse, respondent even inculcated in the mind of the complainant that she had to adhere to the nefarious culture of giving "grease money" or *lagay,* in the total amount of ₱43,000.00,[43] to the British Embassy personnel, as if it was an ordinary occurrence in the normal course of conducting official business transactions, as a means to expedite the visa applications. This runs afoul the dictum in Rule 1.01 of Canon 1 of the Code of Professional Responsibility which states that a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

More importantly, apart from her bare denials that no remittance was made to her personal bank account, as shown by the monthly transaction report (covering January to December for the years 2000-2001),[44] respondent never attempted to reconcile the discrepancy, or give a satisfactory explanation, as to why she failed to render an accounting, on the proceeds of the insurance policies that should rightfully belong to the complainant *vis-á-vis* the correspondence by the insurance companies based in London, pertaining to the remittance of the following amounts to the respondent's personal bank account, to wit: Per letter[45] dated November 23, 2000, from one Rupesh Majithia, Administrator, Customer Services Department of Lincoln Financial Group, addressed to complainant, stating, among others, that "An amount of £10,489.57 was paid out under the Power of Attorney on 27th September 2000," and per letter,[46] dated

---

[43] The amounts are as follows: ₱18,000.00, ₱20,000.00, and ₱5,000.00 worth of wine.

[44] Referred to as Far East Bank and Trust Company (FEBTC), now Bank of the Philippine Islands (BPI) monthly records, respondent's Motion for Reconsideration dated January 31, 2006, Exhibits "17" to "17-a" to "17-I" [*should be* "17-J,"], *id.* at 126-136.

[45] Annex "O" of complainant's Motion Submitting Instant Case for Immediate Resolution with Comments on Respondent's Answer dated January 19, 2001, *id.* at 63.

[46] Annex "O-7" of complainant's Motion Submitting the Instant Case for Immediate Resolution with Comments on Respondent's Answer dated January 19, 2001, *id.* at 74.

April 28, 2000, from one Jeff Hawkes, Customer Services Claims (CLD), of the Eagle Star Life Assurance Company Limited, addressed to one Andrea Ransom of the Lincoln Financial Group, The Quays, stating, among others, that "I can confirm that a death claim was made on the policy on 13 October 1999 when an amount of £471.06 was sent by International Moneymover to the client's legal representative, ZP Reyes Law Office of Quezon City, Philippines." Clearly, there is no doubt that the amounts of £10,489.57 and £471.06 were remitted to respondent through other means of international transactions, such as the International Moneymover, which explains why no direct remittance from the insurance companies in London could be traced to the personal bank account of respondent, per monthly transaction report, covering January to December for the years 2000-2001.

A criminal case is different from an administrative case, and each must be disposed of according to the facts and the law applicable to each case.[47] Section 5, in relation to Sections 1[48] and 2,[49] Rule 133, Rules of Court states that in administrative

---

[47] *Office of the Court Administrator v. Claudio M. Lopez, Process Server, Municipal Trial Court, Sudipen, La Union*, A.M. No. P-10-2788, January 18, 2011.

[48] Section 1. *Preponderance of evidence, how determined.* — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

[49] Section 2. *Proof beyond reasonable doubt.* — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

cases, only substantial evidence is required, not proof beyond reasonable doubt as in criminal cases, or preponderance of evidence as in civil cases. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. Applying the rule to the present case, the dismissal of a criminal case does not preclude the continuance of a separate and independent action for administrative liability, as the weight of evidence necessary to establish the culpability is merely substantial evidence. Respondent's defense that the criminal complaint for estafa against her was already dismissed is of no consequence. An administrative case can proceed independently, even if there was a full-blown trial wherein, based on both prosecution and defense evidence, the trial court eventually rendered a judgment of acquittal, on the ground either that the prosecution failed to prove the respondent's guilt beyond reasonable doubt, or that no crime was committed. More so, in the present administrative case, wherein the ground for the dismissal of the criminal case was because the trial court granted the prosecution's motion to withdraw the information and, *a fortiori*, dismissed the case for insufficiency of evidence.

In *Velez v. De Vera*,[50] the Court ruled that the relation between attorney and client is highly fiduciary in nature. Being such, it requires utmost good faith, loyalty, fidelity, and disinterestedness on the part of the attorney. Its fiduciary nature is intended for the protection of the client. The Canon of Professional Ethics provides that the lawyer should refrain from any action whereby for his personal benefit or gain, he abuses or takes advantage of the confidence reposed in him by his client. Money of the client or collected for the client, or other trust property coming into the possession of the lawyer, should be reported and accounted for promptly and should not, under any circumstances, be commingled with his own or be used by him. Consequently, a lawyer's failure to return upon demand the funds or property held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use to the prejudice

---

[50] A.C. No. 6697, B.M. No. 1227 and A.M. No. 05-5-15-SC, July 25, 2006, 496 SCRA 345.

of, and in violation of the trust reposed in him by, his client. It is a gross violation of general morality as well as of professional ethics; it impairs the public confidence in the legal profession and deserves punishment. Lawyers who misappropriate the funds entrusted to them are in gross violation of professional ethics and are guilty of betrayal of public confidence in the legal profession. Those who are guilty of such infraction may be disbarred or suspended indefinitely from the practice of law.[51] Indeed, lawyering is not a business. It is a profession in which duty to public service, not money, is the primary consideration.[52]

In some cases, the Court stripped lawyers of the privilege to practice their profession for breach of trust and confidence pertaining to their clients' moneys and properties. In *Manzano v. Soriano*,[53] therein respondent, found guilty of grave misconduct (misappropriating the funds belonging to his client) and malpractice, represented therein complainant in a collection suit, but failed to turn over the amount of ₱50,000.00 as stipulated in their agreement and, to conceal the misdeed, executed a simulated deed of sale, with himself as the vendor and, at the same time, the notary public. In *Lemoine v. Balon, Jr.*,[54] therein respondent, found guilty of malpractice, deceit, and gross misconduct, received the check corresponding to his client's insurance claim, falsified the check and made it payable to himself, encashed the same, and appropriated the proceeds.

Law advocacy, it has been stressed, is not capital that yields profits. The returns it births are simple rewards for a job done or service rendered. It is a calling that, unlike mercantile pursuits which enjoy a greater deal of freedom from government interference, is impressed with public interest, for which it is

---

[51] *Id.* at 380-381, citing *Espiritu v. Ulep*, A.C. No. 5808, May 4, 2005, 458 SCRA 1, 8-9.

[52] *Adrimisin v. Javier*, A.C. No. 2591, September 8, 2006, 501 SCRA 192, 198.

[53] A.C. No. 8051, April 7, 2009, 584 SCRA 1.

[54] A.C. No. 5829, October 28, 2003, 414 SCRA 511.

subject to State regulation.[55] Respondent's repeated reprehensible acts of employing chicanery and unbecoming conduct to conceal her web of lies, to the extent of milking complainant's finances dry, and deceitfully arrogating upon herself the insurance proceeds that should rightfully belong to complainant, in the guise of rendering legitimate legal services, clearly transgressed the norms of honesty and integrity required in the practice of law. This being so, respondent should be purged from the privilege of exercising the noble legal profession.

WHEREFORE, respondent Atty. Zenaida P. Reyes is found guilty of gross misconduct and *DISBARRED* from the practice of law. Let her name be stricken off the Roll of Attorneys. This Decision is immediately executory.

Let all the courts, through the Office of the Court Administrator, Integrated Bar of the Philippines, and the Office of the Bar Confidant, be notified of this Decision and be it duly recorded in the personal file of the respondent.

Respondent is *ORDERED* to turn over to complainant Marites E. Freeman the proceeds of the insurance policies remitted to her by Lincoln Financial Group, in the amount of £10,489.57, and Eagle Star Life Assurance Company Limited, £471.06, or in the total amount of £10,960.63, which is approximately equivalent to ₱700,000.00, pursuant to the prevailing exchange rate at the time of the subject transaction.

SO ORDERED.

Carpio, Brion, Peralta, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Corona, C.J. and *Bersamin, J.,* no part.

Velasco, Jr., J., no part due to relationship to a party.

Leonardo-de Castro and *del Castillo, JJ.,* on official leave.

---

[55] *Rayos v. Hernandez*, G.R. No. 169079, February 12, 2007, 515 SCRA 517, 527, citing *Metropolitan Bank & Trust Company v. Court of Appeals*, G.R. Nos. 86100-03, January 23, 1990, 181 SCRA 367, 377, which cited *Canlas v. Court of Appeals*, G.R. No. 77691, August 8, 1988, 164 SCRA 160, 173-174.

EN BANC

[G.R. No. 191017. November 15, 2011]

CONSTANCIO F. MENDOZA, *petitioner, vs.* **SENEN C. FAMILARA and COMMISSION ON ELECTIONS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE SUPREME COURT HAS THE DISCRETION TO DETERMINE WHETHER A PETITION WAS FILED UNDER RULE 45 OR RULE 65 OF THE RULES OF COURT. —** For clarity and to obviate confusion, we treat the instant petition as one filed under Rule 64 in relation to Rule 65 of the Rules of Court since the totality of the allegations contained therein seek to annul and set aside the Resolution of the COMELEC *en banc* because it is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. As we have also noted in *Mendoza v. Mayor Villas*, another case filed by Mendoza before us where Mendoza did not specify under which Rule (45 or 65) his petition was being filed, this Court has the discretion to determine whether a petition was filed under Rule 45 or 65 of the Rules of Court.

2. **POLITICAL LAW; JUDICIARY; MOOT AND ACADEMIC CASE; AS A RULE, THE COURTS DECLINE JURISDICTION OVER MOOT AND ACADEMIC CASE OR MAY DISMISS THE SAME ON THE GROUND OF MOOTNESS; EXCEPTIONS. —** A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value. As a rule, courts decline jurisdiction over such case, or dismiss it on ground of mootness. Certainly, the rule is not set in stone and permits exceptions. Thus, we may choose to decide cases otherwise moot and academic if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest involved; *third*, the constitutional issue raised requires formulation of controlling principles to guide the

bench, the bar and the public; or *fourth*, the case is capable of repetition yet evasive of review.

3. **ID.; ELECTIONS; THREE-CONSECUTIVE TERM LIMIT RULE; NO RETROACTIVE APPLICATION IN CASE AT BAR, SUSTAINED. —** Our decision in *COMELEC v. Cruz* settles, once and for all, the constitutionality of the three-consecutive term limit rule reckoned from the 1994 Barangay Elections. We unequivocally declared, thus: x x x Our own reading shows that no retroactive application was made because **the three-term limit has been there all along as early as the second *barangay* law (RA No. 6679) after the 1987 Constitution took effect; it was continued under the [Local Government Code] and can still be found in the current law.** x x x These Title II provisions are intended to apply to all local elective officials, ***unless the contrary is clearly provided***. A contrary application is provided with respect to the length of the term of office under Section 43(a); while it applies to all local elective officials, it does not apply to *barangay* officials whose length of term is specifically provided by Section 43(c). In contrast to this clear case of an exception to a general rule, the three-term limit under Section 43(b) does not contain any exception; it applies to all local elective officials who must perforce include *barangay* officials. An alternative perspective is to view [Section] 43(a), (b) and (c) separately from one another as independently standing and self-contained provisions, except to the extent that they expressly relate to one another. Thus, [Section] 43(a) relates to the term of local elective officials, except *barangay* officials whose term of office is separately provided under Sec. 43(c). [Section] 43(b), by its express terms, relates to all local elective officials without any exception. Thus, the term limitation applies to all local elective officials without any exclusion or qualification. Either perspective, both of which speak of the same resulting interpretation, is the correct legal import of Section 43 in the context in which it is found in Title II of the LGC. x x x All these inevitably lead to the conclusion that the challenged proviso has been there all along and does not simply retroact the application of the three-term limit to the *barangay* elections of 1994. Congress merely integrated the past statutory changes into a seamless whole by coming up with the challenged proviso.

APPEARANCES OF COUNSEL

Samuel M. Salas for petitioner.
The Solicitor General for public respondent.
Edgardo C. Aceron for Senen Familara.

R E S O L U T I O N

PEREZ, *J.*:

This petition raises a far from novel issue, *i.e.*, the constitutionality of Section 2[1] of Republic Act No. 9164 (entitled "An Act Providing for Synchronized *Barangay* and *Sangguniang Kabataan* Elections, amending RA No. 7160, as amended, otherwise known as the Local Government Code of 1991"). As other *barangay* officials had done in previous cases,[2] petitioner Constancio F. Mendoza (Mendoza) likewise questions the retroactive application of the three-consecutive term limit imposed on *barangay* elective officials beginning from the 1994 *barangay* elections.

We here have a special civil action, designated by Mendoza as a "petition for review on *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court," seeking to annul and set aside the Resolution[3] of the Commission on Elections (COMELEC) *En Banc*.

---

[1] Sec. 2. *Term of Office*. — The term of office of all *barangay* and *sangguniang kabataan* officials after the effectivity of this Act shall be three (3) years.

No *barangay* elective official shall serve for more than three (3) consecutive terms in the same position: **Provided, however, That the term of office shall be reckoned from the 1994 *barangay* elections.** Voluntary renunciation of office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official was elected. (Emphasis supplied)

[2] See *COMELEC v. Cruz*, G.R. No. 186616, 20 November 2009, 605 SCRA 167; *Monreal v. COMELEC*, G.R. No. 184935, 21 December 2009, 608 SCRA 717.

[3] Dated 23 December 2009, *rollo,* pp. 34-39.

Mendoza was a candidate for *Barangay* Captain of *Barangay* Balatasan, Oriental Mindoro in the 29 October 2007 *Barangay* Elections. As required by law, Mendoza filed a certificate of candidacy. Prior thereto, Mendoza had been elected as *Barangay* Captain of *Barangay* Balatasan for three (3) consecutive terms, on 9 May 1994, 12 May 1997 and 15 July 2002.

On 26 October 2007, respondent Senen C. Familara (Familara) filed a Petition to Disqualify Mendoza averring that Mendoza, under Section 2 of RA No. 9164, is ineligible to run again for *Barangay* Captain of *Barangay* Balatasan, having been elected and having served, in the same position for three (3) consecutive terms immediately prior to the 2007 *Barangay* Elections.

Posthaste, Mendoza filed his Answer[4] refuting Familara's allegations and asseverating the following:

1. That he has the qualifications and none of the disqualification to vote and be voted for in the October 29, 2007 *Barangay* Elections for *Barangay* Balatasan, Bulalacao, Oriental Mindoro;

2. [He] further AFFIRMS that he has duly-filed his Certificate of Candidacy for *Punong Barangay* of *Barangay* Balatasan, Bulalacao, Oriental Mindoro;

3. [He] RAISES THE QUESTION of the legal personality of [respondent Senen] Familara because:

a. He is not a party in interest in the *Barangay* Elections for *Punong Barangay* at *Barangay* Balatasan;
b. He is not a resident nor registered voter of *Barangay* Balatasan;
c. He is not a candidate to any elective position for *Barangay* Balatasan in the scheduled October 29, 2007 *Barangay* Elections;

4. That while the proper party in interest to file a petition for disqualification is any registered voter of *Barangay* Balatasan, the instant petition is intended to benefit the only other candidate for *Punong Barangay* for Balatasan in the forthcoming elections, TOMAS PAJANEL, but said person is a permanent resident not only of a *Barangay* different from *Barangay* Balatasan but worse,

[4] *Id.* at 40-44.

said person is a permanent resident of Bulalacao's adjoining town, Mansalay;

x x x x x x x x x

6. The petition suffers from legal infirmities;

x x x x x x x x x

The present petition is premature. It should be filed within ten (10) days from proclamation of election results.

Further, [Senen] Familara is not a proper party to file the petition. It must be filed by a candidate who has duly filed a certificate of candidacy and has been voted for the same office.

Finally, the petition was filed before the wrong forum. It must be filed before the Municipal Trial Court. The COMELEC has the exclusive appellate jurisdiction over all contests x x x involving elective *barangay* officials decided by trial courts of limited jurisdiction.

On 13 November 2007, the Commission on Elections (COMELEC) Assistant Regional Election Director of Region IV, Atty. Jocelyn V. Postrado, issued a Resolution[5] recommending that necessary action be filed against Mendoza for misrepresenting himself as a qualified candidate for the position of *Barangay* Captain of Balatasan:

RESOLUTION/RECOMMENDATION

Pursuant to the delegated authority vested to the undersigned by the Omnibus Election Law and other election laws and after issuing the necessary summons to MR. CONSTANCIO F. MENDOZA on the above *Petition for Disqualification* filed by Mr. Senen C. Familara, which to no avail this office until now has not yet received the required affidavits from Mr. Mendoza, and wherein by said act and under our COMELEC Rules of Procedure, he is deemed to have expressly waived his right to present evidence in his defense. xxx

Ruling on the submitted petition and supporting evidence, we find Mr. Mendoza to have completed the three (3) term-limit and yet, still ran for office knowing that he was prohibited. Please find a

[5] *Id.* at 46.

copy of the Certification issued by the Office of the Election Officer, Bulalacao, Oriental Mindoro verifying that Mr. Mendoza filed a Certificate of Candidacy for the position of *Punong Barangay*. His act of misrepresenting himself as qualified to run for the said position of *Punong Barangay* at Balatasan, Municipality of Bulalacao, Province of Oriental Mindoro in the 29 October 2007 *Barangay* Elections, is in violation of Section 2 of Republic Act No. 9164, the Omnibus election Law and other election laws.

WHEREFORE, premises considered, the undersigned hereby ***recommends that necessary action be filed against MR. CONSTANCIO F. MENDOZA.***

Undaunted, Mendoza filed a flurry of motions: (1) an *Ex-Parte* Motion to Recall;[6] (2) *Ex-Parte* Motion to Dismiss;[7] and (3) *Ex-Parte* Motion to Resolve,[8] all aiming to forestall the implementation of the 13 November 2007 Resolution of the COMELEC Assistant Regional Election Director of Region IV, Atty. Postrado, and the continuation of the Petition for Disqualification filed by Familara against Mendoza.

In another turn of events, Mendoza won in the elections; he was proclaimed *Barangay* Captain of Balatasan.

Consequently, Mendoza's rival, Thomas Pajanel, filed a petition for *quo warranto* and *mandamus* against Mendoza before the Municipal Circuit Trial Court (MCTC) of Mansalay-Bulalacao docketed as Election Case No. 407-B. Pajanel contended that Mendoza is ineligible to occupy the position of *Barangay* Captain of Balatasan, having been elected and having already served as such for three (3) consecutive terms.

In yet another setback, the MCTC promulgated its Decision and disqualified Mendoza in accordance with the three-consecutive term rule provided in Section 2 of RA No. 9164. Not unexpectedly, Mendoza appealed the MCTC Decision before the COMELEC. The appeal is docketed as EAC (BRGY) No. 101-2008 and is pending before the COMELEC Second Division.

---

[6] *Id.* at 47-49.

[7] *Id.* at 50-51.

[8] *Id.* at 52-56.

On the other litigation front concerning the Petition for Disqualification filed by Familara against Mendoza, the COMELEC First Division issued a Resolution[9] agreeing with the recommendation of the COMELEC Assistant Regional Election Director of Region IV that Mendoza is disqualified from running as *Barangay* Captain of Balatasan under the three-consecutive term limit rule. The COMELEC shot down Mendoza's technical objections to the Petition for Disqualification, to wit:

> [Mendoza's] contentions that the petition [for disqualification] should be dismissed as [Familara] lacks the personality to file the said petition since the latter is neither a candidate nor a registered voter of *Barangay* Balatasan, Municipality of Bulalacao, that it was prematurely filed and was filed before a wrong forum are untenable.
>
> It is undisputed that the instant case is a Petition for Disqualification involving *barangay* officials, hence, Section 11 in relation to Section 10 of COMELEC Resolution No. 8297 issued on September 6, 2007 is the applicable rule with respect to the qualifications of [Mendoza], period of filing and the tribunal to file the same.
>
> ***Section 11 in relation to Section 10 of COMELEC Resolution No. 8297*** provides that:
>
>> ***Sec. 10. Petition to deny due course to or cancellation of a certificate of candidacy. —*** A verified petition to deny due course to or cancel a certificate of candidacy pursuant to Sec. 69 (nuisance candidate) or Sec. 78 (material misrepresentation in the certificate of candidacy) of the Omnibus Election Code shall be filed directly with the office of Provincial Election Supervisor concerned by any registered candidate for the same office personally or through a duly-authorized representative within five (5) days from the last day for filing of certificate of candidacy. In the National Capital Region, the same be filed directly with the Office of the Regional Election Director.
>>
>> In the Provinces where the designated Provincial Election Supervisor is not a lawyer the petition shall be filed with the Regional Election Director concerned.

---

[9] Dated 18 September 2008, *rollo*, pp. 28-33.

Filing by mail is not allowed.

Within twenty four (24) hours from receipt of the petition, the Provincial Election Supervisor or the Regional Election Director of the National Capital Region, as the case may be, shall issue the corresponding summons requiring the respondent candidate to answer the petition within three (3) days from receipt. Immediately upon receipt of the answer, the petition shall be set for hearing for the reception of evidence of the parties but not later than five (5) days from the service of summons. The Resolution of the Hearing Officer shall be submitted to the Commission through the Clerk of the Commission within fifteen (15) days from receipt of the petition.

Sec. 11. Petition for Disqualification. — A verified petition to disqualify a candidate on the ground of ineligibility or under Section 68 of the Omnibus Election Code may be filed at anytime before proclamation of the winning candidate by any registered voter or any candidate for the same office. The procedure prescribed in the preceding section shall be applicable herein.

x x x x x x x x x

All disqualification cases filed on the ground of ineligibility shall continue although the candidate has already been proclaimed.

Applying the above-cited provisions in the case at bar, it only requires the petitioner to be a registered voter for him to acquire *locus standi* to file the instant petition. Further, it provides that a petition for disqualification must be filed at any time before the proclamation of the winning candidate. Furthermore, it also requires that the said petition must be filed with the Provincial Election Supervisor or Regional Election Director, as the case may be. It is clear that in the present case these requirements under the above-cited provisions of the law have been complied.

WHEREFORE, in view of the foregoing, the Commission (First Division) **GRANTS** the Petition. [Petitioner], Constancio Farol Mendoza, having already served as *Punong Barangay* of *Barangay* Balatasan, Bulalacao, Oriental Mindoro for three consecutive terms is hereby **DISQUALIFIED** from being a candidate for the same office in the October 29, 2007 Synchronized *Barangay* and *Sangguniang*

Kabataan Elections. Considering that [Mendoza] had already been proclaimed, said proclamation is hereby **ANNULLED**. Succession to said office shall be governed by the provisions of Section 44 of the Local Government Code.[10]

Mendoza filed a Motion to Recall Resolution, to Dismiss the Case and to Conduct Appropriate Investigation to Determine Criminal and Administrative Liability[11] before the COMELEC *En Banc*, seeking the reversal of the Resolution of the COMELEC First Division.

In a Resolution[12] dated 23 December 2009, the COMELEC *En Banc* denied the Motion to Recall for lack of merit. It dismissed Mendoza's arguments, thus:

It appears from Section 10 of Resolution No. 8297 that the [COMELEC] has indeed jurisdiction to entertain this petition in the first place. The petition was filed on September 23, 2007, or less than five days from the last day of filing the certificates of candidacy for the position of *Punong Barangay*. The assistant Regional Director proceeded to issue subpoena, and thereafter, submitted her Resolution/ Recommendation which was forwarded to the [COMELEC] for appropriate action through the Clerk of the [COMELEC].

The records of the case would reveal that this petition has run its normal course. The allegation of Mendoza that he was allegedly deprived of due process is of no avail. It appears from the registry return receipt attached to the records of the case that summons were duly received by Mendoza on October 24, 2007, as such, he is bound to answer the allegations of the petition within three days from receipt. Failing in this respect, Mendoza is said to have waived his right to file his answer within the time given by the Rules.

Furthermore, we cannot subscribe to the argument of Mendoza that the pendency of the proceedings before the Second Division docketed as EAC (Brgy.) 101-2008 would merit the dismissal of this petition.

x x x x x x x x x

---

[10] *Id.* at 31-33.

[11] *Id.* at 57-63.

[12] *Id.* at 34-39.

The Supreme Court held in the case of *Sunga vs. COMELEC*, and *Lonzanida v. COMELEC*, that:

> "This court has held that the clear legislative intent is that the COMELEC should continue the trial and hearing of the disqualification case to its conclusion, *i.e.*, until judgment is rendered. The outright dismissal of the petition for disqualification filed before the election but which remained unresolved after the proclamation of the candidate sought to be disqualified will unduly reward the said candidate and may encourage him to employ delaying tactics to impede the resolution of the petition until after he has been proclaimed."

Considering that [the COMELEC] is tasked with the duty to continue with the trial and hearing of the disqualification case of Mendoza to its conclusion despite the pendency of EAC (Brgy) No. 101-2008, then there is no cogent reason to disturb the Resolution of the First Division dated September 18, 2008.[13]

Unperturbed, Mendoza filed the instant petition alleging grave abuse of discretion in the 23 December 2009 Resolution of the COMELEC *En Banc*. Mendoza insists that the disqualification case should have been dismissed, or, at the least, consolidated with the *quo warranto* case on appeal before the COMELEC Second Division because the latter case stems from a judicial proceeding which "followed strictly the requirements of law and the rules." Mendoza then blithely puts in issue the constitutionality of the retroactive application to the 1994 *Barangay* Elections of the three-consecutive term limit rule. For good measure, Mendoza asserts denial of due process as would invalidate the disqualification proceedings against him and his resulting disqualification from the race for *Barangay* Captain of Balatasan.

The jettisoning of the petition is inevitable: the holding of the October 2010 *Barangay* Elections makes the issues posed by petitioner moot and academic.

Before anything else, we note the apparent mix-up in Mendoza's designation of the present petition. He alleged grave abuse of

---

[13] *Id.* at 36-38.

discretion, but incorrectly specified in the prefatory statement of the petition that it is a "petition for review on *certiorari*."

For clarity and to obviate confusion, we treat the instant petition as one filed under Rule 64 in relation to Rule 65 of the Rules of Court since the totality of the allegations contained therein seek to annul and set aside the Resolution of the COMELEC *en banc* because it is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. As we have also noted in *Mendoza v. Mayor Villas*,[14] another case filed by Mendoza before us where Mendoza did not specify under which Rule (45 or 65) his petition was being filed, this Court has the discretion to determine whether a petition was filed under Rule 45 or 65 of the Rules of Court.

Even without going into Mendoza's penchant for filing confused petitions, the supervening event that is the conduct of the 2010 *Barangay* Elections renders this case moot and academic. The term of office for *Barangay* Captain of Balatasan for the 2007 *Barangay* Elections had long expired in 2010 following the last elections held on October 25 of the same year.

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value. As a rule, courts decline jurisdiction over such case, or dismiss it on ground of mootness.[15]

Certainly, the rule is not set in stone and permits exceptions. Thus, we may choose to decide cases otherwise moot and academic if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest involved; *third*, the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; or *fourth*, the case is capable

---

[14] G.R. No. 187256, 23 February 2011.

[15] *Gunsi v. COMELEC*, G.R. No. 168792, 23 February 2009, 580 SCRA 70, 76.

of repetition yet evasive of review.[16] None of the foregoing exceptions calling for this Court to exercise jurisdiction obtains in this instance.

The justiciability of the present petition is further decimated by our recent ruling in *Mendoza v. Mayor Villas*:[17]

> **With the conduct of the 2010 *barangay* elections, a supervening event has transpired that has rendered this case moot and academic and subject to dismissal.** This is because, as stated in *Fernandez v. Commission on Elections*, "whatever judgment is reached, the same can no longer have any practical legal effect or, in the nature of things, can no longer be enforced." **Mendoza's term of office has expired with the conduct of last year's local elections**. As such, Special Civil Action No. 08-10, where the assailed Orders were issued, can no longer prosper. Mendoza no longer has any legal standing to further pursue the case, rendering the instant petition moot and academic. (emphasis supplied)

In any event, upon a perusal of the merits or lack thereof, the petition is clearly dismissible.

Our decision in *COMELEC v. Cruz*[18] settles, once and for all, the constitutionality of the three-consecutive term limit rule reckoned from the 1994 Barangay Elections. We unequivocally declared, thus:

> ***The Retroactive Application Issue***
>
> x x x x x x x x x
>
> Our first point of disagreement with the respondents and with the RTC is on their position that a retroactive application of the term limitation was made under RA No. 9164. Our own reading shows that no retroactive application was made because **the three-term limit has been there all along as early as the second *barangay* law (RA No. 6679) after the 1987 Constitution took effect; it**

---

[16] *David v. Macapagal-Arroyo*, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489, 171424, 3 May 2006, 489 SCRA 160, 214-215.

[17] *Supra* note 14.

[18] G.R. No. 186616, 20 November 2009, 605 SCRA 167.

was continued under the [Local Government Code] and can still be found in the current law. We find this obvious from a reading of the historical development of the law.

The first law that provided a term limitation for *barangay* officials was **RA No. 6653** (1988); it imposed a two-consecutive term limit. After only six months, Congress, under **RA No. 6679** (1988), changed the two-term limit by providing for a three-consecutive term limit. This consistent imposition of the term limit gives no hint of any equivocation in the congressional intent to provide a term limitation. Thereafter, RA No. 7160 - the LGC - followed, bringing with it the issue of whether it provided, *as originally worded*, for a three-term limit for *barangay* officials. We differ with the RTC analysis of this issue.

Section 43 is a provision under Title II of the LGC on Elective Officials. Title II is divided into several chapters dealing with a wide range of subject matters, **all** relating to local elective officials, as follows: a. Qualifications and Election (Chapter I); b. Vacancies and Succession (Chapter II); c. Disciplinary Actions (Chapter IV) and d. Recall (Chapter V). Title II likewise contains a chapter on Local Legislation (Chapter III).

These Title II provisions are intended to apply to all local elective officials, ***unless the contrary is clearly provided***. A contrary application is provided with respect to the length of the term of office under Section 43(a); while it applies to all local elective officials, it does not apply to *barangay* officials whose length of term is specifically provided by Section 43(c). In contrast to this clear case of an exception to a general rule, the three-term limit under Section 43(b) does not contain any exception; it applies to all local elective officials who must perforce include *barangay* officials.

An alternative perspective is to view [Section] 43(a), (b) and (c) separately from one another as independently standing and self-contained provisions, except to the extent that they expressly relate to one another. Thus, [Section] 43(a) relates to the term of local elective officials, except *barangay* officials whose term of office is separately provided under Sec. 43(c). [Section] 43(b), by its express terms, relates to all local elective officials without any exception. Thus, the term limitation applies to all local elective officials without any exclusion or qualification.

Either perspective, both of which speak of the same resulting interpretation, is the correct legal import of Section 43 in the context in which it is found in Title II of the LGC.

x x x x x x x x x

All these inevitably lead to the conclusion that the challenged proviso has been there all along and does not simply retroact the application of the three-term limit to the *barangay* elections of 1994. Congress merely integrated the past statutory changes into a seamless whole by coming up with the challenged proviso.

With this conclusion, the respondents' constitutional challenge to the proviso—based on retroactivity—must fail.[19]

WHEREFORE, premises considered, the petition is hereby *DISMISSED*. The COMELEC Resolutions dated 18 September 2008 and 23 December 2009 in SPA (Brgy.) 07-243 are *AFFIRMED*.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Brion, Peralta, Bersamin, Abad, Villarama, Jr., Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Leonardo-de Castro and *del Castillo,* on official leave.

---

[19] *Id.* at 183-185, 189.

EN BANC

[G.R. No. 191805. November 15, 2011]

IN THE MATTER OF THE PETITION FOR THE WRIT OF *AMPARO* AND *HABEAS DATA* IN FAVOR OF NORIEL H. RODRIGUEZ,

NORIEL H. RODRIGUEZ, *petitioner, vs.* **GLORIA MACAPAGAL-ARROYO, GEN. VICTOR S. IBRADO, PDG JESUS AME VERSOZA, LT. GEN. DELFIN BANGIT, MAJ. GEN. NESTOR Z. OCHOA, P/CSUPT. AMETO G. TOLENTINO, P/SSUPT. JUDE W. SANTOS, COL. REMIGIO M. DE VERA, an officer named MATUTINA, LT. COL. MINA, CALOG, GEORGE PALACPAC under the name "HARRY," ANTONIO CRUZ, ALDWIN "BONG" PASICOLAN and VICENTE CALLAGAN,** *respondents.*

[G.R. No. 193160. November 15, 2011]

IN THE MATTER OF THE PETITION FOR THE WRIT OF *AMPARO* AND *HABEAS DATA* IN FAVOR OF NORIEL H. RODRIGUEZ,

POLICE DIR. GEN. JESUS A. VERSOZA, P/SSUPT. JUDE W. SANTOS, BGEN. REMEGIO M. DE VERA, 1ST LT. RYAN S. MATUTINA, LT. COL. LAURENCE E. MINA, ANTONIO C. CRUZ, ALDWIN C. PASICOLAN and VICENTE A. CALLAGAN, *petitioners, vs.* **NORIEL H. RODRIGUEZ,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; JUDICIAL REMEDY; WRIT OF *AMPARO*; DEFINED. —** The writ of *amparo* is an extraordinary and independent remedy that provides rapid judicial relief, as it partakes of a summary proceeding that requires only substantial evidence to make the appropriate interim and permanent reliefs available to the petitioner. It is

not an action to determine criminal guilt requiring proof beyond reasonable doubt, or liability for damages requiring preponderance of evidence, or administrative responsibility requiring substantial evidence that will require full and exhaustive proceedings. Rather, it serves both preventive and curative roles in addressing the problem of extrajudicial killings and enforced disappearances. It is preventive in that it breaks the expectation of impunity in the commission of these offenses, and it is curative in that it facilitates the subsequent punishment of perpetrators by inevitably leading to subsequent investigation and action.

2. **ID.; ID.; WRIT OF *HABEAS DATA*; NATURE THEREOF, EXPLAINED. —** [T]he writ of *habeas data* provides a judicial remedy to protect a person's right to control information regarding oneself, particularly in instances where such information is being collected through unlawful means in order to achieve unlawful ends. As an independent and summary remedy to protect the right to privacy — especially the right to informational privacy — the proceedings for the issuance of the writ of *habeas data* does not entail any finding of criminal, civil or administrative culpability. If the allegations in the petition are proven through substantial evidence, then the Court may (a) grant access to the database or information; (b) enjoin the act complained of; or (c) in case the database or information contains erroneous data or information, order its deletion, destruction or rectification.

3. **POLITICAL LAW; EXECUTIVE DEPARTMENT; A NON-SITTING PRESIDENT DOES NOT ENJOY IMMUNITY FROM SUIT, EVEN FOR ACTS COMMITTED DURING HIS TENURE; CASE AT BAR. —** In *Estrada v. Desierto*, we clarified the doctrine that a non-sitting President does not enjoy immunity from suit, even for acts committed during the latter's tenure. We emphasize our ruling therein that courts should look with disfavor upon the presidential privilege of immunity, especially when it impedes the search for truth or impairs the vindication of a right, to wit: x x x Further, in our Resolution in *Estrada v. Desierto*, we reiterated that the presidential immunity from suit exists only in concurrence with the president's incumbency. x x x Applying the foregoing rationale to the case at bar, it is clear that former President Arroyo cannot use the presidential immunity from suit to shield

herself from judicial scrutiny that would assess whether, within the context of *amparo* proceedings, she was responsible or accountable for the abduction of Rodriguez.

4. **ID.; THE DOCTRINE OF COMMAND RESPONSIBILITY, EXPLAINED. —** As we explained in *Rubrico v. Arroyo*, command responsibility pertains to the "responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflict." Although originally used for ascertaining criminal complicity, the command responsibility doctrine has also found application in civil cases for human rights abuses. In the United States, for example, command responsibility was used in *Ford v. Garcia* and *Romagoza v. Garcia* — civil actions filed under the Alien Tort Claims Act and the Torture Victim Protection Act. This development in the use of command responsibility in civil proceedings shows that the application of this doctrine has been liberally extended even to cases not criminal in nature. Thus, it is our view that command responsibility may likewise find application in proceedings seeking the privilege of the writ of *amparo*. x x x Precisely in the case at bar, the doctrine of command responsibility may be used to determine whether respondents are accountable for and have the duty to address the abduction of Rodriguez in order to enable the courts to devise remedial measures to protect his rights. Clearly, nothing precludes this Court from applying the doctrine of command responsibility in *amparo* proceedings to ascertain responsibility and accountability in extrajudicial killings and enforced disappearances.

5. **ID.; ID.; APPLICABILITY IN WRIT OF *AMPARO* CASES. —** [*A*]*mparo* proceedings determine (a) responsibility, or the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, and (b) accountability, or the measure of remedies that should be addressed to those (i) who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or (ii) who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or (iii) those who carry, but have failed to discharge, the burden of extraordinary diligence in

the investigation of the enforced disappearance. Thus, although there is no determination of criminal, civil or administrative liabilities, the doctrine of command responsibility may nevertheless be applied to ascertain responsibility and accountability within these foregoing definitions. x x x The Rule on the Writ of *Amparo* explicitly states that the violation of or threat to the right to life, liberty and security may be caused by either an act or an *omission* of a public official. Moreover, in the context of *amparo* proceedings, responsibility may refer to the participation of the respondents, by action or *omission,* in enforced disappearance. Accountability, on the other hand, may attach to respondents who are *imputed with knowledge* relating to the enforced disappearance and who *carry the burden of disclosure*; or those who *carry, but have failed to discharge, the burden of extraordinary diligence in the investigation* of the enforced disappearance. In this regard, we emphasize our ruling in *Secretary of National Defense v. Manalo* that the right to security of a person includes the positive obligation of the government to ensure the observance of the duty to investigate.

6. **ID.; ID.; LIABILITY UNDER THE DOCTRINE; ELEMENTS.** — To hold someone liable under the doctrine of command responsibility, the following elements must obtain: a. the existence of a superior-subordinate relationship between the accused as superior and the perpetrator of the crime as his subordinate; b. the superior knew or had reason to know that the crime was about to be or had been committed; and c. the superior failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof.

7. **ID.; ID.; ID.; KNOWLEDGE OF THE COMMISSION OF IRREGULARITIES, WHEN PRESUMED.** — [A]lthough international tribunals apply a strict standard of knowledge, *i.e.*, actual knowledge, such may nonetheless be established through circumstantial evidence. In the Philippines, a more liberal view is adopted and superiors may be charged with constructive knowledge. This view is buttressed by the enactment of Executive Order No. 226, otherwise known as the *Institutionalization of the Doctrine of 'Command Responsibility' in all Government Offices, particularly at all Levels of Command in the Philippine National Police and other Law Enforcement Agencies* (E.O. 226). Under E.O. 226, a government official may be held liable for neglect of duty

under the doctrine of command responsibility if he has knowledge that a crime or offense shall be committed, is being committed, or has been committed by his subordinates, or by others within his area of responsibility and, despite such knowledge, he did not take preventive or corrective action either before, during, or immediately after its commission. Knowledge of the commission of irregularities, crimes or offenses is presumed when (a) the acts are widespread within the government official's area of jurisdiction; (b) the acts have been repeatedly or regularly committed within his area of responsibility; or (c) members of his immediate staff or office personnel are involved.

8. **ID.; RIGHT TO SECURITY INCLUDES POSITIVE OBLIGATION OF THE GOVERNMENT TO INVESTIGATE; WHEN VIOLATED. —** The Rule on the Writ of *Amparo* explicitly states that the violation of or threat to the right to life, liberty and security may be caused by either an act or an *omission* of a public official. Moreover, in the context of *amparo* proceedings, responsibility may refer to the participation of the respondents, by action or *omission*, in enforced disappearance. Accountability, on the other hand, may attach to respondents who are *imputed with knowledge* relating to the enforced disappearance and who *carry the burden of disclosure*; or those who *carry, but have failed to discharge, the burden of extraordinary diligence in the investigation* of the enforced disappearance. In this regard, we emphasize our ruling in *Secretary of National Defense v. Manalo* that the right to security of a person includes the positive obligation of the government to ensure the observance of the duty to investigate, x x x.

APPEARANCES OF COUNSEL

Rex J.M.A. Fernandez for Noriel Rodriguez.

D E C I S I O N

SERENO, *J.*:

Before this Court are two consolidated cases, namely, (1) Petition for Partial Review on *Certiorari* dated 20 April 2010

(G.R. No. 191805), and (2) Petition for Review on *Certiorari* dated 19 August 2010 (G.R. No. 193160).[1] Both Petitions assail the 12 April 2010 Decision of the Court of Appeals, the dispositive portion of which reads:

WHEREFORE, the petition for writ of *amparo* and writ of *habeas data* is **GRANTED**.

Respondents Gen. Victor S. Ibrado, Lt. Gen. Delfin Bangit, Maj. Gen. Nestor Z. Ochoa, PCSupt. Ameto G. Tolentino, PSSupt. Jude W. Santos, Col. Remigio M. De Vera, Lt. Col. Laurence E. Mina and 1Lt. Ryan S. Matutina, or their replacements in their official posts if they have already vacated the same, are ORDERED to furnish this Court within five (5) days from notice of this decision, official or unofficial reports pertaining to petitioner — covering but not limited to intelligence reports, operation reports and provost marshal reports prior to, during and subsequent to September 6, 2009 — made by the 5th Infantry Division, Philippine Army, its branches and subsidiaries, including the 17th Infantry Battalion, Philippine Army.

The above-named respondents are also **DIRECTED** to refrain from using the said reports in any transaction or operation of the military. Necessarily, the afore-named respondents are **ORDERED** to expunge from the records of the military all documents having any reference to petitioner.

Likewise, the afore-named respondents, as well as respondents Police Director General Jesus Ame Versoza, Antonio Cruz, Aldwin Pasicolan and Vicente Callagan are **DIRECTED** to ensure that no further violation of petitioner's rights to life, liberty and security is committed against the latter or any member of his family.

The petition is **DISMISSED** with respect to President Gloria Macapagal-Arroyo on account of her presidential immunity from suit. Similarly, the petition is **DISMISSED** with respect to respondents Calog and George Palacpac or Harry for lack of merit.

Petitioner's prayer for issuance of a temporary protection order and inspection order is **DENIED**.

---

[1] Resolution dated 28 June 2011, ordering the consolidation of G.R. Nos. 191805 and 193160.

Noriel Rodriguez (Rodriguez) is petitioner in G.R. No. 191805 and respondent in G.R. No. 193160. He is a member of *Alyansa Dagiti Mannalon Iti Cagayan (Kagimungan)*, a peasant organization affiliated with *Kilusang Magbubukid ng Pilipinas* (KMP).

On the other hand, Gloria Macapagal-Arroyo (former President Arroyo), Police Director General (PDG.) Jesus A. Verzosa, Police Senior Superintendent (P/SSupt.) Jude W. Santos, Brigadier General (Brig. Gen.) Remegio M. De Vera, First Lieutenant (1st Lt.) Ryan S. Matutina, Lieutenant Colonel (Lt. Col.) Laurence E. Mina, Antonio C. Cruz (Cruz), Aldwin C. Pasicolan (Pasicolan) and Vicente A. Callagan (Callagan) are respondents in G.R. No. 191805 and petitioners in G.R. No. 193160. At the time the events relevant to the present Petitions occurred, former President Arroyo was the President of the Philippines. PDG. Verzosa, P/SSupt. Santos, Brig. Gen. De Vera, 1st Lt. Matutina and Lt. Col. Mina were officers of the Philippine National Police (PNP). Cruz, Pasicolan and Callagan were Special Investigators of the Commission on Human Rights (CHR) in Region II.

Antecedent Facts

Rodriguez claims that the military tagged KMP as an enemy of the State under the Oplan Bantay Laya, making its members targets of extrajudicial killings and enforced disappearances.[2]

On 6 September 2009, at 5:00 p.m., Rodriguez had just reached Barangay Tapel, Cagayan onboard a tricycle driven by Hermie Antonio Carlos (Carlos), when four men forcibly took him and forced him into a car. Inside the vehicle were several men in civilian clothes, one of whom was holding a .45 caliber pistol. Subsequently, three more persons arrived, and one of them carried a gun at his side. Two men boarded the car, while the others rode on the tricycle.[3]

The men tied the hands of Rodriguez, ordered him to lie on his stomach, sat on his back and started punching him. The car

---

[2] Petition, CA *rollo* (G.R. No. 191805), p. 4.

[3] Decision, *rollo* (G.R. No. 191805), p. 30.

travelled towards the direction of Sta. Teresita-Mission and moved around the area until about 2:00 a.m. During the drive, the men forced Rodriguez to confess to being a member of the New People's Army (NPA), but he remained silent. The car then entered a place that appeared to be a military camp. There were soldiers all over the area, and there was a banner with the word "Bravo" written on it. Rodriguez later on learned that the camp belonged to the 17th Infantry Battalion of the Philippine Army.[4]

Rodriguez was brought to a canteen, where six men confronted him, ordering him to confess to his membership in the NPA. Due to his exhaustion, he unintentionally fell asleep. As a result, the men hit him on the head to wake him up. After the interrogation, two of the men guarded him, but did not allow him to sleep.[5]

In the morning of 7 September 2009, the men tied the hands of Rodriguez, blindfolded him and made him board a vehicle. While they were in transit, the soldiers repeatedly hit him in the head and threatened to kill him. When the car stopped after about ten minutes, the soldiers brought him to a room, removed his blindfold, and forced him to confess to being a member of the NPA. During the interrogation, the soldiers repeatedly hit him on the head. Thereafter, he was detained inside the room for the entire day. The soldiers tied his stomach to a *papag*, and gave him rice and viand. Fearing that the food might be poisoned, he refused to eat anything. He slept on the *papag* while being tied to it at the waist.[6]

On 8 September 2009, the men forced Rodriguez into a vehicle, which brought them to Bugey and Mission. While passing houses along the way, the men asked him if his contacts lived in those houses. When he failed to answer, a soldier pointed a gun to his head and threatened to kill him and his family. Because he remained silent, the soldiers beat him and tied him up. The

---

[4] *Rollo* (G.R. No. 191805), p. 31.

[5] *Id.*

[6] *Rollo* (G.R. No. 191805), pp. 31-32.

vehicle returned to the military camp at past 1:00 p.m., where he was again subjected to tactical interrogation about the location of an NPA camp and his alleged NPA comrades. He suffered incessant mauling every time he failed to answer.[7]

At dawn on 9 September 2009, soldiers armed with rifles took Rodriguez and made him their guide on their way to an NPA camp in Birao. Accompanying them was a man named Harry, who, according to the soldiers, was an NPA member who had surrendered to the military. Harry pointed to Rodriguez and called him a member of the NPA. He also heard Harry tell the soldiers that the latter knew the area well and was acquainted with a man named Elvis. The soldiers loaded Rodriguez into a military truck and drove to Tabbak, Bugey. While he was walking with the soldiers, he noticed a soldier with the name tag "Matutina," who appeared to be an official because the other soldiers addressed him as "sir."[8]

Upon reaching Birao on foot, the soldiers looked for and was able to locate a certain Elvis and told him that Rodriguez had identified his whereabouts location. The soldiers forced Rodriguez to convince Elvis to disclose the location of the NPA camp. They brought the two to the mountains, where both were threatened with death. When the soldiers punched Elvis, Rodriguez told them that he would reveal the location of the NPA camp if they let Elvis go home. They finally released Elvis around 3:00 p.m. that day. The soldiers and Rodriguez spent the next three nights in the mountains.[9]

On 12 September 2009, the soldiers again hit Rodriguez and forced him to identify the location of the NPA camp. He was blindfolded and warned to get ready because they would beat him up again in the military camp. Upon arrival therein, they brought him to the same room where he had first been detained, and two soldiers mauled him again. They repeatedly punched

---

[7] *Id.* at 32.

[8] *Id.* at 32-33.

[9] *Id.* at 33.

and kicked him. In the afternoon, they let him rest and gave him an Alaxan tablet. Thereafter, he fell asleep due to over-fatigue and extreme body pain. The soldiers, however, hit him again. After giving him a pen and a piece of paper, they ordered him to write down his request for rice from the people. When he refused, the soldiers maltreated him once more.[10]

On 13 September 2009, the soldiers forced Rodriguez to sign documents declaring that he had surrendered in an encounter in Cumao, and that the soldiers did not shoot him because he became a military asset in May. When he refused to sign the document, he received another beating. Thus, he was compelled to sign, but did so using a different signature to show that he was merely coerced.[11]

The soldiers showed Rodriguez photographs of different persons and asked him if he knew the men appearing therein. When he told them that he did not recognize the individuals on the photos, the soldiers instructed him to write down the name of his school and organization, but he declined. The soldiers then wrote something on the paper, making it appear that he was the one who had written it, and forced him to sign the document. The soldiers took photographs of him while he was signing. Afterwards, the soldiers forced him down, held his hands, and sat on his feet. He did not only receive another beating, but was also electrocuted. The torture lasted for about an hour.[12]

At 11:00 p.m. on 15 September 2009, the soldiers brought Rodriguez to a military operation in the mountains, where he saw Matutina again. They all spent the night there.[13]

In the morning of 16 September 2009, the soldiers and Rodriguez started their descent. When they stopped, the soldiers took his photograph and asked him to name the location of the NPA camp. Thereafter, they all returned to the military camp.

---

[10] *Id.* at 34.

[11] *Id.*

[12] *Rollo* (G.R. No. 191805), pp. 34-35.

[13] *Id.*

The soldiers asked him to take a bath and wear a white polo shirt handed to him. He was then brought to the Enrile Medical Center, where Dr. Juliet Ramil (Dr. Ramil) examined him.[14] When the doctor asked him why he had bruises and contusions, he lied and told her that he sustained them when he slipped, as he noticed a soldier observing him. Dr. Ramil's medical certificate indicated that he suffered from four hematomas in the epigastric area, chest and sternum.[15]

Back at the camp, the soldiers let Rodriguez eat with several military officials and took pictures of him while he was eating with them. They also asked him to point to a map in front of him and again took his photograph. Later, they told him that he would finally see his mother.[16]

Rodriguez was brought to another military camp, where he was ordered to sign a piece of paper stating that he was a surrenderee and was never beaten up. Scared and desperate to end his ordeal, he signed the paper and was warned not to report anything to the media.[17]

Around 6:00 a.m. on 17 September 2009, the soldiers instructed petitioner to take a bath. They gave him a pair of jeans and perfume. While he was having breakfast, the two soldiers guarding him repeatedly reminded him not to disclose to the media his experience in the camp and to say instead that he had surrendered to the military.[18]

At 9:00 a.m. on the same day, the mother and the brother of Rodriguez arrived surrounded by several men. His mother, Wilma Rodriguez (Wilma), talked to Lt. Col. Mina. Rodriguez heard one of the soldiers tell Wilma that he had surrendered to the

---

[14] Rodriguez's Position Paper dated 8 February 2010, CA *rollo* (G.R. No. 191805), pp. 422, 433.

[15] *Rollo* (G.R. No. 191805), pp. 35-36.

[16] *Id.* at 36.

[17] *Id.*

[18] *Id.*

military and had long been its asset. His brother, Rodel Rodriguez (Rodel), informed him that the men accompanying them were from the CHR, namely, Pasicolan, Cruz and Callagan. Upon seeing Rodriguez, Cruz instructed him to lift up his shirt, and one of the CHR employees took photographs of his bruises.[19]

A soldier tried to convince Wilma to let Rodriguez stay in the camp for another two weeks to supposedly prevent the NPA from taking revenge on him. Respondent Calog also approached Rodriguez and Rodel and asked them to become military assets. Rodel refused and insisted that they take Rodriguez home to Manila. Again, the soldiers reminded them to refrain from facing the media. The soldiers also told them that the latter will be taken to the Tuguegarao Airport and guarded until they reached home.[20]

Rodriguez and his family missed their flight. Subsequently, the soldiers accompanied them to the CHR office, where Rodriguez was made to sign an affidavit stating that he was neither abducted nor tortured. Afraid and desperate to return home, he was forced to sign the document. Cruz advised him not to file a case against his abductors because they had already freed him. The CHR personnel then led him and his family to the CHR Toyota Tamaraw FX service vehicle. He noticed that a vehicle with soldiers on board followed them.[21]

The Tamaraw FX pulled over and respondent 1st Lt. Matutina boarded the vehicle. Upon reaching a mall in Isabela, Rodriguez, his family, Callagan, 1st Lt. Matutina and two other soldiers transferred to an orange Toyota Revo with plate number WTG 579. Upon reaching the boundary of Nueva Ecija and Nueva Viscaya, 1st Lt. Matutina alighted and called Rodriguez to a diner. A certain Alan approached Rodriguez and handed him a cellphone with a SIM card. The latter and his family then left and resumed their journey back home.[22]

---

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

[20] *Id.* at 37.

[21] *Id.* at 37-38.

[22] *Id.* at 38.

Rodriguez reached his house in Sta. Ana, Manila at 3:00 a.m. on 18 September 2010. Callagan and two soldiers went inside the house, and took photographs and a video footage thereof. The soldiers explained that the photos and videos would serve as evidence of the fact that Rodriguez and his family were able to arrive home safely. Despite Rodriguez's efforts to confront the soldiers about their acts, they still continued and only left thirty minutes later.[23]

On 19 September 2009, Dr. Reginaldo Pamugas, a physician trained by the International Committee on Torture and Rehabilitation, examined Rodriguez and issued a Medical Certificate stating that the latter had been a victim of torture.[24]

Around 7:00 a.m. on 3 November 2010, Rodriguez and his girlfriend, Aileen Hazel Robles, noticed that several suspicious-looking men followed them at the Metro Rail Transit (MRT), in the streets and on a jeepney.[25]

On 7 December 2009, Rodriguez filed before this Court a Petition for the Writ of *Amparo* and Petition for the Writ of *Habeas Data* with Prayers for Protection Orders, Inspection of Place, and Production of Documents and Personal Properties dated 2 December 2009.[26] The petition was filed against former President Arroyo, Gen. Ibrado, PDG. Versoza, Lt. Gen. Bangit, Major General (Maj. Gen.) Nestor Z. Ochoa, P/CSupt. Tolentino, P/SSupt. Santos, Col. De Vera, 1st Lt. Matutina, Calog, George Palacpac (Palacpac), Cruz, Pasicolan and Callagan. The petition prayed for the following reliefs:

a. The issuance of the writ of *amparo* ordering respondents to desist from violating Rodriguez's right to life, liberty and security.

---

[23] *Id.*

[24] Exhibit "L" of Rodriguez's Position Paper dated 8 February 2010, p. 13, CA *rollo* (G.R. No. 191805), p. 427.

[25] *Karagdagang Salaysay* dated 20 January 2010, *rollo* (G.R. No. 191805), p. 43.

[26] *Rollo* (G.R. No. 191805), p. 5; *rollo* (G.R. No. 193160), p. 15.

b. The issuance of an order to enjoin respondents from doing harm to or approaching Rodriguez, his family and his witnesses.

c. Allowing the inspection of the detention areas of the Headquarters of Bravo Co., 5th Infantry Division, Maguing, Gonzaga, Cagayan and another place near where Rodriguez was brought.

d. Ordering respondents to produce documents submitted to them regarding any report on Rodriguez, including operation reports and provost marshall reports of the 5th Infantry Division, the Special Operations Group of the Armed Forces of the Philippines (AFP), prior to, on and subsequent to 6 September 2009.

e. Ordering records pertinent or in any way connected to Rodriguez, which are in the custody of respondents, to be expunged, disabused, and forever barred from being used.[27]

On 15 December 2009, we granted the respective writs after finding that the petition sufficiently alleged that Rodriguez had been abducted, tortured and later released by members of the 17th Infantry Battalion of the Philippine Army.[28] We likewise ordered respondents therein to file a verified return on the writs on or before 22 December 2009 and to comment on the petition on or before 4 January 2010.[29] Finally, we directed the Court of Appeals to hear the petition on 4 January 2010 and decide on the case within 10 days after its submission for decision.[30]

During the initial hearing on 4 January 2010, the Court of Appeals required the parties to submit affidavits and other pieces of evidence at the next scheduled hearing on 27 January 2010.[31]

---

[27] CA *rollo* (G.R. No. 191805), pp. 10-11.

[28] *Id.* at 43-50.

[29] *Id.*

[30] *Id.*

[31] *Id.* at 65-67; *rollo* (G.R. No. 193160), p. 16.

On 8 January 2010, respondents therein, through the Office of the Solicitor General (OSG), filed their Return of the Writ, which was likewise considered as their comment on the petition.[32] In their Return, respondents therein alleged that Rodriguez had surrendered to the military on 28 May 2009 after he had been put under surveillance and identified as "Ka Pepito" by former rebels.[33] According to his military handlers, Corporal (Cpl.) Rodel B. Cabaccan and Cpl. Julius P. Navarro, Rodriguez was a former member of the NPA operating in Cagayan Valley.[34] Wanting to bolt from the NPA, he told Cpl. Cabaccan and Cpl. Navarro that he would help the military in exchange for his protection.[35]

Upon his voluntary surrender on 28 May 2009, Rodriguez was made to sign an Oath of Loyalty and an Agent's Agreement/ Contract, showing his willingness to return to society and become a military asset.[36] Since then, he acted as a double agent, returning to the NPA to gather information.[37] However, he feared that his NPA comrades were beginning to suspect him of being an infiltrator.[38] Thus, with his knowledge and consent, the soldiers planned to stage a sham abduction to erase any suspicion about him being a double agent.[39] Hence, the abduction subject of the instant petition was conducted.[40]

Meanwhile, Cruz, Pasicolan and Callagan filed a Consolidated Return of the Writ dated 15 January 2010,[41] alleging that they had exercised extraordinary diligence in locating Rodriguez,

---

[32] *Id.* at 75-121.

[33] *Id.* at 78-79.

[34] *Id.* at 78.

[35] *Id.* at 79.

[36] *Id.*

[37] *Id.*

[38] CA *rollo* (G.R. No. 191805), p. 80.

[39] *Id.*

[40] *Id.* at 79-80.

[41] *Id.* at 275.

facilitating his safe turnover to his family and securing their journey back home to Manila. More specifically, they alleged that, on 16 September 2009, after Wilma sought their assistance in ascertaining the whereabouts of her son, Cruz made phone calls to the military and law enforcement agencies to determine his location.[42] Cruz was able to speak with Lt. Col. Mina, who confirmed that Rodriguez was in their custody.[43] This information was transmitted to CHR Regional Director Atty. Jimmy P. Baliga. He, in turn, ordered Cruz, Pasicolan and Callagan to accompany Wilma to the 17th Infantry Division.[44]

When the CHR officers, along with Wilma and Rodel, arrived at the 17th Infantry Battalion at Masin, Alcala, Cagayan, Brigade Commander Col. de Vera and Battalion Commander Lt. Col. Mina alleged that Rodriguez had become one of their assets, as evidenced by the Summary on the Surrender of Noriel Rodriguez and the latter's Contract as Agent.[45] The CHR officers observed his casual and cordial demeanor with the soldiers.[46] In any case, Cruz asked him to raise his shirt to see if he had been subjected to any maltreatment. Cruz and Pasicolan did not see any traces of torture. Thereafter, Rodriguez was released to his family, and they were made to sign a certification to this effect. During the signing of the document, herein CHR officers did not witness any threat, intimidation or force employed against Rodriguez or his family.[47]

During their journey back to the home of Rodriguez, the CHR officers observed that he was very much at ease with his military escorts, especially with 1st Lt. Matutina.[48] Neither was there any force or intimidation when the soldiers took pictures

---

[42] *Id.* at 278-279.

[43] *Id.* at 279.

[44] *Id.*

[45] *Id.*

[46] CA *rollo* (G.R. No. 191805), p. 280.

[47] *Id.*

[48] *Id.* at 281.

of his house, as the taking of photographs was performed with Wilma's consent.[49]

During the hearing on 27 January 2010, the parties agreed to file additional affidavits and position papers and to have the case considered submitted for decision after the filing of these pleadings.[50]

On 12 April 2010, the Court of Appeals rendered its assailed Decision.[51] Subsequently, on 28 April 2010, respondents therein filed their Motion for Reconsideration.[52] Before the Court of Appeals could resolve this Motion for Reconsideration, Rodriguez filed the instant Petition for Partial Review on *Certiorari* (G.R. No. 191805), raising the following assignment of errors:

> a. The Court of Appeals erred in not granting the Interim Relief for temporary protection order.
>
> b. The Court of Appeals erred in saying: "(H)owever, given the nature of the writ of *amparo*, which has the effect of enjoining the commission by respondents of violation to petitioner's right to life, liberty and security, the safety of petitioner is ensured with the issuance of the writ, even in the absence of an order preventing respondent from approaching petitioner."
>
> c. The Court of Appeals erred in not finding that respondent Gloria Macapagal Arroyo had command responsibility.[53]

On the other hand, respondents therein, in their Comment dated 30 July 2010, averred:

> a. The Court of Appeals properly dropped then President Gloria Macapagal Arroyo as a party-respondent, as she may not be sued in any case during her tenure of office or actual incumbency.
>
> b. Petitioner had not presented any adequate and competent evidence, much less substantial evidence, to establish his claim

---

[49] *Id.*

[50] *Id.* at 412-414.

[51] *Id.* at 608.

[52] *Id.* at 1066-1100.

[53] *Rollo* (G.R. No. 191805), p. 6.

that public respondents had violated, were violating or threatening to violate his rights to life, liberty and security, as well as his right to privacy. Hence, he was not entitled to the privilege of the writs of *amparo* and *habeas data* or to the corresponding interim reliefs (*i.e.* inspection order, production order and temporary protection order) provided under the rule on the writ of *amparo* and the rule on the writ of *habeas data*.[54]

On 19 August 2010, PDG. Verzosa, P/SSupt. Santos, BGen. De Vera, 1st Lt. Matutina, Lt. Col. Mina, Cruz, Pasicolan and Callagan filed a Petition for Review on *Certiorari*, seeking the reversal of the 12 April 2010 Decision of the Court of Appeals.[55] They alleged that Rodriguez —

Has not presented any adequate and competent evidence, must less substantial evidence, to establish his claim that petitioners have violated, are violating or threatening with violation his rights to life, liberty and security, as well as his right to privacy; hence, he is not entitled to the privilege of the writs of *amparo* and *habeas data* and their corresponding interim reliefs (*i.e.*, inspection order, production order and temporary protection order) provided under the Rule on the Writ of *Amparo* and the Rule on the Writ of *Habeas Data.*[56]

In ascertaining whether the Court of Appeals committed reversible error in issuing its assailed Decision and Resolution, the following issues must be resolved:

I. Whether the interim reliefs prayed for by Rodriguez may be granted after the writs of *amparo* and *habeas data* have already been issued in his favor.

II. Whether former President Arroyo should be dropped as a respondent on the basis of the presidential immunity from suit.

III. Whether the doctrine of command responsibility can be used in *amparo* and *habeas data* cases.

---

[54] *Id.* at 127.

[55] CA *rollo* (G.R. No. 191805), p. 608.

[56] Petition (G.R. No. 193160), p. 29.

IV. Whether the rights to life, liberty and property of Rodriguez were violated or threatened by respondents in G.R. No. 191805.

At the outset, it must be emphasized that the writs of *amparo* and *habeas data* were promulgated to ensure the protection of the people's rights to life, liberty and security.[57] The rules on these writs were issued in light of the alarming prevalence of extrajudicial killings and enforced disappearances.[58] The Rule on the Writ of *Amparo* took effect on 24 October 2007,[59] and the Rule on the Writ of *Habeas Data* on 2 February 2008.[60]

The writ of *amparo* is an extraordinary and independent remedy that provides rapid judicial relief, as it partakes of a summary proceeding that requires only substantial evidence to make the appropriate interim and permanent reliefs available to the petitioner.[61] It is not an action to determine criminal guilt requiring proof beyond reasonable doubt, or liability for damages requiring preponderance of evidence, or administrative responsibility requiring substantial evidence that will require full and exhaustive proceedings.[62] Rather, it serves both preventive and curative roles in addressing the problem of extrajudicial killings and enforced disappearances.[63] It is preventive in that it breaks the expectation of impunity in the commission of these offenses, and it is curative in that it facilitates the subsequent punishment of perpetrators by inevitably leading to subsequent investigation and action.[64]

---

[57] *Castillo v. Cruz*, G.R. No. 182165, 25 November 2009, 605 SCRA 628, 636.

[58] Annotation to the Rule on the Writ of *Amparo*, pamphlet released by the Supreme Court, p. 49.

[59] A.M. No. 07-9-12-SC.

[60] A.M. No. 08-1-06-SC.

[61] *Secretary of National Defense v. Manalo*, G.R. No. 180906, 7 October 2008, 568 SCRA 1, 42.

[62] *Id.*

[63] *Id.* at 43.

[64] *Id.*

Meanwhile, the writ of *habeas data* provides a judicial remedy to protect a person's right to control information regarding oneself, particularly in instances where such information is being collected through unlawful means in order to achieve unlawful ends.[65] As an independent and summary remedy to protect the right to privacy — especially the right to informational privacy[66] — the proceedings for the issuance of the writ of *habeas data* does not entail any finding of criminal, civil or administrative culpability. If the allegations in the petition are proven through substantial evidence, then the Court may (a) grant access to the database or information; (b) enjoin the act complained of; or (c) in case the database or information contains erroneous data or information, order its deletion, destruction or rectification.[67]

First issue: Grant of interim reliefs

In the petition in G.R. No. 191805, Rodriguez prays for the issuance of a temporary protection order. It must be underscored that this interim relief is only available before final judgment. Section 14 of the Rule on the Writ of *Amparo* clearly provides:

Interim Reliefs. — Upon filing of the petition or at ***anytime before final judgment***, the court, justice or judge may grant any of the following reliefs:

Temporary Protection Order. — The court, justice or judge, upon motion or *motu proprio*, may order that the petitioner or the aggrieved party and any member of the immediate family be protected in a government agency or by an accredited person or private institution capable of keeping and securing their safety. If the petitioner is an organization, association or institution referred to in Section 3(c) of this Rule, the protection may be extended to the officers involved.

The Supreme Court shall accredit the persons and private institutions that shall extend temporary protection to the petitioner

---

[65] *Roxas v. Arroyo*, G.R. No. 189155, 7 September 2010, 630 SCRA 211, 239.

[66] Annotation to the Rule on the Writ of *Habeas Data*, pamphlet released by the Supreme Court, p. 23.

[67] Section 16 of the Rule on the Writ of *Habeas Data*.

or the aggrieved party and any member of the immediate family, in accordance with guidelines which it shall issue.

The accredited persons and private institutions shall comply with the rules and conditions that may be imposed by the court, justice or judge.

(a) Inspection Order. — The court, justice or judge, upon verified motion and after due hearing, may order any person in possession or control of a designated land or other property, to permit entry for the purpose of inspecting, measuring, surveying, or photographing the property or any relevant object or operation thereon.

The motion shall state in detail the place or places to be inspected. It shall be supported by affidavits or testimonies of witnesses having personal knowledge of the enforced disappearance or whereabouts of the aggrieved party.

If the motion is opposed on the ground of national security or of the privileged nature of the information, the court, justice or judge may conduct a hearing in chambers to determine the merit of the opposition.

The movant must show that the inspection order is necessary to establish the right of the aggrieved party alleged to be threatened or violated.

The inspection order shall specify the person or persons authorized to make the inspection and the date, time, place and manner of making the inspection and may prescribe other conditions to protect the constitutional rights of all parties. The order shall expire five (5) days after the date of its issuance, unless extended for justifiable reasons.

(b) Production Order. — The court, justice, or judge, upon verified motion and after due hearing, may order any person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, or objects in digitized or electronic form, which constitute or contain evidence relevant to the petition or the return, to produce and permit their inspection, copying or photographing by or on behalf of the movant.

The motion may be opposed on the ground of national security or of the privileged nature of the information, in which case the

court, justice or judge may conduct a hearing in chambers to determine the merit of the opposition.

The court, justice or judge shall prescribe other conditions to protect the constitutional rights of all the parties.

(c) Witness Protection Order. — The court, justice or judge, upon motion or *motu proprio*, may refer the witnesses to the Department of Justice for admission to the Witness Protection, Security and Benefit Program, pursuant to Republic Act No. 6981.

The court, justice or judge may also refer the witnesses to other government agencies, or to accredited persons or private institutions capable of keeping and securing their safety. (Emphasis supplied)

We held in *Yano v. Sanchez*[68] that "[t]hese provisional reliefs are intended to assist the court ***before*** it arrives at a judicious determination of the *amparo* petition." Being interim reliefs, they can only be granted before a final adjudication of the case is made. In any case, it must be underscored that the privilege of the writ of *amparo*, once granted, necessarily entails the protection of the aggrieved party. Thus, since we grant petitioner the privilege of the writ of *amparo*, there is no need to issue a temporary protection order independently of the former. The order restricting respondents from going near Rodriguez is subsumed under the privilege of the writ.

Second issue: Presidential immunity from suit

It bears stressing that since there is no determination of administrative, civil or criminal liability in *amparo* and *habeas data* proceedings, courts can only go as far as ascertaining responsibility or accountability for the enforced disappearance or extrajudicial killing. As we held in *Razon v. Tagitis*:[69]

It does not determine guilt nor pinpoint criminal culpability for the disappearance; rather, it determines responsibility, or at least accountability, for the enforced disappearance for purposes of

---

[68] G.R. No. 186640, 11 February 2010, 612 SCRA 347, 362.

[69] G.R. No. 182498, 3 December 2009, 606 SCRA 598.

imposing the appropriate remedies to address the disappearance. ***Responsibility*** refers to the extent the actors have been established by substantial evidence to have ***participated*** in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. ***Accountability***, on the other hand, refers to the measure of remedies that should be addressed to those who exhibited ***involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility*** defined above; or who are ***imputed with knowledge*** relating to the enforced disappearance and who carry the burden of disclosure; or those who ***carry, but have failed to discharge, the burden of extraordinary diligence in the investigation*** of the enforced disappearance. In all these cases, the issuance of the Writ of *Amparo* is justified by our primary goal of addressing the disappearance, so that the life of the victim is preserved and his liberty and security are restored.[70] (Emphasis supplied.)

Thus, in the case at bar, the Court of Appeals, in its Decision[71] found respondents in G.R. No. 191805 — with the exception of Calog, Palacpac or Harry – to be accountable for the violations of Rodriguez's right to life, liberty and security committed by the 17th Infantry Battalion, 5th Infantry Division of the Philippine Army.[72] The Court of Appeals dismissed the petition with respect to former President Arroyo on account of her presidential immunity from suit. Rodriguez contends, though, that she should remain a respondent in this case to enable the courts to determine whether she is responsible or accountable therefor. In this regard, it must be clarified that the Court of Appeals' rationale for dropping her from the list of respondents no longer stands since her presidential immunity is limited only to her incumbency.

---

[70] *Id.* at 620-621.

[71] Penned by Associate Justice Abdulwahid, H.S. and concurred in by Justices Pizarro, N.B., and Macalino, F.S., *rollo* (G.R. No. 191805), pp. 29-74.

[72] CA Decision, pp. 37, 41 and 45; *Id.* at 65, 69 and 73.

In *Estrada v. Desierto*,[73] we clarified the doctrine that a non-sitting President does not enjoy immunity from suit, even for acts committed during the latter's tenure. We emphasize our ruling therein that courts should look with disfavor upon the presidential privilege of immunity, especially when it impedes the search for truth or impairs the vindication of a right, to wit:

We reject [Estrada's] argument that he cannot be prosecuted for the reason that he must first be convicted in the impeachment proceedings. The impeachment trial of petitioner Estrada was aborted by the walkout of the prosecutors and by the events that led to his loss of the presidency. Indeed, on February 7, 2001, the Senate passed Senate Resolution No. 83 "Recognizing that the Impeachment Court is *Functus Officio*." Since the Impeachment Court is now *functus officio*, it is untenable for petitioner to demand that he should first be impeached and then convicted before he can be prosecuted. The plea if granted, would put a perpetual bar against his prosecution. Such a submission has nothing to commend itself for it will place him in a better situation than ***a non-sitting President who has not been subjected to impeachment proceedings and yet can be the object of a criminal prosecution.*** To be sure, the debates in the Constitutional Commission make it clear that when impeachment proceedings have become moot due to the resignation of the President, the proper criminal and civil cases may already be filed against him, *viz*:

"x x x x x x x x x

Mr. Aquino. On another point, if an impeachment proceeding has been filed against the President, for example, and the President resigns before judgment of conviction has been rendered by the impeachment court or by the body, how does it affect the impeachment proceeding? Will it be necessarily dropped?

Mr. Romulo. If we decide the purpose of impeachment to remove one from office, then his resignation would render the case moot and academic. However, as the provision says, the criminal and civil aspects of it may continue in the ordinary courts."

---

[73] G.R. Nos. 146710-15, 146738, 2 March 2001, 353 SCRA 452.

This is in accord with our ruling in In Re: Saturnino Bermudez that ***"incumbent Presidents are immune from suit or from being brought to court during the period of their incumbency and tenure" but not beyond.*** xxx

We now come to the scope of immunity that can be claimed by petitioner as a non-sitting President. The cases filed against petitioner Estrada are criminal in character. They involve plunder, bribery and graft and corruption. By no stretch of the imagination can these crimes, especially plunder which carries the death penalty, be covered by the alleged mantle of immunity of a non-sitting president. Petitioner cannot cite any decision of this Court licensing the President to commit criminal acts and wrapping him with post-tenure immunity from liability. ***It will be anomalous to hold that immunity is an inoculation from liability for unlawful acts and omissions. The rule is that unlawful acts of public officials are not acts of the State and the officer who acts illegally is not acting as such but stands in the same footing as any other trespasser.***

Indeed, a critical reading of current literature on executive immunity will reveal ***a judicial disinclination to expand the privilege especially when it impedes the search for truth or impairs the vindication of a right.*** In the 1974 case of *US v. Nixon*, US President Richard Nixon, a sitting President, was subpoenaed to produce certain recordings and documents relating to his conversations with aids and advisers. Seven advisers of President Nixon's associates were facing charges of conspiracy to obstruct justice and other offenses which were committed in a burglary of the Democratic National Headquarters in Washington's Watergate Hotel during the 1972 presidential campaign. President Nixon himself was named an unindicted co-conspirator. President Nixon moved to quash the subpoena on the ground, among others, that the President was not subject to judicial process and that he should first be impeached and removed from office before he could be made amenable to judicial proceedings. The claim was rejected by the US Supreme Court. It concluded that "when the ground for asserting privilege as to subpoenaed materials sought for use in a criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice." In the 1982 case of *Nixon v. Fitzgerald*, the US Supreme Court further held that the immunity of the President from civil damages covers only "official acts." Recently, the US Supreme Court had the occasion to reiterate this doctrine in the case of *Clinton v. Jones* where it held that the US

President's immunity from suits for money damages arising out of their official acts is inapplicable to unofficial conduct.[74] (Emphasis supplied)

Further, in our Resolution in *Estrada v. Desierto*,[75] we reiterated that the presidential immunity from suit exists only in concurrence with the president's incumbency:

Petitioner stubbornly clings to the contention that he is entitled to absolute immunity from suit. His arguments are merely recycled and we need not prolong the longevity of the debate on the subject. In our Decision, we exhaustively traced the origin of executive immunity in our jurisdiction and its bends and turns up to the present time. We held that ***given the intent of the 1987 Constitution to breathe life to the policy that a public office is a public trust, the petitioner, as a non-sitting President, cannot claim executive immunity for his alleged criminal acts committed while a sitting President.*** Petitioner's rehashed arguments including their thinly disguised new spins are based on the rejected contention that he is still President, albeit, a President on leave. His stance that his immunity covers his entire term of office or until June 30, 2004 disregards the reality that he has relinquished the presidency and there is now a new *de jure* President.

Petitioner goes a step further and avers that even a non-sitting President enjoys immunity from suit during his term of office. He buttresses his position with the deliberations of the Constitutional Commission, *viz*:

"Mr. Suarez. Thank you.

The last question is with reference to the Committee's omitting in the draft proposal the immunity provision for the President. I agree with Commissioner Nolledo that the Committee did very well in striking out this second sentence, at the very least, of the original provision on immunity from suit under the 1973 Constitution. But would the Committee members not agree to a restoration of at least the first sentence that the president shall be immune from suit during his tenure,

---

[74] *Id.* at 521-523.

[75] Resolution in G.R. Nos. 146710-15, 146738, 3 April 2001, 356 SCRA 108.

considering that if we do not provide him that kind of an immunity, he might be spending all his time facing litigations, as the President-in-exile in Hawaii is now facing litigations almost daily?

Fr. Bernas:

The reason for the omission is that we consider it understood in present jurisprudence that during his tenure he is immune from suit.

Mr. Suarez:

So there is no need to express it here.

Fr. Bernas:

There is no need. It was that way before. The only innovation made by the 1973 Constitution was to make that explicit and to add other things.

Mr. Suarez:

On the understanding, I will not press for any more query, madam President

I thank the Commissioner for the clarification."

Petitioner, however, fails to distinguish between term and tenure. The term means the time during which the officer may claim to hold the office as of right, and fixes the interval after which the several incumbents shall succeed one another. The tenure represents the term during which the incumbent actually holds office. The tenure may be shorter than the term for reasons within or beyond the power of the incumbent. From the deliberations, ***the intent of the framers is clear that the immunity of the president from suit is concurrent only with his tenure and not his term.***[76] (Emphasis supplied)

Applying the foregoing rationale to the case at bar, it is clear that former President Arroyo cannot use the presidential immunity from suit to shield herself from judicial scrutiny that would assess whether, within the context of *amparo* proceedings, she was responsible or accountable for the abduction of Rodriguez.

---

[76] *Id.* at 149-150.

Third issue: Command responsibility in amparo proceedings

To attribute responsibility or accountability to former President Arroyo, Rodriguez contends that the doctrine of command responsibility may be applied. As we explained in *Rubrico v. Arroyo,*[77] command responsibility pertains to the "responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflict."[78] Although originally used for ascertaining criminal complicity, the command responsibility doctrine has also found application in civil cases for human rights abuses.[79] In the United States, for example, command responsibility was used in *Ford v. Garcia* and *Romagoza v. Garcia* — civil actions filed under the Alien Tort Claims Act and the Torture Victim Protection Act.[80] This development in the use of command responsibility in civil proceedings shows that the application of this doctrine has been liberally extended even to cases not criminal in nature. Thus, it is our view that command responsibility may likewise find application in proceedings seeking the privilege of the writ of *amparo*. As we held in *Rubrico*:

It may plausibly be contended that command responsibility, as legal basis to hold military/police commanders liable for extra-legal killings, enforced disappearances, or threats, may be made applicable to this jurisdiction on the theory that ***the command responsibility doctrine now constitutes a principle of international law or customary international law in accordance with the incorporation clause of the Constitution.***

… … …

---

[77] G.R. No. 183871, 18 February 2010, 613 SCRA 233.

[78] *Id.* at 251.

[79] HOECHERL, Cortney C., "Command Responsibility Doctrine: Formulation Through *Ford v. Garcia* and *Romagoza v. Garcia*," available at http://www.law.upenn.edu/groups/jilp/1-1_Hoecherl_Cortney.pdf (accessed on 16 March 2011).

[80] *Id.*

If command responsibility were to be invoked and applied to these proceedings, ***it should, at most, be only to determine the author who, at the first instance, is accountable for, and has the duty to address, the disappearance and harassments complained of, so as to enable the Court to devise remedial measures that may be appropriate under the premises to protect rights covered by the writ of amparo.*** As intimated earlier, however, the determination should not be pursued to fix criminal liability on respondents preparatory to criminal prosecution, or as a prelude to administrative disciplinary proceedings under existing administrative issuances, if there be any.[81] (Emphasis supplied.)

Precisely in the case at bar, the doctrine of command responsibility may be used to determine whether respondents are accountable for and have the duty to address the abduction of Rodriguez in order to enable the courts to devise remedial measures to protect his rights. Clearly, nothing precludes this Court from applying the doctrine of command responsibility in *amparo* proceedings to ascertain responsibility and accountability in extrajudicial killings and enforced disappearances. In this regard, the Separate Opinion of Justice Conchita Carpio-Morales in *Rubrico* is worth noting, thus:

That proceedings under the Rule on the Writ of Amparo do not determine criminal, civil or administrative liability should not abate the applicability of the doctrine of command responsibility. Taking *Secretary of National Defense v. Manalo* and *Razon v. Tagitis* in proper context, they do not preclude the application of the doctrine of command responsibility to *Amparo* cases.

Manalo was actually emphatic on the importance of the right to security of person and its contemporary signification as a guarantee of protection of one's rights by the government. It further stated that ***protection includes conducting effective investigations, organization of the government apparatus to extend protection to victims of extralegal killings or enforced disappearances, or threats thereof, and/or their families, and bringing offenders to the bar of justice.***

---

[81] *Id.* at 252-254.

Tagitis, on the other hand, cannot be more categorical on the application, at least in principle, of the doctrine of command responsibility:

> Given their mandates, the PNP and PNP-CIDG officials and members were the ones who were remiss in their duties when the government completely failed to exercise the extraordinary diligence that the *Amparo* Rule requires. ***We hold these organizations accountable through their incumbent Chiefs*** who, under this Decision, shall carry the personal responsibility of seeing to it that extraordinary diligence, in the manner the *Amparo* Rule requires, is applied in addressing the enforced disappearance of Tagitis.

Neither does Republic Act No. 9851 emasculate the applicability of the command responsibility doctrine to Amparo cases. The short title of the law is the *"Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity."* Obviously, it should, as it did, only treat of superior responsibility as a ground for criminal responsibility for the crimes covered. Such limited treatment, however, is merely in keeping with the statute's purpose and not intended to rule out the application of the doctrine of command responsibility to other appropriate cases.

Indeed, one can imagine the innumerable dangers of insulating high-ranking military and police officers from the coverage of reliefs available under the Rule on the Writ of *Amparo*. The explicit adoption of the doctrine of command responsibility in the present case will only bring Manalo and Tagitis to their logical conclusion.

In fine, I submit that the Court should take this opportunity to state what the law ought to be if it truly wants to make the Writ of *Amparo* an effective remedy for victims of extralegal killings and enforced disappearances or threats thereof. While there is a genuine dearth of evidence to hold respondents Gen. Hermogenes Esperon and P/Dir. Gen. Avelino Razon accountable under the command responsibility doctrine, the *ponencia*'s hesitant application of the doctrine itself is replete with implications abhorrent to the rationale behind the Rule on the Writ of *Amparo*.[82] (Emphasis supplied.)

---

[82] *Id.* at 273-275.

This Separate Opinion was reiterated in the recently decided case of *Boac v. Cadapan,*[83] likewise penned by Justice Carpio-Morales, wherein this Court ruled:

> *Rubrico* categorically denies the application of command responsibility in *amparo* cases to determine criminal liability. The Court maintains its adherence to this pronouncement as far as *amparo* cases are concerned.
>
> ***Rubrico, however, recognizes a preliminary yet limited application of command responsibility in amparo cases*** to instances of determining the responsible or accountable individuals or entities that are duty-bound to abate any transgression on the life, liberty or security of the aggrieved party.
>
>> ***If command responsibility were to be invoked and applied to these proceedings, it should, at most, be only to determine the author who, at the first instance, is accountable for, and has the duty to address, the disappearance and harassments complained of, so as to enable the Court to devise remedial measures that may be appropriate under the premises to protect rights covered by the writ of amparo***. As intimated earlier, however, the determination should not be pursued to fix criminal liability on respondents preparatory to criminal prosecution, or as a prelude to administrative disciplinary proceedings under existing administrative issuances, if there be any.
>
> In other words, ***command responsibility may be loosely applied in amparo cases in order to identify those accountable individuals that have the power to effectively implement whatever processes an amparo court would issue.*** In such application, the *amparo* court does not impute criminal responsibility but merely pinpoint the superiors it considers to be in the best position to protect the rights of the aggrieved party.
>
> Such identification of the responsible and accountable superiors may well be a preliminary determination of criminal liability which, of course, is still subject to further investigation by the appropriate government agency. (Emphasis supplied.)

[83] G.R. Nos. 184461-62, 184495, 187109, 31 May 2011.

As earlier pointed out, *amparo* proceedings determine (a) responsibility, or the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, and (b) accountability, or the measure of remedies that should be addressed to those (i) who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or (ii) who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or (iii) those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance. Thus, although there is no determination of criminal, civil or administrative liabilities, the doctrine of command responsibility may nevertheless be applied to ascertain responsibility and accountability within these foregoing definitions.

a. Command responsibility of the President

Having established the applicability of the doctrine of command responsibility in *amparo* proceedings, it must now be resolved whether the president, as commander-in-chief of the military, can be held responsible or accountable for extrajudicial killings and enforced disappearances. We rule in the affirmative.

To hold someone liable under the doctrine of command responsibility, the following elements must obtain:

a. the existence of a superior-subordinate relationship between the accused as superior and the perpetrator of the crime as his subordinate;

b. the superior knew or had reason to know that the crime was about to be or had been committed; and

c. the superior failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof.[84]

---

[84] Judge Bakone Justice Moloto, *Command Responsibility in International Criminal Tribunals,* Berkeley J. International Law Publicist, Vol. III, p. 18.

The president, being the commander-in-chief of all armed forces,[85] necessarily possesses control over the military that qualifies him as a superior within the purview of the command responsibility doctrine.[86]

On the issue of knowledge, it must be pointed out that although international tribunals apply a strict standard of knowledge, *i.e.*, actual knowledge, such may nonetheless be established through circumstantial evidence.[87] In the Philippines, a more liberal view is adopted and superiors may be charged with constructive knowledge. This view is buttressed by the enactment of Executive Order No. 226, otherwise known as the *Institutionalization of the Doctrine of 'Command Responsibility' in all Government Offices, particularly at all Levels of Command in the Philippine National Police and other Law Enforcement Agencies* (E.O. 226).[88] Under E.O. 226, a government official may be held liable for neglect of duty under the doctrine of command responsibility if he has knowledge that a crime or offense shall be committed, is being committed, or has been committed by his subordinates, or by others within his area of responsibility and, despite such knowledge, he did not take preventive or corrective action either before, during, or immediately after its commission.[89] Knowledge of the commission of irregularities, crimes or offenses is presumed when (a) the acts are widespread within the government official's area of jurisdiction; (b) the acts have been repeatedly or regularly committed within his area of responsibility; or (c) members of his immediate staff or office personnel are involved.[90]

(2009), citing *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Judgment, 484 (29 July 2004); *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-A, Judgment, Mar. 24, 2000.

[85] CONSTITUTION, Article VII, Section 18.

[86] Pacifico A. Agabin, *Accountability of the President under the Command Responsibility Doctrine*, p. 3.

[87] Judge Bakone Justice Moloto, *supra* note 84, at 18.

[88] 17 February 1995.

[89] Section 1.

[90] Section 2.

Meanwhile, as to the issue of failure to prevent or punish, it is important to note that as the commander-in-chief of the armed forces, the president has the power to effectively command, control and discipline the military.[91]

b. Responsibility or accountability of former President Arroyo

The next question that must be tackled is whether Rodriguez has proven through substantial evidence that former President Arroyo is responsible or accountable for his abduction. We rule in the negative.

Rodriguez anchors his argument on a general allegation that on the basis of the "Melo Commission" and the "Alston Report," respondents in G.R. No. 191805 already had knowledge of and information on, and should have known that a climate of enforced disappearances had been perpetrated on members of the NPA.[92] Without even attaching, or at the very least, quoting these reports, Rodriguez contends that the Melo Report points to rogue military men as the perpetrators. While the Alston Report states that there is a policy allowing enforced disappearances and pins the blame on the President, we do not automatically impute responsibility to former President Arroyo for each and every count of forcible disappearance.[93] Aside from Rodriguez's general averments, there is no piece of evidence that could establish her responsibility or accountability for his abduction. Neither was there even a clear attempt to show that she should have known about the violation of his right to life, liberty or security, or that she had failed to investigate, punish or prevent it.

---

[91] *Gonzales v. Abaya*, G.R. No. 164007, 10 August 2006, 498 SCRA 445.

[92] Petition, p. 17, *rollo*, p. 19.

[93] *Id.*

<u>Fourth issue: Responsibility or accountability of respondents in G.R. No. 191805</u>

The doctrine of totality of evidence in *amparo* cases was first laid down in this Court's ruling in *Razon*,[94] to wit:

> The fair and proper rule, to our mind, is to ***consider all the pieces of evidence adduced in their totality***, and to consider any evidence otherwise inadmissible under our usual rules to be admissible if it is consistent with the admissible evidence adduced. In other words, ***we reduce our rules to the most basic test of reason*** — *i.e.*, to the ***relevance of the evidence to the issue at hand and its consistency with all other pieces of adduced evidence.*** Thus, even hearsay evidence can be admitted if it satisfies this basic minimum test.[95] (Emphasis supplied.)

In the case at bar, we find no reason to depart from the factual findings of the Court of Appeals, the same being supported by substantial evidence. A careful examination of the records of this case reveals that the totality of the evidence adduced by Rodriguez indubitably prove the responsibility and accountability of some respondents in G.R. No. 191805 for violating his right to life, liberty and security.

a. The totality of evidence proved by substantial evidence the responsibility or accountability of respondents for the violation of or threat to Rodriguez's right to life, liberty and security.

After a careful examination of the records of these cases, we are convinced that the Court of Appeals correctly found sufficient evidence proving that the soldiers of the 17th Infantry Battalion, 5th Infantry Division of the military abducted Rodriguez on 6 September 2009, and detained and tortured him until 17 September 2009.

---

[94] *Supra,* note 69.

[95] *Id.* at 692.

Rodriguez's *Sinumpaang Salaysay* dated 4 December 2009 was a meticulous and straightforward account of his horrific ordeal with the military, detailing the manner in which he was captured and maltreated on account of his suspected membership in the NPA.[96] His narration of his suffering included an exhaustive description of his physical surroundings, personal circumstances and perceived observations. He likewise positively identified respondents 1st Lt. Matutina and Lt. Col. Mina to be present during his abduction, detention and torture,[97] and respondents Cruz, Pasicolan and Callagan as the CHR representatives who appeared during his release.[98]

More particularly, the fact of Rodriguez's abduction was corroborated by Carlos in his *Sinumpaang Salaysay* dated 16 September 2009,[99] wherein he recounted in detail the circumstances surrounding the victim's capture.

As regards the allegation of torture, the respective Certifications of Dr. Ramil and Dr. Pamugas validate the physical maltreatment Rodriguez suffered in the hands of the soldiers of the 17th Infantry Battalion, 5th Infantry Division. According to the Certification dated 12 October 2009 executed by Dr. Ramil,[100] she examined Rodriguez in the Alfonso Ponce Enrile Memorial District Hospital on 16 September 2009 and arrived at the following findings:

FACE
- 10cm healed scar face right side
- 2cm healed scar right eyebrow (lateral area)
- 2cm healed scar right eye brow (median area)
- 4cm x 2cm hematoma anterior chest at the sternal area right side
- 3cm x 2cm hematoma sternal area left side
- 6cm x 1cm hematoma from epigastric area to ant. chest left side

---

[96] CA *rollo* (G.R. No. 191805), pp. 14-23.

[97] *Id.* at 17-23.

[98] *Id.* at 21-23.

[99] *Id.* at 42.

[100] *Id.* at 24.

- 6cm x 1cm hematoma from epigastric area to ant. chest right side
- Multiple healed rashes (brownish discoloration) both forearm
- Multiple healed rashes (brownish discoloration)
- both leg arm
- hip area/lumbar area[101]

Dr. Pamugas performed a separate medical examination of Rodriguez on 19 September 2009, the results of which confirmed that the injuries suffered by the latter were inflicted through torture. Dr. Pamugas thus issued a Medical Report dated 23 September 2009,[102] explicitly stating that Rodriguez had been tortured during his detention by the military, to wit:

X. Interpretation of Findings

The above physical and psychological findings sustained by the subject are related to the torture and ill-treatment done to him. The multiple circular brown to dark brown spots found on both legs and arms were due to the insect bites that he sustained when he was forced to join twice in the military operations. The abrasions could also be due to the conditions related during military operations. The multiple pin-point blood spots found on his left ear is a result of an unknown object placed inside his left ear. The areas of tenderness he felt during the physical examination were due to the overwhelming punching and kicking on his body. The occasional difficulty of sleeping is a symptom experience (sic) by the subject as a result of the psychological trauma he encountered during his detention.

XI. Conclusions and Recommendations

The physical injuries and psychological trauma suffered by the subject are secondary to the torture and ill-treatment done to him while in detention for about 11 days. ***The physical injuries sustained by the subject, of which the age is compatible with the alleged date of infliction*** (sic).[103] (Emphasis supplied.)

---

[101] *Id.*

[102] *Id.* at 25-29.

[103] *Id.* at 29.

In assessing the weight of the Certifications, the Court of Appeals correctly relied on the medical finding that the injuries suffered by Rodriguez matched his account of the maltreatment inflicted on him by the soldiers of the 17th Infantry Battalion, 5th Infantry Division of the Philippine Army. Further, the kind of injuries he sustained showed that he could not have sustained them from merely falling, thus making respondents' claim highly implausible.

Despite these medical findings that overwhelmingly supported and lent credibility to the allegations of Rodriguez in his *Sinumpaang Salaysay*, respondents in G.R. No. 191805 still stubbornly clung to their argument that he was neither abducted nor detained. Rather, they claimed that he was a double agent, whose relationship with the military was at all times congenial. This contention cannot be sustained, as it is far removed from ordinary human experience.

If it were true that Rodriguez maintained amicable relations with the military, then he should have unhesitatingly assured his family on 17 September 2009 that he was among friends. Instead, he vigorously pleaded with them to get him out of the military facility. In fact, in the *Sinumpaang Salaysay* dated 4 December 2009[104] Wilma executed, she made the following averments:

> 18. *Na nang Makita ko ang aking anak ay nakaramdam ako sa kanya ng awa dahil sa mukha syang pagod at malaki ang kanyang ipinayat.*
>
> 19. ***Na niyakap ko sya at sa aming pagkakayakap ay binulungan nya ako na wag ko syang iiwan sa lugar na iyon***;
>
> x x x x x x x x x
>
> 23. *Na sinabihan ako ng mga sundalo na kung pwede daw ay maiwan muna ng dalawang linggo sa kampo ako at si Noriel para daw matrain pa si Noriel sa loob ng kampo;*
>
> 24. ***Na hindi ako pumayag na maiwan ang aking anak;***

---

[104] CA *rollo* (G.R. No. 191805), pp. 36-38.

x x x x x x x x x

33. *Na sa kasalukuhan, hanggang ngayon ay nag-aalala pa ako sa paa (sic) sa kaligtasan ng aming buong pamilya, lalo na kay Noriel;* xxx[105]

Also, Rodel made the following supporting averments in his *Sinumpaang Salaysay* dated 3 December 2009:[106]

24. *Na nang makita ko si Noriel, hindi sya makalakad ng diretso, hinang-hina sya, malaki ang ipinayat at nanlalalim ang mga mata;*

25. *Na nang makita ko ang aking kapatid ay nakaramdam ako ng awa dahil nakilala ko syang masigla at masayahin;*

26. *Na ilang minuto lang ay binulugan nya ako ng "Kuya, ilabas mo ako dito, papatayin nila ako."*

27. *Na sinabihan kami ni Lt. Col. Mina na baka pwedeng maiwan pa ng dalwang linggo ang aking kapatid sa kanila para raw ma-train sya.*

28. *Na hindi kami pumayag ng aking nanay;* xxx[107]

Moreover, the Court of Appeals likewise aptly pointed out the illogical, if not outrightly contradictory, contention of respondents in G.R. No. 191805 that while Rodriguez had complained of his exhaustion from his activities as a member of the CPP-NPA, he nevertheless willingly volunteered to return to his life in the NPA to become a double-agent for the military. The lower court ruled in this manner:

In the Return of the Writ, respondent AFP members alleged that petitioner confided to his military handler, Cpl. Navarro, that petitioner could no longer stand the hardships he experienced in the wilderness, and that he wanted to become an ordinary citizen again because of the empty promises of the CPP-NPA. However, in the same Return, respondents state that petitioner agreed to become a double agent for the military and wanted to re-enter the CPP-NPA, so that he could get information regarding the movement directly from the

---

[105] *Id.* at 37-38.

[106] *Id.* at 39-41.

[107] *Id.* at 40.

source. ***If petitioner was tired of life in the wilderness and desired to become an ordinary citizen again, it defies logic that he would agree to become an undercover agent and work alongside soldiers in the mountains — or the wilderness he dreads — to locate the hideout of his alleged NPA comrades***.[108] (Emphasis supplied.)

Furthermore, the appellate court also properly ruled that aside from the abduction, detention and torture of Rodriguez, respondents, specifically 1st Lt. Matutina, had violated and threatened the former's right to security when they made a visual recording of his house, as well as the photos of his relatives, to wit:

In the videos taken by the soldiers — one of whom was respondent Matutina — in the house of petitioner on September 18, 2009, the soldiers even went as far as taking videos of the photos of petitioner's relatives hung on the wall of the house, as well as videos of the innermost part of the house. ***This Court notes that 1Lt. Matutina, by taking the said videos, did not merely intend to make proofs of the safe arrival of petitioner and his family in their home. 1Lt. Matutina also desired to instill fear in the minds of petitioner and his family by showing them that the sanctity of their home, from then on, will not be free from the watchful eyes of the military,*** permanently captured through the medium of a seemingly innocuous cellhpone (sic) video camera. The Court cannot — and will not — condone such act, as it intrudes into the very core of petitioner's right to security guaranteed by the fundamental law.[109] (Emphasis supplied.)

Taken in their totality, the pieces of evidence adduced by Rodriguez, as well as the contradictory defenses presented by respondents in G.R. No. 191805, give credence to his claim that he had been abducted, detained and tortured by soldiers belonging to the 17th Infantry Battalion, 5th Infantry Division of the military.

It must be pointed out, however, that as to respondents Cruz, Pasicolan and Callagan, there was no substantial evidence to show that they violated, or threatened with violation, Rodriguez's

---

[108] *Rollo* (G.R. No. 191805), pp. 63-64.

[109] *Rollo* (G.R. No. 191805), p. 67.

right to life, liberty and security. Despite the dearth of evidence to show the CHR officers' responsibility or accountability, this Court nonetheless emphasizes its criticism as regards their capacity to recognize torture or any similar form of abuse. The CHR, being constitutionally mandated to protect human rights and investigate violations thereof,[110] should ensure that its officers are well-equipped to respond effectively to and address human rights violations. The actuations of respondents unmistakably showed their insufficient competence in facilitating and ensuring the safe release of Rodriguez after his ordeal.

b. The failure to conduct a fair and effect investigation amounted to a violation of or threat to Rodriguez's rights to life, liberty and security.

The Rule on the Writ of *Amparo* explicitly states that the violation of or threat to the right to life, liberty and security may be caused by either an act or an *omission* of a public official.[111] Moreover, in the context of *amparo* proceedings, responsibility may refer to the participation of the respondents, by action or *omission,* in enforced disappearance.[112] Accountability, on the other hand, may attach to respondents who are *imputed with knowledge* relating to the enforced disappearance and who *carry the burden of disclosure*; or those who *carry, but have failed to discharge, the burden of extraordinary diligence in the investigation* of the enforced disappearance.[113]

In this regard, we emphasize our ruling in *Secretary of National Defense v. Manalo*[114] that the right to security of a person includes

---

[110] CONSTITUTION, Art. XIII, Sec. 18.

[111] Sec. 1.

[112] *Supra*, note 69.

[113] *Id.*

[114] *Supra*, note 61.

the positive obligation of the government to ensure the observance of the duty to investigate, *viz*:

Third, the right to security of person is a guarantee of protection of one's rights by the government. In the context of the writ of *Amparo*, this right is built into the guarantees of the right to life and liberty under Article III, Section 1 of the 1987 Constitution and the right to security of person (as freedom from threat and guarantee of bodily and psychological integrity) under Article III, Section 2. The right to security of person in this third sense is a corollary of the policy that the State "guarantees full respect for human rights" under Article II, Section 11 of the 1987 Constitution. As the government is the chief guarantor of order and security, the Constitutional guarantee of the rights to life, liberty and security of person is rendered ineffective if government does not afford protection to these rights especially when they are under threat. ***Protection includes conducting effective investigations,*** organization of the government apparatus to extend protection to victims of extralegal killings or enforced disappearances (or threats thereof) and/or their families, and bringing offenders to the bar of justice. The Inter-American Court of Human Rights stressed the importance of investigation in the Velasquez Rodriguez Case, *viz*:

> ***(The duty to investigate) must be undertaken in a serious manner and not as a mere formality preordained to be ineffective***. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.

x x x x x x x x x

Similarly, the European Court of Human Rights (ECHR) has interpreted the "right to security" not only as prohibiting the State from arbitrarily depriving liberty, but imposing a positive duty on the State to afford protection of the right to liberty. The ECHR interpreted the "right to security of person" under Article 5(1) of the European Convention of Human Rights in the leading case on disappearance of persons, ***Kurt v. Turkey***. In this case, the claimant's son had been arrested by state authorities and had not been seen since. ***The family's requests for information and investigation regarding his whereabouts proved futile. The claimant suggested that this was a violation of her son's right to security of person***. The ECHR ruled, *viz*:

> ... any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrariness... Having assumed control over that individual it is incumbent on the authorities to account for his or her whereabouts. For this reason, Article 5 must be seen as ***requiring the authorities to take effective measures to safeguard against the risk of disappearance and to conduct a prompt effective investigation into an arguable claim that a person has been taken into custody and has not been seen since***.[115] (Emphasis supplied)

In the instant case, this Court rules that respondents in G.R. No. 191805 are responsible or accountable for the violation of Rodriguez's right to life, liberty and security on account of their abject failure to conduct a fair and effective official investigation of his ordeal in the hands of the military. Respondents Gen. Ibrado, PDG. Verzosa, Lt. Gen. Bangit, Maj. Gen. Ochoa, Col. De Vera and Lt. Col. Mina only conducted a perfunctory investigation, exerting no efforts to take Ramirez's account of the events into consideration. Rather, these respondents solely relied on the reports and narration of the military. The ruling of the appellate court must be emphasized:

> In this case, respondents Ibrado, Verzosa, Bangit, Tolentino, Santos, De Vera, and Mina are accountable, for ***while they were charged with the investigation of the subject incident, the investigation they conducted and/or relied on is superficial and one-sided.*** The records disclose that the military, in investigating the incident complained of, depended on the *Comprehensive Report of Noriel Rodriguez @Pepito* prepared by 1Lt. Johnny Calub for the Commanding Officer of the 501st Infantry Brigade, 5th Infantry Division, Philippine Army. Such report, however, is merely based on the narration of the military. No efforts were undertaken to solicit petitioner's version of the subject incident and no witnesses were questioned regarding the alleged abduction of petitioner.
>
> Respondent PDG Verzosa, as Chief of the PNP, is accountable because Section 24 of Republic Act No. 6975, otherwise known as

---

[115] *Id.* at 57-61.

the "PNP Law," specifies the PNP as the governmental office with the mandate "to investigate and prevent crimes, effect the arrest of criminal offenders, bring offenders to justice and assist in their prosecution." In this case, PDG Verzosa failed to order the police to conduct the necessary investigation to unmask the mystery surrounding petitioner's abduction and disappearance. Instead, PDG Verzosa disclaims accountability by merely stating that petitioner has no cause of action against him. Palpable, however, is the lack of any effort on the part of PDG Verzosa to effectively and aggressively investigate the violations of petitioner's right to life, liberty and security by members of the 17th Infantry Battalion, 17th Infantry Division, Philippine Army.[116] (Emphasis supplied.)

Clearly, the absence of a fair and effective official investigation into the claims of Rodriguez violated his right to security, for which respondents in G.R. No. 191805 must be held responsible or accountable.

Nevertheless, it must be clarified that Rodriguez was unable to establish any responsibility or accountability on the part of respondents P/CSupt. Tolentino, P/SSupt. Santos, Calog and Palacpac. Respondent P/CSupt. Tolentino had already retired when the abduction and torture of Rodriguez was perpetrated, while P/SSupt. Santos had already been reassigned and transferred to the National Capital Regional Police Office six months before the subject incident occurred. Meanwhile, no sufficient allegations were maintained against respondents Calog and Palacpac.

From all the foregoing, we rule that Rodriguez was successful in proving through substantial evidence that respondents Gen. Ibrado, PDG. Verzosa, Lt. Gen. Bangit, Maj. Gen. Ochoa, Brig. Gen. De Vera, 1st Lt. Matutina, and Lt. Col. Mina were responsible and accountable for the violation of Rodriguez's rights to life, liberty and security on the basis of (a) his abduction, detention and torture from 6 September to 17 September 2009, and (b) the lack of any fair and effective official investigation as to his allegations. Thus, the privilege of the writs of *amparo* and *habeas data* must be granted in his favor. As a result, there is no longer any need to issue a temporary protection order, as

---

[116] *Rollo* (G.R. No. 191805), pp. 66, 68.

the privilege of these writs already has the effect of enjoining respondents in G.R. No. 191805 from violating his rights to life, liberty and security.

It is also clear from the above discussion that despite (a) maintaining former President Arroyo in the list of respondents in G.R. No. 191805, and (b) allowing the application of the command responsibility doctrine to *amparo* and *habeas data* proceedings, Rodriguez failed to prove through substantial evidence that former President Arroyo was responsible or accountable for the violation of his rights to life, liberty and property. He likewise failed to prove through substantial evidence the accountability or responsibility of respondents Maj. Gen. Ochoa, Cruz, Pasicolan and Callagan.

WHEREFORE, we resolve to *GRANT* the Petition for Partial Review in G.R. No. 191805 and *DENY* the Petition for Review in G.R. No. 193160. The Decision of the Court of Appeals is hereby *AFFIRMED WITH MODIFICATION*.

The case is dismissed with respect to respondents former President Gloria Macapagal-Arroyo, P/CSupt. Ameto G. Tolentino, and P/SSupt. Jude W. Santos, Calog, George Palacpac, Antonio Cruz, Aldwin Pasicolan and Vicente Callagan for lack of merit.

This Court directs the Office of the Ombudsman (Ombudsman) and the Department of Justice (DOJ) to take the appropriate action with respect to any possible liability or liabilities, within their respective legal competence, that may have been incurred by respondents Gen. Victor Ibrado, PDG. Jesus Verzosa, Lt. Gen. Delfin Bangit, Maj. Gen. Nestor Ochoa, Brig. Gen. Remegio De Vera, 1st Lt. Ryan Matutina, and Lt. Col. Laurence Mina. The Ombudsman and the DOJ are ordered to submit to this Court the results of their action within a period of six months from receipt of this Decision.

In the event that herein respondents no longer occupy their respective posts, the directives mandated in this Decision and in the Court of Appeals are enforceable against the incumbent officials holding the relevant positions. Failure to comply with the foregoing shall constitute contempt of court.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Leonardo-de Castro and *del Castillo, JJ.,* on official leave.

EN BANC

[G.R. No. 192926. November 15, 2011]

ATTY. ELIAS OMAR A. SANA, *petitioner, vs.* **CAREER EXECUTIVE SERVICE BOARD,** *respondent.*

SYLLABUS

POLITICAL LAW; JUDICIARY; JUDICIAL REVIEW; CASE AND CONTROVERSY AS PRECONDITION FOR THE COURT'S EXERCISE THEREOF; NOT PRESENT IN CASE AT BAR. — The petition seeks a review of the constitutionality of EO 883 and CESB Resolution No. 870 for being repugnant to Section 15, Article VII of the Constitution. At the time this petition was filed, however, President Aquino had already issued EO 3 revoking EO 883 expressly (under Section 1) and CESB Resolution No. 870 impliedly (under Section 2). EO 883 and CESB Resolution No. 870 having ceased to have any force and effect, the Court finds no reason to reach the merits of the petition and pass upon these issuances' validity. To do so would transgress the requirement of case and controversy as precondition for the Court's exercise of judicial review. True, this Court had relaxed the case and controversy requirement to resolve moot issues. In those instances, however, the issues presented were grounded on peculiar set of facts giving rise to important constitutional questions capable of repetition yet

evading review or indicating intent on the part of potential or actual parties to place a constitutional question beyond the ambit of judicial review by performing acts rendering moot an incipient or pending justiciable controversy. These factors do not obtain here. The question whether an appointment to a CESO rank of an executive official amounts to an "appointment" for purposes of the constitutional ban on midnight appointment, while potentially recurring, holds no certainty of evading judicial review as the question can be decided even beyond the appointments-ban period under Section 15, Article VII of the Constitution. Indeed, petitioner does not allege to have suffered any violation of a right vested in him under EO 883. He was not among the 13 officials granted CESO ranking by President Arroyo. The CESB itself stated that "no conferment of CESO rank was ever made by President [Arroyo] in relation to EO 883." Hence, for the Court to nevertheless reach the merits of this petition and determine the constitutionality of EO 883 and CESB Resolution No. 870 despite their unquestioned repeal and the absence of any resulting prejudice to petitioner's rights is to depart from its constitutional role of settling "actual controversies involving rights which are legally demandable and enforceable."

D E C I S I O N

CARPIO, *J.*:

Before the Court is a petition for *certiorari* and prohibition assailing Executive Order No. 883, series of 2010 (EO 883),[1] which granted Career Executive Service Officer (CESO) rank to eligible lawyers in the executive branch, and a related administrative issuance, Career Executive Service Board (CESB) Resolution No. 870,[2] for violating Section 15, Article VII of the Constitution.

---

[1] Entitled "Granting Career Service Officer Rank to Lawyers in the Government Executive Service, and Other Purposes."

[2] Entitled "Policy on the Coverage of the Election Ban on Appointments Under the 1987 Constitution and the Omnibus Election Code."

The Facts

On 28 May 2010, President Gloria Macapagal-Arroyo (President Arroyo) issued EO 883 granting the rank of CESO III or higher to officers and employees "occupying legal positions in the government executive service who have obtained graduate degrees in law and successfully passed the bar examinations" (Section 1).[3] EO 883 invoked the granting of CESO "rank to government

---

[3] EO 883 provides in full:

WHEREAS, Presidential Decree (PD) No. 1 provides that members of the Career Executive Service (CES) shall be classified according to rank based on broad levels of responsibility, personal qualifications and demonstrated competence;

WHEREAS, Section 7, Chapter 2, Subtitle A, Title I, Book V of the Administrative Code provides that positions in the CES are characterized by entrance based on merit and fitness determined by competitive examination or based on highly technical qualifications;

WHEREAS, the law profession is a specialized and highly technical field, the practice of which requires the completion of all prescribed courses in a four (4) year graduate law program at a law school or university officially approved and recognized by the Secretary of Education, as well as successfully passing the bar examinations conducted by the Supreme Court;

WHEREAS, Republic Act (RA) No. 1080 recognizes the bar examinations as civil service examinations for purposes of appointment in the classified service, without distinction as to whether the degree programs relative thereto are undergraduate or graduate in nature;

WHEREAS, *EO 400 series of 1997 and EO 696 series of 1981, as amended by EO 771 series of 1982, grant CES Officer (CESO) rank to government personnel who successfully complete certain graduate programs, such as Masters in Public Safety Administration (MPSA) and Masters in National Security Administration (MNSA)*;

WHEREAS, *government personnel who obtained graduate degrees in law and successfully passed the bar examinations, particularly those occupying legal positions in the executive service, equally deserve the grant of CESO rank or similar benefits*;

WHEREAS, Section 8, Chapter 2, Subtitle A, Title I, Book V of the Administrative Code provides that entrance to the CES shall be prescribed by the Career Executive Service Board (CESB), an agency created under the Integrated Reorganization Plan of the Executive Branch;

WHEREAS, under Article VII of the Constitution, executive power shall be vested in the President, who shall be [in] control and supervision of all executive departments, bureaus and offices.

personnel who successfully complete certain graduate programs, such as Masters in Public Safety Administration (MPSA) and Masters in National Security Administration (MNSA)" as basis for the granting of CESO rank to government lawyers in the executive service.[4]

On 2 June 2010, the CESB issued Resolution No. 870 finding no legal impediment for the President to vest CESO rank to executive officials during the periods covered by the constitutional ban on midnight appointment and statutory ban on pre-election appointment.[5] CESB Resolution No. 870 reasoned:

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

Section 1. *Grant of Rank*. — ***Offices and employees occupying legal positions in the government executive service who have obtained graduate degrees in law and successfully passed the bar examinations attendant thereto, shall initially be granted the rank of CESO III or higher, with the corresponding salary grade and other privileges in the Career Executive Service.***

Section 2. *Determination of Rank Level*. — The appropriate level of the CESO rank granted to the government officer or employee under Section 1 hereof shall be determined upon the recommendation of the Department or Agency Head concerned and the evaluation of the Career Executive Service Board (CESB). In the determination thereof, due consideration shall be given to (a) the position of the officer or employee in government, (b) academic honors and distinctions received, and (c) bar or board examination rating.

Section 3. *Non-Prescription; Construction*. — The CESO rank granted under the provisions of this Order shall vest upon the government officer or employee's compliance with the requirements of Section 1 hereof, and shall not prescribe. Nothing in this Order shall be constructed to defeat the security of tenure and other privileges/entitlements of government officers and employees as provided under existing laws, orders, rules and regulations.

Section 4. *Repealing Clause*. — All executive orders, administrative orders, proclamations, rules and regulations or parts thereof that are in conflict with this Executive Order are hereby repealed or modified accordingly. (Emphasis supplied)

[4] Fifth and sixth "Whereas" clauses, EO 883.

[5] Under Section 261(g), Batas Pambansa Blg. 881, as amended.

1. In its legal sense, appointment to a position pertains to selection, by the authority vested with the power, of an individual who is to exercise the functions of a given office.

2. Appointment to a CES rank cannot properly be deemed synonymous to an appointment to a position in the legal sense for it is merely a completion of a previous appointment and does not entail the conferment of an authority to exercise the functions of an office.

3. In the CES concept, the word 'appoint' means a step in the bestowal of a CES rank, to which one is entitled after having complied with all the requirements prescribed by the CESB.[6]

x x x x x x x x x

The CESB subsequently endorsed to President Arroyo its recommendation to vest CESO rank to 13 officials from various departments and agencies, including three members of the CESB who signed CESB Resolution No. 870.[7] On 10 June 2010, President Arroyo appointed the 13 officials to varying CESO ranks.[8]

---

[6] *Rollo*, pp. 64-65.

[7] Proceso T. Domingo, Angelito M. Twaño, and Susan M. Solo.

[8] Namely:

1. Remedios Eugenio Ongtangco, Director II, Department of Agriculture – to CESO III;
2. Ma. Mercedes Guerra Yacapin, Department Manager III, National Food Authority – to CESO Rank IV;
3. Teofila del Rosario Villanueva, Director IV, Department of Education – to CESO III;
4. Luisito Rosales Meaño, Chief of Medical Professional Staff II, Philippine Orthopedic Center – to CESO V;
5. Jose Vicente Buenviaje Salazar, Undersecretary, Department of Justice – to CESO I
6. Proceso T. Domingo, Undersecretary, Department of National Defense – to CESO I;
7. Angelito De Mesa Twaño, Director IV, Department of Public Works and Highways – to CESO III;
8. Graciano Perez Yumul, Undersecretary, Department of Science and Technology – to CESO I;

On 30 July 2010, President Benigno S. Aquino III (President Aquino) issued EO 3 expressly revoking EO 883 (Section 1) and "[a]ll x x x administrative orders, proclamations, rules and regulations" that conflict with EO 3 (Section 2). As basis for the repeal, the fifth "Whereas" clause of EO 3 provides that "EO 883 encroaches upon the power of the CESB to 'promulgate rules, standards and procedures on the selection, classification, compensation and career development of members of the Career Executive service x x x' vested by law with the [CESB] x x x."[9]

---

9. Evelyn Alinsao Trompeta, Director IV, Department of the Interior and Local Government – to CESO II;
10. Desiderio Pedregusa Belas, Director II, Department of Trade and Industry – to CESO III;
11. Ma. Irene Bello Calingo, Director IV, Presidential Management Staff – to CESO III;
12. Josephine Pilapil Raynes, Director IV, Presidential Management Staff – to CESO III;
13. Susan Montero Solo, Director IV, Presidential Management Staff – to CESO III. (*Rollo*, pp. 60-62)

[9] EO 3 provides in full:

WHEREAS, Section 2, Article IX-B of the 1987 Constitution states that "appointments in the civil service shall be made only according to merit and fitness to be determined, as far as practicable, and, except to positions which are policy-determining, primarily confidential, or highly technical, by competitive examination."

WHEREAS, under Article IV, Chapter I, Part III of the Integrated Reorganizational Plan under P.D. No. 1, the exclusive power to "promulgate rules, standards and procedures on the selection, classification, compensation and career development of members of the Career Executive service (CES)" is vested with the Career Executive Service Board (CESB);

WHEREAS, under Section 8, Chapter II, book V of EO 292 or the Administrative Code of 1987, "entrance to the third level (Career Executive Service) shall be prescribed by the CESB";

WHEREAS, Executive Order No. 883 dated 28 May 2010 automatically vests lawyers "occupying legal positions in the government executive service who have obtained graduate degrees in law and successfully passed their bar examinations" with the rank of CESO III in the CES;

WHEREAS, Executive Order No. 883 encroaches upon the power of the CESB to "promulgate rules, standards and procedures on the selection, classification, compensation and career development of members of the Career

On 4 August 2010, petitioner Atty. Elias Omar A. Sana (petitioner) filed the present petition, contending that EO 883 and the subsequent appointment of the 13 executive officials to CESO rank are void for violating the constitutional ban on midnight appointment under Section 15, Article VII of the Constitution.[10] Petitioner theorizes that appointments to positions and ranks in the CES are "executive" in nature and, if made within the period provided under Section 15, Article VII, fall under its prohibition. Petitioner submits that CESB Resolution No. 870 circumvents Section 15, Article VII by distinguishing the terms "appoint" and "appointment." He contends that CESB Resolution No. 870 cannot give new meaning to presidential issuances, laws, and the Constitution.[11]

In its Comment, the CESB prays for the dismissal of the petition as the issue it raises was rendered moot by EO 3's revocation of EO 883. Alternatively, the CESB defends the vesting of CESO rank to the 13 officials based on an opinion

---

Executive service (CES)" vested by law with the Career Executive Service Board (CESB);

WHEREAS, from the foregoing, it is evident that EO 883 amounts to a repeal or amendment of the provisions of P.D. 1 and E.O. 292 which were issued when the President had legislative powers, hence illegal and void.

NOW, THEREFORE, I, **BENIGNO S. AQUINO III,** by virtue of the powers vested in me by the Constitution as President of the Republic of the Philippines by law, do hereby declare:

SECTION 1. *Revocation* – Executive Order No. 883 dated 28 May 2010 is hereby revoked.

SECTION 2. *Repealing Clause* — All executive orders, administrative orders, proclamations, rules and regulations or parts thereof that are in conflict with this Executive Order are hereby modified accordingly.

SECTION 3. *Effectivity* — This Executive order shall take effect immediately. (Emphasis in the original)

[10] This provides: "Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety."

[11] *Rollo*, pp. 21-24.

given by Atty. Ferdinand Rafanan (Rafanan), head of the Commission on Elections (COMELEC) Law Department,[12] that "the appointment to a CES[O] rank is not equivalent to an appointment to an office since the latter entails the conferment of an authority to exercise the functions of an office whereas the former is merely a completion of a previous appointment." Rafanan further opined that such vesting of CESO rank is valid because it "does not contemplate any hiring or appointment since it involves only the conferment of a rank rather than a selection for a position."[13]

The CESB agrees with Rafanan's view, invoking Article IV, Part III, paragraph (c) of the Integrated Reorganization Plan (IRP), which states that "[a]ppointment to appropriate classes in the Career Executive Service shall be made by the President from a list of career executive eligibles recommended by the Board. Such appointments shall be made on the basis of rank." Nevertheless, the CESB submits that the grant of CESO rank III or higher to lawyers in the executive service under EO 883 is "not automatic" because this needs prior guidelines from the CESB. The CESB points out that President Arroyo did not confer CESO rank to any official based on EO 883.[14]

For its part, the Office of the Solicitor General (OSG), while disclaiming any authorization for the CESB to file its separate Comment, joins causes with the latter in praying for the dismissal of the petition for mootness. The OSG contends that President Aquino's issuance of EO 3 revoking EO 883 moots the issue on the latter's validity. The OSG arrives at the same conclusion on the issue of the validity of the appointment of the 13 officials to CESO rank in light of the CESB's resubmission to President Aquino of its recommendation for the vesting of CESO rank to the same officials.[15]

---

[12] In response to a query posed by Department of Justice Undersecretary Jose Vicente Salazar.

[13] *Rollo*, pp. 82, 89, 96-97.

[14] *Id.* at 87, 89-90.

[15] *Id.* at 279, 281, 284, 296-299.

Alternatively, the OSG argues that EO 883 is unconstitutional for being violative of Section 15, Article VII of the Constitution. The OSG adds that even if EO 883 is valid, it does not automatically confer CESO rank to lawyers holding CES positions.[16]

The Court's Ruling

We dismiss the petition on the threshold ground of mootness.

The petition seeks a review of the constitutionality of EO 883 and CESB Resolution No. 870 for being repugnant to Section 15, Article VII of the Constitution. At the time this petition was filed, however, President Aquino had already issued EO 3 revoking EO 883 expressly (under Section 1) and CESB Resolution No. 870 impliedly (under Section 2). EO 883 and CESB Resolution No. 870 having ceased to have any force and effect, the Court finds no reason to reach the merits of the petition and pass upon these issuances' validity. To do so would transgress the requirement of case and controversy as precondition for the Court's exercise of judicial review.

True, this Court had relaxed the case and controversy requirement to resolve moot issues. In those instances, however, the issues presented were grounded on peculiar set of facts giving rise to important constitutional questions capable of repetition yet evading review[17] or indicating intent on the part of potential or actual parties to place a constitutional question beyond the ambit of judicial review by performing acts rendering moot an incipient or pending justiciable controversy.[18]

---

[16] *Id.* at 283.

[17] See *e.g. Alunan v. Mirasol*, 342 Phil. 467 (1997) (reviewing a question relating to the holding of *Sangguniang Kabataan* (SK) elections which can potentially recur every SK elections but evade review because of the short duration of the SK election period).

[18] *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, G.R. No. 183591, 14 October 2008, 568 SCRA 402, 461 (where the Court, in reviewing the validity of a draft peace agreement between the government and an insurgent group despite the government's manifestation *pendente lite* of lack of intent

These factors do not obtain here. The question whether an appointment to a CESO rank of an executive official amounts to an "appointment" for purposes of the constitutional ban on midnight appointment, while potentially recurring, holds no certainty of evading judicial review as the question can be decided even beyond the appointments-ban period under Section 15, Article VII of the Constitution.

Indeed, petitioner does not allege to have suffered any violation of a right vested in him under EO 883. He was not among the 13 officials granted CESO ranking by President Arroyo. The CESB itself stated that "no conferment of CESO rank was ever made by President [Arroyo] in relation to EO 883."[19] Hence, for the Court to nevertheless reach the merits of this petition and determine the constitutionality of EO 883 and CESB Resolution No. 870 despite their unquestioned repeal and the absence of any resulting prejudice to petitioner's rights is to depart from its constitutional role of settling "actual controversies involving rights which are legally demandable and enforceable."[20]

WHEREFORE, we *DISMISS* the petition.

SO ORDERED.

Corona, C.J., Velasco, Jr., Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Leonardo-de Castro and *del Castillo, JJ.,* on official leave.

---

to sign the agreement, held: "[a]nother exclusionary circumstance that may be considered is ***where there is a voluntary cessation of the activity complained of by the defendant or doer***. Thus, once a suit is filed and the doer voluntarily ceases the challenged conduct, it does not automatically deprive the tribunal of power to hear and determine the case and does not render the case moot x x x." [emphasis supplied]). See also *David v. Arroyo*, 522 Phil. 705 (2006) (where the Court reviewed the validity of Presidential Proclamation No. 1017 (PP 1017) issued by President Arroyo even though, post-filing of petitions questioning the validity of PP 1017, the latter issued Presidential Proclamation No. 1021 expressly repealing PP 1017).

[19] *Rollo*, p. 90.

[20] Section 1, Article VIII, Constitution.

SECOND DIVISION

[A.C. No. 6174. November 16, 2011]

LYDIA CASTRO-JUSTO, *complainant, vs.* **ATTY. RODOLFO T. GALING,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; LAWYER-CLIENT RELATIONSHIP; THE RELATIONSHIP WAS ESTABLISHED FROM THE MOMENT LEGAL ADVICE WAS SOUGHT FROM THE LAWYER DESPITE CLOSE FRIENDSHIP BETWEEN THEM. —** A lawyer-client relationship can exist notwithstanding the close friendship between complainant and respondent. The relationship was established the moment complainant sought legal advice from respondent regarding the dishonored checks. By drafting the demand letter respondent further affirmed such relationship. The fact that the demand letter was not utilized in the criminal complaint filed and that respondent was not eventually engaged by complainant to represent her in the criminal cases is of no moment. As observed by the Investigating Commissioner, by referring to complainant Justo as "my client" in the demand letter sent to the defaulting debtor respondent admitted the existence of the lawyer-client relationship. Such admission effectively estopped him from claiming otherwise.

2. **ID.; ID.; PROHIBITION AGAINST CONFLICTING INTEREST; ABSENCE OF MONETARY CONSIDERATION DOES NOT EXEMPT LAWYERS FROM COMPLYING THEREWITH; SUSTAINED. —** Absence of monetary consideration does not exempt lawyers from complying with the prohibition against pursuing cases with conflicting interests. The prohibition attaches from the moment the attorney-client relationship is established and extends beyond the duration of the professional relationship. We held in *Burbe v. Atty. Magulta* that it is not necessary that any retainer be paid, promised or charged; neither is it material that the attorney consulted did not afterward handle the case for which his service had been sought.

3. **ID.; ID.; ID.; SUCH PROHIBITION IS FOUNDED ON PRINCIPLES OF PUBLIC POLICY AND GOOD TASTE;**

RATIONALE. — Under Rule 15.03, Canon 15 of the Code of Professional Responsibility, "[a] lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts." Respondent was therefore bound to refrain from representing parties with conflicting interests in a controversy. By doing so, without showing any proof that he had obtained the written consent of the conflicting parties, respondent should be sanctioned. The prohibition against representing conflicting interest is founded on principles of public policy and good taste. In the course of the lawyer-client relationship, the lawyer learns of the facts connected with the client's case, including the weak and strong points of the case. The nature of the relationship is, therefore, one of trust and confidence of the highest degree. It behooves lawyers not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice. x x x The take-over of a client's cause of action by another lawyer does not give the former lawyer the right to represent the opposing party. It is not only malpractice but also constitutes a violation of the confidence resulting from the attorney-client relationship.

APPEARANCES OF COUNSEL

Manuel A. Año for complainant.

D E C I S I O N

PEREZ, *J.*:

Before us for consideration is Resolution No. XVIII-2007-196[1] of the Board of Governors, Integrated Bar of the Philippines (IBP), relative to the complaint[2] for disbarment filed by Lydia Castro-Justo against Atty. Rodolfo T. Galing.

---

[1] *Rollo*, p. 45.

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

Complainant Justo alleged that sometime in April 2003, she engaged the services of respondent Atty. Galing in connection with dishonored checks issued by Manila City Councilor Arlene W. Koa (Ms. Koa). After she paid his professional fees, the respondent drafted and sent a letter to Ms. Koa demanding payment of the checks.[3] Respondent advised complainant to wait for the lapse of the period indicated in the demand letter before filing her complaint.

On 10 July 2003, complainant filed a criminal complaint against Ms. Koa for estafa and violation of Batas Pambansa Blg. 22 before the Office of the City Prosecutor of Manila.[4]

On 27 July 2003, she received a copy of a Motion for Consolidation[5] filed by respondent for and on behalf of Ms. Koa, the accused in the criminal cases, and the latter's daughter Karen Torralba (Ms. Torralba). Further, on 8 August 2003, respondent appeared as counsel for Ms. Koa before the prosecutor of Manila.

Complainant submits that by representing conflicting interests, respondent violated the Code of Professional Responsibility.

In his Comment,[6] respondent denied the allegations against him. He admitted that he drafted a demand letter for complainant but argued that it was made only in deference to their long standing friendship and not by reason of a professional engagement as professed by complainant. He denied receiving any professional fee for the services he rendered. It was allegedly their understanding that complainant would have to retain the services of another lawyer. He alleged that complainant, based on that agreement, engaged the services of Atty. Manuel A. Año.

To bolster this claim, respondent pointed out that the complaint filed by complainant against Ms. Koa for estafa and violation

---

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

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

[5] *Id.* at 10-11.

[6] *Id.* at 14-22.

of B.P. Blg. 22 was based not on the demand letter he drafted but on the demand letter prepared by Atty. Manuel A. Año.

Respondent contended that he is a close friend of the opposing parties in the criminal cases. He further contended that complainant Justo and Ms. Koa are likewise long time friends, as in fact, they are "*comares*" for more than 30 years since complainant is the godmother of Ms. Torralba.[7] Respondent claimed that it is in this light that he accommodated Ms. Koa and her daughter's request that they be represented by him in the cases filed against them by complainant and complainant's daughter. He maintained that the filing of the Motion for Consolidation which is a non-adversarial pleading does not evidence the existence of a lawyer-client relationship between him and Ms. Koa and Ms. Torralba. Likewise, his appearance in the joint proceedings should only be construed as an effort on his part to assume the role of a moderator or arbiter of the parties.

He insisted that his actions were merely motivated by an intention to help the parties achieve an out of court settlement and possible reconciliation. He reported that his efforts proved fruitful insofar as he had caused Ms. Koa to pay complainant the amount of ₱50,000.00 in settlement of one of the two checks subject of I.S. No. 03G-19484-86.

Respondent averred that the failure of Ms. Koa and Ms. Torralba to make good the other checks caused a lot of consternation on the part of complainant. This allegedly led her to vent her ire on respondent and file the instant administrative case for conflict of interest.

In a resolution dated 19 October 2007, the Board of Governors of the IBP adopted and approved with modification the findings of its Investigating Commissioner. They found respondent guilty of violating Canon 15, Rule 15.03 of the Code of Professional Responsibility by representing conflicting interests and for his daring audacity and for the pronounced malignancy of his act.

---

[7] *Id.* at 16.

It was recommended that he be suspended from the practice of law for one (1) year with a warning that a repetition of the same or similar acts will be dealt with more severely.[8]

We agree with the Report and Recommendation of the Investigating Commissioner,[9] as adopted by the Board of Governors of the IBP.

It was established that in April 2003, respondent was approached by complainant regarding the dishonored checks issued by Manila City Councilor Koa.

It was also established that on 25 July 2003, a Motion for Consolidation was filed by respondent in I.S. No. 03G-19484-86 entitled "*Lydia Justo vs. Arlene Koa*" and I.S. No. 03G-19582-84 entitled "*Lani C. Justo vs. Karen Torralba*." Respondent stated that the movants in these cases are mother and daughter while complainants are likewise mother and daughter and that these cases arose out from the same transaction. Thus, movants and complainants will be adducing the same sets of evidence and witnesses.

Respondent argued that no lawyer-client relationship existed between him and complainant because there was no professional fee paid for the services he rendered. Moreover, he argued that he drafted the demand letter only as a personal favor to complainant who is a close friend.

We are not persuaded. A lawyer-client relationship can exist notwithstanding the close friendship between complainant and respondent. The relationship was established the moment complainant sought legal advice from respondent regarding the dishonored checks. By drafting the demand letter respondent further affirmed such relationship. The fact that the demand letter was not utilized in the criminal complaint filed and that respondent was not eventually engaged by complainant to represent her in the criminal cases is of no moment. As observed by the Investigating Commissioner, by referring to complainant

---

[8] *Id.* at 45.

[9] *Id.* at 46-53.

Justo as "my client" in the demand letter sent to the defaulting debtor,[10] respondent admitted the existence of the lawyer-client relationship. Such admission effectively estopped him from claiming otherwise.

Likewise, the non-payment of professional fee will not exculpate respondent from liability. Absence of monetary consideration does not exempt lawyers from complying with the prohibition against pursuing cases with conflicting interests. The prohibition attaches from the moment the attorney-client relationship is established and extends beyond the duration of the professional relationship.[11] We held in *Burbe v. Atty. Magulta*[12] that it is not necessary that any retainer be paid, promised or charged; neither is it material that the attorney consulted did not afterward handle the case for which his service had been sought.[13]

Under Rule 15.03, Canon 15 of the Code of Professional Responsibility, "[a] lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts." Respondent was therefore bound to refrain from representing parties with conflicting interests in a controversy. By doing so, without showing any proof that he had obtained the written consent of the conflicting parties, respondent should be sanctioned.

The prohibition against representing conflicting interest is founded on principles of public policy and good taste.[14] In the course of the lawyer-client relationship, the lawyer learns of the facts connected with the client's case, including the weak and strong points of the case. The nature of the relationship is, therefore, one of trust and confidence of the highest degree.[15]

---

[10] *Id.* at 48.

[11] *Buted v. Hernando*, A.C. No. 1359, 17 October 1991, 203 SCRA 1, 8.

[12] 432 Phil. 840 (2002).

[13] *Id.* at 848.

[14] *Hilado v. David*, 84 Phil. 569, 578 (1949).

[15] *Maturan v. Gonzales*, A.C. No. 2597, 12 March 1998, 287 SCRA 443, 446.

It behooves lawyers not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice.[16]

The case of *Hornilla v. Atty. Salunat*[17] is instructive on this concept, thus:

> There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is 'whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client.'[18] This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used.[19] Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection.[20] Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double dealing in the performance thereof.[21]

---

[16] *Supra* note 14 at 579.

[17] 453 Phil. 108 (2003).

[18] *Id.* at 111 citing PINEDA, *Legal and Judicial Ethics*, p. 199 [1999 ed.].

[19] *Id.* citing *Hilado v. David*, 84 Phil. 569[1949]; *Nombrado v. Hernandez*, 26 SCRA 13 [1968]; *Bautista v. Barrios*, 9 SCRA 695 [1963].

[20] *Id.* at 111-112 citing PINEDA, *Legal and Judicial Ethics*, p.199, citing *Pierce v. Palmer*, 31 R.I. 432.

[21] *Id.* at 112 citing AGPALO, *Legal Ethics*, p. 220, citing in *Re De la Rosa*, 27 Phil. 258[1914]; *Grievance Committee v. Rottner*, 152 Conn. 59, 203 A 2d 82 [1954] and *Titania v. Ocampo*, 200 SCRA 472 [1991].

The excuse proffered by respondent that it was not him but Atty. Año who was eventually engaged by complainant will not exonerate him from the clear violation of Rule 15.03 of the Code of Professional Responsibility. The take- over of a client's cause of action by another lawyer does not give the former lawyer the right to represent the opposing party. It is not only malpractice but also constitutes a violation of the confidence resulting from the attorney-client relationship.

Considering that this is respondent's first infraction, the disbarment sought in the complaint is deemed to be too severe. As recommended by the Board of Governors of the IBP, the suspension from the practice of law for one (1) year is warranted.

ACCORDINGLY, the Court resolved to *SUSPEND* Atty. Rodolfo T. Galing from the practice of law for one (1) year, with a *WARNING* that a repetition of the same or similar offense will warrant a more severe penalty. Let copies of this Decision be furnished all courts, the Office of the Bar Confidant and the Integrated Bar of the Philippines for their information and guidance. The Office of the Bar Confidant is directed to append a copy of this Decision to respondent's record as member of the Bar.

SO ORDERED.

Carpio (Chairperson), Brion, Sereno, and *Reyes, JJ.,* concur.

SECOND DIVISION

[A.C. No. 6899. November 16, 2011]

ROGELIO F. ESTAVILLO, *complainant, vs.* **ATTYS. GEMMO G. GUILLERMO and ERME S. LABAYOG,** *respondents.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 18.03, CANON 18 THEREOF, VIOLATED IN THE CASE AT BAR; MITIGATION OF THE PENALTY, NOT PROPER. — Under Canon 18 of the Code of Professional Responsibility, "A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE." Pursuant to Rule 18.03 cited by the complainant, "A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable." x x x We do not find the respondents' stance acceptable as it betrays a lack of the necessary competence and diligence required by the Code of Professional Responsibility in responding to the court's summons for the Estavillos to **make an appearance in the case and to file an answer to the complaint**. The respondents, especially Atty. Guillermo who was supposed to be the lead counsel for the Estavillos, misappreciated the urgency and the importance of the court's summons. They mistakenly assumed that the court would issue an order of dismissal. They waited and when no order was issued from the court, they again incorrectly assumed that the regular rules apply without seeking a clarification from the court or ascertaining exactly when the answer should be filed. With this rationalization, they then shifted the blame for their failure to file the answer on time to the court. We cannot allow this kind of response in the handling of cases as the terms of the Rules of Court are sufficiently clear in their requirements to the average lawyer. x x x Thus, the respondents had in fact been negligent, or worse, had failed to exercise the required competence and diligence in filing the Estavillo's answer to the complaint. Under the circumstances of the case, the respondents' penalty cannot be further mitigated without committing an unfairness against the complainant and his son. We remind the respondents and the IBP Board of Governors of what we said in *Fil-Garcia, Inc. v. Hernandez*: Rule 18.03 of the Code of Professional Responsibility enjoins a lawyer not to "neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable." Every case a lawyer accepts deserves his full attention, skill and competence, regardless of its importance and whether he accepts it for a fee or for free. He must constantly keep in

mind that his actions or omissions or nonfeasance would be binding upon his client. Thus, he is expected to be acquainted with the rudiments of law and legal procedure, and a client who deals with him has the right to expect not just a good amount of professional learning and competence but also a whole-hearted fealty to the client's cause.

APPEARANCES OF COUNSEL

Edgar A. Pacis for complainant.

D E C I S I O N

BRION, *J*.:

We review Resolution No. XIX-2011-503,[1] passed on June 26, 2011 by the Board of Governors of the Integrated Bar of the Philippines (*IBP*), granting the motion for reconsideration of Attys. Gemmo G. Guillermo and Erme S. Labayog (respondents), thereby lowering the penalty of suspension from the practice of law for three (3) months against the two lawyers (imposed in Resolution No. XVIII-2009-07[2]) to REPRIMAND. The respondents were penalized for violation of Rule 18.03 of the Code of Professional Responsibility.

<u>The Case</u>

On September 6, 2005, Rogelio F. Estavillo (*complainant*) filed an affidavit-complaint[3] with the Office of the Bar Confidant, charging the respondents with *gross negligence*. The complainant and his son, Dexter, engaged the services of the respondents in Civil Case No. 3183[4] for *Forcible Entry and Damages*, filed against them by Teresita A. Guerrero with the Municipal Trial Court in Cities (MTCC), Laoag City.

---

[1] IBP Records, Vol. IV, Addendum.

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

[3] *Rollo*, pp. 2-11.

[4] *Id.* at 12-17; Complaint, Annex "A".

In particular, the complainant charged the respondents for their failure to file an answer in the civil case within the period fixed by the Rules of Court, as required by the summons dated March 18, 2005[5] which commanded:

> You are hereby required to enter your appearance in the above-entitled case within ten (10) days after the service of the summons upon you, exclusive of the day of such service, and to answer the complaint served upon you within the period fixed by the Rules of Court. If you fail to appear within the aforesaid period, the plaintiff will take judgment against you by default and demand from this Court the relief prayed for in said complaint.

The MTCC noted that the summons was served on the Estavillos on March 18, 2005, leaving them until March 28, 2005 within which to file their answer to the complaint. The respondents filed the answer only on April 4, 2005, or seven (7) days beyond the ten (10)-day period under the Rules. For this reason, the court, upon Guerrero's motion, issued an order striking the answer from the records.[6]

The complainant further claimed that the respondents did not inform him or his son of scheduled hearings and incidents related to the civil case, notably the following:

1) the April 15, 2005 hearing on Guerrero's motion to strike out the pleading (answer) filed by the respondents, as well as the motion to cite them for indirect contempt;

2) the Order dated March 28, 2005[7] with a writ of preliminary prohibitory and mandatory injunction, ordering them; to demolish the fence they built on the disputed property; to refrain from demolishing or continuing with the demolition of Guerrero's house; and to refrain from continuing with the construction of the fence on the property in dispute;

---

[5] *Id.* at 18; Complaint, Annex "B".

[6] *Id.* at 41-45; Complaint, Annex "J".

[7] *Id.* at 39-40; Complaint, Annex "I-1".

3) the Motion to Allow Plaintiff to Adduce Evidence in Support of her Prayer for Damages, with notice of hearing on May 20, 2005;[8] the hearing was held without the appearance of either of the respondents; and

4) the Order dated May 31, 2005,[9] directing the complainant and his son to solidarily pay Guerrero ₱20,000.00 as actual damages, ₱50,000.00 as moral damages, ₱20,000.00 as exemplary damages, ₱30,000.00 as attorney's fee, and ₱3,060.00 as cost of suit.

Still further, the complainant bewailed that at 5:00 p.m. on June 24, 2005, as he and his son were waiting at the respondents' law office, Atty. Guillermo finally arrived; they told the lawyer about their discovery of the May 31, 2005 order; when they asked him why they were not advised of the judgment, Atty. Guillermo just answered, **"We have plenty of work."**[10] Taken aback by Atty. Guillermo's response and attitude, they left the law office enraged and confused. The same indifferent treatment was shown to them by Atty. Labayog who undertook to show them the draft of the notice of appeal of the May 31, 2005 order. Instead of Atty. Labayog, a new member of the law firm, a certain Atty. Janapin, came and could only say that she was sorry for what had happened.

As required by the Court,[11] the respondents submitted their Comment to the complaint[12] where they vehemently denied the complainant's allegations that they had been grossly negligent. They alleged that the complainant conferred with Atty. Guillermo regarding the civil case. They learned that Guerrero, the plaintiff, is the former owner of the property in dispute and is residing at a house built on the property. The Estavillos acquired the property and they wanted to get rid of Guerrero. One way of

---

[8] *Id.* at 51-52; Complaint, Annex "L".

[9] *Id.* at 60-66; Complaint, Annex "N".

[10] *Supra* note 3, par. 14.

[11] *Rollo*, p. 67; Resolution dated October 10, 2005.

[12] *Id.* at 68-71.

doing it, they thought, was to build a fence on the lot, thereby substantially reducing Guerrero's passageway and destroying Guerrero's house. Thus, Guerrero prayed for a temporary restraining order and a writ of preliminary and/or prohibitory injunction.

To the respondents' mind, Guerrero's case was actually for *possession* despite its title — *for Forcible Entry* — based on the allegations of the complainant. They, therefore, waited for the order of the court, before they filed the answer to the complaint. They relied on Section 4, par. 2 of the 1991 Revised Rule on Summary Procedure which provides that if no ground for dismissal is found by the court, it shall forthwith issue summons stating that the summary procedure under the Rule shall apply. Unfortunately, the court did not issue any order so they presumed that the regular rules apply and that the time to file an answer is fifteen (15) days. This notwithstanding, they vehemently opposed Guerrero's motion to strike out the answer, but the court ruled in Guerrero's favor and struck out the answer they filed in behalf of the Estavillos.

The respondents further maintained that contrary to the complainant's allegations, they represented the complainant and his son in all stages of the proceedings, except at one hearing when Guillermo had an emergency meeting in connection with a different case. They also denied that they were not providing updates on the case; the complainant's son, Dexter, had been regularly going to the law office to get feedbacks on the progress of the case.

The respondents took exception to the complainant's claim that Atty. Guillermo said "We have plenty of work"[13] in justifying the loss of the civil case, for what he told the complainant on one occasion was "not all cases are won, and our only remedy left is appeal."[14] They indeed filed the appeal which adequately and exhaustively discussed the complainant's position in the

---

[13] *Supra* note 10.

[14] *Supra* note 12, par. 15.

case. It just so happened that the court decided in Guerrero's favor.

The IBP Proceedings

On February 22, 2006,[15] the Court referred the complaint to the IBP for investigation, report and recommendation.

In a Report and Recommendation dated November 11, 2008,[16] Commissioner Pedro A. Magpayo, Jr. of the IBP Commission on Bar Discipline recommended that the respondents be suspended from the practice of law for three (3) months for violation of Rule 18.03 of the Code of Professional Responsibility.

The relevant portions of Commissioner Magpayo's report state:

> After a judicious study of the records, it appears to the undersigned that the respondents composing the law office of Guillermo & Labayog did not meet the standard of diligence required by the situation relative to the civil complaint and the summons received by their client. When they accepted the complainant's case, the clients presented to them the copy of the summons issued by the Clerk of Court.
>
> The summons dated 18 March 2005 specifically states: "You are hereby required to enter your appearance in the above-entitled case within ten (10) days after the service of the summons upon you, exclusive of the day of such service, and to answer the complaint served upon you within the period fixed by the Rules of Court." (Exh. "3")
>
> The complaint docketed as Civil Case No. 3183 is for: Forcible Entry and damages with prayer of the issuance of a temporary restraining order and writ of preliminary mandatory and/or prohibitory injunction."
>
> It behooves or is incumbent upon respondent[s] to be knowledgeable of the periods within which to file a pleading. In this particular [instance], Rule 70, governing forcible entry and unlawful detainer cases which is incorporated in the 1997 Rules of Civil Procedure[,]

---

[15] *Rollo*, p. 80.

[16] IBP Records, Vol. IV, pp. 3-7.

has been in effect for almost eight (8) years when this complaint was instituted by plaintiff Guerrero against respondents' clients. It is the bounden duty of counsel in the active practice to keep abreast of decisions of the Supreme Court and changes in the law (*De Roy v. Court of Appeals,* 157 SCRA 757).

It was the finding of the MTCC that "as appearing in the record, the defendants filed their Answer only on April 4, 2005 or 7 days beyond the ten (10) day period given (order dated April 28, 2005)."

Thus, it is plain that respondents who argued that the reglementary period is fifteen days, and not ten days, were still late in submitting the defendants' answer within fifteen days.[17]

Commissioner Magpayo, however, found no solid evidence to support the complainant's other accusations. He cited as a case in point the hearing of May 20, 2005 permitting Guerrero, the plaintiff, to present *ex-parte* evidence. As the term of the court's directive implies, the hearing was supposed to be attended by the plaintiff alone, without the defendant's presence, for the purpose of adducing evidence to prove damages. The absence of an answer (the Estavillos' answer having been stricken off the record) facilitated the allowance of the *ex-parte* evidence of Guerrero.

Commissioner Magpayo opined that to the credit of the respondents, they put up a fight, however futile, in defense of the complainant's case, as shown in the TSN of the hearings of March 22,[18] April 15[19] and May 6, 2005.[20] Unfortunately, it was really a losing case because the answer to the complaint was filed late or beyond the reglementary period of 10 days prescribed under the Rules of Court.[21]

---

[17] *Id.* at 5-6.

[18] IBP Records, Vol. II, pp. 33-44.

[19] *Id.* at 50-54.

[20] *Id.* at 61-65.

[21] Rule 70, Section 6.

The IBP Board of Governors' Ruling and Related Incidents

On February 19, 2009, the IBP Board of Governors passed a Resolution[22] adopting and approving Commissioner Magpayo's recommendation.

On July 9, 2009, the respondents moved for reconsideration of the IBP resolution, insisting that they were not liable for gross negligence. They argued that they filed all the required pleadings for the Estavillos — the answer, oppositions, appeals and memoranda. Except for one oral argument where Atty. Guillermo had a previous commitment elsewhere (which happened to be the time of the plaintiff's *ex-parte* presentation of evidence), they religiously attended to all the hearings. They maintained that if there had been negligence at all, it was not gross as it was brought about by the difficult appreciation of the Rules. They further argued that the penalty of suspension for their negligence, if any, is not in accord with jurisprudence.

On August 26, 2009, Guillermo filed a comment on the motion for reconsideration, asking for its denial, contending that "[t]he hackneyed reasoning of respondents that the trial court should have issued an order fixing the period to file an answer is a subterfuge, if not a lame excuse, for their gross negligence and lack of fidelity in handling their client's case."[23]

On June 26, 2011, the IBP Board of Governors passed the Resolution under review, Resolution No. XIX-2011-503.[24] To reiterate, it modified its Resolution No. XVIII-2009-07 dated February 19, 2009, lowering the recommended penalty of suspension for three (3) months against the respondents to REPRIMAND.

The Court's Ruling

The original sanction recommended by Commissioner Magpayo against the respondents, principally for their failure to file an

---

[22] *Supra* note 2.

[23] IBP Records, Vol. IV, p. 20.

[24] *Supra* note 1.

answer for the Estavillos in the civil case, **was a three-month suspension from the practice of law**. The recommendation already took into account the presence of mitigating circumstances, although Commissioner Magpayo failed to elaborate on what these mitigating circumstances were.

In asking for a penalty lighter than the three-month suspension imposed, the respondents contend that they did everything required by their clients' defense, except for the answer to the complaint which was filed beyond the reglementary period. Nonetheless, they submit that if there had been any negligence at all, it was not gross as it was due to a difficult appreciation of the Rules. In any event, they submit that their clients really had a losing case and there was nothing they could do about it. They further argue that the recommended penalty is not in accord with jurisprudence.

Under Canon 18 of the Code of Professional Responsibility, "A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE." Pursuant to Rule 18.03 cited by the complainant, "A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable."

After a review of the facts, we find no reason to reduce the originally recommended penalty of suspension for three months against the respondents for their mishandling of the Estavillos' civil case. Although they filed the answer, it could no longer serve its purpose as it was filed late (*i.e.*, seven days beyond the required ten [10]-day period), as found by the court.[25] As a consequence, the answer was stricken off the record[26] to the detriment of the complainant and his son.

The respondents attempted to justify the late filing of the answer by claiming that, to their mind, the civil case was actually for *possession*, notwithstanding that its title is for *forcible entry*. They thus waited for an order from the court pursuant to

---

[25] *Supra* note 6, at 42.

[26] *Id.* at 45.

Section 4 of the 1991 Revised Rule on Summary Procedure which provides that "If no ground for dismissal is found it shall forthwith issue summons which shall state that the summary procedure under this Rule shall apply." They did not receive a court order so they presumed that the regular rules apply, under which, the answer shall be filed within fifteen (15) days.

We do not find the respondents' stance acceptable as it betrays a lack of the necessary competence and diligence required by the Code of Professional Responsibility in responding to the court's summons for the Estavillos to **make an appearance in the case and to file an answer to the complaint**. The respondents, especially Atty. Guillermo who was supposed to be the lead counsel for the Estavillos, misappreciated the urgency and the importance of the court's summons. They mistakenly assumed that the court would issue an order of dismissal. They waited and when no order was issued from the court, they again incorrectly assumed that the regular rules apply without seeking a clarification from the court or ascertaining exactly when the answer should be filed. With this rationalization, they then shifted the blame for their failure to file the answer on time to the court. We cannot allow this kind of response in the handling of cases as the terms of the Rules of Court are sufficiently clear in their requirements to the average lawyer. The terms of the summons were also clear; as the court aptly stated:

> In the summons issued, specific instruction was given to the defendants that within ten (10) days after service, they are required to enter their appearance and to answer the complaint within the period fixed by the Rules of Court. The period fixed by the Rules of Court is ten (10) days and not fifteen (15) days as averred by the defendants. The defendants, however, failed.[27]

Thus, the respondents had in fact been negligent, or worse, had failed to exercise the required competence and diligence in filing the Estavillo's answer to the complaint.

Under the circumstances of the case, the respondents' penalty cannot be further mitigated without committing an unfairness

---

[27] *Id.* at 44.

against the complainant and his son. We remind the respondents and the IBP Board of Governors of what we said in *Fil-Garcia, Inc. v. Hernandez*:[28]

> Rule 18.03 of the Code of Professional Responsibility enjoins a lawyer not to "neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable." Every case a lawyer accepts deserves his full attention, skill and competence, regardless of its importance and whether he accepts it for a fee or for free. He must constantly keep in mind that his actions or omissions or nonfeasance would be binding upon his client. Thus, he is expected to be acquainted with the rudiments of law and legal procedure, and a client who deals with him has the right to expect not just a good amount of professional learning and competence but also a whole-hearted fealty to the client's cause.

WHEREFORE, premises considered, the Integrated Bar of the Philippines Board of Governors' Resolution No. XIX-2011-503 of June 26, 2011 is *SET ASIDE*, and its Resolution No. XVIII-2009-07 dated February 19, 2009 is *REINSTATED*.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.,* concur.

SECOND DIVISION

[A.M. No. CA-11-24-P. November 16, 2011]
(Formerly A.M. OCA I.P.I. No. 10-163-CA-P)

COURT OF APPEALS BY: COC TERESITA R. MARIGOMEN, *complainant, vs.* **ENRIQUE E. MANABAT, JR., Security Guard I, Court of Appeals, Manila,** *respondent.*

---

[28] A.C. No. 7129, July 16, 2008, 558 SCRA 400, 408-409.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; NEGLIGENCE; ESTABLISHED IN THE CASE AT BAR.** — In ruling out mechanical causes, it can only be concluded that the undesired discharge of the respondent's service pistol was the result of his own negligence; in the usual course of things, a firearm that is being unloaded should not discharge if gun safety procedures had been strictly followed. What cannot be denied is that the gun fired and the firing could not have happened unless there was a bullet in the gun's chamber. Assuming that the respondent did indeed remove the magazine and did indeed cock the gun to eject whatever bullet that might have been in the chamber, obviously, he simply cocked the gun and did not visually examine if the chamber was clear. This is a basic and elementary precaution that every gun handler, more so a security guard who is provided a gun for his duties, should know.

2. **ID.; ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY DISTINGUISHED FROM GROSS NEGLECT OF DUTY; RESPONDENT'S NEGLIGENCE, NOT GROSS IN NATURE. —** Simple neglect of duty is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference. On the other hand, gross neglect of duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty. We cannot consider the respondent's negligence as gross in nature because there is nothing in the records to show that the respondent willfully and intentionally fired his service pistol. Also, at the time of the incident, the respondent did observe most of the safety measures required in unloading his firearm. As attested to by SG1 Tamba who was the lone eyewitness to the incident, the respondent did point the pistol's muzzle towards a safe direction, *i.e.,* to the ground, at the time it was being unloaded and when it unexpectedly went off – a fact evidenced by the bullet mark on the floor of the guardhouse.

3. **ID.; ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; ABSENCE OF LIABILITY THEREFOR, ESTABLISHED IN THE CASE AT BAR. —**

We also agree with the OCA that the respondent is not liable for conduct prejudicial to the best interest of the service. Although the Revised Uniform Rules on Administrative Cases in the Civil Service does not provide for a definition or enumerate acts that constitute such an offense, we held that conduct prejudicial to the best interest of the service refers to acts or omissions that violate the norm of public accountability and diminish — or tend to diminish — the people's faith in the Judiciary. Here, we do not find the respondent's negligent act to have an adverse reflection on the Judiciary's integrity.

4. **ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; LESS GRAVE OFFENSES; SIMPLE NEGLECT OF DUTY; PENALTY. —** Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is classified as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense. Considering the respondent's performance ratings and that this is his first offense for simple neglect of duty, we impose upon him the penalty of suspension in the minimum period.

R E S O L U T I O N

BRION, *J.*:

We resolve the present administrative complaint filed against Enrique E. Manabat, Jr. (*respondent*), Security Guard 1 (*SG1*) of the Court of Appeals (*CA*), Manila, for gross neglect of duty and conduct prejudicial to the best interest of the service by the accidental firing of his service pistol inside the CA guardhouse on June 8, 2009.

In an Investigation Report[1] dated June 15, 2009, Mr. Reynaldo V. Dianco, Chief of the CA Security Services Unit, informed Hon. Justice Normandie B. Pizarro, Chairperson of the CA Security and Safety Committee, that at around 8:00 a.m. of June 8, 2009, the respondent, who was inside the guardhouse,

---

[1] *Rollo,* pp. 9-10.

accidentally fired his service pistol, a 9mm FEG Hungary, while in the process of unloading it for turnover to SG1 Miguel Tamba, the guard on duty for the next shift. In the same report, Mr. Dianco recommended that the respondent be dismissed from the service for gross neglect of duty. The matter was forwarded to the CA Clerk of Court, Atty. Teresita R. Marigomen, for investigation.[2]

On June 22, 2009, the CA Clerk of Court filed a formal charge[3] against the respondent for gross neglect of duty and conduct prejudicial to the best interest of the service. The respondent was directed to file a written answer, under oath, within five (5) days from receipt thereof.

In his verified answer,[4] the respondent explained that the firing of his service pistol on June 8, 2009 was purely accidental, it was not done with evident bad faith, and it did not cause undue injury to any party; hence, his dismissal from the service for gross neglect of duty is unwarranted. He narrated that, to his surprise, the pistol went off after he removed the magazine and while emptying the chamber load; that immediately after the incident, he reported the same to the CA Clerk of Court; and that in turning over the pistol to SG1 Tamba, he observed the usual and safety procedure of pointing the gun's muzzle towards the ground, particularly to the inner wall of the guardhouse, and at a safe distance from his co-officer — a fact attested to by SG1 Tamba in an affidavit attached to his answer.[5] As cause of the accidental discharge, the respondent intimated that his pistol may have been defective because during their recent firing course at Camp Crame, service pistols of the model 9mm FEG Hungary used in the shooting exercises malfunctioned; that the malfunctioning of the 9mm FEG Hungary pistols was made known to Justice Pizarro; and that their police instructor at Camp Crame recommended that they no longer use the 9mm

---

[2] Memorandum dated June 17, 2009; *id.* at 8.

[3] *Id.* at 12.

[4] *Id.* at 15-19.

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

FEG Hungary pistols as they may encounter problems with them in the future. The respondent reiterated these arguments in the position paper[6] he subsequently filed with the CA.

After the investigation, the CA Clerk of Court did not find the respondent guilty of gross neglect of duty and conduct prejudicial to the best interest of the service. However, the CA Clerk of Court found the respondent liable for simple neglect of duty, and recommended the penalty of one (1) month and one (1) day suspension without pay, with a stern warning that a repetition of the same offense would be dealt with more severely. The CA Clerk of Court forwarded the Investigation Report and Recommendation[7] to CA Presiding Justice Andres B. Reyes, Jr., who adopted the recommended penalty and forwarded the records of the instant case to this Court.[8]

In an Indorsement[9] dated March 24, 2010, the Office of the Court Administrator (*OCA*) required the respondent to file his comment on the formal charge against him for gross neglect of duty and conduct prejudicial to the best interest of the service.

In his comment,[10] the respondent stressed that the incident was purely accidental; that he had complied with the standard procedure in unloading his pistol, but despite this, the pistol still went off without his fault. For this reason, he argued that the recommended penalty of dismissal from the service is highly improper and he prayed that the charges against him be dismissed for insufficiency of evidence. Also, he related that he had been employed with the CA for eleven (11) years and that his latest performance rating for the period of January to June 2009 was very satisfactory.

After a review of the records, the OCA agreed with the CA's finding that the respondent is guilty of simple neglect of duty.

---

[6] *Id.* at 30-36.

[7] *Id.* at 3-7.

[8] Letter dated March 12, 2010; *id.* at 1.

[9] *Id.* at 37.

[10] *Id.* at 38-41.

For one, the OCA did not find the elements of gross negligence present in the case. The OCA, however, could not absolve the respondent from liability because the latter, by accidentally firing his service pistol, still failed to exercise the diligence required in the proper discharge of his functions; that the respondent should have been extra careful in handling his firearm while turning it over to SG1 Tamba. The OCA belied the respondent's claim that his service pistol was defective for there was evidence which showed that the exact same service pistol issued to him was in good condition and has never been reported for any malfunction — this fact was attested to by former SG1 Marcialito Villaflor and SG1 Romeo Pimentel, to whom the same service pistol had earlier been issued.[11]

Also, the OCA did not find the respondent liable for the offense of conduct prejudicial to the best interest of the service because the records do not show that the respondent's negligent act compromised the integrity and efficacy of the government service.[12]

In its Recommendation[13] to this Court, the OCA enumerated the previous infractions committed by the respondent: that in March 1999, the respondent was reprimanded for discourtesy with stern warning; that in November 2001, he was sternly reprimanded for unprofessional behavior and acts prejudicial to the service; and that in June 2005, he was suspended for a month for habitual absenteeism. The OCA, however, noted that the respondent's performance rating for the periods of January to June 2008 and July to December 2008 were both very satisfactory and that simple neglect of duty is not one of the offenses for which the respondent was previously found guilty. Due to these considerations, the OCA agreed with the CA and submitted that the respondent be suspended for one (1) month and one (1) day, without pay, and be sternly warned that a

---

[11] *Id.* at 9.

[12] *Id.* at 64.

[13] Dated July 21, 2011; *id.* at 59-65.

repetition of the same or similar offense shall be dealt with more severely.

THE COURT'S RULING

We agree with the OCA's recommendation and find respondent Enrique E. Manabat, Jr. administratively liable for simple neglect of duty.

The unexpected discharge of a firearm may occur for a variety of reasons. It can be the result of mechanical failure such as wear, faulty assembly, damage or faulty design of the firearm, but most often, undesired discharges result from "operator error" or due to the carelessness or ineptness of the person handling the firearm. It is for the latter reason that our court security personnel are taught the basic rules of firearm or gun safety in order to prevent incidents of undesired discharges.

To exculpate himself from liability, the respondent contended that the discharge might have been caused by a mechanical failure; that his service pistol may have been defective because 9mm FEG Hungary pistols used during their recent firing course at Camp Crame malfunctioned. This incident at Camp Crame, however, is barely proof that the respondent's pistol is defective. One cannot simply generalize, based from such incident, that all 9mm FEG Hungary pistols used by the CA security personnel are defective. To bolster his theory, the respondent should have presented evidence to show that his service pistol was, at that time, not mechanically sound, particularly in light of the evidence that the pistol is in good working condition.

In ruling out mechanical causes, it can only be concluded that the undesired discharge of the respondent's service pistol was the result of his own negligence; in the usual course of things, a firearm that is being unloaded should not discharge if gun safety procedures had been strictly followed. What cannot be denied is that the gun fired and the firing could not have happened unless there was a bullet in the gun's chamber. Assuming that the respondent did indeed remove the magazine and did indeed cock the gun to eject whatever bullet that might have been in the chamber, obviously, he simply cocked the gun and

did not visually examine if the chamber was clear. This is a basic and elementary precaution that every gun handler, more so a security guard who is provided a gun for his duties, should know.

The next question to be resolved is whether the respondent's negligence, in causing the undesired discharge of his service pistol, is gross in nature. We rule in the negative.

Simple neglect of duty is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference.[14] On the other hand, gross neglect of duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty.[15]

We cannot consider the respondent's negligence as gross in nature because there is nothing in the records to show that the respondent willfully and intentionally fired his service pistol. Also, at the time of the incident, the respondent did observe most of the safety measures required in unloading his firearm. As attested to by SG1 Tamba who was the lone eyewitness to the incident, the respondent did point the pistol's muzzle towards a safe direction, *i.e.,* to the ground, at the time it was being unloaded and when it unexpectedly went off — a fact evidenced by the bullet mark on the floor of the guardhouse.[16]

We also agree with the OCA that the respondent is not liable for conduct prejudicial to the best interest of the service. Although the Revised Uniform Rules on Administrative Cases in the Civil Service[17] does not provide for a definition or enumerate acts that constitute such an offense, we held that conduct prejudicial

---

[14] *Reyes v. Pablico*, A.M. No. P-06-2109, November 27, 2006, 508 SCRA 146, 156.

[15] *Brucal v. Hon. Desierto*, 501 Phil. 453, 465-466 (2005).

[16] *Rollo*, p. 6.

[17] Promulgated by the Civil Service Commission through Resolution No. 99-1936 dated August 31, 1999 and implemented by CSC Memorandum Circular No. 19, series of 1999.

to the best interest of the service refers to acts or omissions that violate the norm of public accountability and diminish — or tend to diminish — the people's faith in the Judiciary.[18] Here, we do not find the respondent's negligent act to have an adverse reflection on the Judiciary's integrity.

Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service,[19] simple neglect of duty is classified as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense. Considering the respondent's performance ratings and that this is his first offense for simple neglect of duty, we impose upon him the penalty of suspension in the minimum period.

ACCORDINGLY, premises considered, respondent Enrique E. Manabat, Jr., Security Guard I of the Court of Appeals, Manila, is *SUSPENDED* for one (1) month and one (1) day, without pay, for simple neglect of duty. He is further *DIRECTED* to undergo, during his suspension, a firearm handling security course with the appropriate unit of the Philippine National Police, at his own expense, and shall be deemed to have completely served his suspension only upon submission of proof of the completion of this course. He is *WARNED* that a repetition of the same or similar offense shall be dealt with more severely.

Let a copy of this Resolution be given to the Presiding Justice, Court of Appeals, Manila, with the suggestion that the firearms and ammunition issued to the CA security force be technically examined for their mechanical safety and working order.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.,* concur.

---

[18] *Ito v. De Vera*, A.M. No. P-01-1478, December 13, 2006, 511 SCRA 1, 11-12.

[19] *Id.* at 11.

THIRD DIVISION

[A.M. No. P-07-2369. November 16, 2011]
(Formerly OCA IPI No. 06-2444-P)

CONCERNED CITIZEN, *complainant, vs.* **MARIA CONCEPCION M. DIVINA, Court Stenographer, Regional Trial Court, Branch 3, Balanga City, Bataan,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; IN ADMINISTRATIVE PROCEEDINGS, THE QUANTUM OF PROOF NECESSARY FOR A FINDING OF GUILT IS SUBSTANTIAL EVIDENCE OR SUCH EVIDENCE AS A REASONABLE MIND MAY ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION.—** In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such evidence as a reasonable mind may accept as adequate to support a conclusion. The complainant has the burden of proving by substantial evidence the allegations in the complaint.

2. **ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; GROSS MISCONDUCT; NOT PROVEN IN CASE AT BAR.—** In the present case, there is no sufficient, clear and convincing evidence to hold Divina administratively liable for Gross Misconduct as charged in the undated anonymous letter. As found during the investigation, apart from the allegation of the "Concerned Citizen," not a scintilla of evidence was proffered to establish that she demanded and solicited the amount of ₱20,000.00 from a party in a pending case before the RTC in exchange for the prompt preparation of the TSN. It bears to point out that the author of the undated anonymous letter never came out in the open to testify before the Investigating Judge to support his claim that Divina had engaged in an illegal activity to make money out of a case pending before the RTC. Accusation is not synonymous with guilt. This brings to fore the application of the age-old but familiar rule that he who alleges a fact has the burden of proving it for mere allegation is not evidence. Reliance on mere

allegation, conjectures and suppositions will leave an administrative complaint with no leg to stand on. The allegation of "Concerned Citizen" that Divina attempted to extort ₱20,000.00 has remained as such and, thus, cannot be admitted as evidence, let alone given evidentiary weight. As it stands, this charge of attempted extortion has remained unsubstantiated and, hence, should be dismissed.

3. ID.; ID.; ID.; ID.; NORM OF CONDUCT TO BE OBSERVED.— The Court has always stressed that the behavior of all employees and officials involved in the administration of justice, from judges to the most junior clerks, is circumscribed with a heavy burden of responsibility. All court personnel must observe strict propriety and decorum to preserve and maintain the public's respect for and trust in the judiciary. Needless to say, every act and word of all court personnel should be characterized by prudence, restraint, courtesy and diligence.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY; THE FINDINGS AND EVALUATION OF THE INVESTIGATION JUDGE ARE ACCORDED FULL RESPECT; ACCUSATION OF EXTORTION, NOT PROVEN WITH SUFFICIENT EVIDENCE IN THE CASE AT BAR.— [T]he accusation of extortion by Ricardo against Divina is bereft of merit and, hence, must also be dismissed. The charge of extortion is a factual matter which must be established and proved with sufficient competent evidence. Complainant, upon whom rests the burden of proving his cause of action, failed to show in a satisfactory manner the facts upon which he based his claim. No clear and solid proof was offered by Ricardo to show that Divina demanded money from him in exchange for immediate preparation of his TSN. As found by the Investigating Judge, Ricardo even admitted that he voluntarily gave money to Divina each time the latter would ask for it because he believed that this would expedite the transcription of their stenographic notes. The Court is in full accord with the findings and evaluation of the Investigating Judge whose assessment and appreciation of evidence are quite competent and convincing. An accusation of extortion is a very serious charge which, if properly substantiated, would entail not only the respondent's dismissal from the Judiciary but also a possible criminal prosecution. To be sure, it will take more than a mere ambiguous testimony of a lone witness to lend an aura of credibility to such accusation.

5. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; COURT STENOGRAPHERS; LACK OF DEDICATION IN THE PERFORMANCE OF ONE'S DUTIES, ESTABLISHED IN THE CASE AT BAR.— The records, however, are replete with evidence clearly showing that Divina is less than zealous in the performance of her official duties as court stenographer. As such, she failed to live up to the standard of efficiency and professionalism that the Judiciary demands from its court personnel. For one, Divina failed to strictly follow Administrative Circular No. 24-90 that prescribes the time for completion and submission of TSN. Although the Court is solicitous of the plight of court stenographers, being saddled with heavy workload is not compelling reason enough to justify Divina's failure to faithfully comply with the prescribed period provided in Administrative Circular No. 24-90 and, thus, she must be faulted. Otherwise, every government employee charged with inefficiency would resort to the same convenient excuse to evade punishment, to the great prejudice of public service. Moreover, as observed by Judge Escalada, of the four stenographers assigned to his court, only Divina was found to be delinquent in the transcription of stenographic notes. It is noteworthy that Administrative Circular No. 24-90 imposes upon all court stenographers the duty to transcribe the stenographic notes within twenty days from the time they had been taken, regardless of the presence or the absence of a demand for those notes by the parties. Neither does the above justification proffered by Divina constitute as sufficient excuse for her not to remit a portion of her collection from Ricardo for requests of copies of the TSN in the total amount of ₱600.00. Section 11, Rule 141 of the Rules of Court clearly provides that payment for requests of copies of the TSN shall be made to the Clerk of Court, and that a third of the portion of such payment accrues to the Judicial Development Fund *(JDF),* with only two-thirds thereof to be paid to the stenographer concerned. Thus, a stenographer is not entitled to the full amount of the TSN fees. Payment likewise cannot be made to her as the payment is an official transaction that must be made with the Clerk of Court. For all her foregoing shortcomings, Divina has shown her lack of dedication in the performance of her duties. As court stenographer, she knows or ought to know that she performs an important role in running the machinery

of our trial court system and that TSNs are vital for the speedy disposition of cases.

6. ID.; ID.; ID.; ID.; ID.; MITIGATION OF ADMINISTRATIVE LIABILITY, PROPER IN THE CASE AT BAR.— The Court notes that Divina has not been previously charged administratively and that she has been in the service of the Judiciary for a long time, fifteen (15) years at the time of the occurrence of the incident with Atty. Camacho. Also, it appears on record that Divina was given a "Satisfactory" rating by Judge Escalada for the period January to March 2007 and a "Very Satisfactory" rating by Judge Tanciangco, for the period April to June 2007. In view of this, the Court is inclined to give Divina the benefit of the doubt and to construe her subsequent favorable performance ratings as an indication of improvement in the discharge of her duties. These circumstances do not cure her infractions but can mitigate her administrative liability. Taken in this light, the Court finds the imposable penalty recommended by the OCA in its September 14, 2010 Memorandum as fair and appropriate.

APPEARANCES OF COUNSEL

Zuniga Law Office for Ricardo M. Ricardo.

D E C I S I O N

MENDOZA, *J*.:

This disposition addresses the administrative complaints against respondent, Maria Concepcion M. Divina *(Divina),* Court Stenographer of the Regional Trial Court of Balanga City, Bataan, Branch 3 *(RTC),* to wit: **1]** an undated anonymous letter-complaint[1] filed by a "Concerned Citizen" charging her with Gross Misconduct for her alleged attempt to extort ₱20,000.00 in exchange for the Transcript of Stenographic Notes *(TSN)* of their case; **2]** a letter-complaint[2] dated August 24, 2005 of Atty. Teodoro O. Camacho III *(Atty. Camacho)* for her alleged arrogant behavior;

---

[1] *Rollo,* p. 5.

[2] *Id.* at 20.

and **3]** a complaint-affidavit[3] filed by Ricardo M. Ricardo *(Ricardo)* charging her with extortion and inefficiency.

As synthesized by the Office of the Court Administrator *(OCA)* in its September 14, 2010 Memorandum,[4] the facts of the case are as follows:

> Records show that sometime in 2005, an anonymous complaint was filed by a "Concerned Citizen" against Maria Concepcion M. Divina, Court Stenographer, Regional Trial Court, Branch 3, Balanga City, Bataan, for Grave Misconduct. According to the letter-sender, respondent demanded Twenty Thousand Pesos (₱20,000.00) from them in exchange for the Transcript of Stenographic Notes of their case. Respondent allegedly threatened them that if they failed to give her money, she would not prepare the Transcript of Stenographic Notes (TSN) they were requesting, which would result in the delay in the disposition of their case.
>
> On December 8, 2005, the matter was referred to Honorable Remigio M. Escalada, Jr., Executive Judge, Regional Trial Court, Balanga City, Bataan, for discreet investigation. On March 2, 2006, Judge Escalada submitted his investigation report. He claimed that he could not ascertain the identity of the letter-writer. However, one court litigant executed a sworn statement alleging that respondent demanded money from him when he asked for a copy of TSN. Integrated Bar of the Philippines (IBP) Bataan Chapter President, Atty. Teodoro O. Camacho III, likewise complained about the arrogance of respondent when he requested for a TSN, which respondent failed to submit on time. When Judge Escalada conducted an inventory of the docket folders, he discovered that respondent had a backlog of untranscribed stenographic notes as far back as 2001.
>
> On March 6, 2006, the anonymous complaint was referred to respondent for comment. Ms. Divina denied that she demanded Twenty Thousand Pesos (₱20,000.00) from a court litigant, and that she had been delaying the release of the TSN of cases assigned to her. She maintained that most of the time, TSNs were given for free because majority of the litigants in their court are indigents and her townmates. She even had to bring home some of her work so that

---

[3] *Id.* at 13.

[4] *Id.* at 193-200.

she can finish transcribing them and she reports for work even on her birthdays and when her children were in the hospital, just to finish her work.

Considering the gravity of the charges against the respondent and in order to afford her a chance to answer the accusations against her, the Court, in its Resolution of October 11, 2006, referred the complaint to Judge Escalada, for a full-blown investigation. The Clerk of Court of Regional Trial Court, Branch 3, Balanga City, Bataan, was likewise required to conduct an inventory of all untranscribed stenographic notes of respondent.

In compliance with the October 11, 2006 Resolution, Judge Escalada reported that respondent faces three (3) charges; (1) extortion and delay in submitting the Transcript of Stenographic Notes in Civil Case No. 7400; (2) delay in submitting the TSN covering the proceeding in other cases; and (3) belligerent attitude exhibited against Atty. Teodoro O. Camacho III.

In the investigation conducted by Judge Escalada, Mr. Ricardo M. Ricardo, petitioner in Civil Case No. 7400, for annulment of marriage, testified that he was not the author of the anonymous complaint and his "Sinumpaang Salaysay," dated January 16, 2006, was the only complaint he filed against respondent for the delay in the submission of Transcript of Stenographic Notes. He alleged that on the day he took the witness stand, respondent waved her hand at him while he was still outside the courtroom, and after the hearing, respondent told him to secure the TSN of his testimony in order that the psychologist/expert witness may review the same. Respondent asked money from him and he gave her One Hundred Pesos (₱100.00), the only money he could spare. Before the date of the hearing wherein he would present the psychologist, he approached the respondent and asked her about the transcript, but he was told by respondent that, "*Marami pa akong ginagawa at marami pang nakapila, kaya di ko pa magawa*." He followed up his request for the TSN for several times, but he felt that respondent was making it difficult for him to get the transcript. Thus, the next time respondent asked money from him, he readily gave her Five Hundred Pesos (₱500.00), although he was aware that the transcript costs only Ten Pesos (₱10.00) per page. In August 2005, he went again to respondent to ask for the transcript, but respondent failed to give him the TSN.

Atty. Camacho's complaint stemmed from a verbal row he had with respondent on August 18, 2005 at the lawyer's table while a

hearing was going on. Atty. Camacho testified that, on August 18, 2005, he was at the sala of Regional Trial Court, Branch 3, Balanga City, Bataan, as counsel of one of the accused, and waiting for his case to be called. He was then holding the TSN of the case, where Atty. Eliodoro S. Baluyot was the counsel of the other accused. He told Atty. Baluyot that he could ask for a copy of the said TSN from respondent. When respondent heard what he had advised Atty. Baluyot, respondent arrogantly asked him, with piercing eyes, *"Gusto mo ngayon ko kukunin?"* Complainant claimed that it was not his intention to direct respondent to rise from her seat and get the TSN from the staff room. According to complainant, prior to the incident, he had repeatedly requested for the TSN from respondent who promised to give him a copy few days before the scheduled hearing. When he eventually got the TSN, respondent even retorted, "*Hindi ko naman dinagdagan yan and in 20 years na pagtatrabaho ko dito, tama ang aking ginagawa.*" Complainant realized that the reason why respondent was slow in finishing the transcripts, especially for IBP Legal Aid cases, was because she would not be paid, due to previous arrangement of the IBP with court stenographers to give the TSN for free to lawyers rendering services *pro bono*.[5]

In his Investigation Report[6] dated March 12, 2007, Judge Remigio M. Escalada, Jr. *(Judge Escalada)* found Divina liable for violation of Section 11 of Rule 141 due to her unauthorized collection of payments from complainant Ricardo for the TSN in Civil Case No. 7400. Judge Escalada also found her liable for unjustified delay in preparing the TSN in Civil Case No. 7400 despite repeated demands of Ricardo and for failure to timely submit the TSN due from her in other cases. The Investigating Judge, however, accorded Divina the benefit of the doubt on Ricardo's allegation of extortion in the light of his ambiguous testimony on the matter. In the absence of sufficient proof, Judge Escalada absolved Divina of the extortion charge by the "Concerned Citizen," whose identity had remained unknown even until the investigation was over.

Anent the charge of belligerent attitude by Atty. Camacho, Judge Escalada opined that it was not sufficiently established,

---

[5] *Id.* at 193-196.

[6] *Id.* at 37-44.

although evidence on this score all the more showed how inefficient and ineffective Divina had become as a stenographer. For her infractions, Judge Escalada recommended that Divina be suspended from service for not less than six (6) months without pay. Further, he suggested that, after serving her suspension penalty, Divina be transferred to any first-level court in Bataan as she could not cope with the more demanding work in the second-level court.

The Court referred the investigation report of Judge Escalada to the OCA for evaluation, report and recommendation as per Resolution[7] dated March 28, 2007.

In the Memorandum[8] dated August 22, 2007, the OCA echoed the findings of Judge Escalada and agreed that Divina was guilty of inefficiency in the performance of duty and violation of Section 11, Rule 141 and Section 17, Rule 136 of the Rules of Court, and Administrative Circular No. 24-90 dated July 12, 1990. The OCA said, however, that it could not adopt the penalty recommended by Judge Escalada considering the numerous TSNs that Divina failed to timely transcribe which definitely contributed to the delay in the administration of justice. The OCA also noted the "Unsatisfactory" performance rating she was given for the period from July to December 2006. It recommended instead, a penalty of suspension from service for one (1) year without pay.

In the Resolution[9] dated September 10, 2007, the Court resolved to: 1) re-docket the complaint as a regular administrative matter; 2) direct the Clerk of Court of the RTC to properly monitor the Stenographic Reporters under her supervision; and 3) order Judge Escalada to review the performance rating of Divina for the period from January to June 2007, pursuant to Circular No. 172-2003 dated December 2, 2003 and to submit his recommendations to this Court through the Performance Evaluation Committee *(PERC),* OCA.

---

[7] *Id.* at 35.

[8] *Id.* at 157-165.

[9] *Id.* at 166-167.

In compliance with the directive, Judge Escalada submitted a letter[10] dated October 30, 2007 informing the Court that he gave Divina a "Satisfactory" rating for her work performance from January to March 2007. Judge Erasto D. Tanciangco *(Judge Tanciangco)*, Presiding Judge of the 1st Municipal Circuit Trial Court of Dinalupihan Hermosa, Bataan *(MCTC),* where Divina was detailed from April to September 2007, gave her a "Very Satisfactory" rating for the period April to June 22, 2007. Instead of six (6) months suspension, Judge Escalada recommended that the Court impose upon Divina the penalty of suspension from the service for two (2) months, without salary and with warning, considering that Divina's work performance had improved.

In the Resolution[11] dated January 21, 2008, the Court again referred this October 30, 2007 letter of Judge Escalada to the OCA for evaluation, report and recommendation.

Pursuant thereto, the OCA issued its Memorandum[12] dated July 11, 2008 stating that Divina's improvement in her work performance would not exonerate her from her culpability for inefficiency and violation of the Code of Conduct for Court Personnel, particularly, Section 4, Canon 1 which prohibits court personnel from accepting any fee or remuneration beyond what they receive or are entitled to in their official capacity. The OCA recommended that Divina be found guilty of gross violation of the Code of Conduct for Court Personnel for demanding money over and above the fees of TSN as provided for in the Rules and recommended that she be dismissed from service with forfeiture of all salaries and benefits, except accrued leave credits to which she may be entitled, and with disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporation.

---

[10] *Id.* at 168-170.

[11] *Id.* at 173.

[12] *Id.* at 176-178.

On October 28, 2009, the Court issued its Resolution[13] requiring the parties to manifest if they were willing to submit the case for decision/resolution on the basis of the pleadings filed. On January 14, 2010, Divina filed her Manifestation and Motion[14] (With Explanation for the Late Filing of the Same) praying for the reopening of the case for further investigation and reception of evidence. On the other hand, Atty. Joe Frank Zuniga *(Atty. Zuñiga)*, counsel for Ricardo, filed his Compliance[15] dated December 9, 2009 wherein he expressed his desire to submit the case for resolution based on the pleadings on record.

In the Resolution[16] dated April 5, 2010, the Court referred Atty. Zuniga's December 9, 2009 Compliance and January 13, 2010 Manifestation to the OCA. On September 14, 2010, the OCA issued its Memorandum[17] where the following recommendations were submitted for the consideration of the Court: 1) to deny Divina's motion to reopen the case; and 2) to mete the penalty of suspension for one (1) year without pay against Divina for inefficiency in the performance of duty and violation of Section 11, Rule 141 and Section 17, Rule 136 of the Rules of Court and Circular No. 24-90 dated July 12, 1990, with a caveat that a repetition of the same or similar acts in the future shall be dealt with more severely.[18]

After a judicious review of the records, the Court finds that this case can be decided based on the pleadings filed by the parties and the reports submitted by the Investigating Judge and the OCA. Divina's motion for further investigation and presentation of evidence is denied considering that she was already afforded sufficient opportunity to controvert and refute the accusations against her through her comment and testimony during the full-blown investigation conducted by Judge Escalada.

---

[13] *Id.* at 180.

[14] *Id.* at 181-182.

[15] *Id.* at 184.

[16] *Id.* at 191.

[17] *Id.* at 193-200.

[18] *Id.* at 199-200.

The issue to be resolved now is whether or not Divina is guilty of the charges hurled against her. In this regard, the Court determines that the findings of the OCA in its September 14, 2010 Memorandum, are well-taken.

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such evidence as a reasonable mind may accept as adequate to support a conclusion. The complainant has the burden of proving by substantial evidence the allegations in the complaint.[19]

In the present case, there is no sufficient, clear and convincing evidence to hold Divina administratively liable for Gross Misconduct as charged in the undated anonymous letter. As found during the investigation, apart from the allegation of the "Concerned Citizen," not a scintilla of evidence was proffered to establish that she demanded and solicited the amount of ₱20,000.00 from a party in a pending case before the RTC in exchange for the prompt preparation of the TSN. It bears to point out that the author of the undated anonymous letter never came out in the open to testify before the Investigating Judge to support his claim that Divina had engaged in an illegal activity to make money out of a case pending before the RTC.

Accusation is not synonymous with guilt. This brings to fore the application of the age-old but familiar rule that he who alleges a fact has the burden of proving it for mere allegation is not evidence. Reliance on mere allegation, conjectures and suppositions will leave an administrative complaint with no leg to stand on.[20] The allegation of "Concerned Citizen" that Divina attempted to extort ₱20,000.00 has remained as such and, thus, cannot be admitted as evidence, let alone given evidentiary weight. As it stands, this charge of attempted extortion has remained unsubstantiated and, hence, should be dismissed.

The charge of belligerent/arrogant behavior against Divina must likewise fail. A circumspect scrutiny of the records has

---

[19] *Aldecoa-Delorino v. Abellanosa*, A.M. No. P-08-2472, October 19, 2010, 633 SCRA 449, 462.

[20] *Alfonso v. Ignacio*, 487 Phil. 1, 7 (2004).

revealed that the testimony of Atty. Camacho is inadequate to establish his claim and to hold her liable for misconduct. The Court fully subscribes to the findings of the Investigating Judge whose observation deserves to be quoted at length, thus:

> Apropos the incident between complainant Camacho and the respondent, the Investigating Judge is at a loss on how to make a categorical disposition. The testimony of complainant Camacho is as credible as that of respondent's insofar as the incident in question is concerned. Although this Investigating Judge was present when the spat took place, his attention was focused at a case then being heard. It would have been easier for the Investigating Judge to make a clear-cut finding had complainant Camacho or respondent, on their own, offered the testimony of Atty. Eliodoro S. Baluyot or of any other person who may have been an eyewitness in support of their versions. Verily, some leeway must be allowed to the justification proffered by respondent. It is not hard to imagine the situation the respondent was in at the time of the incident. She should have all eyes and ears at the hearing then in progress, and yet, a lawyer in front of her kept on asking her about a copy of a TSN which is not even due to him but to some other lawyer. This is not to say, however, that the respondent should be absolved entirely of what had happened between her and complainant Camacho. The fact is that a TSN was due from her and it took a lot of requests from said complainant before she made it available. xxx[21]

The Court has always stressed that the behavior of all employees and officials involved in the administration of justice, from judges to the most junior clerks, is circumscribed with a heavy burden of responsibility.[22] All court personnel must observe strict propriety and decorum to preserve and maintain the public's respect for and trust in the judiciary. Needless to say, every act and word of all court personnel should be characterized by prudence, restraint, courtesy and diligence.

In this case, Divina's demeanor at the time was nothing but an isolated emotional outburst after being apparently distracted

---

[21] *Rollo*, p. 44.

[22] *Office of the Court Administrator v. Montalla*, A.M. No. P-06-2269, December 20, 2006, 511 SCRA 328, 331.

from taking down stenographic notes of a proceeding because of the repetitious and annoying requests of Atty. Camacho for a copy of the TSN, not for himself, but for his lawyer friend. To the mind of the Court, Divina's conduct was not of such deplorable and contemptible nature that would serve as valid basis to slap her with an administrative and disciplinary sanction in view of the facts obtaining in this case. Besides, there is no showing that her behavior at that time was calculated merely to disrespect, humiliate or insult Atty. Camacho before those present during the hearing. It is significant to note that Atty. Camacho has not cited any other similar incident to validate his accusation of her alleged belligerent attitude towards him.

Meanwhile, the accusation of extortion by Ricardo against Divina is bereft of merit and, hence, must also be dismissed. The charge of extortion is a factual matter which must be established and proved with sufficient competent evidence. Complainant, upon whom rests the burden of proving his cause of action, failed to show in a satisfactory manner the facts upon which he based his claim. No clear and solid proof was offered by Ricardo to show that Divina demanded money from him in exchange for immediate preparation of his TSN. As found by the Investigating Judge, Ricardo even admitted that he voluntarily gave money to Divina each time the latter would ask for it because he believed that this would expedite the transcription of their stenographic notes.

The Court is in full accord with the findings and evaluation of the Investigating Judge whose assessment and appreciation of evidence are quite competent and convincing. An accusation of extortion is a very serious charge which, if properly substantiated, would entail not only the respondent's dismissal from the Judiciary but also a possible criminal prosecution. To be sure, it will take more than a mere ambiguous testimony of a lone witness to lend an aura of credibility to such accusation.

The records, however, are replete with evidence clearly showing that Divina is less than zealous in the performance of her official duties as court stenographer. As such, she failed to live up to the standard of efficiency and professionalism that the Judiciary demands from its court personnel.

For one, Divina failed to strictly follow Administrative Circular No. 24-90[23] that prescribes the time for completion and submission of TSN. Thus:

2. (a) All stenographers are required to transcribe all stenographic notes and to attach the transcript to the record of the case not later than twenty (20) days from the time the notes are taken. The attaching may be done by putting all said transcripts in a separate folder or envelope, which will then be joined to the records of the case.

(b) The stenographer concerned shall accomplish a verified monthly certification as to compliance with this duty. xxx

The Court cannot turn a blind eye on Divina's clear violation of the foregoing circular which is evident from the open court orders given by Judge Escalada, Presiding Judge of RTC, Balanga City, Branch 3. In the Order[24] dated November 24, 2005 in Criminal Case Nos. 7837-7840 entitled *People v. Roberto dela Peña*, the promulgation of judgment had to be deferred because of her delayed submission of the required TSN. In the Order[25] dated November 24, 2005 in Criminal Case No. 9786 entitled *People v. Fernando Uno y Giray;* Order[26] dated January 19, 2006 in Criminal Case No. 9084 entitled *People v. Ariel De Guzman y Santos;* and Order[27] dated February 15, 2006 in Criminal Case No. 9697 entitled *People v. Danilo Bonuel y Cuevas,* the scheduled hearings were reset to much later dates due to the unavailability or non-transcription by Divina of the stenographic notes she took during the previous hearings. Divina offered no explanation for her failure to comply with the prescribed deadline.

Records also disclose that Judge Escalada issued a Memorandum[28] dated February 6, 2006 addressed to Divina

---

[23] Promulgated by this Court on July 12, 1990 and took effect on August 1, 1990.

[24] *Rollo*, p. 14.

[25] *Id.* at 15.

[26] *Id.* at 15-a.

[27] *Id.* at 17.

[28] *Id.* at 16.

directing her to immediately submit the TSN in *People v. Reynaldo Albarda* dated December 20, 2001, April 29, 2003 and February 4, 2005 under pain of disciplinary action should she fail to do so. On February 27, 2006, Divina received from Judge Escalada another letter[29] dated February 23, 2006 requiring her to submit with utmost dispatch the long overdue TSN in numerous civil and criminal cases contained in a 7-page list.[30] Due to her noncompliance, Judge Escalada was constrained to issue another Memorandum[31] dated April 18, 2006 directing her to submit all the TSNs due from her on or before May 2006 and excluding her, in the meantime, from court duty of taking down stenographic notes during hearings. In evaluating Divina's work performance, Judge Escalada rated Divina "Unsatisfactory" for the period from July to December 2006. Her poor rating was due to her delays in submitting the required TSNs.

Further, it was shown that Margarita H. Quicho *(Ms. Quicho)*, Officer-in-Charge of the RTC, submitted an inventory of overdue TSN[32] of Divina as of January 28, 2006, consisting of four (4) pages in compliance with the October 11, 2006 Resolution of the Court. Said inventory disclosed that Divina had a total of **109** untranscribed notes, 3 of which were taken in April, August and November 2001, 5 in 2002, 12 in 2003, 22 in 2004, and 67 in 2005. According to Ms. Quicho, Divina still had to submit the TSN as of January 12, 2007.

Lastly, the evidence shows that Divina gave Ricardo difficult time in securing the needed TSN in Civil Case No. 7400. Despite numerous requests and follow-ups, Ricardo failed to get from her copies of the TSN though he already paid for them. Notably, she submitted the TSN in Civil Case No. 7400, covering the proceedings taken on October 17, 2002 and on May 12, 2005,

---

[29] Records, p. 84.

[30] *Id.* at 85-91.

[31] *Id.* at 83.

[32] *Id.* at 94-97.

only on January 23, 2006.[33] Hence, she incurred an *intolerable delay of three (3) years, three (3) months and five (5) days in transcribing the stenographic notes of October 17, 2002 hearing consisting of only thirteen pages,*[34] *while it took her eight (8) months and ten (10) days to transcribe the May 12, 2005 hearing consisting of only eight (8) pages.*[35]

In a desperate bid to exonerate herself from administrative liability and to justify her delays, Divina cited her heavy workload and the need to transcribe the stenographic notes in several other cases as well. She bared that she had to bring home some of her notes so that she could finish transcribing them and in the process, she spent a part of her salary for tape recorder, blank cassette tape, batteries and the like. She also claimed that she had to report for work even on her birthdays and when her children were in the hospital just to complete her duties and obligations.

Although the Court is solicitous of the plight of court stenographers, being saddled with heavy workload is not compelling reason enough to justify Divina's failure to faithfully comply with the prescribed period provided in Administrative Circular No. 24-90 and, thus, she must be faulted. Otherwise, every government employee charged with inefficiency would resort to the same convenient excuse to evade punishment, to the great prejudice of public service. Moreover, as observed by Judge Escalada, of the four stenographers assigned to his court, only Divina was found to be delinquent in the transcription of stenographic notes. It is noteworthy that Administrative Circular No. 24-90 imposes upon all court stenographers the duty to transcribe the stenographic notes within twenty days from the time they had been taken, regardless of the presence or the absence of a demand for those notes by the parties.[36]

---

[33] *Rollo*, p. 43.

[34] Records, pp. 112-124.

[35] *Id.* at 125-132.

[36] *Alcover v. Bacatan*, 513 Phil. 77, 83 (2005).

Neither does the above justification proffered by Divina constitute as sufficient excuse for her not to remit a portion of her collection from Ricardo for requests of copies of the TSN in the total amount of ₱600.00. Section 11,[37] Rule 141 of the Rules of Court clearly provides that payment for requests of copies of the TSN shall be made to the Clerk of Court, and that a third of the portion of such payment accrues to the Judicial Development Fund *(JDF),* with only two-thirds thereof to be paid to the stenographer concerned. Thus, a stenographer is not entitled to the full amount of the TSN fees. Payment likewise cannot be made to her as the payment is an official transaction that must be made with the Clerk of Court.

For all her foregoing shortcomings, Divina has shown her lack of dedication in the performance of her duties. As court stenographer, she knows or ought to know that she performs an important role in running the machinery of our trial court system and that TSNs are vital for the speedy disposition of cases. Divina must be reminded that the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat and, hence, it becomes the imperative and sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice.[38] The lackadaisical attitude displayed by Divina in performing her duties hampered the prompt and proper administration of justice.

No less than the Constitution mandates that public officers and employees must at all times serve the people with utmost responsibility, integrity and efficiency.[39] Indeed, public office

---

[37] Sec. 11. Stenographers. — Stenographers shall give certified transcript of notes taken by them to every person requesting the same upon payment to the Clerk of Court of (a) TEN (₱10.00) PESOS for each page of not less than two hundred and fifty words before the appeal is taken and (b) FIVE (₱5.00) PESOS for the same page, after the filing of the appeal, provided, however, that one-third (1/3) of the total charges shall accrue to the Judiciary Development Fund (JDF) and the remaining two-thirds (2/3) to the stenographer concerned.

[38] *Judge Ibay v. Lim*, 394 Phil. 415, 421-422. (2000).

[39] Article XI, Section 1, 1997 Constitution.

is a public trust. Divina indubitably violated this trust by failing to diligently fulfill her duties. Her delay and inefficiency in punctually transcribing the notes she took of court proceedings assigned to her definitely prejudiced public service and jeopardized the faith and confidence of the affected litigants in the Judiciary.

The Court notes that Divina has not been previously charged administratively and that she has been in the service of the Judiciary for a long time, fifteen (15) years at the time of the occurrence of the incident with Atty. Camacho.[40] Also, it appears on record that Divina was given a "Satisfactory" rating by Judge Escalada for the period January to March 2007 and a "Very Satisfactory" rating by Judge Tanciangco, for the period April to June 2007. In view of this, the Court is inclined to give Divina the benefit of the doubt and to construe her subsequent favorable performance ratings as an indication of improvement in the discharge of her duties. These circumstances do not cure her infractions but can mitigate her administrative liability. Taken in this light, the Court finds the imposable penalty recommended by the OCA in its September 14, 2010 Memorandum as fair and appropriate.

WHEREFORE, respondent Maria Concepcion M. Divina, Court Stenographer of the Regional Trial Court of Balanga City, Branch 3, is found *GUILTY* of inefficiency and violation of the provisions of Administrative Circular No. 24-90 dated July 12, 1990 and Section 11, Rule 141 of the Rules of Court. She is hereby *SUSPENDED FROM SERVICE* for the period of *ONE (1) YEAR* without pay, with a stern warning that repetition of the same or similar acts in the future shall be dealt with more severely.

Let a copy of this Decision be attached to the 201 file of the respondent.

---

[40] Records, p. 65.

SO ORDERED.

Carpio,[*] *Peralta (Acting Chairperson), Abad,* and *Villarama, Jr.,*[**] *JJ.,* concur.

SECOND DIVISION

[A.M. No. P-11-3009. November 16, 2011]
(Formerly A.M. OCA I.P.I. No. 10-3386-P)

BEATRIZ B. OÑATE, *complainant, vs.* **SEVERINO G. IMATONG, Junior Process Server, Municipal Circuit Trial Court, Piat, Cagayan,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; EXACTING STANDARDS OF ETHICS AND MORALITY FOR COURT EMPLOYEES ARE REQUIRED TO MAINTAIN THE PEOPLE'S FAITH IN THE COURTS AS DISPENSERS OF JUSTICE WHOSE IMAGE IS MIRRORED BY THEIR ACTUATIONS.—** The exacting standards of ethics and morality for court employees are required to maintain the people's faith in the courts as dispensers of justice whose image is mirrored by their actuations. In this case involving no less than his widowed sister-in-law, respondent Imatong fell short of these exacting standards of morality demanded from court employees.

---

[*] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152-A dated November 11, 2011.

[**] Designated as additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Raffle dated November 14, 2011.

2. **ID.; ID.; ID.; ID.; SIMPLE MISCONDUCT; DEFINED; COMMITTED IN THE CASE AT BAR.—** Simple misconduct has been defined as an unacceptable behavior that transgresses the established rules of conduct for public officers. Respondent's actions transgressed the norms of civility expected of judicial officers, even in their private lives, and constitute simple misconduct that must be squarely penalized. Although *beso-beso* or air kissing may be considered a standard greeting between family members, what respondent did was he not merely greeted his sister-in-law, but encroached into the territory of unwarranted advances that offended acceptable standards of decency. Regardless of whether it reached the level of criminal malice or lewdness, his conduct was unbecoming a court personnel, upon whom is placed the heavy burden of moral uprightness. The Court held thus: This Court has consistently underscored the heavy burden and responsibility that court personnel are saddled with in view of their exalted positions as keepers of the public faith. No position demands greater moral uprightness from its occupant than a judicial office. Indeed, the responsibilities of a public officer as enshrined in the Constitution are not mere rhetoric to be taken as idealistic sentiments. These are working standards and attainable goals that should be matched with actual deeds.

R E S O L U T I O N

SERENO, *J.*:

Before this Court is a Motion for Reconsideration of a Resolution, which earlier dismissed the administrative case filed against respondent Severino G. Imatong.

Respondent Imatong is a junior process server at the Municipal Circuit Trial Court, Piat, Cagayan. On the other hand, complainant Beatriz Oñate is a widow and professor at the Cagayan State University in Tuguegarao City. The wife of respondent and the deceased husband of complainant Oñate are siblings.

On 28 January 2010, respondent Imatong attended a wedding celebration near the house of complainant and stayed until about seven in the evening. Since it was already late and there was

no available means of transportation going back to his home in Piat, Cagayan, respondent went to complainant's house to ask permission if he could spend the night. Complainant Oñate acceded and allowed him to sleep in the living room.

Around six-thirty the next morning on 29 January 2010, while complainant was preparing herself for work, respondent Imatong allegedly barged into her room. He then proceeded to embrace and kiss her, while pushing her towards the bed. After the initial shock, complainant fought back and pushed him away.

When complainant was able to finally free herself, she pushed respondent out of the room while shouting at him at the top of her voice. He backed off and asked that she keep to herself what transpired between them. Complainant continued shouting at him, until he finally left the premises.

According to complainant Oñate, after respondent left, she sent a text message to his wife asking her to come over so that complainant could relate to her the acts committed by respondent. When the text message was ignored, complainant reported the incident to the police on 31 January 2010.[1]

On the other hand, according to respondent, on the night he went to the home of complainant Oñate, she requested him to attend to the replacement of broken windows inside one of the bedrooms and he promised to do so. Hence, he woke up early the next morning and went inside the bedroom of complainant to examine the broken window glasses. Several minutes later, complainant allegedly entered, upon which he greeted her good morning with a *beso-beso* and "tapped" her on the shoulder with his right hand. Thereafter, she and her son supposedly

---

[1] "Beatriz Onate *y* Baguen, 48 years old, widow, gov't employee and a resident of 113 B Perpetual Villate Phase 2, Ugac Norte, Tuguegarao City, came over and reported that last January 29, 2010 at around 6:30 AM insider her room of their house, brother in law MARIO IMATONG, of legal age, married, MTC Piat Cagayan employee and a resident of Piat Cagayan who happened to sleep at her house because of wedding he attended on the night of January 28. 2010, suddenly took hold of her shoulder, defamed putting her in shame prompted her to push him outside her room." (Certification dated 31 January 2010)

dressed themselves up for school, gave respondent a ride, and dropped him off along the highway around seven in the morning.

On 09 February 2010, complainant Oñate executed against respondent an Affidavit-Complaint, which became the basis of a criminal proceeding below, as well as of the instant administrative case.

In his defense, respondent argued that air kisses or *beso-beso* were commonplace between him and complainant, even in the presence of her husband when he was still alive. In addition, he questioned why she would still give him a lift on his way back home.

On 03 November 2010, the Prosecutor's Office of Tuguegarao City dismissed for lack of probable cause the criminal complaint for the crime of attempted rape filed against respondent.[2]

On 12 April 2011, the Office of the Court Administrator (OCA) submitted its recommendation to dismiss the Complaint as follows:

---

[2] "The charge in this case filed against respondent is for the crime of Attempted Rape. There is an attempt to commit rape when the offender commences its execution directly by overt acts but does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance. In this particular case, the series of events which took place in the morning of January 29, 2010 inside the house of the complainant, does not establish that respondent intended to lie or have sexual intercourse with the complainant. Even assuming that respondent embraced, kissed and pushed complainant in her room, these do not constitute the first or some subsequent step in a direct movement towards commission of the crime of rape. Kissing or embracing a person is more of an expression of extreme affection or desire. It does not necessarily follow that a person doing it is also laden with lecherous intention to have sexual intercourse with the other party. Worthwhile to note also is the fact that the act complained of had transpired at about 6:30 o'clock in the morning. This is a time where everybody is presumed to be already up and about. To commit the crime charged at such time of the day is inconceivable considering that the chance of discovery is very high. The respondent had slept the whole night of January 28, 2010 at the house of the complainant at had been possessed with the evil plan of having sex with the complainant, he would have executed it as a better opportune time on that whole night. Evidently, the facts of the case fall short to sustain the existence of a probable cause that the crime of Attempted Rape was committed." (Resolution dated 03 November 2010)

Respondent Imatong is charged with Misconduct for alleged attempted rape against complainant Oñate. However, it is worthy to note that complainant Oñate also filed a criminal complaint against respondent Imatong arising from the same incident complained of in the instant administrative case, which was already dismissed for lack of probable cause by the City Prosecutor's Office of Tuguegarao City.

While the dismissal of the criminal complaint does not necessarily mean the dismissal of an administrative case as the quantum of proof in the latter only requires substantial evidence, the Office of the Court Administrator (OCA) finds the instant administrative case against respondent Imatong dismissible. Complainant failed to substantiate the charge against respondent Imatong. In administrative proceedings, the complainant bears the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In the instant case, it was not established that respondent Imatong attempted to rape complainant Oñate. Although respondent Imatong admitted making "*beso-beso*" to complainant Oñate, the OCA opines that there is nothing wrong with the said act as the former merely intends to greet the latter. Hence, in absence of any substantial evidence, the complaint should be dismissed.[3]

On 15 June 2011, the Court adopted the findings of the OCA and dismissed the Complaint for lack of merit.[4]

In the meantime, the Prosecutor's Office issued another Resolution recalling its earlier Order and declared that there was probable cause against respondent, this time for the crime of **acts of lasciviousness**.[5] Acting on his Motion for Reconsideration, the Regional Prosecutor's Office affirmed the new Resolution and also found probable cause against him for acts of lasciviousness.

On 26 August 2011, complainant moved for the reconsideration of the Court's earlier Resolution dismissing the administrative

---

[3] OCA Report and Recommendation dated 12 April 2011.

[4] SC Resolution dated 15 June 2011.

[5] Prosecutor's Office Resolution dated 11 April 2011.

Complaint against respondent and cited the two new Resolutions of the Prosecutor's Office finding probable cause against him for the crime of acts of lasciviousness.

The Court finds merit in the Motion for Reconsideration.

The exacting standards of ethics and morality for court employees are required to maintain the people's faith in the courts as dispensers of justice whose image is mirrored by their actuations.[6]

In this case involving no less than his widowed sister-in-law, respondent Imatong fell short of these exacting standards of morality demanded from court employees.

Respondent does not deny that on the early morning of 29 January 2010, he kissed complainant in the bedroom. Although he characterizes his act as a simple greeting, the recipient of his "affections," complainant herein, thought otherwise and was bold and determined enough to pursue both criminal and administrative charges against him. In fact, despite her having just recently been widowed, she was courageous enough to confront her husband's sister — respondent's wife — about the transgression. No ill motive has been attributed to complainant that would push her to make such grave accusations against respondent, except for the veracity of her claims. Her claims ring true, especially in the light of her own narration of how respondent has been supportive and helpful to her husband when he became sickly until he died on 01 January 2010. The Court takes note of the effects of a complaint for sexual advances — against a brother-in-law, no less — on complainant's reputation as an educator and widow who would not take such shocking assertions so casually or lightly.

Respondent Imatong's defense that his *beso-beso* or air kisses were ordinary greetings is unconvincing. If indeed his actions were harmless displays of affection toward a family member, then complainant would not have taken too much offense at them and would have simply brushed them aside. That she

[6] *Regir v. Regir*, A.M. No. P-06-2282, 07 August 2009, 595 SCRA 455.

would take pains to brave the humiliation of exposing his "advances" gives this Court reason to pause and consider that what happened contravened the normal behavior between the two of them.

Moreover, there are apparent inconsistencies in the account of the incident given by respondent. First, he did not greet or kiss complainant when they met the night before, on 28 January 2010, and he asked permission to sleep in her house. If air kissing had been an ordinary practice between the two of them even when her husband was alive, then it seems strange that respondent did not resort to his "usual" greeting when the latter proceeded to the house of complainant after the wedding he had attended. Second, respondent offered no reason why he would fix the broken window glass inside her bedroom so early in the morning. It was never established that he had any experience or skill in mending window glass, so as to convince her to ask for his assistance. In any case, she had other household help who could have done the task just as well.

In recommending the dismissal of the administrative Complaint, the OCA relied on the city prosecutor's Resolution, which dismissed the criminal Complaint for attempted rape for lack of merit. However, as pointed out by complainant, the Prosecutor's Office subsequently reconsidered its earlier Resolution and instead found probable cause for acts of lasciviousness.

The dismissal of the criminal Complaint in this case for the crime of attempted rape did not necessarily foreclose the continuation of the administrative action or carry with it relief from administrative liability.[7] Yet, as the Prosecutor's Office has reconsidered its earlier findings with respect to acts of lasciviousness, the Court cannot help but be convinced that there was a breach in ethical standards committed by respondent when he kissed complainant. To be sure, this Court makes no finding whatsoever with respect to his criminal liability for acts of lasciviousness, which is properly lodged in the trial court

---

[7] *Apolinario v. Flores*, G.R. No. 152780, 22 January 2007, 512 SCRA 113.

proceedings. The Court's pronouncements in this administrative case are simply limited to evaluating the conduct of respondent as a court personnel.

Simple misconduct has been defined as an unacceptable behavior that transgresses the established rules of conduct for public officers.[8] Respondent's actions transgressed the norms of civility expected of judicial officers, even in their private lives, and constitute simple misconduct that must be squarely penalized. Although *beso-beso* or air kissing may be considered a standard greeting between family members, what respondent did was he not merely greeted his sister-in-law, but encroached into the territory of unwarranted advances that offended acceptable standards of decency. Regardless of whether it reached the level of criminal malice or lewdness, his conduct was unbecoming a court personnel, upon whom is placed the heavy burden of moral uprightness. The Court held thus:

> This Court has consistently underscored the heavy burden and responsibility that court personnel are saddled with in view of their exalted positions as keepers of the public faith. No position demands greater moral uprightness from its occupant than a judicial office. Indeed, the responsibilities of a public officer as enshrined in the Constitution are not mere rhetoric to be taken as idealistic sentiments. These are working standards and attainable goals that should be matched with actual deeds.[9]

IN VIEW OF THE FOREGOING, complainant Beatriz B. Oñate's Motion for Reconsideration dated 22 August 2011 is *GRANTED*. The Court's earlier Resolution dated 15 June 2011 is hereby *SET ASIDE*.

Respondent Severino G. Imatong is found guilty of *SIMPLE MISCONDUCT* and *FINED* ₱10,000, with a *WARNING* that the repetition of the same or a similar offense shall be dealt with more severely.

---

[8] *Tabora v. Carbonell*, A. M. No. RTJ-08-2145, 18 June 2010, 621 SCRA 196, citing *Spouses Bautista v. Sula*, 530 SCRA 406 (2007).

[9] *Retired Employee v. Manubag*, A. M. No. P-10-2833, 14 December 2010, 638 SCRA 86.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Reyes, JJ.,* concur.

THIRD DIVISION

[A.M. No. RTJ-11-2283. November 16, 2011]
(Formerly OCA I.P.I. No. 10-3478-RTJ)

ATTY. LETICIA E. ALA, *complainant, vs.* **JUDGE SOLIVER C. PERAS, Presiding Judge, Regional Trial Court, Branch 10, Cebu City; JUDGE SIMEON P. DUMDUM, JR., Presiding Judge, Regional Trial Court, Branch 7, Cebu City; JUDGE GENEROSA C. LABRA, Presiding Judge, Regional Trial Court, Branch 23, Cebu City; JEOFFREY S. JOAQUINO, Clerk of Court VII, Regional Trial Court, Office of the Clerk of Court, Cebu City; EL CID R. CABALLES, Sheriff IV, Regional Trial Court, Office of the Clerk of Court, Cebu City, and FORTUNATO T. VIOVICENTE, JR., Sheriff IV, Regional Trial Court, Branch 10, Cebu City,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; JUDICIAL REMEDIES AGAINST ERRORS OR IRREGULARITIES COMMITTED BY THE REGIONAL TRIAL COURT IN THE EXERCISE OF ITS JURISDICTION. —** The law provides for ample judicial remedies against errors or irregularities committed by the RTC in the exercise of its jurisdiction. The ordinary remedies against errors or irregularities which may be regarded as normal in

nature include a motion for reconsideration, a motion for new trial, and an appeal. The extraordinary remedies against errors or irregularities which may be deemed extraordinary in character are the special civil actions of *certiorari*, prohibition or *mandamus*, or a motion for inhibition, or a petition for change of venue, as the case may be.

2. **ID.; ID.; ID.; ID.; AVAILABILITY OF THE JUDICIAL REMEDIES PRECLUDES RESORT TO CRIMINAL, CIVIL OR ADMINISTRATIVE PROCEEDINGS AGAINST A JUDGE; DISCIPLINARY PROCEEDINGS AND CRIMINAL ACTIONS AGAINST A JUDGE ARE NOT ALTERNATIVE OR CUMULATIVE, COMPLEMENTARY OR SUPPLETORY TO, NOR A SUBSTITUTE FOR, JUDICIAL REMEDIES. —** The availability of these judicial remedies precludes resort to criminal, civil or administrative proceedings against a judge. It is an established doctrine that disciplinary proceedings and criminal actions against a judge are not alternative or cumulative, complementary or suppletory to, nor a substitute for, judicial remedies. Exhaustion of judicial remedies and the entry of judgment in the corresponding action or proceedings, are pre-requisites for the taking of civil, administrative, or criminal cases against the judge concerned. x x x [T]he charges being judicial in nature, the remedy of the complainant should have been with the proper court for the appropriate judicial action and not with the OCA by means of an administrative complaint. In addition to the requirements of exhaustion of judicial remedies, and a final declaration by a competent court in an appropriate proceeding of the manifestly unjust character of the challenged judgment or order, there must also be evidence of malice or bad faith, ignorance or inexcusable negligence, on the part of the judge in rendering said judgment or order. Judges are generally not liable for acts done within the scope of their jurisdiction and in good faith. Complainant failed to prove that the respondent Judges acted with malice, bad faith, ignorance, or inexcusable negligence in rendering their questioned orders.

3. **JUDICIAL ETHICS; JUDGES; MUST BE FREE TO JUDGE, WITHOUT PRESSURE OR INFLUENCE FROM EXTERNAL FORCES OR FACTORS. —** Judges must be free to judge, without pressure or influence from external forces or factors; they should not be subject to intimidation, the fear

of civil, criminal or administrative sanctions for acts they may do in the performance of their duties and functions. For complainant's failure to exhaust judicial remedies, to prove malice and bad faith, and to substantiate her other allegations by substantial evidence, the administrative complaint against respondent Judges should be dismissed.

4. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; REPUBLIC ACT NO. 6713 (CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES); SECTION 5 (a) THEREOF, VIOLATED IN CASE AT BAR. —** On his failure to officially respond to complainant's various formal inquiries regarding the injunction bond, respondent Clerk of Court Joaquino's claim to have orally answered the complainant's formal queries when she visited the Office of the Clerk of Court *(OCC)* cannot exonerate him, as a verbal reply to a formal and written inquiry is not sufficient. Republic Act *(R.A.)* No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, enunciates the State's policy of promoting a high standard of ethics and utmost responsibility in the public service. Section 5 (a) thereof provides that all public officials and employees shall, within 15 working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public. The reply must contain the action taken on the request. In fact, Administrative Circular No. 8-99 was issued to remind all employees in the Judiciary to strictly observe Section 5 (a).

5. **ID.; ID.; IN ADMINISTRATIVE PROCEEDINGS, COMPLAINANT HAS THE BURDEN OF PROVING BY SUBSTANTIAL EVIDENCE THE ALLEGATIONS IN HIS/HER COMPLAINT. —** In administrative proceedings, complainant has the burden of proving by substantial evidence the allegations in their complaint. In the present case, complainant failed to substantiate her allegations as she failed to prove that the certificates of sale were falsified. On the contrary, it has been sufficiently shown in respondent Judge Dumdum's Comment that he was already the Executive Judge at the time he approved the certificate of sale. Furthermore, respondent Clerk of Court Joaquino presented official receipts to prove payment of the clerk's commissions.

6. **ID.; ID.; ID.; CLERKS OF COURT; MANUAL FOR CLERKS OF COURT; DUTY TO PLAN, DIRECT, SUPERVISE, AND COORDINATE SHERIFF'S ACTIVITIES IN THE OFFICE OF THE CLERK OF COURT; VIOLATED IN CASE AT BAR. —** Anent the charge of condoning the inefficiencies of respondent Sheriff Caballes, respondent Clerk of Court Joaquino admitted that he could not monitor all 28 sheriffs of the RTC of Cebu City, thus, he relied on reports from the parties or their counsels regarding each sheriff's performance. This cannot excuse him from the duty of supervising his personnel at the OCC. As Clerk of Court, it is his duty to plan, direct, supervise, and coordinate sheriffs' activities of all division/sections/units in the OCC.

7. **ID.; ID.; ID.; ID.; PENALTY OF REPRIMAND FOR BEING REMISS IN THE PERFORMANCE OF ONE'S DUTIES, PROPER IN CASE AT BAR. —** From the foregoing, it is clear that respondent Clerk of Court Joaquino was remiss in the performance of his duties. The Court, thus, finds the penalty of reprimand to be appropriate under the circumstances. Respondent Clerk of Court Joaquino, however, should be sternly warned that a repetition of the same or similar foregoing acts shall be dealt with more severely.

8. **ID.; ID.; ID.; COURT PERSONNEL; SHERIFFS; SIMPLE NEGLECT OF DUTY; FAILURE TO FURNISH COMPLAINANT A COPY OF THE SHERIFF'S REPORT, A CASE OF; PENALTY.—** It is a settled rule that in administrative proceedings, the complainant has the burden of proving the allegations in his complaint with substantial evidence, and in the absence of evidence to the contrary, the presumption is that respondent has regularly performed his duties. In this case, respondent Sheriff Caballes showed that he acted promptly in the implementation of the writ. Nevertheless, he failed in his duty to furnish the complainant a copy of the Sheriff's Report in accordance with Section 14 of Rule 39 of the Rules of Court. In accordance with Rule IV, Section 52(B)(1) of the Uniform Rules on Administrative Cases in the Civil Service, he should be held liable for Simple Neglect of Duty. Considering, however, that it is his first administrative offense and that such was unintentional, respondent Sheriff Caballes should be admonished and sternly warned that the same or similar act of negligence shall be dealt with more severely.

9. ID.; ID.; ID.; ID.; NORM OF CONDUCT REQUIRED. — [T]he conduct and behavior of every one connected with an office charged with the dispensation of justice, from the presiding judge to the lowest clerk, are circumscribed with the heavy burden of responsibility. Their conduct, at all times, must not only be characterized by propriety and decorum, but above all, be beyond suspicion.

10. ID.; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; POWERS; POWER TO ORDER A CHANGE OF VENUE IN ORDER TO AVOID MISCARRIAGE OF JUSTICE; REQUEST FOR TRANSFER OF VENUE, DENIED FOR LACK OF MERIT. — Section 5 (4), Article VIII of the 1987 Constitution provides that this Court has the power to order a change of venue or place of trial to avoid a miscarriage of justice. Consequently, where there are serious and weighty reasons present, which would prevent the court of original jurisdiction from conducting a fair and impartial trial, this Court has been mandated to order a change of venue so as to prevent a miscarriage of justice. Considering that the administrative charges against the respondents, on which her request for transfer of venue is based, have been discussed and disposed of above, and further considering that the real property involved in the case, covered by TCT No. 110723, is situated in Cebu City, the Court finds no serious and weighty reasons to prevent the RTC of Cebu City from conducting a fair and impartial trial. Accordingly, the prayer to transfer venue must be denied.

D E C I S I O N

MENDOZA, *J.*:

Before this Court is the Verified Complaint[1] with an Urgent Prayer for Transfer of Venue dated July 27, 2010 filed by Atty. Leticia E. Ala *(complainant)* charging all respondents with various violations relative to Civil Case No. CEB 32893, entitled *VTL Realty Corporation v. Atty. Leticia E. Ala* and docketed with the Regional Trial Court *(RTC)* of Cebu City.

---

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

The Facts

In May 2000, complainant was the counsel of Adelaida Alba-Chua *(Mrs. Chua)* in Civil Case No. Q-00-40681, entitled *Adelaida Alba-Chua v. Benson Go Chua*, for declaration of nullity of marriage at the RTC, Branch 107, Quezon City *(QC)*, presided by then Judge Rosalina L. Luna-Pison *(Judge Pison)*. In 2002, complainant was replaced as counsel but recognized as Intervenor in the said case.

On August 12, 2003, Judge Pison issued a Partial Judgment[2] based on a compromise agreement regarding the property matters of the spouses. It was agreed that Benson Go Chua *(Chua)* would assume the payment of complainant's professional fee as Mrs. Chua's counsel, as follows:

> 6. The attorney's fees of Atty. Ala although computed on the basis of her 10-percent claim against the 30% share of petitioner shall be paid, assumed and collected from the share exclusively belonging to Mr. Benson Chua, but the manner of payment of which shall be subject to further discussion between Atty. Ala and respondent, Benson Chua.[3]

Complainant filed her Motion for Execution of the Partial Judgment, which was granted by the Court in its Resolution[4] dated March 29, 2004, which ordered the issuance of a writ of execution in favor of complainant for the amount of ₱3,015,203.67. In the same resolution, the court cashier was also ordered to deliver to complainant the amount of ₱164,000.00, which had been earlier deposited by Chua. Accordingly, the Writ of Execution was issued and was partially implemented with the delivery of the amount of ₱164,000.00 to complainant as partial payment of her professional fee.

Meanwhile, upon motion by Chua, Judge Pison inhibited herself from the case. In June 2004, the case was re-raffled to RTC,

---

[2] *Id.* at 36-39.

[3] *Id.* at 38.

[4] *Id.* at 40-44.

Branch 94, QC, presided by Judge Romeo F. Zamora *(Judge Zamora)*. In his Resolution[5] dated July 11, 2005, Judge Zamora reiterated the finality of the Partial Judgment and the Resolution granting the Motion for Execution issued by Judge Pison, and directed the issuance of another Writ of Execution for the balance of ₱2,851,203.67 in favor of complainant. Accordingly, an *alias* Writ of Execution[6] was issued on July 14, 2005.

On September 7, 2005, Sheriff Fernando Regino of the RTC, Branch 94, QC made a levy on three motor vehicles owned by Chua in Cebu City. The three vehicles were later left with the CIDG, Cebu City, for safekeeping and were eventually released to the effective possession of Chua.

Earlier, on July 18, 2005, the *alias* Writ of Execution was implemented by the Office of the *Ex-Officio* Sheriff of the RTC of Cebu City. The implementing sheriff, respondent El Cid Caballes *(respondent Sheriff Caballes),* however, failed in his first attempt to make a levy. Subsequent attempts at implementation of the writ also produced negative results. Later, upon a tip that Chua was attempting to sell the conjugal home of the spouses in Cebu City, respondent Sheriff Caballes was able to levy an execution on the conjugal home covered by Transfer Certificate of Title *(TCT)* No. 110723, registered in the name of Chua. The levy was annotated on the title. The property was then scheduled to be sold by public auction on November 9, 2006.

On November 3, 2006, before the scheduled public auction of the conjugal home, an independent action was instituted, docketed as Civil Case No. CEB-32893, entitled *VTL Realty Corporation v. Atty. Leticia E. Ala, et al.* for Injunction and Damages with an Application for Temporary Restraining Order *(TRO)*. The case was filed to enjoin the public auction set on November 9, 2006 on the ground that the conjugal home was no longer owned by Chua but by VTL Realty Corporation *(VTL)*, as it had been the subject of a foreclosed mortgage sold by Metrobank to VTL on November 26, 2002. The case was first

---

[5] *Id.* at 46-52.

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

raffled to RTC, Branch 7, Cebu City, presided over by respondent Judge Simeon P. Dumdum, Jr. *(respondent Judge Dumdum).* On November 3, 2006, respondent Judge Dumdum issued a 72-hour TRO enjoining the execution sale by public auction.

On November 9, 2006, after the lapse of the 72-hour TRO and pursuant to the Writ of Execution issued in the nullity case, the subject property was sold and awarded to complainant as the highest bidder. On November 17, 2006, the sale was registered with the Register of Deeds in Cebu City.

In the meantime, Civil Case No. CEB-32893 was re-raffled to RTC, Branch 23, Cebu City, presided by respondent Judge Generosa G. Labra *(respondent Judge Labra).* Complainant filed her Motion to Dismiss dated November 13, 2006 on the grounds that the Certificate of Sale of the foreclosure was falsified and that the alleged foreclosure was only registered with the Register of Deeds after the levy of execution in favor of complainant. VTL filed its Amended Complaint dated November 18, 2006 for Declaration of Nullity of the Execution Sale. In response, complainant filed her Motion to Dismiss the Amended Complaint for forum-shopping, interference in the processes of a co-equal court, and for lack of cause of action. Respondent Judge Labra denied the complainant's motion in the Order[7] dated April 12, 2007.

In May 2007, respondent Judge Labra inhibited herself upon motion by complainant. The case was re-raffled to the RTC, Branch 10, Cebu City, presided by respondent Judge Soliver C. Peras *(respondent Judge Peras).* In his Order dated November 16, 2007, respondent Judge Peras directed the issuance of a writ of preliminary injunction to enjoin the issuance of a new TCT in favor of complainant. It was later issued on December 3, 2007. Complainant filed motions and manifestations questioning whether the injunction bond was paid, which remained pending before the said court.

The marriage nullity case, in the meantime, had been re-raffled from one sala to another since then. After Judge Zamora

[7] *Id.* at 123.

inhibited himself from the case, Judge Ma. Elisa Sempio-Dy of RTC, Branch 225, QC, took over until she was made to recuse herself upon motion by Chua. Thereafter, the case was re-raffled to RTC, Branch 89, QC presided over by Judge Elsa A. De Guzman, and eventually to RTC, Branch 102, QC, whose presiding judge, Judge Lourdes A. Giron *(Judge Giron)*, directed the consolidation of ownership of the property under TCT No. 110723 in favor of complainant.

In an Order[8] also dated December 3, 2007, the same day the Writ of Preliminary Injunction was issued by respondent Judge Peras, as more than one year had elapsed from the execution sale without redemption, Judge Giron directed the issuance of the Sheriff's Final Certificate of Sale and a Writ of Possession in favor of complainant, and directed the Register of Deeds to cancel TCT No. 110723 and issue a new title in complainant's name. Accordingly, the Sheriff's Final Certificate of Sale[9] and the Writ of Possession[10] were issued on December 7 and 10, 2007, respectively.

On December 11, 2007, Chua was served the Notice to Vacate.[11] On December 27, 2007, Chua was removed from the subject property and a turnover of possession was effected.[12]

As a result, Chua filed a petition for *certiorari* with the Court of Appeals *(CA)* docketed as CA G.R. SP No. 98597, questioning the execution sale conducted on November 9, 2006. The CA dismissed the petition, which impelled Chua to file a petition for review with this Court docketed as G.R. No. 183791. The Court, in its October 6, 2008 Resolution, denied the petition, which became final and executory with an Entry of Judgment[13] dated April 17, 2009.

---

[8] *Id.* at 82-86.

[9] *Id.* at 87-88.

[10] *Id.* at 82-86.

[11] *Id.* at 91.

[12] *Id.* at 92.

[13] *Id.* at 203-204.

On the basis of the said resolution, complainant filed another Motion to Dismiss in the injunction case, which was denied by respondent Judge Peras in his Order[14] dated July 7, 2010.

In view of the above factual background, complainant filed the present complaint against the respondents on the following grounds:

1. **Respondent Judge Peras**, Presiding Judge of RTC, Branch 10, Cebu City for:

a. Insubordination in flagrantly disobeying the "hierarchy of courts" doctrine and trivializing this Court's judicial review powers in failing to recognize its ruling in G.R. No. 183791 affirming the execution sale in favor of complainant;

b. Gross Ignorance of the Law in exercising jurisdiction over a case for declaration of nullity of execution sale conducted under the direction of the RTC of Quezon City, which is a court of concurrent jurisdiction;

c. Grave Abuse of Discretion and Gross Ignorance of the Law in enjoining the RTC QC Order which directed the Register of Deeds of Cebu City to cancel TCT No. 110723 and to issue a new title in the name of complainant;

d. Dereliction of Duty in not resolving pending incidents within the regulatory period, and in not resolving the many inquiries of complainant in relation to the non-payment of the injunction bond;

e. Bias and Partiality in insulating respondent Clerk of Court Atty. Jeoffrey S. Joaquino (*respondent Clerk of Court Joaquino)*, respondent Sheriff Fortunato S. Viovicente *(respondent Sheriff Viovicente),* and VTL, from inquiries made by complainant as to lack of service of the Writ of Preliminary Injunction, and the non-payment of the injunction bond and the clerk's commissions in relation to the trumped-up foreclosure sale;

f. Refusing to dissolve the Writ of Preliminary Injunction despite non-payment of injunction bond, breach of

[14] *Id.* at 192-202.

injunctive relief by surreptitiously filing for consolidation of title by VTL, and in recognizing a patently trumped-up foreclosure sale based on three falsified certificates of sale where the clerk's commissions were not paid; and

g. Pre-judging the outcome of the injunction case in the Order dated July 7, 2010, which stated:

> Although the Court commiserate[s] with defendant Ala's predicament, it cannot likewise totally disregard plaintiff's rights as a purchaser of a property in the extra-judicial foreclosure sale.[15]

2. **Respondent Judge Dumdum**, Presiding Judge of RTC, Branch 7, Cebu City for:

a. Gross Ignorance of the Law in exercising jurisdiction over the case for injunction, and issuing a TRO dated November 6, 2006 enjoining the execution sale directed by the RTC of Quezon City, which is a court of concurrent jurisdiction;

b. Bias and Partiality in allowing the use of his official stamp pad by Chua and Peter Po on a falsified certificate of sale dated November 26, 2002 to give it a semblance of regularity; and

c. Dishonesty in approving another version of a falsified certificate of sale dated January 3, 2003 under the rubric "Executive Judge" while he was not yet the executive judge of the RTC of Cebu City.

3. **Respondent Judge Labra**, Presiding Judge of RTC, Branch 23, Cebu City for:

a. Gross Ignorance of the Law in exercising jurisdiction in the injunction case that was later amended to a case for declaration of nullity of execution sale which was directed by the RTC of Quezon City, which is a court of concurrent jurisdiction;

b. Gross Ignorance of the Law and rules on amendment of complaints, formal offer of evidence and crafting of

---

[15] *Id.* at 201.

orders, and in failing to rule on the admissibility of complainant's formal offer of evidence on the motion to dismiss; and

c. Bias and Partiality in flagrantly glossing over the falsified certificates of sale and falsified annotations on TCT No. 110723 that were brought to her attention, and for copying the arguments and authorities of adverse counsel to deny complainant's motion to dismiss.

4. Joeffrey S. Joaquino ***(Respondent Clerk of Court Joaquino)***, Executive Clerk of Court and *Ex-Officio* Sheriff of the RTC of Cebu City for:

a. Gross Incompetence, Dereliction of Duty, and Dishonesty in recommending the approval of an injunction bond, issuing a Writ of Preliminary Injunction without the payment of the injunction bond, and ignoring all formal inquiries in relation thereto;

b. Usurpation of the duties of the regular Branch Clerk of Court of RTC, Branch 10 of Cebu City in the processing and issuance of the Writ of Preliminary Injunction;

c. Gross Dishonesty in recommending for approval a falsified certificate of sale dated January 6, 2003 to "Executive Judge Dumdum" who was not yet an executive judge at the time, without the payment of the clerk's commissions under the rules, and refusing to answer all inquiries thereto; and

d. Condoning the inefficiencies of a subordinate sheriff, respondent Sheriff Caballes, in the implementation of the writ of execution endorsed to his office sometime in July 2005 by the RTC, Branch 94 of Quezon City.

5. **Respondent Sheriff Caballes**, Sheriff IV, Office of the *Ex-Officio* Sheriff of the RTC of Cebu City for:

a. Dereliction of Duty in not making a levy on July 18, 2005 during the implementation of the Writ dated July 14, 2005 issued by the RTC, Branch 94 of Quezon City; and

b. Gross Dishonesty in surreptitiously submitting the Sheriff's Progress Report dated October 23, 2006, before the RTC of Quezon City, which was intended to stop the

execution sale, knowing that he was no longer the implementing sheriff, and without furnishing a copy thereof to the complainant.

6. Fortunato T. Viovicente, Jr. ***(Respondent Sheriff Viovicente)***, Sheriff IV, Branch Sheriff of the RTC, Branch 10, Cebu City for:

a. Dereliction of Duty in not furnishing complainant a copy of the Writ of Preliminary Injunction; and

b. Gross Dishonesty in making a Return to the RTC, Branch 10 of Cebu City to the effect that complainant was furnished a copy of the writ of preliminary injunction on December 4, 2007, knowing such to be false since it was mailed to complainant only on December 28, 2007.

Lastly, complainant asserts that she has been going through much physical, emotional and financial stress from being forced to litigate in Cebu City since the filing of the injunction case in November 2006. She, thus, requests for the transfer of venue to prevent further miscarriage of justice.

In his Comment[16] dated September 21, 2010, **respondent Judge Dumdum** denied the charges against him. On the charge of Gross Ignorance of the Law, he explained that he issued the assailed 72-hour TRO because he saw the pressing need for its issuance. Under the Rules of Court, he averred that third party claimants to levied property have the right to vindicate their claims in a separate action. His issuance of the TRO is an exception to the rule that a court has no power to restrain by means of injunction the execution of a judgment of another court of concurrent jurisdiction because VTL is a third party claimant to the subject property.

On the charge of Bias and Partiality by allowing the use of his official stamp pad, respondent Judge Dumdum averred that he never gave Chua or Peter Po the authority to use his official stamp pad. He explained that his official stamp pad was kept by a clerk in an open box on her table which was accessible to

---

[16] *Id.* at 221-230.

court employees, and that he gave specific instructions to the clerk to keep it under lock and key. He also pointed out that although the questioned certificate of sale contains his stamp, such does not show his or the clerk of court's signatures.

Anent the charge of Dishonesty for approving a falsified certificate of sale dated January 6, 2003 before he was appointed Executive Judge on March 12, 2004, respondent Judge Dumdum maintained that he approved it when he was already the Executive Judge. He explained that he only signed it because it contained the signature of respondent Clerk of Court Joaquino who had the duty of ensuring that it had complied with all the legal requirements. He further stated that the date of the certificate was not necessarily the same as the date of its approval, as there were times when an appreciable period might have gone by between its preparation and approval. Moreover, he asserted that it was highly improbable and irrational for him to have an Executive Judge stamp prepared for himself prior to his appointment as such and during the incumbency of another Executive Judge, for the sole purpose of approving a certificate of sale.

In his Supplemental Comment[17] dated October 20, 2010, respondent Judge Dumdum appended certified true copies of Official Receipt Nos. 5104637A and 5109389A dated November 16, 2006, issued to VTL, to support his claim that he signed the certificate of sale not on January 6, 2003, but at about November 16, 2006, when he was already Executive Judge.

In his Comment[18] dated September 23, 2010, **respondent Sheriff Caballes** denied the charge of Dereliction of Duty. He averred that he could not be considered negligent of his duties because he immediately acted on the *alias* writ of execution issued on July 14, 2005. He explained that he received the RTC Order on July 18, 2005, on which date he prepared a Notice of Demand to Satisfy the Writ of Execution and proceeded to Chua's place of business where he served the notice to Chua's

[17] *Id.* at 362-366.

[18] *Id.* at 243-245.

staff as he was not around. On July 19, 2005, he proceeded to Chua's residence and served the notice to a househelper as Chua was again not around. On July 20, 2005, he conducted a property check and proceeded to the Register of Deeds of Cebu City where he was able to procure a photocopy of TCT No. 110723. On July 21, 2005, a notice of levy was filed and annotated in the Register of Deeds. He, however, did not proceed with the auction sale because of the existence of prior liens. On October 23, 2006, he submitted a Progress Report to the court of origin.

As to the charge of Gross Dishonesty in failing to furnish complainant with a copy of the Progress Report, respondent Sheriff Caballes explained that it was a mere unintentional oversight.

In his Comment[19] dated September 15, 2010, **respondent Sheriff Viovicente** denied the charges of Dereliction of Duty and Dishonesty in preparing the Sheriff's Returns. He explained that complainant was furnished a copy of the Writ of Preliminary Injunction together with copies of the plaintiff's application and bond through registered mail on December 28, 2007, which was received on January 4, 2008. Copies of the registry return receipt and rubber stamp imprint on the Writ of Preliminary Injunction were appended to support his claims.

Regarding the discrepancy in the dates of the mailing of the Sheriff's Return, respondent Sheriff Viovicente explained that he prepared the mailing envelope containing a copy of the Writ of Preliminary Injunction, evaluation of application for surety bond and injunction bond addressed to the complainant, and left it on the table of the clerk-in-charge for mailing on December 4, 2007. When he prepared the Sheriff's Return, he believed that the envelope would be mailed on the same day but the clerk-in-charge only mailed the envelope on December 28, 2007.

---

[19] *Id.* at 327-328.

In his Comment[20] dated September 23, 2010, **respondent Clerk of Court Joaquino** denied the charges against him. He averred that as far as he could remember, he saw to it that all the requirements had been complied with before indorsing the injunction bond. In his Manifestation[21] dated October 27, 2010, he appended copies of the official receipts as evidence of payments made by VTL for the clerk's commissions.

With regard to the allegation that he ignored all formal inquiries made by complainant, respondent Clerk of Court Joaquino claimed that complainant went to his office to inquire about the injunction case, and he answered all her queries and pointed out to her that some of the answers to her questions could be found in the case record. He thought that he had given sufficient explanation and that a formal answer to complainant's letters was no longer necessary.

As regards the charge of Usurpation of the Duties of the Branch Clerk of the RTC, Branch 10, Cebu City, respondent Clerk of Court Joaquino stated that whenever the Office of the Clerk of Court would receive an order directing the issuance of a writ, he would issue the writ then forward it to the Branch Sheriff of the issuing court. He added that it was the practice in their Office that all writs were issued and signed by him, except for one or two branches.

Anent his condonation of the inefficiencies of respondent Sheriff Caballes, respondent Clerk of Court Joaquino pointed out that complainant never raised the matter with him. He added that because of his workload and the fact that the RTC of Cebu City had 28 sheriffs, he could not monitor all their activities. Consequently, he relied on reports of the parties and their counsels regarding the implementation of the writs assigned to him.

In his Comment[22] dated October 30, 2010, **respondent Judge Peras** denied the charges against him. As to the complaint

---

[20] *Id.* at 370-372.

[21] *Id.* at 500.

[22] *Id.* at 443-463.

that he interfered with the judgment of a co-equal court in ordering the issuance of the Writ of Preliminary Injunction on November 16, 2007, he averred that it was done in good faith and in accordance to his assessment of the evidence presented. He cited jurisprudence in arguing that the issuance of a preliminary injunction against an execution of judgment could not be considered an interference of a co-equal court when third parties were involved, and that third party claimants may vindicate their claim by an independent action, which may stop the execution of a judgment on property not belonging to the judgment debtor. Further jurisprudence was cited to explain that a money judgment was enforceable only against property unquestionably belonging to the judgment debtor. He contended that complainant was aware that the subject property did not belong to Chua because such was acknowledged to have been foreclosed in the Partial Judgment, to wit:

> The conjugal home of the parties in Sto. Nino Village has been previously foreclosed by Metrobank, Cebu. Should the respondent decide to redeem the property, the petitioner and the children hereby forever waive their claims on the said property.[23]

Respondent Judge Peras also denied the charge that he deliberately stalled the proceedings of the injunction case with respect to the issuance of a *subpoena duces tecum* against respondent Clerk of Court Joaquino regarding the alleged non-payment of the injunction bond. He averred that when the injunction case was raffled to him, he promptly acted on all pending incidents, conducted hearings, received evidence, and required the submission of pleadings on VTL's application for the issuance of the Writ of Preliminary Injunction. He explained that the proceedings in the injunction case were held in abeyance pending the resolution of complainant's Motion for Summary Judgment, which was filed on July 29, 2008 and eventually denied on March 26, 2009. Complainant's motion for the issuance of a *subpoena duces tecum* against respondent Clerk of Court Joaquino was promptly acted upon and set for hearing on May 22, 2009.

---

[23] *Id.* at 37.

On May 18, 2009, complainant manifested that she had prayed to the Supreme Court for a transfer of venue of the case as she did not want respondent Judge Peras to conduct the trial. Complainant insisted that he should not continue with the proceedings until such time that the issue of transfer of venue is resolved. Respondent Judge Peras averred that notwithstanding complainant's preference to wait for the resolution of her request, he directed the parties to appear before the Mediation Office to explore the possibility of amicable settlement. He was of the opinion that it was complainant's actions which slowed the proceedings of the injunction case.

In her Comment[24] dated November 3, 2010, **respondent Judge Labra** denied the charges against her and adopted the Comment submitted by respondent Judge Peras in response to the charge of interference with the judgment of a court of concurrent jurisdiction. She explained that she admitted the amended complaint of VTL without leave of court since such was a matter of right as no responsive pleading had yet been filed. Anent the allegation that she did not act on complainant's formal offer of documentary evidence, she pointed out that complainant had previously orally offered the same and all the exhibits had been admitted.

Complainant filed her Reply[25] dated November 2, 2010, to the Comments of respondents Judge Peras, Judge Dumdum, Clerk of Court Joaquino, Sheriff Caballes, and Sheriff Viovicente.

As regards respondent Judge Peras' Comment, complainant reiterated the impropriety of the interference with the processes of the RTC, Quezon City. Complainant insisted that the application for the issuance of the Writ of Preliminary Injunction should not have been granted because in G.R. No. 1837981, this Court denied the Petition for Review questioning the CA Decision which affirmed the execution sale of the subject property in her favor. She also pointed out that respondent Judge Peras did not comment on the charge of bias and partiality in insulating

---

[24] *Id.* at 423-428.

[25] *Id.* at 337-405.

respondent Clerk of Court Joaquino; his refusal to dissolve the writ; on pre-judging the outcome of the injunction case; and on his failure to resolve the matter of whether the injunction bond was paid or not.

Anent the Comment of respondent Judge Dumdum, complainant argued that had he thoroughly examined the documents presented, he would have seen that VTL should have filed the injunction case before the RTC of Quezon City and not Cebu City. Regarding allowing unauthorized persons to have access to his official stamp, the complainant countered that respondent Judge Dumdum should have kept it under lock and key. With respect to the claim of respondent Judge Dumdum that the date of the certificate of sale was not necessarily its date of approval, complainant stressed that the date of the amended certificate of sale that respondent Clerk of Court Joaquino wanted approved in 2007 was January 6, 2003. Complainant averred that the superimpositions on the document were plainly noticeable.

In his Rejoinder,[26] respondent Judge Dumdum explained that the certificate of sale was registered with the Register of Deeds in 2007, which was distinct from the date he approved it in November 2006.

With regard to the Comment of respondent Clerk of Court Joaquino, complainant asserted that he was lying because when she went to his office, he required her to put all her queries in writing. She did as instructed and never received a reply. Complainant disagreed with respondent Clerk of Court Joaquino's practice of issuing all the writs for most of the branches of the RTCs in Cebu City. Regarding his condonation of the inefficiencies of his subordinates, complainant claimed that during the implementation of writ on July 18, 2005, she had provided trucks, laborers, a *bodega*, escorts, and law enforcers, yet they all returned empty-handed.

With respect to the Comment of respondent Sheriff Caballes, complainant asserted that the representative she sent during

---

[26] *Id.* at 517-519.

the implementation of the writ on July 18, 2005 reported to her that respondent Sheriff Caballes did not levy on any of the properties in Chua's store but simply kept himself busy talking to Chua and his lawyers over the phone. Moreover, when she sent an adverse claim over TCT No. 110723 with the Register of Deeds of Cebu City, it was only then that she was informed that there was a levy of execution conducted on July 22, 2005 by respondent Sheriff Caballes. Complainant alleged that she was not informed of the levy and did not receive a copy of the Sheriff's Return, which was done intentionally to derail the execution sale of the subject property.

On the Comment submitted by respondent Sheriff Viovicente, complainant averred that when she inadvertently found out that the Writ of Preliminary Injunction had been issued and asked for a copy of the Sheriff's Return signed by respondent Sheriff Viovicente, she was informed that it had already been mailed to her on December 4, 2007.

In complainant's Supplemental Reply[27] to the belated Comment of respondent Judge Labra, she expressed her frustration over the mere adoption of the Comment of respondent Judge Peras. Complainant further averred that she had no idea why respondent Judge Labra exercised jurisdiction over the injunction case and insisted that her formal offer of evidence was never ruled upon. She reiterated her claim of impropriety of the interference in the judgment and processes of the RTC, QC by the RTC, Cebu City, and her allegations regarding the falsified certificate of sale. She also questioned the veracity of the copy of the official receipts submitted by respondent Clerk of Court Joaquino, and recommended the audit of the Office of the Clerk of Court of the RTC, Cebu City.

On March 17, 2001, the Office of the Court Administrator *(OCA)* recommended that the administrative complaints against respondent Judges Peras, Dumdum, and Labra be dismissed for being judicial in nature; that respondent Clerk of Court Joaquino be suspended for 30 days without pay for neglect of duty and

---

[27] *Id.* at 507-516.

for failure to promptly act on letters and requests, and sternly warned that a repetition of the same or similar act shall be dealt with more severely; the administrative complaints against respondent Sheriffs Caballes and Viovicente be dismissed but they be reminded to be more circumspect in the performance of their duties; and that the request for transfer of venue for Civil Case No. CEB-32893 be denied for lack of merit.

The Court's Ruling

The Court adopts the findings and recommendation of the OCA with modification.

Respondents Judge Peras, Judge Dumdum and Judge Labra

Complainant charges respondent Judges Peras, Dumdum, and Labra with Insubordination, Gross Ignorance of the Law, Grave Abuse of Discretion, and Bias and Partiality with respect to their acts of taking cognizance of the injunction case and issuing orders thereto in violation of the basic principle of law that once a court acquires jurisdiction, it maintains the same until the controversy is finally disposed of. The doctrine of judicial stability or non-interference in the regular orders of a co-equal court is cited as an insurmountable barrier to the competence of another co-equal court to entertain a motion or order relative to property which is in *custodia legis* of another court by virtue of a prior writ of attachment. It is painstakingly argued and reiterated by complainant that the orders issued in the injunction case filed in Cebu City interfered with the order for execution of the partial judgment in the nullity case filed in Quezon City, and as such, the injunction case should have been dismissed.

The Court disagrees.

In order to find merit in complainant's allegations, a review on the merits of the respondent Judges' orders would be imperative. This task, however, is not the proper subject of an administrative case but for a court of justice to determine in an appropriate case. The law provides for ample judicial remedies

against errors or irregularities committed by the RTC in the exercise of its jurisdiction. The ordinary remedies against errors or irregularities which may be regarded as normal in nature include a motion for reconsideration, a motion for new trial, and an appeal. The extraordinary remedies against errors or irregularities which may be deemed extraordinary in character are the special civil actions of *certiorari*, prohibition or *mandamus*, or a motion for inhibition, or a petition for change of venue, as the case may be.[28]

The availability of these judicial remedies precludes resort to criminal, civil or administrative proceedings against a judge. It is an established doctrine that disciplinary proceedings and criminal actions against a judge are not alternative or cumulative, complementary or suppletory to, nor a substitute for, judicial remedies. Exhaustion of judicial remedies and the entry of judgment in the corresponding action or proceedings, are pre-requisites for the taking of civil, administrative, or criminal cases against the judge concerned.[29]

A review of the records shows that complainant failed to timely raise her concerns in an appropriate judicial proceeding. Until and unless there is an authoritative pronouncement that the questioned orders of the respondent Judges were indeed tainted by anomaly, there would be no ground to prosecute the respondent Judges, either administratively or criminally, for rendering them. [30] Thus, an administrative complaint is not the appropriate remedy for every act of a judge deemed aberrant or irregular where a judicial remedy exists and is available, for if subsequent developments prove the judge's challenged act to be correct, there would be no occasion to proceed against him at all.[31] Thus, the charges being judicial in nature, the remedy of the complainant should have been with the proper court for

---

[28] *Flores v. Abesamis*, 341 Phil. 299, 312-313 (1997).

[29] *Id.* at 313.

[30] *Id.* at 314.

[31] *Santos v. Orlino*, 357 Phil. 102, 108 (1998).

the appropriate judicial action and not with the OCA by means of an administrative complaint.[32]

In addition to the requirements of exhaustion of judicial remedies, and a final declaration by a competent court in an appropriate proceeding of the manifestly unjust character of the challenged judgment or order, there must also be evidence of malice or bad faith, ignorance or inexcusable negligence, on the part of the judge in rendering said judgment or order.[33] Judges are generally not liable for acts done within the scope of their jurisdiction and in good faith. Complainant failed to prove that the respondent Judges acted with malice, bad faith, ignorance, or inexcusable negligence in rendering their questioned orders.

With respect to the other charges which are non-judicial in nature, they were satisfactorily rebutted by the respondent judges in their respective Comments. Complainant also failed to show that their actions or inaction pertaining to their judicial functions were tainted with fraud, dishonesty, corruption, and bad faith, as is required for a disciplinary action to prosper.[34]

Judges must be free to judge, without pressure or influence from external forces or factors; they should not be subject to intimidation, the fear of civil, criminal or administrative sanctions for acts they may do in the performance of their duties and functions.[35] For complainant's failure to exhaust judicial remedies, to prove malice and bad faith, and to substantiate her other allegations by substantial evidence, the administrative complaint against respondent Judges should be dismissed.

Respondent Clerk of Court Joaquino

Complainant questioned the act of respondent Clerk of Court Joaquino in recommending the approval of the injunction bond

---

[32] *Dionisio v. Escano*, 362 Phil. 46, 56-57 (1999).

[33] *Flores v. Abesamis*, *supra* note 28 at 313-314.

[34] *Mariano v. Garafin*, A.M. No. RTJ-06-2024, October 17, 2006, 504 SCRA 605, 614.

[35] *Flores v. Abesamis*, *supra* note 28 at 313-314.

and issuing the writ of preliminary injunction without payment of the injunction bond, and in ignoring all formal inquiries in relation thereto. In his defense, respondent Clerk of Court Joaquino averred that as far as he could remember, all the requirements of the injunction bond were complied with before he indorsed it. The Court finds respondent Clerk of Court Joaquino's mere denial to be insufficient. Considering that proof of payment of the injunction bond should have been presented to him prior to its approval, it should have been in his possession, and should have been presented to prove that the injunction bond was, in fact, paid.

On his failure to officially respond to complainant's various formal inquiries regarding the injunction bond, respondent Clerk of Court Joaquino's claim to have orally answered the complainant's formal queries when she visited the Office of the Clerk of Court *(OCC)* cannot exonerate him, as a verbal reply to a formal and written inquiry is not sufficient.[36] Republic Act *(R.A.)* No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, enunciates the State's policy of promoting a high standard of ethics and utmost responsibility in the public service. Section 5 (a) thereof provides that all public officials and employees shall, within 15 working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public. The reply must contain the action taken on the request.[37] In fact, Administrative Circular No. 8-99 was issued to remind all employees in the Judiciary to strictly observe Section 5 (a).

Complainant also assails respondent Clerk of Court Joaquino's act of recommending the approval of an allegedly falsified certificate of sale to respondent Judge Dumdum who was not yet the Executive Judge at the time and without the payment of the clerk's commissions as required. In administrative proceedings, complainant has the burden of proving by substantial evidence

---

[36] *Pamintuan v. Ente-Alcantara*, 488 Phil. 279, 286 (2004).

[37] *Id.* at 284-285.

the allegations in their complaint.[38] In the present case, complainant failed to substantiate her allegations as she failed to prove that the certificates of sale were falsified. On the contrary, it has been sufficiently shown in respondent Judge Dumdum's Comment that he was already the Executive Judge at the time he approved the certificate of sale. Furthermore, respondent Clerk of Court Joaquino presented official receipts[39] to prove payment of the clerk's commissions.

Anent the charge of condoning the inefficiencies of respondent Sheriff Caballes, respondent Clerk of Court Joaquino admitted that he could not monitor all 28 sheriffs of the RTC of Cebu City, thus, he relied on reports from the parties or their counsels regarding each sheriff's performance. This cannot excuse him from the duty of supervising his personnel at the OCC.[40] As Clerk of Court, it is his duty to plan, direct, supervise, and coordinate sheriffs' activities of all division/sections/units in the OCC.[41]

From the foregoing, it is clear that respondent Clerk of Court Joaquino was remiss in the performance of his duties. The Court, thus, finds the penalty of reprimand to be appropriate under the circumstances. Respondent Clerk of Court Joaquino, however, should be sternly warned that a repetition of the same or similar foregoing acts shall be dealt with more severely.

Respondent Sheriff Caballes

Complainant alleged that respondent Sheriff Caballes was remiss in his duty to implement the Writ of Execution dated July 14, 2005. In response, respondent Sheriff Caballes presented evidence to prove that upon receipt of that order he immediately

---

[38] *Manguerra v. Arriesgado*, A.M. No. RTC-04-1854, June 8, 2004, 431 SCRA 161, 163.

[39] *Rollo*, p. 500.

[40] 2002 MANUAL FOR CLERKS OF COURT, Chapter VII, D(1).

[41] *Anonymous Letter-Complaint Against Atty. Miguel Morales*, A.M. No. P-08-2519, November 19, 2008, 571 SCRA 361, 385, citing 2002 MANUAL FOR CLERKS OF COURT, Chapter VII, D(1).

prepared a Notice of Demand to Satisfy Writ of Execution and proceeded to Chua's place of business and residence. He, however, admitted that complainant was not furnished a copy of the Sheriff's Progress Report but his failure was not intentional.

It is a settled rule that in administrative proceedings, the complainant has the burden of proving the allegations in his complaint with substantial evidence, and in the absence of evidence to the contrary, the presumption is that respondent has regularly performed his duties.[42] In this case, respondent Sheriff Caballes showed that he acted promptly in the implementation of the writ. Nevertheless, he failed in his duty to furnish the complainant a copy of the Sheriff's Report in accordance with Section 14[43] of Rule 39 of the Rules of Court. In accordance with Rule IV, Section 52(B)(1)[44] of the Uniform Rules on Administrative Cases in the Civil Service,[45] he should be held liable for Simple Neglect of Duty. Considering, however, that it is his first administrative

---

[42] *Reyes v. Jamora*, A.M. No. P-06-2224, April 30, 2010, 619 SCRA 601, 607.

[43] Section 14. *Return of Writ of Execution*. — The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. **The return or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties**. (Emphasis supplied)

[44] Section 52. *Classification of Offenses*. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity of depravity and effects on the government service.

x x x x x x x x x

B. The following are *less grave offenses* with the corresponding penalties:

1. Simple Neglect of Duty

   1st Offense – Suspension 1 mo. 1 day to 6 mos.

   2nd Offense – Dismissal

[45] CSC Resolution No. 99-1936.

offense and that such was unintentional, respondent Sheriff Caballes should be admonished and sternly warned that the same or similar act of negligence shall be dealt with more severely.

Respondent Sheriff Viovicente

Complainant charged respondent Sheriff Viovicente with Dereliction of Duty for not furnishing her with a copy of the Writ of Preliminary Injunction and Gross Dishonesty in stating in the Sheriff's Return that she was furnished a copy of the writ of December 4, 2007 while the truth was that it was mailed only on December 28, 2007. Respondent Sheriff Viovicente faulted the clerk-in-charge for having failed to mail the prepared envelope on the same day he left it on the clerk's desk for mailing.

Instead of ensuring that the copy of the writ was indeed mailed, respondent Sheriff Viovicente simply assumed so. For this, he should be reminded to be more circumspect in the performance of his duties as the conduct and behavior of every one connected with an office charged with the dispensation of justice, from the presiding judge to the lowest clerk, are circumscribed with the heavy burden of responsibility. Their conduct, at all times, must not only be characterized by propriety and decorum, but above all, be beyond suspicion.[46]

Transfer of Venue

Complainant coupled her present administrative complaint with a prayer for transfer of venue of Civil Case No. CEB 32893, grounded on her charges against the respondents. She alleged that the collective actions of respondents have dove-tailed with one another, resulting in an extremely biased dispensation of justice to her prejudice. She contended that she has been forced to litigate in Cebu City since November 2006 and prays that the case be transferred to any RTC in Metro Manila.

---

[46] *Santuyo v. Benito*, A.M. No. P-05-1997, August 3, 2006, 497 SCRA 461, 468.

Section 5 (4),[47] Article VIII of the 1987 Constitution provides that this Court has the power to order a change of venue or place of trial to avoid a miscarriage of justice. Consequently, where there are serious and weighty reasons present which would prevent the court of original jurisdiction from conducting a fair and impartial trial, this Court has been mandated to order a change of venue so as to prevent a miscarriage of justice.[48]

Considering that the administrative charges against the respondents, on which her request for transfer of venue is based, have been discussed and disposed of above, and further considering that the real property involved in the case, covered by TCT No. 110723, is situated in Cebu City, the Court finds no serious and weighty reasons to prevent the RTC of Cebu City from conducting a fair and impartial trial. Accordingly, the prayer to transfer venue must be denied.

WHEREFORE,

1. The administrative complaint against **Judge Soliver C. Peras**, Presiding Judge, Regional Trial Court, Branch 10, Cebu City; **Judge Simeon P. Dumdum, Jr**., Presiding Judge, Regional Trial Court, Branch 7, Cebu City; and **Judge Generosa G. Labra**, Presiding Judge, Regional Trial Court, Branch 23, Cebu City, are *DISMISSED* for being judicial in nature and for lack of merit;

2. **Atty. Jeoffrey S. Joaquino**, Clerk of Court VII, Regional Trial Court, Office of the Clerk of Court, Cebu City, is *REPRIMANDED* and *STERNLY WARNED* that a repetition of the same or similar acts shall be dealt with more severely;

3. **El Cid R. Caballes**, Sheriff IV, Regional Trial Court, Office of the Clerk of Court, Cebu City, is *ADMONISHED*

---

[47] Section 5. The Supreme Court shall have the following powers:

x x x x x x x x x

(4) Order a change of venue or place of trial to avoid a miscarriage of justice.

[48] *Mondiguin v. Abad*, 160-A Phil. 672, 675 (1975).

and *STERNLY WARNED* that a repetition of the same or similar act of negligence shall be dealt with more severely;

4. The administrative complaint against **Fortunato T. Viovicente, Jr.**, Sheriff IV, Regional Trial Court, Branch 10, Cebu City, is *DISMISSED*, but he is *REMINDED* to be more circumspect in the performance of his duties; and

5. The request for transfer of venue of Civil Case No. CEB-32893 is *DENIED* for lack of merit.

SO ORDERED.

*Velasco, Jr. (Chairperson), Brion,** *Peralta,* and *Perez,*** *JJ.,* concur.

THIRD DIVISION

[G.R. No. 159564. November 16, 2011]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **SPOUSES LEON GUILALAS and EULALIA SELLERA GUILALAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; VENUE OF REAL ACTIONS; CASE AT BAR. — Section 1, Rule 14

---

* Designated as additional member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1150 dated November 11, 2011.

** Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152 dated November 11, 2011.

of the 1997 Rules of Civil Procedure provides that actions affecting title to or possession of real property or an interest therein (real actions) shall be commenced and tried in the proper court that has territorial jurisdiction over the area where the real property or any part thereof is situated. Considering that the lot in question was not within the territorial jurisdiction of RTC of Caloocan City, it was but proper for the RTC to have dismissed the complaint. However, in both the decisions of the RTC and the CA, both tribunal made determinations regarding the actual location of respondents' lot and petitioner's Tala Estate. Therein, both categorically concluded in their respective decisions that indeed, respondents' lot is located in San Jose Del Monte, Bulacan, while that of petitioner is situated in Caloocan City and that respondents' lot did not encroach petitioner's property. Considering that the RTC had conducted the trial and both parties actively participated in the proceedings by submitting and presenting their respective evidence and witnesses, it would be just and proper to settle the dispute once and for all based on the findings of the RTC and the CA. Otherwise, it would not only be impractical, it would cause more injustice to the parties and protract an already long and dragging litigation.

2. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; QUESTION OF FACT DISTINGUISHED FROM QUESTION OF LAW.** — A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. This Court's ruling in *Velayo-Fong v. Velayo* is instructive: A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or

evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.

3. **ID.; ID.; ID.; ONLY QUESTIONS OF LAW MAY BE ENTERTAINED BY THE SUPREME COURT; EXCEPTIONS; APPLICATION OF ANY OF THE EXCEPTION, NOT WARRANTED. —** The well-entrenched rule in our jurisdiction that only questions of law may be entertained by this Court in a petition for review on *certiorari* is not ironclad and admits certain exceptions, such as when (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. After a careful review of the records, this Court finds no just reason to warrant the application of any of the foregoing exceptions to the general rule.

4. **ID.; ID.; ID.; FACTUAL FINDINGS OF THE REGIONAL TRIAL COURT WHICH ARE AFFIRMED BY THE COURT OF APPEALS BIND THE SUPREME COURT AS A RULE. —** Based on the findings of fact of the RTC, as affirmed by the CA, the property of the respondents does not encroach the Tala Estate and correctly falls within the territorial jurisdiction of San Jose Del Monte, Bulacan, and not Caloocan City. This factual finding binds this Court and is no longer subject to review. Thus, absent a showing of an error of law committed by the court below, or of whimsical or capricious exercise of judgment, or a demonstrable lack of basis for its conclusions, this Court may not disturb its factual findings. Moreover, well-established is the rule that factual findings of the Court of Appeals are conclusive on the parties and carry even more weight when the said court affirms the factual findings of the trial court.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Walter T. Young for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the Decision[1] dated August 14, 2003 of the Court of Appeals (CA) in CA-G.R. CV No. 64867.

The procedural and factual antecedents are as follows:

Petitioner Republic of the Philippines is the registered owner of two (2) parcels of land known as the "Tala Estate," covered by Transfer Certificate of Title (TCT) Nos. 34629 and 34599. The TCTs were issued in the name of then Commonwealth of the Philippines and were derived from Original Certificate of Title (OCT) No. 543, originally registered on July 23, 1913 pursuant to Decree No. 4974 issued in G.L.R.O Record No. 6563 of the Registry of Deeds of Rizal.[2]

Under Proclamation No. 843,[3] a 598-hectare portion of the Tala Estate was reserved for housing, resettlement sites and related purposes by the government under the administration of the National Housing Authority (NHA).

On the other hand, respondents, spouses Leon Guilalas and Eulalia Guilalas, are the registered owners of a 30,000-square-meter parcel of land under TCT No. T-194289 of the Registry of Deeds of Bulacan, designated as Lot 433-B-2 of the subdivision plan (LRC) Psd-196244, located at Barrio Gaya-Gaya, San Jose Del Monte, Bulacan.

---

[1] Penned by then Associate Justice Elvi John S. Asuncion, with Associate Justices Eugenio S. Labitoria and Lucas P. Bersamin (now a member of this Court); *rollo*, pp. 24-29.

[2] *Rollo*, pp. 24-25.

[3] Dated April 26, 1971.

Eventually, the NHA started the development of the 598-hectare portion of the Tala Estate for its intended purpose. However, respondents resisted the development of the area claiming that a portion of their land was encroached upon by the government. After an investigation was conducted by the representatives of the NHA, it was found that the land owned by the respondents was part and parcel of the Tala Estate.

Thus, petitioner filed a Complaint for Cancellation of Title against the respondents, docketed as Civil Case No. C-12726,[4] before the Regional Trial Court (RTC), Caloocan City.

In their Answer with Counterclaim,[5] respondents claimed that the RTC of Caloocan City had no jurisdiction over the case since their lot is situated in San Jose Del Monte, Bulacan and not Caloocan City. Further, respondents maintained that they have been in open, adverse and continuous possession of the subject lot since birth and have been actually tilling the same in the concept of an owner.

After due trial, the RTC, on July 14, 1999, rendered a Decision[6] in favor of the respondents, the dispositive portion of which reads:

> WHEREFORE, in view of all the foregoing premises, judgment is HEREBY RENDERED:
>
> 1. Dismissing the complaint with costs against the plaintiff; and
> 2. Denying the application for writ of preliminary injunction.
>
> SO ORDERED.[7]

Aggrieved, petitioner, through the Office of the Solicitor General (OSG), sought recourse before the CA. The case was docketed as CA-G.R. CV No. 64867.

---

[4] Records, pp. 2-6.

[5] *Id.* at 15-17.

[6] *Id.* at 412-418.

[7] *Id.* at 418.

In its Brief,[8] petitioner raised the following errors committed by the RTC:

I

THE TRIAL COURT ERRED IN DECLARING THAT IT HAS NO JURISDICTION OVER THE CASE AS THE LAND SUBJECT OF THE ACTION LIES IN THE PROVINCE OF BULACAN.

II

THE TRIAL COURT ERRED IN CONCLUDING THAT IT HAS NO JURISDICTION TO ANNUL THE JUDGMENT OF A CO-EQUAL COURT IN A LAND REGISTRATION PROCEEDING DECREEING IN FAVOR OF DEFENDANTS-APPELLEES LOT 433-B-2.

III

THE TRIAL COURT ERRED IN HOLDING THAT DEFENDANTS-APPELLEES' LAND FALLS OUTSIDE OF TALA ESTATE OF THE REPUBLIC ON THE BASIS OF EXHIBITS 6 AND 7 WHICH ARE MERE SKETCH PLANS PREPARED BY A PRIVATE LAND SURVEYOR AND WHICH PLANS ARE NOT DULY APPROVED BY THE BUREAU OF LANDS.

IV

THE TRIAL COURT ERRED IN TOTALLY DISREGARDING THE EVIDENCE PRESENTED BY THE PLAINTIFF-APPELLANT PARTICULARLY EXHIBITS "M", "N" AND "O-1", ALL SHOWING THAT DEFENDANTS-APPELLEES' LAND FALLS INSIDE THE TALA ESTATE OF THE REPUBLIC AND WHICH REPORTS/ SKETCH PLANS WERE PREPARED BY THE GOVERNMENT AGENCY TASKED BY THE COURT FOR THE PURPOSE.

V

THE TRIAL COURT ERRED IN CONCLUDING THAT THERE IS NO ADEQUATE BASIS FOR PLOTTING THE PLAINTIFF'S LOTS.[9]

On August 14, 2003, the CA rendered the assailed Decision affirming the decision of the RTC, the decretal portion of which reads:

---

[8] *Rollo*, pp. 31-51.

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

WHEREFORE, the July 14, 1999 Decision of the Regional Trial Court of Caloocan City, Branch 128, is **AFFIRMED**.

SO ORDERED.[10]

In concurring with the RTC, the CA concluded that based on the evidence submitted by the respective parties, it is apparent that respondents' lot is beyond the boundaries of the Tala Estate. Thus, outside the jurisdiction of the RTC Caloocan City.

Hence, the petition assigning the following errors:

A.

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE LOT OWNED BY THE GUILALAS SPOUSES IS LOCATED IN BULACAN AND DOES NOT ENCROACH ON THE LOTS OF THE PETITIONER WHICH ARE LOCATED IN CALOOCAN CITY. THE APPELLATE COURT ERRED IN GIVING MORE CREDENCE TO THE REPORT SUBMITTED BY ENGINEER ROMEO SAYCON, A PRIVATE GEODETIC ENGINEER, OVER THE REPORT RENDERED BY ENGR. ERNESTO ERIVE OF THE LAND SURVEY DIVISION OF [THE] DENR-NCR.

B.

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT TCT NOS. 34629 AND 34599 AND PROCLAMATION 843 CANNOT BE THE BASES FOR PLOTTING THE PETITIONER'S LOT BECAUSE SAID DOCUMENTS FAILED TO INDICATE THE TECHNICAL DESCRIPTIONS OF THE SUBJECT LOTS.[11]

Petitioner maintains that respondents' lot encroaches upon and falls within the Tala Estate. Petitioner argues that the testimony and Report[12] of Engr. Ernesto S. Erive, Chief of Land Surveys Division of the Department of Environment and Natural Resources — NCR (DENR-NCR), confirming that the lot involved in the instant case is within the boundaries of the Tala Estate and that there was overlapping of lots, should be given greater weight

---

[10] *Id.* at 29. (Emphasis supplied.)

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

[12] *Id.* at 66-70.

than the sketch[13] prepared by Engr. Romeo Saycon, a private geodetic engineer. In the said sketch, it shows that respondents' lot does not overlap the Tala Estate in Caloocan City, because their property is located in San Jose Del Monte, Bulacan. Petitioner posits that it is the report of Engr. Erive that should prevail. Being a public official, he is presumed to have regularly performed his official function.

Petitioner also contends that while TCT Nos. 34629 and 34599 do not indicate complete technical descriptions, still there are other reliable sources that may be used in order to plot the pertinent portions of the Tala Estate.

On their part, respondent maintains that the issues raised by petitioner are both questions of fact, which is improper in the present petition. Moreover, it is patent that the trial court had no jurisdiction considering that the land subject matter of the case lies and is within the territorial boundaries of San Jose Del Monte, Bulacan and outside that of Caloocan City. Further, the findings made by the trial court, which was affirmed by the CA, are supported by sufficient evidence.

The petition is bereft of merit.

At the outset, petitioner primarily sought the cancellation of respondents' TCT over the lot in question, which is clearly a real action. Section 1,[14] Rule 14 of the 1997 Rules of Civil Procedure provides that actions affecting title to or possession of real property or an interest therein (real actions) shall be commenced and tried in the proper court that has territorial jurisdiction over the area where the real property or any part thereof is situated. Considering that the lot in question was not within the territorial jurisdiction of RTC of Caloocan City, it was but proper for the RTC to have dismissed the complaint.

---

[13] Exhibit 6.

[14] SECTION 1. *Venue of real actions.* — Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated.

However, in both the decisions of the RTC and the CA, both tribunal made determinations regarding the actual location of respondents' lot and petitioner's Tala Estate. Therein, both categorically concluded in their respective decisions that indeed, respondents' lot is located in San Jose Del Monte, Bulacan, while that of petitioner is situated in Caloocan City and that respondents' lot did not encroach petitioner's property. Considering that the RTC had conducted the trial and both parties actively participated in the proceedings by submitting and presenting their respective evidence and witnesses, it would be just and proper to settle the dispute once and for all based on the findings of the RTC and the CA. Otherwise, it would not only be impractical, it would cause more injustice to the parties and protract an already long and dragging litigation.

It must be stressed that the issues raised by the petitioner involves questions of fact which are not proper subjects of a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure, as amended. It is axiomatic that in an appeal by *certiorari*, only questions of law may be reviewed.[15]

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.[16] This Court's ruling in *Velayo-Fong v. Velayo*[17] is instructive:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear

---

[15] *Baron v. National Labor Relations Commission*, G.R. No. 182299, February 22, 2010, 613 SCRA 351, 359.

[16] *Latorre v. Latorre*, G.R. No. 183926, March 29, 2010, 617 SCRA 88, 99.

[17] G.R. No. 155488, December 6, 2006, 510 SCRA 320.

that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[18]

The well-entrenched rule in our jurisdiction that only questions of law may be entertained by this Court in a petition for review on *certiorari* is not ironclad and admits certain exceptions, such as when (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[19]

After a careful review of the records, this Court finds no just reason to warrant the application of any of the foregoing exceptions to the general rule.

In the case at bar, respondents sufficiently established from the evidence submitted that indeed, their property lies within the boundaries of San Jose Del Monte, Bulacan. Moreover, the pieces of evidence submitted by the petitioner could not be made basis to determine their claim that respondents' property is within the boundaries of the Tala Estate, which is in Caloocan City, considering that even TCT Nos. T-34629 and T-34599

---

[18] *Id.* at 329-330. (Citations omitted.)

[19] *Cabigting v. San Miguel Foods, Inc.*, G.R. No. 167706, November 5, 2009, 605 SCRA 14, 21.

contain insufficient technical description to make it as bases of any sketch or plan of the said lot. Not even Proclamation No. 843, which is petitioner's basis for maintaining that the Marilao River is the northern boundary of its parcels of land, lacked the technical description of the area covered by it.

The trial court's meticulous assessment of the probative values of the respective evidence submitted by both parties is worthy of note, to wit:

> It is of paramount importance that the exact location of Marilao River be ascertained in view of plaintiff's allegation that aforementioned river is the northern boundary of its lots.
>
> In this connection, it is noteworthy that the Municipality of San Jose Del Monte, Bulacan initiated the move to ascertain its boundary with Caloocan City. In Resolution No. 20-02-94 (Exhibit 11), its municipal council stated that said town conformed with the boundary indicated by the cadastral survey of Caloocan, Rizal to be [the] boundary between said town and city. This was followed by a letter dated April 19, 1994 addressed to Secretary Rafael Alunan III, Department of the Interior and Local Government (Exhibit 11-C) involving his assistance in finding the true boundary between said municipality and the City of Caloocan. In DILG's first endorsement dated May 11, 1994 (Exhibit 11-B), the Lands Management Bureau, DENR, was requested to relocate the true boundary between the two political units. Pursuant to this request, the DENR, Lands Management Bureau, Region III, San Fernando, Pampanga entered into a Memorandum of Agreement dated November 23, 1994 with San Jose Del Monte, Bulacan (Exhibit 12), whereby said office agreed to undertake a relocation survey to establish the boundary in question, expenses to be paid by aforesaid town.
>
> After the actual relocation survey by personnel of the Lands Management Bureau, Region III, Mr. Eriberto Almasan sent a letter dated November 10, 1995 (Exhibits 13, 13-A, 13-B, 13-C, 13-D and 13-E and 13-F).
>
> Relocation plan REL-03-000527 of MBM 22 to 33 Cad. 267 Caloocan (Exhibit 13-F) pinpointed not only the boundary monuments between the aforementioned Municipality and City, but also identified and indicated the location and course of the Marilao River. The boundary monuments are identified by letters MBM followed by the corresponding number.

The line in red pencil connecting MBM 22, 23, 24, 25, 26, 27 and 28 (Exhibit 13-F-1) indicates the boundary line between San Jose Del Monte, Bulacan and Caloocan City. Said red line touches no part of the Marilao River.

A green-colored line (Exhibits 13-F-2), beginning at a point below MBM 22 on the left side, describes the course of the Kipungoc River which, in plaintiff's SWO 41785, was labeled erroneously as the Marilao River.

San Jose Del Monte, Bulacan's town mayor, Eduardo Roquero, wrote a letter to the Lands Management Bureau, Manila (Exhibit 14-B), requesting that a sketch plan be prepared showing the relation between MBM 22 to 33 Cad. 267 Caloocan as against boundary monuments BM 11 to 24 of the Tala Estate. This is the area where the land in dispute is located. In response, Mr. Privadi Dalire, Chief, Geodetic Surveys Division, Lands Management Bureau, Manila, sent a sketch plan (Exhibit 14-C) which indicated the relative position of MBM 22 to 33 Cad. 267 Caloocan with BM 18 to 24, inclusive of the Tala Estate.

Additionally, defendants wrote a letter dated January 4, 1996 (Exhibit 15) to the Regional Technical Director, Region 3, Lands Management Bureau, San Fernando, Pampanga, requesting for a certified copy of the relocation to defendants' Lot 433-B-2-A.

In reply, said office sent to defendants an approved sketch plan SK-03-001828 of Lot 433-B-2-A Psd-03-046016 (Exhibit 15-B). In this sketch plan, a pink colored line beginning from MBM 27 to MBM 28 indicates the boundary line of Caloocan City relative to defendants' lot.

A green line from BM 16 to BM 17 of the Tala Estate shows that defendants' Lot 433-B-2-A falls outside the Tala Estate (Exhibit 15-B-2).

The date culled from the relocation survey plan should prevail over plaintiff's claim that the Marilao River is the northern boundary of its lots inasmuch as the relocation survey plan was the product of actual survey recently conducted.

With respect to plaintiff's claim on the Marilao River boundary, its TCT Nos. T-34629 and T-34599 contain inadequate technical description to make it as bases of any plan or sketch of said lot. Only the cadastral lot number, the boundary owner's cadastral lot number and the area are included in the technical description found

in aforementioned certificates of title. There are no bearings, distance and degrees that may furnish an adequate basis for plotting the plaintiff's lot on a sketch or plan.

As regards Proclamation No. 843, which is plaintiff's basis for claiming that the Marilao River is the northern boundary of its parcels of land, it should be noted that the proclamation likewise contain no technical description of the area covered by it. Beyond stating that the area included in the proclamation is the Marilao River, no other technical data appear to qualify it as adequate basis for the preparation of any plan of plaintiff's property. Moreover, in said proclamation, private property such as that owned by the defendants [must] be recognized. The requirement that a survey of the area covered by the proclamation is likewise mandated but never complied with by the plaintiff. These defects impair plaintiff's insistence, that the Marilao River is the boundary of the lots owned by it.[20]

This finding of the RTC was also arrived at by the CA when it concluded, thus:

We disagree. *Firstly*, on the face of the title of the lot owned by the Guilalas spouses, the same is located in Bulacan. *Secondly*, a perusal of TCT Nos. 34629 and 34599 shows that the said titles lack the necessary technical descriptions. *Thirdly*, under Proclamation No. 843 which was also made as basis of plaintiff in claiming that the northern boundary of the Tala Estate is the Marilao River, cannot also be made basis in preparing the sketch plan since no technical data or description appeared on the said Proclamation. Thus, the trial court was correct in ruling that these documents cannot be made as bases for plotting plaintiff-appellant's lot. Consequently, the report of Engr. Ernesto Erive to the effect that the lot of the Guilalas spouses is inside the Tala Estate, using as bases the above-named documents cannot be given due credence.

On the contrary, the claim of the Guilalas spouses that their land is outside the Tala Estate is clearly supported by the evidence on record. The Sketch Plan (Exhibits 6 and 6-A) as well as the Sketch of the entire area of Caloocan City (Exhibits 7 and 7-A) would show that the couple's lot is outside of the Tala Estate and contrary to the report of Engr. Erive, there appears no Marilao River as boundary between Caloocan City and Bulacan. The Contoured Map 3222-IV-2

[20] Records, pp. 415-417.

Edition 1 (1987) and Contoured Map with No. 3230-N-2 Edition 1 (1987) (Exhibits 2, 2-A, 2-B and 2-C) prepared and issued by the Bureau of Coast and Geodetic Survey showing the boundary between Bulacan and Caloocan City as depicted by the broken lines would also reveal that no part of the broken line passes through Marilao River. The position of the Guilalas spouses' lot on the said contoured maps was plotted thereon and said plotting was even admitted by Engr. Erive as correct (*See TSN, September 27, 1993, p. 5*). Moreover, the probative value of the maps cannot be questioned since these were issued by the Bureau of Coast and Geodetic Survey, which is a government agency tasked with preparing maps indicating the various political units of the country.[21]

Based on the findings of fact of the RTC, as affirmed by the CA, the property of the respondents does not encroach the Tala Estate and correctly falls within the territorial jurisdiction of San Jose Del Monte, Bulacan, and not Caloocan City. This factual finding binds this Court and is no longer subject to review. Thus, absent a showing of an error of law committed by the court below, or of whimsical or capricious exercise of judgment, or a demonstrable lack of basis for its conclusions, this Court may not disturb its factual findings.[22] Moreover, well-established is the rule that factual findings of the Court of Appeals are conclusive on the parties and carry even more weight when the said court affirms the factual findings of the trial court.[23]

WHEREFORE, premises considered, the petition is *DENIED*. The Decision of the Court of Appeals, dated August 14, 2003, in CA-G.R. CV No. 64867 is *AFFIRMED*.

SO ORDERED.

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

---

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

[22] *Supra* note 19, at 22.

[23] *Bicol Agro-Industrial Producers Cooperative, Inc. (BAPCI) v. Obias*, G.R. No. 172077, October 9, 2009, 603 SCRA 173, 192.

[*] Designated as an additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152, dated November 11, 2011.

THIRD DIVISION

[G.R. No. 166847. November 16, 2011]

GUILLERMO E. CUA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW MAY BE RAISED; QUESTION OF LAW, ELUCIDATED. —** At the outset, it should be stressed that in a petition for review under Rule 45 of the Rules of Court, only questions of law may be raised. Thus, questions of fact are not reviewable. It is not the Court's function to analyze or weigh all over again the evidence already considered in the proceedings below, its jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court. As such, a question of law must not involve an examination of the probative value of the evidence presented by the litigants. The resolution of factual issues is the function of lower courts, whose findings on these matters are accorded respect. A question of law exists when the doubt centers on what the law is on a certain set of facts. A question of fact exists when the doubt centers on the truth or falsity of the alleged facts. There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. Thus, the issue to be resolved must be limited to determining what the law is on a certain set of facts. Once the issue invites a review of the evidence, the question posed is one of fact. x x x The resolution of the issue raised by petitioner necessarily requires the re-evaluation of the evidence presented by both parties. This is precisely a question of fact proscribed under Rule 45. Petitioner has failed to establish that the present case falls under any of the exceptions to said rule.

2. **ID.; ID.; FACTUAL FINDINGS OF THE TRIAL COURT WHICH WERE AFFIRMED BY THE COURT OF APPEALS ARE FINAL AND CONCLUSIVE AND MAY NOT BE REVIEWED ON APPEAL. —** [T]he factual findings of

the RTC were affirmed by the CA, and as such, are final and conclusive and may not be reviewed on appeal. On this ground alone, the petition must be denied.

3. **CRIMINAL LAW; CRIMES COMMITTED BY PUBLIC OFFICERS; MALVERSATION; ELEMENTS; ESTABLISHED IN THE CASE AT BAR. —** The elements of the crime of malversation of public funds are, thus: 1. that the offender is a public officer; 2. that he had the 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. In the present case, all the elements are present and have been proven by the prosecution. With respect to the first three elements, it has been established that petitioner was a revenue collection agent of the BIR. He was a public officer who had custody of public funds for which he was accountable. Anent the fourth element, such was established when the PNB confirmed that there was a discrepancy in the amounts actually received by the PNB and the amounts stated in the receipts reported by petitioner.

4. **ID.; ID.; ID.; CONVICTION IS WARRANTED EVEN IF THERE IS NO DIRECT EVIDENCE OF MISAPPROPRIATION AND THE ONLY EVIDENCE IS THAT THERE IS A SHORTAGE IN ONE'S ACCOUNT WHICH CANNOT BE SATISFACTORILY EXPLAINED. —** This Court has held that to justify conviction for malversation of public funds or property, the prosecution has only to prove that the accused received public funds or property and that he could not account for them, or did not have them in his possession and could not give a reasonable excuse for their disappearance. An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation, and the only evidence is that there is a shortage in his accounts which he has not been able to satisfactorily explain. In the present case, considering that the shortage was duly proven by the prosecution, petitioner's retaliation against the BIR for not promoting him clearly does not constitute a satisfactory or reasonable explanation for his failure to account for the missing amount.

5. **REMEDIAL LAW; EVIDENCE; OBJECTION; RULE THEREON. —** The objection against the admission of any evidence must be made at the proper time, as soon as the grounds therefor become reasonably apparent, and if not so made, it will be understood to have been waived. Furthermore, only matters raised in the initial proceedings may be taken up by a party thereto on appeal. In the present case, petitioner failed to object to the admission of the said letter during trial, and only raised it for the first time on appeal. Even if the said letter was inadmissible, petitioner had already admitted his shortage in his letter dated August 23, 1994, which acknowledged receipt of Soto's demand letter and contained his promise to pay.

APPEARANCES OF COUNSEL

Roberto B. Arca for petitioner.
The Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J.*:

In this petition for review, Guillermo E. Cua *(petitioner)* questions the June 8, 2004 Decision[1] and January 13, 2005 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CR. No. 24608, which affirmed with modification the September 21, 1999 Decision[3] of the Regional Trial Court, Branch 72, Olongapo City (*RTC*), in Criminal Case No. 84-96, finding him guilty of the crime of malversation of public funds. The Information indicting the petitioner reads:

---

[1] *Rollo*, pp. 59-67. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justice Cancio C. Garcia and Associate Justice Lucas P. Bersamin (now a member of this Court), concurring.

[2] *Rollo*, p. 68. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justice Salvador J. Valdez, Jr. and Associate Justice Lucas P. Bersamin (now a member of this Court), concurring.

[3] Records, pp. 253-260.

That on or about the 29th day of June, 1994 or on dates prior thereto, in Olongapo City and within the jurisdiction of this Honorable Court, the above-named accused, being then an accountable officer for public funds as Revenue Collection Agent of Bureau of Internal Revenue, Revenue Region No. 4, Olongapo City, and having received tax collections in the total amount of ₱340,950.37 for the months of January to June 1994, did then and there willfully, unlawfully and feloniously, appropriate, take or misappropriate a portion of said tax collections in the amount of ₱291,783.00 for his own personal use and benefit and despite demand made on him by the Commission on Audit, Regional Office No. III, San Fernando Pampanga, to pay or return the said amount, the said accused refused and failed and still refuses and fails to pay or return the said amount of ₱291,793.00, to the damage and prejudice of the government.

CONTRARY TO LAW.[4]

The Facts

On June 29, 1994, a regular audit was conducted on the cash account and accountable forms of petitioner, then a Revenue Collection Agent of the Bureau of Internal Revenue *(BIR)* in Olongapo City.[5]

Remedios Soto *(Soto),* resident Auditor of the BIR in San Fernando, Pampanga, assigned two of her staff members, Alfredo Malonzo *(Malonzo)* and Virginia Santos *(Santos)*,[6] to examine the cash account inventory of accountable forms, cash book and transactions of petitioner from December 2, 1993 to June 29, 1994.[7]

The initial findings of said audit, based on the documents and cash produced by petitioner, revealed no cash shortage on his account. The accountable forms consisting of Revenue Official Receipts and the documentary stamps were complete and intact. Based on petitioner's cash book, all his collections were remitted

---

[4] *Id.* at 2.

[5] TSN, December 13, 1996, p. 8.

[6] *Id.*

[7] TSN, March 17, 1997, p. 5; TSN, June 2, 1997, p. 7.

to the Philippine National Bank *(PNB)*.[8] The total amount of ₱340,950.37, for which petitioner was accountable,[9] appeared to have been deposited at the PNB, Olongapo City Branch, as evidenced by the deposit slips and official receipts issued by the PNB, which were attached to the record kept by petitioner.[10]

As part of the examination process, however, a confirmation from the government depository bank is required to verify the initial audit.[11] Thus, on July 14, 1994, Soto sent a letter[12] to the depository bank, PNB, requesting confirmation or verification of the authenticity of the official receipts and deposit slips attached to the collection reports of petitioner.[13]

In a reply dated August 24, 1994, PNB returned the letter-request with a notation that the amounts stated in three of the official receipts did not tally with their records, that the official receipt numbers should be specified to facilitate verification of the other deposit slips, and that petitioner had not made any deposit from June 8 to 27, 1994.[14]

Soto proceeded to the PNB to discuss the matter with Florida Francisco *(Francisco),* the State Auditor assigned at the Olongapo City Branch, who checked and verified the official receipts and deposit slips presented by petitioner.[15]

In his Letter-reply[16] dated February 17, 1994, addressed to Soto, Felixberto De Guzman *(De Guzman),* Department Manager of the PNB Olongapo City Branch, detailed the discrepancies

---

[8] TSN, June 2, 1997, p. 10.

[9] Exhibit "A", records, p. 142.

[10] TSN, December 13, 1996, p. 13.

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

[12] Exhibit "G", records, p. 174.

[13] TSN, February 7, 1997, p. 9; TSN, June 2, 1997, p. 11.

[14] Exhibit "C", records, pp. 167-168.

[15] TSN, February 7, 1997, p. 12; TSN, October 13, 1997, p. 6.

[16] Exhibits "F" and "F-1", records, pp. 172-173.

in the amounts stated in the actual receipts in the possession of the PNB and the amounts stated in the receipts as reported by petitioner as follows:

Please take note of the following discrepancies on the amount of the actual receipts and the amount of receipts as reported:

PNB OR NO.	DATE	AMOUNT REPORTED	AMOUNT OF ACTUAL RECEIPT
977793	1/13/94	₱163,674.87	₱12,574.87
975653	2/04/94	31,407.00	3,183.00
976408	3/30/94	25,120.00	6,075.00

I further certify the authenticity of deposit slip with deposit number 94-4 dated May 31, 1994 in the amount of P10,929.50. However, the rest of the deposit slips reported were not actually transacted in this office and are considered void, as follows:

DEPOSIT SLIP	AMOUNT	DATE
Deposit Slip No. 94-5	₱25,304.00	6/8/94
Deposit Slip No. 94-6	33,305.00	6/10/94
Deposit Slip No. 94-7	18,282.00	6/16/94
Deposit Slip No. 94-8	13,801.00	6/24/94
Deposit Slip No. 94-9	2,772.00	6/27/94

Soto prepared a letter of demand[17] dated August 23, 1994, which contained a summary of the discrepancies as noted by the PNB, and disclosed that petitioner had incurred a cash shortage amounting to 291,783.00.[18] Soto then requested petitioner to come to her office to personally receive the demand letter.[19]

Petitioner then wrote a reply letter[20] dated August 23, 1994, addressed to the resident auditor, admitting his cash shortage

---

[17] Exhibits "D" and "D-1", *id.* at 169-170.

[18] The amount of ₱2,733.00 which was then pending confirmation, was later deducted from the original shortage amount of ₱294,516.00.

[19] TSN, February 7, 1997, pp. 15-18.

[20] Exhibit "E", records, p. 171.

purportedly to get even with the BIR which failed to promote him but promised to pay the amount as soon as possible.[21]

Thereafter, a special arrangement was made between the BIR and petitioner, wherein the BIR would withhold the salary of petitioner and apply the same to the shortage incurred until full payment of the accountability was made.[22]

Notwithstanding, the Information dated March 6, 1996, was filed against petitioner before the RTC. Upon arraignment on August 9, 1996, petitioner pleaded not guilty.

The Ruling of the RTC

During trial, the prosecution presented Soto, Santos, Francisco, and Dolores Robles[23] as its witnesses. Petitioner, on the other hand, did not take the witness stand, and opted instead to submit documentary evidence showing that he had paid for the shortage by means of deductions from his salary in the total amount of ₱291,783.00.[24]

Giving credence to the evidence of the prosecution, and finding that payment of the amount malversed was not a defense, the RTC convicted petitioner as charged. It did, however, consider restitution of the malversed amount as a mitigating circumstance. The dispositive portion of the RTC Decision dated September 21, 1999, reads:

> WHEREFORE, in view of the foregoing considerations, the Court finds the accused Guillermo Cua guilty beyond reasonable doubt of the crime of Violation of Article 217 of the Revised Penal Code for Malversation of Public Funds and hereby sentences him to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY to TWENTY (20) YEARS of *Reclusion Temporal* and to suffer perpetual special disqualification to hold public office.
>
> SO ORDERED.[25]

---

[21] TSN, February 7, 1997, pp. 23-24.

[22] Exhibit "1", records, p. 209.

[23] Former Accountant of PNB Olongapo City Branch.

[24] Records, p. 260.

[25] *Id.*

The Ruling of the CA

On appeal to the CA, petitioner argued that the special arrangement with the BIR was synonymous to an absolution of his criminal liability, and the State had, in effect, pardoned him. The CA, however, held that restitution only extinguished petitioner's civil liability but not his criminal liability. It, thus, agreed with the RTC in finding that petitioner's guilt was proven beyond a reasonable doubt. Nonetheless, the CA found that the RTC failed to apply the Indeterminate Sentence Law and to impose the corresponding fine as provided in Article 217 of the Revised Penal Code, and thus, modified the penalty accordingly. The dispositive portion of the assailed CA Decision dated June 8, 2004, is as follows:

> WHEREFORE, premises considered, the instant appeal is DENIED. However, the 21 September 1999 Decision of the Regional Trial Court of Olongapo City, Branch 72 is accordingly MODIFIED in that accused-appellant Guillermo E. Cua is hereby sentenced to suffer an indeterminate sentence of ten (10) years and one (1) day as minimum to seventeen (17) years, four (4) months and one (1) day as maximum and to pay a fine of Two Hundred Ninety One Thousand Seven Hundred Eighty Three Pesos (₱291,783.00).
>
> SO ORDERED.[26]

After his motion for reconsideration was denied, petitioner filed this petition for review.

Issue

Petitioner raises the sole issue of:

WHETHER OR NOT THE PROSECUTION PROVED THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

Petitioner argued that the CA failed to sift, evaluate, and properly weigh the evidence adduced by the prosecution. Had it done so, he posited that the CA could have established that (a) there is not a single iota of evidence to sustain the charge

---

[26] *Rollo*, pp. 66-67.

of malversation of public funds against petitioner; and (b) the prosecution itself, admitted, by its own evidence, that the petitioner remitted to the PNB for deposit the alleged shortage.

Petitioner averred that the prosecution admitted the authenticity of the PNB official receipts, deposit slips, and remittance advices which petitioner submitted for audit, when it offered them in its formal offer of evidence "to prove that petitioner collected the said amounts and deposited the same to the PNB Olongapo Branch." Furthermore, he pointed out that De Guzman contradicted himself when he enumerated the discrepancies because he had actually confirmed the authenticity of the aforementioned PNB documents in his letter-reply to the BIR dated November 17, 1994, which stated that he was "confirming the authenticity" of the said documents.

Petitioner, thus, contended that he did, in fact, deposit the full amount of his accountability. He attributed the discrepancy between the amounts he deposited and the amounts actually received by the PNB to an irregularity within the PNB. He suggested that the bank teller might not have reported to the bank the entire amounts received from him.

Petitioner goes on to highlight that all the deposit slips were stamped "RECEIVED/DEPOSITED CASH DIVISION PNB-OLONGAPO." He noted that De Guzman, the PNB employee who prepared the PNB letter outlining the discrepancies, was not called to the stand by the prosecution to testify. He argued that Francisco, who noted the said letter, was not competent to testify on it as she was not the one who prepared it.

Petitioner also contended that adding all the amounts in the official receipts and deposit slips, his total accountability is only ₱332,961.37, and not ₱340,950.37. Thus, the BIR overcalculated his total accountability by ₱7,989.00.

Finally, petitioner claimed that the settlement of the shortage was forced upon him by the Commission on Audit *(COA)*, and not a voluntary arrangement. He averred that Soto requested the BIR to withhold his salary and apply the same to the shortage, without his consent.

The Ruling of the Court

The Court finds petitioner's arguments to be devoid of merit.

At the outset, it should be stressed that in a petition for review under Rule 45 of the Rules of Court, only questions of law may be raised. Thus, questions of fact are not reviewable. It is not the Court's function to analyze or weigh all over again the evidence already considered in the proceedings below, its jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court. As such, a question of law must not involve an examination of the probative value of the evidence presented by the litigants. The resolution of factual issues is the function of lower courts, whose findings on these matters are accorded respect.[27]

A question of law exists when the doubt centers on what the law is on a certain set of facts. A question of fact exists when the doubt centers on the truth or falsity of the alleged facts. There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. Thus, the issue to be resolved must be limited to determining what the law is on a certain set of facts. Once the issue invites a review of the evidence, the question posed is one of fact.[28]

Petitioner raises the sole issue that the prosecution failed to establish his guilt beyond reasonable doubt on the ground that the evidence shows that he did not incur a shortage of ₱291,783.00. He argues that as an exception to the rule that factual findings and conclusions of the CA are binding on this Court, the CA plainly overlooked certain facts of substance and value which, if considered, would alter the result of the case.

The Court disagrees.

---

[27] *Vallacar Transit, Inc. v. Catubig*, G.R. No. 175512, May 30, 2011.

[28] *Villamar v. People*, G.R. No. 178652, December 8, 2010, 637 SCRA 584, 590; citing *Pagsibigan v. People*, G.R. No. 163868, June 4, 2009, 588 SCRA 249.

The resolution of the issue raised by petitioner necessarily requires the re-evaluation of the evidence presented by both parties. This is precisely a question of fact proscribed under Rule 45. Petitioner has failed to establish that the present case falls under any of the exceptions[29] to said rule. On the other hand, the factual findings of the RTC were affirmed by the CA, and as such, are final and conclusive and may not be reviewed on appeal. On this ground alone, the petition must be denied.

Nonetheless, even granting that the present case falls under one of the exceptions, the petition should still be denied.

Malversation is defined and penalized under Article 217 of the Revised Penal Code, to wit:

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, 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:

---

[29] *Id.* at 591; citing *Pagsibigan v. People*, G.R. No. 163868, June 4, 2009, 588 SCRA 249. — The findings of fact of the Court of Appeals are generally conclusive but may be reviewed when: (1) the factual findings of the Court of Appeals and the trial court are contradictory; (2) the findings are grounded entirely on speculation, surmises or conjectures; (3) the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd or impossible; (4) there is grave abuse of discretion in the appreciation of facts; (5) the appellate court, in making its findings, goes beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee; (6) the judgment of the Court of Appeals is premised on a misapprehension of facts; (7) the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; and (8) the findings of fact of the Court of Appeals are contrary to those of the trial court or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record.

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.

The elements of the crime of malversation of public funds are, thus:

1. that the offender is a public officer;

2. that he had the 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.[30]

---

[30] *Tubola, Jr. v. Sandiganbayan*, G.R. No. 154042, April 11, 2011.

In the present case, all the elements are present and have been proven by the prosecution.

With respect to the first three elements, it has been established that petitioner was a revenue collection agent of the BIR.[31] He was a public officer who had custody of public funds for which he was accountable.

Anent the fourth element, such was established when the PNB confirmed that there was a discrepancy in the amounts actually received by the PNB and the amounts stated in the receipts reported by petitioner.

Petitioner, however, disputes this finding.

Firstly, petitioner argues that the prosecution admitted the authenticity of the PNB documents he submitted for audit, when it offered such in its formal offer of evidence "to prove that petitioner collected the said amounts and deposited the same to the PNB Olongapo Branch."

Petitioner is mistaken.

A cursory reading of the prosecution's formal offer of evidence[32] reveals that the PNB documents were not offered to prove that petitioner "deposited" the stated amounts, but rather that petitioner "presented"[33] the PNB documents to the COA Auditor to show that he collected and deposited the amounts stated therein.

---

[31] TSN, December 13, 1996, p. 8.

[32] Records, pp. 137-141.

[33] "To prove that the accused **presented** this PNB receipt to COA auditor Virginia Santos showing that he collected the amount of ₱XXX and deposited the same to PNB, Olongapo branch; as part of the testimony of Virginia Santos and Remedios Soto."

"To prove that accused **presented** this deposit slip number to COA auditor Vriginia (sic) Santos showing he deposited the amount of ₱XXXwith PNB, Olongapo branch."

"To prove that accused **presented** this document to COA auditor Virginia Santos showing that he deposited the amount of ₱XXX with the PNB, Olongapo branch; as part of the testimony of Virginia Santos and Remedios Soto." (Emphasis supplied)

Secondly, petitioner argues that the PNB, thru De Guzman's letter dated November 17, 1994, actually confirmed the authenticity of the official receipts, deposit slips and remittance advices which petitioner submitted for audit. To support his claim, petitioner harps on the following statement in the letter: "confirming the authenticity of your attached certified xerox copies of PNB Official Receipts, deposit slips and remittance invoices found as attachments in the collection reports of Mr. Guillermo E. Cua."[34]

The Court is not persuaded.

A review of the said letter will reveal that the above-quoted statement was taken out of context by petitioner. The phrase relied upon was not a confirmation by the PNB that the submitted documents were authentic, but was a mere reference to the letter of Soto requesting the PNB to confirm the authenticity of said documents. In fact, the letter precisely enumerates discrepancies and inauthentic documents in the papers which were submitted to the PNB for confirmation.

For clarity, this correspondence is reproduced hereunder as follows:

November 10, 1994

The Manager
Philippine National Bank
Olongapo City

Thru: The Branch Auditor
Commission on Audit
PNB, Olongapo City

S i r:

We are currently in the process of finalizing our cash examination report on the cash and accounts of Mr. Guillermo E. Cua, Revenue Collection Agent of BIR, Olongapo City.

---

[34] Exhibit "F", records, pp. 172-173.

In consonance with the reporting requirements of the COA Regonal (sic) Office III, San Fernando, Pampanga, please confirm the authenticity of the attached certified xerox copies of PNB Official Receipts, deposit slips and remittance advices found as attachments in the collection reports of Mr. Guillermo E. Cua, as follows:

PNB OR No./Deposit Slip	Amount	Date
977793	₱163,674.87	1/13/94
975653	31,407.00	2/4/94
976408	25,120.00	3/30/94
Deposit Slip No. 94-4	10,929.50	5/31/94
Deposit Slip No. 94-5	25,304.00	6/8/94
Deposit Slip No. 94-6	33,305.00	6/10/94
Deposit Slip No. 94-7	18,282.00	6/16/94
Deposit Slip No. 94-8	13,801.00	6/24/94
Deposit Slip No. 94-9	2,772.00	6/27/94

For this purpose, may we request your good office to issue a certification stating whether or not the above PNB OR Nos./Deposit Slips together with their attachments (*i.e.* Remittance Advices or Inter-Office Savings Deposit Slip) were issued or stamped "RECEIVED" by any one of your authorized bank personnel.

Your early action hereon is earnestly requested.

Very truly yours,

REMEDIOS P. SOLO
State Auditor IV[35]

November 17, 1994

MS. REMEDIOS P. SOTO
State Auditor IV
Bureau of Internal Revenue
Regional Office No. IV
San Fernando, Pampanga

This is in response to your letter dated November 10, 1994 <u>confirming the authenticity of your attached certified xerox copies</u>

[35] Exhibit "G", *id.* at 174.

of PNB Official Receipts, deposit slips and remittance invoices found as attachments in the collection reports of Mr. Guillermo E. Cua. (Emphasis supplied)

Please take note of the following discrepancies on the amount of the actual receipts and the amount of receipts as reported:

PNB OR NO.	**DATE**	**AMOUNT REPORTED**	**AMOUNT OF ACTUAL RECEIPT**
977793	1/13/94	₱163,674.87	₱12,574.87
975653	2/04/94	31,407.00	3,183.00
976408	3/30/94	25,120.00	6,075.00

I further certify the authenticity of deposit slip with deposit number 94-4 dated May 31, 1994 in the amount of 10,929.50. However, the rest of the deposit slips reported were not actually transacted in this office and are considered void, as follows:

DEPOSIT SLIP	**AMOUNT**	**DATE**
Deposit Slip No. 94-5	₱25,304.00	6/8/94
Deposit Slip No. 94-6	33,305.00	6/10/94
Deposit Slip No. 94-7	18,282.00	6/16/94
Deposit Slip No. 94-8	13,801.00	6/24/94
Deposit Slip No. 94-9	2,772.00	6/27/94

Attached herewith are the certified xerox copies of PNB Official Receipts, Remittance Advice and Deposit slips actually issued/received by this office.

This certification is being issued for whatever legal purposes it may serve.

Thank you.

Very truly yours,

(sgd)
FELIXBERTO D. DE GUZMAN
Department Manager III

NOTED BY:

(sgd)
FLORIDA F. FRANCISCO
State Auditor III[36]

Petitioner, nevertheless, attempted to attribute the discrepancy to an irregularity internal to the PNB. He, however, failed to prove this allegation. More importantly, he acknowledged the discrepancy in his reply to the demand letter of Soto, where he admitted taking from his daily collections in retaliation for not being promoted, and even promised to pay back the amount taken. Said reply[37] is reproduced hereunder as follows:

August 23, 1994

The Resident Auditor
COA – BIR IV
Revenue Region No. IV
San Fernando, Pampanga

M a d a m:

This is to acknowledge receipt of your demand letter dated August 23, 1994 regarding the examination of my cash and accounts as Revenue Collection Officer of Olongapo City in which the shortage of ₱294,516.00 was discovered.

I am a very frustrated Collection Officer. Since November 1985 to date, I have not been promoted to a higher position in the Bureau. Prior to the Standardization Law, I was already holding the item of a Revenue Collector II. But instead of being promoted, I received the item of a Revenue Officer I when the Standardization Law was implemented. As Collection Officer of Olongapo City, I practically collected the main bulk of the Revenue collection of the district. I don't know who are to be blamed for the oversight of my efforts. I remained stagnant as Revenue Officer I. What is very disheartening is the fact that my Clerks and other Clerks who handle practically

---

[36] Exhibits "F" and "F-1", *id.* at 172-173.

[37] Exhibit "E", *id.* at 171.

no accountability have been promoted and are now equal to my position receiving the same salary as I do. Perhaps, **to get even, I slowly dipped my fingers into my daily collections. I know that this is wrong.**

I have no intention of leaving the country and **I promise to pay the amount of ₱294,516.00 as soon as possible.**

Very truly yours,

(sgd)
GUILLERMO E. CUA
(Emphases supplied)

Petitioner did not object to or deny the said letter during trial, and chose to remain silent on the matter.

This Court has held that to justify conviction for malversation of public funds or property, the prosecution has only to prove that the accused received public funds or property and that he could not account for them, or did not have them in his possession and could not give a reasonable excuse for their disappearance. An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation, and the only evidence is that there is a shortage in his accounts which he has not been able to satisfactorily explain.[38]

In the present case, considering that the shortage was duly proven by the prosecution, petitioner's retaliation against the BIR for not promoting him clearly does not constitute a satisfactory or reasonable explanation for his failure to account for the missing amount.

Petitioner argues that Francisco, who noted the PNB letter prepared by De Guzman outlining the discrepancies in the documents, was not competent to testify on such, as she was not the one who prepared it.

---

[38] *Alejo v. People*, G.R. No. 173360, March 28, 2008, 550 SCRA 326, 342; citing *People v. Pepito*, 335 Phil. 37, 46 (1997), and *Villanueva v. Sandiganbayan*, G.R. No. 95627, August 16, 1991, 200 SCRA 722, 734.

This argument cannot prosper.

The objection against the admission of any evidence must be made at the proper time, as soon as the grounds therefor become reasonably apparent, and if not so made, it will be understood to have been waived.[39] Furthermore, only matters raised in the initial proceedings may be taken up by a party thereto on appeal.[40] In the present case, petitioner failed to object to the admission of the said letter during trial, and only raised it for the first time on appeal. Even if the said letter was inadmissible, petitioner had already admitted his shortage in his letter[41] dated August 23, 1994, which acknowledged receipt of Soto's demand letter and contained his promise to pay.

Petitioner also contends that the BIR overcalculated his total accountability by ₱7,989.00, hence, his total accountability is only ₱332,961.37, and not ₱340,950.37.

This argument cannot succeed.

This is a question of fact not reviewable by this Court. The factual finding of the RTC of petitioner's total accountability in the amount of ₱340,950.37 was affirmed by the CA, and is again being raised for the first time on appeal. Furthermore, petitioner has already previously admitted his shortage in the amount of ₱291,783.00, which he, in fact, acknowledged and paid.

Petitioner avers that Soto requested the BIR to withhold his salary and apply the same to the shortage without his consent.

This argument must again fail.

Firstly, this contention is belied by the BIR letter[42] dated July 9, 1998, addressed to petitioner which was in reply to his letter dated July 3, 1998, requesting the BIR to apply his withheld salaries against his shortage in collection. Hence, such application

---

[39] RULES OF COURT, Rule 132, Sec. 36.

[40] *Borbon II v. Servicewide Specialists, Inc.*, 328 Phil. 150, 160 (1996).

[41] Exhibit "E", records, p. 171.

[42] Records, p. 213.

was not without his consent because petitioner himself requested that his salaries be applied against his shortage. Secondly, petitioner precisely raised the payment of his shortage as a defense in the proceedings before the RTC and the CA. Lastly and most importantly, even granting that such payment was indeed involuntary, such would not extinguish his criminal liability.

The Court notes with dismay that petitioner has adopted two conflicting theories in his defense. In fact, all of petitioner's arguments before this Court are being raised for the first time on appeal. Under the proceedings in the RTC and the CA, petitioner admitted having incurred a cash shortage but claimed his criminal liability was extinguished by his payment of the same.[43] Before this Court, however, petitioner argues that he is not criminally liable because the PNB confirmed the authenticity of the pertinent documents, and adds that his payment of the shortage was involuntary and without his consent. Petitioner's reliance on these diametrically opposed defenses renders his present arguments all the more unbelievable and unavailing. This cannot be countenanced, as to do so would make a mockery of established precepts in criminal jurisprudence.[44]

Considering that the factual findings of the RTC, as affirmed by the CA, were supported by the evidence on record, all the elements of the crime of malversation of public funds were thus duly proven beyond reasonable doubt.

WHEREFORE, the petition is *DENIED*. The June 8, 2004 Decision and January 13, 2005 Resolution of the Court of Appeals in CA-G.R. CR. NO. 24608 are *AFFIRMED*.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Perez,*[*] *JJ.*, concur.

---

[43] CA *rollo*, pp. 52-53.

[44] *People v. Sinoro*, 449 Phil. 370, 387 (2003).

[*] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152 dated November 11, 2011.

THIRD DIVISION

[G.R. No. 173628. November 16, 2011]

SEVERINO S. CAPIRAL, *petitioner, vs.* **SIMEONA CAPIRAL ROBLES and VICENTE CAPIRAL,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; TRIAL-TYPE PROCEEDING IS SANCTIONED IN THE SENSE THAT PARTIES ARE ALLOWED TO PRESENT EVIDENCE AND ARGUE THEIR RESPECTIVE POSITIONS BEFORE THE COURT; EXPOUNDED. —** Contrary to petitioner's contention, insofar as hearings on a motion to dismiss are concerned, Section 2, Rule 16 of the Rules of Court sanctions trial-type proceedings in the sense that the parties are allowed to present evidence and argue their respective positions before the court. x x x In the present case, petitioner's ground in filing his Motion to Dismiss is that he has been openly, continuously and exclusively possessing the subject property in the concept of an owner for more than ten years and that he has explicitly repudiated his co-ownership of the subject property with his co-heirs. Evidence is quite obviously needed in this situation, for it is not to be expected that said ground, or any facts from which its existence may be inferred, will be found in the averments of the complaint. When such a ground is asserted in a motion to dismiss, the general rule governing evidence on motions applies. The rule is embodied in Section 7, Rule 133 of the Rules of Court which provides that "[w]hen a motion is based on facts not appearing of record the court may hear the matter on affidavits or depositions presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions." However, in the present case, there was no affidavit or any other documentary evidence attached to petitioner's Motion to Dismiss as proof of the averments contained therein. Thus, the RTC is justified in directing the conduct of further hearings to ascertain petitioner's factual allegations in its motion. Indeed, unlike a motion to dismiss based on the failure

of the complaint to state a cause of action, which may be resolved solely on the basis of the allegations of the complaint, the Motion to Dismiss filed by petitioner raised an affirmative defense that he has long been in possession of the disputed property as an owner and that he has repudiated his co-ownership of the subject property with private respondents and the other co-heirs. The motion thus posed a question of fact that should be resolved after due hearing.

2. **ID.; ID.; ID.; RESOLUTION OF MOTION; WHAT IS PROHIBITED IS THE DEFERMENT UNTIL TRIAL OF THE RESOLUTION OF THE MOTION TO DISMISS ITSELF; NOT OBTAINING IN THE CASE AT BAR. —** Neither may the trial court's act of setting the case for hearing in order to receive evidence be considered as a move to defer the resolution of petitioner's Motion to Dismiss. As discussed above, Section 2, Rule 16 is explicit in allowing the conduct of hearings and the reception of evidence on the questions of fact involved in the motion to dismiss. Contrary to petitioner's asseveration, what is prohibited by the second paragraph of Section 3, Rule 16 of the same Rules is the deferment until trial of the resolution of the motion to dismiss itself. Under the circumstances obtaining in the instant case, the assailed Orders of the RTC may not be construed as tantamount to deferring action on the motion to dismiss until trial is conducted.

APPEARANCES OF COUNSEL

Santiago, Cruz & Sarte Law Offices for petitioner.
Dulay Pagusan & Ty Law Office for respondents.

D E C I S I O N

PERALTA, *J.*:

Assailed in the present petition for review on *certiorari* under Rule 45 of the Rules of Court are the Decision[1] dated May 29,

[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Edgardo P. Cruz and Rosalinda Asuncion-Vicente, concurring; *rollo*, pp. 48-53.

2006 and Resolution[2] dated July 20, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 83223. The CA Decision dismissed petitioner's petition for *certiorari* and affirmed the August 15, 2003 and January 12, 2004 Orders of the Regional Trial Court (RTC) of Malabon City, Branch 74, in Civil Case No. 3430-MN, while the CA Resolution denied petitioner's Motion for Reconsideration.

The following are the factual and procedural antecedents of the instant case:

The instant petition arose from a Complaint for Partition with Damages filed with the RTC of Malabon City by herein respondents against herein petitioner and five other persons, all surnamed Capiral, whom respondents claim to be their co-heirs.[3]

On September 5, 2002, herein petitioner filed a Motion to Dismiss[4] on grounds that respondents' Complaint lacked cause of action or that the same is barred by prescription and laches.

In their Opposition to herein petitioner's Motion to Dismiss, private respondents questioned the factual allegations of petitioner and contended that the property subject of the Complaint for Partition is covered by a Transfer Certificate of Title having been duly registered under the Torrens System and as such may not be acquired by prescription. Private respondents also argued that neither is the principle of laches applicable; instead, the doctrine of imprescriptibility of an action for partition should apply.

On February 21, 2003, the RTC issued an Order holding as follows:

> In the subject motion, defendant-movant [herein petitioner] claimed that prior to the death of their [predecessor-in-interest] Apolonio Capiral, he and his aunt, Arsenia Capiral, who died on 26 November 2002, has been in actual possession of the subject property and has

---

[2] *Id.* at 55.

[3] Records, pp. 3-6.

[4] *Id.* at 28-35.

been the one paying for its realty tax; that after the death of Apolonio Capiral, defendant movant "repudiated the co-ownership by permanently residing [in] the said property... … that for more than ten (10) years now, defendant [-movant] has been openly, continuously and exclusively possessing the same in the concept of an owner" thus, the subject property cannot be the subject of the instant action for partition because the same has been acquired by defendant[-movant] …. thru prescription"; and that further, by plaintiffs' inaction for more than ten years in asserting their rights as co-owners, the principle of estoppel bars them from filing the instant complaint.

The Court finds it necessary to set first the subject motion for further hearing for the reception of evidence of the parties pursuant to Sec. 2, Rule 16 of the 1997 Rules of Civil Procedure, x x x

x x x x x x x x x

The allegations of defendant-movant that he has already repudiated the co-ownership and that plaintiffs are guilty of laches involve factual issues warranting a hearing on the matters in order for the parties herein, as mandated by the aforequoted rules, to submit their respective evidence on question of facts involved and for the Court to appreciate the same.

WHEREFORE, premised (sic) considered, let the instant motion be set for hearing on April 10, 2003 at 8:30 o'clock in the morning.[5]

On August 12, 2003, petitioner filed a Motion to Resolve[6] praying that an Order be issued by the RTC resolving petitioner's Motion to Dismiss.

On August 15, 2003, the RTC issued its first assailed Order[7] denying petitioner's Motion to Resolve.

Petitioner filed a Motion for Reconsideration contending that there is no longer any need to set the case for hearing for the reception of evidence to prove the allegations in the Motion to Dismiss considering that, in their Opposition, herein respondents

---

[5] *Id*. at 44-45.

[6] *Id.* at 91-92.

[7] *Id.* at 99.

failed to deny nor rebut the material factual allegations in the said Motion.[8]

However, the RTC, in its second assailed Order dated January 12, 2004, denied petitioner's Motion for Reconsideration.[9]

Subsequently, petitioner filed a special civil action for *certiorari* with the CA, arguing that the RTC is guilty of grave abuse of discretion in issuing the abovementioned Orders.

On May 29, 2006, the CA promulgated its assailed Decision dismissing the special civil action for *certiorari* and affirming the disputed Orders of the RTC.

Petitioner filed a Motion for Reconsideration, but the CA denied it *via* its Resolution dated July 20, 2006.

Hence, the present petition with a sole Assignment of Error, to wit:

> THE COURT OF APPEALS COMMITTED A CLEAR AND REVERSIBLE ERROR WHEN IT HELD THAT THE TRIAL-TYPE HEARING REQUIRED BY THE TRIAL COURT FOR THE RESOLUTION OF THE MOTION TO DISMISS IS IN ACCORD WITH SECTION 2, RULE 16 OF [THE] RULES OF COURT.[10]

Petitioner contends that there is nothing in Section 2, Rule 16 of the Rules of Court which requires a trial-type hearing for the resolution of a motion to dismiss. Petitioner argues that the RTC, in requiring a trial-type hearing deferred the resolution of the subject Motion to Dismiss and, in so doing, violated Section 3, Rule 16 of the Rules of Court.

The Court does not agree.

Contrary to petitioner's contention, insofar as hearings on a motion to dismiss are concerned, Section 2, Rule 16 of the Rules of Court sanctions trial-type proceedings in the sense

---

[8] *Id*. at 103-107.

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

[10] *Rollo*, p. 33.

that the parties are allowed to present evidence and argue their respective positions before the court, thus:

> Sec. 2. *Hearing of Motion*. — At the hearing of the motion, the parties shall submit their arguments on the questions of law and their evidence on the questions of fact involved except those not available at that time. Should the case go to trial, the evidence presented during the hearing shall automatically be part of the evidence of the party presenting the same.

In *Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation*,[11] this Court had occasion to rule that the issues raised in a motion to dismiss have to be determined in accordance with the evidence and facts presented, not on the basis of unsubstantiated allegations and that the courts could not afford to dismiss a litigant's complaint on the basis of half-baked conclusions with no evidence to show for it. In emphasizing the need for a formal hearing, this Court held that the demand for a clear factual finding to justify the grant or denial of a motion to dismiss cannot be dispensed with.[12] To this end, Section 2, Rule 16 of the Rules of Court allows not only a hearing on the motion to dismiss, but also for the parties to submit their evidence on the questions of fact involved, which may be litigated extensively at the hearing or hearings on the motion.[13] During the said hearings, the parties are allowed to submit their respective evidence, and even rebut the opposing parties' evidence.[14] The hearings should provide the parties the forum for full presentation of their sides.[15] Moreover, from the trial court's perspective, the extent of such hearings would depend on its satisfaction that the ground in filing the motion to dismiss has been established or disestablished.[16]

---

[11] G.R. No. 152228, September 23, 2005, 470 SCRA 650.

[12] *Id*. at 662.

[13] *Id*.

[14] *Id*. at 663.

[15] *Id*.

[16] *Id*.

In the present case, petitioner's ground in filing his Motion to Dismiss is that he has been openly, continuously and exclusively possessing the subject property in the concept of an owner for more than ten years and that he has explicitly repudiated his co-ownership of the subject property with his co-heirs. Evidence is quite obviously needed in this situation, for it is not to be expected that said ground, or any facts from which its existence may be inferred, will be found in the averments of the complaint.[17] When such a ground is asserted in a motion to dismiss, the general rule governing evidence on motions applies.[18] The rule is embodied in Section 7, Rule 133 of the Rules of Court which provides that "[w]hen a motion is based on facts not appearing of record the court may hear the matter on affidavits or depositions presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions."

However, in the present case, there was no affidavit or any other documentary evidence attached to petitioner's Motion to Dismiss as proof of the averments contained therein. Thus, the RTC is justified in directing the conduct of further hearings to ascertain petitioner's factual allegations in its motion.

Indeed, unlike a motion to dismiss based on the failure of the complaint to state a cause of action, which may be resolved solely on the basis of the allegations of the complaint, the Motion to Dismiss filed by petitioner raised an affirmative defense that he has long been in possession of the disputed property as an owner and that he has repudiated his co-ownership of the subject property with private respondents and the other co-heirs. The motion thus posed a question of fact that should be resolved after due hearing.[19]

---

[17] *Merrill Lynch Futures, Inc. v. CA*, G.R. No. 97816, July 24, 1992, 211 SCRA 824, 834.

[18] *Id*.

[19] *Heirs of Nepomucena Paez v. Torres*, G.R. No. 104314, February 2, 2000, 324 SCRA 403, 412.

Neither may the trial court's act of setting the case for hearing in order to receive evidence be considered as a move to defer the resolution of petitioner's Motion to Dismiss. As discussed above, Section 2, Rule 16 is explicit in allowing the conduct of hearings and the reception of evidence on the questions of fact involved in the motion to dismiss.

Contrary to petitioner's asseveration, what is prohibited by the second paragraph of Section 3, Rule 16 of the same Rules is the deferment until trial of the resolution of the motion to dismiss itself.[20] Under the circumstances obtaining in the instant case, the assailed Orders of the RTC may not be construed as tantamount to deferring action on the motion to dismiss until trial is conducted.

In sum, the Court finds no error on the part of the CA in holding that the RTC did not commit grave abuse of discretion in issuing its assailed Orders.

WHEREFORE, the petition is *DENIED*. The May 29, 2006 Decision and the July 20, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 83223 are *AFFIRMED*. Let the records of this case be remanded to the Regional Trial Court of Malabon City, Branch 74, for further proceedings with dispatch.

SO ORDERED.

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

---

[20] *Marquez v. Baldoz*, G.R. No. 143779, April 4, 2003, 400 SCRA 669, 675.

[*] Designated as an additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152, dated November 11, 2011.

SECOND DIVISION

[G.R. No. 174179. November 16, 2011]

KAISAHAN AT KAPATIRAN NG MGA MANGGAGAWA AT KAWANI SA MWC-EAST ZONE UNION and EDUARDO BORELA, representing its members, *petitioners, vs.* **MANILA WATER COMPANY, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AS A RULE, REASSESSMENT OF THE EVIDENCE IS NOT PROPER; EXCEPTION. —** We agree with the petitioners that as a rule, the CA cannot undertake a re-assessment of the evidence presented in the case in *certiorari* proceedings under Rule 65 of the Rules of Court. However, the rule admits of exceptions. In *Mercado v. AMA Computer College-Parañaque City, Inc*., we held that the CA may examine the factual findings of the NLRC to determine whether or not its conclusions are supported by substantial evidence, whose absence justifies a finding of grave abuse of discretion. xxx As discussed below, our review of the records and of the CA decision shows that the CA erred in ruling that the NLRC gravely abused its discretion in awarding the petitioners ten percent (10%) attorney's fees without basis in fact and in law. Corollary to the above-cited rule is the basic approach in the Rule 45 review of Rule 65 decisions of the CA in labor cases which we articulated in *Montoya v. Transmed Manila Corporation* as a guide and reminder to the CA. In a Rule 45 review, we consider the **correctness of the assailed CA decision,** in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC**

decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case**? In the present case, we are therefore tasked to determine whether the CA correctly ruled that the NLRC committed grave abuse of discretion in awarding 10% attorney's fees to the petitioners.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; ATTORNEY'S FEES; TWO COMMONLY ACCEPTED CONCEPTS; EXPLAINED. —** We explained in *PCL Shipping Philippines, Inc. v. National Labor Relations Commission* that there are two commonly accepted **concepts of attorney's fees –** the ordinary and extraordinary. In its **ordinary concept**, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services the former renders; compensation is paid for the cost and/or results of legal services per agreement or as may be assessed. In its **extraordinary concept**, **attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party to the winning party**. The instances when these may be awarded are enumerated in Article 2208 of the Civil Code, specifically in its paragraph 7 on actions for recovery of wages, and is ***payable not to the lawyer but to the client***, **unless the client and his lawyer have agreed that the award shall accrue to the lawyer as additional or part of compensation.**

3. **ID.; ID.; ID.; EXTRAORDINARY CONCEPT; IN THE AWARD THEREOF, THERE NEED NOT BE ANY SHOWING THAT THE EMPLOYER ACTED MALICIOUSLY OR IN BAD FAITH; RATIONALE; AWARD OF ATTORNEY'S FEES, PROPER IN THE CASE AT BAR. —** We also held in *PCL Shipping* that Article 111 of the Labor Code, as amended, contemplates the **extraordinary concept** of attorney's fees and that **Article 111 is an exception to the declared policy of strict construction in the award of attorney's fees. Although an express finding of facts and law is still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in**

bad faith when it withheld the wages. In carrying out and interpreting the Labor Code's provisions and implementing regulations, the employee's welfare should be the primary and paramount consideration. This kind of interpretation gives meaning and substance to the liberal and compassionate spirit of the law as embodied in Article 4 of the Labor Code (which provides that "[a]ll doubts in the implementation and interpretation of the provisions of [the Labor Code], including its implementing rules and regulations, shall be resolved in favor of labor") and Article 1702 of the Civil Code (which provides that "[i]n case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer"). x x x In the present case, we find it undisputed that the union members are entitled to their AA benefits and that these benefits were not paid by the Company. That the Company had no funds is not a defense as this was not an insuperable cause that was cited and properly invoked. As a consequence, the union members represented by the Union were compelled to litigate and incur legal expenses. On these bases, we find no difficulty in upholding the NLRC's award of ten percent (10%) attorney's fees.

4. **ID.; ID.; ID.; ID.; EXPOUNDED; NO VIOLATION OF THE MAXIMUM LIMIT OF TEN PERCENT (10%) FIXED BY ARTICLE 111 OF THE LABOR CODE IN THE CASE AT BAR. —** In *Traders Royal Bank Employees Union-Independent v. NLRC*, we expounded on the concept of attorney's fees in the context of Article 111 of the Labor Code, as follows: In the first place, the fees mentioned here are the extraordinary attorney's fees recoverable as **indemnity for damages sustained by and payable to the prevailing part[y]**. In the second place**, the ten percent** (10%) attorney's fees provided for in Article 111 of the Labor Code and Section 11, Rule VIII, Book III of the Implementing Rules **is the maximum of the award that may thus be granted**. **Article 111 thus fixes only the limit on the amount of attorney's fees the victorious party may recover** in any judicial or administrative proceedings and it does not even prevent the NLRC from fixing an amount lower than the ten percent (10%) ceiling prescribed by the article when circumstances warrant it. In the present case, the ten percent (10%) attorney's fees awarded by the NLRC on the basis of Article 111 of the Labor Code accrue to the Union's members as indemnity for damages and not to the Union's

counsel as compensation for his legal services, **unless, they agreed that the award shall be given to their counsel as additional or part of his compensation; in this case** the Union bound itself to pay 10% attorney's fees to its counsel under the MOA and also gave up the attorney's fees awarded to the Union's members in favor of their counsel. This is supported by Borela's affidavit which stated that "[t]he 10% attorney's fees paid by the members/employees is separate and distinct from the obligation of the company to pay the 10% awarded attorney's fees which we also gave to our counsel as part of our contingent fee agreement." The limit to this agreement is that the **indemnity for damages imposed by the NLRC on the losing party (*i.e.*, the Company**) cannot exceed ten percent (10%). Properly viewed from this perspective, the award cannot be taken to mean an additional grant of attorney's fees, in violation of the ten percent (10%) limit under Article 111 of the Labor Code since it rests on an entirely different legal obligation than the one contracted under the MOA. Simply stated, **the attorney's fees contracted under the MOA do not refer to the amount of attorney's fees awarded by the NLRC; the MOA provision on attorney's fees does not have any bearing at all to the attorney's fees awarded by the NLRC under Article 111 of the Labor Code.** Based on these considerations, it is clear that the CA erred in ruling that the LA's award of attorney's fees violated the maximum limit of ten percent (10%) fixed by Article 111 of the Labor Code.

APPEARANCES OF COUNSEL

Dolendo and Associates for petitioners.
Poblador Bautista & Reyes for respondent.

D E C I S I O N

BRION, *J*.:

We resolve the petition for review on *certiorari*[1] filed by the petitioners, Kaisahan at Kapatiran ng mga Manggagawa at

[1] *Rollo*, pp. 3-26; under Rule 45 of the Rules of Court.

Kawani sa MWC-East Zone Union (*Union*) and Eduardo Borela, assailing the decision[2] and the resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 83654.[4]

The Factual Antecedents

The background facts are not disputed and are summarized below.

The Union is the duly-recognized bargaining agent of the rank-and-file employees of the respondent Manila Water Company, Inc. (*Company*) while Borela is the Union President.[5] On February 21, 1997, the Metropolitan Waterworks and Sewerage System (*MWSS*) entered into a Concession Agreement (*Agreement*) with the Company to privatize the operations of the MWSS.[6] Article 6.1.3 of the Agreement provides that "the Concessionaire shall grant [its] employees benefits no less favorable than those granted to MWSS employees at the time of [their] separation from MWSS."[7] Among the benefits enjoyed by the employees of the MWSS were the amelioration allowance (*AA*) and the cost-of-living allowance (*COLA*) granted in August 1979, pursuant to Letter of Implementation No. 97 issued by the Office of the President.[8]

The payment of the AA and the COLA was discontinued pursuant to Republic Act No. 6758, otherwise known as the "Salary Standardization Law," which integrated the allowances

---

[2] Dated March 6, 2006, *id.* at 34-43; penned by Associate Justice Arcangelita M. Romilla-Lontok, and concurred in by Associate Justices Conrado M. Vasquez, Jr. (retired) and Martin S. Villarama, Jr. (now a member of this Court).

[3] Dated August 15, 2006, *id.* at 31-32.

[4] *Manila Water Company, Inc. v. National Labor Relations Commission, et al.*

[5] *Rollo*, pp. 267-268.

[6] *Id.* at 369.

[7] *Id.* at 36.

[8] *Ibid.*

into the standardized salary.[9] Nonetheless, in 2001, the Union demanded from the Company the payment of the AA and the COLA during the renegotiation of the parties' Collective Bargaining Agreement (*CBA*).[10] The Company initially turned down this demand, however, it subsequently agreed to an amendment of the CBA on the matter, which provides:

> The Company shall implement the payment of the Amelioration Allowance and Cost of Living [A]llowance retroactive August 1, 1997 should the MWSS decide to pay its employees and all its former employees or upon award of a favorable order by the MWSS Regulatory Office or upon receipt of [a] final court judgment.[11]

Thereafter, the Company integrated the AA into the monthly payroll of all its employees beginning August 1, 2002, payment of the AA and the COLA after an appropriation was made and approved by the MWSS Board of Trustees. The Company, however, did not subsequently include the COLA since the Commission on Audit disapproved its payment because the Company had no funds to cover this benefit.[12]

As a result, the Union and Borela filed on April 15, 2003 a complaint against the Company for payment of the AA, COLA, moral and exemplary damages, legal interest, and attorney's fees before the National Labor Relations Commission (*NLRC*).[13]

The Compulsory Arbitration Rulings

In his decision of August 20, 2003, Labor Arbiter Aliman D. Mangandog (*LA*) ruled in favor of the petitioners and ordered the payment of their AA and COLA, six percent (6%) interest of the total amount awarded, and ten percent (10%) attorney's fees.[14]

---

[9] *Ibid.*

[10] *Id.* at 37.

[11] *Ibid.*

[12] *Id.* at 37-38.

[13] *Id.* at 36.

[14] *Id.* at 367-381.

On appeal by the Company, the NLRC affirmed with modification the LA's decision.[15] It set aside the award of the COLA benefits because the claim was not proven and established, but ordered the Company to pay the petitioners their accrued AA of about ₱107,300,000.00 in lump sum and to continue paying the AA starting August 1, 2002. It also upheld the award of 10% attorney's fees to the petitioners.

In its Motion for Partial Reconsideration of the NLRC's December 19, 2003 decision, the Company pointed out that the award of ten percent (10%) attorney's fees to the petitioners is already provided for in their December 19, 2003 Memorandum of Agreement (*MOA*) which mandated that attorney's fees shall be deducted from the AA and CBA receivables.[16] This compromise agreement, concluded between the parties in connection with a notice of strike filed by the Union in 2003,[17] provides among others that:[18]

31. Attorney's fees – 10% to be deducted from AA and CBA receivables.
32. All other issues are considered withdrawn.[19]

In their Opposition, the petitioners argued that the MOA only covered the payment of their share in the contracted attorney's fees, but did not include the attorney's fees awarded by the NLRC. To support their claim, the petitioners submitted Borela's affidavit which relevantly stated:

2. On December 19, 2003, in settlement of the notice of Strike for CBA Deadlock, Manila Water Company, Inc. and the Union entered into an Agreement settling the deadlock issued (sic) of the CBA negotiation including [the] payment of the AA and the mode of payment thereof.

---

[15] Decision rendered on December 19, 2003; *id.* at 102-118.

[16] *Id.* at 481-485.

[17] NCMB NCR-NS-11-311-03, *id.* at 478.

[18] *Ibid.*

[19] *Id.* at 493.

3. Considering that the AA payment was included in the Agreement, the Union representation deemed it wise, for practical reason, to authorize the company to immediately deduct from the benefits that will be received by the member/employees the 10% attorney's fees in conformity with our contract with our counsel.

4. **The 10% attorney's fees paid by the members/employees is separate and distinct from the obligation of the company to pay the 10% awarded attorney's fees which we also gave to our counsel as part of our contingent fee agreement.**

5. There was no agreement that we are going to shoulder the entire attorney's fees as this would cost us 20% of the amount we would recover. There was also no agreement that the 10% attorney's fees in the MOA represents the entire attorney's cost because the said payment represents only our compliance of our share in the attorney's fees in conformity with our contract. Likewise, we did not waive the awarded 10% attorney's fees because the same belongs to our counsel and not to us and beyond our authority.[20] (emphasis ours)

The NLRC subsequently denied both parties' Motions for Partial Reconsideration,[21] prompting the Company to **elevate the case to the CA *via* a petition for *certiorari* under Rule 65 of the Rules of Court**. It charged the NLRC of grave abuse of discretion in sustaining the award of attorney's fees on the grounds that: (1) it is contrary to the MOA[22] concerning the payment of attorney's fees; (2) there was no finding of unlawful withholding of wages or bad faith on the part of the Company; and (3) the attorney's fees awarded are unconscionable.

The CA Decision

In its Decision promulgated on March 6, 2006,[23] the CA modified the assailed NLRC rulings by deleting "[t]he order for respondent MWCI to pay attorney's fees equivalent to 10% of

---

[20] *Id.* at 658-659.

[21] *Id.* at 119-124; Resolution dated April 5, 2004.

[22] *Id.* at 489-493, item 31.

[23] *Supra* note 2.

the total judgment awards." The CA recognized the binding effect of the MOA between the Company and the Union; it stressed that any further award of attorney's fees is unfounded considering that it did not find anything in the Agreement that is contrary to law, morals, good customs, public policy or public order.

In resolving the issue, the CA cited our ruling in *Traders Royal Bank Employees Union-Independent v. NLRC*,[24] where we distinguished between the two commonly accepted concepts of attorney's fees — the ordinary and the extraordinary. We held in that case that under its ordinary concept, attorney's fees are the reasonable compensation paid to a lawyer by his client for legal services rendered. On the other hand, we ruled that in its extraordinary concept, attorney's fees represent an indemnity for damages ordered by the court to be paid by the losing party in a litigation based on what the law provides; it is payable to the client not to the lawyer, unless there is an agreement to the contrary.

The CA noted that the fees at issue in this case fall under the extraordinary concept — the NLRC having ordered the Company, as losing party, to pay the Union and its members ten percent (10%) attorney's fees. It found the award without basis under Article 111 of the Labor Code which provides that attorney's fees equivalent to ten percent (10%) of the amount of wages recovered may be assessed only in cases of unlawful withholding of wages.

The CA ruled that the facts of the case do not indicate any unlawful withholding of wages or bad faith attributable to the Company. It also held that the additional grant of 10% attorney's fees violates Article 111 of the Labor Code considering that the MOA between the parties already ensured the payment of 10% attorney's fees, deductible from the AA and CBA receivables of the Union's members. The CA thus adjudged the NLRC decision awarding attorney's fees to have been rendered with grave abuse of discretion.

---

[24] 336 Phil. 705, 712 (1997).

The Union and Borela moved for reconsideration, but the CA denied the motion in its resolution of August 15, 2006.[25] Hence, the present petition.

The Petition

The petitioners seek a reversal of the CA rulings on the sole ground that the appellate court committed a reversible error in reviewing the factual findings of the NLRC and in substituting its own findings — an action that is not allowed under Rule 65 of the Rules of Court. They question the CA's re-evaluation of the evidence, particularly the MOA, and its conclusion that there was no unlawful withholding of wages or bad faith attributable to the Company, thereby contradicting the factual findings of the NLRC. They also submit that a petition for *certiorari* under Rule 65 is confined only to issues of jurisdiction or grave abuse of discretion, and does not include the review of the NLRC's evaluation of the evidence and its factual findings.[26]

The petitioners argue that in the present case, all the parties' arguments and evidence relating to the award of attorney's fees were carefully studied and weighed by the NLRC. As a result, the NLRC gave credence to Borela's affidavit claiming that the attorney's fees paid by the Union's members are separate and distinct from the attorney's fees awarded by the NLRC. The petitioners stress that whether the NLRC is correct in giving credence to Borela's affidavit is a question that the CA cannot act upon in a petition for *certiorari* unless grave abuse of discretion can be shown.[27]

The Case for the Company

In its Memorandum filed on September 7, 2007,[28] the Company argues that the correctness of the NLRC's interpretation of the

[25] *Supra* note 3.

[26] *Supra* note 1.

[27] *Ibid.*

[28] *Id.* at 694-720.

provision of the MOA, the reasonableness of the attorney's fees in question, and the application or interpretation of a provision of the Labor Code on the matter are questions of law which the CA validly inquired into in the *certiorari* proceedings. It argues that the CA correctly ruled that the NLRC acted with grave abuse of discretion when it affirmed the LA's award of attorney's fees despite the absence of a finding of any unlawful withholding of wages or bad faith on the part of the Company. It finally contends that the Union's demand, together with the NLRC award, is unconscionable as it represents 20% of the amount due or about ₱21.4 million.

Issues

The core issues posed for our resolution are: (1) whether the CA can review the factual findings of the NLRC in a Rule 65 petition; and (2) whether the NLRC gravely abused its discretion in awarding ten percent (10%) attorney's fees to the petitioners.

The Court's Ruling

We find the petition and its arguments meritorious.

On the CA's Review of the NLRC's Factual Findings

We agree with the petitioners that as a rule, the CA cannot undertake a re-assessment of the evidence presented in the case in *certiorari* proceedings under Rule 65 of the Rules of Court.[29] However, the rule admits of exceptions. In *Mercado v. AMA Computer College-Parañaque City, Inc.*,[30] we held that the CA may examine the factual findings of the NLRC to determine whether or not its conclusions are supported by substantial evidence, whose absence justifies a finding of grave abuse of discretion. We ruled:

> We agree with the petitioners that, as a rule in *certiorari* proceedings under Rule 65 of the Rules of Court, the CA does not

---

[29] *Protacio v. Laya Mananghaya & Co.*, G.R. No. 168654, March 25, 2009, 582 SCRA 417, 427.

[30] G.R. No. 183572, April 13, 2010, 618 SCRA 218.

assess and weigh each piece of evidence introduced in the case. The CA only examines the factual findings of the NLRC to determine whether or not the conclusions are supported by substantial evidence whose absence points to grave abuse of discretion amounting to lack or excess of jurisdiction. In the recent case of *Protacio v. Laya Mananghaya & Co*., we emphasized that:

> As a general rule, in *certiorari* proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. **However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence. The Court has not hesitated to affirm the appellate court's reversals of the decisions of labor tribunals if they are not supported by substantial evidence.**[31] (italics and emphasis supplied; citation omitted)

As discussed below, our review of the records and of the CA decision shows that the CA erred in ruling that the NLRC gravely abused its discretion in awarding the petitioners ten percent (10%) attorney's fees without basis in fact and in law. Corollary to the above-cited rule is the basic approach in the Rule 45 review of Rule 65 decisions of the CA in labor cases which we articulated in *Montoya v. Transmed Manila Corporation*[32] as a guide and reminder to the CA. We laid down that:

In a Rule 45 review, we consider the **correctness of the assailed CA decision,** in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision**

---

[31] *Id.* at 231-232.

[32] G.R. No. 183329, August 27, 2009, 597 SCRA 334.

from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case**?[33] (italics and emphases supplied)

In the present case, we are therefore tasked to determine whether the CA correctly ruled that the NLRC committed grave abuse of discretion in awarding 10% attorney's fees to the petitioners.

On the Award of Attorney's Fees

Article 111 of the Labor Code, as amended, governs the grant of attorney's fees in labor cases:

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.

Section 8, Rule VIII, Book III of its Implementing Rules also provides, *viz*:

Section 8. *Attorney's fees.* — Attorney's fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10% of the amount awarded. The fees may be deducted from the total amount due the winning party.

---

[33] *Id.* at 342-343.

We explained in *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*[34] that there are two commonly accepted **concepts of attorney's fees —** the ordinary and extraordinary. In its **ordinary concept**, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services the former renders; compensation is paid for the cost and/or results of legal services per agreement or as may be assessed. In its **extraordinary concept**, **attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party to the winning party**. The instances when these may be awarded are enumerated in Article 2208 of the Civil Code, specifically in its paragraph 7 on actions for recovery of wages, and is ***payable not to the lawyer but to the client***, **unless the client and his lawyer have agreed that the award shall accrue to the lawyer as additional or part of compensation.**[35]

We also held in *PCL Shipping* that Article 111 of the Labor Code, as amended, contemplates the **extraordinary concept** of attorney's fees and that **Article 111 is an exception to the declared policy of strict construction in the award of attorney's fees. Although an express finding of facts and law is still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages.** In carrying out and interpreting the Labor Code's provisions and implementing regulations, the employee's welfare should be the primary and paramount consideration. This kind of interpretation gives meaning and substance to the liberal and compassionate spirit of the law as embodied in Article 4 of the Labor Code (which provides that "[a]ll doubts in the implementation and interpretation of the provisions of [the Labor Code], including its implementing rules and regulations, shall be resolved in favor of labor") and Article 1702 of the Civil Code (which provides that "[i]n case of doubt, all labor legislation and all labor contracts shall be

---

[34] G.R. No. 153031, December 14, 2006, 511 SCRA 44.

[35] *Id.* at 64-65, citing *Dr. Reyes v. Court of Appeals*, 456 Phil. 520, 539-540 (2003).

construed in favor of the safety and decent living for the laborer").[36]

We similarly so ruled in *RTG Construction, Inc. v. Facto*[37]and in *Ortiz v. San Miguel Corporation.*[38] In *RTG Construction*, we specifically stated:

> Settled is the rule that in actions for recovery of wages, or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interests, a monetary award by way of attorney's fees is justifiable under Article 111 of the Labor Code; Section 8, Rule VIII, Book III of its Implementing Rules; and paragraph 7, Article 2208 of the Civil Code. **The award of attorney's fees is proper, and there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly.**[39] (emphasis ours)

In *PCL Shipping*, we found the award of attorney's fees due and appropriate since the respondent therein incurred legal expenses after he was forced to file an action for recovery of his lawful wages and other benefits to protect his rights.[40] From this perspective and the above precedents, we conclude that the CA erred in ruling that a finding of the employer's malice or bad faith in withholding wages must precede an award of attorney's fees under Article 111 of the Labor Code. To reiterate, a plain showing that the lawful wages were not paid without justification is sufficient.

In the present case, we find it undisputed that the union members are entitled to their AA benefits and that these benefits were not paid by the Company. That the Company had no funds is not a defense as this was not an insuperable cause that was cited and properly invoked. As a consequence, the union

---

[36] *Ibid.*

[37] G.R. No. 163872, December 21, 2009, 608 SCRA 615.

[38] G.R. Nos. 151983-84, July 31, 2008, 560 SCRA 654.

[39] *Supra* note 37, at 625-626.

[40] *Supra* note 34, at 65.

members represented by the Union were compelled to litigate and incur legal expenses. On these bases, we find no difficulty in upholding the NLRC's award of ten percent (10%) attorney's fees.

The more significant issue in this case is the effect of the MOA provision that attorney's fees shall be deducted from the AA and CBA receivables. In this regard, the CA held that the additional grant of 10% attorney's fees by the NLRC violates Article 111 of the Labor Code, considering that the MOA between the parties already ensured the payment of 10% attorney's fees deductible from the AA and CBA receivables of the Union's members. In addition, the Company also argues that the Union's demand, together with the NLRC award, is unconscionable as it represents 20% of the amount due or about ₱21.4 million.

In *Traders Royal Bank Employees Union-Independent v. NLRC*,[41] we expounded on the concept of attorney's fees in the context of Article 111 of the Labor Code, as follows:

> In the first place, the fees mentioned here are the extraordinary attorney's fees recoverable as **indemnity for damages sustained by and payable to the prevailing part[y]**. In the second place**, the ten percent** (10%) attorney's fees provided for in Article 111 of the Labor Code and Section 11, Rule VIII, Book III of the Implementing Rules **is the maximum of the award that may thus be granted**. **Article 111 thus fixes only the limit on the amount of attorney's fees the victorious party may recover** in any judicial or administrative proceedings and it does not even prevent the NLRC from fixing an amount lower than the ten percent (10%) ceiling prescribed by the article when circumstances warrant it.[42] (emphases ours; citation omitted)

In the present case, the ten percent (10%) attorney's fees awarded by the NLRC on the basis of Article 111 of the Labor Code accrue to the Union's members as indemnity for damages and not to the Union's counsel as compensation for his legal

---

[41] *Supra* note 24.

[42] *Id.* at 722.

services, **unless, they agreed that the award shall be given to their counsel as additional or part of his compensation; in this case** the Union bound itself to pay 10% attorney's fees to its counsel under the MOA and also gave up the attorney's fees awarded to the Union's members in favor of their counsel. This is supported by Borela's affidavit which stated that "[t]he 10% attorney's fees paid by the members/employees is separate and distinct from the obligation of the company to pay the 10% awarded attorney's fees which we also gave to our counsel as part of our contingent fee agreement."[43] The limit to this agreement is that the **indemnity for damages imposed by the NLRC on the losing party (*i.e.*, the Company**) cannot exceed ten percent (10%).

Properly viewed from this perspective, the award cannot be taken to mean an additional grant of attorney's fees, in violation of the ten percent (10%) limit under Article 111 of the Labor Code since it rests on an entirely different legal obligation than the one contracted under the MOA. Simply stated, **the attorney's fees contracted under the MOA do not refer to the amount of attorney's fees awarded by the NLRC; the MOA provision on attorney's fees does not have any bearing at all to the attorney's fees awarded by the NLRC under Article 111 of the Labor Code.** Based on these considerations, it is clear that the CA erred in ruling that the LA's award of attorney's fees violated the maximum limit of ten percent (10%) fixed by Article 111 of the Labor Code.

Under this interpretation, the Company's argument that the attorney's fees are unconscionable as they represent 20% of the amount due or about ₱21.4 million is more apparent than real. Since the attorney's fees awarded by the LA pertained to the Union's members as indemnity for damages, it was totally within their right to waive the amount and give it to their counsel as part of their contingent fee agreement. Beyond the limit fixed by Article 111 of the Labor Code, such as between the lawyer and the client, the attorney's fees may exceed ten

---

[43] *Supra* note 20.

percent (10%) on the basis of *quantum meruit*, as in the present case.[44]

WHEREFORE, premises considered, the petition is hereby *GRANTED*. The assailed decision dated March 6, 2006 and the resolution dated August 15, 2006 of the Court of Appeals in CA-G.R. SP No. 83654 are *REVERSED* and *SET ASIDE*. The Labor Arbiter's award of attorney's fees equivalent to ten percent (10%) of the total judgment award is hereby *REINSTATED*.

No pronouncement as to costs.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 176377. November 16, 2011]

FUNCTIONAL, INC., *petitioner, vs.* **SAMUEL C. GRANFIL,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; IN ILLEGAL DISMISSAL CASES, THE BURDEN OF PROOF IS UPON THE EMPLOYER TO SHOW THAT THE EMPLOYEE'S TERMINATION FROM SERVICE IS FOR JUST AND VALID CAUSE. — The rule is long and well settled that, in

---

[44] C.A. Azucena, Jr., *The Labor Code With Comments and Cases*, Volume 1, 6th ed., p. 352.

illegal dismissal cases like the one at bench, the burden of proof is upon the employer to show that the employee's termination from service is for a just and valid cause. The employer's case succeeds or fails on the strength of its evidence and not the weakness of that adduced by the employee, in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them. Often described as more than a mere scintilla, the quantum of proof is substantial evidence which is understood as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise. Failure of the employer to discharge the foregoing onus would mean that the dismissal is not justified and therefore illegal.

2. **ID.; ID.; ID.; ABANDONMENT; AN EMPLOYER CANNOT EXPEDIENTLY ESCAPE LIABILITY FOR ILLEGAL DISMISSAL BY CLAIMING THAT THE EMPLOYER ABANDONED HIS WORK. —** Denying the charge of illegal dismissal, FI insists that Granfil abandoned his employment after he was transferred from his assignment at the NBS Megamall Branch as a consequence of the latter's request for his relief. In the same manner that it cannot be said to have discharged the above-discussed burden by merely alleging that it did not dismiss the employee, it has been ruled that an employer cannot expediently escape liability for illegal dismissal by claiming that the former abandoned his work. This applies to FI which adduced no evidence to prove Granfil's supposed abandonment beyond submitting copies of NBS' 31 July 2002 request for said employee's transfer and its 1 August 2002 written acquiescence thereto. While these documents may have buttressed the claim that Granfil was indeed recalled from his assignment, however, we find that the CA correctly discounted their probative value insofar as FI's theory of abandonment is concerned.

3. **ID.; ID.; ID.; BEING A MATTER OF INTENTION, ABANDONMENT CANNOT BE INFERRED OR PRESUMED FROM EQUIVOCAL ACTS; ELEMENTS THAT MUST CONCUR. —** Being a matter of intention, moreover, abandonment cannot be inferred or presumed from equivocal acts. As a just and valid ground for dismissal, it requires the deliberate, unjustified refusal of the employee to

resume his employment, without any intention of returning. Two elements must concur: (1) failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. The burden of proving abandonment is once again upon the employer who, whether pleading the same as a ground for dismissing an employee or as a mere defense, additionally has the legal duty to observe due process. Settled is the rule that mere absence or failure to report to work is not tantamount to abandonment of work.

4. **ID.; ID.; ID.; ABSENCE MUST BE ACCOMPANIED BY OVERT ACTS UNERRINGLY POINTING TO THE FACT THAT THE EMPLOYEE SIMPLY DOES NOT WANT TO WORK ANYMORE; FACT THAT RESPONDENT PRAYED FOR HIS REINSTATEMENT SPEAKS AGAINST ANY INTENT TO SEVER THE EMPLOYER-EMPLOYEE RELATIONSHIP WITH HIS EMPLOYER. —** Viewed in the light of the foregoing principles, we find that the CA correctly ruled out FI's position that Granfil had abandoned his employment. Aside from the fact that Bautista, Tenorio, Ballesteros and Dizon did not even execute sworn statements to refute the overt acts of dismissal imputed against them, the record is wholly bereft of any showing that FI required Granfil to report to its main office or, for that matter, to explain his supposed unauthorized absences. Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. Even then, FI's theory of abandonment was likewise negated by Granfil's filing the complaint for illegal dismissal which evinced his desire to return to work. In vigorously pursuing his action against FI before the Labor Arbiter, the NLRC and the CA, Granfil clearly manifested that he has no intention of relinquishing his employment. In any case, the fact that Granfil prayed for his reinstatement speaks against any intent to sever the employer-employee relationship with FI.

5. **REMEDIAL LAW; EVIDENCE; RULE ON FINALITY OF FINDINGS OF FACT IN ADMINISTRATIVE PROCEEDINGS; DOES NOT APPLY WHEN IT IS CLEAR THAT A PALPABLE MISTAKE WAS COMMITTED BY THE QUASI-JUDICIAL TRIBUNAL WHICH NEEDS**

RECTIFICATION. — FI next faults the CA for not giving credence to the factual findings of Labor Arbiter Eduardo Carpio which was affirmed in the NLRC's 20 April 2005 resolution. As may be gleaned from the above disquisition, however, both the Labor Arbiter and the NLRC clearly erred in directing the dismissal of the complaint by unduly shifting the burden of proving the illegality of his dismissal to Granfil. While administrative findings of fact are, concededly, accorded great respect, and even finality when supported by substantial evidence, nevertheless, when it can be shown that administrative bodies grossly misappreciated evidence of such nature as to compel a contrary conclusion, this court had not hesitated to reverse their factual findings. Indeed, said rule does not apply when, as here, it is clear that a palpable mistake was committed by the quasi-judicial tribunal which needs rectification.

APPEARANCES OF COUNSEL

Saulog and De Leon Law Office for petitioner.
Caraan and Associates Law Offices for respondent.

D E C I S I O N

PEREZ, *J*.:

Assailed in this petition for review[1] filed under Rule 45 of the *1997 Rules of Civil Procedure* is the Decision dated 22 November 2006 rendered by the then Tenth Division of the Court of Appeals (CA) in CA-G.R. SP No. 94851,[2] the dispositive portion of which states:

WHEREFORE, premises considered, the petition is GRANTED. The Resolution dated April 20, 2005 and the order dated January 26, 2006 of public respondent NLRC, First Division in NLRC NCR Case No. 09-07126-02 NLRC NCR CA No. 035887-03 sustaining the findings of the Labor Arbiter are hereby REVERSED and SET ASIDE.

---

[1] *Rollo*, pp. 33-54, FI's 28 February 2007 Petition.

[2] Penned by Remedios A. Salazar-Fernando and concurred in by Justices Noel G. Tijam and Arturo G. Tayag. *Id.* at 55-66.

Private respondent Functional, Inc. is hereby ORDERED to reinstate petitioner Granfil without loss of seniority rights and other privileges, and to pay the latter his full backwages, inclusive of allowances and other benefits, from July 31, 2002 up to the time of his actual reinstatement.

SO ORDERED.[3]

The Facts

Sometime in 1992, respondent Samuel C. Granfil was hired as key operator by petitioner Functional, Inc. (FI), a domestic corporation engaged in the business of sale and rental of various business equipments, including photocopying machines. As Key Operator, Granfil was tasked to operate the photocopying machine rented by the National Bookstore (NBS) at its SM Megamall Branch. There is no dispute regarding the fact that, in the evening of 30 July 2002, Granfil attended to a customer by the name of Cosme Cavaldeja (Cavaldeja) who, together with his wife, asked to have their flyers photocopied. It appears that Bonnel Dechavez, the security guard assigned at said establishment, saw Cavaldeja handing money to Granfil after the transaction was finished.[4] After investigating the matter, Dechavez submitted the following incident report to NBS Branch Manager Lucy Genegaban (Genegaban), to wit:

> At around 1940 on July 30, 2002 at NBS SM Megamall Dona Julia Vargas Ave., Mandaluyong City, I checked one customer and asked if he already paid for his xerox[ed] item's (sic) and he said "yes." Upon asking for a receipt, he pointed to Sammy the Xerox operator [to] whom he g[a]ve payment, instead of paying to the cashier. Sammy came and it was only then that he brought the customer to the counter 09 for payment [of] the amount of [the] xerox[ed] item's (sic) is ₱250.[5]

On 3 September 2002, Granfil filed a complaint against FI, its President, Romeo Bautista (Bautista), its Marketing Manager,

---

[3] *Id.* at 66.

[4] *Id.* at 38; 390-392.

[5] *Id.* at 91, Dechavez' 30 July 2002 Incident Report.

Freddie Tenorio (Tenorio), its Office Supervisor, Julius Ballesteros (Ballesteros), and its Area Supervisor, Joel Dizon (Dizon), for illegal dismissal, unpaid 13th month pay, moral and exemplary damages and attorney's fees. In support of his complaint which was docketed as NLRC NCR Case No. 09-07126-2002 before the arbitral level of the National Labor Relations Commission (NLRC),[6] Granfil alleged, among other matters, that the money which Dechavez saw him receive from Cavaldeja was a ₱200 tip said customer gave him in appreciation of his assistance in xeroxing and organizing the batches of voluminous materials he asked to be photocopied; that payment for the materials was, however, already paid per batch by Cavaldeja's wife who, by that time, had already left the premises; and, that rather than listening to his explanation and simply verifying the meter of the photocopy machine as well as the paper allotted to it, Dechavez submitted his incident report which, in turn, caused Tenorio to tell him, "*Mr. Granfil, magpahinga ka muna. Mabuti pa, pumirma ka nalang ng resignation letter para may makuha ka pa*."[7]

Granfil further asseverated that, with said incident report having been telefaxed to FI's head office, he was asked to report thereat in the morning of 31 July 2002; that instead of allowing him to explain, however, Ballesteros peremptorily ordered his termination from employment; that wishing to explain his side, he sought out Dizon who merely ignored and tersely advised him, "*Magpahinga ka na lang*"; that refused entry when he tried to report for work on 1 August 2002, he subsequently sought out Cavaldeja whose corroboration of his version of the incident also fell on deaf ears; that having been terminated without just cause and observance of due process, he was constrained to file the 3 September 2002 complaint from which the instant suit originated; that aside from the reinstatement to which he is clearly entitled as an illegally dismissed employee, he should be paid full backwages and 13th month pay for the year 2002; and, that in view of the malice and bad faith which characterized his

[6] *Id.* at 74, Granfil's 3 September 2002 Complaint.

[7] *Id.* at 76-78, Granfil's 28 October 2002 Position Paper.

dismissal from employment, Bautista, Tenorio, Ballesteros and Dizon should be held jointly and severally liable with FI for the payment of said indemnities as well as his claims for moral and exemplary damages and attorney's fees.[8]

In their position paper, FI and its corporate officers, in turn, averred that having been apprised of the incident, Genegaban requested for Granfil's relief as Key Operator of the photocopying machine installed at the NBS SM Megamall Branch; that for the good of all concerned, FI informed Granfil that he was going to be transferred to a different assignment, without demotion in rank or diminution of his salaries, benefits and other privileges; that required to report to FI's main office to act as emergency reliever to other Key Operators while waiting for his new assignment, Granfil misconstrued his transfer as a punishment for his guilt and refused to heed said directive which was within the management's prerogative to issue; that an employee's right to security of tenure does not give him such vested right to his position as would deprive his employer of its prerogative to change his assignment or transfer him where he will be most useful; and, that aside from being guilty of insubordination, Granfil clearly abandoned his employment rather than illegally dismissed therefrom.[9]

On 29 April 2003, Labor Arbiter Eduardo Carpio rendered a decision discounting Granfil's illegal dismissal from employment in view of his failure to prove with substantial evidence overt acts of termination on the part of FI and its officers. Simply awarded the sum of ₱3,966.65 as proportionate 13th month pay for services rendered from January to July 2002,[10] Granfil perfected the appeal which was docketed before the First Division of the NLRC as NLRC NCR CA No. 035887-03. With the affirmance of the Labor Arbiter's decision in the 20 April 2005 Resolution issued by the NLRC[11] and the subsequent denial of

---

[8] *Id.* at 78-88.

[9] *Id.* at 93-99, FI's 14 October 2002 Position Paper.

[10] *Id.* at 140-145, Labor Arbiter's 29 April 2003 Decision.

[11] *Id.* at 180-183, NLRC's 20 April 2005 Resolution.

his motion seeking the reconsideration of said decision,[12] Granfil elevated the case through the Rule 65 petition for *certiorari* docketed before the CA as CA-G.R. SP No. 94851. On 22 November 2006, the CA rendered the herein assailed 22 November 2006 Decision, reversing the NLRC's 20 April 2005 Resolution on the ground that FI failed to satisfactorily prove Granfil's supposed abandonment of his employment which, by itself, was negated by his filing of a case for illegal employment. Ordering FI to reinstate Granfil and to pay his full backwages, allowances and other benefits from 31 July 2002 until his actual reinstatement, the CA denied said employee's claims for moral and exemplary damages as well as attorney's fees for lack of factual basis.[13]

FI's motion for reconsideration of the CA's 22 November 2006 decision was denied for lack of merit in said court's 22 January 2007 resolution,[14] hence, this petition.

The Issues

FI prays for the reversal and setting aside of the assailed decision on the following grounds, to wit:

A.

The Honorable Court erred in holding that [Granfil] was illegally dismissed by FI.

B.

The Honorable Court erred in not giving credence to the factual findings of both the NLRC and Labor Arbiter before wh[om] the case was tried.[15]

The Court's Ruling

We find the petition bereft of merit.

---

[12] *Id.* at 184-186, NLRC's 26 January 2006 Order.

[13] *Id.* at 55-66, CA's 22 November 2006 Decision.

[14] *Id.* at 68-69, CA's 22 January 2007 Resolution.

[15] *Id.* at 42.

The rule is long and well settled that, in illegal dismissal cases like the one at bench, the burden of proof is upon the employer to show that the employee's termination from service is for a just and valid cause.[16] The employer's case succeeds or fails on the strength of its evidence and not the weakness of that adduced by the employee,[17] in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them.[18] Often described as more than a mere scintilla,[19] the quantum of proof is substantial evidence which is understood as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.[20] Failure of the employer to discharge the foregoing onus would mean that the dismissal is not justified and therefore illegal.[21]

Denying the charge of illegal dismissal, FI insists that Granfil abandoned his employment after he was transferred from his assignment at the NBS Megamall Branch as a consequence of the latter's request for his relief.[22] In the same manner that it cannot be said to have discharged the above-discussed burden by merely alleging that it did not dismiss the employee, it has been ruled that an employer cannot expediently escape liability for illegal dismissal by claiming that the former abandoned his

---

[16] *Harborview Restaurant v. Labro*, G.R. No. 168273, 30 April 2009, 587 SCRA 277, 281.

[17] *Philippine Long Distance Telephone Company, Inc. v. Tiamson*, 511 Phil. 384, 394 (2005).

[18] *Triple Eight Integrated Services, Inc. v. National Labor Relations Commission*, 359 Phil. 955, 964 (1998).

[19] *Spouses Aya-ay v. Arpahil Shipping Corporation*, 516 Phil. 628, 639 (2006).

[20] *Oriental Shipmanagement Co., Inc. v. Bastol*, G.R. No. 186289, 29 June 2010, 622 SCRA 352, 377.

[21] *Tacloban Far East Marketing Corporation v. Court of Appeals*, G.R. No. 182320, 11 September 2009, 599 SCRA 662, 670.

[22] *Rollo*, pp. 42-48.

work.[23] This applies to FI which adduced no evidence to prove Granfil's supposed abandonment beyond submitting copies of NBS' 31 July 2002 request for said employee's transfer[24] and its 1 August 2002 written acquiescence thereto.[25] While these documents may have buttressed the claim that Granfil was indeed recalled from his assignment, however, we find that the CA correctly discounted their probative value insofar as FI's theory of abandonment is concerned.

Being a matter of intention, moreover, abandonment cannot be inferred or presumed from equivocal acts.[26] As a just and valid ground for dismissal, it requires the deliberate, unjustified refusal of the employee to resume his employment,[27] without any intention of returning.[28] Two elements must concur: (1) failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts.[29] The burden of proving abandonment is once again upon the employer[30] who, whether pleading the same as a ground for dismissing an employee or as a mere defense, additionally has the legal duty to observe

---

[23] *Seven Star Textile Company v. Dy*, G.R. No. 166846, 24 January 2007, 512 SCRA 486, 498.

[24] *Rollo*, p. 112, Genebagan's 31 July 2002 Letter.

[25] Tenorio's 1 August 2002 Letter, *id.* at 113.

[26] *New Ever Marketing, Inc. v. Court of Appeals*, 501 Phil. 575, 586 (2005).

[27] *Aliten v. U-Need Lumber & Hardware*, G.R. No. 168931, 12 September 2006, 501 SCRA 577, 586.

[28] *Baron Republic Theatrical v. Peralta*, G.R. No. 170525, 2 October 2009, 602 SCRA 258, 265.

[29] *Henlin Panay Company v. National Labor Relations Commission*, G.R. No. 180718, 23 October 2009, 604 SCRA 362, 369 citing *Camua, Jr. v. National Labor Relations Commission*, G.R. No. 158731, 25 January 2007, 512 SCRA 677, 682.

[30] *Macahilig v. National Labor Relations Commission*, G.R. No. 158095, 23 November 2007, 538 SCRA 375, 385.

due process.[31] Settled is the rule that mere absence or failure to report to work is not tantamount to abandonment of work.[32]

Viewed in the light of the foregoing principles, we find that the CA correctly ruled out FI's position that Granfil had abandoned his employment. Aside from the fact that Bautista, Tenorio, Ballesteros and Dizon did not even execute sworn statements to refute the overt acts of dismissal imputed against them, the record is wholly bereft of any showing that FI required Granfil to report to its main office or, for that matter, to explain his supposed unauthorized absences. Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore.[33] Even then, FI's theory of abandonment was likewise negated by Granfil's filing the complaint for illegal dismissal[34] which evinced his desire to return to work. In vigorously pursuing his action against FI before the Labor Arbiter, the NLRC and the CA, Granfil clearly manifested that he has no intention of relinquishing his employment. In any case, the fact that Granfil prayed for his reinstatement speaks against any intent to sever the employer-employee relationship[35] with FI.

FI next faults the CA for not giving credence to the factual findings of Labor Arbiter Eduardo Carpio which was affirmed in the NLRC's 20 April 2005 resolution.[36] As may be gleaned from the above disquisition, however, both the Labor Arbiter and the NLRC clearly erred in directing the dismissal of the complaint by unduly shifting the burden of proving the illegality of his dismissal to Granfil. While administrative findings of

---

[31] *Supra* note 23.

[32] *La Rosa v. Ambassador Hotel*, G.R. No. 177059, 13 March 2009, 581 SCRA 340, 347.

[33] *Samarca v. Arc-Men Industries, Inc*., 459 Phil. 506, 515 (2003).

[34] *Hodieng Concrete Products v. Emilia*, 491 Phil. 434, 440 (2005).

[35] *Pentagon Steel Corporation v. Court of Appeals*, G.R. No. 174141, 26 June 2009, 591 SCRA 160, 173.

[36] *Rollo*, pp. 48-50.

fact are, concededly, accorded great respect, and even finality when supported by substantial evidence, nevertheless, when it can be shown that administrative bodies grossly misappreciated evidence of such nature as to compel a contrary conclusion, this court had not hesitated to reverse their factual findings.[37] Indeed, said rule does not apply when, as here, it is clear that a palpable mistake was committed by the quasi-judicial tribunal which needs rectification.[38]

WHEREFORE, premises considered, the petition is *DENIED* for lack of merit and the assailed Decision dated 22 November 2006 is, accordingly, *AFFIRMED in toto*.

SO ORDERED.

Carpio (Chairperson), Brion, Sereno, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. Nos. 180849 and 187143. November 16, 2011]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **DAN PADAO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; STATE POLICIES; UNDERSCORE THE IMPORTANCE AND ECONOMIC SIGNIFICANCE OF LABOR.— In the 1987 Constitution, provisions on social justice and the protection

[37] *Aklan Electric Cooperative, Inc. v. National Labor Relations Commission*, 380 Phil. 225, 237 citing *Philippine Airlines, Inc. vs. NLRC*, G.R. No. 117038, 25 September 1997, 279 SCRA 445, 458.

[38] *Seven Star Textile Company v. Dy*, *supra* note 23 at 497.

of labor underscore the importance and economic significance of labor. Article II, Section 18 characterizes labor as a "primary social economic force," and as such, the State is bound to "protect the rights of workers and promote their welfare." Moreover, workers are "entitled to security of tenure, humane conditions of work, and a living wage." The Labor Code declares as policy that the State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE LAW SETS THE VALID GROUNDS FOR TERMINATION AS WELL AS THE PROPER PROCEDURE TO BE FOLLOWED WHEN TERMINATING THE SERVICES OF AN EMPLOYEE; JUST CAUSES FOR TERMINATION OF EMPLOYMENT.—** While it is an employer's basic right to freely select or discharge its employees, if only as a measure of self-protection against acts inimical to its interest, the law sets the valid grounds for termination as well as the proper procedure to be followed when terminating the services of an employee. Thus, in cases of regular employment, the employer is prohibited from terminating the services of an employee except for a just or authorized cause. Such just causes for which an employer may terminate an employee are enumerated in Article 282 of the Labor Code: (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; (b) Gross and habitual neglect by the employee of his duties; (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; (d) Commission of a crime or offense by the employee against the person of his employer or any immediate family member of his family or his duly authorized representative; and (e) Other causes analogous to the foregoing. Further, due process requires that employers follow the procedure set by the Labor Code.

3. **ID.; ID.; ID.; GROSS AND HABITUAL NEGLECT OF DUTIES; GROSS NEGLIGENCE; DEFINED.—** Padao was dismissed by PNB for gross and habitual neglect of duties under

Article 282 (b) of the Labor Code. Gross negligence connotes want of care in the performance of one's duties, while habitual neglect implies repeated failure to perform one's duties for a period of time, depending on the circumstances. Gross negligence has been defined as the want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.

4. **ID.; ID.; ID.; RESPONDENT'S REPEATED FAILURE TO DISCHARGE HIS DUTIES AS A CREDIT INVESTIGATOR OF THE BANK AMOUNTED TO GROSS AND HABITUAL NEGLECT OF DUTIES UNDER ARTICLE 282 (B) OF THE LABOR CODE.—** In the case at bench, Padao was accused of having presented a fraudulently positive evaluation of the business, credit standing/rating and financial capability of Reynaldo and Luzvilla Baluma and eleven other loan applicants. Some businesses were eventually found not to exist at all, while in other transactions, the financial status of the borrowers simply could not support the grant of loans in the approved amounts. Moreover, Padao over-appraised the collateral of spouses Gardito and Alma Ajero, and that of spouses Ihaba and Rolly Pango. The role that a credit investigator plays in the conduct of a bank's business cannot be overestimated. The amount of loans to be extended by a bank depends upon the report of the credit investigator on the collateral being offered. If a loan is not fairly secured, the bank is at the mercy of the borrower who may just opt to have the collateral foreclosed. If the scheme is repeated a hundredfold, it may lead to the collapse of the bank. In the case of *Sawadjaan v. Court of Appeals*, the Court stressed the crucial role that a credit investigator or an appraiser plays. x x x In fact, banks are mandated to exercise more care and prudence in dealing with registered lands: [B]anks are cautioned to exercise more care and prudence in dealing even with registered lands, than private individuals, "for their business is one affected with public interest, keeping in trust money belonging to their depositors, which they should guard against loss by not committing any act of negligence which amounts to lack of good faith by which they would be denied the protective mantle of the land registration statute Act 496, extended only to purchasers for value and in good faith, as well as to mortgagees of the same

character and description. It is for this reason that banks before approving a loan send representatives to the premises of the land offered as collateral and investigate who are the true owners thereof. Padao's repeated failure to discharge his duties as a credit investigator of the bank amounted to gross and habitual neglect of duties under Article 282 (b) of the Labor Code. He not only failed to perform what he was employed to do, but also did so repetitively and habitually, causing millions of pesos in damage to PNB. Thus, PNB acted within the bounds of the law by meting out the penalty of dismissal, which it deemed appropriate given the circumstances.

5. **ID.; ID.; ID.; IN AFFIXING HIS SIGNATURE ON THE FRAUDULENT REPORTS AND ATTESTING TO THE FALSEHOODS CONTAINED THEREIN, RESPONDENT REPEATEDLY FAILED TO PERFORM HIS DUTIES AS A CREDIT INVESTIGATOR.—** The CA was correct in stating that when the violation of company policy or breach of company rules and regulations is tolerated by management, it cannot serve as a basis for termination. Such ruling, however, does not apply here. The principle only applies when the breach or violation is one which neither amounts to nor involves fraud or illegal activities. In such a case, one cannot evade liability or culpability based on obedience to the corporate chain of command. Padao cited *Llosa-Tan v. Silahis International Hotel*, where the "violation" of corporate policy was held not per se fraudulent or illegal. Moreover, the said "violation" was done in compliance with the apparent lawful orders of the concerned employee's superiors. Management-sanctioned deviations in the said case did not amount to fraud or illegal activities. If anything, it merely represented flawed policy implementation. In sharp contrast, Padao, in affixing his signature on the fraudulent reports, attested to the falsehoods contained therein. Moreover, by doing so, he repeatedly failed to perform his duties as a credit investigator.

6. **ID.; ID.; ID.; FACT THAT THERE IS NO PROOF THAT RESPONDENT DERIVED ANY BENEFIT FROM THE SCHEME IS IMMATERIAL AS WHAT IS CRUCIAL IS THAT HIS GROSS AND HABITUAL NEGLIGENCE CAUSED GREAT DAMAGE TO HIS EMPLOYER.—** That there is no proof that Padao derived any benefit from the scheme is immaterial. What is crucial is that his gross and habitual

negligence caused great damage to his employer. Padao was aware that there was something irregular about the practices being implemented by his superiors, but he went along with, became part of, and participated in the scheme. It does not speak well for a person to apparently blindly follow his superiors, particularly when, with the exercise of ordinary diligence, one would be able to determine that what he or she was being ordered to do was highly irregular, if not illegal, and would, and did, work to the great disadvantage of his or her employer. PNB, as an employer, has the basic right to freely select and discharge employees (subject to the Labor Code requirements on substantive and procedural due process), if only as a measure of self-protection against acts inimical to its interests. It has the authority to impose what penalty it deems sufficient or commensurate to an employee's offense. Having satisfied the requirements of procedural and substantive due process, it is thus left to the discretion of the employer to impose such sanction as it sees befitting based on the circumstances.

7. **ID.; ID.; ID.; RESPONDENT IS NOT ENTITLED TO FINANCIAL ASSISTANCE.—** Padao is not entitled to financial assistance. In *Toyota Motor Phils. Corp. Workers Association v. NLRC,* the Court reaffirmed the general rule that separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes **other than serious misconduct, willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, commission of a crime against the employer or his family, or those reflecting on his moral character.** These five grounds are just causes for dismissal as provided in Article 282 of the Labor Code. In *Central Philippine Bandag Retreaders, Inc. v. Diasnes*, cited in *Quiambao v. Manila Electric Company*, we discussed the parameters of awarding separation pay to dismissed employees as a measure of financial assistance: To reiterate our ruling in *Toyota,* labor adjudicatory officials and the CA must demur the award of separation pay based on social justice when an employee's dismissal is based on serious misconduct or willful disobedience; **gross and habitual neglect of duty**; fraud or willfull breach of trust; or commission of a crime against the person of the employer or his immediate family — grounds under Art. 282 of the Labor Code that sanction dismissal of employees. They must be

judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers. The commitment of the Court to the cause of labor should not embarrass us from sustaining the employers when they are right, as here. In fine, we should be more cautions in awarding financial assistance to the undeserving and those who are unworthy of the liberality of the law. Clearly, given the Court's findings, Padao is not entitled to financial assistance.

APPEARANCES OF COUNSEL

Franc Evan L. Dandoy II for petitioner.
Young Co Pajaran & Associates for respondent.

D E C I S I O N

MENDOZA, *J.*:

These are two consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court.

In G.R. No. 180849, petitioner Philippine National Bank *(PNB)* seeks the reversal of the December 14, 2006 Decision[1] and October 2, 2007 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 76584, which upheld the ruling of the National Labor Relations Commission, Cagayan de Oro City *(NLRC)* in its October 30, 2002 Resolution,[3] reversing the June 21, 2001 Decision[4] of the Executive Labor Arbiter *(ELA)* which found the dismissal of respondent Dan Padao *(Padao)* valid.

---

[1] *Rollo* (G.R. No. 180849), pp. 7-21. Twenty First Division, penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justice Teresita Dy-Liacco Flores and Associate Justice Mario V. Lopez, concurring.

[2] *Id.* at 22-23. Former Twenty First Division, penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justice Teresita Dy-Liacco Flores and Associate Justice Mario V. Lopez, concurring.

[3] *Id.* at 54-61. Penned by Presiding Commissioner Salic B. Dumarpa, with Commissioner Oscar N. Abella, concurring.

[4] *Id.* at 102-112.

In G.R. No. 187143, PNB seeks the reversal of the December 9, 2008 Decision[5] and February 24, 2009 Resolution[6] of the CA in CA-G.R. SP No. 00945, which allowed the execution of the October 30, 2002 NLRC Resolution.

THE FACTS

A. G.R. No. 180849

On August 21, 1981, Padao was hired by PNB as a clerk at its Dipolog City Branch. He was later designated as a credit investigator in an acting capacity on November 9, 1993. On March 23, 1995, he was appointed regular Credit Investigator III, and was ultimately promoted to the position of Loan and Credit Officer IV.

Sometime in 1994, PNB became embroiled in a scandal involving "behest loans." A certain Sih Wat Kai complained to the Provincial Office of the Commission on Audit *(COA)* of Zamboanga del Norte that anomalous loans were being granted by its officers: Assistant Vice President *(AVP)* and Branch Manager Aurelio De Guzman *(AVP de Guzman),* Assistant Department Manager and Cashier Olson Sala *(Sala),* and Loans and Senior Credit Investigator Primitivo Virtudazo *(Virtudazo).*

The questionable loans were reportedly being extended to select bank clients, among them Joseph Liong, Danilo Dangcalan, Jacinto Salac, Catherine Opulentisima, and Virgie Pango. The exposé triggered the conduct of separate investigations by the COA and PNB's Internal Audit Department *(IAD)* from January to August 1995. Both investigations confirmed that the collateral provided in numerous loan accommodations were grossly over-appraised. The credit standing of the loan applicants was also fabricated, allowing them to obtain larger loan portfolios from

---

[5] *Id.* (G.R. No. 187143), pp. 9-27. Twenty First Division, penned by Associate Justice Romulo V. Borja, with Associate Justice Mario V. Lopez and Associate Justice Elihu A. Ibañez, concurring.

[6] *Id.* at 22-23. Twenty First Division, penned by Associate Justice Romulo V. Borja, with Associate Justice Mario V. Lopez and Associate Justice Elihu A. Ibañez, concurring.

PNB. These borrowers eventually defaulted on the payment of their loans, causing PNB to suffer millions in losses.

In August 1995, Credit Investigators Rolando Palomares *(Palomares)* and Cayo Dagpin *(Dagpin)* were administratively charged with Dishonesty, Grave Misconduct, Gross Neglect of Duty, Conduct Prejudicial to the Best Interest of the Service, and violation of Republic Act *(R.A.)* No. 3019 *(Anti-Graft and Corrupt Practices Act),* in connection with an anomalous loan granted to the spouses, Jaime and Allyn Lim *(the Lims)*. These charges, however, were later ordered dropped by PNB, citing its findings that Dagpin and Palomares signed the Inspection and Appraisal Report *(IAR)* and the Credit Inspection Report *(CIR)* in support of the Lims' loan application in good faith, and upon the instruction of their superior officers. PNB also considered using Dagpin and Palomares as prosecution witnesses against AVP de Guzman, Loan Division Chief Melindo Bidad *(Bidad)* and Sala.

The following month, September 1995, administrative charges for Grave Misconduct, Gross Neglect of Duty and Gross Violations of Bank Rules and Regulations and criminal cases for violation of R.A. No. 3019 were filed against AVP de Guzman, Sala, Virtudazo, and Bidad. Consequently, they were all dismissed from the service by PNB in November 1996. Later, Virtudazo was ordered reinstated.

On June 14, 1996, Padao and Division Chief Wilma Velasco *(Velasco)* were similarly administratively charged with Dishonesty, Grave Misconduct, Gross Neglect of Duty, Conduct Prejudicial to the Best Interest of the Service, and violation of R.A. No. 3019.

The case against Padao was grounded on his having allegedly presented a deceptively positive status of the business, credit standing/rating and financial capability of loan applicants Reynaldo and Luzvilla Baluma and eleven (11) others. It was later found that either said borrowers' businesses were inadequate to meet their loan obligations, or that the projects they sought to be financed did not exist.

Padao was also accused of having over-appraised the collateral of the spouses Gardito and Alma Ajero, the spouses Ibaba, and Rolly Pango.

On January 10, 1997, after due investigation, PNB found Padao guilty of gross and habitual neglect of duty and ordered him dismissed from the bank. Padao appealed to the bank's Board of Directors. On January 20, 1997, Velasco was also held guilty of the offenses charged against her, and was similarly meted the penalty of dismissal. Her motion for reconsideration, however, was later granted by the bank, and she was reinstated.

On October 11, 1999, after almost three (3) years of inaction on the part of the Board, Padao instituted a complaint[7] against PNB and its then AVP, Napoleon Matienzo *(Matienzo)*, with the Labor Arbitration Branch of the NLRC Regional Arbitration Branch *(RAB)* No. IX in Zamboanga City for **1]** Reinstatement; **2]** Backwages; **3]** Illegal Dismissal; and **4]** Treachery/Bad Faith and Palpable Discrimination in the Treatment of Employees with administrative cases. The case was docketed as RAB 09-04-00098-01.

In a Decision dated June 21, 2001, the ELA found Padao's dismissal valid. Despite the finding of legality, the ELA still awarded separation pay of one-half (½) month's pay for every year of service, citing *PLDT v. NLRC & Abucay.*[8] The ELA held that in view of the peculiar conditions attendant to Padao's dismissal, there being no clear conclusive showing of moral turpitude, Padao should not be left without any remedy.

Padao appealed to the NLRC, which, in its Resolution[9] dated October 30, 2002, reversed and set aside the ELA Decision and declared Padao's dismissal to be illegal. He was thereby ordered reinstated to his previous position without loss of seniority rights and PNB was ordered to pay him full backwages and

---

[7] *Id.* (G.R. No. 180849), p. 100.

[8] 247 Phil. 641(1988), cited in G.R. No. 180849, *rollo*, p. 111.

[9] *Rollo* (G.R. No. 180849), pp. 54-60. Penned by Presiding Commissioner Salic B. Dumarpa, with Commissioner Oscar N. Abella, concurring.

attorney's fees equivalent to ten percent (10%) of the total monetary award.

PNB's Motion for Reconsideration[10] was denied by the NLRC in its Resolution[11] dated December 27, 2002.

Aggrieved, PNB filed a petition for *certiorari*[12] with the CA but it was dismissed in a Decision[13] dated December 14, 2006. PNB moved for reconsideration[14] but the motion was denied in the CA Resolution[15] dated October 2, 2007.

B. G.R. No. 187143

During the pendency of G.R. No. 180849 before the Court, the NLRC issued an entry of judgment on September 22, 2003, certifying that on February 28, 2003, its October 30, 2002 Resolution had become final and executory.[16]

On December 5, 2003, Padao filed a Motion for Execution of the NLRC Resolution dated October 30, 2002. This was granted by the ELA on April 22, 2004.

On May 4, 2004, PNB and AVP Matienzo sought reconsideration of the ELA's Order based on the following grounds: (1) the October 30, 2003 Resolution was inexistent and, thus, could not become final and executory; and (2) Padao's motion for execution was granted without hearing.

Acting thereon, the ELA denied PNB's motion for reconsideration on the ground that motions for reconsideration

---

[10] *Id.* at 122-127.

[11] *Id.* at 128.

[12] *Id.* at 129-143.

[13] *Id.* at 7-21.

[14] *Id.* at 159-183.

[15] *Id.* at 22-23.

[16] *Id.* (G.R. No. 187143), p. 11. The CA Decision (at footnote 7, p. 11) states that the date of the Resolution, October 30, **2003**, is clearly a typographical error. It should read October 30, **2002**.

of an order are prohibited under Section 19, Rule V of the NLRC Rules of Procedure.

Thus, Padao filed his Motion to Admit Computation[17] dated July 14, 2004. In its Comment,[18] PNB alleged that the computation was grossly exaggerated and without basis, and prayed for a period of thirty (30) days within which to submit its counter-computation since the same would come from its head office in Pasay City.

On September 22, 2004, the ELA issued the Order[19] granting Padao's Motion to Admit Computation. The order cited PNB's failure to submit its counter-computation within the two extended periods (totaling forty days), which the ELA construed as a waiver to submit the same. Thus, the ELA ordered the issuance of a writ of execution for the payment of backwages due to Padao in the amount of ₱2,589,236.21.

In a motion[20] dated September 29, 2004, PNB sought reconsideration of the order with an attached counter-computation. The ELA denied the same in its Order[21] dated October 20, 2004 on the ground that the motions for reconsideration of orders and decisions of the Labor Arbiter are prohibited under Section 19, Rule V of the NLRC Rules of Procedure. The ELA further stated that PNB had been given more than ample opportunity to submit its own computation in this case, and the belatedly submitted counter-computation of claims could not be considered. Thus, a writ of execution[22] was issued on October 21, 2004.

On November 11, 2004 and January 19, 2005, PNB filed its Motion to Quash Writ of Execution and its Motion to Dissolve

---

[17] *Id.* at 87-89.

[18] *Id.* at 91-92.

[19] *Id.* at 94-96.

[20] *Id.* at 97-98.

[21] *Id.* at 106-107.

[22] *Id.* at 108-110.

Alias Writ of Execution, respectively. Both were denied by the ELA in an Order[23] dated February 8, 2005.

On February 18, 2005, PNB filed a Notice of Appeal with Memorandum on Appeal[24] with the NLRC. On September 20, 2005, however, the NLRC issued a Resolution[25] dismissing the bank's appeal. PNB's Motion for Reconsideration[26] was also denied in the December 21, 2005 Resolution.[27]

Thus, on March 7, 2006, PNB filed a Petition for *Certiorari*[28] with the CA, assailing the findings of ELA Plagata and the NLRC.

In a Decision[29] dated December 9, 2008, the CA dismissed the petition, and later denied PNB's motion for reconsideration on February 24, 2009.

ISSUES

In G.R. No. 180849, PNB presents the following Assignment of Errors:[30]

A. THE COURT OF APPEALS ERRED IN NOT CONSIDERING THAT THE POSITION OF A CREDIT INVESTIGATOR IS ONE IMBUED WITH [THE] TRUST AND CONFIDENCE OF THE EMPLOYER.

B. THE COURT OF APPEALS ERRED IN TREATING THE ACT OF FALSIFYING THE CREDIT AND APPRAISAL

---

[23] *Id.* at 111-112.

[24] *Id.* at 113-130.

[25] *Id.* at 131-139.

[26] *Id.* at 140-148.

[27] *Id.* at 149-151.

[28] *Id.* at 152-165.

[29] *Id.* at 9. Twenty First Division, penned by Associate Justice Romulo V. Borja, with Associate Justice Mario V. Lopez and Associate Justice Elihu A. Ibañez, concurring.

[30] *Id.* (G.R. No. 180849), at 35.

REPORTS AND THAT OF MERELY AFFIXING ONE'S SIGNATURE IN A FALSE REPORT PREPARED BY ANOTHER AS ONE AND THE SAME DEGREE OF MISCONDUCT WHICH WARRANTS THE SAME PENALTY.

In G.R. No. 187143, PNB presents the following Assignment of Errors:[31]

THE LABOR COURTS AND THE APPELLATE COURT ERRED WHEN THEY INVARIABLY IGNORED PNB'S COUNTER-COMPUTATION AND MERELY RELIED ON RESPONDENT DAN PADAO'S SELF-SERVING COMPUTATION OF HIS MONEY AWARD.

THE LABOR COURTS AND THE APPELLATE COURT ERRED WHEN THEY ACCEPTED THE COMPUTATION OF RESPONDENT PADAO WITHOUT REQUIRING PROOF TO SUPPORT THE SAME.

In G.R. No. 180849, PNB argues that the position of a credit investigator is one reposed with trust and confidence, such that its holder may be validly dismissed based on loss of trust and confidence. In disciplining employees, the employer has the right to exercise discretion in determining the individual liability of each erring employee and in imposing a penalty commensurate with the degree of participation of each. PNB further contends that the findings of the CA are not in accordance with the evidence on record, thus, necessitating a review of the facts of the present case by this Court.[32]

On the other hand, Padao counters that local bank policies implemented by the highest-ranking branch officials such as the assistant vice-president/branch manager, assistant manager/cashier, chief of the loans division and legal counsel, are presumed to be sanctioned and approved by the bank, and a subordinate employee should not be faulted for his reliance thereon. He argues that a person who acts in obedience to an order issued

[31] *Id.* (G.R. No. 187143), at 45.

[32] *Id.* (G.R. No. 180849), at 35-36.

by a superior for some lawful purpose cannot be held liable. PNB is bound by the acts of its senior officers and he, like his fellow credit investigators, having acted in good faith in affixing his signature on the reports based on the instruction, order and directive of senior local bank officials, should not be held liable.[33]

Padao also claims that PNB cruelly betrayed him by charging and dismissing him after using him as a prosecution witness to secure the conviction of the senior bank officials, that he was never part of the conspiracy, and that he did not derive any benefit from the scheme.[34]

<u>The Court's Ruling</u>

In the 1987 Constitution, provisions on social justice and the protection of labor underscore the importance and economic significance of labor. Article II, Section 18 characterizes labor as a "primary social economic force," and as such, the State is bound to "protect the rights of workers and promote their welfare." Moreover, workers are "entitled to security of tenure, humane conditions of work, and a living wage."[35]

The Labor Code declares as policy that the State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.[36]

While it is an employer's basic right to freely select or discharge its employees, if only as a measure of self-protection against

---

[33] *Id.* at 362.

[34] *Id.* at 364.

[35] *Spic N' Span Services Corporation v. Paje*, G.R. No. 174084, August 25, 2010, 629 SCRA 261, 269-270.

[36] Article 3, Presidential Decree No. 442 (Labor Code of the Philippines), as amended.

acts inimical to its interest,[37] the law sets the valid grounds for termination as well as the proper procedure to be followed when terminating the services of an employee.[38]

Thus, in cases of regular employment, the employer is prohibited from terminating the services of an employee except for a just or authorized cause.[39] Such just causes for which an employer may terminate an employee are enumerated in Article 282 of the Labor Code:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate family member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

Further, due process requires that employers follow the procedure set by the Labor Code:

Art. 277. Miscellaneous provisions.

x x x x x x x x x

b. Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer

---

[37] *Sawadjaan v. Court of Appeals*, 498 Phil. 552, 556 (2005), citing *Filipro, Incorporated v. National Labor Relations Commission*, G.R. No. 70546, October 16, 1986, 145 SCRA 123.

[38] *Alert Security and Investigation Agency, Inc. v. Pasawilan*, G.R. No. 182397, September 14, 2011.

[39] Article 279, Presidential Decree No. 442 (Labor Code of the Philippines), as amended.

shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. The Secretary of the Department of Labor and Employment may suspend the effects of the termination pending resolution of the dispute in the event of a *prima facie* finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that the termination may cause a serious labor dispute or is in implementation of a mass lay-off. (As amended by Section 33, Republic Act No. 6715, March 21, 1989)

x x x x x x x x x

In this case, Padao was dismissed by PNB for gross and habitual neglect of duties under Article 282 (b) of the Labor Code.

Gross negligence connotes want of care in the performance of one's duties, while habitual neglect implies repeated failure to perform one's duties for a period of time, depending on the circumstances.[40] Gross negligence has been defined as the want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[41]

In the case at bench, Padao was accused of having presented a fraudulently positive evaluation of the business, credit standing/ rating and financial capability of Reynaldo and Luzvilla Baluma

---

[40] *AFI International Trading Corporation v. Lorenzo*, G.R. No. 173256, October 9, 2007, 535 SCRA 347, 353-354, citing *Genuino Ice Co., Inc. v. Magpantay*, G.R. No. 147740, June 27, 2006, 493 SCRA 195, 205-206.

[41] *Citibank v. Gatchalian*, 310 Phil. 211, 217-218 (1995); *National Bookstore v. CA*, 428 Phil. 235, 245 (2002).

and eleven other loan applicants.[42] Some businesses were eventually found not to exist at all, while in other transactions, the financial status of the borrowers simply could not support the grant of loans in the approved amounts.[43] Moreover, Padao over-appraised the collateral of spouses Gardito and Alma Ajero, and that of spouses Ihaba and Rolly Pango.[44]

The role that a credit investigator plays in the conduct of a bank's business cannot be overestimated. The amount of loans to be extended by a bank depends upon the report of the credit investigator on the collateral being offered. If a loan is not fairly secured, the bank is at the mercy of the borrower who may just opt to have the collateral foreclosed. If the scheme is repeated a hundredfold, it may lead to the collapse of the bank. In the case of *Sawadjaan v. Court of Appeals*,[45] the Court stressed the crucial role that a credit investigator or an appraiser plays. Thus:

> Petitioner himself admits that the position of appraiser/inspector is "one of the most serious [and] sensitive job[s] in the banking operations." He should have been aware that accepting such a designation, **he is obliged to perform the task at hand by the exercise of more than ordinary prudence. As appraiser/investigator, the petitioner was expected to conduct an ocular inspection of the properties offered by CAMEC as collaterals and check the copies of the certificates of title against those on file with the Registry of Deeds.** Not only did he fail to conduct these routine checks, but he also deliberately misrepresented in his appraisal report that after reviewing the documents and conducting a site inspection, he found the CAMEC loan application to be in order. Despite the number of pleadings he has filed, he has failed to offer an alternative explanation for his actions. [Emphasis supplied]

In fact, banks are mandated to exercise more care and prudence in dealing with registered lands:

---

[42] *Rollo* (G.R. No. 180849), p. 11.

[43] *Id.*

[44] *Id.*

[45] 498 Phil. 552, 560 (2005).

[B]anks are cautioned to exercise more care and prudence in dealing even with registered lands, than private individuals, "for their business is one affected with public interest, keeping in trust money belonging to their depositors, which they should guard against loss by not committing any act of negligence which amounts to lack of good faith by which they would be denied the protective mantle of the land registration statute Act 496, extended only to purchasers for value and in good faith, as well as to mortgagees of the same character and description. It is for this reason that banks before approving a loan send representatives to the premises of the land offered as collateral and investigate who are the true owners thereof.[46]

Padao's repeated failure to discharge his duties as a credit investigator of the bank amounted to gross and habitual neglect of duties under Article 282 (b) of the Labor Code. He not only failed to perform what he was employed to do, but also did so repetitively and habitually, causing millions of pesos in damage to PNB. Thus, PNB acted within the bounds of the law by meting out the penalty of dismissal, which it deemed appropriate given the circumstances.

The CA was correct in stating that when the violation of company policy or breach of company rules and regulations is tolerated by management, it cannot serve as a basis for termination.[47] Such ruling, however, does not apply here. The principle only applies when the breach or violation is one which neither amounts to nor involves fraud or illegal activities. In such a case, one cannot evade liability or culpability based on obedience to the corporate chain of command.

Padao cited *Llosa-Tan v. Silahis International Hotel*,[48] where the "violation" of corporate policy was held not per se fraudulent

---

[46] *Gonzales v. Intermediate Appellate Court*, 241 Phil. 630, 639-640 (1988), citing *Tomas v. Tomas*, G.R. No. L-36897, June 25, 1980, 98 SCRA 280.

[47] *Rollo* (G.R. No. 180849), p. 7.

[48] 260 Phil. 166 (1990), where the dismissed company cashier encashed two personal checks drawn by a Reynaldo M. Vicencio with a combined value of US$1,200.00, on the recommendation of Fernando Gayondato, the general cashier of Puerto Azul Beach Resort (a sister company of Silahis

or illegal. Moreover, the said "violation" was done in compliance with the apparent lawful orders of the concerned employee's superiors. Management-sanctioned deviations in the said case did not amount to fraud or illegal activities. If anything, it merely represented flawed policy implementation.

In sharp contrast, Padao, in affixing his signature on the fraudulent reports, attested to the falsehoods contained therein. Moreover, by doing so, he repeatedly failed to perform his duties as a credit investigator.

Further, even Article 11(6) of the Revised Penal Code requires that any person, who acts in obedience to an order issued by a superior does so *for some lawful purpose* in order for such person not to incur criminal liability. The succeeding article exempts from criminal liability any person who acts under the compulsion of an *irresistible force* (Article 12, paragraph 6) or under the impulse of an *uncontrollable fear of an equal or greater injury* (Article 12, paragraph 7).

Assuming solely for the sake of argument that these principles apply by analogy, even an extremely liberal interpretation of these justifying or exempting circumstances will not allow Padao to escape liability.

Also, had Padao wanted immunity in exchange for his testimony as a prosecution witness, he should have demanded that there be a written agreement. Without it, his claim is self-serving and unreliable.

That there is no proof that Padao derived any benefit from the scheme is immaterial.[49] What is crucial is that his gross and habitual negligence caused great damage to his employer. Padao was aware that there was something irregular about the practices

---

International Hotel), and nephew of the Executive Vice President. It was shown in that case that Llosa-Tan initially refused to encash the checks, citing the company policy prohibiting such transactions, but Gayondato persisted, assuring her that the presentation of such checks was being done upon instructions of the Executive Vice President.

[49] *Sawadjaan v. Court of Appeals*, 498 Phil. 552, 556 (2005).

being implemented by his superiors, but he went along with, became part of, and participated in the scheme.

It does not speak well for a person to apparently blindly follow his superiors, particularly when, with the exercise of ordinary diligence, one would be able to determine that what he or she was being ordered to do was highly irregular, if not illegal, and would, and did, work to the great disadvantage of his or her employer.

PNB, as an employer, has the basic right to freely select and discharge employees (subject to the Labor Code requirements on substantive and procedural due process), if only as a measure of self-protection against acts inimical to its interests.[50] It has

---

[50] *Id.*, citing *Filipro, Incorporated v. National Labor Relations Commission*, 229 Phil. 150 (1986). In *Filipro* case (229 Phil. 150, 156-157 [1986]), the Court also stated:

> The initial decision of the Labor Arbiter decreeing the dismissal of private respondent herein is fully justified by the provisions of Article 283 (c) of the Labor Code, already above quoted. Pronouncements made by this Court in this regard are as follows:
>
> > "It is an established principle that an employer cannot be compelled to continue in employment an employee guilty of acts inimical to the interest of the employer and justifying loss of confidence in him (*International Hardwood and Veneer Company of the Philippines v. Leogardo*, 117 SCRA 967, 971-972 (1982); (*Manila Trading and Supply Co. v. Zulueta*, 69 Phil. 485; *Galsim v. PNB*, 23 SCRA 293; *PECO v. PECO Employees Union*, 107 Phil. 1003; *Nevans v. Court of Industrial Relations*, 23 SCRA 1321; *Gas Corporation of the Philippines v. Inciong*, 93 SCRA 652).
> >
> > "A company has the right to dismiss its erring employees if only as a measure of self-protection against acts inimical to its interest," (*Manila Trading & Supply Co. v. Zulueta*, 69 Phil.485 and *International Hardwood and Veneer Co. of the Phil. v. Leogardo*, G.R. No. 57429, October 28, 1982, 117 SCRA 967).
> >
> > "We concede that the right of the employer to freely select or discharge his employees, is subject to regulation by the State basically in the exercise of its paramount police power. But much as we should expand beyond the economic doxy, we hold that

the authority to impose what penalty it deems sufficient or commensurate to an employee's offense. Having satisfied the requirements of procedural and substantive due process, it is thus left to the discretion of the employer to impose such sanction as it sees befitting based on the circumstances.

Finally, Padao claims that he should be accorded the same treatment as his co-employees.[51] As the ELA, however, correctly observed:

> [A]s pointed out by the respondents, the case of the complainant was different, and his culpability, much more than his aforementioned co-employees. In the case of Palomares and Dagpin, they were involved in only one case of over-appraisal of collateral in the loan account of the spouses Jaime Lim and Allyn Tan (Respondents' Comments, p. 1), but in the case of complainant, **his over-appraisals involved three (3) loan accounts and amounting to ₱9,537,759.00 (*Ibid*.), not to mention that he also submitted falsified Credit Investigation Reports for the loan accounts of seven (7) other borrowers of PNB** (*Ibid*., pp. 1-2).
>
> x x x x x x x x x
>
> **The number of over-appraisals (3) and falsified credit investigation reports (7) or countersigned by the complainant indicates habituality, or the propensity to do the same.** The best that can be said of his acts is the lack of moral strength to resist the repeated commission of illegal or prohibited acts in loan transactions. He thus cannot interpose undue pressure or coercion exerted upon [him] by his superiors, to absolve himself of liability for his signing or countersigning the aforementioned falsified reports. It may have been allowable or justifiable for him to give in to one anomalous loan transaction report, but definitely not for ten (10) loan accounts. It is axiomatic that obedience to one's superiors extends only to

---

an employer cannot be legally compelled to continue with the employment of a person who admittedly was guilty of misfeasance towards his employer, and whose continuance in the service of the latter is patently inimical to his interest. The law in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer." (*Manila Trading Co. v. Zulueta*, 69 Phil. 485, 486-487 (1940).

[51] *Rollo* (G.R. No. 180849), p. 44.

lawful orders, not to unlawful orders calling for unauthorized, prohibited or immoral acts to be done.

In the case of Wilma Velasco, PNB did not pursue legal action and even discontinued the administrative case filed against her because, according to PNB, she appeared to have been the victim of the misrepresentations and falsifications of the credit investigation and appraisal reports of the complainant upon which she had to reply in acting on loan applications filed with the PNB and for which such reports were made. She was not obliged to conduct a separate or personal appraisal of the properties offered as collaterals, or separate credit investigations of the borrowers of PNB. These functions pertained to PNB inspectors/credit investigators, like the complainant. Unfortunately, the latter was derelict in the performance of those duties, if he did not deliberately misuse or abuse such duties.

As can be seen, therefore, the complainant and Wilma Velasco did not stand on the same footing relative to their involvement or participation in the anomalous loan transactions earlier mentioned. Therefore, PNB cannot be faulted for freeing her from liability and punishment, while dismissing the complainant from service. [Emphases supplied]

Given the above ruling of the Court in G.R. No. 180849, the ruling of the CA in CA-G.R. SP No. 00945, an action stemming from the execution of the decision in said case, must perforce be reversed.

However, Padao is not entitled to financial assistance. In *Toyota Motor Phils. Corp. Workers Association v. NLRC,*[52] the Court reaffirmed the general rule that separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes **other than serious misconduct, willful disobedience, <u>gross and habitual neglect of duty</u>, fraud or willful breach of trust, commission of a crime against the employer or his family, or those reflecting on his moral character.** These five grounds are just causes for dismissal as provided in Article 282 of the Labor Code.

---

[52] G.R. Nos. 158786 & 158789, October 19, 2007, 537 SCRA 171.

In *Central Philippine Bandag Retreaders, Inc. v. Diasnes*,[53] cited in *Quiambao v. Manila Electric Company*,[54] we discussed the parameters of awarding separation pay to dismissed employees as a measure of financial assistance:

> To reiterate our ruling in *Toyota,* labor adjudicatory officials and the CA must demur the award of separation pay based on social justice when an employee's dismissal is based on serious misconduct or willful disobedience; **gross and habitual neglect of duty**; fraud or willfull breach of trust; or commission of a crime against the person of the employer or his immediate family — grounds under Art. 282 of the Labor Code that sanction dismissal of employees. They must be judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers. The commitment of the Court to the cause of labor should not embarrass us from sustaining the employers when they are right, as here. In fine, we should be more cautions in awarding financial assistance to the undeserving and those who are unworthy of the liberality of the law.[55] [Emphasis original. Underscoring supplied]

Clearly, given the Court's findings, Padao is not entitled to financial assistance.

WHEREFORE, the petitions in G.R. No. 180849 and G.R. No. 187143 are *GRANTED*. In G.R. No. 180849, the December 14, 2006 Decision and the October 2, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 76584 are *REVERSED* and *SET ASIDE*.

In G.R. No. 187143, the December 9, 2008 Decision and the February 24, 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 00945 are *REVERSED* and *SET ASIDE*.

---

[53] G.R. No. 163607, July 14, 2008, 558 SCRA 194.

[54] G.R. No. 171023, December 18, 2009.

[55] *Supra* note 53 at 207.

The June 21, 2001 Decision of the Executive Labor Arbiter is hereby ordered *REINSTATED*, with the *MODIFICATION* that the award of financial assistance is *DELETED*.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Perez,*[*] *JJ.*, concur.

THIRD DIVISION

[G.R. No. 185412. November 16, 2011]

GILBERT QUIZORA, *petitioner, vs.* **DENHOLM CREW MANAGEMENT (PHILIPPINES), INC.,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT AUTHORITY STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DISABILITY BENEFITS; CLAIM THEREFOR GOVERNED BY THE PARTIES' EMPLOYMENT CONTRACT; CASE AT BAR.** — Considering that petitioner executed an overseas employment contract with respondent company in November 1999, the 1996 POEA-SEC should govern. The 2000 POEA-SEC initially took effect on June 25, 2000. Thereafter, the Court issued the Temporary Restraining Order *(TRO)* which was later lifted on June 5, 2002. This point was discussed in the case of *Coastal Safeway Marine Services, Inc. v. Leonisa Delgado,* where it was written: **The employment of seafarers, including claims for death benefits, is governed by the contracts they sign**

---

[*] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152 dated November 11, 2011.

every time they are hired or rehired; and as long as the stipulations therein are not contrary to law, morals, public order or public policy, they have the force of law between the parties. While the seafarer and his employer are governed by their mutual agreement, the POEA rules and regulations require that the POEA Standard Employment Contract be integrated in every seafarer's contract. A perusal of Jerry's employment contract reveals that what was expressly integrated therein by the parties was DOLE Department Order No. 4, series of 2000 or the POEA Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, and POEA Memorandum Circular No. 9, series of 2000. However, POEA had issued Memorandum Circular No. 11, series of 2000 stating that: In view of the Temporary Restraining Order issued by the Supreme Court in a Resolution dated 11 September 2000 on the implementation of certain amendments of the Revised Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels as contained in DOLE Department Order No. 04 and POEA Memorandum Circular No. 09, both Series of 2000, please be advised of the following: **Section 20, Paragraphs (A), (B) and (D)** of the former Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, as provided in DOLE Department Order No. 33, and POEA Memorandum Circular No. 55, both Series of **1996 shall apply in lieu of Section 20 (A), (B) and (D) of the Revised Version**; x x x In effect, POEA Memorandum Circular No. 11-00 thereby paved the way for the application of the POEA Standard Employment Contract based on POEA Memorandum Circular No. 055, series of 1996. Worth noting, **Jerry boarded the ship [in] August 2001 before the said temporary restraining order was lifted on June 5, 2002** by virtue of Memorandum Circular No. 2, series of 2002. Consequently, Jerry's employment contract with Coastal must conform to Section 20(A) of the POEA Standard Employment Contract based on POEA Memorandum Circular No. 055, **series of 1996**, in determining compensability of Jerry's death. Thus, petitioner cannot simply rely on the disputable presumption provision mentioned in Section 20 (B) (4) of the **2000** POEA-SEC. As he did so without solid proof of work-relation and work-causation or work-aggravation of his illness, the Court cannot provide him relief.

2. ID.; ID.; ID.; ID.; GRANTING THAT THE DISPUTABLE PRESUMPTION PROVISIONS OF THE 2000 POEA-SEC APPLY, PETITIONER STILL HAS TO PROVE THAT HIS ILLNESS WAS WORK RELATED AND THAT IT MUST HAVE EXISTED DURING THE TERM OF HIS EMPLOYMENT CONTRACT. — Granting that the provisions of the 2000 POEA-SEC apply, the disputable presumption provision in Section 20 (B) does not allow him to just sit down and wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness. Contrary to his position, he still has to substantiate his claim in order to be entitled to disability compensation. He has to prove that the illness he suffered was work-related and that it must have existed during the term of his employment contract. He cannot simply argue that the burden of proof belongs to respondent company.

3. ID.; ID.; ID.; ID.; ID.; PETITIONER FAILED TO PROVE THAT HIS VARICOSE VEINS AROSE OUT OF HIS EMPLOYMENT WITH RESPONDENT COMPANY. — Unfortunately for petitioner, he failed to prove that his varicose veins arose out of his employment with respondent company. Except for his bare allegation that it was work-related, he did not narrate in detail the nature of his work as a messman aboard Denklav's vessels. He likewise failed to particularly describe his working conditions while on sea duty. He also failed to specifically state how he contracted or developed varicose veins while on sea duty and how and why his working conditions aggravated it. Neither did he present any expert medical opinion regarding the cause of his varicose veins. No written document whatsoever was presented that would clearly validate his claim or visibly demonstrate that the working conditions on board the vessels he served increased the risk of acquiring varicose veins.

4. ID.; ID.; ID.; ID.; ID.; THERE IS THE POSSIBILITY THAT PETITIONER ACQUIRED HIS CONDITION DURING HIS "SIGN OFF" VACATIONS WHICH HE ENJOYED EVERY TIME HIS CONTRACT EXPIRED; EXACT CAUSE OF VARICOSE VEINS IS STILL UNKNOWN. — Although petitioner was rehired by respondent company several times, his eight-year service as a seaman was not actually without a "sign-off" period. His contract with respondent company was

considered automatically terminated after the expiration of each overseas employment contract. Upon the termination of each contract, he was considered "signed-off" and he would have to go back and re-apply by informing respondent company as to his availability. Thereafter, he would have to sign an Availability Advise Form. Meanwhile, he would have to wait for a certain period of time, probably months, before he would be called again for sea service. Thus, respondent company can argue that petitioner's eight (8) years of service with it did not automatically mean that he acquired his varicose veins by reason of such employment. His sea service was not an unbroken service. The fact that he never applied for a job with any other employer is of no moment. He enjoyed month-long "sign-off" vacations when his contract expired. It is possible that he acquired his condition during one of his "sign-off" periods. As discussed in the decision of the CA, varicose veins may be caused by trauma, thrombosis, inflammation or heredity. Although the exact cause of varicose veins is still unknown, a number of factors contribute to it which include heredity, advance aging, prolonged standing, being overweight, hormonal influences during pregnancy, use of birth control pills, post-menopausal hormonal replacement therapy, prolonged sitting with legs crossed, wearing tight undergarments or clothes, history of blood clots, injury to the veins, conditions that cause increased pressure in the abdomen including liver disease, fluid in the abdomen, previous groin injury, heart failure, topical steroids, trauma or injury to the skin, previous venous surgery and exposure to ultra-violet rays.

5. **ID.; ID.; ID.; ID.; ID.; NO PROOF THAT PETITIONER'S VARICOSE VEINS CAUSE HIM TO SUFFER TOTAL AND PERMANENT DISABILITY; HIS MEDICAL DIAGNOSIS DOES NOT EXPRESSLY STATE THAT HIS ILLNESS WAS EQUIVALENT TO A TOTAL AND PERMANENT DISABILITY. —** There is also no proof that petitioner's varicose veins caused him to suffer total and permanent disability. The Pre-Employment Medical Examination *(PEME)* he underwent cannot serve as enough basis to justify a finding of a total and permanent disability because of its non-exploratory nature. The fact that respondent passed the company's PEME is of no moment. We have ruled that in the past the PEME is not exploratory in nature. It was not intended to be a totally in-depth and thorough examination of an applicant's medical

condition. The PEME merely determines whether one is "fit to work" at sea or "fit for sea service," it does not state the real state of health of an applicant. In short, the "fit to work" declaration in the respondent's PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment. Thus we held in *NYK-FIL Ship Management, Inc. v. NLRC*: While a PEME may reveal enough for the petitioner (vessel) to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform petitioners of a seafarer's true state of health. The PEME could not have divulged respondent's illness considering that the examinations were not exploratory. Besides, it was not expressly stated in his medical diagnosis that his illness was equivalent to a total and permanent disability. Absent any indication, the Court cannot accommodate him.

APPEARANCES OF COUNSEL

Constantino L. Reyes for petitioner.
Angara Abello Concepcion Regala & Cruz for respondent.

D E C I S I O N

MENDOZA, *J.*:

Before this Court is a petition for review challenging the September 10, 2008 Decision[1] of the Court of Appeals *(CA)*, which set aside the Resolutions[2] of the National Labor Relations Commission *(NLRC)* dated September 20, 2004 and May 24, 2005, and reinstated the Decision of the Labor Arbiter *(LA)* dated June 27, 2002.

The Facts

Records show that in 1992, Denholm Crew Management (Philippines), Inc. *(respondent company),* a domestic manning

---

[1] *Rollo*, pp. 54-73. Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justice Josefina Guevara-Salonga and Associate Justice Edgardo F. Sundiam.

[2] *Id.* at 40-52.

agency that supplied manpower to Denklav Maritime Services, Ltd. *(Denklav),* a foreign maritime corporation, hired the services of Gilbert Quizora *(petitioner)* to work as a messman on board the international vessels of Denklav. Based on Article 4.2 of the Collective Bargaining Agreement[3] *(CBA)* entered into by and between the Association of Marine Officers and Seamen Union of the Philippines *(AMOSUP)* and Denholm Ship Management (Singapore) Ltd., represented by Denklav, his contractual work as messman was considered terminated upon the expiration of each contract. Article 5.1 thereof provided that the duration of his sea service with respondent company was nine (9) months depending on the requirements of the foreign principal. After the end of a contract for a particular vessel, he would be given his next assignment on a different vessel. His last assignment was from November 4, 1999 to July 16, 2000 on board the vessel "MV Leopard."

After the expiration of his contract with "MV Leopard," petitioner was lined up for another assignment to a different vessel, but he was later disqualified for employment and declared unfit for sea duty after he was medically diagnosed to be suffering from "venous duplex scan (lower extremities) deep venous insufficiency, bilateral femoral and superficial femoral veins and the (L) popliteal vein." In layman's terms, he was medically found to have varicose veins.

Subsequently, petitioner demanded from respondent company the payment of disability benefits, separation pay and reimbursement of medical expenses. His demands, however, were denied. He then submitted his claim before the AMOSUP, but it was likewise denied. Thereafter, he filed with the LA a complaint for payment of disability benefits, medical expenses, separation pay, damages, and attorney's fees.

On June 27, 2002, the LA, after due hearing, rendered a decision dismissing petitioner's complaint for lack of merit.

---

[3] *Id*. at 179.

On appeal, the NLRC issued its Resolution dated September 20, 2004 *reversing* the LA's decision and ordering respondent company to pay petitioner his disability compensation in the amount of US$60,000.00.

Upon the denial of its motion for reconsideration in the NLRC Resolution dated May 24, 2005, respondent company elevated the case to the CA with the following arguments:

PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN RULING THAT PRIVATE RESPONDENT IS ENTITLED TO DISABILITY BENEFITS OF $60,000.00 CONSIDERING THAT:

1) PRIVATE RESPONDENT FAILED TO PROVE BY SUBSTANTIAL EVIDENCE THAT HIS ACQUISITION OF VARICOSE VEINS WAS CAUSED BY HIS PREVIOUS EMPLOYMENT WITH PETITIONER COMPANY.

2) VARICOSE VEINS IS A COMMON DISEASE FOR THOSE WHO ARE AT LEAST 30 YEARS OLD. IT CAN BE ACQUIRED GENETICALLY OR CAN BE DUE TO LACK OF EXERCISE. HENCE, TO BLAME THE PETITIONER COMPANY FOR PRIVATE RESPONDENT'S VARICOSE VEINS IS MOST UNFAIR AND UNJUST.

3) WHILE PRIVATE RESPONDENT MAY HAVE ACQUIRED A DISABILITY, HE NEVER LOST HIS EARNING CAPACITY PERMANENTLY SO AS TO ENTITLE HIM TO DISABILITY BENEFITS UNDER THE CBA.

Decision of the Court of Appeals

On September 8, 2010, the CA rendered a decision setting aside the NLRC Resolution and reinstating the LA Decision. The CA explained that since having varicose veins was not among those listed as occupational diseases under Presidential Decree (P.D.) No. 626, petitioner bore the burden of proving that such ailment was brought about by his working conditions.

His mere claim that his employment with respondent company was the cause of his varicose veins hardly constituted substantial evidence to convince a reasonable mind that his ailment was work-related or the risk of contracting it was increased by his working conditions with respondent company. There was even no proof that the disease progressed due to the circumstances of his work which did not fall under any of the factors that contribute to varicose veins. The mere fact that he had no other employer except respondent company did not necessarily impute to the latter the disease acquired by him. Since his claim was not supported by substantial evidence, he was not entitled to disability benefits.

Unsatisfied with the CA decision, petitioner raised before this Court the following

ISSUES

I

WHETHER RESPONDENT HAS THE BURDEN OF PROVING THAT PETITIONER'S ILLNESS IS NOT WORK RELATED

II

WHETHER PETITIONER'S ILLNESS IS WORK RELATED

III

WHETHER PETITIONER IS ENTITLED TO DISABILITY BENEFITS

In advocacy of his position, petitioner argues that the burden of proving that his illness is not work-related rests on the respondent company. Citing the provisions of the Philippine Overseas and Employment Authority Standard Employment Contract *(POEA-SEC)*, he claims that illnesses not listed therein are disputably presumed work-related. It is only when the claim is under the provisions of the Employees Compensation Act that the claimant has the burden of proving that the illness is work-related. As it is not listed, he is relieved from the trouble of proving the work-relatedness of the illness because it is already disputably presumed by law. Hence, respondent company should

rebut this presumption by proving otherwise but, unfortunately, it failed to do so.

To petitioner, there is little difficulty in showing that acquiring varicose veins is work-related for a seafarer. He avers that he was engaged by respondent company as a seafarer for nine (9) years covering seven (7) contracts with their vessels; that he was medically screened in every contract; and that he was found fit to work up to his last contract on board the vessel "MV Leopard."

Moreover, petitioner claims that he is entitled to total and permanent disability benefits because his varicose veins have rendered him permanently incapacitated to return to work as a seafarer.

Position of respondent company

Respondent company counters that there is no evidence showing that petitioner's varicose veins were caused by his previous employment with respondent company, that this disease was work-related, and that it caused him permanent disability.

Petitioner omitted to mention his health after his stint on the "MV Leopard." Also, his application for a new contract with respondent company came long after the contract ended. He was discovered to have varicose veins in March 2001, or months after his last employment contract with respondent company ended in July 2000. So, it is difficult to conclude that his varicose veins can only be attributable to his previous employment with the company.

Besides, petitioner's employment was not continuous but on a per-contract basis which usually lasted for nine (9) months depending on the requirement of the foreign principal. He was considered "signed-off" upon the expiration of each contract. It was possible that he acquired varicose veins while he was "signed-off" from the vessels of respondent company. Except for his bare allegations, there is nothing to support his theory that his intermittent contracts of employment with respondent company had reasonable connection with his acquisition of

varicose veins. He neither presented proof on this point nor offered a medical expert opinion.

Respondent company further argues that the disputable presumption under Section 20(B) (4) of the 2000 POEA SEC is completely irrelevant to this case. *First,* the 2000 POEA-SEC initially took effect sometime in July 2002. Petitioner's last employment contract with respondent company was from November 1999 to July 2000. Thus, at the time the parties entered into an overseas employment contract in November 1999, the provisions of the POEA-SEC, which were deemed incorporated into the contract, were those from the 1996 POEA-SEC. Hence, it is the 1996 POEA-SEC, not the 2000 POEA-SEC, which should govern his claim for disability benefits. The disputable presumption relied upon by petitioner does not appear in the 1996 POEA-SEC but can only be found in the 2000 POEA-SEC.

Second, even assuming that the 2000 POEA-SEC governed petitioner's previous employment with respondent company, he was still not entirely relieved of the burden to submit evidence to prove his claim because Section 20(B) of the 2000 POEA-SEC specifically pertains to work-related injury or illness. Therefore, it is still incumbent upon him to present proof that his varicose veins were reasonably connected to his work.

Respondent company opines that varicose veins is a common disease for those who are at least 30 years old and it can be acquired genetically or through lack of exercise.

Lastly, respondent company asserts that there is no showing that petitioner's varicose veins caused him permanent disability. While affliction with varicose veins may bring pain and discomfort to the body of a person, the illness is not permanent as it can actually be treated, either through self-help or medical care.

The Court's Ruling

The Court finds no merit in the petition.

Before tackling the issue of what rule governs the case, there is a need to compare the provisions of Section 20-B of the

1996 POEA-SEC and Section 20-B of the **2000** POEA-SEC. Section 20 (B) of the **1996** POEA-SEC reads as follows:

SECTION 20. COMPENSATION AND BENEFITS

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS:

The liabilities of the employer when the seafarer suffers injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

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.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

4. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event that the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

5. In case of permanent total or partial disability of the seafarer during the term of employment caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 30 of his 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.

On the other hand, Section 20 (B) of the **2000** POEA-SEC reads:

SECTION 20. COMPENSATION AND BENEFITS

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment, as well as board and lodging, until the seafarer is declared fit to work or to be repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

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.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return, except when he is physically incapacitated to do so, in which case a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

4. **Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.**

5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work, but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

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 his 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. [Emphasis supplied]

Considering that petitioner executed an overseas employment contract with respondent company in November 1999, the 1996 POEA-SEC should govern. The 2000 POEA-SEC initially took effect on June 25, 2000. Thereafter, the Court issued the Temporary Restraining Order *(TRO)* which was later lifted on June 5, 2002. This point was discussed in the case of *Coastal Safeway Marine Services, Inc. v. Leonisa Delgado,*[4] where it was written:

The employment of seafarers, including claims for death benefits, is governed by the contracts they sign every time they are hired or rehired; and as long as the stipulations therein are not contrary to law, morals, public order or public policy, they have the force of law between the parties. While the seafarer and his employer are governed by their mutual agreement, the POEA rules and regulations require that the POEA Standard Employment Contract be integrated in every seafarer's contract.

---

[4] G.R. No. 168210, June 17, 2008, 554 SCRA 590.

A perusal of Jerry's employment contract reveals that what was expressly integrated therein by the parties was DOLE Department Order No. 4, series of 2000 or the POEA Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, and POEA Memorandum Circular No. 9, series of 2000. However, POEA had issued Memorandum Circular No. 11, series of 2000 stating that:

In view of the Temporary Restraining Order issued by the Supreme Court in a Resolution dated 11 September 2000 on the implementation of certain amendments of the Revised Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels as contained in DOLE Department Order No. 04 and POEA Memorandum Circular No. 09, both Series of 2000, please be advised of the following:

Section 20, Paragraphs (A), (B) and (D) of the former Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, as provided in DOLE Department Order No. 33, and POEA Memorandum Circular No. 55, both Series of **1996 shall apply in lieu of Section 20 (A), (B) and (D) of the Revised Version**;

x x x x x x x x x

In effect, POEA Memorandum Circular No. 11-00 thereby paved the way for the application of the POEA Standard Employment Contract based on POEA Memorandum Circular No. 055, series of 1996. Worth noting, **Jerry boarded the ship [in] August 2001 before the said temporary restraining order was lifted on June 5, 2002** by virtue of Memorandum Circular No. 2, series of 2002. Consequently, Jerry's employment contract with Coastal must conform to Section 20(A) of the POEA Standard Employment Contract based on POEA Memorandum Circular No. 055, **series of 1996**, in determining compensability of Jerry's death. [Emphases supplied]

Thus, petitioner cannot simply rely on the disputable presumption provision mentioned in Section 20 (B) (4) of the **2000** POEA-SEC. As he did so without solid proof of work-relation and work-causation or work-aggravation of his illness, the Court cannot provide him relief.

At any rate, granting that the provisions of the 2000 POEA-SEC apply, the disputable presumption provision in Section 20 (B) does not allow him to just sit down and wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness. Contrary to his position, he still has to substantiate his claim in order to be entitled to disability compensation. He has to prove that the illness he suffered was work-related and that it must have existed during the term of his employment contract. He cannot simply argue that the burden of proof belongs to respondent company.

For disability to be compensable under **Section 20 (B) of the 2000 POEA-SEC**, two elements must concur: (1) the injury or illness must be **work-related**; and (2) the work-related injury or illness must have **existed during the term of the seafarer's employment contract**. In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; **it must also be shown** that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.

The 2000 POEA-SEC defines "work-related injury" as "injury[ies] resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied.[5]

Unfortunately for petitioner, he failed to prove that his varicose veins arose out of his employment with respondent company. Except for his bare allegation that it was work-related, he did not narrate in detail the nature of his work as a messman aboard Denklav's vessels. He likewise failed to particularly describe his working conditions while on sea duty. He also failed to specifically state how he contracted or developed varicose veins while on sea duty and how and why his working conditions

[5] *Magsaysay Maritime Corporation and/or Cruise Ships Catering and Services International, N.V. v. National Labor Relations Commission*, G.R. No. 186180, March 22, 2010, 616 SCRA 362.

aggravated it. Neither did he present any expert medical opinion regarding the cause of his varicose veins. No written document whatsoever was presented that would clearly validate his claim or visibly demonstrate that the working conditions on board the vessels he served increased the risk of acquiring varicose veins.

Moreover, although petitioner was rehired by respondent company several times, his eight-year service as a seaman was not actually without a "sign-off" period. His contract with respondent company was considered automatically terminated after the expiration of each overseas employment contract. Upon the termination of each contract, he was considered "signed-off" and he would have to go back and re-apply by informing respondent company as to his availability. Thereafter, he would have to sign an Availability Advise Form. Meanwhile, he would have to wait for a certain period of time, probably months, before he would be called again for sea service.

Thus, respondent company can argue that petitioner's eight (8) years of service with it did not automatically mean that he acquired his varicose veins by reason of such employment. His sea service was not an unbroken service. The fact that he never applied for a job with any other employer is of no moment. He enjoyed month-long "sign-off" vacations when his contract expired. It is possible that he acquired his condition during one of his "sign-off" periods.

As discussed in the decision of the CA, varicose veins may be caused by trauma, thrombosis, inflammation or heredity. Although the exact cause of varicose veins is still unknown, a number of factors contribute to it which include heredity, advance aging, prolonged standing, being overweight, hormonal influences during pregnancy, use of birth control pills, post-menopausal hormonal replacement therapy, prolonged sitting with legs crossed, wearing tight undergarments or clothes, history of blood clots, injury to the veins, conditions that cause increased pressure in the abdomen including liver disease, fluid in the abdomen, previous groin injury, heart failure, topical steroids, trauma or injury to the skin, previous venous surgery and exposure to ultra-violet rays.

Lastly, there is also no proof that petitioner's varicose veins caused him to suffer total and permanent disability. The Pre-Employment Medical Examination[6] *(PEME)* he underwent cannot serve as enough basis to justify a finding of a total and permanent disability because of its non-exploratory nature.

> The fact that respondent passed the company's PEME is of no moment. We have ruled that in the past the PEME is not exploratory in nature. It was not intended to be a totally in-depth and thorough examination of an applicant's medical condition. The PEME merely determines whether one is "fit to work" at sea or "fit for sea service," it does not state the real state of health of an applicant. In short, the "fit to work" declaration in the respondent's PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment. Thus we held in *NYK-FIL Ship Management, Inc. v. NLRC*:
>
> While a PEME may reveal enough for the petitioner (vessel) to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform petitioners of a seafarer's true state of health. The PEME could not have divulged respondent's illness considering that the examinations were not exploratory.[7]

Besides, it was not expressly stated in his medical diagnosis that his illness was equivalent to a total and permanent disability. Absent any indication, the Court cannot accommodate him.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Velasco, Jr. (Chairperson), Brion,[*] *Abad,* and *Perez,*[**] *JJ.*, concur.

---

[6] *Rollo*, p. 217.

[7] *Magsaysay Maritime Corporation and/or Cruise Ships Catering and Services International, N.V. v. National Labor Relations Commission*, *supra* note 5.

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Special Order No. 1150 dated November 11, 2011.

[**] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152 dated November 11, 2011.

SECOND DIVISION

[G.R. No. 187409. November 16, 2011]

PEOPLE OF THE PHILIPPINES, FELIX FLORECE, JOSE FLORECE, and JUSTINO FLORECE, *petitioners, vs.* **HON. COURT OF APPEALS, and SOCORRO FLORECE,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; EXTRINSIC FRAUD; NO CIRCUMSTANCE EXISTS THAT WOULD JUSTIFY A FINDING THAT EXTRINSIC FRAUD WAS EXTANT IN THE PROCEEDINGS BEFORE THE COURT OF APPEALS. —** Extrinsic fraud refers to any fraudulent act of the prevailing party in litigation committed outside of the trial of the case, whereby the defeated party is prevented from fully exhibiting his side of the case by fraud or deception practiced on him by his opponent, such as by keeping him away from court, by giving him a false promise of a compromise, or where the defendant never had the knowledge of the suit, being kept in ignorance by the acts of the plaintiff, or where an attorney fraudulently or without authority connives at his defeat. In the instant case, none of the foregoing circumstances exist that would justify a finding that extrinsic fraud was extant in the proceedings before the CA. The records would show that in the CA, the respondent-complainant was the People of the Philippines represented by the Office of the Solicitor General (OSG). The OSG had in fact participated in the proceedings before the CA. Thus, the People of the Philippines was not prevented from fully exhibiting its case before the CA.

2. **ID.; ID.; ID.; ID.; FACT THAT PETITIONERS WERE NOT ABLE TO PARTICIPATE IN THE PROCEEDINGS BEFORE THE COURT OF APPEALS IS IMMATERIAL AS THEY WERE NOT PARTIES TO THE CRIMINAL CASE. —** The fact that the herein petitioners were not able to participate in the proceedings before the CA is immaterial. Insofar as the petitioners are concerned, they were not parties to the criminal case. The petitioners, as private complainants in the case below,

were merely witnesses for the prosecution. The cases cited by the petitioners herein in support of the instant petition aptly pertain to civil cases. In *Palu-ay v. Court of Appeals*, we held that: 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. While there may be instances where a private complainant or offended party in a criminal case may be allowed to file a petition directly with this Court, as when there is a denial of due process, the foregoing circumstance is not extant here.

3. ID.; ID.; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; INSTANT PETITION FOR REVIEW WAS NOT FILED ON TIME; NO COMPELLING REASON TO RELAX OR SUSPEND THE PROCEDURAL RULES IN THE INTEREST OF SUBSTANTIAL JUSTICE IN CASE AT BAR. — The instant petition for review on *certiorari* was not filed on time. A petition for review on *certiorari* must be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of a motion for new trial or reconsideration filed in due time after notice of the judgment. Here, the petitioners alleged that they received a copy of the August 20, 2008 Decision of the CA only on February 10, 2009. Thus, the petitioners only had until February 25, 2009 to assail the August 20, 2008 Decision of the CA *via* a petition for review on *certiorari*. However, the petitioners were only able to file the instant petition on April 27, 2009. Clearly, the instant petition was filed out of time. Nevertheless, the petitioners invoke the principle of substantial justice and beg this Court to suspend the rules in their favor. We are however loath to heed the petitioners' invocation of substantial justice. It bears stressing that the petitioners utterly failed to advance any cogent or intelligible

explanation for their failure to file the petition on time. The petitioners ought to be reminded that the bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.

4. **ID.; CRIMINAL PROCEDURE; DOUBLE JEOPARDY; A VERDICT OF ACQUITTAL IS IMMEDIATELY FINAL, AND A RE-EXAMINATION OF THE MERITS OF SUCH ACQUITTAL, WILL PUT THE ACCUSED IN JEOPARDY FOR THE SAME OFFENSE. —** A review of the findings of the CA acquitting Socorro of the charge against her is not warranted under the circumstances as it runs afoul of the avowed constitutional right of an accused against double jeopardy. A verdict of acquittal is immediately final, and a re-examination of the merits of such acquittal, even in the appellate courts, will put the accused in jeopardy for the same offense.

APPEARANCES OF COUNSEL

Gerardo A. Del Mundo Law Office for private petitioners.
L.A.M. Caayao Law & Notary Office for private respondent.

R E S O L U T I O N

REYES, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Justino Florece (Justino), for himself and on behalf of his deceased brothers Felix Florece (Felix) and Jose Florece (Jose), assailing the Court of Appeals' (CA) Decision[1] dated August 20, 2008 in CA-G.R. CR No. 31034.

---

[1] Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Vicente Q. Roxas and Estela M. Perlas-Bernabe (now a member of this Court), concurring; *rollo*, pp. 22-33.

The instant case stemmed from a criminal complaint filed by the petitioners against Hilario Florece (Hilario) and his wife Socorro Florece (Socorro) for falsification of public document punishable under Article 172 of the Penal Code.

In the said complaint, the petitioners alleged that they are the children-heirs of the late spouses Gavino and Clara Florece, who were the registered owners of a 1,290 square meter parcel of land in La Purisima, Nabua, Camarines Sur. After the death of their parents, the petitioners, together with their other siblings, orally partitioned said parcel of land amongst themselves.

Sometime in 2003, Felix decided to erect a nipa hut in said parcel of land. However, Hilario protested the same, claiming that said parcel of land was already registered under his name and that he acquired the same by virtue of a deed of transfer from his parents. Hilario's parents, in turn, acquired the property from the petitioners as evidenced by a Deed of Absolute Sale dated August 21, 1973 signed by the latter.

Claiming that they never executed said Deed of Absolute Sale, the petitioners filed a complaint before the Provincial Prosecutor's Office, which after finding probable cause to indict Hilario and Socorro for falsification of public document under Article 172 of the Penal Code, filed the corresponding Information with the Municipal Circuit Trial Court (MCTC) of Nabua-Bato, Camarines Sur.

On November 26, 2006, the MCTC of Nabua-Bato rendered a Judgment[2] convicting Hilario and Socorro of the crime charged. The MCTC of Nabua-Bato opined that accused Hilario and Socorro, being in possession of and having made use of the alleged falsified deed of sale, are presumed to be the material authors of the falsification.

On appeal, the Regional Trial Court (RTC), Branch 37, Iriga City, affirmed the conviction of Hilario and Socorro for falsification of public document.[3] The motion for reconsideration

[2] *Id.* at pp. 62-67.

[3] *Id.* at pp. 68-73.

filed by Hilario and Socorro was denied by the RTC of Iriga City in its Order dated July 18, 2007. Meanwhile, accused Hilario passed away on July 25, 2007.

Thereafter, Socorro filed a Petition for Review[4] with the CA asserting that the RTC of Iriga City erred in affirming her conviction of the crime charged. Socorro asserted that the prosecution failed to prove that she indeed falsified the questioned deed and that her conviction for the offense charged was merely based on presumption.

On August 20, 2008, the CA rendered the herein assailed Decision,[5] acquitting Socorro of the crime charged. The CA concurred with the lower courts insofar as their finding that the prosecution was able to prove that the questioned deed was indeed forged. Nevertheless, the CA pointed out that Hilario and Socorro were not parties and were never shown to have participated in the execution of the Deed of Absolute Sale, and thus, could not be presumed to be the forgers thereof.

Undaunted, the petitioners instituted the instant petition for review on *certiorari* before this Court.

The petition is denied.

The core issue here is whether or not the CA had committed reversible error and/or grave abuse of discretion in reversing the Decision of the RTC which convicted the respondent Socorro. The petitioners insist that the Decision rendered by the CA should be reversed on the ground of extrinsic fraud.

According to the herein petitioners, in the CA proceedings, they were deprived of due process as they had not been given the opportunity to participate in the said proceedings.

Extrinsic fraud refers to any fraudulent act of the prevailing party in litigation committed outside of the trial of the case, whereby the defeated party is prevented from fully exhibiting his side of the case by fraud or deception practiced on him by

---

[4] *Id.* at pp. 35-47.

[5] *Supra* note 1.

his opponent, such as by keeping him away from court, by giving him a false promise of a compromise, or where the defendant never had the knowledge of the suit, being kept in ignorance by the acts of the plaintiff, or where an attorney fraudulently or without authority connives at his defeat.[6]

In the instant case, none of the foregoing circumstances exist that would justify a finding that extrinsic fraud was extant in the proceedings before the CA. The records would show that in the CA, the respondent-complainant was the People of the Philippines represented by the Office of the Solicitor General (OSG). The OSG had in fact participated in the proceedings before the CA. Thus, the People of the Philippines was not prevented from fully exhibiting its case before the CA.

The fact that the herein petitioners were not able to participate in the proceedings before the CA is immaterial. Insofar as the petitioners are concerned, they were not parties to the criminal case. The petitioners, as private complainants in the case below, were merely witnesses for the prosecution. The cases cited by the petitioners herein in support of the instant petition aptly pertain to civil cases.

In *Palu-ay v. Court of Appeals*,[7] we held that:

> 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. (Emphasis supplied)

---

[6] *Amihan Bus Lines, Inc. v. Romars International Gases Corporation*, G.R. No. 180819, July 5, 2010, 623 SCRA 406, 411.

[7] *Palu-ay v. Court of Appeals*, G.R. No. 112995, July 30, 1998, 355 Phil. 94, 106.

While there may be instances where a private complainant or offended party in a criminal case may be allowed to file a petition directly with this Court, as when there is a denial of due process, the foregoing circumstance is not extant here.

Moreover, the instant petition for review on *certiorari* was not filed on time. A petition for review on *certiorari* must be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of a motion for new trial or reconsideration filed in due time after notice of the judgment.[8]

Here, the petitioners alleged that they received a copy of the August 20, 2008 Decision of the CA only on February 10, 2009. Thus, the petitioners only had until February 25, 2009 to assail the August 20, 2008 Decision of the CA *via* a petition for review on *certiorari*. However, the petitioners were only able to file the instant petition on April 27, 2009. Clearly, the instant petition was filed out of time.

Nevertheless, the petitioners invoke the principle of substantial justice and beg this Court to suspend the rules in their favor. We are however loath to heed the petitioners' invocation of substantial justice. It bears stressing that the petitioners utterly failed to advance any cogent or intelligible explanation for their failure to file the petition on time.

The petitioners ought to be reminded that the bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[9]

---

[8] Rules of Court, Rule 45, Sec. 2.

[9] *Lazaro v. Court of Appeals*, G.R. No. 137761, April 6, 2000, 386 Phil. 412, 417.

Lastly, a review of the findings of the CA acquitting Socorro of the charge against her is not warranted under the circumstances as it runs afoul of the avowed constitutional right of an accused against double jeopardy. A verdict of acquittal is immediately final, and a re-examination of the merits of such acquittal, even in the appellate courts, will put the accused in jeopardy for the same offense.[10]

WHEREFORE, in consideration of the foregoing disquisitions, the petition is *DENIED*.

SO ORDERED.

Carpio, Brion, Perez, and *Sereno, JJ.,* concur.

THIRD DIVISION

[G.R. No. 191448. November 16, 2011]

REPUBLIC OF THE PHILIPPINES represented by the Department of Public Works and Highways (DPWH), *petitioners, vs.* **SPS. TAN SONG BOK and JOSEFINA S. TAN, SPS. JUNIOR SY and JOSEFINA TAN, EDGARDO TAN, NENITA TAN, RICARDO TAN, JR., and ALBERT TAN, R.S. AGRI-DEVELOPMENT CORPORATION, ERIBERTO H. GOMEZ married to Wilhelmina Rodriguez, EDGARDO H. GOMEZ, ELOISA H. GOMEZ, ERLINDA GOMEZ married to Camilo Manaloto, CLEOFE CONSUNJI-HIZON, MA. ASUNCION H. DIZON married to Benjamin Dizon, RAMON L. HIZON, married to Caridad Garchitorena, MA. LOURDES C. HIZON, married to John Sackett,**

---

[10] *People v. Court of Appeals*, G.R. No. 159261, February 21, 2007, 516 SCRA 383, 397.

JOSE MARIA C. HIZON married to Ma. Sarah Sarmiento, MA. FREIDESVINDA C. HIZON married to Manuel Yoingko, ROBERTO C. HIZON, ARTHUR C. HIZON, MA. SALOME HIZON, FREDERICK C. HIZON, MA. ENGRACIA H. DAVID, ANTONIO H. DAVID married to Consuelo Goseco, ELOISA P. HIZON married to Domingo C. Gomez, MA. MILAGROS C. HIZON, and PRESENTACION C. HIZON, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; EVEN IN EXPROPRIATION CASES, QUESTIONS OF FACTS ARE BEYOND THE PALE OF RULE 45 OF THE RULES OF COURT AS A PETITION FOR REVIEW MAY ONLY RAISE QUESTIONS OF LAW.—** The Court reiterates the rule, even in expropriation cases, that "questions of facts are beyond the pale of Rule 45 of the Rules of Court as a petition for review may only raise questions of law. Moreover, factual findings of the trial court, particularly when affirmed by the Court of Appeals, are generally binding on this Court." In another expropriation case, it was stressed that "only questions of law may be raised in petitions to review decisions of the CA filed before this Court. The factual findings of the CA affirming those of the trial court are final and conclusive. They cannot be reviewed by this Court, save only in the following circumstances: (1) when the factual conclusion is a finding grounded entirely on speculations, surmises and conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA went beyond the issues of the case in making its findings, which are further contrary to the admissions of both the appellant and the appellee; (7) when the CA's findings are contrary to those of the trial court; (8) when the conclusions do not cite the specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) when the CA's findings of fact, supposedly premised on the absence

of evidence, are contradicted by the evidence on record." In this case, the petitioner has failed to show that the present case falls under any of the aforecited exceptions. An evaluation of the facts and evidence presented does not persuade the Court to deviate from the findings of fact of the two courts below. The lower courts properly appreciated the evidence submitted by both parties as regards the true value of the expropriated lots at the time of taking.

2. **ID.; EVIDENCE; THE UNIFORM FINDINGS OF FACT UPON THE QUESTION OF JUST COMPENSATION REACHED BY THE COURT OF APPEALS AND THE REGIONAL TRIAL COURT ARE ENTITLED TO THE GREATEST RESPECT AND ARE BINDING ON THE COURT.—** The Court affirms the ruling of the RTC and the CA that the Report is founded on evidence. The uniform findings of fact upon the question of just compensation reached by the CA and the RTC are entitled to the greatest respect. They are binding on the Court in the absence of a strong showing by the petitioner that the courts below erred in appreciating the established facts and in drawing inferences from such facts. This Court would like to stress that the petitioner is silent on the undisputed fact that no less than its witness, Cleofe Umlas, Administrative Officer of the Bureau of Internal Revenue, testified and certified that the prevailing fair market value of land located at Pulung Maragul, Angeles City is at ₱4,800.00/s.qm. as per CAR 00158912 dated August 1, 2001. She apparently based her testimony and certification on the latest documents and deeds submitted to the Bureau of Internal Revenue *(BIR)* Regional Office at that time. Obviously, her statement corroborated the findings of the Committee. Hence, there was proper basis for the determination of the just compensation for the expropriated properties. The petitioner's tax declarations, the BIR zonal valuation and the deeds of sale it presented are not the only proof of the fair value of properties. Zonal valuation is just one of the indices of the fair market value of real estate. By itself, this index cannot be the sole basis of "just compensation" in expropriation cases. Various factors come into play in the valuation of specific properties singled out for expropriation. The values assigned by provincial assessors are usually uniform for very wide areas covering several barrios or even an entire town with the exception of the poblacion. Individual differences are never taken into account. The value of land is based on

such generalities as its possible cultivation for rice, corn, coconuts or other crops. Very often land described as 'cogonal' has been cultivated for generations. Buildings are described in terms of only two or three classes of building materials and estimates of areas are more often inaccurate than correct. Tax values can serve as guides but cannot be absolute substitutes for just compensation.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Noel T. Canlas for Tan Song Bok, *et al*.
Ramon F. Aviado, Jr. for E.H. Gomez.

D E C I S I O N

MENDOZA, *J.*:

Questioned in this petition for review is the February 19, 2010 Decision[1] of the Court of Appeals *(CA)* which affirmed with modification the April 14, 2004 Decision[2] of the Regional Trial Court, Branch 57, Angeles City *(RTC)* in Civil Case No. 9956, expropriating eight (8) lots located in the province of Pampanga owned by the respondents.

The Facts

The factual milieu and procedural antecedents were succinctly recited in the CA decision as follows:

On November 10, 2000, the Republic of the Philippines, represented by the Toll Regulatory Board (TRB), through the Office of the Solicitor General (OSG), filed a complaint before the Regional Trial Court, Angeles, for Expropriation of the following parcels of land to become an integral part of the Luzon Expressway (NLE) Project, to wit:

---

[1] *Rollo*, pp. 54-73 (Penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justice Josefina Guevara-Salonga and Associate Justice Pampio A. Abarintos).

[2] *Id.* at 261-279.

OWNER	TCT NO.	AFFECTED AREA (in sq. m)
Sps. Tan Song Bok & Josefina So-Tan, Josefina Tan married to Junior Sy, Edgardo Tan, Nenita Tan, Ricardo Tan, Jr. and Albert Tan	101012	3440
Sps. Tan Song Bok & Josefina So-Tan	82425	16827
Sps. Tan Song Bok & Josefina So-Tan	395874-R	862
Sps. Tan Song Bok & Josefina So-Tan	398835-R	15
R.S. Agri-Development Corporation	80483	35824
Eriberto H. Gomez, married to Wilhelmina Rodriguez, Edgardo H. Gomez, Eloisa H. Gomez, Erlinda H. Gomez, married to Camilo Manaloto	92065	10052
Cleofe Consunji-Hizon, Ma. Asuncion H. Dizon married to Benjamin Dizon, Ramon L. Hizon married to Caridad Garchitorena, Ma. Lourdes C. Hizon, married to John Sackett, Jose Maria C. Hizon, married to Ma. Sarah Sarmiento, Ma. Fredesvinda C. Hizon, married to Manuel Yoingko, Roberto C. Hizon, Arthur Hizon, Ma. Salome Hizon, Ma. Milagros C. Hizon, Presentacion C. Hizon, and Frederick C. Hizon, Ma. Engracia H. David, Antonio H. David, married to Consuelo Goseco, Eloisa P. Hizon,	91441	439

married to Domingo C. Gomez, Eriberto H. Gomez, married to Wilhelmina Rodriguez, Edgardo H. Gomez, Eloisa H. Gomez, and Erlinda H. Gomez, married to Camilo Manaloto		
Ramon L. Hizon, married to Caridad Garchitorena, Ma. Asuncion H. Dizon, married to Benjamin Dizon, Ma. Lourdes C. Hizon, married to John Sackkett, Jose Maria C. Hizon, married to Ma. Sarah Sarmiento, Ma. Freidesvinda C. Hizon, married to Manuel Yoingko, Roberto C. Hizon, Arthur C. Hizon, Ma. Salome C. Hizon, Ma. Milagros C. Hizon, Presentacion C. Hizon and Frederick C. Hizon.	92058	4796

On April 18, 2002, a Writ of Possession was issued placing the plaintiff-appellant in possession of the above-mentioned properties. Consequently, a Committee was created and subsequently a consolidated report was submitted on September 27, 2002. The Committee recommended the following:

In view of the foregoing consideration, and after a final deliberation, the members of the committee jointly recommends as follows:

1. The amount of ₱3,750.00 per sq. meter for Lot 99-V-2-C-4, owned by Tan Song Bok, *et al*;
2. The amount of ₱3,750.00 per sq. meter for Lot 122-E-4-B owned by Tan Song Bok, *et al*;
3. The amount of ₱3,650.00 per sq. meter for Lot 73-A-3-C owned by Tan Song Bok, *et al*;
4. The amount of ₱3,650.00 per sq. meter for Lot 73-A-3-D owned by Tan Song Bok, *et al*;
5. The amount of ₱4,400.00 per sq. meter for Lot 2 owned by R.S. Agri. Ent.;
6. The amount of ₱3,900.00 per sq. meter for Lot 122-E-1-D-24-B-3 owned by E. Gomez, *et al*.;

7. The amount of ₱3,900.00 per sq. meter for Lot 122-E-1-D-24-A, owned C. Hizon, *et al*.;

8. The amount of ₱3,900.00 per sq. meter for Lot 122-E-1-D-24-B-2 owned by R. Hizon, *et al*;

all located in the Province of Pampanga,

to be the just compensation to be paid by the plaintiff to the corresponding defendants in this case, which is reasonable and fair enough to the advantage of both parties considering the devaluation of pesos and the development of the vicinity of the properties of the defendants, which are the subject matter of the instant case.

Since the amount of provisional value deposited by the plaintiff is only the amount equivalent to ₱200.00 per square meter, it is recommended by the committee that the plaintiff deposit the equivalent of the remaining percentage per square meter, recommended by the committee, for the respective parcels of lands owned by the respective defendants in this case.

On November 18, 2002, plaintiff-appellant filed its Comment/ Objection to the Consolidated Committee Report arguing that the amounts recommended by the committee did not constitute fair and just equivalent of the properties sought to be expropriated because there was no sufficient basis for the recommended prices as no document or any deed of sale involving similar property was presented to show the current selling price and that the commissioners did not consider other factors such as tax declarations, zonal valuation and actual use of the lands. It likewise argued that the committee report was based mainly on the personal opinion of two of its commissioners when they allegedly conducted an ocular inspection of the properties.

On February 3, 2003, defendants Sps. Tan Song Bok and Josefina S. Tan, Sps. Junior Sy and Josefina Tan, Edgardo Tan, Nenita Tan, Ricardo Tan, Jr., Albert Tan, and R.S. Agri-Development Corporation, through counsel, filed their Reply arguing therein that the Consolidated Committee Report clearly stated the basis used to determine and arrive at the recommended just compensation, such as; (i) the zonal value as evidenced by the certification from the BIR submitted by plaintiff; (ii) the certification issued by BIR containing the price of the latest recorded sale of property in the area; (iii) Verification with the proper offices of Magalang, Mabalacat and Angeles City; (iv) ocular inspection. Further, they argued that the propriety of the

actions of the committee are supported by Section 5, Republic Act No. 8974, and that both Mr. Alberto Y. Murillo, as the long incumbent City Assessor of Angeles City, and Mr. Rommel Jose DG Suarez, are both experts in the said price determination as their findings were surely based on their knowledge, expertise and experience in the field of real property assessment and real estate brokering. In the same way, defendants-appellees Hizons and Gomezes, in their Reply/Opposition filed on February 27, 2003, had propounded the same arguments.

The Decision of the RTC

On April 14, 2004, after due hearing, the RTC rendered a decision declaring that the petitioner has the right to condemn for public use the affected properties of the respondents upon payment of just compensation. In this regard, the trial court adopted the findings and recommendations of the Committee on Appraisals[3] *(the Committee)* in its Consolidated Committee Report *(the Report)*[4] dated September 20, 2003, as being reflective of the true, fair and just compensation for the expropriation of the affected properties of the respondents. The RTC ruled, among others, that the payment shall be in the following manner:

1. The amount of ₱3,750.00 per sq. meter for Lot 99-V-2-C-4, owned by Tan Song Bok, *et al.*; (T.C.T. No. 101012)

x x x x x x x x x

Total Area Affected – 3,440 sq. m
Compensation: ₱12,900,000.00
Less: Partial Payment per Order dated Dec. 16, 2003 (₱688,000.00)
Compensation Due: ₱12,212,000.00

2. The amount of ₱3,750.00 per sq. meter for Lot 122-E-4-B owned by Tan Song Bok, *et al.*; (T.C.T. No. 82425)

x x x x x x x x x

---

[3] Created by the RTC in its June 10, 2002 Order, composed of OIC/ Branch Clerk of Court Mrs. Anita G. Nunag, as Chairperson; City Assessor, Mr. Alberto Y. Murillo and Licensed Real Estate Broker, Mr. Rommel DG. Suarez, as members, *id.* at 239-240.

[4] *Id.* at 244-249.

Total Area Affected – 16,827 sq. m
Compensation: ₱63,101,250.00
Less: Partial Payment per Order dated Dec. 16, 2003 (₱3,365,400.00)
Compensation Due: ₱59,735,850.00

3. The amount of ₱3,650.00 per sq. meter for Lot 73-A-3-C owned by Tan Song Bok, *et al*; (T.C.T. No. 395874-R)

x x x x x x x x x

Total Area Affected – 862 sq. m
Compensation: ₱3,146,300.00
Less: Partial Payment per Order dated Dec. 16, 2003 (₱172,400.00)
Compensation Due: ₱2,973,900.00

4. The amount of ₱3,650.00 per sq. meter for Lot 73-A-3-D owned by Tan Song Bok, *et al*; (T.C.T. No. 398835-R)

x x x x x x x x x

Total Area Affected – 15 sq. m
Compensation: ₱54,750.00
Less: Partial Payment per Order dated Dec. 16, 2003 (₱3,000.00)
Compensation Due: ₱51,750.00

5. The amount of ₱4,400.00 per sq. meter for Lot 2 owned by R.S. Agri. Ent.; (previously Lot 2 T.C.T. No. 80483 now Lots 5 and 7 T.C.T. Nos. 122746 and 122748, respectively)

x x x x x x x x x

Total Area Affected – 35,824 sq. m
Compensation: ₱157,625,600.00
Less: Partial Payment per Order dated Dec. 16, 2003 (₱7,164,800.00)
Compensation Due: ₱150,460,800.00

6. The amount of 3,900.00 per sq. meter for Lot 122-E-1-D-24-B-3 owned by E. Gomez, *et al*.; (T.C.T. No. 92065)

x x x x x x x x x

Total Area Affected – 10,052 sq. m
Compensation: ₱39,202,800.00
Less: Partial Payment per Order dated Dec. 16, 2003 (₱2,010,400.00)
Compensation Due: ₱37,192,400.00

7. The amount of ₱3,900.00 per sq. meter for Lot 122-E-1-D-24-A, owned C. Hizon, *et al.*; (T.C.T. No. 91441)

x x x x x x x x x

Total Area Affected – 439 sq. m.
Compensation: ₱1,712,100.00
Less: Partial Payment per Order dated Dec. 16, 2003 (₱87,800.00)
Compensation Due: ₱1,624,300.00

8. The amount of ₱3,900.00 per sq. meter for Lot 122-E-1-D-24-B-2 owned by R. Hizon, *et al.*; (T.C.T. No. 92058)

x x x x x x x x x

Total Area Affected – 4,797 sq. m.
Compensation: ₱18,708,300.00
Less: Partial Payment per Order dated Dec. 16, 2003 (₱959,200.00)
Compensation Due: ₱17,749,100.00

Not in conformity with the RTC decision, the petitioner elevated the matter to the CA anchored mainly on the argument that the just compensation recommended by the committee was based on insufficient evidence. According to the petitioner, the appraised values recommended by the committee did not approximate the actual value of the properties at the time of taking, but were purely speculative based on hearsays and gratuitous personal opinions. Hence, the RTC should not have completely adopted its recommendation in determining the just compensation for the subject properties.

The Decision of the CA

On February 19, 2010, the CA rendered a decision affirming the RTC decision with modification, as follows:

WHEREFORE, premises considered, the assailed decision is hereby MODIFIED as follows:

1. Plaintiff-appellant should pay defendants R. Hizon, *et al.* just compensation for the affected area of 4,796 sq. m. instead of 4,797 sq. m. in the amount of ₱18,704,400.00;

2. The payment of the just compensation is immediately executory upon receipt of this decision;

3. Plaintiff shall pay 6% interest per annum reckoned from the date the trial court rendered the decision on April 14, 2004.

SO ORDERED.

The CA stated, among others, that the RTC did not rely solely on the appraisal report submitted by the Committee but it also conducted hearings for the purpose of receiving the parties' evidence. It added that in order to determine the just compensation of the subject properties, the members of the Committee did not just confine themselves to the documents submitted by the parties but made verifications from the proper offices of Magalang, Mabalacat and Angeles City and conducted ocular inspections of the subject lots. The tax declarations, BIR zonal valuation and the deeds of sale presented by the petitioner were considered as only among the many factors for the determination of just compensation. Although such were some of the indices of the fair market value of real estate, they could not be the only bases of just compensation in expropriation cases.

Finding the CA decision unacceptable, the petitioner filed this petition for review raising the following

ISSUE

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT AFFIRMED THE DECISION OF THE COURT *A QUO* WITH RESPECT TO THE JUST COMPENSATION OF THE EXPROPRIATED LANDS.

In advocacy of its position, the petitioner argues that it was deprived of its right to due process when it was not given an opportunity to present its evidence by the Committee. The petitioner claims that the committee did not conduct any hearing to enable the parties to present their respective evidence. Instead, they based the Report on documents submitted by the parties, verifications from offices, ocular inspections and local market conditions, and unsubstantiated statements as to the highest and best use of the properties, and the devaluation of the peso.

The petitioner claims that the RTC merely conducted a clarificatory hearing wherein the commissioners were asked questions on the Report, when it should have conducted further proceedings to allow the reception and presentation of evidence needed in the determination of just compensation. Furthermore, the Report failed to state what particular documents were used as references for the determination of just compensation. No documentary evidence was presented by any of the parties before the preparation of the Report since the Committee did not set any hearing for the reception and presentation of evidence. The report neither stated the specific deed of sale used by the Committee as reference for the determination of the fair market value of the subject properties. The concept of devaluation was likewise misapplied in the Report.

Finally, the petitioner contends that since just compensation is based on the price or value of the property at the time it is taken, the value of the subject properties at the time of the filing of the complaint on November 10, 2000 should be the basis for the determination of their value. The market value of the subject properties could not possibly command a price over and above their zonal value per square meter especially because their classification, use and location as undeveloped agricultural and residential lots were taken into account. The petitioner is of the view that the just compensation in favor of the respondents should be approximate with their tax declarations of ₱200.00 per square meter.

Respondents' position

The respondents counter that the petitioner was not deprived of its right to due process. After the examination of the commissioners, the petitioner was allowed to present its evidence in support of the expropriation case. Thus, it presented the testimonies of Cleofe Umlas, Administrative Officer of the Bureau of Internal Revenue; Liberato L. Navarro, Revenue District Officer, Revenue District No. 21, Pampanga; James Suarez, Bureau of Internal Revenue District Officer; and Ronnie Vergara of the Register of Deeds of Angeles City. After considering the

pieces of evidence presented by the opposing parties, the RTC rendered its decision adopting the valuation recommended by the Committee as reflective of the true, fair and just compensation for the respondents' properties and as the reasonable replacement value thereof.

The respondents stressed that the RTC did not merely rely on the Report but it also conducted hearings for the purpose of receiving the parties' evidence. Moreover, the Committee members did not just confine themselves to the documents submitted by the parties but made verifications from the proper offices of Magalang, Mabalacat and Angeles City, and conducted ocular inspections of the properties to see for themselves the actual condition of the subject premises. In short, the respondents claim that both parties were given all the opportunities to justify their respective positions.

Hence, the petitioner's claim that the determination of just compensation did not have factual and legal basis is unwarranted. The Report was based on all the evidence submitted by the parties, the verifications made from the proper offices and the ocular inspections. The findings as to the valuation of the subject properties need no longer be disturbed because there was no showing that the Committee members assigned by the trial court acted with abuse of discretion in the evaluation of the evidence submitted to them or misappreciated the evidence.

On the other hand, the price of ₱200.00 per square meter offered by the petitioner is unjust and unreasonable considering the prevailing value of the properties in the affected areas and the development of the vicinity of the properties at the time of taking. The petitioner's price estimate is prejudicial to them because the value of the affected properties has obviously increased.

<u>The Court's Ruling</u>

The Court shall resolve two (2) principal issues in this case: 1) whether or not petitioner was deprived of its right to due process; and 2) whether or not the RTC and the CA had sufficient

basis in arriving at the questioned amount of just compensation of the subject properties.

After a careful review of the records, the Court resolves the first issue in the negative and the second issue in the affirmative.

On the first issue, the Court finds without basis petitioner's argument that it was not given the opportunity to present evidence by the Committee.

Records show that when the RTC issued its June 10, 2002 Order of expropriation, it created a committee on appraisal which was composed of three (3) commissioners who would determine and report the just compensation for the properties subject of expropriation. Upon submission of the Report by the Committee on September 20, 2002, petitioner filed its comment/objection to the Report arguing that it did not have sufficient basis for the recommended prices and, thus, the amounts recommended were not justified. Likewise, the petitioner prayed that the commissioners be reconvened for reception of evidence and further proceedings. After the respondents filed their reply to the petitioner's comment/objection, the RTC set the hearing for clarificatory questions.

During the clarificatory hearing, the three (3) appointed commissioners, Alberto Murillo, Angeles City Assessor; Rommel DG. Suarez, private realtor; and Mrs. Anita G. Nuñag, Acting Branch Clerk of Court of the RTC, testified and were subjected to cross-examination.

Thereafter, the petitioner presented its evidence in support of its positions consisting of the testimonies of Cleofe Umlas, Administrative Office of the Bureau of Internal Revenue; Liberato L. Navarro, Revenue District Officer, Revenue District No. 21, Pampanga; James Suarez, Bureau of Internal Revenue District Officer; and Ronnie Vergara, Register of Deeds of Angeles City.

Clearly, the petitioner was afforded due process. The pleadings it submitted and the testimonial evidence presented during the several hearings conducted all prove that the petitioner was given its day in court. The Court notes that the RTC acceded

to the petitioner's request, over the respondents' objection, for the reconvening of the Committee for reception of evidence and further proceedings. It also heard and allowed both sides to present evidence during the clarificatory hearings and rendered a decision based on the evidence presented.

On the second issue, the Court reiterates the rule, even in expropriation cases, that "questions of facts are beyond the pale of Rule 45 of the Rules of Court as a petition for review may only raise questions of law. Moreover, factual findings of the trial court, particularly when affirmed by the Court of Appeals, are generally binding on this Court."[5]

In another expropriation case, it was stressed that "only questions of law may be raised in petitions to review decisions of the CA filed before this Court. The factual findings of the CA affirming those of the trial court are final and conclusive. They cannot be reviewed by this Court, save only in the following circumstances: (1) when the factual conclusion is a finding grounded entirely on speculations, surmises and conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA went beyond the issues of the case in making its findings, which are further contrary to the admissions of both the appellant and the appellee; (7) when the CA's findings are contrary to those of the trial court; (8) when the conclusions do not cite the specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) when the CA's findings of fact, supposedly premised on the absence of evidence, are contradicted by the evidence on record."[6]

In this case, the petitioner has failed to show that the present case falls under any of the aforecited exceptions. An evaluation

---

[5] *National Power Corporation v. Court of Appeals*, 479 Phil. 850 (2004).

[6] *PNOC v. Maglasang*, G.R. No. 155407, November 11, 2008, 570 SCRA 560, 571.

of the facts and evidence presented does not persuade the Court to deviate from the findings of fact of the two courts below. The lower courts properly appreciated the evidence submitted by both parties as regards the true value of the expropriated lots at the time of taking.

Eminent domain is the power of the State to take private property for public use. It is an inherent power of State as it is a power necessary for the State's existence; it is a power the State cannot do without. As an inherent power, it does not need at all to be embodied in the Constitution; if it is mentioned at all, it is solely for purposes of limiting what is otherwise an unlimited power. The limitation is found in the Bill of Rights —that part of the Constitution whose provisions all aim at the protection of individuals against the excessive exercise of governmental powers.

Section 9, Article III of the 1987 Constitution (which reads "No private property shall be taken for public use without just compensation.") provides two essential limitations to the power of eminent domain, namely, that (1) the purpose of taking must be for public use and (2) just compensation must be given to the owner of the private property.

It is not accidental that Section 9 specifies that compensation should be "just" as the safeguard is there to ensure a balance — property is not to be taken for public use at the expense of private interests; the public, through the State, must balance the injury that the taking of property causes through compensation for what is taken, value for value.

Nor is it accidental that the Bill of Rights is interpreted liberally in favor of the individual and strictly against the government. The protection of the individual is the reason for the Bill of Rights' being; to keep the exercise of the powers of government within reasonable bounds is what it seeks.

The concept of "just compensation" is not new to Philippine constitutional law, but is not original to the Philippines; it is a transplant from the American Constitution. It found fertile application in this country particularly in the area of agrarian reform where the taking of private property for distribution to landless farmers has been equated to the "public use" that the Constitution requires. In *Land Bank of the Philippines v. Orilla*, a valuation case under our agrarian reform law, this Court had occasion to state:

Constitutionally, "just compensation" is the sum equivalent to the market value of the property, broadly described as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition, or the fair value of the property as between the one who receives and the one who desires to sell, it being fixed at the time of the actual taking by the government. Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. It has been repeatedly stressed by this Court that the true measure is not the taker's gain but the owner's loss. The word "just" is used to modify the meaning of the word "compensation" to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample.[7]

Republic Act *(R.A.)* No. 8974 (An Act to Facilitate the Acquisition of Right-Of-Way, Site or Location for National Government Infrastructure Projects and for Other Purposes) provides, as follows:

Section 5. Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale.— In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

(a) The classification and use for which the property is suited;

(b) The developmental costs for improving the land;

(c) The value declared by the owners;

(d) The current selling price of similar lands in the vicinity;

(e) The reasonable disturbance compensation for the removal and/or demolition of certain improvement on the land and for the value of improvements thereon;

(f) Th[e] size, shape or location, tax declaration and zonal valuation of the land;

(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and

---

[7] *Apo Fruits Corporation v. Land Bank of the Philippines*, G.R. No. 164195, October 12, 2010, 632 SCRA 739-741.

(h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

Regarding the findings of a committee, it has been written that:

> The duty of the court in considering the commissioners' report is to satisfy itself that just compensation will be made to the defendant by its final judgment in the matter, and to fulfill its duty in this respect, the court will be obliged to exercise its discretion in dealing with the report as the particular circumstances of the case may require. Rule 67, Section 8 of the 1997 Rules of Civil Procedure clearly shows that the trial court has the discretion to act upon the commissioners' report in any of the following ways: (1) **it may accept the same and render judgment therewith**; or (2) for cause shown, it may [a] recommit the report to the commissioners for further report of facts; or [b] set aside the report and appoint new commissioners; or [c] accept the report in part and reject it in part; and it may make such order or render such judgment as shall secure to the plaintiff the property essential to the exercise of his right of expropriation, and to the defendant just compensation for the property so taken.[8] [Emphasis supplied]

In the case at bench, the Report reads as follows:

> In order to arrive at a fair and reasonable appraisal of the just compensation of the properties in question to be paid by the plaintiff to the defendants, the committee did not confine itself with the documents submitted to the court by both parties, but made verifications from the proper offices of Magalang, Mabalacat and Angeles City and on two (2) instances conducted ocular inspection of the premises in question to satisfy itself of the actual condition/situation of the subject premises.
>
> From the ocular inspection, the committee found out that:

---

[8] *National Power Corporation v. Purefoods Corporation*, G.R. No. 160725, September 12, 2008, 565 SCRA 17.

The subject matter of the instant case are parcels of land affected by the impending relocation of the North Expressway, Angeles City Entry/Exit and the widening/expansion along the said expressway, subject matter of this case, located in the City of Angeles, Municipality of Mabalacat, Pampanga, more particularly situated within the vicinity of the North Expressway and Provincial Road leading to Magalang, Pampanga as well as Don Bonifacio Blvd.

Having inspected the properties and investigated the local market conditions, and having given consideration to the extent, description of properties, character, location, identification, neighborhood data, facilities and utilities, progression/regression, increasing and diminishing returns, highest and best use of its properties, and varying development in the immediate vicinity of each propert[y], the two (2) commissioners in the persons of the City Assessor of Angeles City, Mr. Alberto Y. Murillo, and the licensed real estate broker, Mr. Rommel Suarez, submitted to the chairperson, their respective appraisal, xxx.

The Court affirms the ruling of the RTC and the CA that the Report is founded on evidence. The uniform findings of fact upon the question of just compensation reached by the CA and the RTC are entitled to the greatest respect. They are binding on the Court in the absence of a strong showing by the petitioner that the courts below erred in appreciating the established facts and in drawing inferences from such facts.[9]

This Court would like to stress that the petitioner is silent on the undisputed fact that no less than its witness, Cleofe Umlas, Administrative Officer of the Bureau of Internal Revenue, testified and certified that the prevailing fair market value of land located at Pulung Maragul, Angeles City is at ₱4,800.00/s.qm. as per CAR 00158912 dated August 1, 2001. She apparently based her testimony and certification on the latest documents and deeds submitted to the Bureau of Internal Revenue *(BIR)* Regional Office at that time. Obviously, her statement corroborated the findings of the Committee. Hence, there was proper basis for the determination of the just compensation for the expropriated properties.

---

[9] *EPZA v. Jose Pulido*, G.R. No. 188995, August 24, 2011.

The petitioner's tax declarations, the BIR zonal valuation and the deeds of sale it presented are not the only proof of the fair value of properties. Zonal valuation is just one of the indices of the fair market value of real estate. By itself, this index cannot be the sole basis of "just compensation" in expropriation cases.[10]

Various factors come into play in the valuation of specific properties singled out for expropriation. The values assigned by provincial assessors are usually uniform for very wide areas covering several barrios or even an entire town with the exception of the poblacion. Individual differences are never taken into account. The value of land is based on such generalities as its possible cultivation for rice, corn, coconuts or other crops. Very often land described as 'cogonal' has been cultivated for generations. Buildings are described in terms of only two or three classes of building materials and estimates of areas are more often inaccurate than correct. Tax values can serve as guides but cannot be absolute substitutes for just compensation.[11]

In view of the foregoing, the Court upholds the CA decision except on the point that it is immediately executory. Any disposition in this case becomes executory only after its finality.

WHEREFORE, the petition is *DENIED*. Accordingly, the February 19, 2010 Decision of the Court of Appeals is hereby *AFFIRMED* except on the immediate execution of the decision.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Perez,*[*] *JJ.,* concur.

---

[10] *LECA Realty Corp. v. Republic,* G.R. No. 155605, September 27, 2006, 503 SCRA 563.

[11] *EPZA v. Dulay*, G.R. No. 59603, April 29, 1987, 233 Phil. 313.

[*] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152 dated November 11, 2011.

THIRD DIVISION

[G.R. No. 192261. November 16, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GARET SALCENA *Y* VICTORINO,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S ASSESSMENT THEREOF, AS A RULE, IS ENTITLED TO GREAT WEIGHT AND WILL NOT BE DISTURBED ON APPEAL; EXCEPTION; CASE AT BAR. —** After a meticulous review and examination of the evidence on record, the Court finds merit in the appeal. True, the trial court's assessment of the credibility of witnesses and their testimonies, as a rule, is entitled to great weight and will not be disturbed on appeal. This rule, however, does not apply where it is shown that any fact of weight and substance has been overlooked, misapprehended or misapplied by the trial court. The case at bar falls under the above exception and, hence, a deviation from the general rule is justified.

2. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS THAT MUST BE PROVEN. —** Jurisprudence has firmly entrenched that in the prosecution for illegal sale of dangerous drugs, the following essential elements must be proven: (1) that the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified. Implicit in all these is the need for proof that the transaction or sale actually took place, coupled with the presentation in court of the confiscated prohibited or regulated drug as evidence. An assiduous evaluation of the evidence on record in its totality exposes flaws in the prosecution evidence which raises doubt as to its claim of an entrapment operation. Not all the elements necessary for the conviction of Salcena for illegal sale of *shabu* were clearly established in this case.

3. **ID.; ID.; ID.; "BUY BUST" OPERATION; ACCEPTED AS VALID AND EFFECTIVE MODE OF ARRESTING**

VIOLATORS OF DANGEROUS DRUGS LAW. — A buy-bust operation is a form of entrapment, which in recent years has been accepted as valid and effective mode of arresting violators of the Dangerous Drugs Law. It has been proven to be an effective way of unveiling the identities of drug dealers and of luring them out of obscurity. To determine whether there was a valid entrapment or whether proper procedures were undertaken in effecting the buy-bust operation, it is incumbent upon the courts to make sure that the details of the operation are clearly and adequately established through relevant, material and competent evidence. The courts cannot merely rely on, but must apply with studied restraint, the presumption of regularity in the performance of official duty by law enforcement agents. Courts are duty-bound to exercise extra vigilance in trying drug cases and should not allow themselves to be used as instruments of abuse and injustice lest innocent persons are made to suffer the unusually severe penalties for drug offenses.

4. **ID.; ID.; ID.; APPLYING THE "OBJECTIVE" TEST, THE COURT IS OF THE CONSIDERED VIEW THAT THE PROSECUTION FAILED TO PRESENT A COMPLETE PICTURE OF THE BUY-BUST OPERATION HIGHLIGHTED BY THE DISHARMONY AND INCONSISTENCIES IN ITS EVIDENCE. —** The prosecution seeks to prove the entrapment operation through the testimonies of barangay tanods Catubay and Esguerra. Accordingly, the innocence or culpability of Salcena hinges on the issue of their credibility. In determining the credibility of prosecuting witnesses regarding the conduct of a legitimate buy-bust operation, the "objective" test as laid down in *People v. De Guzman* is utilized. Thus: We therefore stress that the "objective" test in buy-bust operation demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer for purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer,

must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Applying this "objective" test, the Court is of the considered view that the prosecution failed to present a complete picture of the buy-bust operation highlighted by the disharmony and inconsistencies in its evidence. The Court finds loose ends in the prosecution evidence, unsupported by coherent and rational amplification.

5. **ID.; ID.; ID.; THE *POSEUR-BUYER'S* STORY OF SILENT NEGOTIATION IS NOT CREDIBLE AND DOES NOT CONFORM TO THE NATURAL COURSE OF THINGS. —** The Court is not unaware that drug transactions are usually conducted stealthily and covertly and, hence, the parties usually employed the "*kaliwaan* system" or the simultaneous exchange of money for the drugs. Still, it baffles the mind how Salcena knew exactly who between Catubay and Esguerra would buy *shabu*, and how much would be the subject of the transaction despite the absence of an offer to purchase *shabu*, through words, signs or gestures, made by either of the two *tanods*. Evidence to be believed must not only proceed from the mouth of a credible witness but it must also be credible in itself such that common experience and observation of mankind lead to the inference of its probability under the circumstances. Catubay's story of silent negotiation is just not credible. It simply does not conform to the natural course of things.

6. **ID.; ID.; ID.; THE CONFUSION AS TO WHO CONFISCATED THE BUY-BUST MONEY AND FROM WHOM IT WAS SEIZED CAST SERIOUS DOUBT ON THE CREDIBILITY OF THE PROSECUTION WITNESSES WHEN CONSIDERED TOGETHER. —** Equally damaging to the cause of the prosecution is the confusion that marks its evidence as to who confiscated the buy-bust money and from whom it was seized. It was stated in both the Investigation Report submitted by P/Supt. Ratuita and the Joint Affidavit of Arrest that it was Esguerra who confiscated the buy-bust money from the right palm of Armas because, allegedly, immediately after receiving the ₱100.00 bill, Salcena passed the money to Armas. Catubay, however, claimed that he recovered the buy-bust money from Salcena herself. x x x The conflicting narrations and improbabilities, seemingly trivial when viewed in isolation, cast serious doubt on the credibility of the prosecution witnesses

when considered together. Unfortunately, they were glossed over by the RTC and the CA invoking the presumption that *barangay tanods* Catubay and Esguerra were in the regular performance of their bounden duties at the time of the incident. It should be stressed, however, that while the court is mindful that the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot, by itself, constitute proof of guilt beyond reasonable doubt. The attendant circumstances negate the presumption accorded to these prosecution witnesses.

7. **ID.; ID.; ID.; THE PROSECUTION EVIDENCE, WHEN PLACED UNDER "SEVERE TESTING" DOES NOT PROVE WITH MORAL CERTAINTY THAT A LEGITIMATE BUY-BUST OPERATION WAS CONDUCTED AGAINST THE APPELLANT. —** Viewed *vis-à-vis* the peculiar factual milieu of this case, it is pertinent to mention the ruling in the case of *People v. Angelito Tan* that courts are mandated to put the prosecution evidence through the crucible of a "severe testing" and that the presumption of innocence requires them to take a more than casual consideration of every circumstance or doubt favoring the innocence of the accused. In the case at bench, the prosecution evidence, when placed under "severe testing," does not prove with moral certainty that a legitimate buy-bust operation was conducted against Salcena.

8. **ID.; ID.; CHAIN OF CUSTODY RULE; THE PROSECUTION FAILED TO SUPPLY VITAL DETAILS AS TO WHO MARKED THE SACHET, WHERE AND HOW THE SAME WAS DONE, AND WHO WITNESSED THE MARKING. —** The Court finds the prosecution fatally remiss in establishing an unbroken link in the chain of custody of the allegedly seized *shabu*. Thus, doubt is engendered on whether the object evidence subjected to laboratory examination and offered in court is the same as that allegedly sold by Salcena. Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti* — the body of the crime whose core is the confiscated illicit drug. Hence, every fact necessary to constitute the crime must be established. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed. x x x It is significant to note that

the testimonies of *poseur-buyer* Catubay and his back-up, Esguerra, lack specifics on the post-seizure custody and handling of the subject narcotic substance. Although Catubay testified that he seized the small plastic sachet containing the suspected *shabu* from Salcena and brought it to the BSDO office, he never disclosed the identity of the person/s who had control and possession of the *shabu* at the time of its transportation to the police station. Neither did he claim that he retained possession until it reached the police station. Furthermore, the prosecution failed to supply vital details as to who marked the sachet, where and how the same was done, and who witnessed the marking. In *People v. Martinez,* the Court ruled that the "marking" of the seized items, to truly ensure that they were the same items that enter the chain and were eventually the ones offered in evidence, should be done (1) in the presence of the apprehended violator; and (2) immediately upon confiscation – in order to protect innocent persons from dubious and concocted searches and to shield the apprehending officers as well from harassment suits based on planting of evidence and on allegations of robbery or theft.

9. **ID.; ID.; ID.; EACH AND EVERY LINK IN THE CUSTODY MUST BE ACCOUNTED FOR, FROM THE TIME THE DRUG WAS RETRIEVED FROM THE SUSPECT DURING THE BUY-BUST OPERATION TO ITS SUBMISSION TO THE FORENSIC CHEMIST UNTIL ITS PRESENTATION BEFORE THE TRIAL COURT. —** The records of the case do not provide for the identity of the officer who placed the marking "RC GVS 5-19-05" on the plastic sachet containing the allegedly confiscated *shabu* and whether said marking had been done in the presence of Salcena. It is likewise noteworthy that the prosecution evidence is wanting as to the identity of the police investigator to whom the buy-bust team turned over the seized item; as to the identity of the person who submitted the specimen to the Philippine National Police *(PNP)* Crime Laboratory; as to whether the forensic chemist whose name appeared in the chemistry report was the one who received the subject *shabu* when it was forwarded to the crime laboratory; and as to who exercised custody and possession of the specimen after the chemical examination and before it was offered in court. Further, no evidence was adduced showing how the seized *shabu* was handled, stored and safeguarded pending its offer

as evidence in court. While a perfect chain of custody is almost always impossible to achieve, an unbroken chain becomes indispensable and essential in the prosecution of drug cases owing to its susceptibility to alteration, tampering, contamination and even substitution and exchange. Accordingly, each and every link in the custody must be accounted for, from the time the *shabu* was retrieved from Salcena during the buy-bust operation to its submission to the forensic chemist until its presentation before the RTC. In the case at bench, the prosecution failed to do so.

10. **ID.; ID.; ID.; THE SUBJECT 0.04 GRAM OF SHABU WAS NEVER IDENTIFIED BY THE WITNESSES IN COURT. —** The subject 0.04 gram of *shabu* was never identified by the witnesses in court. Neither BSDO Catubay nor BSDO Esguerra was confronted with the subject *shabu* for proper identification and observation of the uniqueness of the subject narcotic substance when they were called to the witness stand because at that time, the subject *shabu* was still in the possession of the forensic chemist as manifested by Assistant City Prosecutor Gibson Araula, Jr. They were not given an opportunity to testify either as to the condition of the item in the interim that the evidence was in their possession and control. Said flaw militates against the prosecution's cause because it not only casts doubt on the identity of the *corpus delicti* but also tends to discredit, if not negate, the claim of regularity in the conduct of the entrapment operation.

11. **REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT; NOT ESTABLISHED; A SLIGHTEST DOUBT SHOULD BE RESOLVED IN FAVOR OF THE ACCUSED. —** In view of the loopholes in the prosecution evidence as well as the gaps in the chain of custody, there is no assurance that the identity and integrity of the subject narcotic substance has not been compromised. In *Catuiran v. People,* the Court held that the failure of the prosecution to offer the testimony of key witnesses to establish a sufficiently complete chain of custody of a specimen of *shabu*, and the irregularity which characterized the handling of the evidence before the same was finally offered in court, fatally conflicted with every proposition relative to the culpability of the accused. The Constitution mandates that an accused shall be presumed innocent until the contrary is proved. Concededly, the evidence

for the defense is weak and uncorroborated and could even engender belief that Salcena indeed perpetrated the crime charged. This, however, does not advance the cause of the prosecution because its evidence must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense. The prosecution has the burden to overcome the presumption of innocence and prove the guilt of an accused beyond reasonable doubt. In the light of the failure of the prosecution evidence to pass the test of moral certainty, a reversal of Salcena's judgment of conviction becomes inevitable. Suffice it to say, a slightest doubt should be resolved in favor of the accused. *In dubio pro reo.*

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J.*:

This is an appeal from the February 9, 2010 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 02894, which affirmed the July 10, 2007 Decision[2] of the Regional Trial Court, Branch 103, Quezon City, *(RTC)* in Criminal Case No. Q-05-134553, finding accused Garet Salcena *y* Victorino *(Salcena)* guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act *(R.A.)* No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and sentencing her to suffer the penalty of life imprisonment and ordering her to pay a fine of ₱500,000.00.

In the Information[3] dated May 24, 2005, Salcena, together with a certain Arlene Morales Armas *(Armas),* was charged with illegal sale of *shabu*, the accusatory portion of which reads:

---

[1] *Rollo*, pp. 2-20.

[2] Penned by Judge Jaime N. Salazar, Jr.; CA *rollo*, pp. 12-16.

[3] Records, pp. 1-2.

That on or about the 19th day of May, 2005, in Quezon City, Philippines, the said accused, conspiring together, confederating with and mutually helping each other, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point zero four gram (0.04) of Methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.

When arraigned, both Salcena and Armas entered a plea of "NOT GUILTY"[4] to the offense charged. After pre-trial was terminated, trial on the merits ensued. The prosecution presented the testimonies of Barangay Security Development Officer *(BSDO)* Ronnie Catubay *(Catubay),* the *poseur buyer*; BSDO Elmer Esguerra *(Esguerra);* and Forensic Chemist Filipinas Francisco Papa *(Papa).* The defense, on the other hand, presented the lone testimony of Salcena.

The Version of the Prosecution

The People's version of the incident has been succinctly recited by the Office of the Solicitor General *(OSG)* in its Brief[5] as follows:

In the afternoon of May 19, 2005, an informant reported to the *barangay tanods* of Barangay San Antonio, SFDM, Quezon City, namely, Ronnie Catubay and Elmer Esguerra, that appellant "Garet" was selling illegal drugs. Responding to the report, the *barangay tanods* met in the afternoon and plotted an entrapment against appellant. Barangay tanods Catubay and Esguerra were assigned to act as poseur buyer and given a marked 100.00 bill by the *barangay* chairman. Thereafter, at around 5:20 p.m., the team proceeded to No. 23 Paco Street, SFDM, Quezon City.

Upon arriving at the entrapment place, Catubay and Esguerra went to appellant and asked if they could buy *shabu*. Appellant handed to Catubay a plastic sachet containing *shabu* and in return received

---

[4] *Id.* at 38.

[5] CA *rollo*, pp. 57-75.

the ₱100 marked money. At this point, Catubay immediately arrested appellant and recovered from her the marked money. Just as appellant was apprehended, another woman (identified in court as Arlene M. Armas), ran from the scene, prompting the *tanods* to arrest her. The two women were brought to the BSDO office of the *barangay* hall of Barangay San Antonio for recording purposes. After which, they were taken to the PNP Headquarter in Camp Karingal in Quezon City.

Forensic Chemist Filipinas Francisco Papa of the CPD Crime Laboratory conducted the test on the specimen submitted and the result yielded positive for methamphetamine hydrochloride.[6]

After the prosecution had formally offered its evidence and rested, co-accused Armas filed a demurrer to evidence anchored on the ground that the evidence adduced by the prosecution failed to meet that quantum of proof necessary to support her criminal conviction for the offense charged. On March 15, 2006, the RTC granted the demurrer and dismissed the charge against Armas.[7]

The Version of the Defense

In her Brief,[8] Salcena denied that she was caught, *in flagrante*, selling *shabu* and claimed that she was just a victim of a frame-up. Her version of the events that transpired in the afternoon of May 19, 2005 is diametrically opposed to that of the prosecution. Thus:

On May 19, 2005, at around 10:00 o'clock in the morning, GARET SALCENA and Arlene Armas were on board a tricycle *en route* to Pantranco. Before they were able to reach their destination, two (2) barangay tanods stopped their tricycle and asked them to step out.

Subsequently, the duo were invited to the barangay hall where they were bodily frisked by a female *barangay tanod*. After they were frisked, the lady tanod said, "*negative ito*." Despite this, however, a male tanod said, "*kahit na negative yan, positive yan*."

---

[6] *Id.* at 62-64.

[7] Records, pp. 72-74.

[8] CA *rollo*, pp. 29-46.

Consequently, a plastic sachet was taken from the table of one of the *tanods* and "planted" as evidence against the accused. The duo was subsequently brought to the Camp Karingal police station.

She vehemently denied the accusations against her.[9]

The Decision of the RTC

On July 10, 2007, the RTC rendered judgment convicting Salcena for illegal sale of 0.04 gram of *shabu*. The trial court rejected her defenses of denial and frame-up and accorded weight and credence to the collective testimonies of *barangay tanods*, Catubay and Esguerra. The decretal portion of the RTC Decision reads:

> ACCORDINGLY, judgment is rendered finding the accused GARET SALCENA *y* VICTORINO GUILTY of violation of Section 5 of R.A. 9165 (for pushing *shabu*) as charged and she is sentenced to suffer a jail term of LIFE IMPRISONMENT and to pay a fine of ₱500,000.00.
>
> The *shabu* in this case weighing 0.04 gram is ordered transmitted to the PDEA thru DDB for disposal as per RA 9165.
>
> SO ORDERED.[10]

The Decision of the CA

On appeal, the CA affirmed the conviction of the accused on the basis of the testimonies of Catubay and Esguerra which it found credible and sufficient to sustain the conviction. The CA was of the view that the presumption of regularity in the performance of official duty in favor of the *barangay tanods* was not sufficiently controverted by Salcena. It stated that the prosecution was able to establish the elements of the crime of illegal sale of dangerous drugs as well as the identity of Salcena as its author. The appellate court rejected the defense of frame-up for her failure to substantiate the same.

---

[9] *Id.* at 34.

[10] *Id.* at 16.

Moreover, the CA held that the apprehending team properly observed the procedure outlined by Section 21 of R.A. No. 9165 and that the integrity and evidentiary value of the subject *shabu* was duly preserved. The appellate court also sustained the RTC in holding that Salcena's constitutional right to counsel was never impaired as she was adequately represented and assisted by a counsel at all stages of the trial proceedings. The dispositive portion of the CA Decision dated February 9, 2010 reads:

> WHEREFORE, in view of the foregoing, the appealed Decision dated July 10, 2007 of the Regional Trial Court (RTC), Branch 103, Quezon City in Criminal Case No. Q-05-134553 convicting accused-appellant of the violation of Section 11, article II of R.A. No. 9165 and sentencing her to Life Imprisonment and to pay a fine of ₱500,000.00 is hereby AFFIRMED.
>
> SO ORDERED.[11]

On February 22, 2010, Salcena filed a Notice of Appeal[12] which the CA gave due course in its Minute Resolution[13] dated March 17, 2010.

In the Resolution dated July 2, 2010, the Court required the parties to file their respective supplemental briefs. The parties, however, manifested that they had exhausted their arguments before the CA and, thus, would no longer file any supplemental brief.[14]

The Issues

Insisting on her innocence, Salcena ascribes to the RTC the following errors:

I

THE TRIAL COURT VIOLATED THE ACCUSED-APPELLANT'S CONSTITUTIONAL RIGHT TO COUNSEL.

---

[11] *Id.* at 99.

[12] *Id.* at 100-101.

[13] *Id.* at 104.

[14] *Rollo*, pp. 30-36.

II

THE TRIAL COURT GRAVELY ERRED IN RENDERING A VERDICT OF CONVICTION DESPITE THE FACT THAT THE GUILT OF THE ACCUSED-APPELLANT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

III

THE TRIAL COURT ERRED IN RENDERING A JUDGMENT OF CONVICTION DESPITE THE FACT THAT THE CHAIN OF CUSTODY OF THE ALLEGED *SHABU* WAS NEVER ESTABLISHED.

Salcena contends that the prosecution failed to prove her guilt beyond reasonable doubt. She avers that both the RTC and the CA were mistaken in giving undue credence to the testimonies of Catubay and Esguerra as well as in upholding the validity of the alleged buy-bust operation. She decries that she was a victim of a frame-up claiming that a *barangay tanod* merely planted the subject *shabu* on her for the purpose of harassing her. She adds that the omission of the two *barangay tanods* to observe the procedure outlined by Section 21 of R.A. No. 9165 impaired the prosecution's case. She assails the prosecution for its failure to establish the proper chain of custody of the *shabu* allegedly seized from her. Also, she submits that her acquittal is in order in the light of the denial of her basic constitutional rights to counsel and to due process.

The OSG, on the other hand, counters that the culpability of Salcena for the crime of illegal sale of *shabu* was proven beyond reasonable doubt. It alleges that contrary to her stance, she was afforded with adequate and effective legal representation at all stages of the trial. It avers that there was proper coordination with the Philippine Drug Enforcement Agency *(PDEA)* before the buy-bust operation was conducted, and that the prosecution was able to establish an unbroken and cohesive chain of custody of the confiscated narcotic substance.

The Court's Ruling:

The foregoing assignment of errors can be synthesized into: *first*, the core issue of whether there was a valid buy-bust operation;

and *second*, whether sufficient evidence exists to support Salcena's conviction for violation of Section 5, Article III of R.A. No. 9165.

Prefatorily, it must be emphasized that an appeal in a criminal case throws the whole case open for review and it is the duty of the appellate court to cite, appreciate and correct errors in the appealed judgment whether they are assigned or unassigned.[15]

After a meticulous review and examination of the evidence on record, the Court finds merit in the appeal.

True, the trial court's assessment of the credibility of witnesses and their testimonies, as a rule, is entitled to great weight and will not be disturbed on appeal. This rule, however, does not apply where it is shown that any fact of weight and substance has been overlooked, misapprehended or misapplied by the trial court.[16] The case at bar falls under the above exception and, hence, a deviation from the general rule is justified.

Jurisprudence has firmly entrenched that in the prosecution for illegal sale of dangerous drugs, the following essential elements must be proven: (1) that the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.[17] Implicit in all these is the need for proof that the transaction or sale actually took place, coupled with the presentation in court of the confiscated prohibited or regulated drug as evidence.

An assiduous evaluation of the evidence on record in its totality exposes flaws in the prosecution evidence which raises doubt as to its claim of an entrapment operation. Not all the elements necessary for the conviction of Salcena for illegal sale of *shabu* were clearly established in this case.

---

[15] *People v. Balagat*, G.R. No. 177163, April 24, 2009, 586 SCRA 640, 644-645.

[16] *People v. Baga*, G.R. No. 189844, November 15, 2010, 634 SCRA 743, 749.

[17] *People v. De la Cruz*, G.R. No. 177222, October 29, 2008, 570 SCRA 273, 283.

A buy-bust operation is a form of entrapment, which in recent years has been accepted as valid and effective mode of arresting violators of the Dangerous Drugs Law.[18] It has been proven to be an effective way of unveiling the identities of drug dealers and of luring them out of obscurity.[19] To determine whether there was a valid entrapment or whether proper procedures were undertaken in effecting the buy-bust operation, it is incumbent upon the courts to make sure that the details of the operation are clearly and adequately established through relevant, material and competent evidence. The courts cannot merely rely on, but must apply with studied restraint, the presumption of regularity in the performance of official duty by law enforcement agents. Courts are duty-bound to exercise extra vigilance in trying drug cases and should not allow themselves to be used as instruments of abuse and injustice lest innocent persons are made to suffer the unusually severe penalties for drug offenses.[20]

The prosecution seeks to prove the entrapment operation through the testimonies of *barangay tanods* Catubay and Esguerra. Accordingly, the innocence or culpability of Salcena hinges on the issue of their credibility. In determining the credibility of prosecuting witnesses regarding the conduct of a legitimate buy-bust operation, the "objective" test as laid down in *People v. De Guzman*[21] is utilized. Thus:

> We therefore stress that the "objective" test in buy-bust operation demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer for purchase, the promise

---

[18] *People v. Agulay*, G.R. No. 181747, September 26, 2008, 566 SCRA 571, 594.

[19] *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421, 439.

[20] *Valdez v. People*, G.R. No. 170180, November 23, 2007, 538 SCRA 611, 633.

[21] G.R. No. 151205, June 9, 2004, 431 SCRA 516, citing *People v. Doria,* 361 Phil. 595, 621 (1999).

or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense.

Applying this "objective" test, the Court is of the considered view that the prosecution failed to present a complete picture of the buy-bust operation highlighted by the disharmony and inconsistencies in its evidence. The Court finds loose ends in the prosecution evidence, unsupported by coherent and rational amplification.

First, there are marked discrepancies between the Joint Affidavit of Arrest[22] dated May 21, 2005 (Exh. "B") executed by the barangay tanods, Catubay and Esguerra, and their testimonies before the RTC, relative to matters occurring prior to the buy-bust operation. The Joint Affidavit states that a confidential informant *(CI)* came to the Barangay Security and Development Office *(BSDO)* at around 8:00 o'clock in the *morning* of May 19, 2005 to inform Barangay Captain Martin Dino *(Dino)* about the illegal drug trade activities of Salcena and her companion, Arlene Armas; that Salcena asked the CI to look for buyers of her *shabu*; that Dino coordinated with the Chief of DAID-SOTG, Police Superintendent Gerardo Ratuita *(P/Supt. Ratuita)*, who immediately formed a team to conduct a buy-bust operation against Salcena and Armas composed of a certain Police Inspector Alberto Gatus *(P/Insp. Gatus)* as team leader, BSDO Catubay as poseur-buyer while BSDO Esguerra and the rest of the members, who were police officers, would serve as members of the back-up team; that upon arrival of the team at the agreed meeting place in front of Palamigan store, *Barangay* San Antonio, the CI and Catubay waited for Salcena and Armas while Esguerra and the other team members monitored the process of entrapment from a viewing distance.

---

[22] Records, pp. 6-7.

Catubay's testimony, however, was in stark contrast to the above declaration. Thus:

Fiscal Gibson Araula
(On Direct Examination)

Q: Mr. Witness, do you remember where were you in the morning of May 19, 2005?
A: I was at the *Barangay* Hall

Q: What *barangay* is that?
A: *Barangay* San Antonio, District 1.

x x x x x x x x x

Q: **How about in the afternoon of May 19**?
A: **In the afternoon the informant arrived at the *barangay* office.**

Q: Can you tell this Honorable Court what information that informant relayed to your office?
A: According to the informant "*si Garet raw po ipapaano roon, nagbebenta*."

Q: What do you mean by "*Nagbebenta*"?
A: "*Nagbebenta ng droga*."

Q: **Who received that information**?
A: **I and my colleague BSDO by the name of Elmer Esguerra**.

x x x x x x x x x

Q: What was the action taken by you and your companion with respect to that information?
A: We went to the place pointed out by the informant somewhere near San Antonio, Sto. Niño Street.

Q: What time was that?
A: About 5:30 in the afternoon .

Q: **Who were with you when you went there?**
A: **Elmer and I, sir.**[23]

[Emphases supplied]

---

[23] TSN, November 30, 2005, pp. 3-7.

During cross-examination, Catubay maintained that *he and Esguerra* (not the *barangay* chairman) were the ones informed by the CI about the drug pushing activities of Salcena in the *afternoon* (not 8:00 o'clock in the morning) of May 19, 2005 and that they were the only ones who went to the place named by the CI for the conduct of the alleged buy-bust operation without the aid and support of any police operative.

Atty. Concepcion
(Cross-examination)

Q: **YOU SAID ON May 19, 2005 in the afternoon, you and certain BSDO Elmer received information from confidential informant that Garet is selling *shabu*, mr. witness?**
A: **Yes sir.**

Q: **You and Elmer proceeded to the place where that confidential informant was telling this Garet is selling *shabu*, mr. witness?**
A: **Yes sir.**

Q: **With no other companion, no police officer, you conducted the buy bust operation, mr. witness?**
A: **Yes sir.**

x x x x x x x x x

Q: When you decided, you and Elmer decided to conduct the buy bust operation, what preparation did you made, mr. witness?
A: We have a briefing sir.

Q: **Can you tell us what the briefing all about between you and Elmer, mr. witness?**
A: ***Ako ang bibili at siya ang huhuli po*.**[24]

[Emphases supplied]

What then happened to the entrapment team which was supposedly formed for the purpose of arresting Salcena red-handedly, and whose members were individually named and

[24] TSN, December 14, 2005, pp. 5-7.

enumerated in the Pre-Operation Report[25] (Exh. "H")? They seemed to have suddenly vanished into thin air when the operation was about to be set into motion. Was an entrapment team really organized?

Second, Catubay and Esguerra made it appear in their joint affidavit that it was the CI who had access to Salcena and who was tasked by the latter to look for prospective buyers and to arrange for the sale and delivery of the *shabu*. While at the witness stand, however, these two *barangay tanods* claimed that they directly approached Salcena and bought shabu from her without the intervention and participation of the CI. Should it not have been the CI, who was the conduit to the pusher, who should have arranged for such a meeting?

The Court finds it hard to believe that these two *barangay tanods* were able to pick the propitious time to be in front of the Palamigan store, *Barangay* San Antonio, to consummate the alleged sale with Salcena who conveniently appeared thereat. It must be stressed that neither Catubay nor Esguerra testified that the CI arranged the time of the meeting with the alleged drug pusher and, yet, they astoundingly guessed the time that Salcena would turn up on the scene.

Third, another slant that nags the mind of the Court is the confused narration of prosecution witness Catubay anent how the sale occurred. The Court finds it hard to believe the testimony of Catubay on the transaction he had with Salcena:

Fiscal Araula:
(On Direct Examination)

Q: When you arrived at that place what happened there?
A: I myself was intending to buy from Garet.

Q: Where?
A: "*Sa harap ng palamigan doon sa No. 32 yata.*"

Q: Where you able to talk to that person at that time?
A: I did not, I was not able to talk to her.

---

[25] Records, p. 14.

Q: You were not able to talk to her at that time?
A: Yes, sir.

x x x x x x x x x

Q: When the two of you were not able to talk to Garet, what did you do, if any?
A: I was intending to buy *shabu*.

Q: **To whom?**
A: **Garet and I did not talk to each other since I was buying *shabu* "*nagkaabutan lang ho kami.*"**

x x x x x x x x x

Q: **In other words you were able to talk to Garet?**

Court:

"*Abutan lang daw, walang usapan.*"

x x x x x x x x x

Q: How about the money you mentioned between the two of you that person you mentioned Garet, what is the first, the money you gave to Garet or Garet gave you the *shabu*?
A: **Garet first gave the *shabu* and I gave her the money.**

Q: Now when you said that you received the *shabu* in exchange to (sic) ₱100.00 bill, what did you do after?
A: After I got the *shabu* we immediately arrested Garet.[26]

x x x x x x x x x

Q: Now, you said that you arrested Garet at that time, how about your co-BSDO officer, where was he?
A: In my right side.[27]

[Emphases Supplied]

Not even the barest conversation took place between the *poseur-buyer* and the alleged drug peddler. Catubay, along with Esguerra, approached Salcena and then the latter instantly handed over to him a small heat-sealed transparent plastic containing

---

[26] TSN, November 30, 2005, pp. 8-12.

[27] *Id.* at 14.

suspected *shabu*. In turn, Catubay gave Salcena a ₱100.00 bill. Thereafter, the *barangay tanod* arrested Salcena. The situation was simply ludicrous.

The Court is not unaware that drug transactions are usually conducted stealthily and covertly and, hence, the parties usually employed the "*kaliwaan* system" or the simultaneous exchange of money for the drugs. Still, it baffles the mind how Salcena knew exactly who between Catubay and Esguerra would buy shabu, and how much would be the subject of the transaction despite the absence of an offer to purchase *shabu*, through words, signs or gestures, made by either of the two *tanods*. Evidence to be believed must not only proceed from the mouth of a credible witness but it must also be credible in itself such that common experience and observation of mankind lead to the inference of its probability under the circumstances.[28] Catubay's story of silent negotiation is just not credible. It simply does not conform to the natural course of things.

Fourth, equally damaging to the cause of the prosecution is the confusion that marks its evidence as to who confiscated the buy-bust money and from whom it was seized. It was stated in both the Investigation Report[29] submitted by P/Supt. Ratuita and the Joint Affidavit of Arrest that it was Esguerra who confiscated the buy-bust money from the right palm of Armas because, allegedly, immediately after receiving the ₱100.00 bill, Salcena passed the money to Armas. Catubay, however, claimed that he recovered the buy-bust money from Salcena herself.

Q: Likewise when you arrested Garet where was the buy-bust money, the ₱100.00 bill?
A: I also got the money from Garet.

Q: Where in particular, what part of her body?
A: Right pants pocket of her "*pantalon.*"

---

[28] *People v. Manambit*, 338 Phil. 57, 91 (1997).

[29] Records, pp. 4-5.

Court:

You mean to say you put your hand inside her pocket?
A: Yes, your Honor.[30]

The foregoing conflicting narrations and improbabilities, seemingly trivial when viewed in isolation, cast serious doubt on the credibility of the prosecution witnesses when considered together. Unfortunately, they were glossed over by the RTC and the CA invoking the presumption that *barangay tanods* Catubay and Esguerra were in the regular performance of their bounden duties at the time of the incident. It should be stressed, however, that while the court is mindful that the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot, by itself, constitute proof of guilt beyond reasonable doubt.[31] The attendant circumstances negate the presumption accorded to these prosecution witnesses.

Viewed *vis-à-vis* the peculiar factual milieu of this case, it is pertinent to mention the ruling in the case of *People v. Angelito Tan*[32] that courts are mandated to put the prosecution evidence through the crucible of a "severe testing" and that the presumption of innocence requires them to take a more than casual consideration of every circumstance or doubt favoring the innocence of the accused. In the case at bench, the prosecution evidence, when placed under "severe testing," does not prove with moral certainty that a legitimate buy-bust operation was conducted against Salcena.

Moreover, the Court finds the prosecution fatally remiss in establishing an unbroken link in the chain of custody of the allegedly seized *shabu*. Thus, doubt is engendered on whether

---

[30] TSN, November 30, 2005, pp. 14-15.

[31] *People v. Magat,* G.R. No. 179939, September 29, 2008, 567 SCRA 86, 99.

[32] 432 Phil. 171, 198 (2002).

the object evidence subjected to laboratory examination and offered in court is the same as that allegedly sold by Salcena.

Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti* — the body of the crime whose core is the confiscated illicit drug.[33] Hence, every fact necessary to constitute the crime must be established. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[34]

In *People v. Kamad,*[35] the Court enumerated the links that the prosecution must establish in the chain of custody in a buy-bust situation to be as follows: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

These links in the chain of custody were not adequately established by the testimonies of the prosecution witnesses and the documentary records of the case. It is significant to note that the testimonies of *poseur-buyer* Catubay and his back-up, Esguerra, lack specifics on the post-seizure custody and handling of the subject narcotic substance. Although Catubay testified that he seized the small plastic sachet containing the suspected shabu from Salcena and brought it to the BSDO office, he never disclosed the identity of the person/s who had control and possession of the *shabu* at the time of its transportation to the police station. Neither did he claim that he retained possession until it reached the police station.

---

[33] *People v. Pagaduan*, G.R. No. 179029, August 9, 2010, 627 SCRA 308, 322.

[34] *People v. De Leon*, G.R. No. 186471, January 25, 2010, 611 SCRA 118, 132.

[35] G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308.

Furthermore, the prosecution failed to supply vital details as to who marked the sachet, where and how the same was done, and who witnessed the marking. In *People v. Martinez,*[36] the Court ruled that the "marking" of the seized items, to truly ensure that they were the same items that enter the chain and were eventually the ones offered in evidence, should be done (1) in the presence of the apprehended violator; and (2) immediately upon confiscation — in order to protect innocent persons from dubious and concocted searches and to shield the apprehending officers as well from harassment suits based on planting of evidence and on allegations of robbery or theft.

Records show that both the RTC and the CA agreed in holding that it was Catubay who marked the plastic sachet containing the subject *shabu*. The RTC wrote:

> x x x. In passing, the court is satisfied that the plastic sachet at bench was properly identified. Tanod Esguerra said he saw Tanod Catubay put markings thereon and remembers the letters "RC" which letters appear on the sachet. Tanod Catubay recalls that he marked the sachet but could not remember if it is "RC" or "GV."[37]

Excerpts from the assailed CA Decision on this score is hereto quoted, to wit:

> xxx. Esguerra remembered that Catubay marked the plastic sachet with the initials "RC" and Catubay, on the other hand, cannot remember if the markings he made is "GB" or "RC."[38]
>
> xxx. In the instant case, it was shown to the satisfaction of the Court that when the sale transaction was consummated, the shabu was first handed-over to the poseur-buyer, who placed the necessary markings in the confiscated items.[39]

A perusal of the pertinent Transcript of Stenographic Notes, however, shows that these observations are not reflected. Contrary

---

[36] G.R. No. 191366, December 13, 2010, 637 SCRA 791, 818.

[37] CA *rollo*, p. 16.

[38] *Id.* at 84.

[39] *Id.* at 97.

to the findings of the RTC and CA, there is nothing on record that Esguerra made a categorical declaration that he saw Catubay put the marking "RC" on the plastic sachet. All that he testified to was that he could identify the subject *shabu* because it had the marking "RC."[40] Neither was there any statement from Catubay that he placed markings on the plastic sachet of *shabu* right after seizing it from Salcena. In fact, Catubay claimed that he could not remember whether the marking was "RC" or "GV." Thus:

Atty. Concepcion:
(On Cross-Examination)

Q: You identified the buy bust money because of the initial GB, am I correct to say that, Mr. witness?
A: I could not recall if it is RC or G[V] sir.

Q: Why can't you remember, RC or G[V], what is the relation, Mr. witness?
A: RC refers to Ronnie Catubay sir.

Q: G[V]?
A: I don't know what it means sir.[41]

Verily, the records of the case do not provide for the identity of the officer who placed the marking "RC GVS 5-19-05" on the plastic sachet containing the allegedly confiscated *shabu* and whether said marking had been done in the presence of Salcena.

It is likewise noteworthy that the prosecution evidence is wanting as to the identity of the police investigator to whom the buy-bust team turned over the seized item; as to the identity of the person who submitted the specimen to the Philippine National Police *(PNP)* Crime Laboratory; as to whether the forensic chemist whose name appeared in the chemistry report was the one who received the subject *shabu* when it was forwarded to the crime laboratory; and as to who exercised custody and

[40] TSN, November 30, 2005, p. 36.

[41] TSN, December 14, 2005, p. 8.

possession of the specimen after the chemical examination and before it was offered in court. Further, no evidence was adduced showing how the seized *shabu* was handled, stored and safeguarded pending its offer as evidence in court.

While a perfect chain of custody is almost always impossible to achieve, an unbroken chain becomes indispensable and essential in the prosecution of drug cases owing to its susceptibility to alteration, tampering, contamination and even substitution and exchange.[42] Accordingly, each and every link in the custody must be accounted for, from the time the *shabu* was retrieved from Salcena during the buy-bust operation to its submission to the forensic chemist until its presentation before the RTC. In the case at bench, the prosecution failed to do so.

Lastly, the subject 0.04 gram of *shabu* was never identified by the witnesses in court. Neither BSDO Catubay nor BSDO Esguerra was confronted with the subject *shabu* for proper identification and observation of the uniqueness of the subject narcotic substance when they were called to the witness stand because at that time, the subject *shabu* was still in the possession of the forensic chemist as manifested by Assistant City Prosecutor Gibson Araula, Jr.[43] They were not given an opportunity to testify either as to the condition of the item in the interim that the evidence was in their possession and control. Said flaw militates against the prosecution's cause because it not only casts doubt on the identity of the *corpus delicti* but also tends to discredit, if not negate, the claim of regularity in the conduct of the entrapment operation. The records bare the following:

Fiscal Gibson Araula
(On Direct Examination)

Q: If the transparent plastic sachet is shown to you, can you identify that transparent plastic sachet?
A: Yes, sir. That is the one we got from her so we can remember it.

---

[42] *People v. Almorfe*, G.R. No. 181831, March 29, 2010, 617 SCRA 52, 61-62.

[43] TSN, November 30, 2005, pp. 19 and 37.

Q: Other than that you mentioned the one that you recovered, you cannot identify the *shabu* other than what you mentioned now?
A: "*Makikilala po*."

Q: How will you know that that is the *shabu*?
A: *I knew it "yun ang nahuli naming.*"

Fiscal Araula:

By the way your Honor the *shabu* was in possession of the chemist. I'm going to **reserve the right to identify the *shabu*, your Honor.**

Court:

Okay, granted.[44]

x x x x x x x x x.

Esguerra testified on this matter, as follows:

Q: The two accused were arrested at that time. What happened after that?
A: We brought them to Camp Karingal and turned them over together with the evidences.

Q: **You said you were able to turn over the *shabu* and the money. Can you identify that *shabu* and the money?**
A: **Yes, sir.**

Q: **Why?**
A: **Because it has a marking, sir.**

Q: **What was the marking there that your companion was able to buy *shabu* from Garet at that time, what marking was placed?**
A: **"RC"**

Q: How about the money?
A: "*RC din po sir*."

---

[44] *Id.* at 15-19.

Fiscal Araula: Your Honor, may we **reserve the right to present the transparent plastic sachet**?

Court: Okay, granted.[45]

Despite the reservation of the right, the prosecution never presented the transparent plastic sachet for identification by the two *barangay tanods*.

In view of the loopholes in the prosecution evidence as well as the gaps in the chain of custody, there is no assurance that the identity and integrity of the subject narcotic substance has not been compromised. In *Catuiran v. People,*[46] the Court held that the failure of the prosecution to offer the testimony of key witnesses to establish a sufficiently complete chain of custody of a specimen of *shabu*, and the irregularity which characterized the handling of the evidence before the same was finally offered in court, fatally conflicted with every proposition relative to the culpability of the accused.

The Constitution mandates that an accused shall be presumed innocent until the contrary is proved. Concededly, the evidence for the defense is weak and uncorroborated and could even engender belief that Salcena indeed perpetrated the crime charged. This, however, does not advance the cause of the prosecution because its evidence must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.[47] The prosecution has the burden to overcome the presumption of innocence and prove the guilt of an accused beyond reasonable doubt.

In the light of the failure of the prosecution evidence to pass the test of moral certainty, a reversal of Salcena's judgment of conviction becomes inevitable. Suffice it to say, a slightest doubt

---

[45] *Id.* at 35-37.

[46] G.R. No. 175647, May 8, 2009, 587 SCRA 567, 580.

[47] *People v. Santos*, G.R. No. 175593, October 17, 2007, 536 SCRA 489, 505.

should be resolved in favor of the accused.[48] *In dubio pro reo.*[49]

WHEREFORE, the appeal is *GRANTED*. The February 9, 2010 Decision of the Court of Appeals in CA-G.R. CR-HC No. 02894 is hereby *REVERSED* and *SET ASIDE*. Accordingly, accused Garet Salcena *y* Victorino is hereby *ACQUITTED* of the crime charged against her and ordered immediately *RELEASED* from custody, unless she is being held for some other lawful cause.

The Superintendent of the Correctional Institution for Women is *ORDERED* to forthwith implement this decision and to *INFORM* this Court, within five (5) days from receipt hereof, of the date when Salcena was actually released from confinement.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Perez,*[*] *JJ.*, concur.

THIRD DIVISION

[G.R. No. 192881. November 16, 2011]

TAMSON'S ENTERPRISES, INC., NELSON LEE, LILIBETH ONG and JOHNSON NG, *petitioners, vs.* **COURT OF APPEALS and ROSEMARIE L. SY,** *respondents.*

---

[48] *People v. Milan*, 370 Phil. 493, 506 (1999).

[49] Latin legal maxim which literally means "when in doubt, for the accused."

[*] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152 dated November 11, 2011.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; PROBATIONARY EMPLOYMENT; EXPOUNDED. —** There is probationary employment where the employee upon his engagement is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment based on reasonable standards made known to him at the time of engagement. The probationary employment is intended to afford the employer an opportunity to observe the fitness of a probationary employee while at work, and to ascertain whether he will become an efficient and productive employee. While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer, on the other hand, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment. Thus, the word probationary, as used to describe the period of employment, implies the purpose of the term or period, not its length.

2. **ID.; ID.; ID.; EVEN IF PROBATIONARY EMPLOYEES DO NOT ENJOY PERMANENT STATUS, THEY ARE ACCORDED THE CONSTITUTIONAL PROTECTION OF SECURITY OF TENURE. —** On the basis of the aforequoted provisions and definition, there is no dispute that Sy's employment with Tamson's on September 1, 2006 was probationary in character. As a probationary employee, her employment status was only temporary. Although a probationary or temporary employee with a limited tenure, she was still entitled to a security of tenure. It is settled that even if probationary employees do not enjoy permanent status, they are accorded the constitutional protection of security of tenure. This means they may only be terminated for a just cause or when they otherwise fail to qualify as regular employees in accordance with reasonable standards made known to them by the employer at the time of their engagement. Consistently, in *Mercado v. AMA Computer College-Parañaque City, Inc.,* this Court clearly stressed that: Labor, for its part, is given the protection during the probationary period of knowing the company standards the new hires have to meet during the probationary period, and to be judged on the basis of these standards, aside from the usual standards applicable to

employees after they achieve permanent status. Under the terms of the Labor Code, these **standards should be made known to the [employees] on probationary status at the start of their probationary period,** or xxx during which the probationary standards are to be applied. Of critical importance in invoking a failure to meet the probationary standards, is that the **[employer] should show — as a matter of due process — how these standards have been applied**. This is effectively the second notice in a dismissal situation that the law requires as a due process guarantee supporting the security of tenure provision, and is in furtherance, too, of the basic rule in employee dismissal that the employer carries the burden of justifying a dismissal. These rules ensure compliance with the limited security of tenure guarantee the law extends to probationary employees.

3. **ID.; ID.; ID.; THE STANDARDS TO BE MET MUST BE MADE KNOWN TO THE PROBATIONARY EMPLOYEE AT THE TIME OF HER EMPLOYMENT. —** The justification given by the petitioners for Sy's dismissal was her alleged failure to qualify by the company's standard. Other than the general allegation that said standards were made known to her at the time of her employment, however, no evidence, documentary or otherwise, was presented to substantiate the same. Neither was there any performance evaluation presented to prove that indeed hers was unsatisfactory. Thus, this Court is in full accord with the ruling of the CA when it wrote that: Private respondents were remiss in showing that petitioner failed to qualify as a regular employee. Except for their allegations that she was apprised of her status as probationary and that she would be accorded regular status once she meets their standards, no evidence was presented of these standards and that petitioner had been apprised of them at the time she was hired as a probationary employee. Neither was it shown that petitioner failed to meet such standards. Petitioner should have been informed as to the basis of private respondents' decision not to extend her regular or permanent employment. This case is bereft of any proof like an evaluation or assessment report which would support private respondents' claim that she failed to comply with the standards in order to become a regular employee. One of the conditions before an employer can terminate a probationary employee is dissatisfaction on the

part of the employer which must be real and in good faith, not feigned so as to circumvent the contract or the law. In the case at bar, absent any proof showing that the work performance of petitioner was unsatisfactory, We cannot conclude that petitioner failed to meet the standards of performance set by private respondents. This absence of proof, in fact, leads Us to infer that their dissatisfaction with her work performance was contrived so as not to regularize her employment.

4. **ID.; ID.; ID.; RESPONDENT'S EMPLOYMENT WAS UNJUSTLY TERMINATED TO PREVENT HER FROM ACQUIRING A REGULAR STATUS IN CIRCUMVENTION OF THE LAW ON SECURITY OF TENURE. —** For failure of the petitioners to support their claim of unsatisfactory performance by Sy, this Court shares the view of the CA that Sy's employment was unjustly terminated to prevent her from acquiring a regular status in circumvention of the law on security of tenure. As the Court previously stated, this is a common and convenient practice of unscrupulous employers to circumvent the law on security of tenure. Security of tenure, which is a right of paramount value guaranteed by the Constitution, should not be denied to the workers by such a stratagem. The Court can not permit such a subterfuge, if it is to be true to the law and social justice.

5. **ID.; ID.; ID.; WHERE NO STANDARDS ARE MADE KNOWN TO THE EMPLOYEE AT THE TIME OF HIS OR HER EMPLOYMENT, HE OR SHE SHALL BE DEEMED A REGULAR EMPLOYEE. —** The Court recognizes the employer's power to terminate as an exercise of management prerogative. The petitioners, however, must be reminded that such right is not without limitations. In this connection, it is well to quote the ruling of the Court in the case of *Dusit Hotel Nikko v. Gatbonton*, where it was written: As Article 281 clearly states, a probationary employee can be legally terminated either: (1) for a just cause; or (2) when the employee fails to qualify as a regular employee in accordance with the reasonable standards made known to him by the employer at the start of the employment. Nonetheless, the power of the employer to terminate an employee on probation is not without limitations. First, this power must be exercised in accordance with the specific requirements of the contract. Second, the dissatisfaction on the part of the employer must be real and

in good faith, not feigned so as to circumvent the contract or the law; and third, there must be no unlawful discrimination in the dismissal. In termination cases, the burden of proving just or valid cause for dismissing an employee rests on the employer. Here, the petitioners failed to convey to Sy the standards upon which she should measure up to be considered for regularization and how the standards had been applied in her case. As correctly pointed out by Sy, the dissatisfaction on the part of the petitioners was at best self-serving and dubious as they could not present concrete and competent evidence establishing her alleged incompetence. Failure on the part of the petitioners to discharge the burden of proof is indicative that the dismissal was not justified. The law is clear that in all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee. The standards under which she would qualify as a regular employee not having been communicated to her at the start of her probationary period, Sy qualified as a regular employee. As held by this Court in the very recent case of *Hacienda Primera Development Corporation v. Villegas*,: In this case, petitioner Hacienda fails to specify the reasonable standards by which respondent's alleged poor performance was evaluated, much less to prove that such standards were made known to him at the start of his employment. Thus, **he is deemed to have been hired from day one as a regular employee**. Due process dictates that an employee be apprised beforehand of the condition of his employment and of the terms of advancement therein.

6. **ID.; ID.; ID.; DUE PROCESS IN TERMINATION CASES; PETITIONERS FAILED TO COMPLY WITH THE REQUIREMENT OF WRITTEN NOTICE OF TERMINATION. —** Even on the assumption that Sy indeed failed to meet the standards set by them and made known to the former at the time of her engagement, still, the termination was flawed for failure to give the required notice to Sy. Section 2, Rule I, Book VI of the Implementing Rules provides: Section 2. Security of tenure. — (a) In cases of regular employment, the employer shall not terminate the services of an employee except for just or authorized causes as provided by law, and subject to the requirements of due process.

(b) The foregoing shall **also apply** in cases of **probationary employment;** Provided however, that in such cases, termination of employment due to failure of the employee to qualify in accordance with the standards of the employer made known to the former at the time of engagement may also be a ground for termination of employment. xxx (d) In all cases of termination of employment, the following standards of due process shall be substantially observed: xxx If the termination is brought about by the completion of a contract or phase thereof, or by failure of an employee to meet the standards of the employer in the case of probationary employment, it shall be sufficient that a written notice is served the employee, within a reasonable time from the effective date of termination. In this case, the petitioners failed to comply with the requirement of a written notice. Notably, Sy was merely verbally informed that her employment would be terminated on February 28, 2007, as admitted by the petitioners. Considering that the petitioners failed to observe due process in dismissing her, the dismissal had no legal sanction. It bears stressing that a worker's employment is property in the constitutional sense.

7. **ID.; ID.; ID.; BEING A REGULAR EMPLOYEE WHOSE TERMINATION WAS ILLEGAL, RESPONDENT IS ENTITLED TO THE TWIN RELIEF OF REINSTATEMENT AND BACKWAGES GRANTED BY THE LABOR CODE; AWARD OF ATTORNEY'S FEES IS ALSO JUSTIFIED. —** Being a regular employee whose termination was illegal, Sy is entitled to the twin relief of reinstatement and backwages granted by the Labor Code. Article 279 provides that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, to her full backwages, inclusive of allowances, and to her other benefits or their monetary equivalent computed from the time her compensation was withheld from her up to the time of actual reinstatement. Likewise, having been compelled to come to court and to incur expenses to protect her rights and interests, the award of attorney's fees is in order.

APPEARANCES OF COUNSEL

King Capuchino Tan & Associates and *Jimenes Law Office and Associates* for petitioners.

Public Attorney's Office for private respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the February 26, 2010 Decision[1] and the July 9, 2010 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 105845 which reversed the April 29, 2003 Decision[3] of the National Labor Relations Commission *(NLRC)* and reinstated the September 28, 2007 Decision[4] of the Executive Labor Arbiter, Herminio Suelo *(ELA)*, in NLRC NCR Case No. 00-03-0236607, finding petitioners liable for illegal dismissal and payment of money claims.

This case stemmed from a complaint for illegal dismissal with money claims filed by respondent Rosemarie L. Sy *(Sy)* before the Arbitration Branch, National Capital Region, NLRC, against petitioners Tamson's Enterprises, Inc. *(Tamson's)*, Nelson Lee *(Lee),* the company President; and Lilibeth Ong *(Ong)* and Johnson Ng *(Ng)*, her co-employees.

From the records, it appears that on September 1, 2006, Sy was hired by Tamson's as Assistant to the President. Despite the title, she did not act as such because, per instruction of Lee, she was directed to act as payroll officer, though she actually worked as a payroll clerk.[5]

On February 24, 2007,[6] four days before she completed her sixth month of working in Tamson's, Ng, the Sales Project Manager, called her to a meeting with him and Lee. During the

---

[1] Annex "A" of Petition, *rollo*, pp. 23-32. Penned by Associate Justice Pampio A. Abarintos with Associate Justice Josefina Guevara-Salonga and Associate Justice Jane Aurora C. Lantion, concurring.

[2] Annex "B" of Petition, *id.* at 35-36.

[3] Annex "Q" of Petition, *id.* at 172.

[4] *Rollo*, p. 121.

[5] Annex "D" of Petition, *id.* at 43.

[6] *Id.*

meeting, they informed Sy that her services would be terminated due to inefficiency. She was asked to sign a letter of resignation and quitclaim. She was told not to report for work anymore because her services were no longer needed. On her last day of work, Ong humiliated her in front of her officemates by shouting at her and preventing her from getting her personal things or any other document from the office.

During her pre-employment interview, Lee had nice comments about her good work experience and educational background. She was assured of a long-term employment with benefits. Throughout her employment, she earnestly performed her duties, had a perfect attendance record, worked even during brownouts and typhoons, and would often work overtime just to finish her work.

Sy claimed that the remarks of her superiors about her alleged inefficiency were ill-motivated and made without any basis. She had been rendering services for almost six (6) months before she was arbitrarily and summarily dismissed. Her dismissal was highly suspicious as it took place barely four (4) days prior to the completion of her six-month probationary period. The petitioners did not show her any evaluation or appraisal report regarding her alleged inefficient performance. As she was terminated without an evaluation on her performance, she was deprived of the opportunity to be regularly part of the company and to be entitled to the benefits and privileges of a regular employee. Worse, she was deprived of her only means of livelihood.

For their part, the petitioners asserted that before Sy was hired, she was apprised that she was being hired as a probationary employee for six months from September 1, 2006 to February 28, 2007, subject to extension as a regular employee conditioned on her meeting the standards of permanent employment set by the company. Her work performance was thereafter monitored and evaluated. On February 1, 2007, she was formally informed that her employment would end on February 28, 2007 because she failed to meet the company's standards. From then on, Sy started threatening the families of the petitioners with bodily

harm. They pointed out that the unpredictable attitude of Sy was one of the reasons for her not being considered for regular employment.

The foregoing circumstances prompted Sy to file a case for illegal dismissal with claims for back wages, unpaid salary, service incentive leave, overtime pay, 13th month pay, and moral and exemplary damages, and attorney's fees.

After the submission of the parties' respective pleadings, the ELA rendered a decision in favor of Sy, stating that a termination, notwithstanding the probationary status, must be for a just cause. As there was an absence of evidence showing just cause and due process, he found Sy's termination to be arbitrary and illegal. The dispositive portion of the ELA decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding respondents [herein petitioners] liable for illegal dismissal and payment of money claims.
>
> Accordingly, respondents [herein petitioners] are hereby ordered to reinstate complainant to her position without loss of seniority rights and other benefits, and to pay the following:
>
> 1. Complainant's full backwages, computed from the time she was illegally dismissed to the date of her actual reinstatement, which as of date amounts to ₱185,380.00;
> 2. Prorated 13th month pay in the sum of ₱4,166.00;
> 3. Salaries for period of February 16-28, 2007 amounting to ₱13,000.00;
> 4. 10% of the total award as attorney's fee.
>
> The reinstatement aspect of this Decision is immediately executory pursuant to Article 223 of the Labor Code, as amended. Respondents [herein petitioners] are therefore directed to submit a report of compliance thereof before this Office within ten (10) calendar days from receipt hereof.
>
> All other claims are hereby DISMISSED for lack of merit.
>
> SO ORDERED.[7]

---

[7] *Rollo*, pp. 79-80.

Dissatisfied, the petitioners appealed to the NLRC on the ground that the ELA gravely abused his discretion in finding that Sy was illegally dismissed and in ordering her reinstatement and payment of backwages.

On appeal, the NLRC *reversed* the ELA's finding that Sy was terminated without just cause and without due process and dismissed the case.[8]

In reversing the decision of the ELA, the NLRC reasoned out that pursuant to Article 281 of the Labor Code, there are two general grounds for the services of a probationary employee to be terminated, just cause or failure to qualify as a regular employee. In effect, failure to qualify for regular employment is in itself a just cause for termination of probationary employment. To the NLRC, the petitioners were in compliance with the mandate of the said provision when Sy was notified one month in advance of the expiration of her probationary employment due to her non-qualification for regular employment.

The motion for reconsideration having been denied, Sy elevated her case to the CA via a petition for *certiorari* under Rule 65. She imputed grave abuse of discretion on the part of NLRC in dismissing her complaint.

On February 26, 2010, the CA rendered the assailed decision *reversing* the NLRC. It explained that at the time Sy was engaged as a probationary employee she was not informed of the standards that she should meet to become a regular employee. Citing the ruling in *Clarion Printing House, Inc v. NLRC*,[9] the CA stated that where an employee hired on probationary basis was not informed of the standards that would qualify her as a regular employee, she was deemed to have been hired from day one as a regular employee. As a regular employee, she was entitled to security of tenure and could be dismissed only for a just cause and after due compliance with procedural due process. The

---

[8] *Id.* at 178.

[9] 500 Phil. 61 (2005).

CA added that the petitioners did not observe due process in dismissing Sy.

Thus, the CA agreed with the ELA's conclusion that the termination of Sy's services was illegal as there was no evidence that a standard of performance had been made known to her and that she was accorded due process. The pertinent portions of the CA decision, including the dispositive portion, read:

> Public respondent NLRC committed grave abuse of discretion in reversing the findings of the Labor Arbiter and ruling that private respondents [herein petitioners] have the right to terminate the services of petitioner [herein respondent] because they found her unfit for regular employment even if there was no evidence to show the instances which made her unfit. Moreover, the NLRC erred when it found that there was a compliance with procedural due process when petitioner's [respondent's] services were terminated.
>
> WHEREFORE, the petition is **GRANTED**. The decision of the Labor Arbiter dated September 28, 2007 is **REINSTATED**. Consequently, the decision and resolution of the National Labor Relations Commission dated April 29, 2008 and July 30, 2008, respectively, are **REVERSED** and **SET ASIDE**.
>
> SO ORDERED.[10]

The petitioners sought reconsideration of the said decision. The CA, however, denied the motion in its Resolution dated July 9, 2010.

Hence, the petitioners interpose the present petition before this Court anchored on the following

GROUNDS

(1)

THE COURT OF APPEALS ERRED IN UPHOLDING THE DECISION OF THE LABOR ARBITER AND AWARDING BACK WAGES AND OTHER MONETARY CLAIMS IN FAVOR OF THE PRIVATE RESPONDENT.

---

[10] *Rollo*, p. 32.

(2)

THE COURT OF APPEALS ERRED IN HOLDING THAT HEREIN PRIVATE RESPONDENT BECAME A REGULAR EMPLOYEE EFFECTIVE DAY ONE OF HER EMPLOYMENT WITH PETITIONER.

(3)

THE COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE PROBATIONARY PERIOD OF EMPLOYMENT OF PRIVATE RESPONDENT ENDING [ON] FEBRUARY 28, 2007.[11]

The core issue to be resolved is whether the termination of Sy, a probationary employee, was valid or not.

The petitioners pray for the reversal of the CA decision arguing that Sy was a probationary employee with a limited tenure of six months subject to regularization conditioned on her satisfactory performance. They insist that they substantially complied with the requirements of the law having apprised Sy of her status as probationary employee. The standard, though not written, was clear that her continued employment would depend on her overall performance of the assigned tasks, and that the same was made known to her since day one of her employment. According to the petitioners, reasonable standard of employment does not require written evaluation of Sy's function. It is enough that she was informed of her duties and that her performance was later rated below satisfactory by the Management.

Citing *Alcira v. NLRC*[12] and *Colegio San Agustin v. NLRC,*[13] the petitioners further argue that Sy's constitutional protection to security of tenure ended on the last day of her probationary tenure or on February 28, 2007. It is unfair to compel regularization of an employee who was found by the Management to be unfit for the job. As they were not under obligation to extend Sy's employment, there was no illegal dismissal, but

---

[11] *Id.* at 10-11.

[12] G.R. No. 149859, June 9, 2004, 431 SCRA 508.

[13] G.R. No. 87333, September 6, 1991, 201 SCRA 398.

merely an expiration of the probationary contract. As such, she was not entitled to any benefits like separation pay or backwages.

Sy counters that she was illegally terminated from service and insists that the petitioners cannot invoke her failure to qualify as she was not informed of the standards or criteria which she should have met for regular employment. Moreover, no proof was shown as to her alleged poor work performance. She was unceremoniously terminated to prevent her from becoming a regular employee and be entitled to the benefits as such.

The Court finds the petition devoid of merit.

The pertinent law governing the present case is Article 281 of the Labor Code which provides as follows:

> Art. 281. *Probationary employment.* — Probationary employment shall not exceed six months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged in a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee. (Underscoring supplied)

There is probationary employment where the employee upon his engagement is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment based on reasonable standards made known to him at the time of engagement.[14] The probationary employment is intended to afford the employer an opportunity to observe the fitness of a probationary employee while at work, and to ascertain whether he will become an efficient and productive employee.

---

[14] *Robinsons Galleria/Robinsons Supermarket Corporation and/or Jess Manuel v. Ranchez*, G.R. No. 177937, January 19, 2011, 640 SCRA 142, citing Omnibus Rules Implementing the Labor Code, Book VI, Rule I, Sec. 6.

While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer, on the other hand, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment. Thus, the word probationary, as used to describe the period of employment, implies the purpose of the term or period, not its length.[15]

On the basis of the aforequoted provisions and definition, there is no dispute that Sy's employment with Tamson's on September 1, 2006 was probationary in character. As a probationary employee, her employment status was only temporary. Although a probationary or temporary employee with a limited tenure, she was still entitled to a security of tenure.

It is settled that even if probationary employees do not enjoy permanent status, they are accorded the constitutional protection of security of tenure. This means they may only be terminated for a just cause or when they otherwise fail to qualify as regular employees in accordance with reasonable standards made known to them by the employer at the time of their engagement.[16] Consistently, in *Mercado v. AMA Computer College-Parañaque City, Inc.*,[17] this Court clearly stressed that:

> Labor, for its part, is given the protection during the probationary period of knowing the company standards the new hires have to meet during the probationary period, and to be judged on the basis of these standards, aside from the usual standards applicable to employees after they achieve permanent status. Under the terms of the Labor Code, these **standards should be made known to the [employees] on probationary status at the start of their probationary period,** or xxx during which the probationary standards

---

[15] *Magis Young Achievers' Learning Center v. Manalo*, G.R. No. 178835, February 13, 2009, 579 SCRA 421, 431-432, citing *International Catholic Migration Commission v. NLRC*, 251 Phil. 560, 567 (1989).

[16] *Alcira v. National Labor Relations Commission*, G.R. No. 149859, June 9, 2004, 431 SCRA 508, citing *Agoy v. National Labor Relations Commission*, 322 Phil. 636, 645 (1996).

[17] G.R. No. 183572, April 13, 2010, 618 SCRA 218.

are to be applied. Of critical importance in invoking a failure to meet the probationary standards, is that the **[employer] should show — as a matter of due process — how these standards have been applied**. This is effectively the second notice in a dismissal situation that the law requires as a due process guarantee supporting the security of tenure provision, and is in furtherance, too, of the basic rule in employee dismissal that the employer carries the burden of justifying a dismissal. These rules ensure compliance with the limited security of tenure guarantee the law extends to probationary employees.[18] [Emphases supplied]

In this case, the justification given by the petitioners for Sy's dismissal was her alleged failure to qualify by the company's standard. Other than the general allegation that said standards were made known to her at the time of her employment, however, no evidence, documentary or otherwise, was presented to substantiate the same. Neither was there any performance evaluation presented to prove that indeed hers was unsatisfactory. Thus, this Court is in full accord with the ruling of the CA when it wrote that:

Private respondents were remiss in showing that petitioner failed to qualify as a regular employee. Except for their allegations that she was apprised of her status as probationary and that she would be accorded regular status once she meets their standards, no evidence was presented of these standards and that petitioner had been apprised of them at the time she was hired as a probationary employee. Neither was it shown that petitioner failed to meet such standards.

Petitioner should have been informed as to the basis of private respondents' decision not to extend her regular or permanent employment. This case is bereft of any proof like an evaluation or assessment report which would support private respondents' claim that she failed to comply with the standards in order to become a regular employee.

One of the conditions before an employer can terminate a probationary employee is dissatisfaction on the part of the employer which must be real and in good faith, not feigned so as to circumvent

---

[18] *Mercado v. AMA Computer College-Parañaque City, Inc.*, G.R. No. 183572, April 13, 2010, 618 SCRA 218, 240-241.

the contract or the law. In the case at bar, absent any proof showing that the work performance of petitioner was unsatisfactory, We cannot conclude that petitioner failed to meet the standards of performance set by private respondents. This absence of proof, in fact, leads Us to infer that their dissatisfaction with her work performance was contrived so as not to regularize her employment.[19]

For failure of the petitioners to support their claim of unsatisfactory performance by Sy, this Court shares the view of the CA that Sy's employment was unjustly terminated to prevent her from acquiring a regular status in circumvention of the law on security of tenure. As the Court previously stated, this is a common and convenient practice of unscrupulous employers to circumvent the law on security of tenure. Security of tenure, which is a right of paramount value guaranteed by the Constitution, should not be denied to the workers by such a stratagem. The Court can not permit such a subterfuge, if it is to be true to the law and social justice.[20]

In its attempt to justify Sy's dismissal, the petitioners relied heavily on the case of *Alcira v. NLRC*[21] where the Court stressed that the constitutional protection ends on the expiration of the probationary period when the parties are free to either renew or terminate their contract of employment.

Indeed, the Court recognizes the employer's power to terminate as an exercise of management prerogative. The petitioners, however, must be reminded that such right is not without limitations. In this connection, it is well to quote the ruling of the Court in the case of *Dusit Hotel Nikko v. Gatbonton*,[22] where it was written:

As Article 281 clearly states, a probationary employee can be legally terminated either: (1) for a just cause; or (2) when the

---

[19] *Rollo*, p. 30.

[20] *Octaviano v. National Labor Relations Commission*, G.R. No. 88636, October 3, 1991, 202 SCRA 332, 337.

[21] G.R. No. 149859, June 9, 2004, 431 SCRA 508.

[22] G.R. No. 161654, May 5, 2006, 489 SCRA 671.

employee fails to qualify as a regular employee in accordance with the reasonable standards made known to him by the employer at the start of the employment. Nonetheless, the power of the employer to terminate an employee on probation is not without limitations. First, this power must be exercised in accordance with the specific requirements of the contract. Second, the dissatisfaction on the part of the employer must be real and in good faith, not feigned so as to circumvent the contract or the law; and third, there must be no unlawful discrimination in the dismissal. In termination cases, the burden of proving just or valid cause for dismissing an employee rests on the employer.[23] [Emphases supplied]

Here, the petitioners failed to convey to Sy the standards upon which she should measure up to be considered for regularization and how the standards had been applied in her case. As correctly pointed out by Sy, the dissatisfaction on the part of the petitioners was at best self-serving and dubious as they could not present concrete and competent evidence establishing her alleged incompetence. Failure on the part of the petitioners to discharge the burden of proof is indicative that the dismissal was not justified.

The law is clear that in all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.[24] The standards under which she would qualify as a regular employee not having been communicated to her at the start of her probationary period, Sy qualified as a regular employee. As held by this Court in the very recent case of *Hacienda Primera Development Corporation v. Villegas*,:[25]

---

[23] *Id.* at 675-676, citing *Sameer Overseas Placement Agency, Inc. v. National Labor Relations Commission*, 375 Phil. 535, 540 (1999).

[24] Book VI, Rule I, Sec. 6(d) of the Implementing Rules of the Labor Code (Department Order No. 10, Series of 1997).

[25] G.R. No. 186243, April 11, 2011.

In this case, petitioner Hacienda fails to specify the reasonable standards by which respondent's alleged poor performance was evaluated, much less to prove that such standards were made known to him at the start of his employment. Thus, **he is deemed to have been hired from day one as a regular employee**. Due process dictates that an employee be apprised beforehand of the condition of his employment and of the terms of advancement therein. [Emphasis supplied]

Even on the assumption that Sy indeed failed to meet the standards set by them and made known to the former at the time of her engagement, still, the termination was flawed for failure to give the required notice to Sy. Section 2, Rule I, Book VI of the Implementing Rules provides:

Section 2. Security of tenure. — (a) In cases of regular employment, the employer shall not terminate the services of an employee except for just or authorized causes as provided by law, and subject to the requirements of due process.

(b) The foregoing shall **also apply** in cases of **probationary employment;** Provided however, that in such cases, termination of employment due to failure of the employee to qualify in accordance with the standards of the employer made known to the former at the time of engagement may also be a ground for termination of employment.

x x x x x x x x x

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

x x x x x x x x x

If the termination is brought about by the completion of a contract or phase thereof, or by failure of an employee to meet the standards of the employer in the case of probationary employment, it shall be sufficient that a written notice is served the employee, within a reasonable time from the effective date of termination. [Emphasis and Underscoring supplied]

In this case, the petitioners failed to comply with the requirement of a written notice. Notably, Sy was merely verbally informed that her employment would be terminated on February 28, 2007,

as admitted by the petitioners.[26] Considering that the petitioners failed to observe due process in dismissing her, the dismissal had no legal sanction. It bears stressing that a worker's employment is property in the constitutional sense.[27]

Being a regular employee whose termination was illegal, Sy is entitled to the twin relief of reinstatement and backwages granted by the Labor Code. Article 279 provides that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, to her full backwages, inclusive of allowances, and to her other benefits or their monetary equivalent computed from the time her compensation was withheld from her up to the time of actual reinstatement. Likewise, having been compelled to come to court and to incur expenses to protect her rights and interests, the award of attorney's fees is in order.[28]

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Perez,*[*] *JJ.,* concur.

---

[26] *Rollo*, p. 37.

[27] *Asuncion v. National Labor Relations Commission*, 414 Phil. 329, 336 (2001).

[28] *Fulache v. ABS-CBN Broadcasting Corporation*, G.R. No. 183810, January 21, 2010, 610 SCRA 567, 588, citing *Litonjua Group of Companies v. Vigan*, 412 Phil. 627, 643-644 (2001).

[*] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152 dated November 11, 2011.

THIRD DIVISION

[G.R. No. 193660. November 16, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **AVELINO SUBESA *y* MOSCARDON,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT BY THE TRIAL COURT GENERALLY GIVEN THE HIGHEST DEGREE OF RESPECT, IF NOT FINALITY AND EVEN MORE ENHANCED WHEN APPELLATE COURTS AFFIRMS THE SAME. —** In almost all cases of sexual abuse, the credibility of the victim's testimony is crucial in view of the intrinsic nature of the crime where only the persons involved can testify as to its occurrence. In this case, the Court finds no reason to disturb the findings of the RTC, as affirmed by the CA. Time and again, the Court has emphasized that the manner of assigning values to declarations of witnesses at the witness stand is best and most competently performed by the trial judge who has the unique and unmatched opportunity to observe the demeanor of witnesses and assess their credibility. In essence, when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief, the assessment of the trial court is generally given the highest degree of respect, if not finality. The assessment made by the trial court is even more enhanced when the CA affirms the same, as in this case.
2. **ID.; ID.; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT IN CRIMINAL CASES; ESTABLISHED IN CASE AT BAR. —** The Court finds that the prosecution successfully proved beyond reasonable doubt the charges of rape and acts of lasciviousness against Subesa. All his four children positively identified him as their molester. In rape cases, the accused may be convicted solely on the testimony of the victim, provided it is credible, convincing, and consistent with human nature and the normal course of things. Its examination of the records shows no indication that the Court should view the testimony of the private complainants in a suspicious light.

3. ID.; ID.; DEFENSE OF DENIAL; CANNOT PREVAIL OVER THE POSITIVE TESTIMONY OF THE CHILDREN. — The defense of denial interposed by Subesa cannot prevail over the positive testimony of his children. Denial is one of the weakest of all defenses because it is easy to concoct and fabricate. To be believed, denial must be supported by a strong evidence of innocence; otherwise, it is regarded as purely self-serving.

4. ID.; RAPE; WHEN A WOMAN OR A GIRL-CHILD SAYS THAT SHE WAS RAPE, SHE SAYS IN EFFECT ALL THAT IS NECESSARY TO SHOW THAT RAPE HAS INDEED BEEN COMMITTED. — It has been repeatedly held that a young girl's revelation that she had been raped, coupled with her voluntary submission to a medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction. When a woman or a girl-child says that she was raped, she says in effect all that is necessary to show that rape has indeed been committed.

5. ID.; PENALTIES; *RECLUSION PERPETUA*; COURTS IMPOSING THE PENALTY MUST QUALIFY WHETHER THE IMPOSITION IS WITH OR WITHOUT ELIGIBILITY FOR PAROLE. — In imposing the penalty of *reclusion perpetua* in Criminal Case Nos. 01-247, 01-249 and 01-250, however, the courts below failed to qualify that the penalty of *reclusion perpetua* is without eligibility for parole as held in the case of *People v. Antonio Ortiz.* This should be rectified.

6. ID.; ID.; PENALTIES IMPOSED, MODIFIED. — As regard Criminal Case No. 01-246, the Court agrees with the CA in its ruling that the crime committed was "Rape through Sexual Assault" under Article 266-A (2) of the RPC and not "Acts of Lasciviousness in relation to R.A. No. 7610." The very definition of Rape through Sexual Assault under Article 266-A (2) or the "Anti-Rape Law of 1997," specifically includes the insertion of any instrument into the genital orifice of another person. It has also been settled that the character of the crime is not determined by the caption or preamble of the information or by the specification of the provision of law alleged to have been violated, but by the recital of the ultimate facts and circumstances in the complaint or information. The Court, however, modifies the penalty imposed in Criminal Case

No. 01-246. Under Article 266-B of the RPC, the penalty for rape by sexual assault is *reclusion temporal.* In Criminal Case No. 01-246, the aggravating/qualifying circumstances of minority and relationship are present, considering that the rape was committed by a parent against his minor child. The penalty of *reclusion temporal* ranges from twelve (12) years and one (1) day to twenty (20) years.

7. ID.; ID.; APPROPRIATE IMPOSABLE PENALTY FOR THE CHARGE OF ACTS OF LASCIVIOUSNESS SHOULD BE THAT PROVIDED IN SECTION 5 (B), ARTICLE III OF REPUBLIC ACT NO. 7610, WHICH IS *RECLUSION TEMPORAL* IN ITS MEDIUM PERIOD. — As for Criminal Case No. 01-248, the penalty imposed must likewise be modified. The appropriate imposable penalty should be that provided in Section 5 (b), Article III of Republic Act (R.A.) No. 7610, which is *reclusion temporal* in its medium period which is fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. As the crime was committed by the father of the offended party, the alternative circumstance of relationship should be appreciated. In crimes against chastity, such as Acts of Lasciviousness, relationship is always aggravating. Therefore, Subesa should be meted the indeterminate penalty of imprisonment ranging from thirteen (13) years, nine (9) months and eleven (11) days of *reclusion temporal*, as minimum, to sixteen (16) years and five (5) months and ten (10) days of *reclusion temporal*, as maximum.

8. ID.; INDETERMINATE SENTENCE LAW; APPLIED IN CASE AT BAR. — Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the RPC. Other than the aggravating/qualifying circumstances of minority and relationship which have been taken into account to raise the penalty to *reclusion temporal*, no other aggravating circumstance was alleged and proven. Hence, the penalty shall be imposed in its medium period, or from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. On the other hand, the minimum term of the indeterminate sentence should be within the range of the penalty next lower in degree than that prescribed by the Code which is *prision mayor* or six (6) years and one (1) day to twelve (12) years. Thus, the Court modifies the penalty and deems as

proper the indeterminate penalty of imprisonment ranging from ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J.*:

The perpetuation by a father of his lecherous passion on his four (4) guileless daughters can be considered the most perverted form of sexual felony a man can commit. In committing incestuous rape, man reduces himself into a creature lower than the lowliest beast.[1]

For final review is the October 19, 2009 Decision[2] and the April 14, 2010 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. CR H.C. No. 03406, affirming with modification the April 30, 2008 Joint Decision[4] of the Regional Trial Court, Angeles City, Pampanga, Branch 60 *(RTC)*, which found accused Avelino Subesa *y* Moscardon *(Subesa)* guilty beyond reasonable doubt of having committed dastardly perversions against his four (4) daughters: AAA, BBB, CCC, and DDD.[5]

---

[1] See *People v. Sangil*, *Sr.,* 342 Phil. 499, 502 (1997).

[2] Penned by Associate Justice Martin S. Villarama, Jr. (now an Associate Justice of the Court), with Associate Justice Magdangal M. De Leon and Associate Justice Ricardo R. Rosario, concurring; *rollo*, pp. 2-23.

[3] *Rollo*, p. 28.

[4] CA *rollo*, pp. 14-28.

[5] The Court shall use fictitious initials in lieu of the real names and circumstances of the victim and the latter's immediate family members other than accused-appellant. See *People v. Gloria*, G.R. No. 168476, September 27, 2006, 503 SCRA 742; citing Sec. 29 of Republic Act (R.A.)

On April 10, 2001, five (5) separate informations were filed against Subesa with the RTC. The Informations read:

CRIMINAL CASE NO. 01-246:
(Acts of Lasciviousness in Relation to R.A. No. 7610)

That on several occasions in the year 1999, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of AAA, an 8-year old minor, by touching the private organs of the said complainant and by inserting his finger into the vagina of the complainant, AAA, by means of force and against the will of the said complainant. That accused is the father of the complainant.

ALL CONTRARY TO LAW.

CRIMINAL CASE NO. 01-247:
(Rape in Relation to R.A. No. 7610)

That sometime in the year 1996, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and taking advantage of the innocence and tender age of the victim, did, then and there willfully, unlawfully and feloniously by means of threats and intimidation have carnal knowledge with one BBB, being then 9 years old, by inserting his penis into the vagina of the complainant BBB, against her will and consent. That accused is the father of the complainant.

ALL CONTRARY TO LAW.

CRIMINAL CASE NO. 01-248:
(Acts of Lasciviousness in Relation to R.A. No. 7610)

That sometime in the year 1995, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation did then and there willfully, unlawfully and feloniously commits acts of lasciviousness upon the person of BBB, a (sic) 8 year old

---

No. 7610, Sec. 44 of R.A. No. 9262, and Sec. 40 of the Rule on Violence Against Women and Their Children; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

minor, by touching the private parts of the complainant BBB, by means of force and against the will of the said complainant. That accused is the father of the complainant.

ALL CONTRARY TO LAW.

CRIMINAL CASE NO. 01-249:
(Rape in Relation to R.A. No. 7610)

That sometime in the year 1993, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and taking advantage of the innocence and tender age of the victim, did, then and there willfully, unlawfully and feloniously by means of threats and intimidation have carnal knowledge with one CCC, being then 11 years old, by inserting his penis into the vagina of the complainant CCC, against her will and consent. That accused is the father of the complainant.

ALL CONTRARY TO LAW.

CRIMINAL CASE NO. 01-250:
(Rape in Relation to R.A. No. 7610)

That on or about the 4th day of October, 1998, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and taking advantage of the innocence and tender age of the victim, did, then and there willfully, unlawfully and feloniously by means of threats and intimidation have carnal knowledge with one DDD, a girl of 9 years of age, by inserting his penis into the vagina of the complainant DDD, against her will and consent. That accused is the father of the complainant.

ALL CONTRARY TO LAW.

Upon arraignment, Subesa, assisted by counsel, pleaded not guilty to all the charges. The criminal actions were then jointly tried. In the course of the trial, the prosecution presented the testimonies of the private complainants AAA, BBB, CCC, DDD, their mother, EEE, and Dr. Josiah Joma Espanta. For its part, the defense presented the sole testimony of Subesa.

The respective versions of the prosecution and the defense, as summarized by the CA in its assailed Decision read:

CCC was seventeen (17) years old and in first year college at the time she testified. She narrated that in 1993, she was then eleven (11) years old and living with his father, mother, sisters and brothers. They are nine (9) in the family, four (4) boys and five (5) girls including herself. When their mother was out working as a laundrywoman, she was left with her younger sisters while her brothers were in school. Sometime in 1993, she was outside when her father, accused-appellant Avelino Subesa, called her inside the room. He closed the door and took off his pants. She got scared but did not do anything because she was still young then. She was standing when her father removed her shorts and panty. He went on top of her. He threatened to kill her mother if she told anybody about him raping her. She could not remember whether it was during that time when he was able to insert his penis or on the subsequent incidents. Her father did it to her every time he had a chance, especially when her brothers and mother were out of the house. He either embraced or raped her. She felt pain when his penis touched her vagina. She could not remember if her vagina bled during the first time. She did not tell her mother because of fear that her mother, who was always being mauled by her father, would be killed.

In the year 2000, she found out that her father was also raping her three (3) sisters, DDD, BBB and AAA. That was the time she decided to tell her mother what her father was doing to her. One time, her father did not know that she saw him call her younger sister to the bedroom. She went to her older sister and told her what their father was doing to them. When she was in Grade VI, she stayed outside and ran away whenever he called her. Their father inflicted injuries on them whenever they commit even slight mistakes. She was examined by a doctor and was issued a medical certificate. She executed a *Sinumpaang Salaysay* dated December 13, 2000.

AAA was already eleven (11) years old and in Grade V when she testified on July 31, 2002. In 1999, while she was inside her sister's room, accused-appellant lay down beside her on the bed. Her sister DDD was also there but she was already asleep. She recounted how her father embraced her and touched her vagina with his hand. She was lying on her right side and her father embraced her from behind. At the time, she was wearing t-shirt, shorts and panty. He slid his left hand inside her shorts until he touched her vagina. She did not feel his finger enter her vagina but only the hand touching it and in a moving and caressing manner. It did not take long as he stopped voluntarily and he went out of the room. AAA went back to sleep.

In another occasion, she was alone in her old room playing with her doll when accused-appellant went inside and sat beside her. She was told to stand up and he pulled her shorts and panty down to her knees. He was standing behind slightly bent forward when he placed his hand on her private part and inserted his finger into her vagina. She felt pain but she did not tell her father because he would get angry. He said he would kill them all if she told anyone of what he did to her. When someone knocked on the door, her father stopped and told her to put on her shorts and left the room. She saw her brother but they did not say anything to each other.

One day, she was alone in the room of her sister CCC playing with her doll. Accused-appellant entered and told her to stop playing. He also told her to remove her shorts and panty. While her father was seated on a wooden bed, he inserted his finger (right hand) into her vagina. Her father did not say anything. She felt the pain but did not tell her father because she was afraid that he would get mad at her. When her brother knocked at the door, her father stopped and told her to put on her shorts back. There were also times when her father beat her using his belt whenever he called them and they did not immediately approach him. They were afraid of their father because he also beat up their mother by kicking and slapping her. She was examined by a doctor who submitted a medical certificate indicating that there were lacerations of her hymen. She also executed *Sinumpaang Salaysay* which she identified in open court.

BBB was already sixteen (16) years old when she testified. The first time she was touched by accused-appellant was in 1993 when she was in Grade III but she could not recall where. In 1995, she was eight (8) years old when her father touched her again for the second time. She was in the bedroom with CCC when he touched her private parts. She could not recall how many times she was touched but she remembered that he went inside their bedroom when her mother was working. They were lying down while their father was seated between them with his clothes on. In 1996, he was in the bathroom naked and he removed her clothes. He then inserted his penis into her vagina. The bathroom was closed and she did not shout because her father threatened to kill them. On October 16, 1996, when she was in first year in high school, her father raped her inside their store. She told DDD to call their mother. When her mother came, he left the store. BBB claimed that she was molested by her father in 1993, 1995 and 1996. She was examined by a doctor who issued a Medical Certificate indicating therein that there were healed

lacerations on her hymen. BBB also executed a sworn statement which she identified in open court.

DDD was already twelve (12) years old when she testified. On October 4, 1998, at around 5:00 pm., her father, who was only wearing shorts, called her inside the bathroom. He removed his shorts and placed them on the cabinet. He also pulled down her shorts. She was nervous and did not say anything because he would always hurt them. Sometimes he would kick them and bumped their bodies against the wall. Accused-appellant removed her panty. He was sitting on the toilet bowl totally naked. He asked her to sit on top of him and facing him with open legs. He inserted his penis inside her vagina. At first he had difficulty in inserting his organ because she was crying as it was painful. Her father got angry and withdrew his penis. She went to her mother and told her what happened. They went home together but their father was not around when they got home. When he continued to abuse them, they finally had the courage to tell the police. DDD executed a statement on December 14, 2000 which she identified in open court.

The mother of the victims testified that the first time she was informed of the rape was on October 4, 1998 when her daughter CCC fetched her from work. At home, she talked to DDD, who told her what happened as she was crying. On December 13, 200[1], she saw CCC crying and telling her that accused-appellant was calling her to the comfort room. The witness was beaten and kicked by the accused-appellant. He left and when he returned ten (10) minutes later, he was very drunk and started hurting her again. CCC went with her mother to the *barangay* to ask for help. She learned that all her daughters were raped by accused-appellant. They filed cases against him.

Dr. Josiah Joma Espanta testified that on December 13, 1999, he was at the Ospital Ning Angeles, Angeles City, as he was the resident physician on duty. He examined the four (4) complainants and required them to submit to urine analysis and cervical smear. He issued medical certificates for all the complainants.

For his part, accused Avelino Subesa testified that prior to the filing of the cases, he was a security guard from the years 1998 to 2000. He has nine (9) children. He has a son living in Sta. Rita, Olongapo City, while another child is in another country. Their other children were living with them. A couple also lived with them and were left in the house when he was on duty. His wife was also left

in the house while he was on his job. His house had two (2) rooms, one (1) used by his children and the other one (1) by the couple. Every time he went home, his wife was not around and there was no food on the table. He further testified that sometime in 1996, he noticed that his daughter CCC was missing. A friend told him that he saw CCC talking to a male person. When CCC arrived after 5:00 pm., she was in a state of shock and went directly to her room. They wanted to talk to her but the room was locked. He told his wife to bring CCC to the police station but his wife refused. He denied the rape charges against him. Sometime in 1999 or 2000, his wife woke him up at 1:15 a.m. warning him that something will happen to his life. When he asked why, she accused him of having a relationship with her sister. This was the reason why he quarrelled with his wife. After their last quarrel, he was picked up by the police because of his wife's complaint for physical injuries. He only learned about the complaints of abuse filed by his daughters when he was incarcerated.

After the trial, the RTC found the testimonies of the private complainants to be straightforward as they lacked any ill motive to testify against their very own father.[6] Taking into consideration the aggravating circumstances of relationship and minority without any mitigating circumstance, the trial court disposed of the cases against Subesa in the following manner:

WHEREFORE, finding the guilt of the accused Avelino Subesa to have been proved beyond reasonable doubt and there being aggravating circumstances of relationship (accused being the father of the victims) and minority without the presence of any mitigating circumstance to offset the same, the Court hereby sentences said accused:

1. In Crim. Case No. 01-246 for Acts of Lasciviousness in relation to RA 7610, to a penalty of *reclusion temporal* in its medium period.

2. In Crim. Case No. 01-247 for Rape (Violation of Art. 334, RPC, as amended by RA 7659 in relation to RA 7610) to a penalty of *reclusion perpetua*.

---

[6] *CA rollo*, p. 26.

3. In Crim. Case No. 01-248 for Acts of Lasciviousness in relation to RA 7610 to a penalty of *reclusion temporal* in its medium period.

4. In Crim. Case No. 01-249 for Rape (Violation of Art. 334, RPC, as amended by RA 7659 in relation to RA 7610) to a penalty of *reclusion perpetua*.

5. In Crim. Case No. 01-250 for Rape (Violation of Art. 334, RPC, as amended by RA 7659 in relation to RA 7610) to a penalty of *reclusion perpetua*.

Accused is ordered to indemnify each victim in each case the amount of ₱75,000.00 and moral damages in the amount of ₱75,000.00.

SO ORDERED.

As the RTC did, the CA[7] found Subesa guilty of sexually abusing his daughters. With respect to Criminal Case No. 01-246, however, the CA stated that the crime committed by the accused was "Rape through Sexual Assault" under Article 266-A (2) of the Revised Penal Code *(RPC)* when he inserted his finger into AAA's vagina. According to the CA, it is of no moment that the designation of the offense was "Acts of Lasciviousness in Relation to R.A. No. 7610," since the recital of facts in the Information sufficiently apprised Subesa of the nature of the charge against him. The CA also modified the penalty imposed by the RTC on Subesa in the said case. Thus, affirming with modification the Joint Decision of the RTC, the CA disposed:

WHEREFORE, the Joint Decision of the Regional Trial Court of Angeles City, Pampanga, Branch 60, dated April 30, 2008 and promulgated on May 21, 2008 is hereby AFFIRMED with MODIFICATIONS as follows: 1) In *Criminal Case No. 01-246,* accused-appellant is found guilty beyond reasonable doubt of Rape through Sexual Assault under paragraph 2 of Article 266-A of the Revised Penal Code, as amended, and he is hereby sentenced to suffer the indeterminate penalty of twelve (12) years of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum; and 2) In *Criminal Case No. 01-248,* accused-appellant is hereby

[7] *Supra*, note 2.

sentenced to suffer the indeterminate penalty of twelve (12) years and one (1) day of *reclusion temporal* minimum, as minimum, to seventeen (17) years of *reclusion temporal* medium, as maximum.

In its Resolution[8] dated November 17, 2010, the Court required the parties to file their respective supplemental briefs within thirty (30) days from notice, if they so desired. Both the prosecution[9] and the defense,[10] however, manifested that they would no longer file any brief and they would just stand by their respective briefs filed before the CA.

After carefully going over the records of the case, the Court sustains the assailed Decision of the CA, albeit with modification as to the penalties imposed.

In almost all cases of sexual abuse, the credibility of the victim's testimony is crucial in view of the intrinsic nature of the crime where only the persons involved can testify as to its occurrence. In this case, the Court finds no reason to disturb the findings of the RTC, as affirmed by the CA. Time and again, the Court has emphasized that the manner of assigning values to declarations of witnesses at the witness stand is best and most competently performed by the trial judge who has the unique and unmatched opportunity to observe the demeanor of witnesses and assess their credibility. In essence, when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief, the assessment of the trial court is generally given the highest degree of respect, if not finality. The assessment made by the trial court is even more enhanced when the CA affirms the same, as in this case.[11]

The Court finds that the prosecution successfully proved beyond reasonable doubt the charges of rape and acts of lasciviousness against Subesa. All his four children positively identified him as

---

[8] *Rollo*, p. 30.

[9] *Id.* at 33.

[10] *Id.* at 41-44.

[11] *People v. Espino, Jr.*, G.R. No. 176742, June 17, 2008, 554 SCRA 682, 696-697.

their molester. In rape cases, the accused may be convicted solely on the testimony of the victim, provided it is credible, convincing, and consistent with human nature and the normal course of things.[12] Its examination of the records shows no indication that the Court should view the testimony of the private complainants in a suspicious light.

The defense of denial interposed by Subesa cannot prevail over the positive testimony of his children. Denial is one of the weakest of all defenses because it is easy to concoct and fabricate.[13] To be believed, denial must be supported by a strong evidence of innocence; otherwise, it is regarded as purely self-serving. In this regard, the Court notes the ratiocination by the trial court. Thus:

> Accused did not refute these charges by any independent evidence other than his mere denial. Other than his assertion in reference to what happened to his children CCC and DDD where he wanted to show that something may have happened to them and his verbal denial of the charges, accused failed to show any convincing proofs that he did not commit these acts charged against him by his own daughters. Though he asserted that something may have happened to CCC sometime in 1996, he did not categorically state what particularly happened to her. He declared that he allegedly told his wife to report the matter to the police or for her daughter to submit to the doctor for examination, but he did not state what his suspicions were which would require the attention or help of the police or doctor. He did not make any move to actually bring his daughter CCC to a doctor on his suspicion that something may have happened to her. To the mind of the Court, this is just a weak attempt on his part to exculpate himself from the charges filed against him by his daughters. He wanted to project himself as a caring and protective father who almost always quarrelled with his wife as the latter did not take care of their children. Yet, in this instance, he did not do anything except to tell his wife to talk with their daughter CCC on why she was missing on that one morning and arriving at home late in the afternoon and as if in a

---

[12] *People v. Glivano*, G.R. No. 177565, January 28, 2008, 542 SCRA 656.

[13] *People v. Ayade*, G.R. No. 188561, January 15, 2010, 610 SCRA 246.

state of shock. He also admitted inflicting physical injuries against his wife allegedly in defense of his children who had no food on the table prepared by his wife. He declared that his suggestions were not heeded or followed by his wife who allegedly just told him to just "concentrate" on their work. All these are mere attempts of the accused to evade answering the charges filed against him by his daughter.

Accused failed to refute the charges of sexual molestations filed against him by his four (4) daughters. He failed to state any ill motive on the part of their daughters which made them file these cases. On the contrary, his children even kept to themselves the sexual abuses committed against them by their father for fear that he would carry out his threat to kill them once they told their mother or anybody about his vicious acts. In fact, CCC was willing to keep to herself the harrowing experience she had with her father until she learned that she was not the only one being abused by her father. It was only when CCC saw h[er] sister DDD entering the room, upon being summoned by the accused, that her suspicion was confirmed that her other sister was also being sexually abused by the accused. It was also during that fateful day of confrontation when CCC and her mother came to know that DDD, BBB and AAA were also victims of sexual abuses by their very own father. xxx

It has been repeatedly held that a young girl's revelation that she had been raped, coupled with her voluntary submission to a medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.[14] When a woman or a girl-child says that she was raped, she says in effect all that is necessary to show that rape has indeed been committed.[15]

In imposing the penalty of *reclusion perpetua* in Criminal Case Nos. 01-247, 01-249 and 01-250, however, the courts below failed to qualify that the penalty of *reclusion perpetua* is

---

[14] *People v. Cabillan*, 334 Phil. 912 (1997); *People v. Gaban*, 331 Phil. 87 (1996); *People v. Derpo*, 250 Phil. 447 (1988); and *People v. Molas,* 350 Phil. 333 (1998).

[15] *People v. Diaz*, 338 Phil. 219, 230 (1997).

without eligibility for parole as held in the case of *People v. Antonio Ortiz.*[16] This should be rectified.

As regard Criminal Case No. 01-246, the Court agrees with the CA in its ruling that the crime committed was "Rape through Sexual Assault" under Article 266-A (2) of the RPC and not "Acts of Lasciviousness in relation to R.A. No. 7610." The very definition of Rape through Sexual Assault under Article 266-A (2) or the "Anti-Rape Law of 1997," specifically includes the insertion of any instrument into the genital orifice of another person. It has also been settled that the character of the crime is not determined by the caption or preamble of the information or by the specification of the provision of law alleged to have been violated, but by the recital of the ultimate facts and circumstances in the complaint or information.[17]

The Court, however, modifies the penalty imposed in Criminal Case No. 01-246. Under Article 266-B of the RPC, the penalty for rape by sexual assault is *reclusion temporal.* In Criminal Case No. 01-246, the aggravating/qualifying circumstances of minority and relationship are present, considering that the rape was committed by a parent against his minor child. The penalty of *reclusion temporal* ranges from twelve (12) years and one (1) day to twenty (20) years.

Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the RPC. Other than the aggravating/qualifying circumstances of minority and relationship which have been taken into account to raise the penalty to *reclusion temporal*, no other aggravating circumstance was alleged and proven. Hence, the penalty shall be imposed in its medium period, or from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.[18] On the other hand, the minimum term of the indeterminate sentence should be within the range

---

[16] G.R. No. 179944, September 4, 2009, 598 SCRA 452.

[17] *Flordeliz v. People*, G.R. No. 186441, March 3, 2010, 614 SCRA 225.

[18] *People v. Bonaagua*, G.R. No. 188897, June 6, 2011.

of the penalty next lower in degree than that prescribed by the Code which is *prision mayor* or six (6) years and one (1) day to twelve (12) years. Thus, the Court modifies the penalty and deems as proper the indeterminate penalty of imprisonment ranging from ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum.[19]

As for the civil liabilities imposed in the said case, Subesa must pay civil indemnity of ₱30,000.00, moral damages of ₱30,000.00 and exemplary damages of ₱30,000.00.

As for Criminal Case No. 01-248, the penalty imposed must likewise be modified. The appropriate imposable penalty should be that provided in Section 5 (b), Article III of Republic Act (R.A.) No. 7610, which is *reclusion temporal* in its medium period which is fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. As the crime was committed by the father of the offended party, the alternative circumstance of relationship should be appreciated. In crimes against chastity, such as Acts of Lasciviousness, relationship is always aggravating. Therefore, Subesa should be meted the indeterminate penalty of imprisonment ranging from thirteen (13) years, nine (9) months and eleven (11) days of *reclusion temporal*, as minimum, to sixteen (16) years and five (5) months and ten (10) days of *reclusion temporal*, as maximum.[20]

The same must be said with respect to the civil liabilities of the accused in the said case. For Acts of Lasciviousness in relation to R.A. 7610, jurisprudence[21] dictates that the following civil liabilities should be imposed: (1) a fine of ₱15,000.00; (2) civil indemnity of ₱20,000.00; (3) moral damages of ₱15,000.00; and (4) exemplary damages of ₱15,000.00.

---

[19] *Id.*

[20] *Id.*

[21] *People v. Fragante*, G.R. No. 182521, February 9, 2011.

WHEREFORE, the October 19, 2009 Decision of the Court of Appeals in CA-G.R. CR. H.C. No. 03406 is *AFFIRMED WITH MODIFICATIONS*. The accused, Avelino Subesa *y* Moscardon, is hereby found:

1) *GUILTY* of Rape in Criminal Case Nos. 01-247, 01-249 and 01-250. He is hereby sentenced, in each case, to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay each victim civil indemnity of ₱75,000.00, moral damages of ₱75,000.00 and exemplary damages of ₱30,000.00.

2) *GUILTY* of Rape Through Sexual Assault in Criminal Case No. 01-246. He is hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from ten (10) years *prision mayor*, as minimum, to seventeen (17) years, four (4) months of *reclusion temporal*, as maximum, and ordered to pay his victim civil indemnity of ₱30,000.00, moral damages of ₱30,000.00 and exemplary damages of ₱30,000.00.

3) *GUILTY* of Acts of Lasciviousness in relation to R.A. 7610 in Criminal Case No. 01-248. He is hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from thirteen (13) years, nine (9) months and eleven (11) days of *reclusion temporal*, as minimum, to sixteen (16) years and five (5) months and ten (10) days of *reclusion temporal*, as maximum, and ordered to pay his victim a fine of ₱15,000.00, civil indemnity of ₱20,000.00, moral damages of ₱15,000.00, and exemplary damages of ₱15,000.00.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin,[*] *Abad,* and *Perez,*[**] *JJ.,* concur.

---

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Raffle dated June 21, 2011.

[**] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152 dated November 11, 2011.

SECOND DIVISION

[G.R. No. 193833. November 16, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PO1 FROILAN L. TRESTIZA, P/S INSP. LORIEMAN[*] L. MANRIQUE and RODIE J. PINEDA @ "Buboy,"** *accused.* **PO1 FROILAN L. TRESTIZA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; ARREST WITHOUT WARRANT; WHEN LAWFUL; ACCUSED-APPELLANT'S WARRANTLESS ARREST DOES NOT FALL UNDER ANY OF THE CIRCUMSTANCES PROVIDED BY THE RULES. — Section 5, Rule 113 of the 2000 Rules of Criminal Procedure enumerates the instances when warrantless arrests are lawful. Sec. 5. *Arrest without warrant; when lawful*.— A peace officer or a private person may, without a warrant, arrest a person: (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112. It is clear that Trestiza's warrantless arrest does not fall under any of the circumstances mentioned in Section 5, Rule 113. However, Trestiza failed to make a valid objection to his warrantless arrest. Any objection to the procedure followed in the matter of the acquisition by a court of jurisdiction over the person of the accused must be

[*] Sometimes referred to as "Loriemar" in the records.

opportunely raised before he enters his plea; otherwise, the objection is deemed waived. Trestiza, being a policeman himself, could have immediately objected to his warrantless arrest. However, he merely asked for the grounds for his arrest. He did not even file charges against the arresting officers. There was also a lengthy amount of time between Trestiza's arrest on 16 November 2002 and the filing of the Omnibus Motion objecting to Trestiza's warrantless arrest on 11 May 2004. Although it may be argued that the objection was raised prior to the entry of Trestiza's plea of not guilty in the kidnapping for ransom charge, it must be noted that the circumstances of the present case make us rule otherwise. Trestiza was charged with two crimes at the time of his arrest: kidnapping with ransom under Criminal Case No. 02-3393 and illegal possession of firearms under Criminal Case No. 02-3394. Trestiza did not question the legality of his warrantless arrest nor the acquisition of jurisdiction of the trial court over his person, and fully participated in the hearing of the illegal possession of firearms case. Thus, Trestiza is deemed to have waived any objection to his warrantless arrest. Under the circumstances, Trestiza's Omnibus Motion in the kidnapping for ransom case is a mere afterthought and cannot be considered as a timely objection.

2. **ID.; ID.; ID.; ID.; THE ILLEGAL ARREST OF AN ACCUSED IS NOT SUFFICIENT CAUSE FOR SETTING ASIDE A VALID JUDGMENT RENDERED UPON A SUFFICIENT COMPLAINT AFTER A TRIAL FREE FROM ERROR. —** Assuming *arguendo* that Trestiza indeed made a timely objection to his warrantless arrest, our jurisprudence is replete with rulings that support the view that Trestiza's conviction is proper despite being illegally arrested without warrant. In *People v. Manlulu*, the Court ruled: [T]he illegality of the warrantless arrest cannot deprive the State of its right to prosecute the guilty when all other facts on record point to their culpability. Indeed, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error. The fatal flaw of an invalid warrantless arrest becomes moot in view of a credible eyewitness account.

3. **ID.; EVIDENCE; TRIAL COURT'S FINDINGS OF FACTS, ITS CALIBRATION OF THE COLLECTIVE TESTIMONIES OF WITNESSES, ITS ASSESSMENT OF THE PROBATIVE WEIGHT OF THE EVIDENCE OF THE PARTIES, AS**

WELL AS ITS CONCLUSIONS ANCHORED ON SAID FINDINGS ARE ACCORDED GREAT WEIGHT AND EVEN CONCLUSIVE EFFECT.— The trial court's findings of facts, its calibration of the collective testimonies of witnesses, its assessment of the probative weight of the evidence of the parties, as well as its conclusions anchored on the said findings, are accorded great weight, and even conclusive effect, unless the trial court ignored, misunderstood or misinterpreted cogent facts and circumstances of substance which, if considered, would alter the outcome of the case. This is because of the unique advantage of the trial court to observe, at close range, the conduct, demeanor and the deportment of the witnesses as they testify. We see no reason to overrule the trial court's finding that Trestiza is guilty of kidnapping with ransom.

4. **CRIMINAL LAW; KIDNAPPING WITH RANSOM; FACT THAT APPELLANT IS A POLICE OFFICER DOES NOT EXEMPT HIM FROM CRIMINAL LIABILITY FOR KIDNAPPING. —** Before the present case was tried by the trial court, there was a significant amount of time spent in determining whether kidnapping for ransom was the proper crime charged against the accused, especially since Trestiza and Manrique were both police officers. Article 267 of the Revised Penal Code specifically stated that the crime should be committed by a private individual. The trial court settled the matter by citing our ruling in *People v. Santiano,* thus: The fact alone that appellant Pillueta is an organic member of the NARCOM and appellant Sandigan a member of the PNP would not exempt them from the criminal liability of kidnapping. It is quite clear that in abducting and taking away the victim, appellants did so neither in furtherance of official functions nor in the pursuit of authority vested in them. It is not, in fine, in relation to their office, but in purely private capacity that they have acted in concert with their co-appellant Santiano and Chanco.

5. **ID.; ID.; CLAIM OF HOLDING A LEGITIMATE POLICE OPERATION, NOT ESTABLISHED. —** In the same order, the trial court asked for further evidence which support the defense's claim of holding a legitimate police operation. However, the trial court found as unreliable the Pre-Operation/ Coordination Sheet presented by the defense. The sheet was not authenticated, and the signatories were not presented to attest to its existence and authenticity.

6. ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; MAY BE IMPLIED FROM THE SERIES OF EVENTS THAT TRANSPIRED BEFORE, DURING OR AFTER THE KIDNAPPING INCIDENT.— We agree with the appellate court's assessment that Trestiza's acts were far from just being a mere driver. The series of events that transpired before, during, and after the kidnapping incident more than shows that Trestiza acted in concert with his co-accused in committing the crime. Conspiracy may be implied if it is proved that two or more persons aimed their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent of each other, were, in fact, connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Altamira Cas Alaba & Collado Caveat Law for accused-appellant.

D E C I S I O N

CARPIO, *J*.:

The Case

G.R. No. 193833 is an appeal[1] from the Decision[2] promulgated on 30 June 2009 as well as the Resolution[3] promulgated on 11 June 2010 by the Court of Appeals (appellate court) in CA-G.R.

---

[1] Under Rule 45 of the 1997 Rules of Civil Procedure and Rule 122 of the Revised Rules of Criminal Procedure.

[2] *Rollo*, pp. 2-26. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Fernanda Lampas Peralta and Apolinario D. Bruselas, Jr., concurring.

[3] *Id.* at 31-32. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Fernanda Lampas Peralta and Apolinario D. Bruselas, Jr., concurring.

CR.-HC. No. 03119. The appellate court affirmed the 24 July 2007 Joint Decision[4] of Branch 143 of the Regional Trial Court of Makati City (trial court) in Criminal Case Nos. 02-3393 for Kidnapping (for Ransom), 03-766 for Robbery, and 04-1311 also for Robbery.

The trial court found appellant PO1 Froilan L. Trestiza (Trestiza) guilty beyond reasonable doubt as principal by direct participation of the crime of Kidnapping for Ransom under Article 267 of the Revised Penal Code, as amended by Section 8 of Republic Act No. 7659 (RA 7659), and sentenced him to suffer the penalty of *reclusion perpetua* and to pay damages to Irma Navarro (Navarro) and Lawrence Yu (Yu). P/Insp. Lorieman L. Manrique (Manrique) and Rodie Pineda *y* Jimenez (Pineda) were likewise found guilty of the same crime by the trial court, and adjudged the same sentence as Trestiza. The trial court acquitted Trestiza, Manrique and Pineda in Criminal Case Nos. 03-766 and 04-1311.

<u>The Facts</u>

The following charges were brought against Trestiza, Manrique and Pineda on 20 November 2002:

Criminal Case No. 02-3393 for Kidnapping

That on or about the 7th day of November 2002, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, PO1 Froilan Trestiza *y* Lacson and P/S Insp. Loriemar L. Manrique, both active members of the Philippine National Police, and Rodie Pineda *y* Jimenez, a private individual[,] all of them armed with firearms, conspiring, confederating and mutually helping one another with one PO2 [Reynel] Jose, a member of the Philippine National Police, did then and there willfully, unlawfully and feloniously kidnap Lawrence Yu *y* Lim and Maria Irma Navarro, or otherwise deprive them of their liberty by then and there kidnap without legal grounds for the purpose of extorting money for their safety and immediate release as in fact said accused demanded the amount of ₱1,000,000.00 as ransom money from them.

---

[4] CA *rollo*, pp. 58-73. Penned by Judge Zenaida T. Galapate-Laguilles.

CONTRARY TO LAW.[5]

Criminal Case No. 02-3394 for Illegal Possession of Firearm and Ammunitions

That on or about the 16th day of November 2002, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) Pistol Glock 21 bearing SN 035481 with thirteen (13) rounds of live ammunitions and without the corresponding license or permit thereof, which he carried outside of his residence.

CONTRARY TO LAW.[6]

On 15 April 2004, Trestiza was acquitted of the crime charged in Criminal Case No. 02-3394.[7] The Affidavit of Arrest stated that the serial number of the firearm seized was 035481, while the firearm itself had a serial number of BRG-768. The trial court rejected the explanation that the difference between the serial numbers was a mere typographical error.

An order[8] of the trial court dated 16 April 2004 in Criminal Case Nos. 02-3393, 02-3394, 03-766 and 04-1311 recounted the circumstances involved in the filing of the charges against Trestiza, Manrique and Pineda.

Criminal Case No. 02-3393 for Kidnapping against accused PO1 Froilan Trestiza *y* Lacson (PO1 Trestiza), PS/Insp. Loriemar L. Manrique (PS/Insp. Manrique) and Rodie Pineda *y* Jimenez (Pineda) and Criminal Case No. 02-3394 for Illegal Possession of Firearms and Ammunitions against accused PO1 Trestiza alone were filed before this Court on 20 November 2002. Surprisingly, however,

---

[5] Records, pp. 2-3. Signed by 2nd Assistant City Prosecutor Andres N. Marcos, an unnamed Review Prosecutor, and Senior State Prosecutor Leo B. Dacera III.

[6] *Id.* at 6. Signed by 2nd Assistant City Prosecutor Andres N. Marcos, Assistant City Prosecutor Melquiades I. Mutiangpili, Review Prosecutor Rodolfo C. Lalin, and Senior State Prosecutor Leo B. Dacera III.

[7] *Id.* at 530-533. Penned by Judge Zenaida T. Galapate-Laguilles.

[8] *Id.* at 534-545. Penned by Judge Zenaida T. Galapate-Laguilles.

SPO2 [Reynel] Jose was not included as an accused in the Kidnapping case although in the original Information, Prosecutor Andres N. Marcos mentions him as someone who mutually helped all the other accused in the willful, unlawful, felonious kidnapping of private complainants Lawrence Yu *y* Lim (Yu) and Ma. Irma Navarro (Navarro). A Motion for Reinvestigation dated 21 November 2002 was then filed by "all" three accused while a separate Motion for Reinvestigation and/or Preliminary Investigation dated 22 November was filed by accused PS/Insp. Manrique.

Then Acting Presiding Judge Salvador S. Abad Santos issued the Order dated 26 November 2002 granting the Motions filed by all accused. In the said Order, he directed the Public Prosecutor to conduct a Preliminary Investigation of the cases filed and to furnish the Court with his Report within sixty (60) days from said date.

On 21 February 2003, Public Prosecutor Andres N. Marcos filed a Motion to Withdraw Information of Kidnapping with Ransom and to Admit Information for Robbery with attached Resolution dated 03 January 2008. He pointed out therein that after he conducted a preliminary investigation, he found no probable cause exists to warrant the indictment of the accused for the crime of Kidnapping with Ransom. He added that they should be charged instead for the crimes of Robbery and Grave Threats. The Court set the hearing of this Motion to 06 March 2003.

On 03 March 2003, private complainants appearing through Private Prosecutor Teresita G. Oledan filed an "Urgent Motion to Hold Withdrawal of Information for Kidnapping Charge with Entry of Appearance as Private Prosecutor." They alleged in said Motion that they were not furnished clear and certified true copies of the Resolution dated 03 January 2003 to enable them to file their Opposition/Comment to the Motion to Withdraw.

On 05 March 2003, the Branch Clerk of Court of RTC Makati Branch 135 sent a letter dated 26 February 2003 addressed to the Branch Clerk of this Court ostensibly transmitting the Release Order of PO1 Trestiza dated 22 February 2003 together with other pertinent documents in connection with Criminal Case No. 02-3394, which was duly approved by the Hon. Francisco B. Ibay, Presiding Judge of said Court.

The Order of Release dated 22 February 2003 signed by Judge Ibay directed the Jail Warden of Makati Police Station, Makati City

to discharge from his custody the person of said accused as the latter was able to file the corresponding bail bond in the amount of two hundred thousand pesos (PHP200,000.00) thru the Plaridel Surety and Insurance Company **provided "there exists no order in any other case to the effect that he shall remain confined under your custody."** He set the arraignment of the accused on 14 March 2003 at 8:30 o'clock in the morning.

Before the scheduled hearing of the Motion to Withdraw at 2:00 o'clock in the afternoon of 06 March 2003, the Private Prosecutor filed her Opposition thereto at 1:30 o'clock in the afternoon of said date. She alleged therein that while the Motion to Withdraw filed by Public Prosecutor Marcos prays for the withdrawal of the Information for Kidnapping with Ransom and the substitution thereof with an Information for Robbery, the latter Information was filed immediately with the Criminal Cases Unit of the Office of the Clerk of Court on the same date that the Motion to Withdraw was filed with this Court on 21 February 2003. Subsequently, said "Information for Robbery" was raffled to RTC Branch 57 on 03 March 2003 yet there was a scheduled hearing of the Motion to Withdraw on 06 March 2003. She added that the complainants were in a quandary why the alleged "substituted" Information for Robbery was raffled to another Court and docketed as Criminal Case No. 03-766, when this Court has already acquired jurisdiction over the original cases filed. The same case was thereafter consolidated with this Court on 26 March 2003 as per Order dated 24 March 2003 rendered by the Honorable Reinato G. Quilala, Presiding Judge thereat. Accused PS/Insp. Manrique, PO1 Trestiza, and Pineda posted bail in this case, which was duly approved by Judge Ibay, while accused SPO2 Jose's bail was approved by Judge Napoleon E. Inoturan, Presiding Judge of RTC Branch 133.

At the hearing to the Motion to Withdraw, then Acting Presiding Judge Abad Santos gave counsel for the accused time within which to file his comment/objection to the Urgent Motion to Hold Withdrawal of Information for Kidnapping filed by the private complainants, furnishing the Private Prosecutor a copy thereof, who was given the same number of days to file her Reply, if necessary. The Court likewise ordered the "re-commitment" of all three (3) accused, who were then present at that hearing, to the custody of the Makati City Jail despite the fact that they have already posted bail, considering that the Motion to Withdraw was still pending resolution.

Counsel for the accused filed his Comment to the Opposition dated 10 March 2003 alleging that the same did not bear the conformity of the Public Prosecutor who has direct control and supervision over the Private Prosecutor as provided for under the Rules of Criminal Procedure. Said Comment, to his mind, is thus a mere scrap of paper which did not deserve any consideration by the Court.

On 13 March 2003, the Court was furnished by the private complainants a copy of their "Motion for Reconsideration of the Resolution dated January 03, 2003 but Released on February 20, 2003" which they filed with the Office of the City Prosecutor of Makati City.

x x x x x x x x x

On 29 May 2003, accused PO1 Trestiza and PS/Insp. Manrique filed an Urgent Motion to Resolve Motion for Withdrawal of Original Information claiming that said Original Informations have subsequently been amended by the Public Prosecutor's Office and just "needs the court/judge['s] approval of the Motion to Withdraw Complaint and for Admission of the Amended Information." Moreover, they averred that the City Prosecutor's Office has approved the findings of the reinvestigating Assistant City Prosecutor on the downgrading of the original complaint. Both accused prayed that said motion be heard on 28 May 2003.

On 9 June 2003, the Private Prosecutor filed an *Ex-Parte* Opposition to Accused's Motion for Withdrawal of Original Information with Motion for Issuance of the Warrant of Arrest against accused SPO2 Jose. She alleged therein that "it is true that one of the accused's right is the right to speedy trial. However, where, as in this case, the stench of 'something fishy' already was evident when suddenly the robbery case as amended by Prosecutor Marcos and more recently 'affirmed' by Prosecutor Sibucao, there should be further in-depth investigation as the circumstances on how the three accused were able to post bail without the knowledge and approval of this Honorable Court, which had already acquired jurisdiction over the case. In fact, a Petition for Review from the Resolution of Prosecutor Sibucao denying the Private Complainants' Motion for Reconsideration of the 03 January 2003 Resolution of Prosecutor Marcos duly approved by the City Prosecutor has been seasonably filed." She further alleged that, the Urgent Motion allegedly filed by accused PO1 Trestiza and PS/Insp. Manrique does not include accused SPO2 Jose, also a member of the Police Force. However,

the records show that the latter also "post bail" for the Robbery case and was in fact "outside" the Chamber of this Honorable Court when the hearing was being conducted. "However, when she went out to look for him, SPO2 Jose was able to do a 'Houdini' and disappeared from view." Private Prosecutor Oledan prayed for the deferment of the proceedings herein until the final resolution of the Petition for Review.

Referring back to the Urgent Motion to Resolve by accused PO1 Trestiza and PS/Insp. Manrique, considering that the latter prayed for it to be heard on 28 May 2003, but filed said Motion the following day only, the same was then set for hearing on 10 June 2003. On the same date, the Private Prosecutor furnished the Court a copy of their Petition for Review which they filed with the Department of Justice. In the meantime, the Branch Clerk of this Court issued a Certification to the effect that Acting Presiding Judge Abad Santos was on official leave until 15 July 2003 and that there is an Urgent Motion to be resolved. Pairing Judge Manuel D. Victorio, acting on the Urgent Motion, issued the Order of even date directing the City Prosecution Office to submit to the Court the complete records of its Preliminary Investigation within five (5) days from notice, thereafter the same shall be considered for resolution.

On 23 June 2003, accused PO1 Trestiza filed an *Ex-Parte* Motion for Early Resolution of the Pending Motion to Resolve, reiterating the grounds stated in his previous Motion.

Before the issue could be resolved by the Pairing Judge, however, the Honorable Estela Perlas Bernabe, took over this Court as Assisting Presiding Judge, after the Honorable Salvador S. Abad Santos requested the Supreme Court to be relieved of his assignment herein. Judge Bernabe issued the Order dated 27 June 2003 holding in abeyance the Resolution of the Prosecution's Motion to Withdraw Information for a period of sixty (60) days from the filing of the Petition for Review by private complainants with the Reviewing Office. On 08 July 2003, she denied the Motion to Dismiss Criminal Case No. 02-3394 for Illegal Possession of Firearms filed against accused PO1 Trestiza on the grounds that the allegations raised by said accused are defenses proper for determination in a full-blown trial and set the pre-trial of the same to 24 July 2003. Trial on the merits for this particular Criminal Case ensued until the Prosecution rested its case and said accused filed his Demurrer to Evidence on 05 March 2004.

In the meantime, without any word yet as to the outcome of the Petition for Review filed with the DOJ relative to Criminal Case No. 02-3393, Judge Bernabe issued the Order dated 28 August 2003, directing the City Prosecution Office to conduct a re-assessment and re-evaluation of the evidence presented and to submit its report and recommendation within a period of thirty (30) days from receipt of said Order. The Resolution of the subject Motion was again held in abeyance.

On 02 March 2004, the Prosecution filed a "Motion to Resolve (Motion to Withdraw Information of Kidnapping) with attached Order dated 19 February 2004. It alleged therein that it conducted a thorough re-assessment and re-evaluation of the evidence obtaining in this case in compliance with the Order of this Court dated 28 August 2003 and maintains that the correct and appropriate charges to be filed against accused should be for ROBBERY and GRAVE THREATS but for two (2) counts each, and NOT for KIDNAPPING as initially filed. Thus, it prayed for this Court to be allowed to withdraw the present Information for Kidnapping "considering that the appropriate charges of two (2) counts of Robbery and two (2) counts of Grave Threats in lieu of the charge of KIDNAPPING <u>have already been filed with the proper Courts.</u>"

To justify the Prosecution's withdrawal of the Information for KIDNAPPING, Public Prosecutor Edgardo G. Hirang states, in the Order attached to the said Motion, that, to wit:

> "A careful re-evaluation of the pieces of evidence adduced by both parties shows that the offense of Kidnapping shall not prosper against all the accused. As correctly stated in the Resolution issued on February 20, 2003, one of the essential elements for the crime of Kidnapping for Ransom defined and penalized under [Article] 267 of the Revised Penal Code, as amended, is that [the] offender must be a private individual which does not obtain in the case at bar as respondents Trestiza, Manrique, and Jose are public officers being police officers who at the time the complainants were allegedly divested of their cash money and personal belongings by herein respondents, were conducting a police operation to enforce the provision of the Dangerous Drug Law (R.A. 9165).
>
> All accused were in the place of the incident to conduct such operation is shown not only by the existence of coordination between them and the police authorities but also by the

> declaration of the complainants that they were able to verify the plate number of the vehicle of the accused from the Makati Police Station.
>
> Hence, they should be charged with the offense of Robbery under Article 294, paragraph 5 of the Revised Penal Code and Grave Threats as recommended by this Office in its Resolution issued on February 20, 2003. Considering that there are two (2) complainants, the respondents should be charged with two (2) counts of Robbery and Grave Threats."

The Prosecution filed on the same date a Motion to Amend Information and to Admit Attached Amended Information in Criminal Case No. 02-766 alleging that the Criminal Information therein for Robbery should only be limited to private complainant Yu's complaint and not to Navarro's. Counsel for the accused, Atty. Jose Ma. Q. Austria, filed an Urgent Motion to calendar the hearing of the Motion to Amend Information and to Admit Amended Information which the Court granted in its Order dated 25 March 2004.

In the meantime, Criminal Case No. 04-1311 for Robbery which was filed on the strength of the Complaint of Navarro was consolidated with similar cases pending before this Court, upon the Order dated 12 March 2004 by the Honorable Ma. Cristina J. Cornejo, Presiding Judge of RTC Branch 147.

After study, the Court resolves to:

1. DENY the Motion to Withdraw Information for Kidnapping under Criminal Case No. 02-3393;

2. To [sic] GRANT the Motion to Amend Information for Robbery; [and]

3. To [sic] Hold in Abeyance the Issuance of the Warrant of Arrest against SPO2 Jose in Criminal Case No. 02-3393 until after the Information relative thereto shall have been duly amended by the Prosecution.

In its Motion to Withdraw Information for Kidnapping, the Public Prosecutor argues in essence that the crime of Kidnapping could not be possibly committed by the accused as they, except for one, are police officers, who at the time the complainants were divested of cash and other personal belongings were conducting a police operation to enforce the provisions of the Dangerous Drugs Law.

This to the mind of the movant runs counter to the provisions of Art. 267 of the Revised Penal Code which provides that any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days;

2. If it shall have committed simulating public authority;

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made;

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The Court finds this unmeritorious. Even a public officer can commit the said crime within the context of the aforesaid legal provision. This is settled in our jurisprudence in the case of *People vs. ALIPIO SANTIANO, JOSE SANDIGAN, et al.* (GR No. 123979[,] December 3, 1998) which provides in part:

> "The fact alone that appellant Pillneta is an organic member of the NARCOM and appellant Sandigan a member of the PNP would not exempt them from the criminal liability of kidnapping. It is quite clear that in abducting and taking away the victim, appellants did so neither in furtherance of official functions nor in the pursuit of authority vested in them. It is not, in fine, in relation to their office, but in purely private capacity that they have acted in concert with their co-appellant Santiano and Chanco."

Even an eminent jurist, Justice Florenz B. Regalado elucidates on this point clearly:

> "This article provides that the crimes of kidnapping and serious illegal detention are committed by private individuals obviously because if the offender is a public officer the crime is arbitrary detention under Art. 124, but passing *sub silentio* on the matter of kidnapping. It should be understood however, that the public officer who unlawfully detains another and is punishable by Art. 124 is one who has the duty to apprehend a person with a correlative power to detain him. If he is only

> an employee with clerical or postal functions, although the Code considers him as a public officer, his detention of the victim is illegal detention under this article since he is acting in a private, and not an official, capacity. <u>If a policeman kidnaps the victim, except when legally authorized as part of police operations, he cannot also be said to be acting in an official capacity, hence he is to be treated as a private individual liable under this article</u>. (underscoring ours)
>
> From the purpose and the formulation of R.A. 18 and R.A. 1084, it can be deduced that the legislative intendment was to put all forms of kidnapping under Art. 267 when Congress amended it together with Art. 270. There appears to have been some oversight, however, in the related articles and these will be discussed at the proper juncture." (Florenz B. Regalado, Pages 488 and 489, Criminal Law Conspectus, First Edition, March 2000)

As to whether or not the accused were indeed engaged in the performance of a legitimate police operation at the time the private complainants were allegedly deprived of their liberty and personal belongings is a matter which at this stage can only be considered as a *defense* that calls for further factual support in the course of judicial proceedings. Was there a Mission Order? Are there documents to show that police-to-police coordinations were indeed made? Are there corroborations to these claims whether documentary or testimonial? The need for further evidence supportive of this claim gains significance in the light of the emphatic assertions to the contrary by the private complainants and their witnesses.

As there appears to be probable cause for the inclusion of accused SPO2 Jose in Criminal Case No. 02-3393 for Kidnapping considering that the latter was specifically mentioned in the body of the Information as someone who conspired, confederated and mutually helped the other accused in this case, the Court resolves to await for the Prosecution to amend the same before issuing a Warrant of Arrest against said accused.

Lastly, the Court finds the sought amendment of the Information for Robbery to be well-taken.

WHEREFORE, premises considered, the Court resolves to:

1. DENY the Motion to Withdraw Information for Kidnapping [under Criminal Case No. 02-3393];

2. GRANT the Motion to Amend Information for Robbery;

3. Hold in abeyance the Issuance of the Warrant of Arrest against accused SPO2 Jose in Criminal Case No. 02-3393 until after the Information relative thereto shall have been duly amended by the Prosecution.

Set these cases for arraignment on 27 April 2004 at 8:30 o'clock in the morning. The Amended Information for Robbery duly attached in the Motion is hereby ADMITTED.

SO ORDERED.

Atty. Jose Ma. Q. Austria (Atty. Austria) withdrew as counsel for Manrique and Pineda. Atty. Austria also manifested that he would file an Omnibus Motion relative to the 16 April 2004 Order of the trial court. The arraignment was reset to 25 May 2004,[9] which was further reset to 28 June 2004,[10] 19 July 2004,[11] 23 August 2004,[12] and finally on 31 August 2004.[13]

Atty. Austria filed his Omnibus Motion for Trestiza: motion for reconsideration of the 16 April 2004 Order, motion to quash the informations, and motion to allow Trestiza to post bail.[14] Complainants opposed the Omnibus Motion.[15] The corresponding reply[16] and rejoinder[17] were also filed. In its 19 August 2004 Order,[18] the trial court denied the Omnibus Motion. It ruled that the trial court has the authority to deny a Motion to Withdraw Information relative to a criminal case filed before it. Moreover,

---

[9] *Id.* at 550-551.

[10] *Id.* at 601-602.

[11] *Id.* at 628.

[12] *Id.* at 650, 656-657.

[13] *Id.* at 659.

[14] *Id.* at 565-584.

[15] *Id.* at 611-622.

[16] *Id.* at 637-643.

[17] *Id.* at 644-647.

[18] *Id.* at 656-657.

the quashal of the informations against the accused goes into the determination of the nature of the arrest, which, in turn, goes into the merits of the case. Finally, the charge of kidnapping is a non-bailable offense.

When the case was called for arraignment, Trestiza, Manrique and Pineda all pleaded not guilty to the following charges:

Criminal Case No. 02-3393:

That on or about the 7th day of November 2002, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, PO1 Froilan Trestiza y Lacson and P/S Insp. Loriemar L. Manrique, both active members of the Philippine National Police, and Rodie Pineda y Jimenez, a private individual[,] all of them armed with firearms, conspiring, confederating and mutually helping one another with one PO2 Reynel Jose, a member of the Philippine National Police, did then and there willfully, unlawfully and feloniously kidnap Lawrence Yu y Lim and Maria Irma Navarro, or otherwise deprive them of their liberty by then and there kidnap without legal grounds for the purpose of extorting money for their safety and immediate release as in fact said accused demanded the amount of ₱1,000,000.00 as ransom money from them.

CONTRARY TO LAW.

Criminal Case No. 03-766:

That on or about the 7th day of November 2002, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, PO1 Froilan Trestiza y Lacson and P/S Insp. Loriemar L. Manrique, PO2 Reynel Jose, all active members of the Philippine National Police, and Rodie Pineda y Jimenez, a private individual[,] all of them armed with firearms, conspiring, confederating and mutually helping one another with intent to gain by means of force and violence or intimidation, did then and there willfully, unlawfully and feloniously rob and divest Lawrence Yu y Lim and Maria Irma Navarro of the following items to wit:

a. One (1) piece of necklace (gold) with pendant amounting to ₱50,000.00;

b. Two (2) pieces bracelet (gold) worth more or less ₱70,000.00;
c. One (1) Rolex watch worth ₱270,000.00;
d. One (1) men's ring worth ₱15,000.00;
e. Two (2) cellphone[s] described as Nokia 9210 & 3310;
f. One (1) Philip Chariole [sic] watch worth ₱150,000.00;
g. One (1) Philip Chariole [sic] bracelet worth ₱75,000.00;
h. One (1) solo diamond studded [sic] (3K) worth ₱500,000.00;
i. One (1) women's ring gold worth ₱12,000.00;
j. One (1) necklace gold [sic] worth ₱20,000.00;
k. One (1) [sic] cellphone[s] described as Nokia 7650 & 8855; and,
l. Cash money amounting to more or less ₱300,000.00

to the damage and prejudice of the said complainants.

CONTRARY TO LAW."

Criminal Case No. 04-1311:

That on or about the 7th day of November 2002, in the City of Makati, Metro Manila, Philippines a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping and aiding one another, with intent of gain and by means of force and violence or intimidation, did then and there willfully, unlawfully and feloniously rob and divest Irma Maria A. Navarro of the following items to wit:

a. *One (1) Chariol (sic) watch*
b. *One (1) Gold ring*
c. *One (1) Chariol (sic) bracelet*
d. *One (1) pair diamond earring (sic)*
e. *One (1) gold necklace*
f. *One (1) cellphone 7650 Nokia*
g. *One (1) cellphone 8855 Nokia*
h. *Cash money amounting to ₱120,000.00*

to the damage and prejudice of the complainant.

CONTRARY TO LAW.[19]

---

[19] CA *rollo*, pp. 59-60. Italics in the original.

The trial court set the case for pre-trial conference on 14 September 2004,[20] which was reset to 20 September 2004.[21] The parties stipulated on the following:

1. That on November 7, 2002, the three (3) accused, Trestiza, Manrique and Pineda were using an Adventure van with plate no. XAU-298;

2. That Loriemar Manrique was the team leader of the group comprising [sic] of Rodie Pineda and Reynel Jose on November 7, 2002;

3. That the incident started at the Hotel Intercon located in Makati City;

4. That Loriemar Manrique is a member of the PNP Drug Enforcement Agency;

5. That accused Froilan Trestiza was the driver of the Adventure van bearing plate no. XAU-298 on November 17, 2002;

6. That after the operation was conducted, there was never any occasion that the accused Froilan Trestiza communicated with any of the complainants;

7. None of the items allegedly lost by the complainants were recovered from accused Froilan Trestiza.[22]

The trial court summarized the testimonies during trial as follows:

The prosecution sought to establish its case by presenting the following witnesses: Ma. Irma A. Navarro, Lawrence Yu *y* Lim, PO2 Rodolfo Santiago, PO3 Rosauro P. Almonte, John Paul Joseph P. Suguitan, Angelo Gonzales, PO3 Edward C. Ramos, Schneider R. Vivas, PSInsp. Salvador V. Caro, and Chief Insp. Roseller Fabian.

The Prosecution's main evidence relies heavily upon the accounts of Irma and Lawrence who testified respectively as follows:

---

[20] Records, p. 671.

[21] *Id.* at 681.

[22] *Id.* at 688.

On November 7, 2002 at about one o'clock in the morning, Irma and her boyfriend Lawrence, both twenty-two (22) years old at the time of the incident, were at the "*Where Else Disco*" in Makati attending a party. They stayed thereat for around thirty (30) minutes only. Irma however, went out ahead of Lawrence. When she was about to proceed to where Lawrence's Honda ESI car was parked, she noticed that the said car was blocked by another vehicle which was a Mitsubishi Adventure van. Three (3) armed men later on emerged from the said van. As she was about to open the door of the Honda ESI, somebody hit her in [sic] the nape. When she turned her back, she saw the three (3) men in the company of Rodie Pineda *alias* "Buboy" ("Pineda"). She knew Pineda because the latter was her sister Cynthia's "*kumpare,*" Pineda being the godfather of Cynthia's child. Furthermore, she saw Pineda in their residence the night of November 6, 2002 as he visited his [sic] sister. She asked Pineda what was happening but the latter replied "*pasensya na, mare, trabaho lang*" ("*Bear with me, mare, this is just a job*").

She was told that the three (3) whose identities she later on learned as Capt. Lorieman Manrique, PO2 Reynel Jose and PO1 Froilan Trestiza, were policemen. She asked why she was being accosted but she was handcuffed by Manrique. She was ushered inside the Honda ESI. Pineda asked her where Lawrence was but she was left inside the car with Jose while Pineda, Trestiza and Manrique on the other hand went away apparently to look for Lawrence. Pineda and Manrique later on went back inside the Honda ESI. They drove later with Jose behind the wheels [sic] while Pineda occupied the passenger seat. They followed the Mitsubishi Adventure van which was then driven by Trestiza. Unknown to Irma, Lawrence was already inside the van at the time. They just drove and drove around ("*umiikot*"), passing through small alleys as they avoided major routes. She was asked later by Pineda to remove her jewelry. She was able to remove only her earrings as she was in handcuffs. Pineda himself removed her Philip Chariolle [sic] watch and bracelet. Her necklace and ring followed. All these were later on turned over by Pineda to Manrique. Her bag where her wallet containing the amount of ₱120,000.00 was likewise taken.

Her two (2) cellphones, a 7650 and an 8855, were likewise taken by Pineda. They stopped several times at the side streets and the accused would talk to each other. Pineda would stay with her inside the vehicle while Jose would go out and talk to the occupants of the Mitsubishi Adventure. Later on, she and Lawrence were brought

together inside the Mitsubishi Adventure van. It was there that they were told that they will not be released if they will not be able to produce one million pesos. These were all uttered by Jose and Manrique. It was somewhere in Blumentritt, San Juan where all the accused stopped for the last time. She was crying all the while.

She later on felt the call of nature, prompting her to ask permission if she could possibly relieve herself. She was accompanied by Pineda to a nearby Shell gas station in San Juan. When they returned to where they stopped, she was asked as to whom she could possibly call so that the money that the accused were asking will be produced. The accused later on asked Lawrence to make a call using his cellphone with speaker phone. Lawrence was able to get in touch with his friends John Paul Suguitan and Angelo Gonzales. The latter was told that Lawrence figured in an accident and that he needs money badly. Lawrence and his friends agreed that the money the two will produce will be brought to the Caltex gas station along Ortigas corner Wilson Street in Greenhills. They proceeded to the said place later where they waited for the friends of Lawrence. She was told later by Manrique that she better pray that the transaction pushes through. Manrique further warned her against reporting the incident to anyone lest her whole family will be held liable. She was even shown by the accused the picture of her child. She was cursed by Jose. Trestiza on the other hand told her that Lawrence's transaction should better push through.

The two, John Paul Suguitan and Angelo Gonzales, later on arrived at the gas station. Lawrence took from them what appears to be a package and handed the same to Pineda. Manrique thereafter called Pineda asking "*positive na ba?*" to which Pineda replied "*yes*." The amount raised by the friends of Lawrence was one hundred eighty thousand pesos (Php 180,000.00). They (Irma and Lawrence) were later brought to the Star Mall along Edsa. Their captors warned them not to report the matter to the authorities otherwise they will face dire consequences. The items taken from Irma like the cash money, jewelry and cellphone were placed by the men inside the console box of the Mitsubishi Adventure. When they reached Star Mall, the men talked to them for thirty minutes. Again, they were warned about the consequences of their reporting the incident to the police. Irma was told that the men knew her address, the members of her family and that they have the picture of her child. She was likewise warned not to report the matter to her father, Rod Navarro, who was an actor and a policeman, otherwise her daughter with Lawrence will be the

one [to] bear the consequences ("*anak ko ang mananagot*"). They were released after thirty (30) minutes. Lawrence had to plead for their gasoline from the accused and he was given Php 100.00.

Irma decided not to tell her mother about the incident as she was very afraid. Lawrence however made a report to the Makati police station in the evening of 7 November 2002 where he was shown a "coordination sheet" pertaining to the plate number of the Mitsubishi Adventure. Buboy Pineda in the meanwhile kept on calling them (Irma and Lawrence) demanding for their "balance" of one million pesos (Php 1,000,000.00). Irma's mother however soon learned of the incident because of a newspaper item. Her father likewise learned of the incident and lost no time in contacting authorities from the CIDG. They (Irma and Lawrence) were later investigated by the CIDG people to whom they gave their sworn statements on November 14, 2002. As Buboy Pineda continued to call them for the alleged balance, an entrapment operation was planned on that date. Boodles of money were dusted with ultra-violet powder. On the same date, Buboy Pineda called Lawrence for purposes of meeting him that night in order to get the remaining money. The entrapment operation which was conducted along the New World Hotel, and participated in by PO2 Almonte, was successful as Buboy Pineda was arrested. Recovered from the possession of Pineda were a gold necklace without a pendant; a Nokia cellphone model 7650; a Toyota corolla car with plate number PNG 214 color red and one (1) ignition key. The necessary acknowledgment receipt was duly signed by the said accused. A pawnshop ticket was likewise recovered from his possession.

Lawrence on the other hand narrated that during that fateful day of 7 November 2002 at around 1:30 o'clock in the morning, as he was stepping out from the *Where Else Disco*, he was suddenly "sandwhiched" [sic] by two (2) persons, Manrique and Trestiza. Pineda whom he likewise knew, held a gun and pointed the same to him. He was later on "lifted" through his belt and loaded to a yellow Mitsubishi Adventure. He was made to occupy the passenger seat at the back while Trestiza drove the said vehicle. Manrique occupied the seat beside Trestiza. He asked the accused who they were and he was told that they were policemen. At the time, Trestiza was wearing an outfit which was "*hip hop*" while Manrique was wearing a polo which was "*button down.*" He was cursed and told to shut up. He was asked to bow down his head as they drove along. He remembers that the accused dug into his pockets and his valuables consisting of cellphones, a 9210 and a 3310 models [sic] respectively, including

his wallet, cigarettes, watch bracelet, ring, necklace and a pair of earrings, were taken from him. He later on saw his Honda ESI car. He noticed that the Mitsubishi Adventure they riding was following the said Honda ESI. Manrique later asked him how much money did he have. When replied that his money was inside his car, Manrique allegedly retorted "*imposible*." They later on stopped in Mandaluyong near an open canal. He was asked again by Manrique about his money. At that point, another man whose name he later on learned was SPO2 Reynel Jose, boarded also the Mitsubishi Adventure. Jose asked him about his money. When he replied that his money was inside his car, Jose got mad and boxed him on his face. They later on resumed driving around. When they stopped again, Jose asked him whether he has thought of the money. When he again replied that the money was inside his car, he was boxed repeatedly by Jose. Manrique and Trestiza were seated in the front seats but did not do anything.

They resumed driving again. Jose asked him again about the money. When he gave the same response, Jose put a plastic material over his head which made him unable to breath [sic]. Jose strangled him, prompting him to shout later "*okay na, okay na. Sige na, sige na magbibigay na ako*" ("Okay, okay. I will give."). Jose stopped strangling him and immediately removed the plastic material over his head. Jose remarked that had he cooperated earlier, he would not have been hurt. Trestiza and Manrique told him that he should not have kept the matter long. Later on, the four (4) men had a brief huddle. He was later on approached by them saying "*okay na ha, isang milyon na*" ("Okey ha, it's one million). He could not recall however who in particular made the remark. He was later on instructed by Manrique to call certain persons with the information that he figured in [an] accident. He was made to use his 9210 model phone as the same had a "*speaker*" thus enabling the accused to listen to the conversation. He tried to get in touch with his siblings but failed. He was able to contact later on his friends John Paul Suguitan and Angelo Gonzales who were then in Libis. He told his friends that he needed money very badly as he had an accident. He instructed his friends to proceed to the area given by Manrique which was at the Caltex gas station along Ortigas corner Wilson Street in Greenhills.

Later on, Irma and Lawrence were allowed to be together inside the Mitsubishi Adventure. It was at that point where they were told to produce the amount of One Million pesos (Php 1,000,000.00) that night so they will be released. These very words were uttered by Jose and Manrique. Irma later on asked permission to answer the

call of nature and she was accompanied by Pineda to the Shell gas station in San Juan where she relieved herself. Upon arriving at the said gas station, Lawrence was directed to drive his Honda ESI car. He was in the company of Pineda while Irma on the other hand was with Manrique, Trestiza and Jose inside the Mitsubishi Adventure. While Irma was inside the Mitsubishi Adventure, she was told that if the person contacted by Lawrence will not show up, they will not be released and if Lawrence will escape, she will be finished off. Manrique thereafter told Irma to better pray that the transaction will push through. She was warned that if she reports the incident, her family will be harmed. The said accused had her child's picture at the time. Jose was cursing her. Trestiza on the other hand was seated at the driver side of the Mitsubishi Adventure van and remarked that Lawrence's transaction should push through so that they will be released.

Not long after, Lawrence alighted from his car and stood beside the vehicle. His friends' vehicle later on arrived. Lawrence approached the vehicle that has just arrived and took something. Pineda remained seated in Lawrence's car while smoking. The door of the said car was open at the time. Lawrence thereafter walked back to where Pineda was and handed to him a package. It was already around 4: (sic) or 4:30 in the morning. Lawrence's friends thereafter went away, prompting Pineda to call Manrique. Manrique allegedly asked "*positive na ba?*" to which Pineda replied "yes."

The amount raised by the friends of Lawrence was one hundred eighty thousand pesos (Php 180,000.00). They (Irma and Lawrence) were later brought to the Star Mall along Edsa. Their captors warned them not to report the matter to the authorities otherwise they will face dire consequences. The items taken from Irma like the cash money, jewelry and cellphone were placed by the men inside the console box of the Mitsubishi Adventure. When they reached Star Mall, the men talked to them for thirty minutes. Again, they were warned about the consequences of their reporting the incident to the police. Irma was told that the men knew her address, the members of her family and that they have the picture of her child. She was likewise warned not to report the matter to her father, Rod Navarro, who was an actor and a policeman, otherwise her daughter with Lawrence will be the one [to] bear the consequences ("*anak ko ang mananagot*"). They were released along Edsa after thirty (30) minutes. Lawrence had to plead for their gasoline from the accused and he was given Php 100.00.

Irma decided not to tell her mother about the incident as she was very afraid. Lawrence however made a report to the Makati police station in the evening of 7 November 2002 where he was shown a "coordination sheet" pertaining to the plate number of the Mitsubishi Adventure. Buboy Pineda in the meanwhile kept on calling them (Irma and Lawrence) demanding for their "balance" of one million pesos (Php 1,000,000.00). Irma's mother however soon learned of the incident because of a newspaper item. Her father likewise learned of the incident and lost no time in contacting authorities from the CIDG. They (Irma and Lawrence) were later investigated by the CIDG people to who they gave their sworn statements on November 14, 2002. As Buboy Pineda continued to call them for the alleged balance, an entrapment operation was planned on that date. Boodles of money were dusted with ultra-violet powder. On the same date, Buboy Pineda called Lawrence for purposes of meeting him that night in order to get the remaining money. The entrapment operation which was conducted along the New World Hotel, and participated in by PO2 Almonte, was successful as Buboy Pineda was arrested. Recovered from the possession of Pineda were a gold necklace without pendant; a Nokia cellphone model 7650; a Toyota corolla car with plate number PNG 214 color red and one (1) ignition key. The necessary acknowledgment receipt was duly signed by the said accused. A pawnshop ticket was likewise recovered from his possession.

Early in the morning of the following day at the CIDG, Lorieman Manrique went to the said office looking for his co-accused Froilan Trestiza. He (Manrique) was arrested thereat when the private complainants who happened to be there as they were giving additional statements identified him (Manrique) through a one-way mirror. Trestiza was likewise arrested later as he was identified by his co-accused Rodie Pineda. During the arrest, Trestiza was found to be in possession of an unlicensed firearm for which the corresponding charge was filed. He (Trestiza) was likewise the subject of the complaint sheet filed by Irma and Lawrence and was likewise identified by his co-accused Pineda as one of the cohorts in the kidnapping of the former.

The Defense on the other hand presented the following version:

Private complainants Irma Navarro and Lawrence Yu were known to accused Rodie 'Buboy' Pineda, a freelance dance instructor prior to his incarceration, and a godfather to the child of Irma's sister, since 1997. The two (Irma and Lawrence) are known to Pineda as

suppliers of prohibited drugs, particularly '*Ecstasy*,' '*blue anchors*,' and '*yeng-yen*.' The two, Irma and Lawrence have been distributing these drugs to various customers who [sic] frequented bars and disco pubs. Pineda has been transacting with the two, particularly Lawrence, for a profit. Realizing later that his involvement with the group of Lawrence has become deeper and deeper, Pineda thought of causing the arrest of the latter. He (Pineda) soon decided to report the matter to the police authorities and contacted forthwith his long-time acquaintance, now his co-accused Froilan Trestiza on November 6, 2002 at 10:30 in the evening. At that time, Trestiza was a policeman under the Special Action Unit, Group Director's Office of the National Capital Region. Pineda and Trestiza, who have known each other for the past ten years, used to be dancers at the Equinox Disco along Pasay Road. Upon learning the information from Pineda, Trestiza contacted his classmate PO2 Rolando de Guzman of the Philippine Drugs Enforcement Agency (PDEA) who in turn referred Trestiza to Captain Lorieman Manrique who was then the Deputy Chief of the Special Enforcement Unit of the PDEA, Metro Manila Regional Office. Manrique was called later by Trestiza through cellphone and they agreed to meet the same night, at around midnight, at the parking lot of the Intercontinental Hotel in Makati. Manrique prepared a Pre-Operation sheet for a possible narcotics operation. He likewise gave [the] plate number of the vehicle he was then driving which was a Mitsubishi Adventure van with plate number HAU-298.

During their ensuing meeting, Manrique was with PO2 Reynel Jose. Pineda and Manrique talked to each other. Manrique later on briefed Pineda and Jose. Trestiza was about three to five meters away from the three (3). After the briefing, Manrique asked Trestiza to drive the Mitsubishi Adventure. Manrique told Trestiza that the buy-bust operation has been pre-coordinated with the Makati police. Manrique later joined Trestiza inside the Mitsubishi Adventure while Jose and Pineda were outside as though waiting for someone. Irma and Lawrence later on arrived and they talked to Pineda and Jose. Pineda introduced Jose to Irma and Lawrence as 'the buyer.' Jose was only wearing a t-shirt at the time and it seemed Lawrence and Irma doubted him. Jose told the two that he has the money with him and he would like to buy drugs. Irma however whispered something to Lawrence prompting the latter to vascillate [sic]. From where they are seated inside the Mitsubishi Adventure, Trestiza and Manrique could see what were [sic] going on among Irma, Lawrence, Jose and Pineda. Later on, Jose approached Trestiza and Manrique and told

them that the 'pre-arranged signal' is when he (Jose) scratched his head. According further to Jose, his scratching of his head will mean a signal to Trestiza to drive towards them the vehicle. As Jose later on scratched his head, Trestiza drove the vehicle towards the group as instructed. Manrique thereafter alighted and effected the arrest of Irma and Lawrence. Irma went hysterical and was loaded into the Honda ESI while Lawrence was made to board the Mitsubishi Adventure. It was at that point when two (2) mobile cars arrived with policemen on board. A commotion immediately ensued between the police men aboard the mobile cars and Manrique's men. Firearms were drawn and poked against each of the men ('*nagkatutukan ng baril*'). Jose, however, later on showed what appeared to be a document to the men aboard the mobile car. One of the men later on made a call through his radio and then left afterwards.

Manrique later on instructed Trestiza to drive towards Edsa on their way to Camp Crame. Along the way, Manrique conducted a tactical interrogation against Lawrence and Irma about their drug-related activities. Upon reaching SM Megamall, however, Manrique told Trestiza to pull over. Manrique talked to Lawrence, Irma, Jose and Pineda. Trestiza remained inside the van. Trestiza, however, overheard that Lawrence was at that point was talking about his supplier of '*ecstasy*.' Thereafter, Manrique briefed anew Pineda and Jose in the presence of Irma and Lawrence. It was understood among them that Lawrence will wait for his alleged supplier whose name was allegedly 'Jojo' at the Caltex gas station along Wilson Street in Greenhills. Lawrence told Manrique that this Jojo was really a big-time supplier of *ecstasy* and cocaine. Upon arriving at the gas station, the group waited for Lawrence's supplier for an hour but nobody appeared. Manrique became impatient and went to where Lawrence was. Manrique later told his men that Lawrence might have alerted his supplier. He (Manrique) then decided to bring the two (Irma and Lawrence) to Camp Crame. Trestiza, however, pointed out to Manrique that nothing was taken from the possession of the two. Manrique conferred anew with Jose. Jose remarked that the items could have been thrown away. It was later on decided that Irma and Lawrence will just be released. The two were indeed released near the [Manuela] Complex along Edsa.

Trestiza was later on arrested by the CIDG operatives in the early morning of November 16, 2002 at the parking lot of the Club 5 Disco. A gun was poked at him and he was shoved inside a vehicle. He was boxed and placed on handcuffs. He was not shown any warrant

of arrest. He told the arresting officers that he is also a policeman. He was brought later to Camp Crame. While at Camp Crame, he was shown to his co-accused Pineda and the latter was asked "*di ba sya yung nag-drive noong may operation laban kina Irma Navarro?*" ("Is he not the one who drove during the operation against Irma Navarro?"). He (Trestiza) asked the authorities what were the grounds for detaining him but his queries were not answered. His watch, wallet and cellphone were taken. Later on the same day, Irma arrived in Camp Crame. The authorities thereat talked to Irma, afterwhich, a policeman told her "*eto yung itinuturo ni Buboy na nag-drive.*" ("This is the one pointed to by Buboy as the one who drove"). Several days later, all the accused were presented to the press by the office of General Matillano. The Philippine Daily Inquirer covered the story and later on came out with an article entitled "*We Were Framed.*"

The defense likewise presented PO2 Rolando de Guzman who corroborated the claim of Trestiza that he was called by the latter concerning the information given by Pineda. No further evidence was presented.[23]

The Trial Court's Ruling

In its Joint Decision[24] dated 24 July 2007, the trial court found Trestiza, Manrique, and Pineda guilty beyond reasonable doubt as principals by direct participation of the crime of Kidnapping for Ransom.

The trial court concentrated its ruling on the credibility of the witnesses. It found the testimonies of the prosecution credible, with their versions of the incident dovetailing with each other even on minor details. On the other hand, the defense's testimonies taxed the credulity of the trial court. The trial court raised numerous questions about the defense's story line:

x x x But this leads the court to wonder: if indeed Pineda was so bothered by his involvement with the group of Lawrence, why did he spill the beans against Irma and Lawrence only? Did he not state that it was a "***group***" that he was transacting with? Who were the other members of this group? What were their activities that were

---

[23] CA *rollo*, pp. 61-69. Italics in the original.

[24] *Id.* at 58-73.

so dark and clandestine so as to make him suddenly shudder and opt for a change of life? These were not answered by Pineda's testimony.

Also, while Manrique presented what appears to be a Pre-Operation Coordination Report, thus creating at first glance the impression that theirs was a legitimate police operation, this still does not detract from nor diminish the credibility of the complainants' claim that they were subsequently abducted and money was demanded in exchange for their release. For even if the court is to indulge the claim of the defense that the complainants were indeed drug-pushers and undeserving of this court's sympathy, the nagging doubt about the existence of a prepared police operation as what Manrique and his co-accused refer to, persists. For one, the said Pre-Operation/ Coordination Sheet appears to be unreliable. Aside from the fact that the same was not duly authenticated, the failure of the defense, particularly accused Manrique, to summon the signatories therein who may attest to the existence and authenticity of such document was not at all explained. Second, all the accused narrated about their almost-fatal encounter with another group of policemen while they were allegedly in the act of conducting the supposed buy-bust operation against the complainants. This event, to the view of this court, only invites the suspicion that the Pre-Operation/Coordination Sheet was dubious if not actually non-existent.

The accused likewise claimed that they released the two later along Edsa as nothing was found on them. The manner of the release, however, raises several questions: why were the complainants who were earlier suspected of being drug-pushers not brought to the police precinct? Did not Lawrence volunteer the name of his alleged supplier earlier during the tactical interrogation? Why were they unloaded just like that along Edsa at that ungodly hour? Was there an incident report on the matter considering that Manrique was mindful enough earlier to first secure a Pre-Operation/Coordination sheet?[25]

The dispositive portion of the trial court's Decision states:

WHEREFORE, premises considered, judgment is hereby rendered in Criminal Case No. 02-3393 finding the accused PO1 FROILAN TRESTIZA *Y* LACSON, P/INSP LORIEMAN L. MANRIQUE and RODIE PINEDA *Y* JIMENEZ **GUILTY** beyond reasonable doubt as principals by direct participation of the crime of KIDNAPPING

---

[25] *Id.* at 71-72.

for RANSOM, and they are hereby sentenced to suffer the penalty of ***RECLUSION PERPETUA***. In addition thereto, they are ordered to pay, jointly and severally, the private complainants the sums of PHP 300,000.00 as actual damages, and PHP 300,000.00 as exemplary damages. All the accused are ACQUITTED in Criminal Cases Nos. 03-766 and 04-1311 both for Robbery respectively.

Send the records of this case to the archives in so far as accused PO2 Reynel Jose, who continues to be at large, is concerned. Let, however, a Warrant of Arrest be issued against him.

SO ORDERED.[26]

On the same date as the promulgation of its decision, the trial court issued an Order of Commitment[27] of Trestiza, Manrique, and Pineda to the Director of the Bureau of Corrections.

On 27 July 2007, Trestiza, Manrique, and Pineda filed a Motion for New Trial and for Inhibition. Two witnesses, Camille Anne Ortiz *y* Alfonso (Ortiz) and Paulo Antonio De Leon *y* Espiritu (De Leon), allegedly intimate friends of Navarro and Yu, will testify as to the circumstances which took place in the early morning of 7 November 2002. Their testimonies, if admitted, will allegedly result in the acquittal of Trestiza, Manrique, and Pineda. These witnesses are not known to the accused, and they could not have been produced during trial. Moreover, the accused are of the belief that trial court judge Zenaida T. Galapate-Laguilles acted with bias against them. She allegedly made an off-the-record remark and stated that the prosecution failed to establish what they sought to prove, but then later on questioned the existence of the defense's Pre-Operation/Coordination Sheet in her decision. Judge Galapate-Laguilles also failed to resolve the Petition for Bail, and failed to point out discrepancies in the testimonies of the defense's witnesses, particularly those regarding the arrests of Trestiza, Manrique, and Pineda.

The prosecution opposed the Motion for New Trial and Inhibition.[28] De Leon shared a cell with Manrique since July

---

[26] *Id.* at 73.

[27] Records, p. 1093.

[28] *Id.* at 1123-1131.

2003, while the trial was ongoing, and hence De Leon's supposed testimony should not be considered "newly discovered" evidence. On the other hand, Ortiz's narration of events in her affidavit is full of inconsistencies. The prosecution likewise questioned the credibility of the witnesses who allegedly heard Judge Galapate-Laguilles' off-the-record remark. One was Trestiza's relative, while the other was a security escort who was supposed to stay outside the courtroom. Finally, the motion itself was filed late. The supplement to the motion, to which the affidavits of the additional witnesses were attached, was filed two days after the finality of the trial court's decision. Copies of the decision were furnished to both prosecution and defense on 24 July 2007, which was also the date of promulgation. The Motion for New Trial and Inhibition was dated 27 July 2007, while the Supplement to the Motion which included the witnesses' affidavits was dated 10 August 2007.

The trial court held hearings on the twin motions. On 3 October 2007, the trial court issued an Order[29] denying the Motion for New Trial and for Inhibition. The evidence presented was merely corroborative, and the prosecution was able to prove its case despite the judge's alleged off-the-record equivocal remark.

On 19 October 2007, Trestiza, Manrique, and Pineda filed a notice of appeal.[30] The Order denying the Motion for New Trial and for Inhibition was received on 18 October 2007, while the Motion for New Trial and for Inhibition was filed on 27 July 2007 or three days after the promulgation of the Decision on 24 July 2004. The trial court gave due course to the notice of appeal.[31] In their brief filed with the appellate court, Trestiza, Manrique, and Pineda assigned the following errors:

The trial court erred in convicting accused Trestiza despite the fact that he was not part of the alleged conspiracy in that it was not stipulated during the pre-trial that he was just the driver and was not

---

[29] *Id.* at 1157-1161.

[30] CA *rollo*, p. 75.

[31] *Id.* at 76.

part of the team. Besides, he did not perform any act in furtherance of the alleged conspiracy.

The trial court erred in giving credence to the testimonies of private complainants Lawrence Yu and Irma Navarro as their demeanor in the witness stand show hesitation indicative of guilt of fabrication and their testimonies lack spontaneity and were not straightforward.

The trial court erred in giving credence to the testimonies of prosecution witnesses John Paul Suguitan and Angelo Gonzales as they alleged facts and circumstance that are contrary to human nature and experience.

The trial court erred in convicting the accused despite the fact that the complainants were arrested in a legitimate operation as evidenced by the Pre-Operation/Coordination Sheet which was authenticated by accused-appellant Manrique.[32]

The Appellate Court's Ruling

On 30 June 2008, the appellate court dismissed the appeal and affirmed the trial court's decision.

In its recitation of facts, the appellate court quoted from the People's Brief for the prosecution and from the trial court for the defense. The appellate court ruled that Trestiza's contention that he was just the driver of the van and never communicated with the witnesses deserves scant consideration. Yu identified Trestiza as one of the two men who sandwiched him as he left Where Else Disco, and insisted that Yu cooperate with Jose when Jose asked Yu for cash. Trestiza's acts thus show that he acted in concert with his co-accused in the commission of the crime. The appellate court relied on the trial court's assessment of the reliability of the prosecution's witnesses, and gave credence to their testimonies. The appellate court declared that all the elements of kidnapping for ransom are present and thus affirmed the trial court's decision:

---

[32] *Id.* at 89.

In any event, it was established that all the elements constituting the crime of kidnapping for ransom in the case at bar are present. The elements of kidnapping for ransom under Article 267 of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) 7659 are as follows: (a) intent on the part of the accused to deprive the victim of his liberty; (b) actual deprivation of the victim of his liberty; and (c) motive of the accused, which is extorting ransom for the release of the victim (*People vs. Raul Cenahonon*, 527 SCRA 542). Here, Navarro and Yu testified how they were abducted at gun point from the parking lot in Makati and confined inside the car and van respectively; that they were both handcuffed, hence, deprived of their liberty and that appellants made a demand for them to deliver a certain amount in exchange for their release.

In fine, the Court rules and so holds that appellants' guilt for the offense of kidnapping for ransom has been proven beyond moral certainty of doubt.

WHEREFORE, the decision appealed from is hereby AFFIRMED and this appeal is hereby DISMISSED.

SO ORDERED.[33]

Trestiza alone filed a Motion for Reconsideration[34] of the appellate court's decision. In his Motion, Trestiza claimed that he alone, through counsel, filed an appeal brief. Trestiza further claimed that the stipulations made during pre-trial established Trestiza's limited involvement, that is, he was merely a driver of the vehicle when the alleged crime took place, he never communicated with the complainants, and none of the items allegedly taken from the complainants were recovered from Trestiza's possession. The trial court did not mention nor discuss these stipulations in its decision. Even the trial court's finding of facts shows Trestiza's participation was merely that of an invited driver in a legitimate Philippine Drug Enforcement Agency (PDEA) drug bust operation. Moreover, the testimonies of witnesses of both prosecution and defense establish that Trestiza was a member of the Philippine National Police (PNP) when he allegedly committed the crime. Under the circumstances,

---

[33] *Rollo*, pp. 25-26.

[34] CA *rollo*, pp. 609-633.

Trestiza claimed he should be held liable only for Arbitrary Detention. Finally, Trestiza's identification was not only improper for being suggested, but his warrantless arrest should also be held invalid.

The Office of the Solicitor General (OSG) filed a comment opposing Trestiza's Motion for Reconsideration. The stipulations do not discount that Trestiza conspired with his co-appellants Manrique and Pineda in committing the crime charged. The apprehension and detention of Navarro and Yu were clearly effected for the purpose of ransom; hence, the proper crime really is Kidnapping with Ransom. Trestiza filed a Reply to the Comment[35] on 20 October 2009.

The appellate court denied Trestiza's Motion for Reconsideration in a Resolution dated 11 November 2009.[36] An examination of the appellants' brief showed that the brief was filed for Trestiza, Manrique and Pineda. The appellate court found no compelling reason to warrant consideration of its decision.

Trestiza still filed a Notice of Appeal[37] of the appellate court's decision on 10 January 2010. The appellate court initially denied[38] Trestiza's Notice of Appeal due to late filing, but eventually granted[39] Trestiza's Motion for Reconsideration[40] of the 16 February 2010 resolution denying his Notice of Appeal.

Trestiza filed the present supplemental brief[41] before this Court on 15 August 2011. In his brief, Trestiza emphasized that Yu was apprehended by agents of the PNP and PDEA on 30 June 2011 during a raid of an illegal drugs laboratory.

---

[35] *Id.* at 653-663.

[36] *Id.* at 665-667.

[37] *Id.* at 672-673.

[38] *Id.* at 676.

[39] *Id.* at 701-704.

[40] *Id.* at 687-699.

[41] *Rollo*, pp. 59-122.

Yu was charged with the crime of manufacturing, possessing, and selling illegal drugs under Sections 8, 11, and 12, Article II of Republic Act No. 9165.

The Issues

Trestiza raised the following arguments against the appellate court's decision:

I. The supervening event involving the apprehension of Lawrence L. Yu as the head of a big-time drug syndicate throws his credibility as a witness beneath the abyss of morass and decay that must be now totally discarded.

II. The facts and circumstances surrounding the above-entitled case is consistent with the innocence of [Trestiza] rendering the evidence presented insufficient and without moral certainty to support a conviction.

III. At the very least, the "equipoise rule" finds application in the case at bar, taking into consideration the supervening event that demolished the credibility of the witnesses presented by the prosecution.

IV. The Constitutional presumption of innocence of [Trestiza] has not been overwhelmed by the tainted testimony and total lack of credibility of Lawrence L. Yu and, in light of the supervening event, could not now be overcome by questionable testimonies presented by the prosecution.

V. The conviction of an innocent man is a great injustice that affects the very foundations of humanity.

VI. It was not sufficiently shown that all the accused in the above-entitled case conspired in committing the crime of Kidnapping for Ransom and the same was not proven by proof beyond reasonable doubt.

VII. [Trestiza] has no malicious or evil intent in acquiescing to drive the vehicle used in the buy-bust operation.

VIII. [Trestiza] is innocent of the crime of Kidnapping for Ransom.[42]

---

[42] *Id.* at 66-87.

<u>The Court's Ruling</u>

At the outset, we declare that the 30 June 2011 arrest of Yu has no bearing on the present case. The two cases are independent of each other and should be treated as such. Yu's innocence or guilt regarding his 30 June 2011 arrest does not affirm or negate the commission of the crime of Kidnapping for Ransom against him.

<u>*Warrantless Arrest*</u>

These are the circumstances surrounding Trestiza's arrest: Pineda had been contacting Yu to follow up on the balance on the ransom. Pineda was then arrested pursuant to an entrapment operation conducted in the early morning of 16 November 2002 at New World Hotel. During the investigation at Camp Crame, Pineda revealed that Trestiza could be found at Club 5 in Makati. Pineda and Yu accompanied the arresting team to Club 5. Yu pointed out Trestiza to the arresting team while Trestiza was on his way to his black Hummer.[43]

Trestiza questioned the legality of his warrantless arrest in an Omnibus Motion[44] filed before his arraignment. In its Order dated 19 August 2004, the trial court stated that the quashal of the informations on account of Trestiza's illegal arrest is not warranted. The determination of the nature of the arrest goes directly into the merits of the case, and needs a deeper judicial determination. Matters of defense are not grounds for a Motion to Quash. The trial court, however, did not make any ruling related to Trestiza's warrantless arrest in its 24 July 2007 Decision.

Section 5, Rule 113 of the 2000 Rules of Criminal Procedure enumerates the instances when warrantless arrests are lawful.

Sec. 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:

---

[43] TSN, 23 November 2004, pp. 5-41 (PO3 Rosauro P. Almonte).

[44] Records, pp. 565-584.

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

It is clear that Trestiza's warrantless arrest does not fall under any of the circumstances mentioned in Section 5, Rule 113. However, Trestiza failed to make a valid objection to his warrantless arrest.

Any objection to the procedure followed in the matter of the acquisition by a court of jurisdiction over the person of the accused must be opportunely raised before he enters his plea; otherwise, the objection is deemed waived.[45] Trestiza, being a policeman himself, could have immediately objected to his warrantless arrest. However, he merely asked for the grounds for his arrest. He did not even file charges against the arresting officers. There was also a lengthy amount of time between Trestiza's arrest on 16 November 2002 and the filing of the Omnibus Motion objecting to Trestiza's warrantless arrest on 11 May 2004. Although it may be argued that the objection was raised prior to the entry of Trestiza's plea of not guilty in the kidnapping for ransom charge, it must be noted that the circumstances of the present case make us rule otherwise. Trestiza was charged with two crimes at the time of his arrest: kidnapping with ransom under Criminal Case No. 02-3393 and illegal

---

[45] *De Asis v. Hon. Romero*, 148-B Phil. 710, 716-717 (1971). Citations omitted.

possession of firearms under Criminal Case No. 02-3394. Trestiza did not question the legality of his warrantless arrest nor the acquisition of jurisdiction of the trial court over his person, and fully participated in the hearing of the illegal possession of firearms case. Thus, Trestiza is deemed to have waived any objection to his warrantless arrest. Under the circumstances, Trestiza's Omnibus Motion in the kidnapping for ransom case is a mere afterthought and cannot be considered as a timely objection.

Assuming *arguendo* that Trestiza indeed made a timely objection to his warrantless arrest, our jurisprudence is replete with rulings that support the view that Trestiza's conviction is proper despite being illegally arrested without warrant. In *People v. Manlulu*, the Court ruled:

> [T]he illegality of the warrantless arrest cannot deprive the State of its right to prosecute the guilty when all other facts on record point to their culpability.[46]

Indeed, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error.[47] The fatal flaw of an invalid warrantless arrest becomes moot in view of a credible eyewitness account.[48]

Kidnapping with Ransom

The trial court's findings of facts, its calibration of the collective testimonies of witnesses, its assessment of the probative weight of the evidence of the parties, as well as its conclusions anchored on the said findings, are accorded great weight, and even conclusive effect, unless the trial court ignored, misunderstood

---

[46] G.R. No. 102140, 22 April 1994, 231 SCRA 701, 710 *citing People v. Briones*, G.R. No. 90319, 15 October 1991, 202 SCRA 708.

[47] *People v. Calimlim*, 416 Phil. 403, 420 (2001). See also *People v. De Guzman,* G.R. Nos. 98321-24, 30 June 1993, 224 SCRA 93; *People v. De Guia*, G.R. Nos. 107200-03, 9 November 1993, 227 SCRA 614; *People v. Lopez*, 315 Phil. 59 (1995); *People v. Conde*, 408 Phil. 532 (2001).

[48] *People v. Manlulu*, *supra*.

or misinterpreted cogent facts and circumstances of substance which, if considered, would alter the outcome of the case. This is because of the unique advantage of the trial court to observe, at close range, the conduct, demeanor and the deportment of the witnesses as they testify.[49] We see no reason to overrule the trial court's finding that Trestiza is guilty of kidnapping with ransom.

Article 267 of the Revised Penal Code provides:

> Art. 267. *Kidnapping and serious illegal detention.* — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:
>
> 1. If the kidnapping or detention shall have lasted more than three days.
>
> 2. If it shall have been committed simulating public authority.
>
> 3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
>
> 4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.
>
> The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances abovementioned were present in the commission of the offense.
>
> When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

Before the present case was tried by the trial court, there was a significant amount of time spent in determining whether kidnapping for ransom was the proper crime charged against the accused, especially since Trestiza and Manrique were both police officers. Article 267 of the Revised Penal Code specifically

---

[49] *People v. Tonog, Jr.*, G.R. No. 144497, 29 June 2004, 433 SCRA 139, 153-154.

stated that the crime should be committed by a private individual.[50] The trial court settled the matter by citing our ruling in *People v. Santiano,*[51] thus:

> The fact alone that appellant Pillueta is an organic member of the NARCOM and appellant Sandigan a member of the PNP would not exempt them from the criminal liability of kidnapping. It is quite clear that in abducting and taking away the victim, appellants did so neither in furtherance of official functions nor in the pursuit of authority vested in them. It is not, in fine, in relation to their office, but in purely private capacity that they have acted in concert with their co-appellant Santiano and Chanco.

In the same order, the trial court asked for further evidence which support the defense's claim of holding a legitimate police operation. However, the trial court found as unreliable the Pre-Operation/Coordination Sheet presented by the defense. The sheet was not authenticated, and the signatories were not presented to attest to its existence and authenticity.

The second to the last paragraph of Article 267 prescribes the penalty of death when the extortion of ransom was the purpose of the kidnapping. Yu and Navarro were released only after they were able to give various personal effects as well as

---

[50] See *Luis B. Reyes*, 2 *The Revised Penal Code: Criminal Law* 542 (1998).

The following are the elements of the crime:

1. That the offender is a *private individual.*

2. That he *kidnaps* or *detains* another, or in any other manner *deprives* the latter of his *liberty.*

3. That the act of detention or kidnapping must be *illegal*.

4. That in the commission of the offense, any of the following circumstances is present:

(a) That the kidnapping or detention lasts for more than 3 days;

(b) That it is committed simulating public authority;

(c) That any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or

(d) That the person detained is a minor, female or a public officer.

[51] 359 Phil. 928, 943 (1998).

cash amounting to ₱300,000, with the promise to give the balance of ₱1,000,000 at a later date.

Trestiza insists that his participation is limited to being a driver of the Mitsubishi Adventure van. Yu testified otherwise.

Direct Examination of Lawrence Lim Yu

Atty. Oledan:
Q: What happened [after you left Wherelse Disco]?

Witness:
A: As soon as I stepped out of the Wherelse Disco, somebody bumped me at my right side. And then later on, I was "sandwiched" by two (2) persons and when I looked up, I noted the presence of one (1) man immediately in front of me holding a gun.

Q: And these men who "sandwiched" you and the third men [sic] who held the gun in front of you, would you be able to identify them?
A: Yes, ma'am.

Q: Are they inside this Courtroom?
A: Yes, ma'am.

Q: Will you please identify them?
A: The three of them, ma'am.

At this juncture, the witness is to pointing to the three (3) men, who are the accused in this case, inside the Courtroom.

COURT: (To the Accused) Again, for the record, please stand up, gentlemen.

At this juncture, the three (3) accused stood up.

COURT: (To Witness) Are you sure these were the three (3) men whom you are referring to?

WITNESS:
A: Yes, ma'am.

COURT: Make it of record that the witness pointed to accused PO1 Froilan Trestiza, PSINP Loriemar Manrique and Rodie Pineda.

ATTY. OLEDAN:
Q: (To Witness) Specifically, who among these three (3) "sandwiched" you?

WITNESS:
A: It was PO1 Trestiza and Capt. Manrique.

x x x x x x x x x

Q: What happened after you were brought inside the Mitsubishi vehicle?
A: Later on, Officer Trestiza and Capt. Manrique likewise boarded the Mitsubishi Adventure.

x x x x x x x x x

Q: Who was driving the vehicle?
A: It was Froilan Trestiza, ma'am.

x x x x x x x x x

Q: After [Reynel Jose] said [that had Yu cooperated earlier, he would not have been hurt] and the plastic removed from your head, what did [sic] the two, Trestiza and Manrique, doing?
A: They told me the same thing. They told me that I should not have kept the matter long.

Q: What happened after that?
A: After that, Reynel Jose alighted again and we drove towards an area, which I know now to be within San Juan. Right in front of the Tambunting Pawnshop.

Q: What happened at the Tambunting Pawnshop? Did the vehicle stop there?
A: The two (2) vehicles parked there beside each other.

Q: What happened when you were there at Tambunting Pawnshop?
A: After parking in front of the Tambunting Pawnshop, they boarded Irma and have her sat [sic] beside me. Then after which, the door at my left side was opened.

Q: What else happened?
A: They told me not to make any move, that I just keep on sitting there. Afterwards, the men huddled with each other ("*nagkumpul-kumpol po sila*").

Q: Where did they huddle?
A: They huddled in an area close to me, almost in front of me.

Q: Who among the accused huddled together?
A: The four (4) of them, ma'am.

Q: How long did they huddle?
A: For a while only, ma'am, around (10) ten minutes.

Q: After ten (10) minutes, what happened?
A: After ten (10) minutes, Buboy approached me.

Q: What did he say?
A: He told me that they thought my money would be One Million Pesos (₱1,000,000.00).

x x x x x x x x x

Q: So, after that huddle, after you were told by Buboy that "*okay na 'yong one million*" and that was confirmed by one of the three (3) men who said "*isang million na*," what happened?
A: I was talking to Buboy at that time and I was telling him, "Why do you have to do this to me? You are the '*kumpare*' of the elder sister of Irma."

Q: What did Buboy say to that?
A: Buboy retorted, "*Pare, pasensya na, pera pera lang 'yan*."

Q: After Buboy said that, what happened?
A: I told him that he need not do that, because if he needs money, I can always lend him.

Q: What did Buboy say?
A: After saying this to Buboy, he told me to just shut up and then he later on handed over to me a cell phone and told me to contact a person, who can give me money.

Q: Who handed you your cell phone?
A: It was Froilan Trestiza, ma'am.

x x x x x x x x x

Q: After that were you told to go home already?
A: Not yet, ma'am. Before letting us go, they threatened us. They reminded us that they have our IDs, the pictures of our children and the members of our family.

Q: What did you do after that?
A: We just kept on saying yes because we wanted to go home already.

Q: What time was that?
A: It was almost daybreak ("*mag-uumaga na*"). I have no watch already at that time, ma'am.

Q: So, what did you do after that?
A: After that, Froilan Trestiza handed to me my sim card telling me that they will be calling me in my house concerning my alleged balance.[52]

We agree with the appellate court's assessment that Trestiza's acts were far from just being a mere driver. The series of events that transpired before, during, and after the kidnapping incident more than shows that Trestiza acted in concert with his co-accused in committing the crime. Conspiracy may be implied if it is proved that two or more persons aimed their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent of each other, were, in fact, connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment.[53]

Trestiza's civil liability is joint and several with Manrique and Pineda. They are liable for the ₱120,000 taken from Navarro and the ₱180,000 raised by Yu. In line with prevailing jurisprudence,[54] Trestiza is also liable for ₱75,000 as civil indemnity which is awarded if the crime warrants the imposition of death penalty; ₱75,000 as moral damages because the victim is assumed to have suffered moral injuries, without need of proof; and ₱30,000 as exemplary damages.

WHEREFORE, we *DENY* the petition. The Decision of the Court of Appeals in CA-G.R. H.C. No. 03119 promulgated on 30 June 2009, as well as the Resolution promulgated on 11 June 2010, is *AFFIRMED with MODIFICATION*. Froilan L.

---

[52] TSN, 11 July 2005, pp. 13-15, 20-21, 48-51, 53-54, 81-82.

[53] *People v. Pagalasan*, 452 Phil. 341, 363 (2003) paraphrasing *Regina v. Murphy*, 172 Eng. Rep. 502 (1837).

[54] *People v. Bautista*, G.R. No. 188601, 29 June 2010, 622 SCRA 524. Citations omitted.

Trestiza is guilty beyond reasonable doubt of Kidnapping in Criminal Case No. 02-3393 and is sentenced to suffer the penalty of *reclusion perpetua*, as well as the accessory penalties provided by law. In addition to the restitution of ₱300,000 for the ransom, Trestiza is ordered to pay Lawrence Yu and Irma Navarro ₱75,000 as civil indemnity, ₱75,000 as moral damages, and ₱30,000 as exemplary damages.

Costs against Froilan L. Trestiza.

SO ORDERED.

Brion, Perez, Sereno, and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 195167. November 16, 2011]

FERNANDO CO (formerly doing business under the name "Nathaniel Mami House"),* *petitioner, vs.* **LINA B. VARGAS,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW UNDER RULE 45; QUESTION OF FACT WHICH REQUIRES A REVIEW OF THE EVIDENCE PRESENTED MAY NOT BE RAISED. —** In this case, it was only in petitioner's Supplement to the Motion for Reconsideration of the Court of Appeals' Decision that petitioner raised the issue that contrary to the findings of the Labor Arbiter, NLRC, and the Court of Appeals, the bakery was not located at his residence at the time respondent was in their employ. Furthermore, petitioner would even have this Court evaluate additional documentary evidence which were not offered during

---

* Also known as "Nathaniel's Bakeshop."

the proceedings in the Labor Arbiter, NLRC, and the Court of Appeals. The additional evidence were only submitted after the Court of Appeals promulgated its Decision, when petitioner attached the additional evidence in his Supplement to the Motion for Reconsideration. The issue raised by petitioner is clearly a question of fact which requires a review of the evidence presented. The Supreme Court is not a trier of facts. It is not the function of this Court to examine, review or evaluate the evidence all over again, specially on evidence raised for the first time on appeal.

2. **ID.; ID.; ID.; THE COURT WILL NOT REVIEW THE FINDINGS OF FACT OF THE COURT OF APPEALS; EXCEPTIONS, NOT PRESENT. —** As a rule, the findings of fact of the Court of Appeals are final and conclusive and this Court will not review them on appeal, subject to exceptions x x x Petitioner failed to show that this case falls under any of the exceptions. The finding of the Labor Arbiter that petitioner's bakery and his residence are located at the same place was not reversed by the NLRC. Furthermore, the Court of Appeals upheld this finding of the Labor Arbiter. We find no justifiable reason to deviate from the findings and ruling of the Court of Appeals.

APPEARANCES OF COUNSEL

Caguioa & Gatmaytan for petitioner.

R E S O L U T I O N

CARPIO, *J*.:

The Case

This petition for review[1] assails the 29 June 2010 Decision[2] and the 5 January 2011 Resolution[3] of the Court of Appeals in

---

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 12-25. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Mario V. Lopez and Amy C. Lazaro-Javier, concurring.

[3] *Id.* at 86-87.

CA-G.R. SP No. 110728. The Court of Appeals set aside the 11 June 2008 Decision[4] of the National Labor Relations Commission (NLRC) and reinstated the 30 October 2004 Decision[5] of the Labor Arbiter.

The Facts

On 22 April 2003, respondent Lina B. Vargas (respondent) filed against Nathaniel Bakeshop and its owner Fernando Co a complaint for underpayment or non-payment of wages and holiday pay.[6] The complaint was later amended to include illegal dismissal as a cause of action and the non-payment of service incentive leave.[7]

Respondent alleged that she started working at the bakeshop in October 1994 as a baker and worked from 8:00 a.m. until 8:30 p.m., Monday to Saturday. Aside from baking, respondent also served the customers and supervised the other workers in the absence of the owner. Furthermore, respondent claimed that she sometimes cooked and did the chores of a housemaid whenever the latter was not available. Respondent had a salary of ₱220 per day, which she received every Saturday afternoon. During the period of her employment, respondent was not given a payslip and she was never asked to sign a payroll.

On 6 April 2003, petitioner Co's wife, Nely Co, told respondent to cook their lunch because the housemaid was ironing clothes. Since respondent was busy preparing customers' orders, she lost track of time and was unable to cook lunch as instructed. Irate at respondent's failure to cook, Nely Co cussed respondent and told her to leave and never to return because she was not needed anymore. Respondent was so humiliated and could no longer bear the treatment she received from her employers that she decided to take her salary and leave that same day. Respondent

---

[4] CA *rollo*, pp. 245-264.

[5] *Id.* at 110-125.

[6] *Id.* at 28-29.

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

later filed the complaint against Nathaniel Bakeshop and its owner Fernando Co.

Petitioner denies respondent's claim that she was employed as a baker in their business. Petitioner alleges that they hired respondent to work as a housemaid. Petitioner refutes respondent's version of the events which allegedly happened on 6 April 2003. Petitioner alleges that in April 2003, his wife, Nely Co, reprimanded respondent for her failure to cook lunch on time. Angered at being reprimanded, respondent then demanded her salary and walked out of petitioner's residence and has never reported for work again. Petitioner further avers that respondent badmouthed petitioner's daughter and displayed defiance, disrespect and insubordination toward them.

On 30 October 2004, the Labor Arbiter rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding illegal complainant's dismissal. Consequently, respondents are hereby held liable and ordered to reinstate complainant to her former position without loss of seniority rights and other privileges with full backwages initially computed at this time at ₱110,436.04.
>
> In case reinstatement becomes impossible due to some supervening event, respondents are also ordered to pay complainant's separation pay computed at one month's pay for every year of service.
>
> Respondents are likewise ordered to pay complainant's service incentive leave of ₱3,332.50, 13th month pay (pro-rata) of ₱1,551.66 and salary differential of ₱1,723.41.
>
> All other claims are hereby dismissed for lack of merit.
>
> SO ORDERED.[8]

The Labor Arbiter found that the place of business of petitioner is the same as his place of residence and that respondent works for petitioner as well as for his business which is based in his home. Thus, the Labor Arbiter concluded

---

[8] *Id.* at 124-125.

that "while complainant may have started her employ doing chores for the [petitioner's] family, she also fulfilled tasks connected with the [petitioner's] business such as cooking, filling orders, baking orders, and other clerical work, all of which are usually necessary and desirable in the usual trade or business of the respondent. Inescapably, complainant is a regular employee and thus, entitled to security of tenure."[9]

On appeal, the NLRC reversed and set aside the Labor Arbiter's Decision. The NLRC concluded that respondent was not employed as a baker at petitioner's bakeshop but was merely petitioner's housemaid who left her employ voluntarily. The NLRC found petitioner not guilty of illegal dismissal.

Respondent filed a petition for *certiorari* with the Court of Appeals.

The Ruling of the Court of Appeals

On 29 June 2010, the Court of Appeals promulgated its Decision in favor of respondent. The Court of Appeals annulled the NLRC Decision and reinstated the 30 October 2004 Decision of the Labor Arbiter. The Court of Appeals ruled:

> **[I]t is clear that petitioner [Lina B. Vargas] is not a househelper or domestic servant of private respondents [Nathaniel Bakeshop and Fernando Co]. The evidence shows that petitioner is working within the premises of the business of private respondent Co and in relation to or in connection with such business. In the Memorandum of Appeal filed by private respondents before the NLRC, the place of business of respondent Co and his residence is located in the same place, Brgy. Juliana, San Fernando, Pampanga. Thus, respondent Co exercised control and supervision over petitioner's functions.** Respondent Co's averment that petitioner had the simple task of cleaning the house and cooking at times and was not involved in the business was negated by the fact that petitioner likewise takes the orders of private respondents' customers. Even if petitioner was actually working as domestic servant in private respondent's residence, her act of taking orders, which was ratiocinated by the NLRC as not leading to the

---

[9] *Id.* at 121.

conclusion that petitioner in fact took the orders, would warrant the conclusion that petitioner should be considered as a regular employee and not as a mere family househelper or domestic servant of respondent Co.

Private respondents relied heavily on the recantation (through an Affidavit of Recantation) by Joseph Baybayon of his Affidavit stating that petitioner was an employee, to boast [sic] their theory that petitioner is a mere domestic helper. Nonetheless, this Court is convinced that the allegations in the first affidavit are sufficient to establish that petitioner is an employee of private respondent and not a housemaid. Granting *arguendo*, that the second affidavit validly repudiated the first one, courts generally do not look with favor on any retraction or recanted testimony, for it could have been secured by considerations other than to tell the truth and would make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses. A recantation does not necessarily cancel an earlier declaration, but like any other testimony, the same is subject to the test of credibility and should be received with caution.

Having resolved the issue that petitioner was an employee of private respondents and not a housemaid, was petitioner illegally dismissed? The answer is in the affirmative. Since petitioner is an employee of private respondents, she is entitled to security of tenure. The NLRC observed that it was petitioner who left private respondents on April 6, 2003 when petitioner was allegedly driven away from work by Nely Co. Private respondents' witnesses, Jay dela Cruz and Maria Fe Reniva, averred that it was petitioner who abandoned her job by not reporting for work. But their affidavits did state that the two were employees of private respondent. The other two documents considered by the NLRC were the affidavits of Felisa Borason San Andres (who allegedly helped petitioner to be employed as housemaid of Nely Co) and Alma P. Agorita (an alleged co-housemaid of petitioner in the Co residence). Surprisingly, the affidavit of Felisa Borason San Andres was written in English, considering the statement that she was employed as househelper of Nely Co. The question is whether the said househelper understood what was written in her affidavit or if the same was explained to her in her native language, for she was a resident of San Felipe, Naga City, where she allegedly executed her affidavit. All told, the said affidavits cannot be given credence to refute the fact that petitioner was an employee of private respondent Co doing work in relation to private respondent's business, which is that of a bakeshop.

Assuming further that petitioner abandoned her job, the Supreme Court held in *Ultra Villa Food Haus and/or Rosie Tio vs. NLRC* that to constitute abandonment, two requisites must concur: (1) the failure to report to work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship as manifested by some overt acts, with the second requisite as the more determinative factor. The burden of proving abandonment as a just cause for dismissal is on the employer. Private respondents failed to discharge this burden. The only evidence adduced by private respondents to prove abandonment were the affidavits of their househelpers and employees.

WHEREFORE, premises considered, the petition is GRANTED. The *Decision* of the National Labor Relations Commission, Second Division dated June 11, 2008 is hereby ANNULLED and SET ASIDE and the *Decision* of the Labor Arbiter dated October 30, 2004 is REINSTATED.

SO ORDERED.[10] (Boldfacing supplied)

Petitioner filed a Motion for Reconsideration, which the Court of Appeals denied in its Resolution dated 5 January 2011. Hence, this petition.

The Issue

Petitioner raises the sole issue of whether the "Court of Appeals erred in ruling that at the time Respondent was working with the Co family, the business was being conducted at the residence."[11]

The Ruling of the Court

We find the petition without merit.

In this case, it was only in petitioner's Supplement to the Motion for Reconsideration of the Court of Appeals' Decision that petitioner raised the issue that contrary to the findings of the Labor Arbiter, NLRC, and the Court of Appeals, the bakery was not located at his residence at the time respondent was in

---

[10] *Rollo*, pp. 22-24.

[11] Petition for Review, p. 24.

their employ. Furthermore, petitioner would even have this Court evaluate additional documentary evidence which were not offered during the proceedings in the Labor Arbiter, NLRC, and the Court of Appeals. The additional evidence were only submitted after the Court of Appeals promulgated its Decision, when petitioner attached the additional evidence in his Supplement to the Motion for Reconsideration.[12]

The issue raised by petitioner is clearly a question of fact which requires a review of the evidence presented. The Supreme Court is not a trier of facts.[13] It is not the function of this Court to examine, review or evaluate the evidence all over again,[14] specially on evidence raised for the first time on appeal.[15]

A petition for review under Rule 45 of the Rules of Court should cover only questions of law, thus:

> 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**. (Emphasis supplied)

As a rule, the findings of fact of the Court of Appeals are final and conclusive and this Court will not review them on appeal,[16] subject to exceptions such as those enumerated by

---

[12] *Rollo*, pp. 88-145.

[13] *Aliño v. Heirs of Angelica A. Lorenzo*, G.R. No. 159550, 27 June 2008, 556 SCRA 139; *Diesel Construction Co., Inc. v. UPSI Property Holdings, Inc.*, G.R. Nos. 154885 & 154937, 24 March 2008, 549 SCRA 12.

[14] *Alicer v. Compas*, G.R. No. 187720, 30 May 2011.

[15] *China Banking Corporation v. Asian Construction and Development Corporation*, G.R. No. 158271, 8 April 2008, 550 SCRA 585.

[16] *Sps. Andrada v. Pilhino Sales Corporation*, G.R. No. 156448, 23 February 2011; *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, 18 February 2008, 546 SCRA 150; *Microsoft Corporation v. Maxicorp, Inc.*, 481 Phil. 550 (2004).

this Court in *Development Bank of the Philippines v. Traders Royal Bank*:[17]

> The jurisdiction of the Court in cases brought before it from the appellate court is limited to reviewing errors of law, and findings of fact of the Court of Appeals are conclusive upon the Court since it is not the Court's function to analyze and weigh the evidence all over again. Nevertheless, in several cases, the Court enumerated the exceptions to the rule that factual findings of the Court of Appeals are binding on the Court: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[18]

Petitioner failed to show that this case falls under any of the exceptions. The finding of the Labor Arbiter that petitioner's bakery and his residence are located at the same place was not reversed by the NLRC.[19] Furthermore, the Court of Appeals upheld this finding of the Labor Arbiter. We find no justifiable reason to deviate from the findings and ruling of the Court of Appeals.

---

[17] G.R. No. 171982, 18 August 2010, 628 SCRA 404.

[18] *Id.* at 413-414.

[19] Although the NLRC reversed the Labor Arbiter's Decision and held that respondent was not employed as a baker at petitioner's bakeshop but was merely petitioner's housemaid, the NLRC did not reverse the Labor Arbiter's finding that the bakery is located at petitioner's residence.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 29 June 2010 Decision and the 5 January 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 110728.

SO ORDERED.

Brion, Perez, Sereno, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 168317. November 21, 2011]

DUP SOUND PHILS. and/or MANUEL TAN, *petitioners, vs.* **COURT OF APPEALS and CIRILO A. PIAL,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; MERE AFFIDAVIT IS INSUFFICIENT TO PROVE THAT THE EMPLOYEE WAS NOT DISMISSED BUT ABANDONED HIS JOB; DUE PROCESS REQUIREMENT, NOT COMPLIED WITH. —** In the instant case, what betrays petitioners' claim that private respondent was not dismissed from his employment but instead abandoned his job is their failure to prove that the latter indeed stopped reporting for work without any justifiable cause or a valid leave of absence. Petitioners merely presented the affidavits of their office secretary which narrated their version of the facts. These affidavits, however, are not only insufficient to prove their defense but also undeserving of credence because they are self-serving. Moreover, considering the hard times in which we are in, it is incongruous for private respondent to simply give up his work without any apparent reason at all. No employee would recklessly abandon his job knowing fully well the acute unemployment problem and the difficulty of looking

for a means of livelihood nowadays. Certainly, no man in his right mind would do such thing. Petitioners further claim that private respondent's absence caused interruption in the workflow which caused damages to the company. It is, thus, logical that petitioners would have wanted private respondent to return to work in order to prevent further loss on their part. In such a case, they could have immediately sent private respondent a notice or show-cause letter at his last known address requiring him to report for work, or to explain his absence with a warning that his failure to do so would be construed as abandonment of his work. However, petitioners failed to do so. Moreover, if private respondent indeed abandoned his job, petitioners should have afforded him due process by serving him written notices, as well as a chance to explain his side, as required by law. It is settled that, procedurally, if the dismissal is based on a just cause under Article 282 of the Labor Code, the employer must give the employee two written notices and a hearing or opportunity to be heard if requested by the employee before terminating the employment: a notice specifying the grounds for which dismissal is sought, a hearing or an opportunity to be heard and, after hearing or opportunity to be heard, a notice of the decision to dismiss. Again, petitioners failed to do these. Thus, the foregoing bolsters private respondent's claim that he did not abandon his work but was, in fact, dismissed.

2. **ID.; ID.; ID.; EMPLOYEE'S REFUSAL TO REPORT FOR WORK AFTER AN ORDER OF REINSTATEMENT HAS BEEN ISSUED CANNOT BE CONSIDERED AS ABANDONMENT; EXPLAINED. —** Neither may private respondent's refusal to report for work subsequent to the Labor Arbiter's issuance of an order for his reinstatement be considered as another abandonment of his job. It is a settled rule that failure to report for work after a notice to return to work has been served does not necessarily constitute abandonment. As defined under established jurisprudence, abandonment is the deliberate and unjustified refusal of an employee to resume his employment. It is a form of neglect of duty, hence, a just cause for termination of employment by the employer. For a valid finding of abandonment, these two factors should be present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship, with the

second as the more determinative factor which is manifested by overt acts from which it may be deduced that the employee has no more intention to work. The intent to discontinue the employment must be shown by clear proof that it was deliberate and unjustified. In the instant case, private respondent claimed that his subsequent refusal to report for work despite the Labor Arbiter's order for his reinstatement is due to the fact that he was subsequently made to perform the job of a "*bodegero*" of which he is unfamiliar and which is totally different from his previous task of "mastering tape." Moreover, he was assigned to a different workplace, which is a warehouse, where he was isolated from all other employees. The Court notes that petitioners failed to refute the foregoing claims of private respondent in their pleadings filed with the CA. It is only in their Reply filed with this Court that they simply denied and brushed off private respondent's assertion that he was made to work as a "*bodegero*." The Court is, thus, led to conclude that petitioners' failure to immediately refute the claims of private respondent is an implied admission thereof. In the same vein, the Court treats petitioners' belated denial of the same claims of private respondent as mere afterthought which is not worthy of credence.

3. **ID.; ID.; ID.; RELIEFS GRANTED TO AN ILLEGALLY DISMISSED EMPLOYEE. —** Under the existing law, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights. Article 279 of the Labor Code clearly provides that an employee who is dismissed without just cause and without due process is entitled to backwages and reinstatement or payment of separation pay in lieu thereof. Article 223 of the same Code also provides that an employee entitled to reinstatement shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation, or, at the option of the employer, merely reinstated in the payroll. It is established in jurisprudence that reinstatement means restoration to a state or condition from which one had been removed or separated. The person reinstated assumes the position he had occupied prior to his dismissal. Reinstatement presupposes that the previous position from which one had been removed still exists, or that there is an unfilled position which is substantially equivalent or of similar nature as the one previously occupied by the employee.

4. **ID.; ID.; ID.; ID.; AWARD OF SEPARATION PAY IS PROPER WHERE REINSTATEMENT IS NO LONGER VIABLE. —** This Court has ruled in many instances that reinstatement is no longer viable where, among others, the relations between the employer and the employee have been so severely strained, that it is not in the best interest of the parties, nor is it advisable or practical to order reinstatement, or where the employee decides not to be reinstated. In the instant case, the resulting circumstances show that reinstatement would be impractical and would hardly promote the best interest of the parties. Resentment and enmity between petitioners and private respondent necessarily strained the relationship between them or even provoked antipathy and antagonism as shown by the acts of the parties subsequent to the order of reinstatement. Besides, private respondent expressly prayed for an award of separation pay in lieu of reinstatement from the very start of the proceedings before the Labor Arbiter. By so doing, he forecloses reinstatement as a relief by implication. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. This has been the consistent ruling in the award of separation pay to illegally dismissed employees in lieu of reinstatement.

APPEARANCES OF COUNSEL

Isidoro L. Padilla for petitioners.
Licerio S. Zamora, Jr. for respondents.

D E C I S I O N

PERALTA, *J.*:

Assailed in the present petition for review on *certiorari* under Rule 45 of the Rules of Court are the Decision[1] dated November 24, 2004 and Resolution[2] dated May 16, 2005 of

---

[1] Penned by Associate Justice Bienvenido L. Reyes (now a member of this Court), with Associate Justices Eugenio S. Labitoria and Rosalinda Asuncion-Vicente, concurring; *rollo*, pp. 33-40.

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

the Court of Appeals (CA) in CA-G.R. SP No. 81251. The CA nullified and set aside the June 30, 2003 Decision of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 033103-02, while the CA Resolution denied petitioners' Motion for Reconsideration.

The instant petition arose from a complaint for illegal dismissal filed by herein private respondent Cirilo A. Pial (Pial) on November 5, 2001 with the NLRC, Quezon City. In his Position Paper, Pial alleged that he was an employee of herein petitioner DUP Sound Phils. (DUP), which is an entity engaged in the business of recording cassette tapes for various recording companies; petitioner Manuel Tan (Tan) is the owner and manager of DUP; Pial was first employed in May 1988 until December 1988; on October 11, 1991, he was re-employed by DUP and was given the job of "mastering tape"; his main function was to adjust the sound level and intensity of the music to be recorded as well as arrange the sequence of the songs to be recorded in the cassette tapes; on August 21, 2001, Pial got absent from work because he got sick; when he got well the following day and was ready for work, he called up their office in accordance with his employer's policy that any employee who gets absent shall first call their office before reporting back to work; to his surprise, he was informed by the office secretary that the latter was instructed by Tan to tell him not to report for work until such time that they will advise him to do so; after three weeks, without receiving any notice, Pial again called up their office; this time the office secretary advised him to look for another job because, per instruction of Tan, he is no longer allowed to work at DUP; Pial asked the office secretary regarding the reason why he was not allowed to return to his job and pleaded with her to accept him back, but the secretary simply reiterated Tan's order not to allow him to go back to work. Pial prayed for the payment of his unpaid service incentive leave pay, full backwages, separation pay, moral and exemplary damages as well as attorney's fees.[3]

---

[3] CA *rollo*, pp. 27-34.

In their Position Paper, herein petitioners DUP and Tan denied the material allegations of Pial contending that on or about January 1996 they hired Pial as a laborer; on August 21, 2001, the latter failed to report for work following an altercation with his supervisor the previous day; on September 12, 2001, Pial called up their office and informed the office secretary that he will be going back to work on September 17, 2001; however, he failed to report for work on the said date; petitioners were subsequently surprised when they learned that Pial filed a complaint for illegal dismissal against them; Pial was never dismissed, instead, it was his unilateral decision not to work at DUP anymore; Tan even offered him his old post during one of the hearings before the NLRC hearing officer, but Pial refused such offer or any other offer of amicable settlement.[4]

On July 25, 2002, the Labor Arbiter (LA) handling the case rendered a Decision[5] declaring Pial to have been illegally dismissed and ordering DUP and Tan to reinstate him to his former position and pay him backwages, cost of living allowance, service incentive leave pay and attorney's fees.

On appeal, the NLRC, in its Decision promulgated on June 30, 2003, modified the Decision[6] of the LA by deleting the award of backwages and attorney's fees. The NLRC ruled that there was no illegal dismissal on the part of DUP and Tan, but neither was there abandonment on the part of Pial.

Pial filed a Motion for Reconsideration,[7] but the NLRC denied it in its Resolution[8] dated October 7, 2003.

Pial then filed a special civil action for *certiorari* with the CA.[9]

---

[4] *Id.* at 35-42.

[5] *Id.* at 70-78.

[6] *Id.* at 16-22.

[7] *Id.* at 98-106.

[8] *Id.* at 23-24.

[9] *Id.* at 2-15.

On November 24, 2004, the CA issued its presently assailed Decision setting aside the June 30, 2003 Decision of the NLRC and reinstating the July 25, 2002 Decision of the LA.

DUP and Tan filed a Motion for Reconsideration, but the same was denied by the CA in its Resolution dated May 16, 2005.

Hence, the instant petition for review on *certiorari* based on the following grounds:

THE ASSAILED DECISION OF THE HONORABLE COURT OF APPEALS IS CONTRARY TO LAW AND SETTLED JURISPRUDENCE.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REVERSING THE DECISION OF [THE] NLRC AND, THUS, REINSTATING THE LABOR ARBITER'S DECISION.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT TAKING INTO CONSIDERATION PRIVATE RESPONDENT PIAL'S ADAMANT REFUSAL TO RETURN TO HIS WORK WITHOUT VALID REASON DURING AND AFTER THE PENDENCY OF THE INSTANT CASE.[10]

Petitioners' basic contention in the instant petition is that the CA erred in finding that they terminated private respondent's employment, much less illegally, and that private respondent failed to prove that he was terminated from his employment.

The petition lacks merit.

At the outset, the Court finds it proper to reiterate the well-established rule that the jurisdiction of this Court in cases brought before it *via* Rule 45 of the Rules of Court is limited to reviewing errors of law.[11] However, one of the admitted exceptions to

---

[10] *Rollo*, p. 8.

[11] *Union Industries, Inc. v. Vales*, G.R. No. 140102, February 9, 2006, 482 SCRA 17, 22.

this rule is where the findings of the NLRC contradict those of the Labor Arbiter, the Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings.[12]

In this case, while the LA, the NLRC, and the CA were unanimous in their finding that private respondent is not guilty of abandonment, the NLRC's finding that private respondent was not illegally dismissed is contradictory to the ruling of the Labor Arbiter and the CA that petitioners are guilty of illegal dismissal. Hence, the Court deems it proper to reexamine the above factual findings.

After a review of the records at hand, the Court finds no cogent reason to depart from the concurrent findings of the Labor Arbiter and the CA that private respondent was illegally dismissed. Like the Labor Arbiter, the NLRC and the CA, this Court cannot give credence to petitioners' claim that private respondent abandoned his job.

The settled rule in labor cases is that the employer has the burden of proving that the employee was not dismissed, or, if dismissed, that the dismissal was not illegal, and failure to discharge the same would mean that the dismissal is not justified and, therefore, illegal.[13] In the instant case, what betrays petitioners' claim that private respondent was not dismissed from his employment but instead abandoned his job is their failure to prove that the latter indeed stopped reporting for work without any justifiable cause or a valid leave of absence. Petitioners merely presented the affidavits of their office secretary which narrated their version of the facts. These affidavits, however,

---

[12] *Luna v. Allado Construction Co., Inc.*, G.R. No. 175251, May 30, 2011, citing *Abel v. Philex Mining Corporation,* G.R. No. 178976, July 31, 2009, 594 SCRA 683, 691-692.

[13] *Salvaloza v. National Labor Relations Commission*, G.R. No. 182086, November 24, 2010, 636 SCRA 184, 194*; Leopard Integrated Services, Inc. v. Macalinao*, G.R. No. 159808, September 30, 2008, 567 SCRA 192, 197; *Macahilig v. National Labor Relations Commission*, G.R. No. 158095, November 23, 2007, 538 SCRA 375, 384.

are not only insufficient to prove their defense but also undeserving of credence because they are self-serving.[14]

Moreover, considering the hard times in which we are in, it is incongruous for private respondent to simply give up his work without any apparent reason at all. No employee would recklessly abandon his job knowing fully well the acute unemployment problem and the difficulty of looking for a means of livelihood nowadays. Certainly, no man in his right mind would do such thing.[15]

Petitioners further claim that private respondent's absence caused interruption in the workflow which caused damages to the company. It is, thus, logical that petitioners would have wanted private respondent to return to work in order to prevent further loss on their part. In such a case, they could have immediately sent private respondent a notice or show-cause letter at his last known address requiring him to report for work, or to explain his absence with a warning that his failure to do so would be construed as abandonment of his work. However, petitioners failed to do so. Moreover, if private respondent indeed abandoned his job, petitioners should have afforded him due process by serving him written notices, as well as a chance to explain his side, as required by law. It is settled that, procedurally, if the dismissal is based on a just cause under Article 282[16] of

---

[14] *Henlin Panay Company v. National Labor Relations Commission*, G.R. No. 180718, October 23, 2009, 604 SCRA 362, 369.

[15] *Hantex Trading Co., Inc. v. Court of Appeals*, G.R. No. 148241, September 27, 2002, 390 SCRA 181, 189.

[16] Art. 282. *Termination by employer*. — An employer may terminate an employment for any of the following causes:

> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> (b) Gross and habitual neglect by the employee of his duties;
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

the Labor Code, the employer must give the employee two written notices and a hearing or opportunity to be heard if requested by the employee before terminating the employment: a notice specifying the grounds for which dismissal is sought, a hearing or an opportunity to be heard and, after hearing or opportunity to be heard, a notice of the decision to dismiss.[17] Again, petitioners failed to do these. Thus, the foregoing bolsters private respondent's claim that he did not abandon his work but was, in fact, dismissed.

The consistent rule is that the employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.[18] In addition, the employer must also observe the requirements of procedural due process. In the present case, petitioners failed to submit sufficient evidence to show that private respondent's dismissal was for a justifiable cause and in accordance with due process.

The Court also agrees with private respondent that petitioners' earnestness in offering re-employment to the former is suspect. It was only after two months following the filing of the complaint for illegal dismissal that it occurred to petitioners, in a belated gesture of goodwill during one of the hearings conducted before the NLRC, to invite private respondent back to work. If petitioners were indeed sincere, they should have made their offer much sooner. Under circumstances established in the instant case, the Court doubts that petitioners' offer would have been made if private respondent had not filed a complaint against them.

Neither may private respondent's refusal to report for work subsequent to the Labor Arbiter's issuance of an order for his

---

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[17] *R.B. Michael Press v. Galit*, G.R. No. 153510, February 13, 2008, 545 SCRA 23, 35; *Metro Eye Security, Inc. v. Salsona*, G.R. No. 167637, September 28, 2007, 534 SCRA 375, 391.

[18] *Lima Land, Inc. v. Cuevas*, G.R. No. 169523, June 16, 2010, 621 SCRA 36, 52; *Metro Construction, Inc. v. Aman*, G.R. No. 168324, October 12, 2009, 603 SCRA 335, 344.

reinstatement be considered as another abandonment of his job. It is a settled rule that failure to report for work after a notice to return to work has been served does not necessarily constitute abandonment.[19] As defined under established jurisprudence, abandonment is the deliberate and unjustified refusal of an employee to resume his employment.[20] It is a form of neglect of duty, hence, a just cause for termination of employment by the employer.[21] For a valid finding of abandonment, these two factors should be present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship, with the second as the more determinative factor which is manifested by overt acts from which it may be deduced that the employee has no more intention to work.[22] The intent to discontinue the employment must be shown by clear proof that it was deliberate and unjustified.[23] In the instant case, private respondent claimed that his subsequent refusal to report for work despite the Labor Arbiter's order for his reinstatement is due to the fact that he was subsequently made to perform the job of a "*bodegero*" of which he is unfamiliar and which is totally different from his previous task of "mastering tape." Moreover, he was assigned to a different workplace, which is a warehouse, where he was isolated from all other employees. The Court notes that petitioners failed to refute the foregoing claims of private respondent in their pleadings filed with the CA. It is only in their Reply filed with this Court that they simply denied and brushed off private respondent's assertion that he was made to work as a "*bodegero*."

---

[19] *Uniwide Sales Warehouse Club v. National Labor Relations Commission*, G.R. No. 154503, February 29, 2008, 547 SCRA 220, 239.

[20] *Forever Security & General Services v. Flores*, G.R. No. 147961, September 7, 2007, 532 SCRA 454, 468; *Nueva Ecija Electric Cooperative, (NEECO) II v. National Labor Relations Commission*, G.R. No. 157603, June 23, 2005, 461 SCRA 169, 182.

[21] *City Trucking, Inc. v. Balajadia*, G.R. No. 160769, August 9, 2006, 498 SCRA 309, 315.

[22] *Camua, Jr. v. National Labor Relations Commission*, G.R. No. 158731, January 25, 2007, 512 SCRA 677, 682.

[23] *E.G. & I. Construction v. Sato*, G.R. No. 182070, February 16, 2011.

The Court is, thus, led to conclude that petitioners' failure to immediately refute the claims of private respondent is an implied admission thereof. In the same vein, the Court treats petitioners' belated denial of the same claims of private respondent as mere afterthought which is not worthy of credence.

Under the existing law, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights.[24] Article 279[25] of the Labor Code clearly provides that an employee who is dismissed without just cause and without due process is entitled to backwages and reinstatement or payment of separation pay in lieu thereof.[26] Article 223 of the same Code also provides that an employee entitled to reinstatement shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation, or, at the option of the employer, merely reinstated in the payroll. It is established in jurisprudence that reinstatement means restoration to a state or condition from which one had been removed or separated.[27] The person reinstated assumes the position he had occupied prior to his dismissal.[28] Reinstatement presupposes that the previous position from which one had been removed still exists, or that there is an unfilled position which is substantially equivalent or of similar nature as the one previously occupied by the employee.[29] Based on the foregoing principles, it cannot

---

[24] *Cabatulan v. Buat*, G.R. No. 147142, February 14, 2005, 451 SCRA 234, 247.

[25] Art. 279. *Security of Tenure*. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[26] *Macasero v. Southern Industrial Gases Philippines, Inc.*, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 506.

[27] *Pfizer, Inc. v. Velasco*, G.R. No. 177467, March 9, 2011.

[28] *Id*.

[29] *Id*.

be said that petitioners intended to reinstate private respondent neither to his former position under the same terms and conditions nor to a substantially equivalent position. To begin with, the notice that petitioners sent to private respondent requiring the latter to report back for work is silent with regard to the position or exact nature they wanted the private respondent to assume. Indeed, as it turned out, petitioners had other plans for private respondent. Thus, private respondent's assignment to a different job, as well as transfer of work assignment without any justification therefor, cannot be deemed as faithful compliance with the reinstatement order.

As earlier discussed, private respondent may not be faulted for rejecting what petitioners claim as compliance with the order to reinstate the former given the totally different nature of the job he was afterwards given and the conditions and working environment under which he was to perform such job. Thus, private respondent found it unacceptable to work for petitioners. That he was placed in an untenable situation which practically left him with no choice but to leave his assigned task also shows the strained relations that has developed between the parties.

This Court has ruled in many instances that reinstatement is no longer viable where, among others, the relations between the employer and the employee have been so severely strained, that it is not in the best interest of the parties, nor is it advisable or practical to order reinstatement, or where the employee decides not to be reinstated.[30] In the instant case, the resulting circumstances show that reinstatement would be impractical and would hardly promote the best interest of the parties. Resentment and enmity between petitioners and private respondent necessarily strained the relationship between them or even provoked antipathy and antagonism as shown by the acts of the parties subsequent to the order of reinstatement. Besides, private respondent expressly

---

[30] *City Trucking, Inc. v. Balajadia*, *supra* note 21, at 317; *Golden Ace Builders v. Talde*, G.R. No. 187200, May 5, 2010, 620 SCRA 283, 289; *AFI International Trading Corp. (Zamboanga Buying Station) v. Lorenzo*, G.R. No. 173256, October 9, 2007, 535 SCRA 347, 355; *Cabatulan v. Buat*, *supra* note 24.

prayed for an award of separation pay in lieu of reinstatement from the very start of the proceedings before the Labor Arbiter. By so doing, he forecloses reinstatement as a relief by implication.

Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. This has been the consistent ruling in the award of separation pay to illegally dismissed employees in lieu of reinstatement.[31]

Private respondent, however, failed to prove his allegation that he was employed by petitioners since 1991. On the other hand, petitioners were able to present evidence to show that private respondent was employed only in January 1996. Hence, private respondent's separation pay must be reckoned from January 1996, when he began working with petitioners, until finality of this Decision, consistent with established jurisprudence.[32]

With respect to private respondent's backwages, the same shall be reckoned from the date he was illegally dismissed on August 22, 2001 until finality of this Decision, in accordance with prevailing jurisprudence.[33]

WHEREFORE, the instant petition is *DENIED*. The November 24, 2004 Decision of the Court of Appeals, which reinstated the July 25, 2002 Decision of the Labor Arbiter, is *AFFIRMED* with *MODIFICATION* to the effect that, instead of reinstatement, petitioners are directed to pay private respondent separation pay equivalent to one month salary for every year

---

[31] *Diversified Security, Inc. v. Bautista*, G.R. No. 152234, April 15, 2010, 618 SCRA 289, 296; *Macasero v. Southern Industrial Gases Philippines, Inc.*, *supra* note 26, at 507.

[32] *Genuino Ice Co. v. Lava*, G.R. No. 190001, March 23, 2011; *Javellana, Jr. v. Belen,* G.R. Nos. 181913/182158, March 5, 2010, 614 SCRA 342, 352-353; *Session Delights Ice Cream and Fast Foods v. Court of Appeals*, G.R. No. 172149, February 8, 2010, 612 SCRA 10, 26-27; *Rasonable v. NLRC*, G.R. No. 117195, February 20, 1996, 253 SCRA 815, 823-824.

[33] *Javellana, Jr. v. Belen*, *supra*; *Cabatulan v. Buat*, *supra* note 24, at 246-248.

of service from January 1996 until finality of this Decision. Petitioners are also ordered to pay private respondent backwages counted from August 22, 2001 until finality of this Decision.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 191080. November 21, 2011]

FREDRIK FELIX P. NOGALES, GIANCARLO P. NOGALES, ROGELIO P. NOGALES, MELINDA P. NOGALES, PRISCILA B. CABRERA, PHIL-PACIFIC OUTSOURCING SERVICES CORPORATION and 3 X 8 INTERNET, represented by its proprietor MICHAEL CHRISTOPHER A. NOGALES, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES and PRESIDING JUDGE TITA BUGHAO ALISUAG, Branch 1, Regional Trial Court, Manila,** *respondents.*

SYLLABUS

CRIMINAL LAW; PRESIDENTIAL DECREE NO. 969; MANDATES THE CONFISCATION AND DESTRUCTION OF PORNOGRAPHIC MATERIALS INVOLVED IN VIOLATION OF ARTICLE 201 OF THE REVISED PENAL CODE EVEN IF THE ACCUSED WAS ACQUITTED; APPLICATION. — The CA is correct in stating that the removal of the hard disk from the CPU is a reliable way of permanently removing the obscene or pornographic files. Significantly,

---

[*] Designated as an additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152, dated November 11, 2011.

[Section 2 of] Presidential Decree (PD) No. 969 x x x directs the forfeiture of **all** materials involved in violation of the subject law. The CA was lenient with petitioners in modifying the ruling of the RTC in that the CPUs and softwares, which were initially ordered to be retained by the NBI, should be released in their favor with only the hard disk removed from the CPUs and destroyed. If the softwares are determined to be violative of Article 201 of the RPC, unlicensed or pirated, they should also be forfeited and destroyed in the manner allowed by law. The law is clear. Only licensed softwares that can be used for legitimate purposes should be returned to petitioners. To stress, P.D. No. 969 mandates the forfeiture and destruction of pornographic materials involved in the violation of Article 201 of the Revised Penal Code, *even if the accused was acquitted*. Taking into account all the circumstances of this case, the Court holds that the destruction of the hard disks and the softwares used *in any way* in the violation of the subject law addresses the purpose of minimizing if not totally eradicating pornography. This will serve as a lesson for those engaged *in any way* in the proliferation of pornography or obscenity in this country. The Court is not unmindful of the concerns of petitioners but their supposed property rights must be balanced with the welfare of the public in general.

APPEARANCES OF COUNSEL

R.P. Nogales Law Office for petitioners.
The Solicitor General for respondents.

D E C I S I O N

MENDOZA, *J.*:

At bench is a petition for *certiorari* under Rule 65 of the Rules of Court filed by petitioners Fredrik Felix P. Nogales, Giancarlo P. Nogales, Rogelio P. Nogales, Melinda P. Nogales, Priscila B. Cabrera, Phil-Pacific Outsourcing Services Corp. and 3 x 8 Internet, represented by its proprietor Michael Christopher A. Nogales *(petitioners)* against respondents People of the Philippines and Presiding Judge Tita Bughao Alisuag *(Judge Alisuag)* of Branch 1, Regional Trial Court, Manila *(RTC).*

The petition challenges the August 19, 2009 Decision[1] of the Court of Appeals *(CA),* in CA-G.R. SP No. 105968, which affirmed with modification the August 6, 2008 Order[2] of Judge Alisuag of the RTC; and its January 25, 2010 Resolution,[3] which denied petitioners' motion for reconsideration.

THE FACTS:

On July 30, 2007, Special Investigator Garry Meñez *(SI Meñez)* of the National Bureau of Investigation *(NBI)* applied for a search warrant before the RTC to authorize him and his fellow NBI agents or any peace officer to search the premises of petitioner Phil-Pacific Outsourcing Services Corporation *(Phil-Pacific)* and to seize/confiscate and take into custody the items/articles/ objects enumerated in his application. The sworn application, docketed as Search Warrant Proceedings No. 07-11685,[4] partially reads:

SWORN APPLICATION FOR A SEARCH WARRANT

x x x x x x x x x

That he has been informed, verily believes and personally verified that **JUN NICOLAS, LOREN NUESTRA, FREDRICK FELIX P. NOGALES, MELINDA P. NOGALES, PRISCILA B. CABRERA and/or occupants PHIL-PACIFIC OUTSOURCING SERVICES CORP. located at Mezzanine Flr., Glorietta De Manila Building, 776 San Sebastian St., University Belt, Manila** have in their possession/control and are concealed in the above-mentioned premises various material[s] used in the creation and selling of pornographic internet website, to wit:

1. Computer Sets
2. Television Sets
3. Internet Servers

---

[1] *Rollo*, 50-63. Penned by Associate Justice Isaias Dicdican, with Associate Justice Pampio A. Abarintos and Associate Justice Romeo F. Barza, concurring.

[2] *Id.* at 150-152.

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

[4] *Id.* at 84-85.

4. Fax Machines
5. Pornographic Films and other Pornographic Materials
6. Web Cameras
7. Telephone Sets
8. Photocopying Machines
9. List of clients and
10. Other tools and materials used or intended to be used in the commission of the crime.

The application for Search Warrant No. 07-11685 of SI Meñez was acted upon by Judge Alisuag. On August 3, 2007, a hearing was conducted wherein Judge Alisuag personally examined SI Meñez and two other witnesses in the form of searching questions and their answers thereto were duly recorded by the court. The witnesses' affidavits were also submitted and marked as supporting evidence to the application for the issuance of a search warrant. On the same date of the hearing, the application was granted and the corresponding Search Warrant,[5] issued. The said search warrant is quoted as follows:

SEARCH WARRANT

TO: ANY PEACE OFFICER

It appearing to the satisfaction of the undersigned, after examining under oath applicant SI III GARY I. MEÑEZ of the Special Task Force Division, National Bureau of Investigation, and his witnesses, ISABEL CORTEZ *y* ANDRADE of 167 5th Avenue, Caloocan City and MARK ANTHONY C. SEBASTIAN of No. 32 Arlegui Street, San Miguel Quiapo, Manila that there are good reasons to believe that VIOLATION OF ARTICLE 201 OF THE REVISED PENAL CODE, AS AMENDED IN RELATION TO R.A. 8792 (ELECTRONIC COMMERCE ACT) has been committed and that JUN NICOLAS, LOREN NUESTRA, FREDERICK (sic) FELIX P. NOGALES, GIAN CARLO P. NOGALES, ROGELIO P. NOGALES, MELINDA P. NOGALES, PRISCILA B. CABRERA and/or OCCUPANTS OF PHIL. PACIFIC OUTSOURCING SERVICES CORPORATION located at Mezzanine Floor, Glorietta De Manila Building, 776 San Sebastian St., University Belt, Manila, have in their possession and control of the following:

---

[5] *Id.* at 86-88.

1. Computer Sets
2. Television Sets
3. Internet Servers
4. Fax Machines
5. Pornographic Films and other Pornographic Materials
6. Web Cameras
7. Telephone Sets
8. Photocopying Machines
9. List of clients and
10. Other tools and materials used or intended to be used in the commission of the crime.

You are hereby commanded to make an immediate search any time of the DAY of the premises mentioned above which is Mezzanine Floor, Glorietta De Manila Building, 776 San Sebastian St., University Belt, Manila and take possession of the following:

1. Computer Sets
2. Television Sets
3. Internet Servers
4. Fax Machines
5. Pornographic Films and other Pornographic Materials
6. Web Cameras
7. Telephone Sets
8. Photocopying Machines
9. List of clients and
10. Other tools and materials used or intended to be used in the commission of the crime.

and bring to this Court the said properties and persons to be dealt with as the law may direct. You are further directed to submit a return within ten (10) days from today.

On August 8, 2007, SI Meñez submitted a Return of Search Warrant[6] to the RTC manifesting that in the morning of August 7, 2007, the operatives of the Special Task Force of the NBI implemented the said search warrant in an orderly and peaceful manner in the presence of the occupants of the described premises and that the seized items were properly inventoried in the Receipt/

[6] *Id.* at 88-89.

Inventory of Property Seized. The items seized were the following:

1. Ten (10) units of Central Processing Units (CPUs);
2. Ten (10) units of monitors;
3. Ten (10) units of keyboard;
4. Ten (10) units of mouse; and
5. Ten (10) units of AVRs.

The RTC then issued an order granting the prayer of SI Meñez to keep the seized items in the NBI evidence room and under his custody with the undertaking to make said confiscated items available whenever the court would require them.

Aggrieved by the issuance of the said order, the named persons in the search warrant filed a Motion to Quash Search Warrant and Return Seized Properties.[7] In the said motion, petitioners cited the following grounds:

A. Respondents do not have programmers making, designing, maintaining, editing, storing, circulating, distributing, or selling said websites or the contents thereof;

B. Respondents do not have any website servers;

C. Respondents do not own the websites imputed to them, which are actually located outside the Philippines, in foreign countries, and are owned by foreign companies in those countries;

D. The testimony of the witnesses presented by the NBI are contradicted by the facts of the case as established by documentary evidence;

E. The NBI withheld verifiable information from the Honorable Court and took advantage of the limited knowledge of courts in general in order to obtain the search warrant for their personal intentions;

F. The NBI raided the wrong establishment; and

G. The element of publicity is absent.

---

[7] *Id.* at 90-123.

On December 26, 2007, the RTC denied the motion[8] stating, among others, that:

1.) It cannot be said that publicity is not present. The Phil-Pacific Outsourcing Services Corp., is actually persuading its clients, thru its agents (call center agents), to log-on to the pornographic sites listed in its web page. In that manner, Phil-Pacific Outsourcing Services Corporation is advertising these pornographic web sites, and such advertisement is a form of publicity.

2.) Even if some of the listed items intended to be seized were not recovered from the place where the search was made, it does not mean that there was no really crime being committed. As in fact, pornographic materials were found in some of the computers which were seized.

3.) In the same way that the names listed in the Search Warrant were not arrested or not in the premises subject of the search, it does not mean that there are no such persons existing nor there is no crime being committed.

4.) As a rule, Search Warrant may be issued upon existence of probable cause. "Probable cause for a search is defined as such fact and circumstances which would lead a reasonable discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be reached." Hence, in implementing a Search Warrant, what matters most is the presence of the items ought to be seized in the place to be searched, even in the absence of the authors of the crime committed.

5.) The Search Warrant was issued in accordance with Secs. 3 to 6, Rule 126 of the Revised Rules of Court. Search Warrant may be quashed or invalidated if there is an impropriety in its issuance or irregularity in its enforcement. Absent such impropriety or irregularity, quashal is not warranted.

Undaunted, petitioners moved for the reconsideration of the said order on the following grounds: (a) the trial court erred in holding that there was no impropriety or irregularity in the issuance of the search warrant; (b) the trial court erred in holding that

---

[8] *Id.* at 125-128.

there was no irregularity in its enforcement; and (c) the trial court erred in holding that publicity was present.

On February 19, 2008, petitioners requested the RTC to issue a *subpoena duces tecum ad testificandum* to SI Meñez and the witnesses Isabel Cortez and Mark Anthony Sebastian directing them to appear, bring the records evidencing publicity of pornographic materials and testify in the hearing set on March 7, 2008.

Meanwhile, in a resolution dated February 21, 2008,[9] the 3rd Assistant City Prosecutor recommended that the complaint for violation of Article 201[10] of the Revised Penal Code *(RPC)* against petitioners be dismissed due to insufficiency of evidence and the same was approved by the City Prosecutor. Hence, on May 6, 2008, petitioners filed a Supplemental Motion to Release Seized Properties[11] manifesting that the complaint against them

---

[9] *Id.* at 143-144.

[10] Art. 201. *Immoral Doctrines, obscene publications and exhibitions, and indecent shows.* — The penalty of *prision mayor* or a fine ranging from six thousand to twelve thousand pesos, or both such imprisonment and fine, shall be imposed upon:

1. Those who shall publicly expound or proclaim doctrines openly contrary to public morals;
2. (a) The authors of obscene literature, published with their knowledge in any form; the editors publishing such literature; and the owners/operators of the establishment selling the same;

(b) Those who, in the theatres, fairs, cinematographs, or any other place, exhibit indecent or immoral plays, scenes, acts or shows, it being understood that the obscene literature or indecent or immoral plays, scenes, acts, or shows, whether live or in film, which are prescribed by virtue hereof, shall include those which: (1) glorify criminals or condone crimes; (2) serve no other purpose but to satisfy the market for violence, lust or pornography; (3) offend any race or religion; (4) tend to abet traffic in and use of prohibited drugs; and (5) are contrary to law, public order, morals, good customs, established policies, lawful orders, decrees and edicts.

3. Those who shall sell, give away or exhibit films, prints, engravings, sculptures or literature which are offensive to morals.

[11] *Rollo*, pp. 145-146.

was dismissed, and that, for said reason, the State had no more use of the seized properties.

On August 6, 2008, the RTC issued the assailed second order,[12] which denied the motion for reconsideration filed by petitioners. The RTC, however, partially granted the prayer of petitioners. Judge Alisuag wrote:

> Be it noted that the proceedings held by this Court when it heard the Application for Search Warrant by NBI Special Investigator Meñez is very much different [from] the case resolved by the Office of the City Prosecutor. The case before the Office of the City Prosecutor, while the same [was] dismissed cannot be the ground to release the seized properties subject of the Search Warrant issued by the Court. When the Court issued the Search Warrant, indeed, it found probable cause in the issuance of the same, which is the only reason wherein Search Warrant may be issued.
>
> On the case heard by the Office of the City Prosecutor, the Resolution has its own ground and reason to dismiss it.
>
> x x x x x x x x x
>
> That the subject of the Search Warrant which is now under the custody of the NBI [was] made subject of the case and as well as the witnesses for that case which was resolved by the Office of the City Prosecutor is of no moment.
>
> WHEREFORE, the Motion for Reconsideration is Denied.
>
> The Motion to Release Seized Properties is partially granted.
>
> Accordingly therefore, let the computer sets be hereby returned to the respondents. The CPU and all the rest of the softwares containing obscene materials which were seized during the implementation of the valid Search Warrant are hereby retained in the possession of the National Bureau of Investigation thru applicant Special Investigator Garry J. Meñez.
>
> SO ORDERED.[13]

---

[12] *Id.* at 150-152.

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

Not in conformity, petitioners sought relief with the CA *via* a special civil action for *certiorari* alleging that Judge Alisuag committed grave abuse of discretion amounting to lack or excess of jurisdiction when she partially granted the motion of petitioners for the release of the seized properties such that only the monitor sets were released but the CPUs and the softwares were retained under the custody of the NBI.

The CA affirmed with modification the assailed August 6, 2008 Order of the RTC. Thus:

WHEREFORE, in view of all the foregoing premises, the assailed order issued by the respondent Judge on August 6, 2008 is **AFFIRMED** with the **MODIFICATION** that the CPUs and softwares which were ordered to be retained by the NBI through SI Meñez shall be released in favor of the petitioners herein <u>with the condition that the hard disk be removed from the CPUs and be destroyed</u>. If the softwares are determined to be unlicensed or pirated copies, they shall be destroyed in the manner allowed by law.

SO ORDERED.[14] [Underscoring supplied]

The CA explained:

1.) It is undisputed that the seized computer units contained obscene materials or pornographic files. The hard disk technically contains them but these files are susceptible to modification or limitation of status; thus, they can be erased or permanently deleted from the storage disk. In this peculiar case, the obscene materials or pornographic files are stored in such a way that they can be erased or deleted by formatting the hard disk without the necessity of destroying or burning the disk that contains them. By structure, the hard drive contains the hard disk and the hard drive can be found in the CPU. These obscene materials or pornographic files are only stored files of the CPU and do not permanently form part of the CPU which would call for the destruction or much less retention of the same.

2.) Notwithstanding, with the advancement of technology, there are means developed to retrieve files from a formatted hard disk, thus, the removal of the hard disk from the CPU is the reliable manner

---

[14] *Id.* at 22.

to permanently remove the obscene or pornographic files. With regard to the softwares confiscated and also ordered to be retained by the NBI, nothing in the evidence presented by the respondents shows that these softwares are pornographic tools or program customized just for creating obscene materials. There are softwares which may be used for licit activities like photograph enhancing or video editing and there are thousands of softwares that have legitimate uses. It would be different if the confiscated softwares are pirated softwares contained in compact discs or the pre-installed softwares have no license or not registered; then, the NBI may retain them. In the particular circumstances of this case, the return of the CPUs and softwares would better serve the purposes of justice and expediency.

3.) The responsibilities of the magistrate do not end with the granting of the warrant but extend to the custody of the articles seized. In exercising custody over these articles, the property rights of the owner should be balanced with the social need to preserve evidence which will be used in the prosecution of a case. In the instant case, the complaint had been dismissed by the prosecutor for insufficiency of evidence. Thus, the court had been left with the custody of highly depreciable merchandise. More importantly, these highly depreciable articles would have been superfluous to be retained for the following reasons: (1) it was found by the prosecutor that there was no sufficient evidence to prove that the petitioners violated Article 201 of the Revised Penal Code in relation to R.A. 8792 (Electronic Commerce Act); (2) the obscene materials or pornographic files can be deleted by formatting or removing the hard disk from the CPUs without destroying the entire CPU; and (3) the petitioners did not dispute that the files found in the seized items were obscene or pornographic but the said devices are not obscene or illegal *per se*. Hence, where the purpose of presenting as evidence the articles seized is no longer served, there is no justification for severely curtailing the rights of a person to his property.

Petitioners filed a motion for reconsideration but it was denied in a resolution dated January 25, 2010.[15]

Undeterred, petitioners filed a petition for *certiorari*[16] with this Court anchored on the following:

---

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

[16] *Id.* at 27-49.

GROUNDS:

6.1. The decision by the Court of Appeals affirming the decision of the respondent trial judge constitutes grave abuse of discretion amounting to lack or excess of jurisdiction, as it violates the constitutional proscription against confiscation of property without due process of law, and there is no appeal nor any plain, speedy or adequate remedy in the ordinary course of law.

6.2. Since the case involves pornography accessible in the internet, this is a case of first impression and current importance.[17] [Emphases ours]

ISSUE

Whether or not there was grave abuse of discretion on the part of the CA in ordering the removal and destruction of the hard disks containing the pornographic and obscene materials.

THE COURT'S RULING

Petitioners argue that there is no evidence showing that they were the source of pornographic printouts presented by the NBI to the RTC or to the City Prosecutor of Manila in I.S. No. 07H-13530. Since the hard disks in their computers are not illegal *per se* unlike *shabu*, opium, counterfeit money, or pornographic magazines, said merchandise are lawful as they are being used in the ordinary course of business, the destruction of which would violate not only procedural, but substantive due process.[18]

The argument of petitioners is totally misplaced considering the undisputed fact that the seized computer units contained obscene materials or pornographic files. Had it been otherwise, then, petitioners' argument would have been meritorious as there could be no basis for destroying the hard disks of petitioners' computer units.

---

[17] *Id.* at 44.

[18] *Id.* at 44-45.

While it may be true that the criminal case for violation of Article 201 of the Revised Penal Code was dismissed as there was no concrete and strong evidence pointing to them as the direct source of the subject pornographic materials, it cannot be used as basis to recover the confiscated hard disks. At the risk of being repetitious, it appears undisputed that the seized computer units belonging to them contained obscene materials or pornographic files. Clearly, petitioners had no legitimate expectation of protection of their supposed property rights.

The CA is correct in stating that the removal of the hard disk from the CPU is a reliable way of permanently removing the obscene or pornographic files. Significantly, Presidential Decree (PD) No. 969 is explicit. Thus:

> Sec. 2. Disposition of the Prohibited Articles. The disposition of the literature, films, prints, engravings, sculptures, paintings, or other materials involved in the violation referred to in Section 1 hereof shall be governed by the following rules:
>
> a. Upon conviction of the offender, to be forfeited in favor of the government to be destroyed.
>
> b. ***Where the criminal case against any violator of this decree results in an acquittal, the obscene/immoral literature, films, prints, engravings, sculpture, paintings or other materials and other articles involved in the violation*** **referred to in Section 1** ***hereof shall nevertheless be forfeited in favor of the government to be destroyed,*** after forfeiture proceedings conducted by the Chief of Constabulary. [Emphasis and underscoring supplied]

Clearly, the provision directs the forfeiture of **all** materials involved in violation of the subject law. The CA was lenient with petitioners in modifying the ruling of the RTC in that the CPUs and softwares, which were initially ordered to be retained by the NBI, should be released in their favor with only the hard disk removed from the CPUs and destroyed. If the softwares are determined to be violative of Article 201 of the RPC, unlicensed or pirated, they should also be forfeited and destroyed in the manner allowed by law. The law is clear. Only licensed softwares

that can be used for legitimate purposes should be returned to petitioners.

To stress, P.D. No. 969 mandates the forfeiture and destruction of pornographic materials involved in the violation of Article 201 of the Revised Penal Code, *even if the accused was acquitted*.

Taking into account all the circumstances of this case, the Court holds that the destruction of the hard disks and the softwares used *in any way* in the violation of the subject law addresses the purpose of minimizing if not totally eradicating pornography. This will serve as a lesson for those engaged *in any way* in the proliferation of pornography or obscenity in this country. The Court is not unmindful of the concerns of petitioners but their supposed property rights must be balanced with the welfare of the public in general.

WHEREFORE, the petition is *DENIED*. The August 19, 2009 Court of Appeals Decision is *AFFIRMED WITH MODIFICATION* in that only the CPUs and those softwares determined to be licensed and used for legitimate purposes shall be returned in favor of the petitioners. The hard disk drives containing the pornographic materials and the softwares used *in any way* in violation of Article 201 of the Revised Penal Code, unlicensed or pirated shall be forfeited in favor of the Government and destroyed.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Perez,*[*] *JJ.*, concur.

---

[*] Designated as additional member of the Third Division in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152 dated November 11, 2011.

EN BANC

[A.C. No. 4808. November 22, 2011]

TERESITA T. BAYONLA, *complainant, vs.* **ATTY. PURITA A. REYES,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; UNJUSTIFIED WITHHOLDING OF CLIENT'S MONEY AMOUNTS TO GROSS MISCONDUCT. — Canon 16 of the *Code of Professional Responsibility* requires that a lawyer shall hold in trust all moneys and properties of her client that may come into her possession. Rule 16.01 of Canon 16 imposes on the lawyer the duty to account for all money or property collected or received for or from the client. Rule 16.03 of Canon 16 demands that the lawyer shall deliver the funds and property of his client when due or upon demand, subject to the lawyer's lien over the funds, or the lawyer's option to apply so much of the funds as may be necessary to satisfy the lawful fees and disbursements, giving notice promptly thereafter to the client. The canons are appropriate considering that the relationship between a lawyer and her client is highly fiduciary, and prescribes on a lawyer a great degree of fidelity and good faith. There is no question that the money or property received by a lawyer for her client properly belongs to the latter. Conformably with these canons of professional responsibility, we have held that a lawyer is obliged to render an accounting of all the property and money she has collected for her client. This obligation includes the prompt reporting and accounting of the money collected by the lawyer by reason of a favorable judgment to his client. x x x By not delivering Bayonla's share despite her demand, Atty. Reyes violated the aforestated canons. The money collected by Atty. Reyes as the lawyer of Bayonla was unquestionably money held in trust to be immediately turned over to the client. The unjustified withholding of money belonging to the client warrants the imposition of disciplinary sanctions on the lawyer. Without doubt, Atty. Reyes' failure to immediately account for and to deliver the money upon demand was deceit, for it signified that she had converted the

money to her own use, in violation of the trust Bayonla had reposed in her. It constituted gross misconduct for which the penalty of suspension from the practice of law became justified pursuant to Section 27, Rule 138 of the *Rules of Court*[.]

2. **ID.; ID.; ADMINISTRATION PROCEEDINGS; PENDENCY OF CRIMINAL CHARGES NOT AN OBSTACLE THERETO. —** The filing of the perjury charge by Atty. Reyes against Bayonla and of the *estafa* charge by Bayonla against Atty. Reyes could not halt or excuse the duty of Atty. Reyes to render an accounting and to remit the amount due to Bayonla. Nor did the pendency of such cases inhibit this administrative matter from proceeding on its due course. It is indisputable that the pendency of any criminal charges between the lawyer and her client does not negate the administrative proceedings against the lawyer. We explained why in *Suzuki v. Tiamson*, to wit: The settled rule is that **criminal and civil cases are different from administrative matters, such that the disposition in the first two will not inevitably govern the third and vice versa**. x x x It serves well to mention, lastly, that the simultaneous pendency of an administrative case and a judicial proceeding related to the cause of the administrative case, even if the charges and the evidence to be adduced in such cases are similar, does not result into or occasion any unfairness, or prejudice, or deprivation of due process to the parties in either of the cases.

3. **ID.; ID.; ID.; THERE WAS NO DENIAL OF DUE PROCESS DESPITE THE ABSENCE OF ADVERSARIAL TRIAL-TYPE PROCEEDING AS LONG AS THE PARTIES WERE AFFORDED OPPORTUNITY TO BE HEARD AND SUBMIT EVIDENCE. —** It is true that a lawyer shall not be disbarred or suspended from the practice of law until she has had full opportunity upon reasonable notice to answer the charges against her, to produce witnesses in her behalf, and to be heard by herself or counsel. Contrary to Atty. Reyes' insistence, however, the IBP Board of Governors was under no legal obligation to conduct a trial-type proceeding at which she could have personally confronted Bayonla. In other words, the lack of such proceeding neither diminished her right to due process nor deprived her of the right. A formal investigation entailing notice and hearing is required in administrative proceedings for disbarment, but the imperative need of notice

and hearing does not always mean the holding of an adversarial trial-type proceeding. Due process is still satisfied when the parties are afforded the reasonable opportunity to be heard and to submit evidence in support of their respective sides. x x x Nevertheless, the IBP Board of Governors actually conducted a formal investigation of the complaint against Atty. Reyes upon the directive of the Court. In her formal investigation of the complaint, Commissioner Navarro allowed both parties to submit their respective proofs on the actual amounts released by the ATO, the amounts due to Bayonla as her share, Atty. Reyes' corresponding contingent fees, the remittances by Atty. Reyes to Bayonla, and the receipts showing such remittances. In due course, Atty. Reyes submitted her written answer, attaching to the answer the documents supporting her defenses. Commissioner Navarro took all of Atty. Reyes' submissions into good and proper account, as borne out by her report. And even after the IBP Board of Governors had adopted Commissioner Navarro's report (and its recommendation), Atty. Reyes was still afforded the fair opportunity to challenge the adverse findings by filing her motion for reconsideration, although such motion was ultimately resolved against her.

4. **ID.; ID.; GROSS MISCONDUCT CONSISTING IN THE FAILURE TO ACCOUNT FOR AND TO RETURN MONEY OF THE CLIENT, COMMITTED; PROPER PENALTY IS SUSPENSION FROM THE PRACTICE OF LAW FOR TWO YEARS. —** The penalty for gross misconduct consisting in the failure or refusal despite demand of a lawyer to account for and to return money or property belonging to a client has been suspension from the practice of law for two years. In *Almendarez, Jr. v. Langit*, the lawyer who withdrew the rentals pertaining to his client totaling ₱255,000.00 without the knowledge of the client and who ignored the demand of the client to account for and to return the amount was suspended from the practice of law for two years. In *Mortera v. Pagatpatan*, the lawyer received ₱155,000.00 from the adversary of his clients as partial payment of a final and executory decision in favor of the clients pursuant to a secret arrangement between the lawyer and the adversary, and deposited the amount to the lawyer's personal bank account without the knowledge of the clients; the lawyer thereafter refused to surrender the money to his clients. The suspension of the lawyer for two years from

the practice of law was ordered by the Court. In *Small v. Banares*, a similar penalty of suspension for a period of two years from the practice of law was imposed on a lawyer who had failed to file a case for the purpose of which he had received an amount of ₱80,000.00, and to return the amount upon demand. x x x Considering that the sin of Atty. Reyes had striking resemblance with the sins thus sanctioned in the aforementioned precedents, the proper penalty for her is suspension from the practice of law for two years, with warning that a similar offense by her will be dealt with more severely.

5. **ID.; ID.; ID.; RESTITUTION OF THE AMOUNT INVOLVED PLUS INTEREST, ORDERED. —** Atty. Reyes is further obliged to pay to Bayonla the amount of ₱44,582.67, which the IBP Board of Governors found to be still unpaid, by way of restitution. Although the Court renders this decision in an administrative proceeding primarily to exact the ethical responsibility on a member of the Philippine Bar, the Court's silence about the respondent lawyer's legal obligation to restitute the complainant will be both unfair and inequitable. No victim of gross ethical misconduct concerning the client's funds or property should be required to still litigate in another proceeding what the administrative proceeding has already established as the respondent's liability. That has been the reason why the Court has required restitution of the amount involved as a concomitant relief in the cited cases of *Mortera v. Pagatpatan, supra, Almendarez, Jr. v. Langit, supra*, and *Small v. Banares, supra*. In addition, Atty. Reyes is liable for interest of 12% *per annum* reckoned from June 22, 1997, the date when she was formally charged with disbarment. This rate of interest was prescribed by the Court in *Almendarez, Jr. v. Langit* and *Small v. Banares.*

D E C I S I O N

BERSAMIN, *J.*:

Rule 16.03 — A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a

lien to the same extent on all judgments and executions he has secured for his client as provided for in the *Rules of Court*.

- *Code of Professional Responsibility*.

This canon of professional responsibility is at the center of this administrative complaint for disbarment for gross dishonesty, deceit, conversion, and breach of trust filed against Atty. Purita A. Reyes by Teresita T. Bayonla, her client.[1]

Antecedents

Petra Durban and Paz Durban were sisters who had jointly owned a parcel of land situated in Butuan City in their lifetimes. They died without leaving a will. Their land was thereafter expropriated in connection with the construction of the Bancasi Airport. An expropriation compensation amounting to ₱2,453,429.00 was to be paid to their heirs. Bayonla and her uncle, Alfredo Tabada (Alfredo), were the compulsory heirs of Paz, being, respectively, Paz's granddaughter and son.[2]

On June 22, 1997, Bayonla charged Atty. Reyes with gross dishonesty, deceit, conversion, and breach of trust. Bayonla alleged that on October 21, 1993, she and Alfredo had engaged the legal services of Atty. Reyes to collect their share in the expropriation compensation from the Air Transportation Office (ATO), Cagayan De Oro City,[3] agreeing to her attorney's fees of 10% of whatever amount would be collected; that in November 1993, Atty. Reyes had collected ₱1 million from the ATO; that Bayonla's share, after deducting Atty. Reyes' attorney's fees, would be ₱75,000.00, but Atty. Reyes had delivered to her only ₱23,000.00, and had failed to deliver the balance of ₱52,000.00 despite repeated demands; that on June 5, 1995, Atty. Reyes had collected the amount of ₱121,119.11 from the ATO; that Bayonla's share, after deducting Atty. Reyes' attorney's fees, would be ₱109,007.20, but Atty. Reyes had

---

[1] *Rollo*, pp. 3-4.

[2] *Id.*, pp. 32-33.

[3] *Id.*, p. 5.

handed her only ₱56,500.00, and had failed to deliver the balance of ₱52,507.20; and that Atty. Reyes should be disbarred for depriving her of her just share.[4]

In her comment dated February 10, 1998,[5] Atty. Reyes admitted that Bayonla and Alfredo had engaged her legal services for the purpose of collecting their share in the expropriation compensation; that as consideration for her services, Bayonla and Alfredo had agreed upon a 40% contingent fee for her; that she had given to Bayonla more than what had been due to her; that Alfredo had received from the ATO the check for the second release corresponding to the share of both Bayonla and Alfredo; that Alfredo had gotten more than Bayonla out of the second release; that on June 5, 1995 she had received out of the second release by the ATO only her 40% contingent fee; that Bayonla and Alfredo had agreed to bear the expenses for the collection of their share; that she had incurred travel and other expenses in collecting such share; and that she should be absolved from liability arising from the complaint.

On June 29, 1998, the Court referred the complaint to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.[6]

On April 20, 1999, IBP Commissioner Lydia A. Navarro (Commissioner Navarro) rendered a report,[7] whereby she found and recommended against Atty. Reyes as follows:

> In so far as this case of disbarment is concerned, the issue hinges only on the complainant's position; one of the heirs of Paz Durban whose legal services of the respondent was not revoked.
>
> The parties were required to submit documents relative to their respective defenses (*sic*) specially the actual amounts released by ATO, actual amount due to the complainant as her share, the

---

[4] *Id.*, pp. 3-4.

[5] *Id.,* pp. 24-28.

[6] *Id.*, p. 94.

[7] *Id.*, pp. 97-102.

remittances made by the respondent to the complainant of her share and receipts to prove the same.

Unfortunately, only the respondent filed an answer without the necessary documents required of them and attached only a xerox copy of the computation made by Atty. Ismael Laya for the heir of Pedro Durban which had already been previously attached to the records of this case.

In the said computation it appears that for the release on February 17, 1993, the heirs of Durban received ₱84,852.00 and for the second release each of them as well as the complainant was entitled ₱121,119.11. It could be inferred from here that complainant was supposed to received (*sic*) ₱205,971.11 as her share.

Inasmuch as the attorney's fees of 40% was (sic) supported by evidence instead of (*sic*) complainant's allegation of ten [10%] percent; then respondent was entitled to ₱82,388.45 as attorney's fees; leaving a balance of ₱123,582.66 due to the complainant.

Respondent's allegation that she gave more than what was alleged by the complainant is untenable for she did not submit evidence to prove the same, therefore, as it is complainant's allegation that she received only ₱79,000.00 for her share as a whole shall be considered for the moment until such time that proofs to the contrary shall have been submitted.

Considering that complainant was supposed to receive the amount due her which was ₱123,582.66 and actually received only ₱79,000.00; then respondent still has to remit to complainant the amount of ₱44,582.66.

From the records of this case respondent alleged that she only collected the 40% attorney's fees for the second release whereby Alfredo Tabada the other heir of Paz Durban received the check from ATO and got a large part of the same. Respondent did not mention how much she got as attorney's fees against complainant's share but on the whole amounting to ₱496,895.00 which is unfair to the complainant.

As counsel for the heirs of Paz Durban, complainant herein should have been advised by the respondent and given a breakdown of whatever amount was received or came to her knowledge as complainant's counsel. Short of the foregoing, respondent violated Rule 16.01 Canon 16 Chapter III of the Code of Professional Responsibility; to wit:

"Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client."

Respondent was given a chance to rectify whatever errors or misgivings (*sic*) she had done for her client but she unfortunately failed to do so and did not comply with the Order dated October 29, 1998.

Wherefore, in view of the foregoing, the Undersigned respectfully recommends that the respondent be required to render an accounting or inventory duly confirmed by the complainant of all the collected shares due the complainant and remit to the latter the said amount of ₱44,582.66;

Until such time that respondent had complied with the aforementioned, she is suspended from the practice of her legal profession.

Respectfully submitted.

On June 19, 1999, the IBP Board of Governors adopted and approved the report of Commissioner Navarro through Resolution No. XIII-99-165.[8]

Atty. Reyes moved for reconsideration, but on September 27, 1999 the IBP Board of Governors denied her motion for reconsideration through Resolution No. XIV-99-117.[9]

Atty. Reyes then filed a motion for reinvestigation. However, through its Resolution No. XV-2001-111 adopted on July 28, 2001, the IBP Board of Governors denied the motion for reinvestigation for lack of jurisdiction, stating that the matter had already been endorsed to the Court.[10]

On July 30, 2002, the Court directed the IBP Board of Governors to report on whether Atty. Reyes had already accounted for and remitted the amount of ₱44,582.66 to Bayonla.[11]

---

[8] *Id.*, p. 96.

[9] *Id.*, p. 105.

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

[11] *Id.*, pp. 146-147.

On August 22, 2002, the IBP Board of Governors informed the Court that per the manifestation of Bayonla's counsel Atty. Reyes had not yet rendered an accounting and had not yet remitted the amount of ₱44,582.66 to Bayonla.[12]

Through her manifestation dated September 4, 2002 to the Court,[13] Atty. Reyes posed some queries, as follows: (*a*) whether she could be compelled to pay the amount of ₱44,582.66 to Bayonla even if the latter's claims had been based on perjured statements; (*b*) whether the payment of the amount would operate to dismiss the *estafa* case previously filed by Bayonla against her for allegedly failing to deliver the balance of Bayonla's share; and (*c*) whether she could deposit the amount of ₱44,582.66 with either the IBP Board of Governors or the Court.

Atty. Reyes also stated in the manifestation that the IBP Board of Governors did not accord to her the right to confront Bayonla during the investigation conducted by the IBP Board of Governors; that Bayonla's counsel had induced Bayonla to file the *estafa* charge against her; and that this had prompted her to initiate a disbarment complaint against Bayonla's counsel.[14]

On May 24, 2010, the Office of the Bar Confidant (OBC) recommended the final resolution of this case.[15] The recommendation was noted by the Court on June 29, 2010.[16]

Issue

Whether or not the findings and recommendations of the IBP Board of Governors were proper.

---

[12] *Id.*, pp. 148-149.

[13] *Id.*, pp. 153-155.

[14] *Id.*

[15] *Id.*, pp. 190-191.

[16] *Id.*, p. 192.

Ruling

We affirm the findings of the IBP Board of Governors, which were supported by the records, but we modify the sanctions to be imposed on Atty. Reyes.

I
Respondent was guilty of violating the canons of the *Code of Professional Responsibility*

Canon 16 of the *Code of Professional Responsibility* requires that a lawyer shall hold in trust all moneys and properties of her client that may come into her possession. Rule 16.01 of Canon 16 imposes on the lawyer the duty to account for all money or property collected or received for or from the client. Rule 16.03 of Canon 16 demands that the lawyer shall deliver the funds and property of his client when due or upon demand, subject to the lawyer's lien over the funds, or the lawyer's option to apply so much of the funds as may be necessary to satisfy the lawful fees and disbursements, giving notice promptly thereafter to the client.

The canons are appropriate considering that the relationship between a lawyer and her client is highly fiduciary, and prescribes on a lawyer a great degree of fidelity and good faith. There is no question that the money or property received by a lawyer for her client properly belongs to the latter.[17] Conformably with these canons of professional responsibility, we have held that a lawyer is obliged to render an accounting of all the property and money she has collected for her client. This obligation includes the prompt reporting and accounting of the money collected by the lawyer by reason of a favorable judgment to his client.[18]

Based on the records, Bayonla and her uncle would each receive the amount of ₱84,852.00 out of the first release, and the amount of ₱121,119.11 out of the second release. Her total

---

[17] *Angeles v. Uy, Jr.*, A.C. No. 5019, April 6, 2000, 330 SCRA 6, 17.

[18] *Id.*, at p. 20; *Marquez v. Meneses, Jr.*, Adm. Case No. 675, December 17, 1999, 321 SCRA 1, 6.

share from the two releases was ₱205,971.11. With Atty. Reyes being entitled to ₱82,388.44 as attorney's fees, the equivalent of 40% of Bayonla's share, the net share of Bayonla was ₱123,582.67. Yet, Atty. Reyes actually delivered to her only ₱79,000.00,[19] which was short by ₱44,582.67. Despite demands by Bayonla and despite the orders from the IBP Board of Governors for her to remit the shortage,[20] Atty. Reyes refused to do so.

By not delivering Bayonla's share despite her demand, Atty. Reyes violated the aforestated canons. The money collected by Atty. Reyes as the lawyer of Bayonla was unquestionably money held in trust to be immediately turned over to the client.[21] The unjustified withholding of money belonging to the client warrants the imposition of disciplinary sanctions on the lawyer.[22] Without doubt, Atty. Reyes' failure to immediately account for and to deliver the money upon demand was deceit, for it signified that she had converted the money to her own use, in violation of the trust Bayonla had reposed in her. It constituted gross misconduct for which the penalty of suspension from the practice of law became justified pursuant to Section 27, Rule 138 of the *Rules of Court*, to wit:

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

---

[19] *Rollo*, pp. 61 and 100-101.

[20] *Id.*, p. 96.

[21] *Marquez v. Meneses, Jr.*, *supra*, note 18, at p. 5.

[22] *Macarilay v. Serina*, A.C. No. 6591, May 4, 2005, 458 SCRA 12, 25.

The disbarment or suspension of a member of the Philippine Bar by a competent court or other disciplinary agency in a foreign jurisdiction where he has also been admitted as an attorney is a ground for his disbarment or suspension if the basis of such action includes any of the acts hereinabove enumerated.

The judgment, resolution or order of the foreign court or disciplinary agency shall be *prima facie* evidence of the ground for disbarment or suspension. (As amended by SC Resolution dated February 13, 1992.)

II
Pendency of other cases not an obstacle to administrative proceeding against respondent

The filing of the perjury charge by Atty. Reyes against Bayonla and of the *estafa* charge by Bayonla against Atty. Reyes could not halt or excuse the duty of Atty. Reyes to render an accounting and to remit the amount due to Bayonla. Nor did the pendency of such cases inhibit this administrative matter from proceeding on its due course. It is indisputable that the pendency of any criminal charges between the lawyer and her client does not negate the administrative proceedings against the lawyer. We explained why in *Suzuki v. Tiamson*,[23] to wit:

> The settled rule is that **criminal and civil cases are different from administrative matters, such that the disposition in the first two will not inevitably govern the third and vice versa**. In this light, we refer to this Court's ruling in *Berbano vs. Barcelona*, citing *In re Almacen*, where it was held:
>
>> Disciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but rather investigations by the Court into the conduct of one of its officers. Not being intended to inflict punishment, [they are] in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. [They] may be initiated by the Court *motu proprio*. Public interest is [their] primary objective, and the real question for determination is whether or not the attorney

---

[23] Adm. Case No. 6542, September 30, 2005, 471 SCRA 129, 141.

is still a fit person to be allowed the privileges as such. Hence, **in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have prove[n] themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney**.

Hence, our only concern in the instant case is the determination of respondent's administrative liability and our findings herein should not in any way be treated as having any material bearing on any other judicial action which the parties may choose to file against each other. [emphasis supplied]

Relevantly, we have also emphasized in *Gatchalian Promotions Talents Pool, Inc. v. Naldoza* [24] that —

xxx a finding of guilt in the criminal case will not necessarily result in a finding of liability in the administrative case. Conversely, respondent's acquittal does not necessarily exculpate him administratively. In the same vein, the trial court's finding of civil liability against the respondent will not inexorably lead to a similar finding in the administrative action before this Court. Neither will a favorable disposition in the civil action absolve the administrative liability of the lawyer.

It serves well to mention, lastly, that the simultaneous pendency of an administrative case and a judicial proceeding related to the cause of the administrative case, even if the charges and the evidence to be adduced in such cases are similar, does not result into or occasion any unfairness, or prejudice, or deprivation of due process to the parties in either of the cases.[25]

---

[24] Adm. Case No. 4017, September 29, 1999, 315 SCRA 406, 413.

[25] *Saludo, Jr. v. Court of Appeals*, G.R. No. 121404, May 3, 2006, 489 SCRA 14, 19.

III
No denial of due process to respondent

Atty. Reyes contends that she was denied her right to due process because the IBP Board of Governors did not permit her to personally confront the complainant.

We do not consider Atty. Reyes' contention valid. She was accorded full due process, for she in fact participated in *all* stages of the proceedings.

It is true that a lawyer shall not be disbarred or suspended from the practice of law until she has had full opportunity upon reasonable notice to answer the charges against her, to produce witnesses in her behalf, and to be heard by herself or counsel.[26] Contrary to Atty. Reyes' insistence, however, the IBP Board of Governors was under no legal obligation to conduct a trial-type proceeding at which she could have personally confronted Bayonla. In other words, the lack of such proceeding neither diminished her right to due process nor deprived her of the right. A formal investigation entailing notice and hearing is required in administrative proceedings for disbarment, but the imperative need of notice and hearing does not always mean the holding of an adversarial trial-type proceeding. Due process is still satisfied when the parties are afforded the reasonable opportunity to be heard and to submit evidence in support of their respective sides.[27] As the Court said in *Samalio v. Court of Appeals*:[28]

Due process in an administrative context does not require trial-type proceedings similar to those in courts of justice. Where opportunity to be heard either through oral arguments or through pleadings is accorded, there is no denial of procedural due process. A formal or trial-type hearing is not at all times and in all instances essential. The requirements are satisfied where the parties are afforded fair and reasonable opportunity

---

[26] Section 30, Rule 138, *Rules of Court*.

[27] *Pormento, Sr. v. Pontevedra*, A.C. No. 5128, March 31, 2005, 454 SCRA 167, 174.

[28] G.R. No. 140079, March 31, 2005, 454 SCRA 462, 472-473.

to explain their side of the controversy at hand. The standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored. In other words, it is not legally objectionable for being violative of due process for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties as affidavits of witnesses may take the place of their direct testimony.

In this case, petitioner was heard through the various pleadings which he filed with the Board of Discipline of the BID when he filed his answer and two motions to dismiss, as well as other motions and papers. He was also able to participate in all stages of the administrative proceeding. He was able to elevate his case to the Secretary of Justice and, subsequently, to the CSC by way of appeal.

We have consistently held that the essence of due process is simply the opportunity to be heard or, as applied to administrative proceedings, the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. And any seeming defect in its observance is cured by the filing of a motion for reconsideration. Denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on his motion for reconsideration. [bold emphasis supplied]

Nevertheless, the IBP Board of Governors actually conducted a formal investigation of the complaint against Atty. Reyes upon the directive of the Court. In her formal investigation of the complaint, Commissioner Navarro allowed both parties to submit their respective proofs on the actual amounts released by the ATO, the amounts due to Bayonla as her share, Atty. Reyes' corresponding contingent fees, the remittances by Atty. Reyes to Bayonla, and the receipts showing such remittances.[29] In due course, Atty. Reyes submitted her written answer, attaching to the answer the documents supporting her defenses.[30] Commissioner Navarro took all of Atty. Reyes' submissions

---

[29] *Rollo*, p. 176.

[30] *Id.*, pp. 177-186.

into good and proper account, as borne out by her report.[31] And even after the IBP Board of Governors had adopted Commissioner Navarro's report (and its recommendation), Atty. Reyes was still afforded the fair opportunity to challenge the adverse findings by filing her motion for reconsideration, although such motion was ultimately resolved against her.[32]

IV
Sanction

The penalty for gross misconduct consisting in the failure or refusal despite demand of a lawyer to account for and to return money or property belonging to a client has been suspension from the practice of law for two years. In *Almendarez, Jr. v. Langit*,[33] the lawyer who withdrew the rentals pertaining to his client totaling ₱255,000.00 without the knowledge of the client and who ignored the demand of the client to account for and to return the amount was suspended from the practice of law for two years. In *Mortera v. Pagatpatan*,[34] the lawyer received ₱155,000.00 from the adversary of his clients as partial payment of a final and executory decision in favor of the clients pursuant to a secret arrangement between the lawyer and the adversary, and deposited the amount to the lawyer's personal bank account without the knowledge of the clients; the lawyer thereafter refused to surrender the money to his clients. The suspension of the lawyer for two years from the practice of law was ordered by the Court. In *Small v. Banares*,[35] a similar penalty of suspension for a period of two years from the practice of law was imposed on a lawyer who had failed to file a case for the purpose of which he had received an amount of ₱80,000.00, and to return the amount upon demand. In *Barcenas v. Alvero*,[36] the Court

---

[31] *Id.*, pp. 99-101.

[32] *Id.*, pp. 105 and 107-113.

[33] A.C. No. 7057, July 25, 2006, 496 SCRA 402.

[34] A.C. No. 4562, June 15, 2005, 460 SCRA 99.

[35] A.C. No. 7021, February 21, 2007, 516 SCRA 323.

[36] A.C. No. 8159, April 23, 2010, 619 SCRA 1.

suspended for a period of two years from the practice of law a lawyer who had failed to immediately account for and to return ₱300,000.00 received from a client for the purpose of depositing it in court, after the lawyer had been found not to have deposited the money in court.

Considering that the sin of Atty. Reyes had striking resemblance with the sins thus sanctioned in the aforementioned precedents, the proper penalty for her is suspension from the practice of law for two years, with warning that a similar offense by her will be dealt with more severely.

Atty. Reyes is further obliged to pay to Bayonla the amount of ₱44,582.67, which the IBP Board of Governors found to be still unpaid, by way of restitution. Although the Court renders this decision in an administrative proceeding primarily to exact the ethical responsibility on a member of the Philippine Bar, the Court's silence about the respondent lawyer's legal obligation to restitute the complainant will be both unfair and inequitable. No victim of gross ethical misconduct concerning the client's funds or property should be required to still litigate in another proceeding what the administrative proceeding has already established as the respondent's liability. That has been the reason why the Court has required restitution of the amount involved as a concomitant relief in the cited cases of *Mortera v. Pagatpatan, supra, Almendarez, Jr. v. Langit, supra*, and *Small v. Banares, supra*.

In addition, Atty. Reyes is liable for interest of 12% *per annum* reckoned from June 22, 1997, the date when she was formally charged with disbarment. This rate of interest was prescribed by the Court in *Almendarez, Jr. v. Langit* and *Small v. Banares.*

WHEREFORE, the Court *FINDS AND PRONOUNCES ATTY. PURITA A. REYES* guilty of violating Rule 16.01 and Rule 16.03 of Canon 16 of the *Code of Professional Responsibilit*y, and *SUSPENDS* her from the practice of law for a period of two years effective upon receipt of this Decision, with warning that a similar offense by her will be dealt with more severely.

The Court *ORDERS* Atty. Reyes to pay to complainant Teresita T. Bayonla within 30 days from receipt of this Decision the amount of ₱44,582.67, with interest of 12% *per annum* from June 22, 1997, and to render unto the complainant a complete written accounting and inventory of: — (*a*) the amounts she had collected from the Air Transportation Office as expropriation compensation; (*b*) the total amount due to the complainant; (*c*) the total amount she had actually remitted to the complainant; and (*d*) the amount she had deducted as her contingent fee *vis-à-vis* the complainant.

Within the same period of compliance, Atty. Reyes shall submit to the Court, through the Office of the Bar Confidant, authentic written proof that her accounting, inventory, and payment were furnished to and received by the complainant in due course.

This Decision is without prejudice to any pending or contemplated proceedings against Atty. Reyes.

Let this Decision be disseminated to all lower courts and to the Integrated Bar of the Philippines, with a copy of it to be included in Atty. Reyes' file in the Office of the Bar Confidant.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Brion, J., on leave.

EN BANC

[G.R. No. 171101. November 22, 2011]

HACIENDA LUISITA, INCORPORATED, *petitioner*, **LUISITA INDUSTRIAL PARK CORPORATION and RIZAL COMMERCIAL BANKING CORPORATION,** *petitioners-in-intervention, vs.* **PRESIDENTIAL AGRARIAN REFORM COUNCIL; SECRETARY NASSER PANGANDAMAN OF THE DEPARTMENT OF AGRARIAN REFORM; ALYANSA NG MGA MANGGAGAWANG BUKID NG HACIENDA LUISITA, RENE GALANG, NOEL MALLARI, and JULIO SUNIGA**[1] **and his SUPERVISORY GROUP OF THE HACIENDA LUISITA, INC. and WINDSOR ANDAYA,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; STATUTES; CONSTITUTIONALITY OF; OPERATIVE FACT DOCTRINE; NOT LIMITED TO LAWS SUBSEQUENTLY DECLARED UNCONSTITUTIONAL OR INVALID BUT APPLIES ALSO TO EXECUTIVE ACTS SUBSEQUENTLY DECLARED INVALID; APPLIED.—** Contrary to the stance of respondents, the operative fact doctrine does not only apply to laws subsequently declared unconstitutional or unlawful, as it also applies to executive acts subsequently declared as invalid. As We have discussed in Our July 5, 2011 Decision: x x x. The applicability of the operative fact doctrine to executive acts was further explicated by this Court in *Rieta v. People*, thus: x x x. Similarly, the implementation/enforcement of presidential decrees prior to their publication in the Official Gazette is 'an operative fact which may have consequences which cannot be justly ignored. The past cannot always be erased by a new judicial declaration … that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.'" x x x. Bearing in mind that PARC Resolution No. 89-12-2 —an

[1] "Jose Julio Zuniga" in some parts of the records.

executive act—was declared invalid in the instant case, the operative fact doctrine is clearly applicable.

2. **ID.; ID.; ID.; ID.; NOT CONFINED TO STATUTES AND RULES AND REGULATIONS ISSUED BY THE EXECUTIVE DEPARTMENT THAT ARE ACCORDED THE SAME STATUS AS THAT OF A STATUTE OR THOSE WHICH ARE QUASI-LEGISLATIVE IN NATURE; TERM "EXECUTIVE ACT," CONSTRUED.—** [N]either the *De Agbayani* case nor the *Municipality of Malabang* case elaborates what "executive act" mean. Moreover, while orders, rules and regulations issued by the President or the executive branch have fixed definitions and meaning in the Administrative Code and jurisprudence, the phrase "executive act" does not have such specific definition under existing laws. It should be noted that in the cases cited by the minority, nowhere can it be found that the term "executive act" is confined to the foregoing. Contrarily, the term "executive act" is broad enough to encompass decisions of administrative bodies and agencies under the executive department which are subsequently revoked by the agency in question or nullified by the Court. xxx In *Tan v. Barrios*, this Court, in applying the operative fact doctrine, held that despite the invalidity of the jurisdiction of the military courts over civilians, certain operative facts must be acknowledged to have existed so as not to trample upon the rights of the accused therein. Relevant thereto, in *Olaguer v. Military Commission No. 34*, it was ruled that "military tribunals pertain to the Executive Department of the Government and are simply instrumentalities of the executive power, provided by the legislature for the President as Commander-in-Chief to aid him in properly commanding the army and navy and enforcing discipline therein, and utilized under his orders or those of his authorized military representatives." Evidently, the operative fact doctrine is not confined to statutes and rules and regulations issued by the executive department that are accorded the same status as that of a statute or those which are quasi-legislative in nature.

3. **ID.; ID.; ID.; ID.; THE COURT CAN APPLY THE OPERATIVE FACT DOCTRINE TO ACTS AND CONSEQUENCES THAT RESULTED FROM THE RELIANCE NOT ONLY ON A LAW OR EXECUTIVE ACT WHICH IS QUASI-LEGISLATIVE IN NATURE BUT ALSO ON DECISIONS**

OR ORDERS OF THE EXECUTIVE BRANCH WHICH WERE LATER NULLIFIED.— Even assuming that *De Agbayani* initially applied the operative fact doctrine only to executive issuances like orders and rules and regulations, said principle can nonetheless be applied, by analogy, to decisions made by the President or the agencies under the executive department. This doctrine, in the interest of justice and equity, can be applied liberally and in a broad sense to encompass said decisions of the executive branch. In keeping with the demands of equity, the Court can apply the operative fact doctrine to acts and consequences that resulted from the reliance not only on a law or executive act which is quasi-legislative in nature but also on decisions or orders of the executive branch which were later nullified. This Court is not unmindful that such acts and consequences must be recognized in the higher interest of justice, equity and fairness. Significantly, a decision made by the President or the administrative agencies has to be complied with because it has the force and effect of law, springing from the powers of the President under the Constitution and existing laws. Prior to the nullification or recall of said decision, it may have produced acts and consequences in conformity to and in reliance of said decision, which must be respected. It is on this score that the operative fact doctrine should be applied to acts and consequences that resulted from the implementation of the PARC Resolution approving the SDP of HLI.

4. ID.; ID.; ID.; ID.; THE APPLICATION OF THE OPERATIVE FACT DOCTRINE TO THE QUALIFIED FARMWORKER-BENEFICIARIES (FWBs) IS NOT INIQUITOUS AND PREJUDICIAL TO THEIR INTERESTS BUT IS ACTUALLY BENEFICIAL AND FAIR TO THEM.— The application of the operative fact doctrine to the FWBs is not iniquitous and prejudicial to their interests but is actually beneficial and fair to them. *First*, they are granted the right to remain in HLI as stockholders and they acquired said shares without paying their value to the corporation. On the other hand, the qualified FWBs are required to pay the value of the land to the Land Bank of the Philippines (LBP) if land is awarded to them by DAR pursuant to RA 6657. If the qualified FWBs really want agricultural land, then they can simply say no to the option. And *second*, if the operative fact doctrine is not applied to

them, then the FWBs will be required to return to HLI the 3% production share, the 3% share in the proceeds of the sale of the 500-hectare converted land, and the 80.51-hectare Subic-Clark-Tarlac Expressway (SCTEX) lot, the homelots and other benefits received by the FWBs from HLI. With the application of the operative fact doctrine, said benefits, homelots and the 3% production share and 3% share from the sale of the 500-hectare and SCTEX lots shall be respected with no obligation to refund or return them. The receipt of these things is an operative fact "that can no longer be disturbed or simply ignored."

5. ID.; ID.; ID.; ID.; A RULE OF EQUITY.— Undeniably, the operative fact doctrine is a rule of equity. As a complement of legal jurisdiction, equity "seeks to reach and complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent to do so. Equity regards the spirit and not the letter, the intent and not the form, the substance rather than the circumstance, as it is variously expressed by different courts." Remarkably, it is applied only in the absence of statutory law and never in contravention of said law.

6. ID.; ID.; STATUTORY CONSTRUCTION; LAST PARAGRAPH OF SECTION 31 OF THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (RA 6657); CONSTRUED.— [T]he last paragraph of Sec. 31 of RA 6657 states: If within two (2) years from the approval of this Act, the land or stock transfer envisioned above is not made or realized **or** the plan for such stock distribution approved by the PARC within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act. Markedly, the use of the word **"or"** under the last paragraph of Sec. 31 of RA 6657 connotes that the law gives the corporate landowner an "option" to avail of the stock distribution option or to have the SDP approved within two (2) years from the approval of RA 6657. This interpretation is consistent with the well-established principle in statutory construction that "[t]he word or is a disjunctive term signifying disassociation and independence of one thing from the other things enumerated; it should, as a rule, be construed in the sense in which it ordinarily implies, as a disjunctive word."

7. ID.; ID.; ID.; ID.; NOT A BAR FROM APPLYING THE OPERATIVE FACT DOCTRINE.— Given that HLI secured approval of its SDP in November 1989, well within the two-year period reckoned from June 1988 when RA 6657 took effect, then HLI did not violate the last paragraph of Sec. 31 of RA 6657. Pertinently, said provision does not bar Us from applying the operative fact doctrine. Besides, it should be recognized that this Court, in its July 5, 2011 Decision, affirmed the revocation of Resolution No. 89-12-2 and ruled for the compulsory coverage of the agricultural lands of Hacienda Luisita in view of HLI's violation of the SDP and DAO 10. By applying the operative fact doctrine, this Court merely gave the qualified FWBs the option to remain as stockholders of HLI and ruled that they will retain the homelots and other benefits which they received from HLI by virtue of the SDP. It bears stressing that the application of the operative fact doctrine by the Court in its July 5, 2011 Decision is favorable to the FWBs because not only were the FWBs allowed to retain the benefits and homelots they received under the stock distribution scheme, they were also given the option to choose for themselves whether they want to remain as stockholders of HLI or not. This is in recognition of the fact that despite the claims of certain farmer groups that they represent the qualified FWBs in Hacienda Luisita, none of them can show that they are duly authorized to speak on their behalf.

8. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RESTRICTED TO RESOLVING ERRORS OF JURISDICTION AND GRAVE ABUSE OF DISCRETION, AND NOT ERRORS OF JUDGMENT.— FARM argues that this Court ignored certain material facts when it limited the maximum area to be covered to 4,915.75 hectares, whereas the area that should, at the least, be covered is 6,443 hectares, which is the agricultural land allegedly covered by RA 6657 and previously held by Tarlac Development Corporation (Tadeco). We cannot subscribe to this view. Since what is put in issue before the Court is the propriety of the revocation of the SDP, which only involves 4,915.75 has. of agricultural land and not 6,443 has., then We are constrained to rule only as regards the 4,915.75 has. of agricultural land. Moreover, as admitted by FARM itself, this issue was raised for the first time by FARM in its Memorandum dated September 24, 2010

filed before this Court. In this regard, it should be noted that "[a]s a legal recourse, the special civil action of *certiorari* is a limited form of review." The *certiorari* jurisdiction of this Court is narrow in scope as it is restricted to resolving errors of jurisdiction and grave abuse of discretion, and not errors of judgment. To allow additional issues at this stage of the proceedings is violative of fair play, justice and due process.

9. **LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (RA 6657); MATTERS INVOLVING STRICTLY THE ADMINISTRATIVE IMPLEMENTATION AND ENFORCEMENT OF AGRARIAN REFORM LAWS ARE WITHIN THE JURISDICTION OF THE DEPARTMENT OF AGRARIAN REFORM (DAR).—** Nonetheless, it should be taken into account that this should not prevent the DAR, under its mandate under the agrarian reform law, from subsequently subjecting to agrarian reform other agricultural lands originally held by Tadeco that were allegedly not transferred to HLI but were supposedly covered by RA 6657. x x x. In order to ensure the proper distribution of the agricultural lands of Hacienda Luisita per qualified FWB, and considering that matters involving strictly the administrative implementation and enforcement of agrarian reform laws are within the jurisdiction of the DAR, it is the latter which shall determine the area with which each qualified FWB will be awarded.

10. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES ARE CONCLUSIVE AND BINDING ON THE COURT WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTIONS.—** [T]he allegation that the converted lands remain undeveloped is contradicted by the evidence on record, particularly, Annex "X" of LIPCO's Memorandum dated September 23, 2010, which has photographs showing that the land has been partly developed. Certainly, it is a general rule that the factual findings of administrative agencies are conclusive and binding on the Court when supported by substantial evidence. However, this rule admits of certain exceptions, one of which is when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

11. **COMMERCIAL LAW; CORPORATIONS; PIERCING THE VEIL OF CORPORATE FICTION; ABSENT ANY ALLEGATION OR PROOF OF FRAUD OR OTHER PUBLIC POLICY CONSIDERATIONS, THE EXISTENCE OF INTERLOCKING DIRECTORS, OFFICERS AND STOCKHOLDERS IS NOT ENOUGH JUSTIFICATION TO PIERCE THE VEIL OF CORPORATE FICTION.—** [B]y arguing that the companies involved in the transfers of the 300-hectare portion of Hacienda Luisita have interlocking directors and, thus, knowledge of one may already be imputed upon all the other companies, AMBALA and Rene Galang, in effect, want this Court to pierce the veil of corporate fiction. However, piercing the veil of corporate fiction is warranted "only in cases when the separate legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, such that in the case of two corporations, the law will regard the corporations as merged into one." x x x. Absent any allegation or proof of fraud or other public policy considerations, the existence of interlocking directors, officers and stockholders is not enough justification to pierce the veil of corporate fiction as in the instant case.

12. **LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (RA 6657); ONCE FINAL AND EXECUTORY, THE CONVERSION ORDER CAN NO LONGER BE QUESTIONED.—** A view has also been advanced that the 200-hectare lot transferred to Luisita Realty Corporation (LRC) should be included in the compulsory coverage because the corporation did not intervene. We disagree. Since the 200-hectare lot formed part of the SDP that was nullified by PARC Resolution 2005-32-01, this Court is constrained to make a ruling on the rights of LRC over the said lot. Moreover, the 500-hectare portion of Hacienda Luisita, of which the 200-hectare portion sold to LRC and the 300-hectare portion subsequently acquired by LIPCO and RCBC were part of, was already the subject of the August 14, 1996 DAR Conversion Order. By virtue of the said conversion order, the land was already reclassified as industrial/commercial land not subject to compulsory coverage. Thus, if We place the 200-hectare lot sold to LRC under compulsory coverage, this Court would, in effect, be disregarding the DAR Conversion Order, which has long attained its finality. And as this Court held in *Berboso*

v. CA, "Once final and executory, the Conversion Order can no longer be questioned." Besides, to disregard the Conversion Order through the revocation of the approval of the SDP would create undue prejudice to LRC, which is not even a party to the proceedings below, and would be tantamount to deprivation of property without due process of law.

13. **ID.; ID.; THE RIGHTS, OBLIGATIONS AND REMEDIES OF THE PARTIES TO THE STOCK DISTRIBUTION OPTION AGREEMENT (SDOA) EMBODYING THE STOCK DISTRIBUTION PLAN (SDP) ARE PRIMARILY GOVERNED BY RA 6657 AND PETITIONER HACIENDA LUISITA, INC. (HLI) CANNOT SHIELD ITSELF FROM THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP) COVERAGE UNDER THE CONVENIENCE OF BEING A CORPORATE ENTITY.—** [H]LI seeks recourse to the Corporation Code in order to avoid its liability to the FWBs for the price received for the 500-hectare converted lot and the 80.51-hectare SCTEX lot. However, as We have established in Our July 5, 2011 Decision, the rights, obligations and remedies of the parties in the instant case are primarily governed by RA 6657 and HLI cannot shield itself from the CARP coverage merely under the convenience of being a corporate entity. In this regard, it should be underscored that the agricultural lands held by HLI by virtue of the SDP are no ordinary assets. These are special assets, because, originally, these should have been distributed to the FWBs were it not for the approval of the SDP by PARC. Thus, the government cannot renege on its responsibility over these assets. Likewise, HLI is no ordinary corporation as it was formed and organized precisely to make use of these agricultural lands actually intended for distribution to the FWBs. Thus, it cannot shield itself from the coverage of CARP by invoking the Corporation Code. As explained by the Court: x x x. **Contrary to the view of HLI, the rights, obligations and remedies of the parties to the SDOA embodying the SDP are primarily governed by RA 6657.** It should abundantly be made clear that HLI was precisely created in order to comply with RA 6657, which the OSG aptly described as the "mother law" of the SDOA and the SDP. **It is, thus, paradoxical for HLI to shield itself from the coverage of CARP by invoking exclusive applicability of the Corporation Code under the**

guise of being a corporate entity. Without in any way minimizing the relevance of the Corporation Code since the FWBs of HLI are also stockholders, its applicability is limited as the rights of the parties arising from the SDP should not be made to supplant or circumvent the agrarian reform program.

14. **ID.; ID.; PROCEEDS OF THE SALE OF THE 500 HECTARE CONVERTED LAND AND OF THE 80.51 HECTARE LAND USED FOR THE SCTEX SHOULD BE GIVEN TO THE QUALIFIED FARMWORKER-BENEFICIARIES LESS TAXES, AND EXPENSES RELATING TO THE TRANSFER OF TITLES AS WELL AS LEGITIMATE CORPORATE EXPENSES; 3% PRODUCTION SHARE, NOT DEDUCTIBLE.—** Considering that the 500-hectare converted land, as well as the 80.51-hectare SCTEX lot, should have been included in the compulsory coverage were it not for their conversion and valid transfers, then it is only but proper that the price received for the sale of these lots should be given to the qualified FWBs. In effect, the proceeds from the sale shall take the place of the lots. [D]AR claims that the "[l]egitimate corporate expenses should not be deducted as there is no basis for it, especially since only the auditing to be conducted on the financial records of HLI will reveal the amounts to be offset between HLI and the FWBs." The contention is unmeritorious. The possibility of an offsetting should not prevent Us from deducting the legitimate corporate expenses incurred by HLI and Centennary. After all, the Court has ordered for a proper auditing "[i]n order to determine once and for all whether or not all the proceeds were properly utilized by HLI and its subsidiary, Centennary." In this regard, DAR is tasked to "engage the services of a reputable accounting firm to be approved by the parties to audit the books of HLI to determine if the proceeds of the sale of the 500-hectare land and the 80.51-hectare SCTEX lot were actually used for legitimate corporate purposes, titling expenses and in compliance with the August 14, 1996 Conversion Order." Also, it should be noted that it is HLI which shall shoulder the cost of audit to reduce the burden on the part of the FWBs. Concomitantly, the legitimate corporate expenses incurred by HLI and Centennary, as will be determined by a reputable accounting firm to be engaged by DAR, shall be among the

allowable deductions from the proceeds of the sale of the 500-hectare land and the 80.51-hectare SCTEX lot. We, however, find that the 3% production share should not be deducted from the proceeds of the sale of the 500-hectare converted land and the 80.51-hectare SCTEX lot. The 3% production share, like the homelots, was among the benefits received by the FWBs as farmhands in the agricultural enterprise of HLI and, thus, should not be taken away from the FWBs.

15. **ID.; ID.; LAW ON CONTRACT NOT APPLICABLE TO THE REVOCATION OF PARC RESOLUTION NO. 89-12-2 APPROVING THE STOCK DISTRIBUTION PLAN (SDP).—** [T]he minority is of the view that as a consequence of the revocation of the SDP, the parties should be restored to their respective conditions prior to its execution and approval, subject to the application of the principle of set-off or compensation. Such view is patently misplaced. The law on contracts, *i.e.* mutual restitution, does not apply to the case at bar. To reiterate, what was actually revoked by this Court, in its July 5, 2011 Decision, is PARC Resolution No. 89-12-2 approving the SDP. To elucidate, it was the SDP, not the SDOA, which was presented for approval by Tadeco to DAR. The SDP explained the mechanics of the stock distribution but did not make any reference nor correlation to the SDOA. x x x. [W]hat was approved by PARC is the SDP and not the SDOA. There is, therefore, no basis for this Court to apply the law on contracts to the revocation of the said PARC Resolution.

16. **ID.; ID.; JUST COMPENSATION; FOR VALUATION PURPOSES, THE DATE OF TAKING IS NOVEMBER 21, 1989, THE DATE OF THE APPROVAL OF THE STOCK DISTRIBUTION PLAN (SDP).—** [W]e maintain that the date of "taking" is November 21, 1989, the date when PARC approved HLI's SDP per PARC Resolution No. 89-12-2, in view of the fact that this is the time that the FWBs were considered to own and possess the agricultural lands in Hacienda Luisita. To be precise, these lands became subject of the agrarian reform coverage through the stock distribution scheme only upon the approval of the SDP, that is, November 21, 1989. Thus, such approval is akin to a notice of coverage ordinarily issued under compulsory acquisition. Further, any doubt should be resolved in favor of the FWBs.

17. ID.; ID.; ID.; THE APPROVAL OF THE SDP TOOK THE PLACE OF A NOTICE OF COVERAGE ISSUED UNDER COMPULSORY ACQUISITION.— The minority contends that it is the date of the notice of coverage, that is, January 2, 2006, which is determinative of the just compensation HLI is entitled to for its expropriated lands. To support its contention, it cited numerous cases where the time of the taking was reckoned on the date of the issuance of the notice of coverage. However, a perusal of the cases cited by the minority would reveal that none of them involved the stock distribution scheme. Thus, said cases do not squarely apply to the instant case. Moreover, it should be noted that it is precisely because the stock distribution option is a distinctive mechanism under RA 6657 that it cannot be treated similarly with that of compulsory land acquisition as these are two (2) different modalities under the agrarian reform program. As We have stated in Our July 5, 2011 Decision, RA 6657 "provides two (2) alternative modalities, *i.e.*, land or stock transfer, pursuant to either of which the corporate landowner can comply with CARP." In this regard, it should be noted that when HLI submitted the SDP to DAR for approval, it cannot be gainsaid that the stock distribution scheme is clearly HLI's preferred modality in order to comply with CARP. And when the SDP was approved, stocks were given to the FWBs in lieu of land distribution. As aptly observed by the minority itself, "[i]nstead of expropriating lands, what the government took and distributed to the FWBs were shares of stock of petitioner HLI in proportion to the value of the agricultural lands that should have been expropriated and turned over to the FWBs." It cannot, therefore, be denied that upon the approval of the SDP submitted by HLI, the agricultural lands of Hacienda Luisita became subject of CARP coverage. Evidently, the approval of the SDP took the place of a notice of coverage issued under compulsory acquisition.

18. ID.; ID.; ID.; THE DEPARTMENT OF AGRARIAN REFORM'S (DAR) LAND VALUATION IS ONLY PRELIMINARY AND IS NOT FINAL AND CONCLUSIVE UPON THE LANDOWNER.— [I]t bears stressing that the DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner. The landowner can file an original action with the RTC acting as a special agrarian court to determine just compensation. The court has

the right to review with finality the determination in the exercise of what is admittedly a judicial function.

19. **ID.; ID.; ID.; PAYMENT OF RENTAL FOR THE USE OF THE SUBJECT LAND, NOT PROPER.—** A view has also been advanced that HLI should pay the qualified FWBs rental for the use and possession of the land up to the time it surrenders possession and control over these lands. What this view fails to consider is the fact that the FWBs are also stockholders of HLI prior to the revocation of PARC Resolution No. 89-12-2. Also, the income earned by the corporation from its possession and use of the land ultimately redounded to the benefit of the FWBs based on its business operations in the form of salaries, benefits voluntarily granted by HLI and other fringe benefits under their Collective Bargaining Agreement. That being so, there would be unjust enrichment on the part of the FWBs if HLI will still be required to pay rent for the use of the land in question.

20. **ID.; ID.; RETENTION LIMITS; 10-YEAR PROHIBITIVE PERIOD RECKONED FROM THE ISSUANCE OF THE EMANCIPATION PATENT (EP) OR CERTIFICATE OF LAND OWNERSHIP AWARD (CLOA), AND NOT THE PLACING OF THE AGRICULTURAL LANDS UNDER CARP COVERAGE.—** Without a doubt, under RA 6657 and DAO 1, the awarded lands may only be transferred or conveyed after ten (10) years from the **issuance** and **registration** of the emancipation patent (EP) or certificate of land ownership award (CLOA). Considering that the EPs or CLOAs have not yet been issued to the qualified FWBs in the instant case, the 10-year prohibitive period has not even started. Significantly, the reckoning point is **the issuance of the EP or CLOA**, and **not the placing of the agricultural lands under CARP coverage**. Moreover, if We maintain the position that the qualified FWBs should be immediately allowed the option to sell or convey the agricultural lands in Hacienda Luisita, then all efforts at agrarian reform would be rendered nugatory by this Court, since, at the end of the day, these lands will just be transferred to persons not entitled to land distribution under CARP.

21. **ID.; ID.; ID.; RULE ON RETENTION LIMITS NOT APPLICABLE TO STOCK DISTRIBUTION SCHEME BUT ONLY TO THE BUY-BACK SCHEME.—** [B]y raising that

the qualified beneficiaries may sell their interest back to HLI, this smacks of outright indifference to the provision on retention limits under RA 6657, as this Court, in effect, would be allowing HLI, the previous landowner, to own more than five (5) hectares of agricultural land, which We cannot countenance. There is a big difference between the ownership of agricultural lands by HLI under the stock distribution scheme and its eventual acquisition of the agricultural lands from the qualified FWBs under the proposed buy-back scheme. The rule on retention limits does not apply to the former but only to the latter in view of the fact that the stock distribution scheme is sanctioned by Sec. 31 of RA 6657, which specifically allows corporations to divest a proportion of their capital stock that "the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets." On the other hand, no special rules exist under RA 6657 concerning the proposed buy-back scheme; hence, the general rules on retention limits should apply.

22. **ID.; ID.; TRANSFER OF THE LAND INTERESTS TO THIRD PARTIES REGARDLESS OF WHETHER THEY HAVE FULLY PAID FOR THE LANDS OR NOT IS A VIOLATION OF THE LAW.—** The position that the qualified FWBs are now free to transact with third parties concerning their land interests, regardless of whether they have fully paid for the lands or not, also transgresses the second paragraph of Sec. 27 of RA 6657, which plainly states that "[i]f the land has not yet been fully paid by the beneficiary, the right to the land may be transferred or conveyed, with prior approval of the DAR, to any heir of the beneficiary or to any other beneficiary who, as a condition for such transfer or conveyance, shall cultivate the land himself failing compliance herewith, the land shall be transferred to the LBP x x x." When the words and phrases in the statute are clear and unequivocal, the law is applied according to its express terms. *Verbal egis non est recedendum*, or from the words of a statute there should be no departure.

23. **ID.; ID.; REVOCATION OF THE APPROVAL OF THE STOCK DISTRIBUTION PLAN (SDP) AFFIRMED; GROUNDS.—** Contrary to the assertions of AMBALA and FARM, nowhere in the SDP, RA 6657 and DAO 10 can it be inferred that improving the economic status of the FWBs is among the legal obligations of HLI under the SDP or is an

imperative imposition by RA 6657 and DAO 10, a violation of which would justify discarding the stock distribution option. x x x. This Court, x x x affirmed the revocation by PARC of its approval of the SDP based on the following grounds: (1) failure of HLI to fully comply with its undertaking to distribute homelots to the FWBs under the SDP; (2) distribution of shares of stock to the FWBs based on the number of "man days" or "number of days worked" by the FWB in a year's time; and (3) 30-year timeframe for the implementation or distribution of the shares of stock to the FWBs.

24. **ID.; ID.; CONTROL OVER THE AGRICULTURAL LANDS MUST ALWAYS BE IN THE HANDS OF THE QUALIFIED FARMWORKER-BENEFICIARIES (FWBs).—** Upon a review of the facts and circumstances, We realize that the FWBs will never have control over these agricultural lands for as long as they remain as stockholders of HLI. In line with Our finding that control over agricultural lands must always be in the hands of the farmers, We reconsider our ruling that the qualified FWBs should be given an option to remain as stockholders of HLI, inasmuch as these qualified FWBs will never gain control given the present proportion of shareholdings in HLI. A revisit of HLI's Proposal for Stock Distribution under CARP and the Stock Distribution Option Agreement (SDOA) upon which the proposal was based reveals that the total assets of HLI is PhP 590,554,220, while the value of the 4,915.7466 hectares is PhP 196,630,000. Consequently, the share of the farmer-beneficiaries in the HLI capital stock is 33.296% (196,630,000 divided by 590,554.220); 118,391,976.85 HLI shares represent 33.296%. Thus, even if all the holders of the 118,391,976.85 HLI shares unanimously vote to remain as HLI stockholders, which is unlikely, control will never be placed in the hands of the farmer-beneficiaries. Control, of course, means the majority of 50% plus at least one share of the common shares and other voting shares. Applying the formula to the HLI stockholdings, the number of shares that will constitute the majority is 295,112,101 shares (590,554,220 divided by 2 plus one [1] HLI share). The 118,391,976.85 shares subject to the SDP approved by PARC substantially fall short of the 295,112,101 shares needed by the FWBs to acquire control over HLI. Hence, control can NEVER be attained by the FWBs. There is even no assurance

that 100% of the 118,391,976.85 shares issued to the FWBs will all be voted in favor of staying in HLI, taking into account the previous referendum among the farmers where said shares were not voted unanimously in favor of retaining the SDP. In light of the foregoing consideration, the option to remain in HLI granted to the individual FWBs will have to be recalled and revoked. Moreover, bearing in mind that with the revocation of the approval of the SDP, HLI will no longer be operating under SDP and will only be treated as an ordinary private corporation; the FWBs who remain as stockholders of HLI will be treated as ordinary stockholders and will no longer be under the protective mantle of RA 6657.

25. **ID.; ID.; ALL THE BENEFITS AND HOMELOTS RECEIVED BY ALL THE FWBs SHALL BE RESPECTED WITH NO OBLIGATION TO REFUND OR RETURN THEM.—** [I]n view of the operative fact doctrine, all the benefits and homelots received by all the FWBs shall be respected with no obligation to refund or return them, since, as We have mentioned in our July 5, 2011 Decision, "the benefits x x x were received by the FWBs as farmhands in the agricultural enterprise of HLI and other fringe benefits were granted to them pursuant to the existing collective bargaining agreement with Tadeco."

26. **ID.; ID.; RIGHTS TO SUBJECT LANDS VESTED ONLY IN THE 6,296 ORIGINAL FWBs PURSUANT TO SEC. 22 OF RA 6657.—** [T]he HLI land shall be distributed only to the 6,296 original FWBs. The remaining 4,206 FWBs are not entitled to any portion of the HLI land, because the rights to said land were vested only in the 6,296 original FWBs pursuant to Sec. 22 of RA 6657. In this regard, DAR shall verify the identities of the 6,296 original FWBs, consistent with its administrative prerogative to identify and select the agrarian reform beneficiaries under RA 6657.

CORONA, *C.J., concurring and dissenting opinion:*

1. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; WHERE A PROVISION OF A STATUTE GOES AGAINST THE FUNDAMENTAL LAW, SPECIALLY IF IT IMPAIRS BASIC RIGHTS AND CONSTITUTIONAL VALUES, THE COURT SHOULD NOT HESITATE TO STRIKE IT DOWN**

AS UNCONSTITUTIONAL.— Where a provision of a statute goes against the fundamental law, specially if it impairs basic rights and constitutional values, the Court should not hesitate to strike it down as unconstitutional. In such a case, refusal to address the issue of constitutionality squarely is neither prudence nor restraint but evasion of judicial duty and abdication of the Court's authority.

2. **ID.; ID.; ID.; CONSTITUTIONALITY OF STATUTES; THE REQUIREMENT OF *LIS MOTA* DOES NOT APPLY WHERE THE QUESTION OF CONSTITUTIONALITY WAS RAISED BY THE PARTIES AND ADDRESSING SUCH QUESTION IS UNAVOIDABLE.—** The Court should not decline to test the constitutional validity of Section 31 of RA 6657 on the basis of either the requirement of *lis mota* or the doctrine of mootness. The requirement of *lis mota* does not apply where the question of constitutionality was raised by the parties and addressing such question is unavoidable. It cannot be disputed that the parties-in-interest to this case presented the question of constitutionality. Also, any discussion of the stock distribution plan of petitioner Hacienda Luisita, Inc. (HLI) necessarily and inescapably involves a discussion of its legal basis, Section 31 of RA 6657. While the said provision enjoys the presumption of constitutionality, that presumption has precisely been challenged. Its inconsistency with the fundamental law was raised specifically as an issue. More importantly, considerations of public interest render the issue of the constitutionality of Section 31 of RA 6657 inevitable. Agriculture is historically significant in Philippine society and economy and agrarian reform is historically imbued with public interest. Our constitutional history and tradition show that agrarian reform has always been a pillar of social justice. Relevantly, the records of the Constitutional Commission show that **Hacienda Luisita has always been viewed as an acid test of genuine agrarian reform**.

3. **ID.; ID.; ID.; ID.; IF THE COURT HAS THE AUTHORITY TO PROMULGATE RULES THAT PROTECT AND ENFORCE CONSTITUTIONAL RIGHTS, IT ALSO HAS THE DUTY TO RENDER DECISIONS THAT ENSURE CONSTITUTIONAL RIGHTS ARE PRESERVED AND SAFEGUARDED, NOT DIMINISHED OR MODIFIED.—** [T]he Constitution recognizes the primacy of the right of farmers

and farmworkers to directly or collectively own the lands they till. Any artificial or superficial substitute such as the stock distribution plan diminishes the right and debases the constitutional intent. If this Court has the authority to promulgate rules that protect and enforce constitutional rights, it also has the duty to render decisions that ensure constitutional rights are preserved and safeguarded, not diminished or modified.

4. ID.; ID.; ID.; ID.; DOCTRINE OF MOOTNESS; EXCEPTIONS; PRESENT.— [T]he invocation of the doctrine of mootness does not provide Section 31 of RA 6657 an unpierceable veil that will prevent the Court from prying into its constitutionality. Indeed, the mootness doctrine admits of several exceptions. x x x. First, a grave violation of the Constitution exists. Section 31 of RA 6657 runs roughshod over the language and spirit of Section 4, Article XIII of the Constitution. x x x. Second, this case is of exceptional character and involves paramount public interest. In *La Bugal-B'Laan Tribal Association, Inc.*, the Court reminded itself of the need to recognize the extraordinary character of the situation and the overriding public interest involved in a case. Here, there is a necessity for a categorical ruling to end the uncertainties plaguing agrarian reform caused by serious constitutional doubts on Section 31 of RA 6657. x x x [S]trong reasons of fundamental public policy demand that the issue of constitutionality be resolved now, before the stormy cloud of doubt can cause a social cataclysm. x x x. Third, the constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public. Fundamental principles of agrarian reform must be established in order that its aim may be truly attained. x x x. Fourth, this case is capable of repetition, yet evading review.

5. ID.; ID.; ID.; ID.; REQUIREMENT OF *LIS MOTA* AND THE MOOTNESS DOCTRINE ARE NOT CONSTITUTIONAL REQUIREMENTS BUT SIMPLY PRUDENTIAL DOCTRINES OF JUSTICIABILITY FASHIONED BY THE COURT IN THE EXERCISE OF JUDICIAL RESTRAINT.— [T]he requirement of *lis mota* and the mootness doctrine are not constitutional requirements but simply prudential doctrines of justiciability fashioned by the Court in the exercise of judicial restraint. For if the said grounds have been imposed by the Constitution itself, no exception could have been carved by

courts (for either ground) as courts only apply and interpret the Constitution and do not modify it.

6. **ID.; ID.; ID.; ID.; ID.; THE COURT MAY NOT BE HAMPERED IN THE PERFORMANCE OF ITS ESSENTIAL FUNCTION TO UPHOLD THE CONSTITUTION BY PRUDENTIAL DOCTRINES OF JUSTICIABILITY.—** Judicial review is particularly important in enjoining and redressing constitutional violations inflicted by all levels of government and government officers. Thus, this Court may not be hampered in the performance of its essential function to uphold the Constitution by prudential doctrines of justiciability. Indeed, in this case, to avoid the constitutional question would be to ignore a violation of the Constitution and to disregard the trampling of basic rights and constitutional values.

7. **LABOR AND SOCIAL LEGISLATIONS; COMPREHENSIVE AGRARIAN REFORM LAW (CARL) (RA No. 6657); ALLOWING CORPORATE LANDHOLDERS TO CONTINUE OWNING THE LAND BY THE MERE EXPEDIENT OF DIVESTING A PROPORTION OF THEIR CAPITAL STOCK, EQUITY OR PARTICIPATION IN FAVOR OF THEIR WORKERS OR OTHER QUALIFIED BENEFICIARIES DEFEATS THE RIGHT OF FARMERS AND REGULAR FARMWORKERS WHO ARE LANDLESS TO OWN DIRECTLY OR COLLECTIVELY THE LANDS THEY TILL.—** Agrarian reform's underlying principle is the recognition of the rights of farmers and farmworkers who are landless to own, directly or collectively, the lands they till. **Under the Constitution, actual land distribution to qualified agrarian reform beneficiaries is mandatory**. Anything that promises something other than land must be struck down for being unconstitutional. By allowing corporate landholders to continue owning the land by the mere expedient of divesting a proportion of their capital stock, equity or participation in favor of their workers or other qualified beneficiaries, Section 31 defeats the right of farmers and regular farmworkers who are landless, under Section 4, Article XIII of the Constitution, to own directly or collectively the lands they till. Section 31 of RA 6657 does not therefore serve the ends of social justice as envisioned under the agrarian reform provisions of the Constitution.

8. **ID.; ID.; SECTION 31 THEREOF; UNDULY PREVENTS THE FARMWORKER-BENEFICIARIES (FWBs) FROM OWNING DIRECTLY OR COLLECTIVELY THE LANDS THEY TILL.—** Section 31 of RA 6657 as implemented under the stock distribution option agreement merely entitles farmworker-beneficiaries of petitioner HLI to certificates of stocks which represent equity or interest in the corporate landowner, petitioner HLI, not in the land itself. Under Section 31 of RA 6657, the corporate landowner retains ownership of the agricultural land while the farmworker-beneficiaries become stockholders but remain landless. While farmworker-beneficiaries hold a piece of paper that represents interest in the corporation that has owned and still owns the land, that paper actually deprives them of their rightful claim which is ownership of the land they till. Thus, Section 31 unduly prevents the farmworker-beneficiaries from enjoying the promise of Section 4, Article XIII of the Constitution for them to own directly or collectively the lands they till.

9. **ID.; ID.; ID.; WHERE THE FARMWORKER-BENEFICIARIES ARE NEITHER THE COLLECTIVE NAKED OWNERS NOR THE COLLECTIVE BENEFICIAL OWNERS OF THE LAND THEY TILL, THERE CAN BE NO VALID COMPLIANCE WITH THE CONSTITUTION'S OBJECTIVE OF COLLECTIVE OWNERSHIP BY FARMERS AND FARMWORKERS.—** Corporate ownership by the corporate landowner under Section 31 does not satisfy the collective ownership envisioned under Section 4, Article XIII of the Constitution. Where the farmworker-beneficiaries are neither the collective naked owners nor the collective beneficial owners of the land they till, there can be no valid compliance with the Constitution's objective of collective ownership by farmers and farmworkers. Collective ownership of land under the agrarian reform provisions of the Constitution must operate on the concept of collective control of the land by the qualified farmer and farmworkers. Here, Section 31 of RA 6657 deprives the farmworker-beneficiaries not only of either naked title to or beneficial ownership of the lands they till. It also prevents them from exercising effective control both of the land and of the corporate vehicle as it simply assures beneficiaries "of at least one (1) representative in the board of directors, or in a management or executive committee, if one exists, of the corporation or association," "irrespective

of the value of their equity in the corporation or association." Thus, while they are given voice in the decision-making process of the corporate landowner with respect to the land, the beneficiaries have no guarantee of control of the lands as they are relegated to the status of minority shareholders.

10. **POLITICAL LAW; STATUTES; CONSTITUTIONALITY OF; OPERATIVE FACT DOCTRINE; A PRINCIPLE FUNDAMENTALLY BASED ON EQUITY; EQUITY SHOULD BE REFUSED TO THE INIQUITOUS AND GUILTY OF INEQUITY.—** [T]he operative fact doctrine should not be applied. The operative fact doctrine is a principle fundamentally based on equity. The basis of the application of the said doctrine in this case was the supposed status of the stock distribution option agreement as having been already implemented. However, equity is extended only to one who comes to court with clean hands. Equity should be refused to the iniquitous and guilty of inequity. For this reason, petitioner HLI may not benefit on the ground of equity from its invalid stock distribution option agreement with the farmworker-beneficiaries as it was found guilty of breach of several material terms and conditions of the said agreement.

11. **LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (RA 6657); SECTION 31 THEREOF IS UNCONSTITUTIONAL; STOCK DISTRIBUTION AGREEMENT BETWEEN FARMWORKER-BENEFICIARIES AND PETITIONER HACIENDA LUISITA, INCORPORATED (HLI) MUST BE ANNULLED; AGRICULTURAL LAND OF PETITIONER HLI DEEMED PLACED UNDER COMPULSORY COVERAGE OF LAND REFORM ON NOVEMBER 21, 1989.—** As Section 31 of RA 6657 is unconstitutional, the stock distribution agreement between petitioner HLI and its farmworker-beneficiaries has no leg to stand on and must perforce be annulled. This means that the agricultural land of petitioner HLI should be deemed placed under compulsory coverage of land reform on November 21, 1989, the date the stock distribution option agreement between petitioner HLI and the farmworker-beneficiaries was approved by the Presidential Agrarian Reform Council (PARC). While PARC could not have validly approved the stock distribution option agreement for lack of legal basis (Section 31 of RA 6657 being unconstitutional), the action of PARC manifested the intent

of the government to subject petitioner HLI's land to the land reform program. In other words, the agricultural land of petitioner HLI was subjected to land reform with respect to petitioner HLI, the farmworker-beneficiaries and the government through PARC on November 21, 1989.

12. **ID.; ID.; THE STOCK DISTRIBUTION OPTION AGREEMENT (SDOA) AS AN INVALID MEANS TO IMPLEMENT LAND REFORM MAY BE CONSIDERED AS SIMPLY AN ACCESSORY TO ACHIEVING THE PRINCIPAL OBJECTIVE OF LAND REFORM TO TRANSFER OWNERSHIP OF LAND TO THE FARMWORKER-BENEFICIARIES (FWBs); NOVEMBER 21, 1989 DEEMED AS THE TIME OF TAKING OF THE LAND FROM PETITIONER HLI AND THE DATE FROM WHICH TO RECKON THE JUST COMPENSATION.—** While there could have been no valid approval of the stock distribution agreement, the government's intent to bring the land under the coverage of land reform could nonetheless be deemed implemented by its action as the subject matter of land reform is basically the redistribution of land. The stock distribution option agreement as an invalid means to implement land reform may be considered as simply an accessory to achieving the principal objective of land reform to transfer ownership of land to the farmworker-beneficiaries. The principal objective and the manifestation of the government's intent to act thereon subsist despite the invalidity of the accessory. Thus, on November 21, 1989, the government should rightly be considered to have pursued the objective of land reform and transferred the ownership of the land to the farmworker-beneficiaries. November 21, 1989 should therefore be deemed as the time of taking of the land from petitioner HLI, as well as the date from which to reckon the just compensation payable to petitioner HLI.

13. **ID.; ID.; PETITIONER HLI CONTINUED POSSESSION OF THE LAND DOES NOT NEGATE TAKING AND TRANSFERRING OF OWNERSHIP TO THE FARMWORKER-BENEFICIARIES ON NOVEMBER 21, 1989; PETITIONER HLI DEEMED POSSESSOR IN GOOD FAITH.—** It may, however, be argued that there could have been no taking (in the sense of transferring ownership to the farmworker-beneficiaries) on November 21, 1989 as the land was actually in the possession and control of petitioner HLI.

True, petitioner HLI may have continued to possess the land but this did not negate taking and transferring of ownership to the farmworker-beneficiaries on November 21, 1989. From that date, petitioner HLI's status became that of a lawful possessor or one who held the "thing or right to keep or enjoy it, the ownership pertaining to another person," particularly the farmworker-beneficiaries. Moreover, petitioner HLI should be deemed as a possessor in good faith, or one that is not aware of any flaw in his title or mode of acquisition thereof. Its reliance on the validity of Section 31 of RA 6657 and, concomitantly, of its stock distribution option agreement could be considered as a mistake on a difficult question of law, a fact which supports its possession in good faith.

14. **ID.; ID.; THE LAND OF PETITIONER HLI SUBJECT TO AGRARIAN REFORM, AS DETERMINED BY THE DAR, SHOULD BE IMMEDIATELY AND ACTUALLY DISTRIBUTED TO THE FWBs EXCLUDING THE PORTION OF CONVERTED LAND TRANSFER TO LUISITA INDUSTRIAL PARK CORPORATION (LIPCO) AND RIZAL COMMERCIAL BANKING CORPORATION (RCBC) AND THE PORTION EXPROPRIATED BY THE GOVERNMENT FOR THE SUBIC-CLARK-TARLAC-EXPRESSWAY (SCTEX).—** While the stock distribution option agreement was supposed to cover only 4,195 hectares of petitioner HLI's land, no such term or condition should be deemed imposed on the coverage of land reform as of November 21, 1989. The limitation of the coverage shall be determined subject only to such priorities and reasonable retention limits prescribed by law, "taking into account ecological, developmental, or equity considerations." The Department of Agrarian Reform (DAR) shall therefore determine the area properly covered by land reform, guided by the retention limits set by law and taking into account ecological, developmental or equity considerations. Upon determination of the area properly covered by land reform, the DAR should immediately and actually distribute the same to the farmworker-beneficiaries. This shall, however, exclude the portion of converted land transferred to LIPCO and RCBC which shall remain with the said transferees as they were transferees (buyers) in good faith. The land distribution shall also exclude the portion expropriated by the government for the SCTEX.

15. **ID.; ID.; THE FWBs SHALL BE ENTITLED TO THE PORTION OF THE PROCEEDS OF THE SALE OF LIPCO AND RCBC CORRESPONDING TO THE MARKET VALUE THEREOF AS OF NOVEMBER 21, 1989 AND THE PROCEEDS OF THE PORTION EXPROPRIATED FOR THE SCTEX, LESS 3% OF THE PROCEEDS ALREADY GIVEN TO THEM.—** For the excluded portions, however, the farmworker-beneficiaries shall be entitled to the portion of the proceeds of the sale to LIPCO and RCBC corresponding to the market value thereof as of November 21, 1989. It would be unfair to rule otherwise as any increase in value of the land may reasonably be attributed to the improvements thereon made by petitioner HLI and petitioner HLI's efforts to have the said portion reclassified to industrial land. Moreover, this would be in consonance with the rule that "the possessor in good faith is entitled to the fruits received before the possession is legally interrupted." The amount accruing to the farmworker-beneficiaries shall also be less the 3% of the proceeds already given to them. On the other hand, the proceeds of the portion expropriated for the SCTEX shall accrue to the farmworker-beneficiaries.

16. **ID.; ID.; JUST COMPENSATION; PETITIONER HLI IS ENTITLED TO JUST COMPENSATION BASED ON THE MARKET VALUE OF LAND AS OF NOVEMBER 21, 1989; THE FWBs SHOULD RETURN THE SHARES OF STOCK WHICH THEY RECEIVED.—** Indeed, Section 4, Article XIII of the Constitution requires that the landowner be given just compensation. For this purpose, the DAR shall determine the just compensation payable by each farmworker-beneficiary to petitioner HLI as it has jurisdiction in matters involving the administrative implementation and enforcement of agrarian reform laws. The just compensation shall be based on the market value as of November 21, 1989 of the entire portion that may be determined by the DAR as subject to the coverage of land reform. The portion of the proceeds of the portion sold to LIPCO and RCBC as well as the proceeds of the portion expropriated for the SCTEX may be the subject of legal compensation or set off for purposes of the payment of just compensation. [T]he farmworker-beneficiaries shall return the shares of stock which they received to petitioner HLI under the invalid stock distribution option agreement.

BRION, *J.*, *separate concurring and dissenting opinion:*

1. **POLITICAL LAW; STATUTES; OPERATIVE FACT DOCTRINE; APPLIES ONLY TO EXECUTIVE ISSUANCES; TERM "EXECUTIVE ACTS," CONSTRUED.—** The operative fact doctrine is applicable only in considering the effects of a declaration of unconstitutionality of a **law** (a generic term that includes statutes, rules and regulations issued by the executive department and are accorded the same status as a statute). x x x. *De Agbayani v. Philippine National Bank* (*PNB*), promulgated in this jurisdiction in 1971, was the first instance when the "operative fact doctrine" was extended to consider the effects of a declaration of unconstitutionality of an "executive act." x x x. The Court was then confronted with the issue of whether to give effect to EO 32 prior to the declaration of its unconstitutionality. The Court, *per Justice Enrique Fernando*, resolved the issue in this manner: The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code [Article 7] puts it: "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.["] **Administrative or executive acts, orders and regulations** shall be valid only when they are not contrary to the laws of the Constitution. It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive. Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that **prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with.** This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. x x x. When these paragraphs are read together, the phrase "such challenged legislative or executive act" quite obviously pertains to the "administrative or executive *acts, orders and regulations*" mentioned in Article 7 of the

Civil Code. Thus, **the context in which the term "executive act" was used in *De Agbayani* referred to only executive issuances (acts, orders, rules and regulations) that have the force and effect of laws; it was not used to refer to *any act* performed by the Executive Department.** *De Agbayani's* extension of the operative fact doctrine, therefore, more properly refers only to the recognition of the effects of a declaration of unconstitutionality of *executive issuances*, and *not to all executive acts* as the *ponencia* loosely construes the term. The limited construction of an "executive act," *i.e.*, executive issuances, is actually more consistent with **the rationale behind the operative fact doctrine: the presumption of constitutionality of laws**. Accordingly, it is only to this kind of executive action that the operative fact doctrine can apply.

2. **LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL) (RA NO. 6657); THE PRESIDENTIAL AGRARIAN REFORM COUNCIL'S (PARC) REVOCATION OF THE APPROVAL OF THE STOCK DISTRIBUTION PLAN (SDP) CARRIED WITH IT THE NULLIFICATION OF THE STOCK DISTRIBUTION OPTION AGREEMENT (SDOA), AND THE RESTORATION OF THE PARTIES TO THEIR RESPECTIVE SITUATIONS PRIOR TO THE EXECUTION OF THE NULLIFIED AGREEMENT.—** Indeed, much of the confusion that arose in the disposition of this case stemmed from the varying perspectives taken by the members of the Court on **what are the effects of the revocation** and **when these effects should accrue**. The revocation of the SDP amounts to the nullification of the SDOA, and the logical and legal consequence of this should be the restoration of the parties to their *respective situations prior to the execution of the nullified agreement*. There should be no question that the PARC's revocation of the approval of the SDP carried with it the nullification of the SDOA because the PARC's approval is necessary to the validity of the SDOA; accordingly, the effects of the revocation should be deemed to have taken place on **November 21, 1989**, the date when PARC Resolution No. 89-12-2 approving the SDP was issued. To consider any other date (either at the time PARC Resolution No. 2005-32-01, revoking its approval of the SDP, was issued

or at the time this Court's decision becomes final) is not only iniquitous for the parties but also preposterous under the law. Hence, to accomplish a complete, orderly, and fair disposition of the case, we have to consider the effects of the revocation to accrue from November 21, 1989. The Court should decree that compulsory Comprehensive Agrarian Reform Program coverage should start at this point in time, and then proceed to adjust the relations of the parties with due regard to the intervening events that transpired.

3. **ID.; ID.; THE ENTIRE 4,915.75 HECTARES OF LAND SUBJECT OF THE STOCK DISTRIBUTION PLAN (SDP) ARE DEEMED PLACED UNDER THE COMPULSORY COVERAGE THEREOF AS OF NOVEMBER 21, 1989; 500 HECTARES OF LAND NOT INCLUDED IN THE ACTUAL DISTRIBUTION AMONG QUALIFIED FARMWORKERS-BENEFICIARIES BECAUSE OF THE VALIDITY OF ITS TRANSFER TO THIRD PARTIES.—** Since the effects of the revocation are deemed to have taken place on November 21, 1989, the entire 4,915.75 hectares of agricultural land should be considered as placed under compulsory coverage as of this time. To declare x x x that 500 hectares of the subject land can no longer be included under the CARL's compulsory coverage because it had already been converted into industrial land is erroneous, as this implies that the land was placed under compulsory coverage only when revocation of the SDP was declared, not in 1989. If this was the case then, the FWBs should not be entitled to any of the proceeds of the sale of the 500 hectares of converted land because their right to these proceeds stems from their right to own the land which accrues only when the land is placed under compulsory coverage. xxx [T]he *ponencia* takes an inconsistent position x x x. To reconcile these inconsistent position, x x x [t]he *ponencia* perhaps meant was that, on account of the revocation, the entire 4,915.75 hectares were deemed placed under compulsory coverage on November 21, 1989; however, despite the inclusion, portions of the land (specifically, the 500 hectares of converted land and the 80 hectares of the SCTEX land) can no longer be *distributed* among the qualified FWBs under Section 22 of the CARL because of the valid transfers made in favor of third parties. Thus, it was not the conversion of the 500-hectare land that exclude it from *compulsory coverage* as it was already

deemed included in the *compulsory coverage* since 1989; it was the recognition of the valid transfers of these lands to third parties that excluded them from the *actual land distribution* among the qualified FWBs.

4. **ID.; ID.; THE LUISITA REALTY CORPORATION (LRC) SHALL BE ENTITLED TO PROVE BEFORE THE DEPARTMENT OF AGRARIAN REFORM (DAR) OF THE VALIDITY OF THE TRANSFER OF THE 200 HECTARES OF CONVERTED LAND.—** By failing to intervene in this case, LRC was unable to present evidence supporting its good faith purchase of the 200-hectare converted land. The *ponencia's* conclusion that there was a valid transfer to LRC of the 200 hectares of converted land, therefore, lacks both factual and basis. Thus, x x x [the] LRC be given "full opportunity to present its case before the DAR x x x, the failure of [LRC] to actively intervene at the PARC level and before this Court does not really affect the intrinsic validity of the transfer made in its favor *if indeed it is similarly situated as LIPCO and RCBC.* x x x [A] definitive ruling on the transfer of the 200 hectares to [LRC] is premature to make." The FWBs' right to the 200-hectare converted land itself or only to the proceeds of the sale (amounting to ₱500 million) can be determined only after LRC has presented its case before the DAR. x x x. In case the LRC is able to prove its good faith purchase of the 200-hectare converted land before the DAR, the treatment of the proceeds of the sale of this land shall be the same as those of LIPCO/RCBC's 300-hectare converted land – the FWBs will be entitled only to the land's value as of November 21, 1989, and the balance shall be for the HLI as compensation for any improvements introduced.

5. **ID.; ID.; THE VALID TRANSFER OF THE 300 HECTARES OF CONVERTED LAND TO LIPCO/RCBC ENTITLES THE FARMWORKERS-BENEFICIARIES (FWBs) ONLY TO THE PROCEEDS OF THE SALE.—** LIPCO/RCBC's acquisition in good faith has been adequately proven. Thus, although the 300-hectare converted land should belong to the FWBs on account of the revocation of the SDP, the valid transfer to LIPCO/RCBC entitles them only to the proceeds of the sale.

6. **ID.; ID.; THE ENTIRE PROCEEDS OF THE SALE OF THE 80-HECTARES LAND TO THE GOVERNMENT FOR THE SCTEX HIGHWAY SHOULD ACCRUE SOLELY TO THE**

FARMWORKERS-BENEFICIARIES (FWBs).— With respect to the proceeds of the sale of the 80-hectare land to the government for the SCTEX, "the FWBs are entitled to be paid the full amount of just compensation that HLI received from the government for the 80 hectares of expropriated land forming the SCTEX highway. What was transferred in this case was a portion of the HLI property that was not covered by any conversion order. The transfer, too, came after compulsory CARP coverage had taken place and without any significant intervention from HLI. Thus, the whole of the just compensation paid by the government should accrue solely to the FWBs as owners."

7. **ID.; ID.; THE FWBs ARE ENTITLED TO THE PROCEEDS OF THE SALE OF THE 300 HECTARES LAND; EXPENDITURES FOR LEGITIMATE CORPORATE PURPOSES, NOT DEDUCTIBLE.—** HLI claimed that it had already paid out 3% of the proceeds of the sale of the lands to the FWBs. This amount should thus be deducted from the total proceeds that should be returned to the qualified FWBs. The taxes and expenses related to the transfer of titles should likewise be deducted, since the same amounts will be incurred regardless of the seller (HLI or the FWBs). The *ponencia* proposes that the 3% production share and the expenditures incurred by HLI and Centennary for legitimate corporate purposes should also be deducted from the total proceeds of the sale. In proposing that the 3% production share be deducted from the total proceeds of sale to be returned to the FWBs, the *ponencia* has effectively reversed its own insistent declaration that all the benefits received by the FWBs shall "be respected with no obligation to refund or return them." Its reliance on the "operative fact doctrine" to authorize the FWBs' retention of all the benefits would thus be for naught; <u>what the *ponencia* has given with its right hand, it takes away with its left hand</u>. Also, I do not find any legitimate basis for allowing HLI to deduct from the proceeds of the sale to be turned over to the FWBs the amounts it used for legitimate corporate purposes. x x x. The FWBs are entitled to the proceeds of the sale of the 300-hectare land in lieu of the actual land which they are deemed to have acquired under the CARL since 1989.

8. **ID.; ID.; SECTION 27 THEREOF; TRANSFERABILITY OF AWARDED LANDS; CONSTRUED.—** The *ponencia* denies

the applicability of Section 27 of the CARL x x x. **Properly construed, the law means that, as a general rule, the FWBs are prohibited from transferring or conveying the lands within 10 years from the issuance of the EPs or CLOAs, except if the transfer or conveyance is made in favor of (a) a hereditary successor, (b) the government, (c) the Land Bank of the Philippines (*LBP*), or (d) other qualified beneficiaries; transfers or conveyances made in favor of any of those enumerated, even within the 10 years period, are not prohibited by law**. A contrary interpretation would prevent the beneficiary's heir from inheriting the land in the event that the beneficiary dies within the 10-year period, and put the land's ownership in limbo. Thus, under Section 27 of the CARL, the FWBs who are no longer interested in owning their proportionate share of the land may opt to sell it to the government or the LBP, which in turn can sell it to HLI or the LRC (if it is unable to prove its good faith purchase of the 200-hectare converted land), in order not to disrupt their existing operations.

9. **ID.; ID.; INTEREST MAY BE AWARDED WHEN THERE IS DELAY IN THE PAYMENT OF JUST COMPENSATION; PRINCIPLE NOT APPLICABLE; HACIENDA LUISITA INC. (HLI) IS ENTITLED TO THE PAYMENT OF JUST COMPENSATION BASED ON THE VALUE OF THE SUBJECT LAND AT THE TIME OF TAKING, WITHOUT ANY INTEREST; PETITIONER HLI SHOULD PAY RENTAL FOR THE USE AND POSSESSION OF THE LAND UP TO THE TIME IT SURRENDER POSSESSIONS THEREOF.—** As a consequence of the revocation of the SDP, the 4,915.75 hectares of agricultural land subject of the SDP are deemed placed under the CARL's compulsory coverage since November 21, 1989. Corollary, the taking is deemed to have occurred at this time and <u>HLI is entitled to just compensation based on the value of the entire 4,915.75-hectare land in 1989</u>. In light of this conclusion, the question that begs for a definitive response is: **is HLI entitled to interest from 1989 up to the present on the amount of just compensation it should receive**? In several cases, the Court awarded interests when there is delay in the payment of just compensation. The underlying rationale for the award is to compensate the landowner not simply for the delay, but for the income the landowner would have received from the land

had there been no immediate taking thereof by the government. This principle, however, does not apply to the present case because HLI never lost possession and control of the land; all the incomes that the land generated were appropriated by HLI. No loss of income from the land (that should be compensated by the imposition of interest on the just compensation due) therefore resulted. On the contrary, it is the qualified FWBs who have been denied of income due to HLI's possession and control of the land since 1989. Thus, HLI should pay the qualified FWBs rental for the use and possession of the land up to the time it surrenders possession and control over these lands. The DAR, as the agency tasked to implement agrarian reform laws, shall have the authority to determine the appropriate rental due from HLI to the qualified FWBs. In recognition, however, of any improvements that HLI may have introduced on these lands, HLI is entitled to offset their value from the rents due.

10. **ID.; ID.; CONSEQUENCE OF THE REVOCATION OF THE STOCK DISTRIBUTION PLAN (SDP); PRINCIPLE OF SET-OFF OR COMPENSATION, APPLIED.—** The consequence of the revocation of the SDP, x x x is the restoration of the parties to their respective conditions prior to its execution and approval – thus, they are bound to restore whatever they received on account of the SDP. However, this does not prevent the application of the principle of set-off or compensation. The retention, either by the qualified FWBs or the HLI, of some of the benefits received pursuant to the revoked SDP is based on the application of the principle of compensation, not on the misapplication of the operative fact doctrine.

BERSAMIN, *J.*, *concurring and dissenting opinion:*

1. **LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; JUST COMPENSATION; THE NATURE AND CHARACTER OF LAND AT THE TIME OF ITS TAKING ARE THE PRINCIPAL CRITERIA TO DETERMINE JUST COMPENSATION TO THE LANDOWNER; RATIONALE.—** The determination of when the taking occurred is an integral and vital part of the determination and computation of just compensation. The nature and character of land *at the time of its taking* are the principal criteria to determine just

compensation to the landowner. In *National Power Corporation v. Court of Appeals*, the Court emphasized the importance of the time of taking in fixing the amount of just compensation, thus: xxx [T]he Court xxx invariably held that **the time of taking is the critical date in determining lawful or just compensation**. Justifying this stance, Mr. Justice (later Chief Justice) Enrique Fernando, speaking for the Court in *Municipality of La Carlota vs. The Spouses Felicidad Baltazar and Vicente Gan,* said, "xxx the owner as is the constitutional intent, is paid what he is entitled to according to the value of the property so devoted to public use as of the date of the taking. From that time, he had been deprived thereof. He had no choice but to submit. He is not, however, to be despoiled of such a right. No less than the fundamental law guarantees just compensation. It would be an injustice to him certainly if from such a period, he could not recover the value of what was lost. There could be on the other hand, injustice to the expropriator if by a delay in the collection, the increment in price would accrue to the owner. The doctrine to which this Court has been committed is intended precisely to avoid either contingency fraught with unfairness."

2. **ID.; ID.; ID.; THE RECKONING DATE FOR PURPOSES OF DETERMINING JUST COMPENSATION SHOULD BE LEFT TO THE DEPARTMENT OF AGRARIAN REFORM (DAR) AND LAND BANK, AND TO THE SPECIAL AGRARIAN COURT (SAC) IN CASE OF DISAGREEMENT.—** [T]he factual issue of when the taking had taken place as to the affected agricultural lands should not be separated from the determination of just compensation by DAR, Land Bank and SAC. Accordingly, x x x the Court should leave the matter of the reckoning date to be hereafter determined by the DAR and Land Bank pursuant to Section 18 of Republic Act No. 6657. Should the parties disagree thereon, the proper SAC will then resolve their disagreement as an integral part of a petition for determination of just compensation made pursuant to Section 57 of Republic Act No. 6657.

3. **ID.; ID.; ID.; THE PETITIONER SHOULD BE COMPENSATED FOR THE VALUE OF THE HOMELOTS GRANTED TO THE FARMWORKERS-BENEFICIARIES (FWBs) PURSUANT TO THE DISCREDITED STOCK DISTRIBUTION PLAN (SDP).—** It appears x x x that the

homelots granted to the FWBs under the SDP do not form part of the total area of the agricultural lands to be turned over to DAR for distribution to the qualified FWBs for which the landowner will be justly compensated. x x x The result will be unfair should the landowner not be justly compensated for the value of the homelots. In such a situation, the taking will be confiscatory and unconstitutional. [H]LI as the landowner should be justly compensated also for the homelots.

SERENO, *J.*, *concurring and dissenting opinion:*

1. **LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (RA NO. 6657); JUST COMPENSATION; RIGHTS OF LANDOWNERS; THE TAKING OF PROPERTIES FOR AGRARIAN REFORM PURPOSES SHOULD NOT RESULT IN THE OPPRESSION OF LANDOWNERS BY PEGGING THE CHEAPEST VALUE FOR THEIR LANDS.—** While distribution of land was the prevailing ideology in crafting our agrarian reform policies in the Constitution, the other side of the spectrum is the recognition of the rights of the landowner specifically the right of just compensation. The aim of redistributing agricultural lands under the Constitution was primarily to correct the unjust social structures then prevailing in order to achieve an equitable distribution of wealth from the landed few in favor of the landless majority. Yet, in recognizing the social function of the lands and the demands of social justice, the framers never lost sight of the property rights of landowners, as an inherent limitation to the exercise of the State's power of eminent domain or expropriation, even in cases of agrarian reform. Concomitant with the fundamental right not to be deprived of property without due process of law is the constitutional provision that "[p]rivate property shall not be taken for public use without just compensation." Hence, the policy underlying the provision for eminent domain is to make the private owner "whole" after his property is taken by the State. The taking of private lands under the agrarian reform program partakes of the nature of an expropriation proceeding. For purposes of taking under the agrarian reform program, **the framers of the Constitution expressly made its intention known that the owners of the land should not receive less than the market value for their expropriated properties and drew parallelisms with the**

ordinary understanding of just compensation in non-land reform expropriation. Indeed, the matter of just compensation was never meant to involve a severe diminution of what the land owner gets. The aim of just compensation in terms of expropriation, even in agrarian reform, should be just to the owner — that which approximates the market value. Hence, the Court acknowledged the other side of the agrarian reform coin and ruled: **The Comprehensive Agrarian Reform Program** was undertaken primarily for the benefit of our landless farmers. However, **the undertaking should not result in the oppression of landowners by pegging the cheapest value for their lands.** Indeed, the taking of properties for agrarian reform purposes is a revolutionary kind of expropriation, but not at the undue expense of landowners who are also entitled to protection under the Constitution and agrarian reform laws.

2. **ID.; ID.; ID.; THE VALUE OF THE LAND AT THE TIME OF THE TAKING, NOT AT THE TIME OF THE RENDITION OF JUDGMENT, SHOULD BE TAKEN INTO CONSIDERATION IN COMPUTING JUST COMPENSATION FOR EXPROPRIATION PROCEEDINGS. —** Since the farm lands in Hacienda Luisita are to be the subject of distribution, petitioner HLI or Tarlac Development Corporation (TADECO), as landowners, are entitled to just compensation, which is an indispensable legal requirement in agrarian reform expropriation. x x x. Just compensation in cases of expropriation is ordinarily to be ascertained as of the time of the taking. In computing the just compensation for expropriation proceedings, it is the value of the land at the time of the taking, not at the time of the rendition of judgment, which should be taken into consideration. Hence, in determining the value of the land for the payment of just compensation, the time of taking should be the basis. The concept of taking in both land reform and non-land reform expropriations is well-settled. There is taking of private property by the State in expropriation proceedings when the owner is ousted from his property and deprived of his beneficial enjoyment thereof. The "time of taking" is the moment when landowners are deprived of the use and benefit of the property.

3. **ID.; ID.; ID.; FACTORS IN ARRIVING AT JUST COMPENSATION FOR LANDOWNERS; GENERAL**

FORMULA.— The CARL, as amended, had expressly identified the factors in arriving at just compensation for landowners whose properties have been subject to land reform expropriation: In determining just compensation, **the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR)**, translated into a basic formula by the DAR shall be considered, subject to the final decision of the proper court. The **social and economic benefits** contributed by the farmers and the farmworkers and by the Government to the property as well as the **nonpayment of taxes or loans secured from any government financing institution on the said land** shall be considered as additional factors to determine its valuation. Pursuant to its rule-making powers, the Department of Agrarian Reform (DAR) reduced these factors into a basic general formula that computes the value of the land subject of agrarian reform in this manner: Land Value = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1) Where CNI = Capitalized Net Income CS = Comparable Sales MV = Market Value per Tax Declaration. In a long line of cases, the Court has given judicial imprimatur to the above formulation made by the DAR. x x x. **In all these cases, the formula approximately reflects the fair market value of the property at the time of the Notice of Coverage** to estimate the loss suffered by the landowner, whose property was the subject of expropriation.

4. ID.; ID.; ID.; THE DATE OF THE NOTICE OF COVERAGE IS DETERMINATIVE OF THE JUST COMPENSATION THAT THE LANDOWNER IS ENTITLED TO FOR ITS EXPROPRIATED LANDS.— [U]nder the uniform rulings of this Court, the notice of coverage commences the process of acquiring private agricultural lands covered by the CARP. The date of the notice of coverage is therefore determinative of the just compensation petitioner HLI is entitled to for its expropriated lands. In computing capitalized net income under the DAR formula, one should use the average gross production of the latest available 12 months immediately preceding **the date of notice of coverage**, in case of compulsory acquisition, and the average selling price of the

latest available 12 months prior to the date of receipt of the claim folder by the Land Bank of the Philippines for processing.

5. ID.; ID.; ID.; THE NATURE AND CHARACTER OF THE LAND AT THE TIME OF ITS TAKING IS THE PRINCIPAL CRITERION FOR DETERMINING JUST COMPENSATION FOR LANDOWNERS.— The rationale for pegging the period of computing the value so close or near the present market value at the time of the taking is to consider the appreciation of the property brought about by improvements therein and other factors. The nature and character of the land at the time of its taking is the principal criterion for determining how much just compensation should be given to the landowner. All the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, should be considered. For the compensation to be just to the owner of a commercial farm land, the facilities and improvements introduced by the landowner — not just the land — shall also be taken into consideration. It is but equitable to extend to the landowner compensation arising from the appreciation of the property due to the improvements introduced therein. To simply disregard the changes, appreciation or improvements in the agricultural lands of Hacienda Luisita by pegging the property to its 1989 value is to resort to expropriation that is **confiscatory** — considering that it will be the sole exception to a long line of jurisprudence — and not compensatory which is prescribed under the Constitution as a fundamental right of a landowner.

6. ID.; ID.; ID.; JUST COMPENSATION IN EXPROPRIATIONS SHOULD APPROXIMATE EQUIVALENT VALUE THAT IS REAL, SUBSTANTIAL, FULL AND AMPLE; THE PERIOD OF TAKING IS RECKONED FROM THE DATE OF THE NOTICE OF COVERAGE.— With the equal protection clause in mind, it is simply wrong for landowners to have their real properties, subject of expropriation, valued several years or even decades behind, considering the upward trend in property values. The Court explained this inherent unfairness when it was confronted by a non-land reform expropriation case, in which the trial court and the appellate court fixed the valuation of the property at its 1984 and 1993 values, respectively, in this wise: In eminent domain cases, the time of taking is the filing of the complaint, if there was

no actual taking prior thereto. Hence, in this case, **the value of the property at the time of the filing of the complaint on November 20, 1990** should be considered in determining the just compensation due the respondents. x x x. **It was certainly unfair for the trial court to have considered a property value several years behind its worth at the time the complaint in this case was filed on November 20, 1990. The landowners are necessarily shortchanged**, considering that, as a rule, land values enjoys steady upward movement. It was likewise erroneous for the appellate court to have fixed the value of the property on the basis of a 1993 assessment. NPC would be paying too much. Petitioner corporation is correct in arguing that the respondents should not profit from an assessment made years after the taking. The expropriation proceedings in this case having been initiated by NPC on November 20, 1990, property values on such month and year should lay the basis for the proper determination of just compensation. x x x. Applied to the instant case, the more just and equitable solution is to reckon the period of the taking from the date of the notice of coverage under the fifth approach, since this was the time that petitioner HLI was put on notice that its stock distribution option was defective and that its agricultural lands therein would be subject to compulsory coverage and direct land distribution under the CARL. It is argued that the time the SDOA was signed and/or the PARC Resolution was issued could be considered as the time petitioner HLI was given due notice that its agricultural lands would be subject of agrarian reform. This argument is undeniably unfair and contrary to uniform jurisprudence interpreting the constitutional dictum that just compensation in expropriations should approximate equivalent value that is real, substantial, full and ample. Landowners would be shortchanged if their real properties are taken by the State in exchange for compensation that is pegged at values two decades prior. In this case, unwarranted discrimination would be committed against petitioner HLI if the agricultural lands to be distributed to the FWBs are to be valued at their 1989 levels.

7. **ID.; ID.; ID.; ID.; THE PAYMENT OF JUST COMPENSATION TO PETITIONER HACIENDA LUISITA, INC. (HLI) MUST BE PEGGED TO THE DATE OF NOTICE OF COVERAGE UNDER THE PREVAILING LAWS, RULES AND JURISPRUDENCE.—** The approximation of fair value of the

expropriated lands as just compensation is not meant to increase the burdens of payment by the qualified FWBs. **When the framers of the Constitution originally determined that just compensation, as understood in prevailing jurisprudence, was to be given to landowners in agrarian reform expropriation, the point was clarified that the amounts to be awarded to the landowners were not the exact figures that would in turn be paid by the farmers, in other words it should be subsidized** x x x. Thus, the original intention was that there should be **no strict correspondence** between the just compensation due to the landowner and the amounts to be paid by the farmworkers x x x. Hence, there was an acknowledgement of the limited capacity of the farmers to pay for value of the expropriated lands under a willing-buyer-willing seller formulation. Thus, the obligation was imposed on the State to subsidize payments in order to support the financial arrangements of the country's agrarian reform program. The fair value paid to the landowner for the distributed lands is to be shouldered by the State, in line with the right to just compensation and the limitations on the state power of expropriation. However, a different principle governs when it is the State that will receive amortization payments from the farmers for expropriated lands, namely the policy of social justice. Hence, the State's function is to subsidize the repayment schemes and offer terms that are affordable to the farmers considering their limited capacity to pay. The burden is now on the State to consider programs that are more financially viable in order to balance the rights of the landowners to just compensation with the social justice demands of the poor farmworkers with limited capabilities to simultaneously pursue agricultural enterprises and pay for the lands. Petitioner HLI, as a corporate landowner, must undoubtedly share the costs and burdens of the country's type of agrarian reform scheme by surrendering the agricultural lands to the government for distribution to the qualified FWBs. But in order to come within the constitutional directives on eminent domain and just compensation, its sacrifice cannot be made to be overly burdensome as to force them to receive but a small fraction of current market values for its expropriated properties. In ruling for the payment of just compensation to petitioner HLI under the fifth approach — which is pegged to the date of notice of coverage under the prevailing laws, rules and jurisprudence

— the Court will perform its obligation to uphold the dictates of social justice in distributing the lands in Hacienda Luisita to the qualified FWBs, but not to the extent of sacrificing the right of landowners and consigning them to accept the cheapest value for their lands.

8. **ID.; ID.; QUALIFIED FARMWORKER-BENEFICIARIES (FWBs) IN HACIENDA LUISITA SHOULD BE FREED FROM THE STRICT APPLICATION OF THE TEN-YEAR PROHIBITION UNDER THE LAW AND SHOULD BE ALLOWED FULL DISCRETION TO DISPOSE THE PROPERTIES AS THEY SEE FIT.—** The qualified FWBs in Hacienda Luisita should not only be confined to a ten-year license to farm the distributed lands, but should be able to enjoy all the rights to the land and fruits thereof. As full owners, the qualified FWBs who would be awarded lands must be afforded the entire gamut of opportunities to make use of the land as their circumstances and capabilities see fit. Nothing prevents them from continuing to till the agricultural land, whether individually or as a collective, as in the case of a cooperative. However, the same freedom should be afforded to them when they see that the best economically and financially advantageous use of the property is to sell portions of the property, especially in this case in which developments in the neighboring lots have greatly enhanced the value thereof. To prolong for a decade the FWBs' enjoyment of the right to transfer and dispose of portions of the agricultural lands is to continue to bind them to the land. Without any assistance from the government or other civic organizations, FWBs may be awarded a possible pyrrhic legal victory, in which they own the land but without the financial means to till and cultivate it. Freeing them from the strict application of the ten-year prohibition under the CARL, will allow them full discretion to dispose and transfer portions of the property as they see fit and as are suitable to their needs. This will release locked-up capital in the soil and enable the qualified FWBs to use the proceeds thereof in other productive enterprises or in the procurement of other assets necessary for tilling the remaining land. To insist that the rights of the FWB sleep for a period of ten years is unrealistic and may seriously deprive them of real opportunities to capitalize on and maximize the victory of direct land distribution. The restriction will limit their access

to credit markets, as studies in land reform have shown. x x x Imposing a ten-year restriction will decrease the desirability of these farm lands as collateral and will even increase the transaction costs for private creditors to extend farm loans to the small qualified FWBs. x x x. Considering the perceived inadequacy of public funds to provide the qualified FWBs access to farm credits and loans to finance the cultivation of the awarded lands, it is necessary to afford them the prospect of soliciting private funds and loans to cultivate and develop their lands by freeing them from the 10-year prohibition period. At this delayed stage in the agrarian reform program covering Hacienda Luisita after the failed stock distribution mechanism, the protection afforded by inflexible restriction on the alienability of the awarded lands is greatly outweighed by the market opportunities available to the qualified FWBs if full ownership is given to them.

9. POLITICAL LAW; CONSTITUTIONAL LAW; STATUTES; CONSTITUTIONALITY OF; DOCTRINE OF OPERATIVE FACTS; AN EXCEPTION TO THE GENERAL RULE THAT THE PRONOUNCEMENT OF UNCONSTITUTIONALITY BY THE COURT RETROACTS TO ALL ACTS UNDERTAKEN BETWEEN THE EFFECTIVITY OF THE LAW AND THE DECLARATION OF ITS INVALIDITY.— The general rule is that an unconstitutional law has no force and effect – it produces no rights, imposes no duties and affords no protection. Hence, the pronouncement of unconstitutionality by the Court **retroacts to all acts undertaken between the effectivity of the law and the declaration of its invalidity.** The doctrine of operative facts serves as an **exception** to this general rule. The declaration of a law or an executive act as unconstitutional is given **limited retroactive application** in cases in which acts or circumstances may have arisen in the operation of the invalidated law prior to the pronouncement of invalidity. Considerations of equity would avert the injustice of nullifying the interim effects of a person's good faith reliance on the law's provisions. The cases involving the unconstitutionality of the debt moratorium laws and the non-payment of debts during the suspensive period prior to the declaration best exemplify the application of the exceptional doctrine of operative facts. In these instances, equity interests of the parties surpass the concern over the retroactive application of the law's unconstitutionality.

10. **ID.; ID.; ID.; ID.; ID.; TO BE APPLICABLE, A LAW OR AN EXECUTIVE ACT THAT WAS MADE EFFECTIVE FOR A TEMPORARY PERIOD SHOULD HAVE BEEN INVALIDATED BY THE COURT FOR BEING INHERENTLY IN CONTRAVENTION OF THE CONSTITUTION AND, THUS, WITHOUT FORCE AND EFFECT FROM ITS VERY INCEPTION; THE STOCK DISTRIBUTION OPTIONS AGREEMENT (SDOA) WAS AN APPLICATION OF THE LAW, AND NOT A STATUTE OR EXECUTIVE ACT.—** No law or executive act with respect to stock distribution options has been declared unconstitutional by the Court. For the operative facts doctrine to have been applied, a law or an executive act that was made effective for a temporary period should have been invalidated by the Court for being inherently in contravention of the Constitution and, thus, without force and effect from its very inception. Except for the previous Separate Opinions of Chief Justice Renato Corona and Justice Jose Mendoza, a majority of the Court generally refrained from making any declaration as to the constitutional validity of a stock distribution option on the ground that it is not the *lis mota* of the present Petition, and that the challenge was not timely made, among others. What the Court invalidated was the SDOA, which was simply an application of the law, and not any statute or executive act, on the basis of its having violated the spirit and intent of the existing law. The invalidated PARC Resolution that approved the SDOA of Hacienda Luisita did not rise to the level of a legislative statute or executive act, in which the operative facts doctrine would become applicable.

11. **ID.; ID.; ID.; ID.; ID.; THE RESOLUTION OF THE PRESIDENTIAL AGRARIAN REFORM COUNCIL (PARC) APPROVING THE SDOA, WHILE AN EXECUTIVE ACT, IS NOT AN EXERCISE OF A QUASI-LEGISLATIVE POWER BY THE EXECUTIVE, BUT A MERE WRONGFUL APPLICATION OF THE LAW ON STOCK DISTRIBUTION OPTIONS UNDER THE CARL.—** The PARC Resolution, while an executive act, is not an exercise of a quasi-legislative power by the executive, but a mere wrongful application of the law on stock distribution options under the CARL. The CARL provided the norms used to evaluate any stock distribution option and this was applied by the PARC in deciding whether

to approve the SDOA. Hence, it was the interpretation of the PARC when it mistakenly approved the SDOA of petitioner HLI and the FWBs that has been declared invalid, and not the enabling law itself. The source of infirmity in this case lies not in the provisions of the CARL allowing stock distribution options, but in the erroneous approval previously granted by the PARC. The good faith reliance of petitioner HLI with respect to the approval (albeit erroneous) of its SDOA does not justify the operation of the doctrine, since no less than this Court has found that the SDOA and its approval were in utter violation of the intent of the CARL on stock distribution options.

12. **ID.; ID.; ID.; ID.; ID.; CAN ONLY COME INTO PLAY AS A RULE OF EQUITY IN CASES WHERE THERE IS A VACUUM IN THE LAW CREATED BY THE SUBSEQUENT DECLARATION OF NULLITY BY THE COURT.—** [I]t would be incongruous to avoid the constitutionality issue of the stock distribution mechanism under the CARP on the ground that it is not the *lis mota* of the case, yet at the same time, invoke the operative facts doctrine. There is simply no room for the application of operative facts doctrine, absent an unconstitutionally invalid legislative or executive act. The operative facts doctrine can only come into play as a rule of **equity** in cases where there is a vacuum in the law created by the subsequent declaration of nullity by the Court. In those instances where the operative facts doctrine was used (*i.e.*, debt moratorium cases), the unraveling of the effects of the declaration of unconstitutionality resorted to a dearth in the law and the need for the courts to provide guidance as to its retroactive application. **In this case, no such vacuum exists, as in fact the CARL itself provides for the ultimate consequence when a stock distribution plan or option is eventually invalidated – direct land distribution**. The Court therefore need not exercise its equity jurisdiction.

APPEARANCES OF COUNSEL

Belo Gozon Parel Asuncion & Lucila for petitioner.

Jorge Cesar M. Sandiego for petitioner-intervenor.

Public Interest Law Center and *Jobert Ilarde Pahilaga and David D. Erro* for R. Galang and AMBALA.

Carmelito M. Santoyo for Alyansa ng Manggagawang Bukid Ng Hacienda Luisita/ Noel Mallari/ United Luisita Workers/ Eldifonso Pingol/Supervisory Group of the Hacienda Luisita, Inc. & Windsor Andaya.

Christian S. Monsod, Marlon J. Manuel, Magistrado A. Mendoza, Jr., Joeven D. Dellosa, Edgar DL. Bernal and Mary Claire A. Demaisip for Farm Peace Foundation, Inc.

Law Firm of Diaz Del Rosario & Associates for RCBC.

Poblador Bautista & Reyes for Luisita Industrial Park Corp.

R E S O L U T I O N

VELASCO, JR., *J*.:

For resolution are the (1) *Motion for Clarification and Partial Reconsideration* dated July 21, 2011 filed by petitioner Hacienda Luisita, Inc. (HLI); (2) *Motion for Partial Reconsideration* dated July 20, 2011 filed by public respondents Presidential Agrarian Reform Council (PARC) and Department of Agrarian Reform (DAR); (3) *Motion for Reconsideration* dated July 19, 2011 filed by private respondent Alyansa ng mga Manggagawang Bukid sa Hacienda Luisita (AMBALA); (4) *Motion for Reconsideration* dated July 21, 2011 filed by respondent-intervenor Farmworkers Agrarian Reform Movement, Inc. (FARM); (5) *Motion for Reconsideration* dated July 21, 2011 filed by private respondents Noel Mallari, Julio Suniga, Supervisory Group of Hacienda Luisita, Inc. (Supervisory Group) and Windsor Andaya (collectively referred to as "Mallari, *et al*."); and (6) *Motion for Reconsideration* dated July 22, 2011 filed by private respondents Rene Galang and AMBALA.[2]

On July 5, 2011, this Court promulgated a Decision[3] in the above-captioned case, denying the petition filed by HLI and

[2] The *Motion for Reconsideration* dated July 22, 2011 was filed by private respondents Rene Galang and AMBALA, through Atty. Romeo T. Capulong of the Public Interest Law Center, as lead counsel for Rene Galang and as collaborating counsel of Atty. Jobert Pahilga of SENTRA for AMBALA.

[3] G.R. No. 171101, July 5, 2011; hereinafter referred to as "July 5, 2011 Decision."

affirming Presidential Agrarian Reform Council (PARC) Resolution No. 2005-32-01 dated December 22, 2005 and PARC Resolution No. 2006-34-01 dated May 3, 2006 with the modification that the original 6,296 qualified farmworker-beneficiaries of Hacienda Luisita (FWBs) shall have the option to remain as stockholders of HLI.

In its *Motion for Clarification and Partial Reconsideration* dated July 21, 2011, HLI raises the following issues for Our consideration:

A

IT IS NOT PROPER, EITHER IN LAW OR IN EQUITY, TO DISTRIBUTE TO THE ORIGINAL FWBs OF 6,296 THE UNSPENT OR UNUSED BALANCE OF THE PROCEEDS OF THE SALE OF THE 500 HECTARES AND 80.51 HECTARES OF THE HLI LAND, BECAUSE:

(1) THE PROCEEDS OF THE SALE BELONG TO THE CORPORATION, HLI, AS CORPORATE CAPITAL AND ASSETS IN SUBSTITUTION FOR THE PORTIONS OF ITS LAND ASSET WHICH WERE SOLD TO THIRD PARTY;

(2) TO DISTRIBUTE THE CASH SALES PROCEEDS OF THE PORTIONS OF THE LAND ASSET TO THE FWBs, WHO ARE STOCKHOLDERS OF HLI, IS TO DISSOLVE THE CORPORATION AND DISTRIBUTE THE PROCEEDS AS LIQUIDATING DIVIDENDS WITHOUT EVEN PAYING THE CREDITORS OF THE CORPORATION;

(3) THE DOING OF SAID ACTS WOULD VIOLATE THE STRINGENT PROVISIONS OF THE CORPORATION CODE AND CORPORATE PRACTICE.

B

IT IS NOT PROPER, EITHER IN LAW OR IN EQUITY, TO RECKON THE PAYMENT OF JUST COMPENSATION FROM NOVEMBER 21, 1989 WHEN THE PARC, THEN UNDER THE CHAIRMANSHIP OF DAR SECRETARY MIRIAM DEFENSOR-SANTIAGO, APPROVED THE STOCK DISTRIBUTION PLAN (SDP) PROPOSED BY TADECO/HLI, BECAUSE:

(1) THAT PARC RESOLUTION NO. 89-12-2 DATED NOVEMBER 21, 1989 WAS NOT THE "ACTUAL TAKING" OF THE TADECO's/HLI's AGRICULTURAL LAND;

(2) THE RECALL OR REVOCATION UNDER RESOLUTION NO. 2005-32-01 OF THAT SDP BY THE NEW PARC UNDER THE CHAIRMANSHIP OF DAR SECRETARY NASSER PANGANDAMAN ON DECEMBER 22, 2005 OR 16 YEARS EARLIER WHEN THE SDP WAS APPROVED DID NOT RESULT IN "ACTUAL TAKING" ON NOVEMBER 21, 1989;

(3) TO PAY THE JUST COMPENSATION AS OF NOVEMBER 21, 1989 OR 22 YEARS BACK WOULD BE ARBITRARY, UNJUST, AND OPPRESSIVE, CONSIDERING THE IMPROVEMENTS, EXPENSES IN THE MAINTENANCE AND PRESERVATION OF THE LAND, AND RISE IN LAND PRICES OR VALUE OF THE PROPERTY.

On the other hand, PARC and DAR, through the Office of the Solicitor General (OSG), raise the following issues in their *Motion for Partial Reconsideration* dated July 20, 2011:

THE DOCTRINE OF OPERATIVE FACT DOES NOT APPLY TO THIS CASE FOR THE FOLLOWING REASONS:

I

THERE IS NO LAW OR RULE WHICH HAS BEEN INVALIDATED ON THE GROUND OF UNCONSTITUTIONALITY; AND

II

THIS DOCTRINE IS A RULE OF EQUITY WHICH MAY BE APPLIED ONLY IN THE ABSENCE OF A LAW. IN THIS CASE, THERE IS A POSITIVE LAW WHICH MANDATES THE DISTRIBUTION OF THE LAND AS A RESULT OF THE REVOCATION OF THE STOCK DISTRIBUTION PLAN (SDP).

For its part, AMBALA poses the following issues in its *Motion for Reconsideration* dated July 19, 2011:

I

THE MAJORITY OF THE MEMBERS OF THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN HOLDING THAT

SECTION 31 OF REPUBLIC ACT 6657 (RA 6657) IS CONSTITUTIONAL.

II

THE MAJORITY OF THE MEMBERS OF THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN HOLDING THAT ONLY THE [PARC'S] APPROVAL OF HLI's PROPOSAL FOR STOCK DISTRIBUTION UNDER CARP AND THE [SDP] WERE REVOKED AND NOT THE STOCK DISTRIBUTION OPTION AGREEMENT (SDOA).

III

THE MAJORITY OF THE MEMBERS OF THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN APPLYING THE DOCTRINE OF OPERATIVE FACTS AND IN MAKING THE [FWBs] CHOOSE TO OPT FOR ACTUAL LAND DISTRIBUTION OR TO REMAIN AS STOCKHOLDERS OF [HLI].

IV

THE MAJORITY OF THE MEMBERS OF THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN HOLDING THAT IMPROVING THE ECONOMIC STATUS OF FWBs IS NOT AMONG THE LEGAL OBLIGATIONS OF HLI UNDER THE SDP AND AN IMPERATIVE IMPOSITION BY [RA 6657] AND DEPARTMENT OF AGRARIAN REFORM ADMINISTRATIVE ORDER NO. 10 (DAO 10).

V

THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN HOLDING THAT THE CONVERSION OF THE AGRICULTURAL LANDS DID NOT VIOLATE THE CONDITIONS OF RA 6657 AND DAO 10.

VI

THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN HOLDING THAT PETITIONER IS ENTITLED TO PAYMENT OF JUST COMPENSATION. SHOULD THE HONORABLE COURT AFFIRM THE ENTITLEMENT OF THE PETITIONER TO JUST COMPENSATION, THE SAME SHOULD BE PEGGED TO FORTY THOUSAND PESOS (PhP 40,000.00) PER HECTARE.

VII

THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN HOLDING THAT LUISITA INDUSTRIAL PARK CORP. (LIPCO) AND RIZAL COMMERCIAL BANKING CORPORATION (RCBC) ARE INNOCENT PURCHASERS FOR VALUE.

In its *Motion for Reconsideration* dated July 21, 2011, FARM similarly puts forth the following issues:

I

THE HONORABLE SUPREME COURT SHOULD HAVE STRUCK DOWN SECTION 31 OF [RA 6657] FOR BEING UNCONSTITUTIONAL. THE CONSTITUTIONALITY ISSUE THAT WAS RAISED BY THE RESPONDENTS-INTERVENORS IS THE *LIS MOTA* OF THE CASE.

II

THE HONORABLE SUPREME COURT SHOULD NOT HAVE APPLIED THE DOCTRINE OF "OPERATIVE FACT" TO THE CASE. THE OPTION GIVEN TO THE FARMERS TO REMAIN AS STOCKHOLDERS OF HACIENDA LUISITA IS EQUIVALENT TO AN OPTION FOR HACIENDA LUISITA TO RETAIN LAND IN DIRECT VIOLATION OF THE COMPREHENSIVE AGRARIAN REFORM LAW. THE DECEPTIVE STOCK DISTRIBUTION OPTION / STOCK DISTRIBUTION PLAN CANNOT JUSTIFY SUCH RESULT, ESPECIALLY AFTER THE SUPREME COURT HAS AFFIRMED ITS REVOCATION.

III

THE HONORABLE SUPREME COURT SHOULD NOT HAVE CONSIDERED [LIPCO] AND [RCBC] AS INNOCENT PURCHASERS FOR VALUE IN THE INSTANT CASE.

Mallari, *et al.*, on the other hand, advance the following grounds in support of their *Motion for Reconsideration* dated July 21, 2011:

(1) THE HOMELOTS REQUIRED TO BE DISTRIBUTED HAVE ALL BEEN DISTRIBUTED PURSUANT TO THE MEMORANDUM OF AGREEMENT. WHAT REMAINS MERELY IS THE RELEASE OF TITLE FROM THE REGISTER OF DEEDS.

(2) THERE HAS BEEN NO DILUTION OF SHARES. CORPORATE RECORDS WOULD SHOW THAT IF EVER NOT ALL OF THE 18,804.32 SHARES WERE GIVEN TO THE ACTUAL ORIGINAL FARMWORKER BENEFICIARY, THE RECIPIENT OF THE DIFFERENCE IS THE NEXT OF KIN OR CHILDREN OF SAID ORIGINAL [FWBs]. HENCE, WE RESPECTFULLY SUBMIT THAT SINCE THE SHARES WERE GIVEN TO THE SAME "FAMILY BENEFICIARY," THIS SHOULD BE DEEMED AS SUBSTANTIAL COMPLIANCE WITH THE PROVISIONS OF SECTION 4 OF DAO 10.

(3) THERE HAS BEEN NO VIOLATION OF THE 3-MONTH PERIOD TO IMPLEMENT THE [SDP] AS PROVIDED FOR BY SECTION 11 OF DAO 10 AS THIS PROVISION MUST BE READ IN LIGHT OF SECTION 10 OF EXECUTIVE ORDER NO. 229, THE PERTINENT PORTION OF WHICH READS, "THE APPROVAL BY THE PARC OF A PLAN FOR SUCH STOCK DISTRIBUTION, AND ITS INITIAL IMPLEMENTATION, SHALL BE DEEMED COMPLIANCE WITH THE LAND DISTRIBUTION REQUIREMENT OF THE CARP."

(4) THE VALUATION OF THE LAND CANNOT BE BASED AS OF NOVEMBER 21, 1989, THE DATE OF APPROVAL OF THE STOCK DISTRIBUTION OPTION. INSTEAD, WE RESPECTFULLY SUBMIT THAT THE "TIME OF TAKING" FOR VALUATION PURPOSES IS A FACTUAL ISSUE BEST LEFT FOR THE TRIAL COURTS TO DECIDE.

(5) TO THOSE WHO WILL CHOOSE LAND, THEY MUST RETURN WHAT WAS GIVEN TO THEM UNDER THE SDP. IT WOULD BE UNFAIR IF THEY ARE ALLOWED TO GET THE LAND AND AT THE SAME TIME HOLD ON TO THE BENEFITS THEY RECEIVED PURSUANT TO THE SDP IN THE SAME WAY AS THOSE WHO WILL CHOOSE TO STAY WITH THE SDO.

Lastly, Rene Galang and AMBALA, through the Public Interest Law Center (PILC), submit the following grounds in support of their *Motion for Reconsideration* dated July 22, 2011:

I

THE HONORABLE COURT, WITH DUE RESPECT, GRAVELY ERRED IN ORDERING THE HOLDING OF A VOTING OPTION

INSTEAD OF TOTALLY REDISTRIBUTING THE SUBJECT LANDS TO [FWBs] in [HLI].

A. THE HOLDING OF A VOTING OPTION HAS NO LEGAL BASIS. THE REVOCATION OF THE [SDP] CARRIES WITH IT THE REVOCATION OF THE [SDOA].

B. GIVING THE [FWBs] THE OPTION TO REMAIN AS STOCKHOLDERS OF HLI WITHOUT MAKING THE NECESSARY CHANGES IN THE CORPORATE STRUCTURE WOULD ONLY SUBJECT THEM TO FURTHER MANIPULATION AND HARDSHIP.

C. OTHER VIOLATIONS COMMITTED BY HLI UNDER THE [SDOA] AND PERTINENT LAWS JUSTIFY TOTAL LAND REDISTRIBUTION OF HACIENDA LUISITA.

II

THE HONORABLE COURT, WITH DUE RESPECT, GRAVELY ERRED IN HOLDING THAT THE [RCBC] AND [LIPCO] ARE INNOCENT PURCHASERS FOR VALUE OF THE 300-HECTARE PROPERTY IN HACIENDA LUISITA THAT WAS SOLD TO THEM PRIOR TO THE INCEPTION OF THE PRESENT CONTROVERSY.

Ultimately, the issues for Our consideration are the following: (1) applicability of the operative fact doctrine; (2) constitutionality of Sec. 31 of RA 6657 or the *Comprehensive Agrarian Reform Law of 1988*; (3) coverage of compulsory acquisition; (4) just compensation; (5) sale to third parties; (6) the violations of HLI; and (7) control over agricultural lands.

We shall discuss these issues accordingly.

I. Applicability of the Operative Fact Doctrine

In their motion for partial reconsideration, DAR and PARC argue that the doctrine of operative fact does not apply to the instant case since: (1) there is no law or rule which has been invalidated on the ground of unconstitutionality;[4] (2) the doctrine of operative fact is a rule of equity which may be applied only in the absence of a law, and in this case, they maintain that there is a positive law which mandates the distribution of the

---

[4] PARC/DAR Motion for Reconsideration (MR), p. 7.

land as a result of the revocation of the stock distribution plan (SDP).[5]

Echoing the stance of DAR and PARC, AMBALA submits that the operative fact doctrine should only be made to apply in the extreme case in which equity demands it, which allegedly is not in the instant case.[6] It further argues that there would be no undue harshness or injury to HLI in case lands are actually distributed to the farmworkers, and that the decision which orders the farmworkers to choose whether to remain as stockholders of HLI or to opt for land distribution would result in inequity and prejudice to the farmworkers.[7] The foregoing views are also similarly shared by Rene Galang and AMBALA, through the PILC.[8] In addition, FARM posits that the option given to the FWBs is equivalent to an option for HLI to retain land in direct violation of RA 6657.[9]

(a) Operative Fact Doctrine Not Limited to Invalid or Unconstitutional Laws

Contrary to the stance of respondents, the operative fact doctrine does not only apply to laws subsequently declared unconstitutional or unlawful, as it also applies to executive acts subsequently declared as invalid. As We have discussed in Our July 5, 2011 Decision:

> That the operative fact doctrine squarely applies to executive acts––in this case, the approval by PARC of the HLI proposal for stock distribution––is well-settled in our jurisprudence. In *Chavez v. National Housing Authority*, We held:
>
> > Petitioner postulates that the "operative fact" doctrine is inapplicable to the present case because it is an equitable doctrine

---

[5] PARC/DAR MR, p. 16.

[6] AMBALA MR, p. 51.

[7] AMBALA MR, pp. 55-60.

[8] Rene Galang and AMBALA MR, pp. 11-13.

[9] FARM MR, p. 47.

which could not be used to countenance an inequitable result that is contrary to its proper office.

On the other hand, the petitioner Solicitor General argues that the existence of the various agreements implementing the SMDRP is an operative fact that can no longer be disturbed or simply ignored, citing *Rieta v. People of the Philippines*.

The argument of the Solicitor General is meritorious.

The "operative fact" doctrine is embodied in *De Agbayani v. Court of Appeals*, wherein it is stated that a legislative or **executive act**, prior to its being declared as unconstitutional by the courts, is valid and must be complied with, thus:

x x x x x x x x x

This doctrine was reiterated in the more recent case of *City of Makati v. Civil Service Commission*, wherein we ruled that:

Moreover, we certainly cannot nullify the City Government's order of suspension, as we have no reason to do so, much less retroactively apply such nullification to deprive private respondent of a compelling and valid reason for not filing the leave application. **For as we have held, a void act though in law a mere scrap of paper nonetheless confers legitimacy upon past acts or omissions done in reliance thereof.** Consequently, the existence of a statute or **executive order** prior to its being adjudged void is an operative fact to which legal consequences are attached. It would indeed be ghastly unfair to prevent private respondent from relying upon the order of suspension in lieu of a formal leave application.

The applicability of the operative fact doctrine to executive acts was further explicated by this Court in *Rieta v. People*, thus:

Petitioner contends that his arrest by virtue of Arrest Search and Seizure Order (ASSO) No. 4754 was invalid, as the law upon which it was predicated — General Order No. 60, issued by then President Ferdinand E. Marcos — was subsequently declared by the Court, in *Tañada v. Tuvera*, 33 to have no force and effect. Thus, he asserts, any evidence obtained pursuant thereto is inadmissible in evidence.

We do not agree. In *Tañada*, the Court addressed the possible effects of its declaration of the invalidity of various presidential

issuances. Discussing therein how such a declaration might affect acts done on a presumption of their validity, the Court said:

> ". . .. In similar situations in the past this Court had taken the pragmatic and realistic course set forth in *Chicot County Drainage District vs. Baxter Bank* to wit:
>
> 'The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree. . . . It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to [the determination of its invalidity], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects — with respect to particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.'
>
> x x x x x x x x x
>
> 'Similarly, the implementation/ enforcement of presidential decrees prior to their publication in the Official Gazette is 'an operative fact which may have consequences which cannot be justly ignored. The past cannot always be erased by a new judicial declaration. . . that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.'"

> The Chicot doctrine cited in *Tañada* advocates that, prior to the nullification of a statute, there is an imperative necessity of taking into account its actual existence as an operative fact negating the acceptance of "a principle of absolute retroactive invalidity." Whatever was done while the legislative or the **executive act** was in operation should be duly recognized and presumed to be valid in all respects. **The ASSO that was issued in 1979 under General Order No. 60 — long before our Decision in *Tañada* and the arrest of petitioner — is an operative fact that can no longer be disturbed or simply ignored.** (Citations omitted; emphasis in the original.)

Bearing in mind that PARC Resolution No. 89-12-2[10]––an executive act––was declared invalid in the instant case, the operative fact doctrine is clearly applicable.

Nonetheless, the minority is of the persistent view that the applicability of the operative fact doctrine should be limited to statutes and rules and regulations issued by the executive department that are accorded the same status as that of a statute or those which are quasi-legislative in nature. Thus, the minority concludes that the phrase "executive act" used in the case of *De Agbayani v. Philippine National Bank*[11] refers only to acts, orders, and rules and regulations that have the force and effect of law. The minority also made mention of the Concurring Opinion of Justice Enrique Fernando in *Municipality of Malabang v. Benito*,[12] where it was supposedly made explicit that the operative fact doctrine applies to executive acts, which are ultimately quasi-legislative in nature.

We disagree. For one, neither the *De Agbayani* case nor the *Municipality of Malabang* case elaborates what "executive act" mean. Moreover, while orders, rules and regulations issued by the President or the executive branch have fixed definitions

---

[10] Under PARC Resolution No. 89-12-2 dated November 21, 1989, then Secretary Miriam Defensor-Santiago approved the SDP of HLI/Tarlac Development Corporation (Tadeco).

[11] G.R. No. L-23127, April 29, 1971, 38 SCRA 429.

[12] G.R. No. L-28113, March 28, 1969, 27 SCRA 533.

and meaning in the Administrative Code and jurisprudence, the phrase "executive act" does not have such specific definition under existing laws. It should be noted that in the cases cited by the minority, nowhere can it be found that the term "executive act" is confined to the foregoing. Contrarily, the term "executive act" is broad enough to encompass decisions of administrative bodies and agencies under the executive department which are subsequently revoked by the agency in question or nullified by the Court.

A case in point is the concurrent appointment of Magdangal B. Elma (Elma) as Chairman of the Presidential Commission on Good Government (PCGG) and as Chief Presidential Legal Counsel (CPLC) which was declared unconstitutional by this Court in *Public Interest Center, Inc. v. Elma*.[13] In said case, this Court ruled that the concurrent appointment of Elma to these offices is in violation of Section 7, par. 2, Article IX-B of the 1987 Constitution, since these are incompatible offices. Notably, the appointment of Elma as Chairman of the PCGG and as CPLC is, without a question, an executive act. Prior to the declaration of unconstitutionality of the said executive act, certain acts or transactions were made in good faith and in reliance of the appointment of Elma which cannot just be set aside or invalidated by its subsequent invalidation.

In *Tan v. Barrios*,[14] this Court, in applying the operative fact doctrine, held that despite the invalidity of the jurisdiction of the military courts over civilians, certain operative facts must be acknowledged to have existed so as not to trample upon the rights of the accused therein. Relevant thereto, in *Olaguer v. Military Commission No. 34*,[15] it was ruled that "military tribunals pertain to the Executive Department of the Government and are simply instrumentalities of the executive power, provided by the legislature for the President as Commander-in-Chief to aid him in properly commanding the army and navy and enforcing

---

[13] G.R. No. 138965, June 30, 2006, 494 SCRA 53.

[14] G.R. Nos. 85481-82, October 18, 1990, 190 SCRA 686.

[15] G.R. Nos. 54558 and 69882, May 22, 1987, 150 SCRA 144.

discipline therein, and utilized under his orders or those of his authorized military representatives."[16]

Evidently, the operative fact doctrine is not confined to statutes and rules and regulations issued by the executive department that are accorded the same status as that of a statute or those which are quasi-legislative in nature.

Even assuming that *De Agbayani* initially applied the operative fact doctrine only to executive issuances like orders and rules and regulations, said principle can nonetheless be applied, by analogy, to decisions made by the President or the agencies under the executive department. This doctrine, in the interest of justice and equity, can be applied liberally and in a broad sense to encompass said decisions of the executive branch. In keeping with the demands of equity, the Court can apply the operative fact doctrine to acts and consequences that resulted from the reliance not only on a law or executive act which is quasi-legislative in nature but also on decisions or orders of the executive branch which were later nullified. This Court is not unmindful that such acts and consequences must be recognized in the higher interest of justice, equity and fairness.

Significantly, a decision made by the President or the administrative agencies has to be complied with because it has the force and effect of law, springing from the powers of the President under the Constitution and existing laws. Prior to the nullification or recall of said decision, it may have produced acts and consequences in conformity to and in reliance of said decision, which must be respected. It is on this score that the operative fact doctrine should be applied to acts and consequences that resulted from the implementation of the PARC Resolution approving the SDP of HLI.

More importantly, respondents, and even the minority, failed to clearly explain how the option to remain in HLI granted to individual farmers would result in inequity and prejudice. We can only surmise that respondents misinterpreted the option as

---

[16] *Id.* at 159.

a referendum where all the FWBs will be bound by a majority vote favoring the retention of all the 6,296 FWBs as HLI stockholders. Respondents are definitely mistaken. The *fallo* of Our July 5, 2011 Decision is unequivocal that only those FWBs who signified their desire to remain as HLI stockholders are entitled to 18,804.32 shares each, while those who opted not to remain as HLI stockholders will be given land by DAR. Thus, referendum was not required but only individual options were granted to each FWB whether or not they will remain in HLI.

The application of the operative fact doctrine to the FWBs is not iniquitous and prejudicial to their interests but is actually beneficial and fair to them. *First*, they are granted the right to remain in HLI as stockholders and they acquired said shares without paying their value to the corporation. On the other hand, the qualified FWBs are required to pay the value of the land to the Land Bank of the Philippines (LBP) if land is awarded to them by DAR pursuant to RA 6657. If the qualified FWBs really want agricultural land, then they can simply say no to the option. And *second*, if the operative fact doctrine is not applied to them, then the FWBs will be required to return to HLI the 3% production share, the 3% share in the proceeds of the sale of the 500-hectare converted land, and the 80.51-hectare Subic-Clark-Tarlac Expressway (SCTEX) lot, the homelots and other benefits received by the FWBs from HLI. With the application of the operative fact doctrine, said benefits, homelots and the 3% production share and 3% share from the sale of the 500-hectare and SCTEX lots shall be respected with no obligation to refund or return them. The receipt of these things is an operative fact "that can no longer be disturbed or simply ignored."

(b) The Operative Fact Doctrine as Recourse in Equity

As mentioned above, respondents contend that the operative fact doctrine is a rule of equity which may be applied only in the absence of a law, and that in the instant case, there is a positive law which mandates the distribution of the land as a result of the revocation of the SDP.

Undeniably, the operative fact doctrine is a rule of equity.[17] As a complement of legal jurisdiction, equity "seeks to reach and complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent to do so. Equity regards the spirit and not the letter, the intent and not the form, the substance rather than the circumstance, as it is variously expressed by different courts."[18] Remarkably, it is applied only in the absence of statutory law and never in contravention of said law.[19]

In the instant case, respondents argue that the operative fact doctrine should not be applied since there is a positive law, particularly, Sec. 31 of RA 6657, which directs the distribution of the land as a result of the revocation of the SDP. Pertinently, the last paragraph of Sec. 31 of RA 6657 states:

> If within two (2) years from the approval of this Act, the land or stock transfer envisioned above is not made or realized **or** the plan for such stock distribution approved by the PARC within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act. (Emphasis supplied.)

Markedly, the use of the word **"or"** under the last paragraph of Sec. 31 of RA 6657 connotes that the law gives the corporate landowner an "option" to avail of the stock distribution option or to have the SDP approved within two (2) years from the approval of RA 6657. This interpretation is consistent with the well-established principle in statutory construction that "[t]he word or is a disjunctive term signifying disassociation and independence of one thing from the other things enumerated; it should, as a rule, be construed in the sense in which it ordinarily

---

[17] *League of Cities of the Phils. v. COMELEC*, G.R. Nos. 176951, 177499 and 178056, August 24, 2010, 628 SCRA 819, 833.

[18] *LCK Industries, Inc. v. Planters Development Bank*, G.R. No. 170606, November 23, 2007, 538 SCRA 634, 652; cited in *Land Bank of the Philippines v. Ong*, G.R. No. 190755, November 24, 2010, 636 SCRA 266, 280.

[19] *Brito, Sr. v. Dianala*, G.R. No. 171717, December 15, 2010.

implies, as a disjunctive word."[20] In *PCI Leasing and Finance, Inc. v. Giraffe-X Creative Imaging, Inc.*,[21] this Court held:

Evidently, the letter did not make a demand for the payment of the ₱8,248,657.47 **AND** the return of the equipment; only either one of the two was required. The demand letter was prepared and signed by Atty. Florecita R. Gonzales, presumably petitioner's counsel. As such, the use of **"or"** instead of **"and"** in the letter could hardly be treated as a simple typographical error, bearing in mind the nature of the demand, the amount involved, and the fact that it was made by a lawyer. Certainly Atty. Gonzales would have known that a world of difference exists between "and" and "or" in the manner that the word was employed in the letter.

> A rule in statutory construction is that the word "or" is a disjunctive term signifying disassociation and independence of one thing from other things enumerated unless the context requires a different interpretation.[22]
>
> **In its elementary sense, "or," as used in a statute, is a disjunctive article indicating an alternative. It often connects a series of words or propositions indicating a choice of either. When "or" is used, the various members of the enumeration are to be taken separately.**[23]
>
> The word "or" is a disjunctive term signifying disassociation and independence of one thing from each of the other things enumerated.[24] (Emphasis in the original.)

---

[20] *Saludaga v. Sandiganbayan*, G.R. No. 184537, April 23, 2010, 619 SCRA 364, 374; citing AGPALO, STATUTORY CONSTRUCTION, 2003 p. 204 and *The Heirs of George Poe v. Malayan Insurance Company, Inc.*, G.R. No. 156302, April 7, 2009.

[21] G.R. No. 142618, July 12, 2007, 527 SCRA 405, 422.

[22] Citing *Pimentel v. COMELEC*, G.R. No. 126394, April 24, 1998, 289 SCRA 586, 597.

[23] Citing *Centeno v. Villalon-Pornillos*, G.R. No. 113092, September 1, 1994, 236 SCRA 197, 206.

[24] Citing *Castillo-Co v. Barbers*, G.R. No. 129952, June 16, 1998, 290 SCRA 717, 723.

Given that HLI secured approval of its SDP in November 1989, well within the two-year period reckoned from June 1988 when RA 6657 took effect, then HLI did not violate the last paragraph of Sec. 31 of RA 6657. Pertinently, said provision does not bar Us from applying the operative fact doctrine.

Besides, it should be recognized that this Court, in its July 5, 2011 Decision, affirmed the revocation of Resolution No. 89-12-2 and ruled for the compulsory coverage of the agricultural lands of Hacienda Luisita in view of HLI's violation of the SDP and DAO 10. By applying the operative fact doctrine, this Court merely gave the qualified FWBs the option to remain as stockholders of HLI and ruled that they will retain the homelots and other benefits which they received from HLI by virtue of the SDP.

It bears stressing that the application of the operative fact doctrine by the Court in its July 5, 2011 Decision is favorable to the FWBs because not only were the FWBs allowed to retain the benefits and homelots they received under the stock distribution scheme, they were also given the option to choose for themselves whether they want to remain as stockholders of HLI or not. This is in recognition of the fact that despite the claims of certain farmer groups that they represent the qualified FWBs in Hacienda Luisita, none of them can show that they are duly authorized to speak on their behalf. As We have mentioned, "To date, such authorization document, which would logically include a list of the names of the authorizing FWBs, has yet to be submitted to be part of the records."

II. Constitutionality of Sec. 31, RA 6657

FARM insists that the issue of constitutionality of Sec. 31 of RA 6657 is the *lis mota* of the case, raised at the earliest opportunity, and not to be considered as moot and academic.[25]

This contention is unmeritorious. As We have succinctly discussed in Our July 5, 2011 Decision:

---

[25] FARM MR, pp. 6-11, 30-36.

While there is indeed an actual case or controversy, intervenor FARM, composed of a small minority of 27 farmers, has yet to explain its failure to challenge the constitutionality of Sec. 3l of RA 6657, since as early as November 21, l989 when PARC approved the SDP of Hacienda Luisita or at least within a reasonable time thereafter and why its members received benefits from the SDP without so much of a protest. It was only on December 4, 2003 or 14 years after approval of the SDP via PARC Resolution No. 89-12-2 dated November 21, 1989 that said plan and approving resolution were sought to be revoked, but not, to stress, by FARM or any of its members, but by petitioner AMBALA. Furthermore, the AMBALA petition did NOT question the constitutionality of Sec. 31 of RA 6657, but concentrated on the purported flaws and gaps in the subsequent implementation of the SDP. Even the public respondents, as represented by the Solicitor General, did not question the constitutionality of the provision. On the other hand, FARM, whose 27 members formerly belonged to AMBALA, raised the constitutionality of Sec. 31 only on May 3, 2007 when it filed its Supplemental Comment with the Court. Thus, it took FARM some eighteen (18) years from November 21, 1989 before it challenged the constitutionality of Sec. 31 of RA 6657 which is quite too late in the day. The FARM members slept on their rights and even accepted benefits from the SDP with nary a complaint on the alleged unconstitutionality of Sec. 31 upon which the benefits were derived. The Court cannot now be goaded into resolving a constitutional issue that FARM failed to assail after the lapse of a long period of time and the occurrence of numerous events and activities which resulted from the application of an alleged unconstitutional legal provision.

It has been emphasized in a number of cases that the question of constitutionality will not be passed upon by the Court unless it is properly raised and presented in an appropriate case at the first opportunity. FARM is, therefore, remiss in belatedly questioning the constitutionality of Sec. 31 of RA 6657. The second requirement that the constitutional question should be raised at the earliest possible opportunity is clearly wanting.

The last but the most important requisite that the constitutional issue must be the very *lis mota* of the case does not likewise obtain. The *lis mota* aspect is not present, the constitutional issue tendered not being critical to the resolution of the case. The unyielding rule has been to avoid, whenever plausible, an issue assailing the constitutionality of a statute or governmental act. If some other

grounds exist by which judgment can be made without touching the constitutionality of a law, such recourse is favored. *Garcia v. Executive Secretary* explains why:

> *Lis Mota* — the fourth requirement to satisfy before this Court will undertake judicial review — means that the Court will not pass upon a question of unconstitutionality, although properly presented, *if the case can be disposed of on some other ground, such as the application of the statute or the general law*. The petitioner must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined. This requirement is based on the rule that every law has in its favor the presumption of constitutionality; to justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative, or argumentative.

The *lis mota* in this case, proceeding from the basic positions originally taken by AMBALA (to which the FARM members previously belonged) and the Supervisory Group, is the alleged non-compliance by HLI with the conditions of the SDP to support a plea for its revocation. And before the Court, the *lis mota* is whether or not PARC acted in grave abuse of discretion when it ordered the recall of the SDP for such non-compliance and the fact that the SDP, as couched and implemented, offends certain constitutional and statutory provisions. To be sure, any of these key issues may be resolved without plunging into the constitutionality of Sec. 31 of RA 6657. Moreover, looking deeply into the underlying petitions of AMBALA, *et al.*, it is not the said section per se that is invalid, but rather it is the alleged application of the said provision in the SDP that is flawed.

It may be well to note at this juncture that Sec. 5 of RA 9700, amending Sec. 7 of RA 6657, has all but superseded Sec. 31 of RA 6657 *vis-à-vis* the stock distribution component of said Sec. 31. In its pertinent part, Sec. 5 of RA 9700 provides: "**[T]hat after June 30, 2009, the modes of acquisition shall be limited to voluntary offer to sell and compulsory acquisition**." Thus, for all intents and purposes, the stock distribution scheme under Sec. 31 of RA 6657 is no longer an available option under existing law. The question of whether or not it is unconstitutional should be a moot issue. (Citations omitted; emphasis in the original.)

Based on the foregoing disquisitions, We maintain that this Court is NOT compelled to rule on the constitutionality of Sec. 31 of RA 6657. In this regard, We clarify that this Court, in its July 5, 2011 Decision, made no ruling in favor of the constitutionality of Sec. 31 of RA 6657. There was, however, a determination of the existence of an apparent grave violation of the Constitution that may justify the resolution of the issue of constitutionality, to which this Court ruled in the negative. Having clarified this matter, all other points raised by both FARM and AMBALA concerning the constitutionality of RA 6657 deserve scant consideration.

III. Coverage of Compulsory Acquisition

FARM argues that this Court ignored certain material facts when it limited the maximum area to be covered to 4,915.75 hectares, whereas the area that should, at the least, be covered is 6,443 hectares,[26] which is the agricultural land allegedly covered by RA 6657 and previously held by Tarlac Development Corporation (Tadeco).[27]

We cannot subscribe to this view. Since what is put in issue before the Court is the propriety of the revocation of the SDP, which only involves 4,915.75 has. of agricultural land and not 6,443 has., then We are constrained to rule only as regards the 4,915.75 has. of agricultural land.

Moreover, as admitted by FARM itself, this issue was raised for the first time by FARM in its Memorandum dated September 24, 2010 filed before this Court.[28] In this regard, it should be noted that "[a]s a legal recourse, the special civil action of *certiorari* is a limited form of review."[29] The *certiorari* jurisdiction of this Court is narrow in scope as it is restricted to

---

[26] *Id.* at 52.

[27] *Id.*

[28] *Id.*

[29] *Apostol v. CA*, G.R. No. 141854, October 15, 2008, 569 SCRA 80, 92; citing *Almuete v. Andres*, 421 Phil. 522, 531 (2001).

resolving errors of jurisdiction and grave abuse of discretion, and not errors of judgment.[30] To allow additional issues at this stage of the proceedings is violative of fair play, justice and due process.[31]

Nonetheless, it should be taken into account that this should not prevent the DAR, under its mandate under the agrarian reform law, from subsequently subjecting to agrarian reform other agricultural lands originally held by Tadeco that were allegedly not transferred to HLI but were supposedly covered by RA 6657.

DAR, however, contends that the declaration of the area[32] to be awarded to each FWB is too restrictive. It stresses that in agricultural landholdings like Hacienda Luisita, there are roads, irrigation canals, and other portions of the land that are considered commonly-owned by farmworkers, and this may necessarily result in the decrease of the area size that may be awarded per FWB.[33] DAR also argues that the July 5, 2011 Decision of this Court does not give it any leeway in adjusting the area that may be awarded per FWB in case the number of actual qualified FWBs decreases.[34]

The argument is meritorious. In order to ensure the proper distribution of the agricultural lands of Hacienda Luisita per qualified FWB, and considering that matters involving strictly the administrative implementation and enforcement of agrarian

---

[30] *Id.*; citing *Tolentino v. People*, G.R. No. 170396, August 31, 2006, 500 SCRA 721, 724 and *Suyat, Jr. v. Torres*, G.R. No. 133530, October 25, 2004, 441 SCRA 265, 274-275.

[31] See *C.F. Sharp Crew Management, Inc. v. Espanol, Jr.*, G.R. No. 155903, September 14, 2007, 533 SCRA 424, 438-439.

[32] We stated in Our July 5, 2011 Decision that if a qualified FWB will choose land distribution, he or she will get 6,886.5 square meters of agricultural land in Hacienda Luisita.

[33] DAR MR, p. 37.

[34] *Id.*

reform laws are within the jurisdiction of the DAR,[35] it is the latter which shall determine the area with which each qualified FWB will be awarded.

(a) Conversion of Agricultural Lands

AMBALA insists that the conversion of the agricultural lands violated the conditions of RA 6657 and DAO 10, stating that "keeping the land intact and unfragmented is one of the essential conditions of [the] SD[P], RA 6657 and DAO 10."[36] It asserts that "this provision or conditionality is not mere decoration and is intended to ensure that the farmers can continue with the tillage of the soil especially since it is the only occupation that majority of them knows."[37]

We disagree. As We amply discussed in Our July 5, 2011 Decision:

> Contrary to the almost parallel stance of the respondents, keeping Hacienda Luisita unfragmented is also not among the imperative impositions by the SDP, RA 6657, and DAO 10.
>
> The Terminal Report states that the proposed distribution plan submitted in 1989 to the PARC effectively assured the intended stock beneficiaries that the physical integrity of the farm shall remain inviolate. Accordingly, the Terminal Report and the PARC-assailed resolution would take HLI to task for securing approval of the conversion to non-agricultural uses of 500 hectares of the hacienda. In not too many words, the Report and the resolution view the conversion as an infringement of Sec. 5(a) of DAO 10 which reads: "a. that the continued operation of the corporation with its agricultural land intact and unfragmented is viable with potential for growth and increased profitability."
>
> The PARC is wrong.
>
> In the first place, Sec. 5(a)—just like the succeeding Sec. 5(b) of DAO 10 on increased income and greater benefits to qualified

---

[35] See *Soriano v. Bravo*, G.R. No. 152086, December 15, 2010, 638 SCRA 403, 420.

[36] AMBALA MR, p. 67.

[37] *Id.*

beneficiaries—is but one of the stated criteria to guide PARC in deciding on whether or not to accept an SDP. Said Sec. 5(a) does not exact from the corporate landowner-applicant the undertaking to keep the farm intact and unfragmented *ad infinitum.* And there is logic to HLI's stated observation that the key phrase in the provision of Sec. 5(a) is "viability of corporate operations": "[w]hat is thus required is not the agricultural land remaining intact x x x but the viability of the corporate operations with its agricultural land being intact and unfragmented. Corporate operation may be viable even if the corporate agricultural land does not remain intact or [un]fragmented."[38]

It is, of course, anti-climactic to mention that DAR viewed the conversion as not violative of any issuance, let alone undermining the viability of Hacienda Luisita's operation, as the DAR Secretary approved the land conversion applied for and its disposition via his Conversion Order dated August 14, 1996 pursuant to Sec. 65 of RA 6657 which reads:

> Sec. 65. *Conversion of Lands*. — After the lapse of five years from its award when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR upon application of the beneficiary or landowner with due notice to the affected parties, and subject to existing laws, may authorize the x x x conversion of the land and its dispositions. x x x

Moreover, it is worth noting that the application for conversion had the backing of 5,000 or so FWBs, including respondents Rene Galang, and Jose Julio Suniga, then leaders of the AMBALA and the Supervisory Group, respectively, as evidenced by the Manifesto of Support they signed and which was submitted to the DAR.[39] If at all, this means that AMBALA should be estopped from questioning the conversion of a portion of Hacienda Luisita, which its leader has fully supported.

---

[38] HLI Consolidated Reply and Opposition, p. 65.

[39] *Id.* at 80, Petition of HLI; *id.* at 944, Consolidated Reply of HLI; *id.* at 1327-1328.

(b) LIPCO and RCBC as Innocent Purchasers for Value

The AMBALA, Rene Galang and the FARM are in accord that Rizal Commercial Banking Corporation (RCBC) and Luisita Industrial Park Corporation (LIPCO) are not innocent purchasers for value. The AMBALA, in particular, argues that LIPCO, being a wholly-owned subsidiary of HLI, is conclusively presumed to have knowledge of the agrarian dispute on the subject land and could not feign ignorance of this fact, especially since they have the same directors and stockholders.[40] This is seconded by Rene Galang and AMBALA, through the PILC, which intimate that a look at the General Information Sheets of the companies involved in the transfers of the 300-hectare portion of Hacienda Luisita, specifically, Centennary Holdings, Inc. (Centennary), LIPCO and RCBC, would readily reveal that their directors are interlocked and connected to Tadeco and HLI.[41] Rene Galang and AMBALA, through the PILC, also allege that "with the clear-cut involvement of the leadership of all the corporations concerned, LIPCO and RCBC cannot feign ignorance that the parcels of land they bought are under the coverage of the comprehensive agrarian reform program [CARP] and that the conditions of the respective sales are imbued with public interest where normal property relations in the Civil Law sense do not apply."[42]

Avowing that the land subject of conversion still remains undeveloped, Rene Galang and AMBALA, through the PILC, further insist that the condition that "[t]he development of the land should be completed within the period of five [5] years from the issuance of this Order" was not complied with. AMBALA also argues that since RCBC and LIPCO merely stepped into the shoes of HLI, then they must comply with the conditions imposed in the conversion order.[43]

---

[40] AMBALA MR, p. 76.

[41] Galang MR, p. 21.

[42] *Id.* at 22.

[43] AMBALA MR, p. 72.

In addition, FARM avers that among the conditions attached to the conversion order, which RCBC and LIPCO necessarily have knowledge of, are (a) that its approval shall in no way amend, diminish, or alter the undertaking and obligations of HLI as contained in the [SDP] approved on November 21, 1989; and (b) that the benefits, wages and the like, received by the FWBs shall not in any way be reduced or adversely affected, among others.[44]

The contentions of respondents are wanting. In the first place, there is no denying that RCBC and LIPCO knew that the converted lands they bought were under the coverage of CARP. Nevertheless, as We have mentioned in Our July 5, 2011 Decision, this does not necessarily mean that both LIPCO and RCBC already acted in bad faith in purchasing the converted lands. As this Court explained:

> It cannot be claimed that RCBC and LIPCO acted in bad faith in acquiring the lots that were previously covered by the SDP. Good faith "consists in the possessor's belief that the person from whom he received it was the owner of the same and could convey his title. Good faith requires a well-founded belief that the person from whom title was received was himself the owner of the land, with the right to convey it. There is good faith where there is an honest intention to abstain from taking any unconscientious advantage from another." It is the opposite of fraud.
>
> **To be sure, intervenor RCBC and LIPCO knew that the lots they bought were subjected to CARP coverage by means of a stock distribution plan, as the DAR conversion order was annotated at the back of the titles of the lots they acquired. However, they are of the honest belief that the subject lots were validly converted to commercial or industrial purposes and for which said lots were taken out of the CARP coverage subject of PARC Resolution No. 89-12-2 and, hence, can be legally and validly acquired by them.** After all, Sec. 65 of RA 6657 explicitly allows conversion and disposition of agricultural lands previously covered by CARP land acquisition "after the lapse of five (5) years from its award when the land ceases to be economically feasible

---

[44] FARM MR, p. 94.

and sound for agricultural purposes or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes." Moreover, DAR notified all the affected parties, more particularly the FWBs, and gave them the opportunity to comment or oppose the proposed conversion. DAR, after going through the necessary processes, granted the conversion of 500 hectares of Hacienda Luisita pursuant to its primary jurisdiction under Sec. 50 of RA 6657 to determine and adjudicate agrarian reform matters and its original exclusive jurisdiction over all matters involving the implementation of agrarian reform. The DAR conversion order became final and executory after none of the FWBs interposed an appeal to the CA. In this factual setting, RCBC and LIPCO purchased the lots in question on their honest and well-founded belief that the previous registered owners could legally sell and convey the lots though these were previously subject of CARP coverage. Ergo, RCBC and LIPCO acted in good faith in acquiring the subject lots. (Emphasis supplied.)

In the second place, the allegation that the converted lands remain undeveloped is contradicted by the evidence on record, particularly, Annex "X" of LIPCO's Memorandum dated September 23, 2010,[45] which has photographs showing that the land has been partly developed.[46] Certainly, it is a general rule that the factual findings of administrative agencies are conclusive and binding on the Court when supported by substantial evidence.[47] However, this rule admits of certain exceptions, one of which is when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[48]

In the third place, by arguing that the companies involved in the transfers of the 300-hectare portion of Hacienda Luisita have interlocking directors and, thus, knowledge of one may

---

[45] *Rollo*, Vol. 3, pp. 3280-3323.

[46] *Id.* at 3428-3468.

[47] *Nicolas v. Del-Nacia Corp.*, G.R. No. 158026, April 23, 2008, 552 SCRA 545, 556.

[48] *Bascos, Jr. v. Taganahan*, G.R. No. 180666, February 18, 2009, 579 SCRA 653, 674-675.

already be imputed upon all the other companies, AMBALA and Rene Galang, in effect, want this Court to pierce the veil of corporate fiction. However, piercing the veil of corporate fiction is warranted "only in cases when the separate legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, such that in the case of two corporations, the law will regard the corporations as merged into one."[49] As succinctly discussed by the Court in *Velarde v. Lopez, Inc.*:[50]

Petitioner argues nevertheless that jurisdiction over the subsidiary is justified by piercing the veil of corporate fiction. Piercing the veil of corporate fiction is warranted, however, only in cases when the separate legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, such that in the case of two corporations, the law will regard the corporations as merged into one. The rationale behind piercing a corporation's identity is to remove the barrier between the corporation from the persons comprising it to thwart the fraudulent and illegal schemes of those who use the corporate personality as a shield for undertaking certain proscribed activities.

In applying the doctrine of piercing the veil of corporate fiction, the following requisites must be established: (1) control, not merely majority or complete stock control; (2) such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest acts in contravention of plaintiff's legal rights; and (3) the aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of. (Citations omitted.)

Nowhere, however, in the pleadings and other records of the case can it be gathered that respondent has complete control over Sky Vision, not only of finances but of policy and business practice in respect to the transaction attacked, so that Sky Vision had at the time of the transaction no separate mind, will or existence of its own. The existence of interlocking directors, corporate officers and shareholders is not enough justification to pierce the veil of

---

[49] *Velarde v. Lopez, Inc.*, G.R. No. 153886, January 14, 2004, 419 SCRA 422, 431-432; citing *Tan Boon Bee & Co., Inc. v. Jarencio*, 163 SCRA 205 (1988) and *Yutivo Sons Hardware Co. v. CTA*, 1 SCRA 160 (1961).

[50] *Id.*

corporate fiction in the absence of fraud or other public policy considerations.

Absent any allegation or proof of fraud or other public policy considerations, the existence of interlocking directors, officers and stockholders is not enough justification to pierce the veil of corporate fiction as in the instant case.

And in the fourth place, the fact that this Court, in its July 5, 2011 Decision, ordered the payment of the proceeds of the sale of the converted land, and even of the 80.51-hectare land sold to the government, through the Bases Conversion Development Authority, to the qualified FWBs, effectively fulfils the conditions in the conversion order, to wit: (1) that its approval shall in no way amend, diminish, or alter the undertaking and obligations of HLI as contained in the SDP approved on November 21, 1989; and (2) that the benefits, wages and the like, received by the FWBs shall not in any way be reduced or adversely affected, among others.

A view has also been advanced that the 200-hectare lot transferred to Luisita Realty Corporation (LRC) should be included in the compulsory coverage because the corporation did not intervene.

We disagree. Since the 200-hectare lot formed part of the SDP that was nullified by PARC Resolution 2005-32-01, this Court is constrained to make a ruling on the rights of LRC over the said lot. Moreover, the 500-hectare portion of Hacienda Luisita, of which the 200-hectare portion sold to LRC and the 300-hectare portion subsequently acquired by LIPCO and RCBC were part of, was already the subject of the August 14, 1996 DAR Conversion Order. By virtue of the said conversion order, the land was already reclassified as industrial/commercial land not subject to compulsory coverage. Thus, if We place the 200-hectare lot sold to LRC under compulsory coverage, this Court would, in effect, be disregarding the DAR Conversion Order, which has long attained its finality. And as this Court held in *Berboso v. CA*,[51] "Once final and executory, the

---

[51] G.R. Nos. 141593-94, July 12, 2006, 494 SCRA 583, 602.

Conversion Order can no longer be questioned." Besides, to disregard the Conversion Order through the revocation of the approval of the SDP would create undue prejudice to LRC, which is not even a party to the proceedings below, and would be tantamount to deprivation of property without due process of law.

Nonetheless, the minority is of the adamant view that since LRC failed to intervene in the instant case and was, therefore, unable to present evidence supporting its good faith purchase of the 200-hectare converted land, then LRC should be given full opportunity to present its case before the DAR. This minority view is a contradiction in itself. Given that LRC did not intervene and is, therefore, not a party to the instant case, then it would be incongruous to order them to present evidence before the DAR. Such an order, if issued by this Court, would not be binding upon the LRC.

Moreover, LRC may be considered to have **waived** its right to participate in the instant petition since it did not intervene in the DAR proceedings for the nullification of the PARC Resolution No. 89-12-2 which approved the SDP.

(c) Proceeds of the sale of the 500-hectare converted land and of the 80.51-hectare land used for the SCTEX

As previously mentioned, We ruled in Our July 5, 2011 Decision that since the Court excluded the 500-hectare lot subject of the August 14, 1996 Conversion Order and the 80.51-hectare SCTEX lot acquired by the government from compulsory coverage, then HLI and its subsidiary, Centennary, should be liable to the FWBs for the price received for said lots. Thus:

> There is a claim that, since the sale and transfer of the 500 hectares of land subject of the August 14, 1996 Conversion Order and the 80.51-hectare SCTEX lot came after compulsory coverage has taken place, the FWBs should have their corresponding share of the land's value. There is merit in the claim. Since the SDP approved by PARC Resolution No. 89-12-2 has been nullified, then all the lands subject of the SDP will automatically be subject of compulsory coverage under Sec. 31 of RA 6657. Since the Court excluded the 500-hectare

lot subject of the August 14, 1996 Conversion Order and the 80.51-hectare SCTEX lot acquired by the government from the area covered by SDP, then HLI and its subsidiary, Centennary, shall be liable to the FWBs for the price received for said lots. HLI shall be liable for the value received for the sale of the 200-hectare land to LRC in the amount of PhP 500,000,000 and the equivalent value of the 12,000,000 shares of its subsidiary, Centennary, for the 300-hectare lot sold to LIPCO for the consideration of PhP 750,000,000. Likewise, HLI shall be liable for PhP 80,511,500 as consideration for the sale of the 80.51-hectare SCTEX lot.

We, however, note that HLI has allegedly paid 3% of the proceeds of the sale of the 500-hectare land and 80.51-hectare SCTEX lot to the FWBs. We also take into account the payment of taxes and expenses relating to the transfer of the land and HLI's statement that most, if not all, of the proceeds were used for legitimate corporate purposes. In order to determine once and for all whether or not all the proceeds were properly utilized by HLI and its subsidiary, Centennary, DAR will engage the services of a reputable accounting firm to be approved by the parties to audit the books of HLI to determine if the proceeds of the sale of the 500-hectare land and the 80.51-hectare SCTEX lot were actually used for legitimate corporate purposes, titling expenses and in compliance with the August 14, 1996 Conversion Order. The cost of the audit will be shouldered by HLI. If after such audit, it is determined that there remains a balance from the proceeds of the sale, then the balance shall be distributed to the qualified FWBs.

HLI, however, takes exception to the above-mentioned ruling and contends that it is not proper to distribute the unspent or unused balance of the proceeds of the sale of the 500-hectare converted land and 80.51-hectare SCTEX lot to the qualified FWBs for the following reasons: (1) the proceeds of the sale belong to the corporation, HLI, as corporate capital and assets in substitution for the portions of its land asset which were sold to third parties; (2) to distribute the cash sales proceeds of the portions of the land asset to the FWBs, who are stockholders of HLI, is to dissolve the corporation and distribute the proceeds as liquidating dividends without even paying the creditors of the corporation; and (3) the doing of said acts would violate the

stringent provisions of the Corporation Code and corporate practice.[52]

Apparently, HLI seeks recourse to the Corporation Code in order to avoid its liability to the FWBs for the price received for the 500-hectare converted lot and the 80.51-hectare SCTEX lot. However, as We have established in Our July 5, 2011 Decision, the rights, obligations and remedies of the parties in the instant case are primarily governed by RA 6657 and HLI cannot shield itself from the CARP coverage merely under the convenience of being a corporate entity. In this regard, it should be underscored that the agricultural lands held by HLI by virtue of the SDP are no ordinary assets. These are special assets, because, originally, these should have been distributed to the FWBs were it not for the approval of the SDP by PARC. Thus, the government cannot renege on its responsibility over these assets. Likewise, HLI is no ordinary corporation as it was formed and organized precisely to make use of these agricultural lands actually intended for distribution to the FWBs. Thus, it cannot shield itself from the coverage of CARP by invoking the Corporation Code. As explained by the Court:

> HLI also parlays the notion that the parties to the SDOA should now look to the Corporation Code, instead of to RA 6657, in determining their rights, obligations and remedies. The Code, it adds, should be the applicable law on the disposition of the agricultural land of HLI.
>
> **Contrary to the view of HLI, the rights, obligations and remedies of the parties to the SDOA embodying the SDP are primarily governed by RA 6657.** It should abundantly be made clear that HLI was precisely created in order to comply with RA 6657, which the OSG aptly described as the "mother law" of the SDOA and the SDP.[53] **It is, thus, paradoxical for HLI to shield itself from the coverage of CARP by invoking exclusive applicability of the Corporation Code under the guise of being a corporate entity.**

---

[52] HLI MR, pp. 3-4.

[53] TSN, August 24, 2010, p. 13.

Without in any way minimizing the relevance of the Corporation Code since the FWBs of HLI are also stockholders, its applicability is limited as the rights of the parties arising from the SDP should not be made to supplant or circumvent the agrarian reform program.

Without doubt, the Corporation Code is the general law providing for the formation, organization and regulation of private corporations. On the other hand, RA 6657 is the special law on agrarian reform. As between a general and special law, the latter shall prevail—*generalia specialibus non derogant*.[54] Besides, the present impasse between HLI and the private respondents is not an intra-corporate dispute which necessitates the application of the Corporation Code. What private respondents questioned before the DAR is the proper implementation of the SDP and HLI's compliance with RA 6657. Evidently, RA 6657 should be the applicable law to the instant case. (Emphasis supplied.)

Considering that the 500-hectare converted land, as well as the 80.51-hectare SCTEX lot, should have been included in the compulsory coverage were it not for their conversion and valid transfers, then it is only but proper that the price received for the sale of these lots should be given to the qualified FWBs. In effect, the proceeds from the sale shall take the place of the lots.

The Court, in its July 5, 2011 Decision, however, takes into account, *inter alia*, the payment of taxes and expenses relating to the transfer of the land, as well as HLI's statement that most, if not all, of the proceeds were used for legitimate corporate purposes. Accordingly, We ordered the deduction of the taxes and expenses relating to the transfer of titles to the transferees, and the expenditures incurred by HLI and Centennary for legitimate corporate purposes, among others.

On this note, DAR claims that the "[l]egitimate corporate expenses should not be deducted as there is no basis for it,

---

[54] *Koruga v. Arcenas*, G.R. Nos. 168332 and 169053, June 19, 2009, 590 SCRA 49, 68; citing *In Re: Petition for Assistance in the Liquidation of the Rural Bank of Bokod (Benguet), Inc., PDIC v. Bureau of Internal Revenue*, G.R. No. 158261, December 18, 2006, 511 SCRA 123, 141.

especially since only the auditing to be conducted on the financial records of HLI will reveal the amounts to be offset between HLI and the FWBs."[55]

The contention is unmeritorious. The possibility of an offsetting should not prevent Us from deducting the legitimate corporate expenses incurred by HLI and Centennary. After all, the Court has ordered for a proper auditing "[i]n order to determine once and for all whether or not all the proceeds were properly utilized by HLI and its subsidiary, Centennary." In this regard, DAR is tasked to "engage the services of a reputable accounting firm to be approved by the parties to audit the books of HLI to determine if the proceeds of the sale of the 500-hectare land and the 80.51-hectare SCTEX lot were actually used for legitimate corporate purposes, titling expenses and in compliance with the August 14, 1996 Conversion Order." Also, it should be noted that it is HLI which shall shoulder the cost of audit to reduce the burden on the part of the FWBs. Concomitantly, the legitimate corporate expenses incurred by HLI and Centennary, as will be determined by a reputable accounting firm to be engaged by DAR, shall be among the allowable deductions from the proceeds of the sale of the 500-hectare land and the 80.51-hectare SCTEX lot.

We, however, find that the 3% production share should not be deducted from the proceeds of the sale of the 500-hectare converted land and the 80.51-hectare SCTEX lot. The 3% production share, like the homelots, was among the benefits received by the FWBs as farmhands in the agricultural enterprise of HLI and, thus, should not be taken away from the FWBs.

Contrarily, the minority is of the view that as a consequence of the revocation of the SDP, the parties should be restored to their respective conditions prior to its execution and approval, subject to the application of the principle of set-off or compensation. Such view is patently misplaced.

The law on contracts, *i.e.* mutual restitution, does not apply to the case at bar. To reiterate, what was actually revoked by

---

[55] DAR MR, p. 33.

this Court, in its July 5, 2011 Decision, is PARC Resolution No. 89-12-2 approving the SDP. To elucidate, it was the SDP, not the SDOA, which was presented for approval by Tadeco to DAR.[56] The SDP explained the mechanics of the stock distribution but did not make any reference nor correlation to the SDOA. The pertinent portions of the proposal read:

MECHANICS OF STOCK DISTRIBUTION PLAN

Under Section 31 of Republic Act No. 6657, a corporation owning agricultural land may distribute among the qualified beneficiaries such proportion or percentage of its capital stock that the value of the agricultural land actually devoted to agricultural activities, bears in relation to the corporation's total assets. **Conformably with this legal provision, Tarlac Development Corporation hereby submits for approval a stock distribution plan that envisions the following**:[57] (Terms and conditions omitted; emphasis supplied)

x x x x x x x x x

The above stock distribution plan is hereby submitted on the basis of all these benefits that the farmworker-beneficiaries of Hacienda Luisita will receive under its provisions in addition to their regular compensation as farmhands in the agricultural enterprise and the fringe benefits granted to them by their collective bargaining agreement with management.[58]

Also, PARC Resolution No. 89-12-2 reads as follows:

RESOLUTION APPROVING THE STOCK DISTRIBUTION PLAN OF TARLAC DEVELOPMENT COMPANY/HACIENDA LUISITA INCORPORATED (TDC/HLI)

---

[56] As stated in the SDP:

"Under Section 31 of Republic Act No. 6657, a corporation owning agricultural land may distribute among the qualified beneficiaries such proportion or percentage of its capital stock that the value of the agricultural land actually devoted to agricultural activities, bears in relation to the corporation's total assets. Conformably with this legal provision, Tarlac Development Corporation hereby submits for approval a stock distribution plan that envisions the following: x x x" (*Rollo*, p. 1322)

[57] *Rollo*, p. 1322; Annex "AA".

[58] *Id.* at 3747-3748.

NOW THEREFORE, on motion duly seconded,

RESOLVED, as it is hereby resolved, to approve the stock distribution plan of TDC/HLI.

UNANIMOUSLY APPROVED.[59] (Emphasis supplied)

Clearly, what was approved by PARC is the SDP and not the SDOA. There is, therefore, no basis for this Court to apply the law on contracts to the revocation of the said PARC Resolution.

IV. Just Compensation

In Our July 5, 2011 Decision, We stated that "HLI shall be paid just compensation for the remaining agricultural land that will be transferred to DAR for land distribution to the FWBs." We also ruled that the date of the "taking" is November 21, 1989, when PARC approved HLI's SDP per PARC Resolution No. 89-12-2.

In its *Motion for Clarification and Partial Reconsideration*, HLI disagrees with the foregoing ruling and contends that the "taking" should be reckoned from finality of the Decision of this Court, or at the very least, the reckoning period may be tacked to January 2, 2006, the date when the Notice of Coverage was issued by the DAR pursuant to PARC Resolution No. 2006-34-01 recalling/revoking the approval of the SDP.[60]

For their part, Mallari, *et al*. argue that the valuation of the land cannot be based on November 21, 1989, the date of approval of the SDP. Instead, they aver that the date of "taking" for valuation purposes is a factual issue best left to the determination of the trial courts.[61]

At the other end of the spectrum, AMBALA alleges that HLI should no longer be paid just compensation for the agricultural

---

[59] *Id.* at 151.

[60] HLI MR, pp. 18-21.

[61] Mallari, *et al*. MR, pp. 3-4.

land that will be distributed to the FWBs, since the Manila Regional Trial Court (RTC) already rendered a decision ordering "the Cojuangcos to transfer the control of Hacienda Luisita to the Ministry of Agrarian Reform, which will distribute the land to small farmers after compensating the landowners ₱3.988 million."[62] In the event, however, that this Court will rule that HLI is indeed entitled to compensation, AMBALA contends that it should be pegged at forty thousand pesos (PhP 40,000) per hectare, since this was the same value that Tadeco declared in 1989 to make sure that the farmers will not own the majority of its stocks.[63]

Despite the above propositions, We maintain that the date of "taking" is November 21, 1989, the date when PARC approved HLI's SDP per PARC Resolution No. 89-12-2, in view of the fact that this is the time that the FWBs were considered to own and possess the agricultural lands in Hacienda Luisita. To be precise, these lands became subject of the agrarian reform coverage through the stock distribution scheme only upon the approval of the SDP, that is, November 21, 1989. Thus, such approval is akin to a notice of coverage ordinarily issued under compulsory acquisition. Further, any doubt should be resolved in favor of the FWBs. As this Court held in *Perez-Rosario v. CA*:[64]

> It is an established social and economic fact that the escalation of poverty is the driving force behind the political disturbances that have in the past compromised the peace and security of the people as well as the continuity of the national order. To subdue these acute disturbances, the legislature over the course of the history of the nation passed a series of laws calculated to accelerate agrarian reform, ultimately to raise the material standards of living and eliminate discontent. Agrarian reform is a perceived solution to social instability. **The edicts of social justice found in the Constitution and the public policies that underwrite them, the extraordinary national experience, and the prevailing national consciousness, all**

---

[62] AMBALA MR, p. 70.

[63] *Id.* at 71.

[64] G.R. No. 140796, June 30, 2006, 494 SCRA 66, 92-93.

command the great departments of government to tilt the balance in favor of the poor and underprivileged whenever reasonable doubt arises in the interpretation of the law. But annexed to the great and sacred charge of protecting the weak is the diametric function to put every effort to arrive at an equitable solution for all parties concerned: the jural postulates of social justice cannot shield illegal acts, nor do they sanction false sympathy towards a certain class, nor yet should they deny justice to the landowner whenever truth and justice happen to be on her side. In the occupation of the legal questions in all agrarian disputes whose outcomes can significantly affect societal harmony, the considerations of social advantage must be weighed, an inquiry into the prevailing social interests is necessary in the adjustment of conflicting demands and expectations of the people, and the social interdependence of these interests, recognized. (Emphasis supplied.)

The minority contends that it is the date of the notice of coverage, that is, January 2, 2006, which is determinative of the just compensation HLI is entitled to for its expropriated lands. To support its contention, it cited numerous cases where the time of the taking was reckoned on the date of the issuance of the notice of coverage.

However, a perusal of the cases cited by the minority would reveal that none of them involved the stock distribution scheme. Thus, said cases do not squarely apply to the instant case. Moreover, it should be noted that it is precisely because the stock distribution option is a distinctive mechanism under RA 6657 that it cannot be treated similarly with that of compulsory land acquisition as these are two (2) different modalities under the agrarian reform program. As We have stated in Our July 5, 2011 Decision, RA 6657 "provides two (2) alternative modalities, *i.e.*, land or stock transfer, pursuant to either of which the corporate landowner can comply with CARP."

In this regard, it should be noted that when HLI submitted the SDP to DAR for approval, it cannot be gainsaid that the stock distribution scheme is clearly HLI's preferred modality in order to comply with CARP. And when the SDP was approved, stocks were given to the FWBs in lieu of land distribution. As aptly observed by the minority itself, "[i]nstead of expropriating

lands, what the government took and distributed to the FWBs were shares of stock of petitioner HLI in proportion to the value of the agricultural lands that should have been expropriated and turned over to the FWBs." It cannot, therefore, be denied that upon the approval of the SDP submitted by HLI, the agricultural lands of Hacienda Luisita became subject of CARP coverage. Evidently, the approval of the SDP took the place of a notice of coverage issued under compulsory acquisition.

Also, it is surprising that while the minority opines that under the stock distribution option, "title to the property remains with the corporate landowner, ***which should presumably be dominated by farmers with majority stockholdings in the corporation***," it still insists that the just compensation that should be given to HLI is to be reckoned on January 2, 2006, the date of the issuance of the notice of coverage, even after it found that the FWBs did not have the majority stockholdings in HLI contrary to the supposed avowed policy of the law. In effect, what the minority wants is to prejudice the FWBs twice. Given that the FWBs should have had majority stockholdings in HLI but did not, the minority still wants the government to pay higher just compensation to HLI. Even if it is the government which will pay the just compensation to HLI, this will also affect the FWBs as they will be paying higher amortizations to the government if the "taking" will be considered to have taken place only on January 2, 2006.

The foregoing notwithstanding, it bears stressing that the DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner. The landowner can file an original action with the RTC acting as a special agrarian court to determine just compensation. The court has the right to review with finality the determination in the exercise of what is admittedly a judicial function.[65]

A view has also been advanced that HLI should pay the qualified FWBs rental for the use and possession of the land up

---

[65] *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines*, G.R. No. 166461, April 30, 2010.

to the time it surrenders possession and control over these lands. What this view fails to consider is the fact that the FWBs are also stockholders of HLI prior to the revocation of PARC Resolution No. 89-12-2. Also, the income earned by the corporation from its possession and use of the land ultimately redounded to the benefit of the FWBs based on its business operations in the form of salaries, benefits voluntarily granted by HLI and other fringe benefits under their Collective Bargaining Agreement. That being so, there would be unjust enrichment on the part of the FWBs if HLI will still be required to pay rent for the use of the land in question.

V. Sale to Third Parties

There is a view that since the agricultural lands in Hacienda Luisita were placed under CARP coverage through the SDOA scheme on May 11, 1989, then the 10-year period prohibition on the transfer of awarded lands under RA 6657 lapsed on May 10, 1999, and, consequently, the qualified FWBs should already be allowed to sell these lands with respect to their land interests to third parties, including HLI, regardless of whether they have fully paid for the lands or not.

The proposition is erroneous. Sec. 27 of RA 6657 states:

> SEC. 27. *Transferability of Awarded Lands.* — **Lands acquired by beneficiaries under this Act may not be sold, transferred or conveyed except through hereditary succession, or to the government, or to the LBP, or to other qualified beneficiaries for a period of ten (10) years:** Provided, however, That the children or the spouse of the transferor shall have a right to repurchase the land from the government or LBP within a period of two (2) years. Due notice of the availability of the land shall be given by the LBP to the Barangay Agrarian Reform Committee (BARC) of the *barangay* where the land is situated. The Provincial Agrarian Coordinating Committee (PARCCOM), as herein provided, shall, in turn, be given due notice thereof by the BARC.
>
> **If the land has not yet been fully paid by the beneficiary,** the right to the land may be transferred or conveyed, with prior approval of the DAR, **to any heir of the beneficiary or to any other beneficiary who, as a condition for such transfer or conveyance,**

shall cultivate the land himself. Failing compliance herewith, the land shall be transferred to the LBP which shall give due notice of the availability of the land in the manner specified in the immediately preceding paragraph.

In the event of such transfer to the LBP, the latter shall compensate the beneficiary in one lump sum for the amounts the latter has already paid, together with the value of improvements he has made on the land. (Emphasis supplied.)

To implement the above-quoted provision, *inter alia*, DAR issued Administrative Order No. 1, Series of 1989 (DAO 1) entitled *Rules and Procedures Governing Land Transactions*. Said Rules set forth the rules on validity of land transactions, to wit:

II. RULES ON VALIDITY OF LAND TRANSACTIONS

A. The following transactions are valid:

1. Those executed by the original landowner in favor of the qualified beneficiary from among those certified by DAR.
2. Those in favor of the government, DAR or the Land Bank of the Philippines.
3. Those covering lands retained by the landowner under Section 6 of R.A. 6657 duly certified by the designated DAR Provincial Agrarian Reform Officer (PARO) as a retention area, executed in favor of transferees whose total landholdings inclusive of the land to be acquired do not exceed five (5) hectares; subject, however, to the right of pre-emption and/or redemption of tenant/lessee under Section 11 and 12 of R.A. 3844, as amended.

x x x x x x x x x

4. Those executed by beneficiaries covering lands acquired under any agrarian reform law in favor of the government, DAR, LBP or other qualified beneficiaries certified by DAR.
5. Those executed **after ten (10) years from the issuance and registration of the Emancipation Patent or Certificate of Land Ownership Award.**

B. The following transactions are not valid:

1. Sale, disposition, lease management contract or transfer of possession of private lands executed by the original landowner prior to June 15, 1988, which are registered on or before September 13, 1988, or those executed after June 15, 1988, covering an area in excess of the five-hectare retention limit in violation of R.A. 6657.
2. Those covering lands acquired by the beneficiary under R.A. 6657 and executed within ten (10) years from the issuance and registration of an Emancipation Patent or Certificate of Land Ownership Award.
3. Those executed in favor of a person or persons not qualified to acquire land under R.A. 6657.
4. Sale, transfer, conveyance or change of nature of the land outside of urban centers and city limits either in whole or in part as of June 15, 1988, when R.A. 6657 took effect, except as provided for under DAR Administrative Order No. 15, series of 1988.
5. Sale, transfer or conveyance by beneficiary of the right to use or any other usufructuary right over the land he acquired by virtue of being a beneficiary, in order to circumvent the law.

x x x x x x x x x

(Emphasis supplied.)

Without a doubt, under RA 6657 and DAO 1, the awarded lands may only be transferred or conveyed after ten (10) years from the **issuance** and **registration** of the emancipation patent (EP) or certificate of land ownership award (CLOA). Considering that the EPs or CLOAs have not yet been issued to the qualified FWBs in the instant case, the 10-year prohibitive period has not even started. Significantly, the reckoning point is **the issuance of the EP or CLOA**, and **not the placing of the agricultural lands under CARP coverage**.

Moreover, if We maintain the position that the qualified FWBs should be immediately allowed the option to sell or convey the agricultural lands in Hacienda Luisita, then all efforts at agrarian reform would be rendered nugatory by this Court, since, at the

end of the day, these lands will just be transferred to persons not entitled to land distribution under CARP. As aptly noted by the late Senator Neptali Gonzales during the Joint Congressional Conference Committee on the Comprehensive Agrarian Reform Program Bills:

SEN. GONZALES. **My point is, as much as possible let the said lands be distributed under CARP remain with the beneficiaries and their heirs** because that is the lesson that we have to learn from PD No. 27. If you will talk with the Congressmen representing Nueva Ecija, Pampanga and Central Luzon provinces, law or no law, **you will find out that more than one-third of the original, of the lands distributed under PD 27 are no longer owned, possessed or being worked by the grantees or the awardees of the same, something which we ought to avoid under the CARP bill that we are going to enact.**[66] (Emphasis supplied.)

Worse, by raising that the qualified beneficiaries may sell their interest back to HLI, this smacks of outright indifference to the provision on retention limits[67] under RA 6657, as this

---

[66] Joint Congressional Conference Committee on the Comprehensive Agrarian Reform Program Bills, May 26, 1988, pp. 45-46.

[67] SEC. 6. *Retention Limits.* — Except as otherwise provided in this Act, no person may own or retain, directly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-sized farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall the retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: *Provided,* That landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder; *Provided, further,* That original homestead grantees or direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead.

The right to choose the area to be retained, which shall be compact or contiguous, shall pertain to the landowner: *Provided, however,* That in case the area selected for retention by the landowner is tenanted, the tenant shall

Court, in effect, would be allowing HLI, the previous landowner, to own more than five (5) hectares of agricultural land, which We cannot countenance. There is a big difference between the ownership of agricultural lands by HLI under the stock distribution scheme and its eventual acquisition of the agricultural lands from the qualified FWBs under the proposed buy-back scheme. The rule on retention limits does not apply to the former but only to the latter in view of the fact that the stock distribution scheme is sanctioned by Sec. 31 of RA 6657, which specifically allows corporations to divest a proportion of their capital stock that "the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets." On the other hand, no special rules exist under RA 6657 concerning the proposed buy-back scheme; hence, the general rules on retention limits should apply.

Further, the position that the qualified FWBs are now free to transact with third parties concerning their land interests, regardless of whether they have fully paid for the lands or not, also transgresses the second paragraph of Sec. 27 of RA 6657, which plainly states that "[i]f the land has not yet been fully paid by the beneficiary, the right to the land may be transferred or conveyed, with prior approval of the DAR, to any heir of the

---

have the option to choose whether to remain therein or be a beneficiary in the same or another agricultural land with similar or comparable features. In case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be a beneficiary under this Act. In case the tenant chooses to be a beneficiary in another agricultural land, he loses his right as a leaseholder to the land retained by the landowner. The tenant must exercise this option within a period of one (1) year from the time the landowner manifests his choice of the area for retention.

In all cases, the security of tenure of the farmers or farm workers on the land prior to the approval of this Act shall be respected.

Upon the effectivity of this Act, any sale, disposition, lease, management contract or transfer of possession of private lands executed by the original landowner in violation of this Act shall be null and void: *Provided, however,* That those executed prior to this Act shall be valid only when registered with the Register of Deeds within a period of three (3) months after the effectivity of this Act. Thereafter, all Registers of Deeds shall inform the DAR within thirty (30) days of any transaction involving agricultural lands in excess of five (5) hectares.

beneficiary or to any other beneficiary who, as a condition for such transfer or conveyance, shall cultivate the land himself. Failing compliance herewith, the land shall be transferred to the LBP x x x." When the words and phrases in the statute are clear and unequivocal, the law is applied according to its express terms.[68] *Verba legis non est recedendum*, or from the words of a statute there should be no departure.[69]

The minority, however, posits that "[t]o insist that the FWBs' rights sleep for a period of ten years is unrealistic, and may seriously deprive them of real opportunities to capitalize and maximize the victory of direct land distribution." By insisting that We disregard the ten-year restriction under the law in the case at bar, the minority, in effect, wants this Court to engage in judicial legislation, which is violative of the principle of separation of powers.[70] The discourse by Ruben E. Agpalo, in his book on statutory construction, is enlightening:

> Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed. Where the law is clear and free from doubt or ambiguity, there is no room for construction or interpretation. **Thus, where what is not clearly provided in the law is read into the law by construction because it is more logical and wise, it would be to encroach upon legislative prerogative to define the wisdom of the law, which is judicial legislation. For whether a statute is wise or expedient is not for the courts to determine. Courts must administer the law, not as they think it ought to be but as they find it and without regard to consequences**.[71] (Emphasis supplied.)

---

[68] *Commissioner of Internal Revenue v. Central Luzon Drug Corp.*, G.R. No. 148512, June 26, 2006, 492 SCRA 575, 581.

[69] *Philippine Amusement & Gaming Corp. v. Philippine Gaming Jurisdiction, Inc., et al.*, G.R. No. 177333, April 24, 2009, 586 SCRA 658, 664-665.

[70] *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 158885 & 170680, October 2, 2009, 602 SCRA 159, 169.

[71] R.E. Agpalo, *STATUTORY CONSTRUCTION* 125 (5th edition, 2003); citations omitted.

And as aptly stated by Chief Justice Renato Corona in his Dissenting Opinion in *Ang Ladlad LGBT Party v. COMELEC*:[72]

> Regardless of the personal beliefs and biases of its individual members, this Court can only apply and interpret the Constitution and the laws. Its power is not to create policy but to recognize, review or reverse the policy crafted by the political departments if and when a proper case is brought before it. Otherwise, it will tread on the dangerous grounds of judicial legislation.

Considerably, this Court is left with no other recourse but to respect and apply the law.

VI. Grounds for Revocation of the SDP

AMBALA and FARM reiterate that improving the economic status of the FWBs is among the legal obligations of HLI under the SDP and is an imperative imposition by RA 6657 and DAO 10.[73] FARM further asserts that "[i]f that minimum threshold is not met, why allow [stock distribution option] at all, unless the purpose is not social justice but a political accommodation to the powerful."[74]

Contrary to the assertions of AMBALA and FARM, nowhere in the SDP, RA 6657 and DAO 10 can it be inferred that improving the economic status of the FWBs is among the legal obligations of HLI under the SDP or is an imperative imposition by RA 6657 and DAO 10, a violation of which would justify discarding the stock distribution option. As We have painstakingly explained in Our July 5, 2011 Decision:

> In the Terminal Report adopted by PARC, it is stated that the SDP violates the agrarian reform policy under Sec. 2 of RA 6657, as the said plan failed to enhance the dignity and improve the quality of lives of the FWBs through greater productivity of agricultural lands. We disagree.

---

[72] G.R. No. 190582, April 8, 2010.

[73] AMBALA MR, pp. 65-66; FARM MR, p. 60.

[74] FARM MR, p. 60.

Sec. 2 of RA 6657 states:

> SECTION 2. *Declaration of Principles and Policies.* — It is the policy of the State to pursue a Comprehensive Agrarian Reform Program (CARP). The welfare of the landless farmers and farm workers will receive the highest consideration to promote social justice and to move the nation towards sound rural development and industrialization, and the establishment of owner cultivatorship of economic-sized farms as the basis of Philippine agriculture.
>
> To this end, a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation and to the ecological needs of the nation, shall be undertaken to provide farmers and farm workers **with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands.**
>
> The agrarian reform program is founded on the right of farmers and regular farm workers, who are landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a share of the fruits thereof. To this end, the State shall encourage the just distribution of all agricultural lands, subject to the priorities and retention limits set forth in this Act, having taken into account ecological, developmental, and equity considerations, and subject to the payment of just compensation. The State shall respect the right of small landowners and shall provide incentives for voluntary land-sharing.

Paragraph 2 of the above-quoted provision specifically mentions that "a more equitable distribution and ownership of land x x x shall be undertaken to provide farmers and farm workers with the **opportunity** to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands." Of note is the term "opportunity" which is defined as a favorable chance or opening offered by circumstances. Considering this, by no stretch of imagination can said provision be construed as a guarantee in improving the lives of the FWBs. At best, it merely provides for a possibility or favorable chance of uplifting the economic status of the FWBs, which may or may not be attained.

Pertinently, improving the economic status of the FWBs is neither among the legal obligations of HLI under the SDP nor an imperative imposition by RA 6657 and DAO 10, a violation of which would justify discarding the stock distribution option. Nothing in that option agreement, law or department order indicates otherwise.

Significantly, HLI draws particular attention to its having paid its FWBs, during the regime of the SDP (1989-2005), some PhP 3 billion by way of salaries/wages and higher benefits exclusive of free hospital and medical benefits to their immediate family. And attached as Annex "G" to HLI's Memorandum is the certified true report of the finance manager of Jose Cojuangco & Sons Organizations-Tarlac Operations, captioned as "*HACIENDA LUISITA, INC. Salaries, Benefits and Credit Privileges (in Thousand Pesos) Since the Stock Option was Approved by PARC/CARP*," detailing what HLI gave their workers from 1989 to 2005. The sum total, as added up by the Court, yields the following numbers: Total Direct Cash Out (Salaries/Wages & Cash Benefits) = PhP 2,927,848; Total Non-Direct Cash Out (Hospital/Medical Benefits) = PhP 303,040. The cash out figures, as stated in the report, include the cost of homelots; the PhP 150 million or so representing 3% of the gross produce of the hacienda; and the PhP 37.5 million representing 3% from the proceeds of the sale of the 500-hectare converted lands. While not included in the report, HLI manifests having given the FWBs 3% of the PhP 80 million paid for the 80 hectares of land traversed by the SCTEX. On top of these, it is worth remembering that the shares of stocks were given by HLI to the FWBs for free. Verily, the FWBs have benefited from the SDP.

To address urgings that the FWBs be allowed to disengage from the SDP as HLI has not anyway earned profits through the years, it cannot be over-emphasized that, as a matter of common business sense, no corporation could guarantee a profitable run all the time. As has been suggested, one of the key features of an SDP of a corporate landowner is the likelihood of the corporate vehicle not earning, or, worse still, losing money.

The Court is fully aware that one of the criteria under DAO 10 for the PARC to consider the advisability of approving a stock distribution plan is the likelihood that the plan "**would result in increased income and greater benefits to [qualified beneficiaries] than if the lands were divided and distributed to them individually**." But as aptly noted during the oral arguments,

DAO 10 ought to have not, as it cannot, actually exact assurance of success on something that is subject to the will of man, the forces of nature or the inherent risky nature of business.[75] Just like in actual land distribution, an SDP cannot guarantee, as indeed the SDOA does not guarantee, a comfortable life for the FWBs. The Court can take judicial notice of the fact that there were many instances wherein after a farmworker beneficiary has been awarded with an agricultural land, he just subsequently sells it and is eventually left with nothing in the end.

In all then, the onerous condition of the FWBs' economic status, their life of hardship, if that really be the case, can hardly be attributed to HLI and its SDP and provide a valid ground for the plan's revocation. (Citations omitted; emphasis in the original.)

This Court, despite the above holding, still affirmed the revocation by PARC of its approval of the SDP based on the following grounds: (1) failure of HLI to fully comply with its undertaking to distribute homelots to the FWBs under the SDP; (2) distribution of shares of stock to the FWBs based on the number of "man days" or "number of days worked" by the FWB in a year's time; and (3) 30-year timeframe for the implementation or distribution of the shares of stock to the FWBs.

Just the same, Mallari, *et al*. posit that the homelots required to be distributed have all been distributed pursuant to the SDOA, and that what merely remains to be done is the release of title from the Register of Deeds.[76] They further assert that there has been no dilution of shares as the corporate records would show that if ever not all of the 18,804.32 shares were given to the actual original FWB, the recipient of the difference is the next of kin or children of said original FWB.[77] Thus, they submit that since the shares were given to the same "family beneficiary," this should be deemed as substantial compliance with the provisions of Sec. 4 of DAO 10.[78] Also, they argue that there

---

[75] TSN, August 24, 2010, p. 125.

[76] Mallari, *et al*. MR, p. 3.

[77] *Id*.

[78] *Id*.

has been no violation of the three-month period to implement the SDP as mandated by Sec. 11 of DAO, since this provision must be read in light of Sec. 10 of Executive Order No. 229, the pertinent portion of which reads, "The approval by the PARC of a plan for such stock distribution, and its initial implementation, shall be deemed compliance with the land distribution requirement of the CARP."[79]

Again, the matters raised by Mallari, *et al.* have been extensively discussed by the Court in its July 5, 2011 Decision. As stated:

On Titles to Homelots

Under RA 6657, the distribution of homelots is required only for corporations or business associations owning or operating farms which opted for land distribution. Sec. 30 of RA 6657 states:

> SEC. 30. *Homelots and Farmlots for Members of Cooperatives*.— The individual members of the cooperatives or corporations mentioned in the preceding section shall be provided with homelots and small farmlots for their family use, to be taken from the land owned by the cooperative or corporation.

The "preceding section" referred to in the above-quoted provision is as follows:

> SEC. 29. *Farms Owned or Operated by Corporations or Other Business Associations.*— In the case of farms owned or operated by corporations or other business associations, the following rules shall be observed by the PARC.
>
> In general, lands shall be distributed directly to the individual worker-beneficiaries.
>
> In case it is not economically feasible and sound to divide the land, then it shall be owned collectively by the worker-beneficiaries who shall form a workers' cooperative or association which will deal with the corporation or business association. Until a new agreement is entered into by and between the workers' cooperative or association and the corporation

[79] *Id.*

> or business association, any agreement existing at the time this Act takes effect between the former and the previous landowner shall be respected by both the workers' cooperative or association and the corporation or business association.

Noticeably, the foregoing provisions do not make reference to corporations which opted for stock distribution under Sec. 31 of RA 6657. Concomitantly, said corporations are not obliged to provide for it except by stipulation, as in this case.

Under the SDP, HLI undertook to "subdivide and allocate for free and without charge among the qualified family-beneficiaries x x x residential or homelots of not more than 240 sq. m. each, with each family beneficiary being assured of receiving and owning a homelot in the barrio or *barangay* where it actually resides," "within a reasonable time."

More than sixteen (16) years have elapsed from the time the SDP was approved by PARC, and yet, it is still the contention of the FWBs that not all was given the 240-square meter homelots and, of those who were already given, some still do not have the corresponding titles.

During the oral arguments, HLI was afforded the chance to refute the foregoing allegation by submitting proof that the FWBs were already given the said homelots:

> Justice Velasco: x x x There is also an allegation that the farmer beneficiaries, the qualified family beneficiaries were not given the 240 square meters each. So, can you also [prove] that the qualified family beneficiaries were already provided the 240 square meter homelots.
>
> Atty. Asuncion: We will, your Honor please.

Other than the financial report, however, no other substantial proof showing that all the qualified beneficiaries have received homelots was submitted by HLI. Hence, this Court is constrained to rule that HLI has not yet fully complied with its undertaking to distribute homelots to the FWBs under the SDP.

On "Man Days" and the Mechanics of Stock Distribution

In our review and analysis of par. 3 of the SDOA on the mechanics and timelines of stock distribution, We find that it **violates** two (2) provisions of DAO 10. Par. 3 of the SDOA states:

> 3. At the end of each fiscal year, for a period of 30 years, the SECOND PARTY [HLI] shall arrange with the FIRST PARTY [TDC] the acquisition and distribution to the THIRD PARTY [FWBs] on the basis of number of days worked and at no cost to them of one-thirtieth (1/30) of 118,391,976.85 shares of the capital stock of the SECOND PARTY that are presently owned and held by the FIRST PARTY, until such time as the entire block of 118,391,976.85 shares shall have been completely acquired and distributed to the THIRD PARTY.

Based on the above-quoted provision, the distribution of the shares of stock to the FWBs, albeit not entailing a cash out from them, is contingent on the number of "man days," that is, the number of days that the FWBs have worked during the year. This formula deviates from Sec. 1 of DAO 10, which decrees the distribution of equal number of shares to the FWBs as the minimum ratio of shares of stock for purposes of compliance with Sec. 31 of RA 6657. As stated in Sec. 4 of DAO 10:

> Section 4. *Stock Distribution Plan.*— The [SDP] submitted by the corporate landowner-applicant shall provide for **the distribution of an <u>equal number of shares</u> of the same class and value, with the same rights and features as all other shares, to each of the qualified beneficiaries**. This distribution plan in all cases, shall be at least the **minimum ratio** for purposes of compliance with Section 31 of R.A. No. 6657.
>
> **On top of the minimum ratio** provided under Section 3 of this Implementing Guideline, the corporate landowner-applicant may adopt **additional stock distribution schemes taking into account factors such as rank, seniority, salary, position and other circumstances which may be deemed desirable as a matter of sound company policy**.

The above proviso gives two (2) sets or categories of shares of stock which a qualified beneficiary can acquire from the corporation under the SDP. The first pertains, as earlier explained, to the mandatory minimum ratio of shares of stock to be distributed to the FWBs in compliance with Sec. 31 of RA 6657. This minimum ratio contemplates of that "**proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets**." It is this set of shares of stock which, in line with Sec. 4 of DAO 10, is supposed to be allocated "for the distribution of an equal number of shares

of stock of the same class and value, with the same rights and features as all other shares, to each of the qualified beneficiaries."

On the other hand, the second set or category of shares partakes of a gratuitous extra grant, meaning that this set or category constitutes an augmentation share/s that the corporate landowner may give under an additional stock distribution scheme, taking into account such variables as rank, seniority, salary, position and like factors which the management, in the exercise of its sound discretion, may deem desirable.

Before anything else, it should be stressed that, at the time PARC approved HLI's SDP, HLI recognized **6,296** individuals as qualified FWBs. And under the 30-year stock distribution program envisaged under the plan, FWBs who came in after 1989, new FWBs in fine, may be accommodated, as they appear to have in fact been accommodated as evidenced by their receipt of HLI shares.

Now then, by providing that the number of shares of the original 1989 FWBs shall depend on the number of "man days," HLI violated the afore-quoted rule on stock distribution and effectively deprived the FWBs of equal shares of stock in the corporation, for, in net effect, these 6,296 qualified FWBs, who theoretically had given up their rights to the land that could have been distributed to them, suffered a dilution of their due share entitlement. As has been observed during the oral arguments, HLI has chosen to use the shares earmarked for farmworkers as reward system chips to water down the shares of the original 6,296 FWBs. Particularly:

> Justice Abad: If the SDOA did not take place, the other thing that would have happened is that there would be CARP?
>
> Atty. Dela Merced: Yes, Your Honor.
>
> Justice Abad: That's the only point I want to know x x x. Now, but they chose to enter SDOA instead of placing the land under CARP. And for that reason those who would have gotten their shares of the land actually gave up their rights to this land in place of the shares of the stock, is that correct?
>
> Atty. Dela Merced: It would be that way, Your Honor.
>
> Justice Abad: Right now, also the government, in a way, gave up its right to own the land because that way the government takes own [sic] the land and distribute it to the farmers and pay for the land, is that correct?

Atty. Dela Merced: Yes, Your Honor.

Justice Abad: And then you gave thirty-three percent (33%) of the shares of HLI to the farmers at that time that numbered x x x those who signed five thousand four hundred ninety eight (5,498) beneficiaries, is that correct?

Atty. Dela Merced: Yes, Your Honor.

Justice Abad: But later on, after assigning them their shares, some workers came in from 1989, 1990, 1991, 1992 and the rest of the years that you gave additional shares who were not in the original list of owners?

Atty. Dela Merced: Yes, Your Honor.

Justice Abad: Did those new workers give up any right that would have belong to them in 1989 when the land was supposed to have been placed under CARP?

Atty. Dela Merced: If you are talking or referring… (interrupted)

Justice Abad: None! You tell me. None. They gave up no rights to land?

Atty. Dela Merced: They did not do the same thing as we did in 1989, Your Honor.

Justice Abad: No, if they were not workers in 1989 what land did they give up? None, if they become workers later on.

Atty. Dela Merced: None, Your Honor, I was referring, Your Honor, to the original… (interrupted)

Justice Abad: So why is it that the rights of those who gave up their lands would be diluted, because the company has chosen to use the shares as reward system for new workers who come in? It is not that the new workers, in effect, become just workers of the corporation whose stockholders were already fixed. The TADECO who has shares there about sixty six percent (66%) and the five thousand four hundred ninety eight (5,498) farmers at the time of the SDOA? Explain to me. Why, why will you x x x what right or where did you get that right to use this shares, to water down the shares of those who should have been benefited, and to use it as a reward system decided by the company?

From the above discourse, it is clear as day that the original 6,296 FWBs, who were qualified beneficiaries at the time of the approval of the SDP, suffered from watering down of shares. As determined earlier, each original FWB is entitled to 18,804.32 HLI shares. The original FWBs got less than the guaranteed 18,804.32 HLI shares per beneficiary, because the acquisition and distribution of the HLI shares were based on "man days" or "number of days worked" by the FWB in a year's time. As explained by HLI, a beneficiary needs to work for at least 37 days in a fiscal year before he or she becomes entitled to HLI shares. If it falls below 37 days, the FWB, unfortunately, does not get any share at year end. The number of HLI shares distributed varies depending on the number of days the FWBs were allowed to work in one year. Worse, HLI hired farmworkers in addition to the original 6,296 FWBs, such that, as indicated in the Compliance dated August 2, 2010 submitted by HLI to the Court, the total number of farmworkers of HLI as of said date stood at 10,502. All these farmworkers, which include the original 6,296 FWBs, were given shares out of the 118,931,976.85 HLI shares representing the 33.296% of the total outstanding capital stock of HLI. Clearly, the minimum individual allocation of each original FWB of 18,804.32 shares was diluted as a result of the use of "man days" and the hiring of additional farmworkers.

Going into another but related matter, par. 3 of the SDOA expressly providing for a 30-year timeframe for HLI-to-FWBs stock transfer is an arrangement contrary to what Sec. 11 of DAO 10 prescribes. Said Sec. 11 provides for the implementation of the approved stock distribution plan within three (3) months from receipt by the corporate landowner of the approval of the plan by PARC. In fact, based on the said provision, the transfer of the shares of stock in the names of the qualified FWBs should be recorded in the stock and transfer books and must be submitted to the SEC within sixty (60) days from implementation. As stated:

> Section 11. *Implementation/Monitoring of Plan.*— The approved stock distribution plan shall be **implemented within three (3) months from receipt by the corporate landowner-applicant of the approval thereof by the PARC**, and the transfer of the shares of stocks in the names of the qualified beneficiaries shall be recorded in stock and transfer books and **submitted to the Securities and Exchange Commission (SEC) within sixty (60) days from the said implementation of the stock distribution plan.**

It is evident from the foregoing provision that the implementation, that is, the distribution of the shares of stock to the FWBs, must be made within three (3) months from receipt by HLI of the approval of the stock distribution plan by PARC. While neither of the clashing parties has made a compelling case of the thrust of this provision, the Court is of the view and so holds that the intent is to compel the corporate landowner to complete, not merely initiate, the transfer process of shares within that three-month timeframe. Reinforcing this conclusion is the 60-day stock transfer recording (with the SEC) requirement reckoned from the implementation of the SDP.

To the Court, there is a purpose, which is at once discernible as it is practical, for the three-month threshold. Remove this timeline and the corporate landowner can veritably evade compliance with agrarian reform by simply deferring to absurd limits the implementation of the stock distribution scheme.

The argument is urged that the thirty (30)-year distribution program is justified by the fact that, under Sec. 26 of RA 6657, payment by beneficiaries of land distribution under CARP shall be made in thirty (30) annual amortizations. To HLI, said section provides a justifying dimension to its 30-year stock distribution program.

HLI's reliance on Sec. 26 of RA 6657, quoted in part below, is obviously misplaced as the said provision clearly deals with land distribution.

> SEC. 26. *Payment by Beneficiaries*.— Lands awarded pursuant to this Act shall be paid for by the beneficiaries to the LBP in thirty (30) annual amortizations x x x.

Then, too, the ones obliged to pay the LBP under the said provision are the beneficiaries. On the other hand, in the instant case, aside from the fact that what is involved is stock distribution, it is the corporate landowner who has the obligation to distribute the shares of stock among the FWBs.

Evidently, the land transfer beneficiaries are given thirty (30) years within which to pay the cost of the land thus awarded them to make it less cumbersome for them to pay the government. To be sure, the reason underpinning the 30-year accommodation does not apply to corporate landowners in distributing shares of stock to the qualified beneficiaries, as the shares may be issued in a much shorter period of time.

Taking into account the above discussion, the revocation of the SDP by PARC should be upheld for violating DAO 10. It bears stressing that under Sec. 49 of RA 6657, the PARC and the DAR have the power to issue rules and regulations, substantive or procedural. Being a product of such rule-making power, DAO 10 has the force and effect of law and must be duly complied with. The PARC is, therefore, correct in revoking the SDP. Consequently, the PARC Resolution No. 89-12-2 dated November 21, l989 approving the HLI's SDP is nullified and voided. (Citations omitted; emphasis in the original.)

Based on the foregoing ruling, the contentions of Mallari, *et al*. are either not supported by the evidence on record or are utterly misplaced. There is, therefore, no basis for the Court to reverse its ruling affirming PARC Resolution No. 2005-32-01 and PARC Resolution No. 2006-34-01, revoking the previous approval of the SDP by PARC.

VII. Control over Agricultural Lands

After having discussed and considered the different contentions raised by the parties in their respective motions, We are now left to contend with one crucial issue in the case at bar, that is, control over the agricultural lands by the qualified FWBs.

Upon a review of the facts and circumstances, We realize that the FWBs will never have control over these agricultural lands for as long as they remain as stockholders of HLI. In Our July 5, 2011 Decision, this Court made the following observations:

There is, thus, nothing unconstitutional in the formula prescribed by RA 6657. **The policy on agrarian reform is that control over the agricultural land must always be in the hands of the farmers.** Then it falls on the shoulders of DAR and PARC to see to it the farmers should always own majority of the common shares entitled to elect the members of the board of directors to ensure that the farmers will have a clear majority in the board. Before the SDP is approved, strict scrutiny of the proposed SDP must always be undertaken by the DAR and PARC, such that the value of the agricultural land contributed to the corporation must always be more than 50% of the total assets of the corporation to ensure that the majority of the members of the board of directors are composed of

the farmers. The PARC composed of the President of the Philippines and cabinet secretaries must see to it that control over the board of directors rests with the farmers by rejecting the inclusion of non-agricultural assets which will yield the majority in the board of directors to non-farmers. Any deviation, however, by PARC or DAR from the correct application of the formula prescribed by the second paragraph of Sec. 31 of RA 6675 does not make said provision constitutionally infirm. Rather, it is the application of said provision that can be challenged. Ergo, Sec. 31 of RA 6657 does not trench on the constitutional policy of ensuring control by the farmers. (Emphasis supplied.)

In line with Our finding that control over agricultural lands must always be in the hands of the farmers, We reconsider our ruling that the qualified FWBs should be given an option to remain as stockholders of HLI, inasmuch as these qualified FWBs will never gain control given the present proportion of shareholdings in HLI.

A revisit of HLI's Proposal for Stock Distribution under CARP and the Stock Distribution Option Agreement (SDOA) upon which the proposal was based reveals that the total assets of HLI is PhP 590,554,220, while the value of the 4,915.7466 hectares is PhP 196,630,000. Consequently, the share of the farmer-beneficiaries in the HLI capital stock is 33.296% (196,630,000 divided by 590,554.220); 118,391,976.85 HLI shares represent 33.296%. Thus, even if all the holders of the 118,391,976.85 HLI shares unanimously vote to remain as HLI stockholders, which is unlikely, control will never be placed in the hands of the farmer-beneficiaries. Control, of course, means the majority of 50% plus at least one share of the common shares and other voting shares. Applying the formula to the HLI stockholdings, the number of shares that will constitute the majority is 295,112,101 shares (590,554,220 divided by 2 plus one [1] HLI share). The 118,391,976.85 shares subject to the SDP approved by PARC substantially fall short of the 295,112,101 shares needed by the FWBs to acquire control over HLI. Hence, control can NEVER be attained by the FWBs. There is even no assurance that 100% of the 118,391,976.85 shares issued to the FWBs will all be voted in favor of staying

in HLI, taking into account the previous referendum among the farmers where said shares were not voted unanimously in favor of retaining the SDP. In light of the foregoing consideration, the option to remain in HLI granted to the individual FWBs will have to be recalled and revoked.

Moreover, bearing in mind that with the revocation of the approval of the SDP, HLI will no longer be operating under SDP and will only be treated as an ordinary private corporation; the FWBs who remain as stockholders of HLI will be treated as ordinary stockholders and will no longer be under the protective mantle of RA 6657.

In addition to the foregoing, in view of the operative fact doctrine, all the benefits and homelots[80] received by all the FWBs shall be respected with no obligation to refund or return them, since, as We have mentioned in our July 5, 2011 Decision, "the benefits x x x were received by the FWBs as farmhands in the agricultural enterprise of HLI and other fringe benefits were granted to them pursuant to the existing collective bargaining agreement with Tadeco."

One last point, the HLI land shall be distributed only to the 6,296 original FWBs. The remaining 4,206 FWBs are not entitled to any portion of the HLI land, because the rights to said land were vested only in the 6,296 original FWBs pursuant to Sec. 22 of RA 6657.

In this regard, DAR shall verify the identities of the 6,296 original FWBs, consistent with its administrative prerogative to identify and select the agrarian reform beneficiaries under RA 6657.[81]

WHEREFORE, the *Motion for Partial Reconsideration* dated July 20, 2011 filed by public respondents Presidential Agrarian

---

[80] *Rollo*, p. 3738. These homelots do not form part of the 4,915.75 hectares of agricultural land in Hacienda Luisita. These are part of the residential land with a total area of 120.9234 hectares, as indicated in the SDP.

[81] See *Concha v. Rubio*, G.R. No. 162446, March 29, 2010, 617 SCRA 22, 31.

Reform Council and Department of Agrarian Reform, the *Motion for Reconsideration* dated July 19, 2011 filed by private respondent Alyansa ng mga Manggagawang Bukid sa Hacienda Luisita, the *Motion for Reconsideration* dated July 21, 2011 filed by respondent-intervenor Farmworkers Agrarian Reform Movement, Inc., and the *Motion for Reconsideration* dated July 22, 2011 filed by private respondents Rene Galang and AMBALA are *PARTIALLY GRANTED with respect to the option granted to the original farmworker-beneficiaries of Hacienda Luisita to remain with Hacienda Luisita, Inc.,* which is hereby *RECALLED* and *SET ASIDE.* The *Motion for Clarification and Partial Reconsideration* dated July 21, 2011 filed by petitioner HLI and the *Motion for Reconsideration* dated July 21, 2011 filed by private respondents Noel Mallari, Julio Suniga, Supervisory Group of Hacienda Luisita, Inc. and Windsor Andaya are *DENIED*.

The *fallo* of the Court's July 5, 2011 Decision is hereby amended and shall read:

PARC Resolution No. 2005-32-01 dated December 22, 2005 and Resolution No. 2006-34-01 dated May 3, 2006, placing the lands subject of HLI's SDP under compulsory coverage on mandated land acquisition scheme of the CARP, are hereby *AFFIRMED* with the following modifications:

All salaries, benefits, the 3% of the gross sales of the production of the agricultural lands, the 3% share in the proceeds of the sale of the 500-hectare converted land and the 80.51-hectare SCTEX lot and the homelots already received by the 10,502 FWBs composed of 6,296 original FWBs and the 4,206 non-qualified FWBs shall be respected with no obligation to refund or return them. The 6,296 original FWBs shall forfeit and relinquish their rights over the HLI shares of stock issued to them in favor of HLI. The HLI Corporate Secretary shall cancel the shares issued to the said FWBs and transfer them to HLI in the stocks and transfer book, which transfers shall be exempt from taxes, fees and charges. The 4,206 non-qualified FWBs shall remain as stockholders of HLI.

DAR shall segregate from the HLI agricultural land with an area of 4,915.75 hectares subject of PARC's SDP-approving Resolution No. 89-12-2 the 500-hectare lot subject of the August 14, l996 Conversion Order and the 80.51-hectare lot sold to, or acquired by, the government as part of the SCTEX complex. After the segregation process, as indicated, is done, the remaining area shall be turned over to DAR for immediate land distribution to the original 6,296 FWBs or their successors-in-interest which will be identified by the DAR. The 4,206 non-qualified FWBs are not entitled to any share in the land to be distributed by DAR.

HLI is directed to pay the original 6,296 FWBs the consideration of PhP 500,000,000 received by it from Luisita Realty, Inc. for the sale to the latter of 200 hectares out of the 500 hectares covered by the August 14, 1996 Conversion Order, the consideration of PhP 750,000,000 received by its owned subsidiary, Centennary Holdings, Inc., for the sale of the remaining 300 hectares of the aforementioned 500-hectare lot to Luisita Industrial Park Corporation, and the price of PhP 80,511,500 paid by the government through the Bases Conversion Development Authority for the sale of the 80.51-hectare lot used for the construction of the SCTEX road network. From the total amount of PhP 1,330,511,500 (PhP 500,000,000 + PhP 750,000,000 + PhP 80,511,500 = PhP 1,330,511,500) shall be deducted the 3% of the proceeds of said transfers that were paid to the FWBs, the taxes and expenses relating to the transfer of titles to the transferees, and the expenditures incurred by HLI and Centennary Holdings, Inc. for legitimate corporate purposes. For this purpose, DAR is ordered to engage the services of a reputable accounting firm approved by the parties to audit the books of HLI and Centennary Holdings, Inc. to determine if the PhP 1,330,511,500 proceeds of the sale of the three (3) aforementioned lots were actually used or spent for legitimate corporate purposes. Any unspent or unused balance and any disallowed expenditures as determined by the audit shall be distributed to the 6,296 original FWBs.

HLI is entitled to just compensation for the agricultural land that will be transferred to DAR to be reckoned from November 21, 1989 which is the date of issuance of PARC Resolution No. 89-12-2. DAR and LBP are ordered to determine the compensation due to HLI.

DAR shall submit a compliance report after six (6) months from finality of this judgment. It shall also submit, after submission of the compliance report, quarterly reports on the execution of this judgment within the first 15 days after the end of each quarter, until fully implemented.

The temporary restraining order is lifted.

SO ORDERED.

Peralta, del Castillo, Abad, and *Perez, JJ.,* concur.

Leonardo-de Castro, J., concurs with Justice Velasco and maintains her vehement disagreement with Justice Sereno's opinion which will put the land beyond the capacity of the farmers to pay, based on her strained construction/interpretation of the law re: date of taking.

Corona, C.J., see concurring and dissenting opinion.

Brion, J., C.J. Corona certifies that he submitted a Concurring and Dissenting Opinion.

Bersamin, J., with concurring and dissenting opinion.

Villarama, Jr., J., joins C.J. R.C. Corona's opinion.

Mendoza, J., maintains his positions in his separate opinion except as to the reckoning date for just compensation. It should be from November 21, 1989.

Sereno, J., see concurring and dissenting opinion.

Reyes and *Perlas-Bernabe, JJ.*, subject to dissenting opinion of Justice Bersamin.

Carpio, J., no part, prior inhibition.

CONCURRING AND DISSENTING OPINION

CORONA, *C.J.*:

The complete independence of the courts of justice is peculiarly essential to a limited Constitution. By a limited Constitution I understand one which contains certain specified exceptions to the legislative authority .... Limitations of this kind can be preserved in practice no other way than through the medium of the **courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void**. Without this, all the reservations of particular rights or privileges would amount to nothing.[1]

The fundamental standard of agrarian reform is Section 4, Article XIII of the Constitution:

Section 4. **The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till** or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, **the State shall encourage and undertake the just distribution of all agricultural lands,** subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing. (Emphasis supplied)

It is against this standard that the following provision of Section 31 of RA 6657 (Comprehensive Agrarian Reform Law of 1988) should be tested:

SEC. 31. *Corporate Landowners.* — Corporate landowners may voluntarily transfer ownership over their agricultural landholdings to the Republic of the Philippines pursuant to Section 20 hereof or to qualified beneficiaries, under such terms and conditions consistent

---

[1] Hamilton, Alexander, The Federalist No. 78 at 521-22, Carl Van Doren ed., 1945.

with this Act, as they may agree upon, subject to confirmation by the DAR.

Upon certification by the DAR, **corporations owning agricultural lands may give their qualified beneficiaries the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets, under such terms and conditions as may be agreed upon by them**. In no case shall the compensation received by the workers at the time the shares of stocks are distributed be reduced. The same principle shall be applied to associations, with respect to their equity or participation.

Corporations or associations which voluntarily divest a proportion of their capital stock, equity or participation in favor of their workers or other qualified beneficiaries under this section shall be deemed to have complied with the provisions of this Act: Provided, That the following conditions are complied with:

a) In order to safeguard the right of beneficiaries who own shares of stocks to dividends and other financial benefits, the books of the corporation or association shall be subject to periodic audit by certified public accountants chosen by the beneficiaries;

b) Irrespective of the value of their equity in the corporation or association, the beneficiaries shall be assured of at least one (1) representative in the board of directors, or in a management or executive committee, if one exists, of the corporation or association;

c) Any shares acquired by such workers and beneficiaries shall have the same rights and features as all other shares; and

d) Any transfer of shares of stocks by the original beneficiaries shall be void *ab initio* unless said transaction is in favor of a qualified and registered beneficiary within the same corporation.

If within two (2) years from the approval of this Act, the land or stock transfer envisioned above is not made or realized or the plan for such stock distribution approved by the PARC within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act.

COURT'S DUTY TO CONFRONT THE CONSTITUTIONAL QUESTION

Where a provision of a statute goes against the fundamental law, specially if it impairs basic rights and constitutional values, the Court should not hesitate to strike it down as unconstitutional. In such a case, refusal to address the issue of constitutionality squarely is neither prudence nor restraint but evasion of judicial duty and abdication of the Court's authority.

With this in mind, I register my dissent to the *ponencia*'s resolution of the motions for reconsideration of the July 5, 2011 decision in this case.

The *ponencia* persists to reject an inquiry into the constitutionality of Section 31 of RA 6657 on two grounds: the issue of constitutionality is not the *lis mota* of the case and the issue is already moot.

The Court should not decline to test the constitutional validity of Section 31 of RA 6657 on the basis of either the requirement of *lis mota* or the doctrine of mootness.

The requirement of *lis mota* does not apply where the question of constitutionality was raised by the parties and addressing such question is unavoidable.[2] It cannot be disputed that the parties-in-interest to this case presented the question of constitutionality. Also, any discussion of the stock distribution plan of petitioner Hacienda Luisita, Inc. (HLI) necessarily and inescapably involves a discussion of its legal basis, Section 31 of RA 6657. While the said provision enjoys the presumption of constitutionality, that presumption has precisely been challenged. Its inconsistency with the fundamental law was raised specifically as an issue.

More importantly, considerations of public interest render the issue of the constitutionality of Section 31 of RA 6657 inevitable. Agriculture is historically significant in Philippine society and economy and agrarian reform is historically imbued with public interest. Our constitutional history and tradition show

[2] *Sotto v. Commission on Elections*, 76 Phil. 516, 522 (1946).

that agrarian reform has always been a pillar of social justice. Relevantly, the records of the Constitutional Commission show that **Hacienda Luisita has always been viewed as an acid test of genuine agrarian reform**.[3]

Furthermore, the Constitution recognizes the primacy of the right of farmers and farmworkers to directly or collectively own the lands they till. Any artificial or superficial substitute such as the stock distribution plan diminishes the right and debases the constitutional intent. If this Court has the authority to promulgate rules that protect and enforce constitutional rights,[4] it also has the duty to render decisions that ensure constitutional rights are preserved and safeguarded, not diminished or modified.

On the other hand, the invocation of the doctrine of mootness does not provide Section 31 of RA 6657 an unpierceable veil that will prevent the Court from prying into its constitutionality. Indeed, the mootness doctrine admits of several exceptions.[5] I have amply discussed why this case falls under the exceptions in my dissent to the July 5, 2011 decision in this case:

> First, a grave violation of the Constitution exists. Section 31 of RA 6657 runs roughshod over the language and spirit of Section 4, Article XIII of the Constitution.
>
> The first sentence of Section 4 is plain and unmistakeable. It grounds the mandate for agrarian reform on the right of farmers and regular farmworkers, who are landless, **to own** directly or collectively the **land** they till. The express language of the provision is clear and unequivocal — agrarian reform means that farmers and regular

---

[3] *See* Record of the Constitutional Commission, Vol. II, pp. 663-664.

[4] Sec. 5(5), Article VIII, Constitution.

[5] *See Province of North Cotabato v. Government of the Republic of the Philippines*, G.R. No. 183591, 14 October 2008, 568 SCRA 402. "[T]he "moot and academic" principle not being a magical formula that automatically dissuades courts in resolving a case, it will decide cases, otherwise moot and academic, if it finds that (a) there is a grave violation of the Constitution; (b) the situation is of exceptional character and paramount public interest is involved; (c) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (d) the case is capable of repetition yet evading review."

farmworkers who are landless should be given direct or collective ownership of the land they till. That is their right.

Unless there is land distribution, there can be no agrarian reform. Any program that gives farmers or farmworkers anything less than ownership of land fails to conform to the mandate of the Constitution. **In other words, a program that gives qualified beneficiaries stock certificates instead of land is not agrarian reform.**

Actual land distribution is the essential characteristic of a constitutional agrarian reform program. The polar star, when we speak of land reform, is that **the farmer has a right to the land he tills**. Indeed, a reading of the framers' intent clearly shows that the philosophy behind agrarian reform is the distribution of land to farmers, nothing less.

> MR. NOLLEDO. And when we talk of the phrase "to own directly," we mean the principle of **direct ownership by the tiller**?
>
> MR. MONSOD. Yes.
>
> MR. NOLLEDO. And when we talk of "collectively," we mean communal ownership, stewardship or State ownership?
>
> MS. NIEVA. In this section, we conceive of cooperatives; that is farmers' cooperatives **owning the land**, not the State.
>
> MR. NOLLEDO. And when we talk of "collectively," referring to farmers' cooperatives, do the farmers own specific areas of land where they only unite in their efforts?
>
> MS. NIEVA. That is one way.
>
> MR. NOLLEDO. Because I understand that there are two basic systems involved: the "moshave" type of agriculture and the "kibbutz." So are both contemplated in the report?
>
> MR. TADEO. *Ang dalawa kasing pamamaraan ng pagpapatupad ng tunay na reporma sa lupa ay ang pagmamay-ari ng lupa na hahatiin sa individual na pagmamay-ari — directly — at ang tinatawag na sama-samang gagawin ng mga magbubukid. Tulad sa Negros, ang gusto ng mga magbubukid ay gawin nila itong "cooperative or collective farm." Ang ibig sabihin ay sama-sama nilang sasakahin.*

MR. BENNAGEN. *Madam President, nais ko lang dagdagan iyong sagot ni Ginoong Tadeo.* xxx

Kasi, doon sa "collective ownership," kasali din iyong "communal ownership" ng mga minorya. Halimbawa sa Tanay, noong gumawa kami ng isang pananaliksik doon, nagtaka sila kung bakit kailangan pang magkaroon ng "land reform" na kung saan ay bibigyan sila ng tig-iisang titulo. At sila nga ay nagpunta sa Ministry of Agrarian Reform at sinabi nila na hindi ito ang gusto nila; kasi sila naman ay magkakamag-anak. ***Ang gusto nila ay lupa*** *at hindi na kailangan ang tig-iisang titulo. Maraming ganitong kaso mula sa Cordillera hanggang Zambales, Mindoro at Mindanao, kayat kasali ito sa konsepto ng "collective ownership."*

x x x x x x x x x

MR. VILLACORTA. xxx Section 5 gives the **opportunity for tillers of the soil to own the land that they till**; xxx

x x x x x x x x x

MR. TADEO. xxx ***Ang dahilan ng kahirapan natin sa Pilipinas ngayon ay ang pagtitipon-tipon ng vast tracts of land sa kamay ng iilan****. Lupa ang nagbibigay ng buhay sa magbubukid at sa iba pang manggagawa sa bukid. Kapag inalis sa kanila ang lupa, parang inalisan na rin sila ng buhay. Kaya* ***kinakailangan talagang magkaroon ng tinatawag na just distribution****.* xxx

x x x x x x x x x

MR. TADEO. *Kasi ganito iyan.* ***Dapat muna nating makita ang prinsipyo ng agrarian reform, iyong maging may-ari siya ng lupa na kaniyang binubungkal. Iyon ang kauna-unahang prinsipyo nito.*** x x x

x x x x x x x x x

MR. TINGSON. xxx When we speak here of "to own directly or collectively the lands they till," is this land for the tillers rather than land for the landless? Before, we used to hear "land for the landless," but now the slogan is "land for the tillers." Is that right?

MR. TADEO. *Ang prinsipyong umiiral dito ay iyong **land for the tillers**. Ang ibig sabihin ng "directly" ay tulad sa implementasyon sa rice and corn lands kung saan **inaari na ng mga magsasaka ang lupang binubungkal nila**. Ang ibig sabihin naman ng "collectively" ay **sama-samang paggawa sa isang lupain o isang bukid**, katulad ng sitwasyon sa Negros.*

x x x x x x x x x

MR. BENNAGEN. *Maaari kayang magdagdag sa pagpapaliwanag ng "primacy"? Kasi may cultural background ito. Dahil agrarian society pa ang lipunang Pilipino, maigting talaga ang ugnayan ng mga magsasaka sa kanilang lupa. Halimbawa, sinasabi nila na ang lupa ay pinagbuhusan na ng dugo, pawis at luha.* So land acquires a symbolic content that is not simply negated by growth, by productivity, etc. The primacy should be seen in relation to an agrarian program that leads to a later stage of social development which at some point in time may already negate this kind of attachment. The assumption is that there are already certain options available to the farmers. *Marahil **ang primacy ay ang pagkilala sa pangangailangan ng magsasaka — ang pag-aari ng lupa**. Ang assumption ay **ang pag-aari mismo ng lupa becomes the basis for the farmers to enjoy the benefits, the fruits of labor**.* xxx (678)

x x x x x x x x x

MR. TADEO. xxx *Kung sinasabi nating si Kristo ay liberating dahil ang api ay lalaya at ang mga bihag ay mangaliligtas, sinabi rin ni Commissioner Felicitas Aquino na kung ang history ay liberating, dapat ding maging liberating ang Saligang Batas. Ang magpapalaya sa atin ay ang agrarian and natural resources reform.*

The primary, foremost and paramount principles and objectives are contained [i]n lines 19 to 22: "primacy of the rights and of farmers and farmworkers to own directly or collectively the lands they till." ***Ito ang kauna-unahan at pinakamahalagang prinsipyo at layunin ng isang tunay na reporma sa lupa — na ang nagbubungkal ng lupa ay maging may-ari nito.*** xxx (695-696)

The essential thrust of agrarian reform is land-to-the-tiller. Thus, to satisfy the mandate of the constitution, any implementation of agrarian reform should always preserve the control over the land in the hands of its tiller or tillers, whether individually or collectively.

Consequently, any law that goes against this constitutional mandate of the actual grant of land to farmers and regular farmworkers must be nullified. If the Constitution, as it is now worded and as it was intended by the framers envisaged an alternative to actual land distribution (*e.g.*, stock distribution) such option could have been easily and explicitly provided for in its text or even conceptualized in the intent of the framers. Absolutely no such alternative was provided for. Section 4, Article XIII on agrarian reform, in no uncertain terms, speaks of **land** to be owned directly or collectively by farmers and regular farm workers.

By allowing the distribution of capital stock, not land, as "compliance" with agrarian reform, Section 31 of RA 6657 directly and explicitly contravenes Section 4, Article XIII of the Constitution. The corporate landowner remains to be the owner of the agricultural land. Qualified beneficiaries are given ownership only of shares of stock, not the lands they till. Landless farmers and farmworkers become **landless stockholders** but still tilling the land of the corporate owner, thereby perpetuating their status as landless farmers and farmworkers.

Second, this case is of exceptional character and involves paramount public interest. In *La Bugal-B'Laan Tribal Association, Inc.*, the Court reminded itself of the need to recognize the extraordinary character of the situation and the overriding public interest involved in a case. Here, there is a necessity for a categorical ruling to end the uncertainties plaguing agrarian reform caused by serious constitutional doubts on Section 31 of RA 6657. While the *ponencia* would have the doubts linger, strong reasons of fundamental public policy demand that the issue of constitutionality be resolved now, before the stormy cloud of doubt can cause a social cataclysm.

At the risk of being repetitive, agrarian reform is fundamentally imbued with public interest and the implementation of agrarian reform at Hacienda Luisita has always been of paramount interest. Indeed, **it was specifically and unequivocally targeted when agrarian reform was being discussed in the Constitutional Commission**. Moreover, the Court should take judicial cognizance of the violent

incidents that intermittently occur at Hacienda Luisita, solely because of the agrarian problem there. Indeed, Hacienda Luisita proves that, for landless farmers and farmworkers, the land they till is their life.

The Constitution does not only bestow the landless farmers and farmworkers the right to own the land they till but also concedes that right to them and makes it a duty of the State to respect that right through genuine and authentic agrarian reform. To subvert this right through a mechanism that allows stock distribution in lieu of land distribution as mandated by the Constitution strikes at the very heart of social justice. As a grave injustice, it must be struck down through the invalidation of the statutory provision that permits it.

To leave this issue unresolved is to allow the further creation of laws, rules or orders that permit policies creating, unintentionally or otherwise, means to avoid compliance with the foremost objective of agrarian reform — to give the humble farmer and farmworker the right to own the land he tills. To leave this matter unsettled is to encourage future subversion or frustration of agrarian reform, social justice and the Constitution.

Third, the constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public. Fundamental principles of agrarian reform must be established in order that its aim may be truly attained.

One such principle that must be etched in stone is that no law, rule or policy can subvert the ultimate goal of agrarian reform, the actual distribution of land to farmers and farmworkers who are landless. Agrarian reform requires that such landless farmers and farmworkers be given direct or collective ownership of the land they till, subject only to the retention limits and the payment of just compensation. There is no valid substitute to actual distribution of land because the right of landless farmers and farmworkers expressly and specifically refers to a **right to own the land they till**.

Fourth, this case is capable of repetition, yet evading review. As previously mentioned, if the subject provision is not struck down today as unconstitutional, the possibility of passing future laws providing for a similar option is ominously present. Indeed, what will stop our legislators from providing artificial alternatives to actual land distribution if this Court, in the face of an opportunity to do so, does not declare that such alternatives are completely against the Constitution?

Moreover, the requirement of *lis mota* and the mootness doctrine are not constitutional requirements but simply prudential doctrines of justiciability fashioned by the Court in the exercise of judicial restraint. For if the said grounds have been imposed by the Constitution itself, no exception could have been carved by courts (for either ground) as courts only apply and interpret the Constitution and do not modify it.

Judicial review is particularly important in enjoining and redressing constitutional violations inflicted by all levels of government and government officers.[6] Thus, this Court may not be hampered in the performance of its essential function to uphold the Constitution by prudential doctrines of justiciability.

Indeed, in this case, to avoid the constitutional question would be to ignore a violation of the Constitution and to disregard the trampling of basic rights and constitutional values.

CONSTITUTIONAL INFIRMITY OF SECTION 31 OF RA 6657

I maintain my stance that Section 31 of RA 6657 is invalid. Agrarian reform's underlying principle is the recognition of the rights of farmers and farmworkers who are landless to own, directly or collectively, the lands they till. **Under the Constitution, actual land distribution to qualified agrarian reform beneficiaries is mandatory**. Anything that promises something other than land must be struck down for being unconstitutional.

By allowing corporate landholders to continue owning the land by the mere expedient of divesting a proportion of their capital stock, equity or participation in favor of their workers or other qualified beneficiaries, Section 31 defeats the right of farmers and regular farmworkers who are landless, under Section 4, Article XIII of the Constitution, to own directly or collectively the lands they till. Section 31 of RA 6657 does not therefore serve the ends of social justice as envisioned under the agrarian reform provisions of the Constitution.

---

[6] Chemerinsky, Erwin, Constitutional Law: Principles and Policies, 3rd Edition (2006), p. 52.

Section 31 of RA 6657 as implemented under the stock distribution option agreement merely entitles farmworker-beneficiaries of petitioner HLI to certificates of stocks which represent equity or interest in the corporate landowner, petitioner HLI, not in the land itself. Under Section 31 of RA 6657, the corporate landowner retains ownership of the agricultural land while the farmworker-beneficiaries become stockholders but remain landless. While farmworker-beneficiaries hold a piece of paper that represents interest in the corporation that has owned and still owns the land, that paper actually deprives them of their rightful claim which is ownership of the land they till. Thus, Section 31 unduly prevents the farmworker-beneficiaries from enjoying the promise of Section 4, Article XIII of the Constitution for them to own directly or collectively the lands they till.

Corporate ownership by the corporate landowner under Section 31 does not satisfy the collective ownership envisioned under Section 4, Article XIII of the Constitution. Where the farmworker-beneficiaries are neither the collective naked owners nor the collective beneficial owners of the land they till, there can be no valid compliance with the Constitution's objective of collective ownership by farmers and farmworkers. Collective ownership of land under the agrarian reform provisions of the Constitution must operate on the concept of collective control of the land by the qualified farmer and farmworkers.

Here, Section 31 of RA 6657 deprives the farmworker-beneficiaries not only of either naked title to or beneficial ownership of the lands they till. It also prevents them from exercising effective control both of the land and of the corporate vehicle as it simply assures beneficiaries "of at least one (1) representative in the board of directors, or in a management or executive committee, if one exists, of the corporation or association," "irrespective of the value of their equity in the corporation or association." Thus, while they are given voice in the decision-making process of the corporate landowner with respect to the land, the beneficiaries have no guarantee of control of the lands as they are relegated to the status of minority shareholders.

CONCOMITANT RIGHTS OF THE FARMWORKERS AND THE LANDOWNER

In view of the unconstitutionality of Section 31 of RA 6657 and the consequent invalidity of the stock distribution option agreement which was based on the said provision, how should the respective rights of the parties be addressed?

Previously, I grudgingly and qualifiedly joined the majority in applying the operative fact doctrine in this case. On further reflection, however, I believe that the operative fact doctrine should not be applied. The operative fact doctrine is a principle fundamentally based on equity. The basis of the application of the said doctrine in this case was the supposed status of the stock distribution option agreement as having been already implemented. However, equity is extended only to one who comes to court with clean hands. Equity should be refused to the iniquitous and guilty of inequity. For this reason, petitioner HLI may not benefit on the ground of equity from its invalid stock distribution option agreement with the farmworker-beneficiaries as it was found guilty of breach of several material terms and conditions of the said agreement.

As Section 31 of RA 6657 is unconstitutional, the stock distribution agreement between petitioner HLI and its farmworker-beneficiaries has no leg to stand on and must perforce be annulled. This means that the agricultural land of petitioner HLI should be deemed placed under compulsory coverage of land reform on November 21, 1989, the date the stock distribution option agreement between petitioner HLI and the farmworker-beneficiaries was approved by the Presidential Agrarian Reform Council (PARC). While PARC could not have validly approved the stock distribution option agreement for lack of legal basis (Section 31 of RA 6657 being unconstitutional), the action of PARC manifested the intent of the government to subject petitioner HLI's land to the land reform program. In other words, the agricultural land of petitioner HLI was subjected to land reform with respect to petitioner HLI, the farmworker-beneficiaries and the government through PARC on November 21, 1989.

While there could have been no valid approval of the stock distribution agreement, the government's intent to bring the land under the coverage of land reform could nonetheless be deemed implemented by its action as the subject matter of land reform is basically the redistribution of land. The stock distribution option agreement as an invalid means to implement land reform may be considered as simply an accessory to achieving the principal objective of land reform to transfer ownership of land to the farmworker-beneficiaries.

The principal objective and the manifestation of the government's intent to act thereon subsist despite the invalidity of the accessory. Thus, on November 21, 1989, the government should rightly be considered to have pursued the objective of land reform and transferred the ownership of the land to the farmworker-beneficiaries. November 21, 1989 should therefore be deemed as the time of taking of the land from petitioner HLI, as well as the date from which to reckon the just compensation payable to petitioner HLI.

It may, however, be argued that there could have been no taking (in the sense of transferring ownership to the farmworker-beneficiaries) on November 21, 1989 as the land was actually in the possession and control of petitioner HLI. True, petitioner HLI may have continued to possess the land but this did not negate taking and transferring of ownership to the farmworker-beneficiaries on November 21, 1989. From that date, petitioner HLI's status became that of a lawful possessor or one who held the "thing or right to keep or enjoy it, the ownership pertaining to another person,"[7] particularly the farmworker-beneficiaries. Moreover, petitioner HLI should be deemed as a possessor in good faith, or one that is not aware of any flaw in his title or mode of acquisition thereof.[8] Its reliance on the validity of

---

[7] Article 525, New Civil Code: "The possession or things or rights may be had in one of two concepts: either in the concept of an owner, or that of the holder of the thing or right to keep or enjoy it, the ownership pertaining to another person."

[8] Article 526, New Civil Code: "He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw

Section 31 of RA 6657 and, concomitantly, of its stock distribution option agreement could be considered as a mistake on a difficult question of law, a fact which supports its possession in good faith.

While the stock distribution option agreement was supposed to cover only 4,195 hectares of petitioner HLI's land, no such term or condition should be deemed imposed on the coverage of land reform as of November 21, 1989. The limitation of the coverage shall be determined subject only to such priorities and reasonable retention limits prescribed by law, "taking into account ecological, developmental, or equity considerations."[9] The Department of Agrarian Reform (DAR) shall therefore determine the area properly covered by land reform, guided by the retention limits set by law and taking into account ecological, developmental or equity considerations. Upon determination of the area properly covered by land reform, the DAR should immediately and actually distribute the same to the farmworker-beneficiaries. This shall, however, exclude the portion of converted land transferred to LIPCO and RCBC which shall remain with the said transferees as they were transferees (buyers) in good faith. The land distribution shall also exclude the portion expropriated by the government for the SCTEX.

For the excluded portions, however, the farmworker-beneficiaries shall be entitled to the portion of the proceeds of the sale to LIPCO and RCBC corresponding to the market value thereof as of November 21, 1989. It would be unfair to rule otherwise as any increase in value of the land may reasonably be attributed to the improvements thereon made by petitioner HLI and petitioner HLI's efforts to have the said portion reclassified to industrial land. Moreover, this would be in consonance with the rule that "the possessor in good faith is entitled to the fruits received before the possession is legally interrupted."[10]

---

which invalidates it. x x x Mistake upon a doubtful or difficult question of law may be the basis of good faith."

[9] Section 4, Article XIII, Constitution.

[10] Article 544, New Civil Code.

The amount accruing to the farmworker-beneficiaries shall also be less the 3% of the proceeds already given to them. On the other hand, the proceeds of the portion expropriated for the SCTEX shall accrue to the farmworker-beneficiaries.

Indeed, Section 4, Article XIII of the Constitution requires that the landowner be given just compensation. For this purpose, the DAR shall determine the just compensation payable by each farmworker-beneficiary to petitioner HLI as it has jurisdiction in matters involving the administrative implementation and enforcement of agrarian reform laws.[11] The just compensation shall be based on the market value as of November 21, 1989 of the entire portion that may be determined by the DAR as subject to the coverage of land reform. The portion of the proceeds of the portion sold to LIPCO and RCBC as well as the proceeds of the portion expropriated for the SCTEX may be the subject of legal compensation or set off for purposes of the payment of just compensation.

Finally, the farmworker-beneficiaries shall return the shares of stock which they received to petitioner HLI under the invalid stock distribution option agreement.

WHEREFORE, I vote that the Court's July 5, 2011 decision be **RECONSIDERED**. Section 31 of RA 6657 should be declared **NULL and VOID** for being **unconstitutional**. Consequently, the stock distribution plan of petitioner HLI should likewise be declared **NULL and VOID** for being **unconstitutional**.

The land of petitioner HLI subject to agrarian reform, as determined by the DAR, should be immediately and actually distributed to the farmworker-beneficiaries, except the (a) portion of converted land transferred to LIPCO and RCBC which shall remain with the said transferees as they were transferees (buyers) in good faith and the (b) portion of land expropriated by the government for the SCTEX.

---

[11] See *Soriano v. Bravo*, G.R. No. 152086, 15 December 2010, 638 SCRA 403.

The farmworker-beneficiaries should return the shares of stock which they received to petitioner HLI under the invalid stock distribution option agreement. Each of them should also be liable to pay petitioner HLI just compensation in the amount to be determined by the DAR based on the fair market value of the land as of November 21, 1989. This may be subject to set-off or legal compensation with the amounts accruing to the farmworker-beneficiaries, namely, (a) the portion of the proceeds of the sale to LIPCO and RCBC corresponding to the market value thereof as of November 21, 1989 and (b) the proceeds of the portion expropriated for the SCTEX shall accrue to the farmworker-beneficiaries.

SEPARATE CONCURRING AND DISSENTING OPINION

BRION, *J*.:

In the Court's Decision dated July 5, 2011, the crucial questions that the Court resolved were: (1) whether the Presidential Agrarian Reform Council (*PARC*) has the power to revoke or recall its approval of a stock distribution option entered into between a corporate landowner and its farmworkers-beneficiaries (*FWBs*), under Section 31 of Republic Act No. 6657 or the Comprehensive Agrarian Reform Law (*CARL*); and (2) whether the PARC has a ground to revoke or recall the stock distribution plan (*SDP*) between petitioner Hacienda Luisita, Incorporated (*HLI*) and its FWBs.

The Court was unanimous in declaring that the PARC's express power to approve the plan for stock distribution of corporate landowners, under Section 31 of the CARL, includes the implied power to revoke its approval. In the case of HLI, the majority of the Court, myself included, found that the PARC has solid bases to revoke its approval of HLI's SDP.[1]

---

[1] The majority ruled that the SDP/Stock Distribution Option Agreement is contrary to law due to the "man days" method it adopted in computing the number of shares that each FWB shall be entitled to, and the extended period of 30 years to complete the distribution of shares; see July 5, 2011 Decision, pp. 67-72.

In view of this ruling, the corollary issue of the **effects of the revocation arose**, and **it was at this point that I diverged from the majority's position**. The majority — speaking through Justice Velasco — found it equitable to recognize the existence of certain "operative facts," notwithstanding the revocation of the SDP. Hence, the majority gave the qualified FWBs the option of choosing whether or not to remain as HLI stockholders. On the same principle, the majority authorized the FWBs to retain all benefits received under the SDP. The dispositive of the July 5, 2011 Decision, thus, decreed that:

1. the qualified FWBs, totaling 6,296, are given the option to choose whether to remain as stockholders of HLI or not. Should they choose to remain, they are entitled to 18,804.32 shares each; otherwise, they are entitled to land distribution. The non-qualified FWBs totaling 4,206, however, are not given this option, but are allowed to retain the shares already received;

2. all the 10,502 FWBs are entitled to retain the following items they received on account of the SDP:

   a. salaries and benefits,

   b. 3% production share,

   c. 3% share of the proceeds of the sale of the 500 hectares of converted land and the 80-hectare Subic-Clark-Tarlac Expressway (*SCTEX*) lot, and

   d. 6,886.5-square meter homelots that each FWB received;

3. From the 4,915.75 hectares of agricultural land shall be segregated:

   a. the 500 hectares of converted land acquired by Luisita Industrial Park Corporation (*LIPCO*)/Rizal Commercial Banking Corporation (*RCBC*) and Luisita Realty Corporation (*LRC*);

   b. the 80 hectares of land expropriated by the government for the SCTEX; and

c. the aggregate area of homelots of FWBs who choose to remain as HLI stockholders.[2]

After segregation, the remaining areas shall be turned over by HLI to the Department of Agrarian Reform (*DAR*) for land distribution to qualified FWBs who prefer land distribution over stock ownership.

4. HLI is directed to turn over the consideration of

a. ₱500 million from the sale of the 200 hectares of converted land to LRC,

b. ₱750 million from the sale of the 300 hectares of converted land to Centennary Holdings, Inc. (Centennary), and

c. ₱80 million from the expropriation of 80 hectares for the SCTEX.

From the sum total of ₱1.33 billion shall be deducted

a. the 3% production share,

b. the 3% share in the proceeds of the sale of the 500-hectare converted land and expropriation of the 80-hectare land,

c. the taxes and expenses relating to the transfer of titles, and

d. the expenditures incurred by HLI for legitimate corporate purposes.

The remaining balance shall be distributed among the qualified FWBs, and

[2] The July 5, 2011 Decision, pp. 88-89 referred to the "aggregate area of 6,886.5 square meters of individual lots that each FWB is entitled to under the CARP had he or she **not** opted to stay in HLI as stockholder" as among those to be segregated from the 4,915.75 hectares of land (and thus not subject to compulsory land distribution). I believe that the *ponencia* was referring instead to the homelots of FWBs who opted to remain as stockholders of HLI, as may be apparent from its subsequent statement that "the aforementioned area composed of 6,886.5-square meter lots allotted to the FWBs who stayed with the corporation shall form part of the HLI assets."

5. HLI shall be paid just compensation for the agricultural land that will be subject to land distribution, the amount of which shall be determined by the DAR.

I dissented from the majority's determination of the effects of the revocation, objecting primarily to their application of the "operative fact doctrine" to justify the option given to the FWBs on whether or not to remain as HLI stockholders. I opined that the revocation of the PARC's approval of the SDP carried with it the nullification of the Stock Distribution Option Agreement (*SDOA*) between HLI and the qualified FWBs. **As a consequence of the nullification, restitution should take place, and the parties are to account and restore what they received from one another. Subject to certain adjustments, I maintain the same view regarding the inapplicability of the operative fact doctrine to the present case**. Based on this perspective, I propose to dispose of the case as discussed below.

The application of the Operative Fact Doctrine to "Executive Acts"

The *ponencia* misapplies the operative fact doctrine. I maintain the view that the doctrine is applicable only in considering the effects of a declaration of unconstitutionality of a **law** (a generic term that includes statutes, rules and regulations issued by the executive department and are accorded the same status as a statute). The doctrine's limited application is apparent from a review of its origins.

The **doctrine of operative fact** is of American origin, first discussed in the 1940 case of *Chicot County Drainage Dist. v. Baxter States Bank.*[3] Chicot Country sought to resist the Baxter States Bank's claim by raising a debt readjustment decree issued by a district court pursuant to *a law enacted by the US Congress*.[4] The Baxter States Bank countered that the readjustment decree

[3] 308 US 317, 318-319, 60 S. Ct. 317.

[4] In particular, the Act of May 24, 1934 (48 Stat. 798), amending the Bankruptcy Act of July 1, 1898, see *Ashton v. Cameron County Water Imp. Dist. No. 1*, 298 U.S. 513 (1936).

was no longer binding, as the law upon which the decree was based has been declared unconstitutional. The lower court sustained the Baxter States Bank's argument, following the void *ab initio* doctrine[5] laid down in the 1886 case of *Norton v. Shelby County*.[6] The US Supreme Court reversed the decision and ordered the remand of the case, rejecting the broad application of the void *ab initio* doctrine through this rationalization:

> **[T]he effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a *statute*, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration.** The effect of the subsequent ruling as to invalidity may have to be considered in various aspects — with respect to particular relations, individual and corporate, and particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts x x x and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified. [italics and emphasis ours]

Notably, *Chicot* and the numerous cases that followed its lead applied the "operative fact doctrine" **only** in considering **the effects of a declaration of unconstitutionality of a *statute***.

De Agbayani v. Philippine National Bank (*PNB*),[7] promulgated in this jurisdiction in 1971, was the first instance when the "operative fact doctrine" was extended to consider the effects of a declaration of unconstitutionality of an "executive act." The *ponencia* cites *De Agbayani* (as well as subsequent cases

---

[5] The void *ab initio* doctrine declares that an "unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed"; *infra* note 6.

[6] 118 US 425, 442.

[7] No. L-23127, April 29, 1971, 38 SCRA 429.

that echoed the "operative fact" principle) to support its position, but this reliance proceeds from a misreading of the context in which *De Agbayani* used the term "executive act."

The executive act referred to in *De Agbayani* was Executive Order No. 32 (*EO 32*) issued by then President Sergio Osmeña in March 10, 1945, which imposed a debt moratorium. Since the Court (in the case of *Rutter v. Esteban*[8]) already declared EO 32 unconstitutional, Francisco de Agbayani contended that the PNB's action for foreclosure against him had already prescribed. The Court was then confronted with the issue of whether to give effect to EO 32 prior to the declaration of its unconstitutionality. The Court, *per Justice Enrique Fernando*, resolved the issue in this manner:

The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code [Article 7] puts it: "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.["] **Administrative or executive acts, orders and regulations** shall be valid only when they are not contrary to the laws of the Constitution. It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.

Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that **prior to the declaration of nullity <u>such challenged legislative or executive act</u> must have been in force and had to be complied with.** This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being

---

[8] 93 Phil. 68 (1953).

nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.[9]

When these paragraphs are read together, the phrase "such challenged legislative or executive act" quite obviously pertains to the "administrative or executive *acts, orders and regulations*" mentioned in Article 7 of the Civil Code. Thus, **the context in which the term "executive act" was used in *De Agbayani* referred to only executive issuances (acts, orders, rules and regulations) that have the force and effect of laws; it was not used to refer to *any act* performed by the Executive Department.** *De Agbayani's* extension of the operative fact doctrine, therefore, more properly refers only to the recognition of the effects of a declaration of unconstitutionality of *executive issuances*, and *not to all executive acts* as the *ponencia* loosely construes the term. The limited construction of an "executive act," *i.e.*, executive issuances, is actually more consistent with **the rationale behind the operative fact doctrine: the presumption of constitutionality of laws**. Accordingly, it is only to this kind of executive action that the operative fact doctrine can apply.

In my separate opinion to the July 5, 2011 Decision, I raised the propriety of applying the operative fact doctrine to the present case, primarily to object to the option granted by the *ponencia* to the qualified FWBs of whether to remain as HLI stockholders or not. Although in the present Resolution, the *ponencia* reconsidered and has now withdrawn the option given to the qualified FWBs to remain as HLI stockholders, **it still relied on the operative fact doctrine to justify the FWBs retention of certain benefits arising from the revoked SDP:**

---

[9] *Id.* at 434-435.

With the application of the operative fact doctrine, said **benefits, homelots and the 3% production share and the 3% share from the sale of the 500-hectare and SCTEX lots shall be respected with no obligation to refund or return them**. The receipt of these things is an operative fact "that can no longer be disturbed or simply ignored."[10] (emphasis ours)

Because of this continued (*and mistaken*) reliance on the operative fact doctrine, I regretfully have to register my continued objection to the manner by which the *ponencia* proposes to dispose of this case.

Indeed, much of the confusion that arose in the disposition of this case stemmed from the varying perspectives taken by the members of the Court on **what are the effects of the revocation** and **when these effects should accrue**. The revocation of the SDP amounts to the nullification of the SDOA, and the logical and legal consequence of this should be the restoration of the parties to their *respective situations prior to the execution of the nullified agreement*. There should be no question that the PARC's revocation of the approval of the SDP carried with it the nullification of the SDOA because the PARC's approval is necessary to the validity of the SDOA[11]; accordingly, the effects of the revocation should be deemed to have taken place on **November 21, 1989**, the date when PARC Resolution No. 89-12-2 approving the SDP was issued. To consider any other date (either at the time PARC Resolution No. 2005-32-01, revoking its approval of the SDP, was issued or at the time this Court's decision becomes final) is not only iniquitous for the parties but also preposterous under the law. Hence, to accomplish a complete, orderly, and fair disposition of the case, we have to consider the effects of the revocation

---

[10] Resolution, p. 11.

[11] This is inferable from Section 31 of the CARL, the relevant portion of which declares, "If within two (2) years from the approval of this Act, the land or stock transfer envisioned above is not made or realized or **the plan for such stock distribution approved by the PARC** within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act."

to accrue from November 21, 1989. The Court should decree that compulsory Comprehensive Agrarian Reform Program coverage should start at this point in time, and then proceed to adjust the relations of the parties with due regard to the intervening events that transpired.[12]

Treatment of the Sale of the Converted Land

Since the effects of the revocation are deemed to have taken place on November 21, 1989, the entire 4,915.75 hectares of agricultural land should be considered as placed under compulsory coverage as of this time. To declare (as the *ponencia* does[13]) that 500 hectares of the subject land can no longer be included under the CARL's compulsory coverage because it had already been converted into industrial land[14] is erroneous, as this implies that the land was placed under compulsory coverage only when revocation of the SDP was declared, not in 1989. If this was the case then, the FWBs should not be entitled to any of the proceeds of the sale of the 500 hectares of converted land because their right to these proceeds stems from their right to own the land which accrues only when the land is placed under compulsory coverage. Oddly enough, the *ponencia* takes an inconsistent position by subsequently declaring that —

---

[12] I have previously declared May 11, 1989 (the date when HLI, TADECO and the qualified FWBs executed the SDOA) as the starting point to reckon the effects of the revocation of the SDP (Separate Concurring and Dissenting Opinion, pp. 38-39). Upon closer study of the CARL and the relevant DAR issuances, I have reconsidered my position and propose that the starting point should be November 21, 1989.

[13] The *ponencia* (p. 24) said:

"the 500-hectare portion of Hacienda Luisita, of which the 200-hectare portion sold to LRC and the 300-hectare portion subsequently acquired by LIPCO and RCBC were part of, was already subject of the August 14, 1996 DAR Conversion Order. **By virtue of the said conversion order, the land was already reclassified as industrial/commercial land not subject to compulsory coverage**." (emphasis ours)

[14] Conversion from agricultural to industrial land took place on August 14, 1996 through DAR Conversion Order No. 03060174-764-(95).

Considering that the 500-hectare converted land, as well as the 80.51-hectare SCTEX lot, should have been included in the compulsory coverage were it not for their conversion *<u>and valid transfers</u>*, then it is only but proper that the price received for the sale of these lots should be given to the qualified FWBs. In effect, the proceeds from the sale shall take the place of the lots.

x x x x x x x x x

x x x. **We maintain that the date of "taking" is November 21, 1989**, the date when PARC approved HLI's SDP per PARC Resolution No. 89-12-2, in view of the fact that **this is the time that the FWBs were considered to own and possess the agricultural lands in Hacienda Luisita**. To be precise, these lands became subject of the agrarian reform coverage through the stock distribution scheme only upon the approval of the SDP, that is, November 21, 1989. Thus, such approval is akin to a notice of coverage ordinarily issued under compulsory acquisition.[15] (emphases, italics, and underscoring ours)

To reconcile these inconsistent positions, I venture to guess that what the *ponencia* perhaps meant was that, on account of the revocation, the entire 4,915.75 hectares were deemed placed under compulsory coverage on November 21, 1989; however, despite the inclusion, portions of the land (specifically, the 500 hectares of converted land and the 80 hectares of the SCTEX land) can no longer be *distributed* among the qualified FWBs under Section 22 of the CARL[16] because of the valid transfers made in favor of third parties. Thus, it was not the conversion of the 500-hectare land that exclude it from *compulsory coverage* as it was already deemed included in the *compulsory coverage* since 1989; it was the recognition of the valid transfers of these lands to third parties that excluded them from the *actual land distribution* among the qualified FWBs.

The *ponencia* itself recognizes this legal reality by citing the "valid transfers" of the land as basis for exclusion. Yet, this is

---

[15] *Supra* note 10, at 27, 29.

[16] Sec. 22. *Qualified Beneficiaries*. — The lands covered by the CARP shall be distributed as much as possible to landless residents of the same *barangay*, or in the absence thereof, landless residents of the same municipality[.]

precisely what is lacking in LRC's case. By failing to intervene in this case, LRC was unable to present evidence supporting its good faith purchase of the 200-hectare converted land. The *ponencia's* conclusion that there was a valid transfer to LRC of the 200 hectares of converted land, therefore, lacks both factual and basis.

Thus, I propose, *as I did in my separate opinion to the July 5, 2011 Decision*, that LRC be given "full opportunity to present its case before the DAR x x x the failure of [LRC] to actively intervene at the PARC level and before this Court does not really affect the intrinsic validity of the transfer made in its favor *if indeed it is similarly situated as LIPCO and RCBC.* x x x [A] definitive ruling on the transfer of the 200 hectares to [LRC] is premature to make." The FWBs' right to the 200-hectare converted land itself or only to the proceeds of the sale (amounting to ₱500 million[17]) can be determined only after LRC has presented its case before the DAR.

On the other hand, LIPCO/RCBC's acquisition in good faith has been adequately proven. Thus, although the 300-hectare converted land should belong to the FWBs on account of the revocation of the SDP, the valid transfer to LIPCO/RCBC entitles them only to the proceeds of the sale. The *ponencia*, however, decrees that the entire ₱750 million paid for the 200-hectare converted land should be paid to the FWBs.

I disagree with this position, as it fails to take into account that it was HLI which invested in and caused the conversion of the land from agricultural to commercial/industrial:

> Since the sale and transfer of these acquired lands came after the compulsory CARP coverage had taken place, the FWBs are entitled to be paid for the 300 hectares of land transferred to LIPCO based on its value in 1989, not on the ₱750 million selling price paid by LIPCO to HLI [through its subsidiary, Centennary] as proposed by the *ponencia*. This outcome recognizes the reality that the value of these lands increased due to the improvements introduced by HLI, specifically HLI's move to have these portions reclassified as

[17] *Supra* note 10, at 47.

industrial land while they were under its possession. Thus, unless it is proven that the ₱750 million is equivalent to the value of the land as of [November 21, 1989] and excludes the value of any improvements that may have been introduced by HLI, I maintain that the land's 1989 value, as determined by the DAR, should be the price paid to the FWBs for the lands transferred to LIPCO/RCBC.[18]

In case the LRC is able to prove its good faith purchase of the 200-hectare converted land before the DAR, the treatment of the proceeds of the sale of this land shall be the same as those of LIPCO/RCBC's 300-hectare converted land — the FWBs will be entitled only to the land's value as of November 21, 1989, and the balance shall be for the HLI as compensation for any improvements introduced.

With respect to the proceeds of the sale of the 80-hectare land to the government for the SCTEX, "the FWBs are entitled to be paid the full amount of just compensation that HLI received from the government for the 80 hectares of expropriated land forming the SCTEX highway. What was transferred in this case was a portion of the HLI property that was not covered by any conversion order. The transfer, too, came after compulsory CARP coverage had taken place and without any significant intervention from HLI. Thus, the whole of the just compensation paid by the government should accrue solely to the FWBs as owners."[19]

Amounts to be Deducted from the Proceeds of the Sale of the Lands

HLI claimed that it had already paid out 3% of the proceeds of the sale of the lands to the FWBs. This amount should thus be deducted from the total proceeds that should be returned to the qualified FWBs. The taxes and expenses related to the transfer of titles should likewise be deducted, since the same amounts will be incurred regardless of the seller (HLI or the FWBs). The *ponencia* proposes that the 3% production share

[18] Separate Concurring and Dissenting Opinion, pp. 40-41.

[19] *Id.* at 41.

and the expenditures incurred by HLI and Centennary for legitimate corporate purposes should also be deducted from the total proceeds of the sale.

In proposing that the 3% production share be deducted from the total proceeds of sale to be returned to the FWBs, the *ponencia* has effectively reversed its own insistent declaration that all the benefits received by the FWBs shall "be respected with no obligation to refund or return them."[20] Its reliance on the "operative fact doctrine" to authorize the FWBs' retention of all the benefits would thus be for naught; what the *ponencia* has given with its right hand, it takes away with its left hand.

Also, I do not find any legitimate basis for allowing HLI to deduct from the proceeds of the sale to be turned over to the FWBs the amounts it used for legitimate corporate purposes. It is irrelevant for the *ponencia* to order the DAR "to determine if the proceeds of the sale of the 500-hectare land and the 80-hectare SCTEX lot were actually used for legitimate corporate purposes."[21] The FWBs are entitled to the proceeds of the sale of the 300-hectare land in lieu of the actual land which they are deemed to have acquired under the CARL since 1989. The *ponencia* never explained why the FWBs should bear such portion of the proceeds of the sale that HLI used to finance its operations.

Transferability of Awarded Lands

The *ponencia* denies the applicability of Section 27 of the CARL, which states:

Sec. 27. *Transferability of Awarded Lands*. — **Lands acquired by beneficiaries under this Act may not be sold, transferred or conveyed except through hereditary succession, or to the government, or to the LBP, or to other qualified beneficiaries for a period of ten (10) years**: Provided, however, That the children or the spouse of the transferor shall have a right to repurchase the

---

[20] *Supra* note 10, at 11.

[21] *Id.* at 28.

land from the government or LBP within a period of two (2) years. Due notice of the availability of the land shall be given by the LBP to the Barangay Agrarian Reform Committee (BARC) of the *barangay* where the land is situated. The Provincial Agrarian Coordinating Committee (PARCCOM), as herein provided, shall, in turn, be given due notice thereof by the BARC.

If the land has not yet been fully paid by the beneficiary, the right to the land may be transferred or conveyed, with prior approval of the DAR, to any heir of the beneficiary or to any other beneficiary who, as a condition for such transfer or conveyance, shall cultivate the land himself. Failing compliance herewith, the land shall be transferred to the LBP which shall give due notice of the availability of the land in the manner specified in the immediately preceding paragraph.

In the event of such transfer to the LBP, the latter shall compensate the beneficiary in one lump sum for the amounts the latter has already paid, together with the value of improvements he has made on the land.

The *ponencia* opposes the application of the above provision by denying the FWBs the right to sell the land to third parties, including HLI. Citing DAR Administrative Order No. 1, series of 1989 (*DAR AO 1-89*), it states that "the awarded lands may only be transferred or conveyed [to third persons] after ten (10) years from the issuance and registration of the emancipation patent (*EP*) or certificate of land ownership award (*CLOA*). Considering that the EPs or CLOAs have not yet been issued to the qualified FWBs x x x, the 10-year prohibitive period has not even started."[22]

I agree with the *ponencia's* declaration, but only to the extent of prohibiting the qualified FWBs from selling the land directly to HLI (or other non-qualified purchasers). **Properly construed, the law means that, as a general rule, the FWBs are prohibited from transferring or conveying the lands within 10 years from the issuance of the EPs or CLOAs, except if the transfer or conveyance is made in favor of (a) a hereditary successor,**

---

[22] *Id.* at 32.

(b) the government, (c) the Land Bank of the Philippines (*LBP*), or (d) other qualified beneficiaries; transfers or conveyances made in favor of any of those enumerated, even within the 10 years period, are not prohibited by law. A contrary interpretation would prevent the beneficiary's heir from inheriting the land in the event that the beneficiary dies within the 10-year period, and put the land's ownership in limbo. Thus, under Section 27 of the CARL, the FWBs who are no longer interested in owning their proportionate share of the land may opt to sell it to the government or the LBP, which in turn can sell it to HLI or the LRC (if it is unable to prove its good faith purchase of the 200-hectare converted land), in order not to disrupt their existing operations.

Distribution of land to FWBs and payment of just compensation to HLI

As a consequence of the revocation of the SDP, the 4,915.75 hectares of agricultural land subject of the SDP are deemed placed under the CARL's compulsory coverage since November 21, 1989. Corollary, the taking is deemed to have occurred at this time and HLI is entitled to just compensation based on the value of the entire 4,915.75-hectare land in 1989.[23] In light of this conclusion, the question that begs for a definitive response is: **is HLI entitled to interest from 1989 up to the present on the amount of just compensation it should receive**?

In several cases, the Court awarded interests when there is delay in the payment of just compensation. The underlying rationale for the award is to compensate the landowner not simply for the delay, but for the income the landowner would have received from the land had there been no immediate taking thereof by the government.[24]

---

[23] The value of the 300-hectare land conveyed to LIPCO/RCBC and the 80-hectare land for SCTEX should not be excluded if the Court is to rule that the FWBs are entitled to the proceeds of these conveyances.

[24] See *Apo Fruits Corporation v. Land Bank of the Philippines*, G.R. No. 164195, October 12, 2010, 632 SCRA 727. See also *Land Bank of the Philippines (LBP) v. Soriano*, G.R. Nos. 180772 and 180776, May 6, 2010, 620 SCRA 347, where the Court declared that

This principle, however, does not apply to the present case because HLI never lost possession and control of the land; all the incomes that the land generated were appropriated by HLI. No loss of income from the land (that should be compensated by the imposition of interest on the just compensation due) therefore resulted. On the contrary, it is the qualified FWBs who have been denied of income due to HLI's possession and control of the land since 1989. Thus, HLI should pay the qualified FWBs rental for the use and possession of the land up to the time it surrenders possession and control over these lands. The DAR, as the agency tasked to implement agrarian reform laws, shall have the authority to determine the appropriate rental due from HLI to the qualified FWBs. In recognition, however, of any improvements that HLI may have introduced on these lands, HLI is entitled to offset their value from the rents due.

Application of the principle of set-off

The consequence of the revocation of the SDP, as I have repeatedly stated, is the restoration of the parties to their respective conditions prior to its execution and approval — thus, they are bound to restore whatever they received on account of the SDP. However, this does not prevent the application of the principle of set-off or compensation. The retention, either by the qualified FWBs or the HLI, of some of the benefits received pursuant to the revoked SDP is based on the application of the principle of compensation, not on the misapplication of the operative fact doctrine.

DISPOSITIVE PORTION

Accordingly, I maintain my vote to DENY HLI's petition and AFFIRM the PARC's Resolution Nos. 2005-32-01 and 2006-34-01 revoking the SDP.

The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.

The entire 4,915.75 hectares of land are deemed PLACED UNDER COMPULSORY COVERAGE of the CARL AS OF NOVEMBER 21, 1989, and the 6,296 qualified FWBs shall be deemed to have acquired rights over the land as of this date. The DAR shall DISTRIBUTE the land among the 6,296 qualified FWBs, EXCLUDING:

a. the 300 hectares of converted land acquired by LIPCO/RCBC; and

b. the 80 hectares of land expropriated by the government for the SCTEX.

The LRC shall be entitled to prove before the DAR that there was valid transfer of the 200 hectares of converted land. If the DAR finds that LRC is a purchaser in good faith and for value, the 200 hectares of converted land shall likewise be excluded from the land to be distributed among the qualified FWBs.

The DAR is ORDERED to determine the amount of just compensation that HLI is entitled to for the entire 4,915.75 hectares of agricultural land, based on the value at the time of taking — November 21, 1989, and no interest shall be imposed on this amount. The DAR is FURTHER ORDERED to determine the amount of RENTALS that HLI must pay to the qualified FWBs for the use and possession of the land beginning November 21, 1989, until possession is turned over to the DAR, for distribution (with due adjustment for the portions conveyed to LIPCO/RCBC, the government for the SCTEX, and, if found by the DAR to be a valid transfer, LRC). HLI, however, is entitled to DEDUCT from the rentals due the value of the improvements it made over the land (excluding those sold to LIPCO/RCBC and LRC, if the DAR finds that there was a valid transfer).

HLI shall PAY to the FWBs the value of the

a. 300 hectares of converted land conveyed to LIPCO/RCBC, based on its November 21, 1989 value, as determined by the DAR; and

b. if the DAR finds that there was a valid transfer, 200 hectares of converted land conveyed to LRC.

HLI shall also PAY the qualified FWBs just compensation received from the government for the 80 hectares of expropriated land for the SCTEX.

From the total amount of the proceeds of the sale and the just compensation to be paid by HLI to the qualified FWBs, the DAR shall DEDUCT the ₱150 million, representing the 3% production share and the aggregate value of the homelots that the qualified FWBs received from HLI. The amount of the 3% production share shall depend on the amount actually received by the FWBs from HLI, to be determined by the DAR.

All the FWBs shall return to HLI the 59 million shares of stock. They are, however, entitled to retain all the salaries, wages and other benefits received as employees of HLI.

CONCURRING AND DISSENTING OPINION

BERSAMIN, *J.*:

I concur with the Resolution the Court issues today by way of resolving the various motions filed against the decision dated July 21, 2011.

I respectfully dissent on two aspects, however, and I humbly opine that: *one*, the reckoning date for purposes of determining just compensation *should be* left to the DAR and Land Bank, and, ultimately, to the Special Agrarian Court (SAC) to determine; and *two*, the landowner should be compensated for the value of the homelots granted to the farmworkers-beneficiaries (FWBs) pursuant to the discredited stock distribution plan (SDP).

Let me explain my position.

I

In the decision of July 5, 2011, the Court upheld the PARC's assailed resolutions placing the agricultural lands subject of the SDP under compulsory coverage of the Comprehensive Agrarian Reform Program (CARP), and declared HLI entitled to just compensation to be reckoned from November 21, 1989.

Today's Resolution continues to follow the same reckoning date of November 21, 1989 due to its being the date when PARC approved HLI's SDP and thereby placed the affected agricultural lands under the coverage of CARP. The Resolution explains that it was upon the approval of the SDP that the farmworker-beneficiaries (FWBs) had come to be considered to own and possess the affected agricultural lands.

The determination of when the taking occurred is an integral and vital part of the determination and computation of just compensation. The nature and character of land *at the time of its taking* are the principal criteria to determine just compensation to the landowner.[1] In *National Power Corporation v. Court of Appeals*,[2] the Court emphasized the importance of the time of taking in fixing the amount of just compensation, thus:

> xxx [T]he Court xxx invariably held that **the time of taking is the critical date in determining lawful or just compensation**. Justifying this stance, Mr. Justice (later Chief Justice) Enrique Fernando, speaking for the Court in *Municipality of La Carlota vs. The Spouses Felicidad Baltazar and Vicente Gan,* said, "xxx the owner as is the constitutional intent, is paid what he is entitled to according to the value of the property so devoted to public use as of the date of the taking. From that time, he had been deprived thereof. He had no choice but to submit. He is not, however, to be despoiled of such a right. No less than the fundamental law guarantees just compensation. It would be an injustice to him certainly if from such a period, he could not recover the value of what was lost. There could be on the other hand, injustice to the expropriator if by a delay in the collection, the increment in price would accrue to the owner. The doctrine to which this Court has been committed is intended precisely to avoid either contingency fraught with unfairness."[3] (emphasis supplied)

---

[1] *Republic v. Cancio,*G.R. No. 170147, January 30, 2009, 577 SCRA 346; *National Power Corporation v. Henson,* G.R. No. 129998, December 29, 1998, 300 SCRA 751, 756.

[2] G.R. No. 113194, March 11, 1996, 254 SCRA 577.

[3] *Id.* at 589.

It is my humble submission, therefore, that the factual issue of when the taking had taken place as to the affected agricultural lands should not be separated from the determination of just compensation by DAR, Land Bank and SAC. Accordingly, I urge that the Court should leave the matter of the reckoning date to be hereafter determined by the DAR and Land Bank pursuant to Section 18 of Republic Act No. 6657.[4] Should the parties disagree thereon, the proper SAC will then resolve their disagreement as an integral part of a petition for determination of just compensation made pursuant to Section 57 of Republic Act No. 6657, to wit:

> Section 57. *Special Jurisdiction*. — The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act.
>
> The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.
>
> The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

II

It appears to me that the homelots granted to the FWBs under the SDP do not form part of the total area of the agricultural lands to be turned over to DAR for distribution to the qualified FWBs for which the landowner will be justly compensated. If my impression is correct, I fear that the result will be unfair should the landowner not be justly compensated for the value of the homelots. In such a situation, the taking will be confiscatory and unconstitutional.

I submit, therefore, that HLI as the landowner should be justly compensated also for the homelots.

---

[4] Section 18. *Valuation and Mode of Compensation*. — The LBP shall compensate the landowner in such amount as may be agreed upon by the landowner and the DAR and LBP or as may be finally determined by the court as just compensation for the land.

CONCURRING AND DISSENTING OPINION

SERENO, *J.*:

At the outset, I have maintained that the nullity of the Stock Distribution Option Agreement (SDOA) in Hacienda Luisita should lead to the immediate distribution of the agricultural lands to the 6,296 qualified farmer-beneficiaries (FWBs). The first draft of the *ponencia* of the original Decision was circulated among the Members of the Court on 11 February 2011. The draft *ponencia*, which eventually became the majority Decision, said that the nullity of the SDOA notwithstanding, effects of its approval have taken place and cannot be undone under the operative facts doctrine and thus directed the holding of a secret voting among the FWBs on whether they will opt to remain as stockholders of petitioner Hacienda Luisita, Inc. (HLI). Shortly thereafter, on 25 March 2011, the first draft of my opinion objecting to the grant of the secret voting option to the FWBs to stay with the SDOA was circulated. Other draft dissenting opinions against the proposed *ponencia* were subsequently released. After the promulgation of the Decision dated 05 July 2011 and after carefully reviewing the instant motions for reconsideration, my initial position remains the same — the SDOA is illegal and land distribution should immediately be directed under Section 33 of Republic Act No. 6657, or the Comprehensive Agrarian Reform Law (CARL).

I welcome the change in the position of the majority, and voting with them, this Court is now unanimously directing immediate land distribution. However, I disagree with its identification of the reckoning date of the "taking" of the lands ordered to be distributed for the purpose of eventually determining "just compensation." On the instant motions for reconsideration, the *ponencia* talks of the possibility of rendering it impossible for the FWBs to pay for the lands if the reckoning date were the date of Notice of Coverage, or on 02 January 2006. It holds that regardless of the uniform rulings of the Court I enumerated in this Opinion to the effect that the "taking" is the date of the Notice of Coverage, it is creating a new rule — that

for SDOAs that are nullified, the compensation for the value of the lands that will be distributed are to be reckoned at their fair market value at the time of the approval of the nullified SDOA.

In my view, such an approach is partially confiscatory as it makes an unjustified exception to the long line of jurisprudence that the Court has laid down regarding the time of "taking" of agrarian reform lands for purposes of just compensation. It would have been preferable, from a policy point of view, that at the time that the CARL was passed in 1989, Congress had chosen one of two options: (a) either the State subsidize the difference between the fair market value at the time of the taking and what the farmers can afford to pay, which some of the 1986 Constitutional Commissioners said should happen; or (b) authorize the confiscation of a part of the price of the fair market value under a radical but rational interpretation of the social justice clause of the 1987 Constitution. Congress chose neither option and opted for payment of the fair market value at the time of the taking as just compensation to be amortized by the farmers for 30 years. This Court has invariably sustained that policy choice. This in large part accounts for the confessed lack of financial viability to make land reform a genuine success.

The choice having been thusly made, this Court has no alternative except to apply the rule uniformly, otherwise, this will result in a discriminatory and partially confiscatory treatment of the Hacienda Luisita lands. That is also why I was proposing that the lands to be distributed to the qualified FWBs be declared to be immediately and freely transferable. After all, the 10-year prohibition against the transfer effectively lapsed on the tenth year of the effectivity of the CARL. The FWBs can sell part and retain part of the lands, and can best determine how to make optimal economic use of them.

My view resonates with the opinion of Justice Arturo D. Brion, who reckoned the value of the lands to the time the SDOA was approved on 21 November 1989, but at the same time recognized petitioner HLI's entitlement to the value of the improvements to the land. He laments the fact that petitioner HLI will be uncompensated for all the improvements it has

introduced as a builder in good faith from 21 November 1989 until now. I agree with him on this point.

The Five Approaches to Resolving this Petition

There are before the Court five major approaches to resolving the agrarian legal problems involving Hacienda Luisita. Each approach advances operative solutions to two standing issues: (a) whether to distribute the agricultural lands to the FWBs or allow them to secretly vote to remain as stockholders; and (b) how much compensation, if any, is due to the corporate landowner.

The **first approach**, which has now been abandoned, is that ordered by the Court's questioned Decision dated 05 July 2011, and as suggested by Chief Justice Renato C. Corona in his Dissenting Opinion of the same date. A secret voting will take place in which FWBs want to indicate whether they will retain their stockholding in petitioner HLI in lieu of their individual right to a direct share in the land, or whether they want direct land ownership. In cases where direct land ownership is selected, petitioner HLI shall be paid the value of the lands as of 21 November 1989, which was the date when the PARC approved its SDOA with the FWBs.

The **second approach** is that proposed by Justice Arturo D. Brion in his earlier Separate Concurring and Dissenting Opinion, which Justice Martin S. Villarama, Jr., joined in. The approach is to order direct land distribution to all the FWBs of the 4,916 hectares of land. The date of the taking will be pegged to 11 May 1989 (the date of the SDOA), and the just compensation will also be pegged to that time. There will be no interest on the just compensation and petitioner HLI will be required to pay back rentals as of that date.

The **third approach** is like the first approach, but modified by the legal consequences of the statement made by the majority in the body of the Decision that a stock option arrangement can only be valid if majority control of the corporation is in the hands of the FWBs. Thus, the Court must categorically direct (a) a revaluation of the assets of HLI; (b) this revaluation must

result in at least 51% control of the voting stock and the beneficial interest; and (c) this restructuring must be completed before the referendum for the FWBs is undertaken by public respondent Department of Agrarian Reform (DAR).

The **fourth approach** is a suggested modification of the second approach. The "taking" and the value of the just compensation is pegged to 11 May 1989, but the Tarlac Development Corporation (TADECO) and/or petitioner HLI (a) must be compensated for (i) interest on the value of the just compensation at that time onwards; (ii) and improvements that have been introduced to the lands with interest on the value of the improvements since these improvements were utilized; (b) may be required to pay rentals for the use of the land in their state as of 11 May 1989 adjudicated by a reasonable annual rate applicable to the lands in such state; and (c) cannot be made to return the entire ₱750,000,000 paid by Luisita Industrial Park Corporation (LIPCO) to petitioner HLI for the 300 hectare lands, the ₱80,000,000 paid by the national government for the 84 hectares expropriated for the Subic-Clark-Tarlac-Expressway (SCTEX), but only the value of the 300 hectares and the 84 hectares as of 11 May 1989, plus interest on the same at the same rate that will be given in favor of petitioner HLI under item (a) above.

The **fifth approach** requires direct land distribution. The "taking" and the value of the just compensation is pegged according to law and prevailing jurisprudence. The just compensation is pegged to the date of actual taking, and its value is approximately at fair market value.

The first approach is contrary to law and unjust to the farmers. The second approach is contrary to prevailing jurisprudence on just compensation and is confiscatory of the right of the landowners. It would have been legally supportable under the initial interpretation of "just compensation" in agrarian reform cases when "socialized taking" was contemplated, but since 1989, law and jurisprudence prevents this approach from being adopted. The third approach, while still legally wrong, mitigates much of the injustice that will be perpetrated by the first approach.

The fourth approach will contradict jurisprudence on "just compensation" and require a lot of accounting exercises, but is less harsh to the farmers and the landowners. The fifth approach is logically consistent, but requires much creative designing by public respondent DAR. The last three approaches would not work too great an injustice on either the FWBs or the landowners.

Land Distribution v. Secret Voting

The Court has unanimously struck a lethal blow to the SDOA between petitioner Hacienda Luisita, Inc., (HLI) and the signatory farmworker-beneficiaries (FWBs), since its provisions were found to be in violation of the Comprehensive Agrarian Reform Law (CARL). Despite the unequivocal invalidation of the SDOA, the Court was divided on the various approaches in dealing with the aftermath of the declaration in accordance with the promises of agrarian reform under the Constitution.

To my mind, no other option is permissible under the law other than **the immediate and direct land distribution to the FWBs as provided for under the CARL**. The rejection of the secret voting option by the *ponente*, Justice Presbitero J. Velasco, Jr., in his Resolution of the various Motions for Clarification/Reconsideration by the main concerned parties, as well as by Chief Justice Corona in his Separate Opinion, is a very positive turn of events.

As the new *ponencia* points out, the distribution of the stocks under the SDOA is evidently iniquitous because the FWBs will continue to be relegated as minority stockholders holding, at best, 33.29% of the votes in the corporation.[1] Under the first approach, the secret voting option would, in fact, further aggravate the minority position of the FWBs in petitioner HLI since those who opt for direct land distribution would have to surrender their stockholdings. Should petitioner HLI's current corporate

[1] Under the SDOA, the FWBs are entitled to the equivalent of the value of the agricultural lands compared with the total assets of petitioner HLI. In this case, the value of petitioner HLI's agricultural land is pegged at ₱196,630,000; while its claimed total assets are worth ₱590,554,220. Thus, the FWBs would be able to hold at maximum 33.296% of petitioner HLI's shares.

structure of lands-to-total-assets ratio be maintained, FWBs who will opt to remain as stockholders will find themselves with a decreased voting power base and placed at an even greater disadvantage with the exodus of other FWBs who will opt for individual distribution of land.

The outcome of the SDOA in Hacienda Luisita may have been different had the FWBs been given **majority or even full control** of petitioner HLI at the outset, which is the rationale of the third approach. The secret voting option would have been less unjust, if majority control of the corporation is first handed to the FWBs, before they decide whether to remain as stockholders or opt for land distribution. The third approach recognizes the constitutional mandate to hand over ownership and control of agricultural lands to the farmers or farmworkers, whether directly through individual ownership or indirectly through collective ownership. Considering that stock distribution options *per se* have not been declared as unconstitutional mechanisms in agrarian reform, the Court must at present give life to the intention of the legislature in opening up that option to corporate landowners, but not at the expense of relegating the FWBs to minority status. The presence of this solution also avoids having to pronounce Section 28 of the CARL void, a preferred approach to statutory construction that this Court is bound to observe by judicial review doctrines.

Just Compensation v. Modified Compensation

Since there is now unanimity in ordering the distribution of the agricultural lands to the FWBs in this case, the Court now contends with the quantum of compensation due to petitioner HLI with respect to its expropriated farm lands. It is not surprising that the issue of just compensation that has plagued the members of the Constitutional Commission and Congress has again reared its head in the present legal controversy, involving the peculiar mechanism of a stock distribution option under the CARL. Fortunately, the wealth of jurisprudence in the years following the passage of the landmark law up to the present offers some guidance in arriving at a solution that conforms with the constitutional mandate of agrarian reform and social justice.

While distribution of land was the prevailing ideology in crafting our agrarian reform policies in the Constitution, the other side of the spectrum is the recognition of the rights of the landowner specifically the right of just compensation.[2] The aim of redistributing agricultural lands under the Constitution was primarily to correct the unjust social structures then prevailing in order to achieve an equitable distribution of wealth from the landed few in favor of the landless majority. Yet, in recognizing the social function of the lands and the demands of social justice, the framers never lost sight of the property rights of landowners, as an inherent limitation to the exercise of the State's power of eminent domain or expropriation, even in cases of agrarian reform. Concomitant with the fundamental right not to be deprived of property without due process of law[3] is the constitutional provision that "[p]rivate property shall not be taken for public use without just compensation."[4] Hence, the policy underlying the provision for eminent domain is to make the private owner "whole" after his property is taken by the State.[5]

The taking of private lands under the agrarian reform program partakes of the nature of an expropriation proceeding.[6] For purposes of taking under the agrarian reform program, **the framers of the Constitution expressly made its intention known that**

---

[2] "… To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and **subject to the payment of just compensation**. …" (CONSTITUTION, Art. XIII, Sec. 4)

[3] "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." (CONSTITUTION, Art. III, Sec. 1)

[4] CONSTITUTION, Art. III, Sec. 9.

[5] Dissenting Opinion of Chief Justice Renato C. Corona, in *Republic of the Philippines v. Gingoyon*, G.R. No. 166429, 19 December 2005, 478 SCRA 474, citing *State by Department of Highways v. McGuckin*, 242 Mont 81, 788 P2d 926.

[6] *Gabatin v. Land Bank of the Philippines*, G.R. No. 148223, 25 November 2004, 444 SCRA 176.

the owners of the land should not receive less than the market value for their expropriated properties and drew parallelisms with the ordinary understanding of just compensation in non-land reform expropriation.[7] Indeed, the matter of just compensation was never meant to involve a severe diminution of what the land owner gets.[8] The aim of just compensation in terms of expropriation, even in agrarian reform, should be just to the owner — that which approximates the market value.[9] Hence, the Court acknowledged the other side of the agrarian reform coin and ruled:

> The Comprehensive Agrarian Reform Program was undertaken primarily for the benefit of our landless farmers. **However, the undertaking should not result in the oppression of landowners by pegging the cheapest value for their lands. Indeed, the taking of properties for agrarian reform purposes is a revolutionary kind of expropriation, but not at the undue expense of landowners who are also entitled to protection under the Constitution and agrarian reform laws**. …[10] (Emphasis supplied)

In the seminal case *Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform*,[11] the Court,

---

[7] "FR. BERNAS: But is it the intention of the Committee that the owner should receive less than the market value?

"MR. MONSOD: It is not the intention of the Committee that the owner should receive less than the just compensation." (Minutes of the Deliberations of the Constitutional Commission, [17 August 1986], p. 17)

[8] Minutes of the Deliberations of the Constitutional Commission, Fr. Joaquin Bernas, S. J. (04 August 1986), p. 648.

[9] "FR. BERNAS. The sense is, it must be just to the owner.

MR. TREÑAS. Precisely.

FR. BERNAS. The owner should get the full market value. But then we have to make a provision as to where the payment will come from." (Minutes of the Deliberations of the Constitutional Commission, [17 August 1986], p. 18)

[10] *LBP v. Chico*, G. R. No. 168453, 13 March 2009, 581 SCRA 226.

[11] G.R. Nos. 78742, 79310, 79744, and 79777, 14 July 1989, 175 SCRA 343.

speaking through retired Justice Isagani Cruz, eloquently expounded on the inherent right of landowners to just compensation, in this wise:

> Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. **It has been repeatedly stressed by this Court that the measure is not the taker's gain but the owner's loss**. The word "just" is used to intensify the meaning of the word "compensation" to convey the idea that the equivalent to be rendered for the property to be taken shall be **real, substantial, full, ample**.
>
> It bears repeating that the measures challenged in these petitions contemplate more than a mere regulation of the use of private lands under the police power. We deal here with an actual taking of private agricultural lands that has dispossessed the owners of their property and deprived them of all its beneficial use and enjoyment, **to entitle them to the just compensation mandated by the Constitution.**
>
> As held in *Republic of the Philippines v. Castellvi*, there is compensable taking when the following conditions concur: (1) the expropriator must enter a private property; (2) the entry must be for more than a momentary period; (3) the entry must be under warrant or color of legal authority; (4) the property must be devoted to public use or otherwise informally appropriated or injuriously affected; and (5) **the utilization of the property for public use must be in such a way as to oust the owner and deprive him of beneficial enjoyment of the property**. All these requisites are envisioned in the measures before us.

Since the farm lands in Hacienda Luisita are to be the subject of distribution, petitioner HLI or Tarlac Development Corporation (TADECO), as landowners, are entitled to just compensation, which is an indispensible legal requirement in agrarian reform expropriations.[12] The issue now lies in the reckoning period in which the just compensation shall be computed, as illustrated by the second, fourth and fifth approaches. Crucial to the Court's resolution of this matter is the **time of the taking** by the government of the farm lands in Hacienda Luisita.

---

[12] "Agrarian reform is a revolutionary kind of expropriation. The recognized rule in expropriation is that title to the expropriated property shall pass from

Just compensation in cases of expropriation is ordinarily to be ascertained as of the time of the taking.[13] In computing the just compensation for expropriation proceedings, it is the value of the land at the time of the taking, not at the time of the rendition of judgment, which should be taken into consideration.[14] Hence, in determining the value of the land for the payment of just compensation, the time of taking should be the basis.[15] The concept of taking in both land reform and non-land reform expropriations is well-settled. There is taking of private property by the State in expropriation proceedings when the owner is ousted from his property and deprived of his beneficial enjoyment thereof.[16] The "time of taking" is the moment when landowners are deprived of the use and benefit of the property.[17]

---

the owner to the expropriator only upon full payment of the just compensation. **Thus, payment of just compensation to the landowner is indispensable**." (*Land Bank of the Philippines v. Dumlao*, G.R. No. 167809, 27 November 2008, 572 SCRA 108)

[13] *B. H. Berkenkotter & Co. v. Court of Appeals*, G.R. No. 89980, 14 December 1992, 216 SCRA 584, citing *Land Bank of the Philippines v. Court of Appeals*, 258 SCRA 404 (1996) and *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 175 SCRA 343 (1989).

[14] *B. H. Berkenkotter & Co. v. Court of Appeals*, *id.*, citing *Republic of the Philippines v. Ker and Company Limited*, 383 SCRA 584 (2002) and *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 175 SCRA 343 (1989).

[15] *B. H. Berkenkotter & Co. v. Court of Appeals*, *id.*

[16] "'Taking' under the power of eminent domain may be defined generally as entering upon private property for more than a momentary period, and, under the warrant or color of legal authority, devoting it to a public use, or otherwise informally appropriating or injuriously affecting it in such a way as substantially **to oust the owner and deprive him of all beneficial enjoyment thereof**." (*Republic of the Philippines v. vda. de Castellvi,* G.R. No. L-20620, 15 August 1974, 157 Phil. 329, citing 26 Am. Jur. 2nd ed., Sec. 157)

[17] "It is reminded to adhere strictly to the doctrine that just compensation must be valued at the time of taking. The 'time of taking' is the time when the landowner was deprived of the use and benefit of his property, such as

Three reckoning periods are for consideration of the Court. *First*, Justice Velasco, who is now joined by Justice Brion, proposes that the amount of just compensation to be paid should be based on the date that the PARC approved the SDOA, or on 21 November 1989 (**date of the PARC approval**). *Second*, the date the SDOA was signed, 18 May 1989, (**date of the SDOA**) was also considered as a reckoning point of the valuation period. *Lastly*, I submit that the valuation be made based on the current fair market value in accordance with established laws, rules and jurisprudence; or more specifically, at the time that petitioner HLI was issued a Notice of Coverage on 02 January 2006 (**date of Notice of Coverage**). With all due respect to my colleagues, the third reckoning period alone satisfies the constitutional directive to give real, substantial, full and ample compensation to the landowner in recognition of the latter's right to property and of the express limitation on the State's power of expropriation.

The period of valuation of the property cannot be reckoned by considering the first two dates as the time that the agricultural lands were taken, precisely because petitioner HLI and the FWBs resorted to the mechanism of a stock distribution option. This was a distinctive mechanism under the agrarian reform scheme, by which shares of stock of the corporate landowner, instead of agricultural lands, were distributed to the farmers. The singular advantage of the said scheme, unlike a direct land transfer to individual farmers or cooperatives, is that title to the property remains with the corporate landowner, which should presumably be dominated by famers with majority stockholdings in the corporation.

The reason behind the 1989 reckoning periods (the date of SDOA or the date of PARC approval) is that the agricultural lands are made the subject of the CARL, and are thus considered to have been expropriated private property under the agrarian reform program. However, the use of these periods ignores the

---

when title is transferred to the Republic." (*Land Bank of the Philippines v. Livioco*, G.R. No. 170685, 22 September 2010, citing *Eusebio v. Luis*, 603 SCRA 576, 586-587 [2009])

fact that petitioner HLI, as the corporate landowner, exactly availed itself of the stock distribution option under the CARL, which resulted in the title remaining in the hands of private persons. Instead of expropriating lands, what the government took and distributed to the FWBs were shares of stock of petitioner HLI in proportion to the value of the agricultural lands that should have been expropriated and turned over to the FWBs.

Hence, no taking of agricultural lands can be considered either at the time the SDOA was signed or at the time PARC approved it, since petitioner HLI retained full ownership and use of the lands thereafter. Despite the change in stockholders, petitioner was never ousted from or deprived of the beneficial enjoyment of the agricultural lands in Hacienda Luisita. This was the very reason why the stock distribution option was the mode specifically preferred by the corporate landowner in this case. Indeed, petitioner freely exercised ownership of the property in the interim, when it applied for the conversion of the lands and sold them to third parties. Even Justice Brion acknowledged this fact in his earlier Separate Opinion, in which he said: "HLI never lost possession and control of the land under the terms of the SDOA." It appears iniquitous to reckon the valuation of the now expropriated farm lands in Hacienda Luisita by their 1989 levels, when the property had not yet been actually taken or expropriated by the government at that time.

The CARL, as amended, had expressly identified the factors in arriving at just compensation for landowners whose properties have been subject to land reform expropriation:

> In determining just compensation, **the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR)**, translated into a basic formula by the DAR shall be considered, subject to the final decision of the proper court. The **social and economic benefits** contributed by the farmers and the farmworkers and by the Government to the property as well as the **nonpayment of taxes or loans secured from any government financing institution on**

the said land shall be considered as additional factors to determine its valuation.[18]

Pursuant to its rule-making powers, the Department of Agrarian Reform (DAR) reduced these factors into a basic general formula that computes the value of the land subject of agrarian reform in this manner:[19]

Land Value = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where

CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

In a long line of cases, the Court has given judicial imprimatur to the above formulation made by the DAR. The following cases demonstrate judicial fealty to this formula: *LBP v. Spouses Banal*, G.R. No. 143276, 20 July 2004, 434 SCRA 543; *LBP v. Celada*, G.R. No. 164876, 23 January 2006, 479 SCRA 495; *Lubrica v. LBP*, G.R. No. 170220, 20 November 2006, 507 SCRA 415; *LBP v. Lim*, G.R. No. 171941, 02 August 2007, 529 SCRA 129; *LBP v. Suntay*, G.R. No. 157903, 11 October 2007, 535 SCRA 605; *Spouses Lee v. LBP*, G.R. No. 170422, 07 March 2008, 548 SCRA 52; *LBP v. Heirs of Eleuterio Cruz*, G.R. No. 175175, 29 September 2008, 567 SCRA 31; *LBP v. Dumlao*, G.R. No. 167809, 27 November 2008, 572 SCRA 108; *LBP v. Gallego*, Jr., G.R. No. 173226, 20 January 2009, 576 SCRA 680; *LBP v. Kumassie Plantation*, G.R. Nos. 177404 and 178097, 25 June 2009, 591 SCRA 1; *LBP v. Rufino*, G.R. Nos. 175644 and 175702, 02 October 2009, 602 SCRA 399; *LBP v. Luciano*, G.R. No. 165428, 25 November 2009, 605 SCRA 426; *LBP v. Dizon*, G.R. No. 160394,

---

[18] Republic Act No. 6657, Sec. 17, as amended by Republic Act No. 9700.

[19] DAR Administrative Order No. 06-92 dated 30 October 1992, as amended by DAR Administrative Order No. 11-94 dated 13 September 1994; *see also* DAR Administrative Order No. 05-98 dated 15 April 1998 and DAR Administrative Order No. 02-09 dated 15 October 2009.

27 November 2009, 606 SCRA 66; *Heirs of Lorenzo and Carmen Vidad v. LBP*, G.R. No. 166461, 30 April 2010, 619 SCRA 609; *LBP v.* Soriano, G.R. Nos. 180772 and 180776, 06 May 2010, 620 SCRA 347; *LBP v. Barrido*, G.R. No. 183688, 18 August 2010, 628 SCRA 454; *LBP v. Colarina*, G.R. No. 176410, 01 September 2010, 629 SCRA 614; *LBP v. Livioco*, G. R. No. 170685, 22 September 2010, 631 SCRA 86; *LBP v. Escandor*, G.R. No. 171685, 11 October 2010, 632 SCRA 504; *LBP v. Rivera,* G.R. No. 182431, 17 November 2010, 635 SCRA 285; *LBP v. DAR*, G.R. No. 171840, 04 April 2011. **In all these cases, the formula approximately reflects the fair market value of the property at the time of the Notice of Coverage** to estimate the loss suffered by the landowner, whose property was the subject of expropriation.

Thus, under the uniform rulings of this Court, the notice of coverage commences the process of acquiring private agricultural lands covered by the CARP.[20] The date of the notice of coverage is therefore determinative of the just compensation petitioner HLI is entitled to for its expropriated lands. In computing capitalized net income under the DAR formula, one should use the average gross production of the latest available 12 months immediately preceding **the date of notice of coverage**, in case of compulsory acquisition, and the average selling price of the latest available 12 months prior to the date of receipt of the claim folder by the Land Bank of the Philippines for processing.[21]

The rationale for pegging the period of computing the value so close or near the present market value at the time of the taking is to consider the appreciation of the property brought about by improvements therein and other factors. The nature and character of the land at the time of its taking is the principal criterion for determining how much just compensation should

---

[20] DLR Administrative Order No. 04-05 dated 02 August 2005.

[21] *LBP v. Rufino*, G.R. Nos. 175644 and 175702, 02 October 2009, 602 SCRA 399.

be given to the landowner.[22] All the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, should be considered.[23] For the compensation to be just to the owner of a commercial farm land, the facilities and improvements introduced by the landowner — not just the land — shall also be taken into consideration.[24] It is but equitable to extend to the landowner compensation arising from the appreciation of the property due to the improvements introduced therein. To simply disregard the changes, appreciation or improvements in the agricultural lands of Hacienda Luisita by pegging the property to its 1989 value is to resort to expropriation that is **confiscatory** — considering that it will be the sole exception to a long line of jurisprudence — and not compensatory which is prescribed under the Constitution as a fundamental right of a landowner.

Indeed, the previous decisions of this Court dealt with voluntary or compulsory coverage under the CARL. It would appear that this is the first instance that the Court is confronted with the question of determining just compensation for cases where the landowners and farmworker-beneficiaries resorted to a stock distribution option that had failed and was nullified. Unlike voluntary or compulsory coverage where the payment of just compensation was roughly speaking executed together with the taking, the stock distribution option in the present scenario has "time" complication. Although the lands were subjected the stock distribution mechanism in 1989, the PARC's decision to nullify the SDOA and its Notice of Coverage ordering immediate

---

[22] *National Power Corporation v. Tiangco*, G.R. No. 170846, 06 February 2007, 514 SCRA 674, citing *National Power Corporation v. Chiong*, 404 SCRA 527 (2003).

[23] *National Power Corporation v. Tiangco*, *id.*, citing *Export Processing Zone Authority v. Dulay*, 149 SCRA 305 (1987).

[24] "Determination of just compensation for commercial farms shall include not only the land but also the facilities and improvements introduced by the landowner. It may take into account the type of commercial crops planted (*e.g.* banana, pineapple, rubber) and such other relevant factors consistent with agrarian laws, rules and regulations"; (DAR Administrative Order No. 09-98 dated 23 December 1998, Art. 1, Sec. 2 [f])

land distribution came about only in 2006. The Court is confronted with the judicial task of determining standards to reconcile the various legal contentions on this time difference, considering other existing stock distribution schemes across the country that are also subject of similar legal challenges.

I believe there is no reason why those same principles and standards in determining just compensation in voluntary or compulsory acquisition should not be equally applicable to a stock distribution scheme. The Constitution, the CARL and even our own jurisprudence have been consistent in approximating a fair valuation of the properties expropriated by the State under its agrarian reform program, and must continue to do so in the case of a failed stock distribution scheme.

With the equal protection clause in mind, it is simply wrong for landowners to have their real properties, subject of expropriation, valued several years or even decades behind, considering the upward trend in property values. The Court explained this inherent unfairness when it was confronted by a non-land reform expropriation case, in which the trial court and the appellate court fixed the valuation of the property at its 1984 and 1993 values, respectively, in this wise:

> In eminent domain cases, the time of taking is the filing of the complaint, if there was no actual taking prior thereto. Hence, in this case, **the value of the property at the time of the filing of the complaint on November 20, 1990** should be considered in determining the just compensation due the respondents. So it is that in *National Power Corporation v. Court of Appeals, et al.*, we ruled:
>
>> **Normally, the time of the taking coincides with the filing of the complaint for expropriation**. Hence, many rulings of this Court have equated just compensation with the value of the property as of the time of filing of the complaint consistent with the above provision of the Rules. So too, where the institution of the action precedes entry into the property, the just compensation is to be ascertained as of the time of the filing of the complaint.
>
> **The trial court fixed the value of the property at its 1984 value, while the CA, at its 1993 worth**. Neither of the two

determinations is correct. For purposes of just compensation, the respondents should be paid the value of the property as of the time of the filing of the complaint which is deemed to be the time of taking the property.

It was certainly unfair for the trial court to have considered a property value several years behind its worth at the time the complaint in this case was filed on November 20, 1990. **The landowners are necessarily shortchanged**, considering that, as a rule, land values enjoy steady upward movement. It was likewise erroneous for the appellate court to have fixed the value of the property on the basis of a 1993 assessment. NPC would be paying too much. Petitioner corporation is correct in arguing that the respondents should not profit from an assessment made years after the taking.

The expropriation proceedings in this case having been initiated by NPC on November 20, 1990, property values on such month and year should lay the basis for the proper determination of just compensation. In *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, the Court ruled that the equivalent to be rendered for the property to be taken shall be substantial, full, ample and, as must apply to this case, real. This must be taken to mean, among others, that the value as of the time of taking should be the price to be paid the property owner.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. In this case, this simply means the property's fair market value at the time of the filing of the complaint, or "that sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be given and received therefor." **The measure is not the taker's gain, but the owner's loss.**

In the determination of such value, the court is not limited to the assessed value of the property or to the schedule of market values determined by the provincial or city appraisal committee; these values consist but one factor in the judicial valuation of the property. **The nature and character of the land at the time of its taking is the principal criterion for determining how much just compensation should be given to the landowner All the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, should be considered.**

Neither of the two determinations made by the courts below is therefore correct. A new one must be arrived at, taking into consideration the foregoing pronouncements.[25] (Emphasis supplied)

In *Apo Fruits Corporation, et al., v. Land Bank of the Philippines*,[26] the Court *en banc* awarded 12% interest to petitioners Apo Fruits Corporation and Hijo Plantation, Inc., for prime agricultural farmlands voluntarily offered to the farmers way back in 1995. We underscored then the value-for-value exchange dictated by just compensation in land reform expropriations, so that the landowner would not be short-changed:

Under the circumstances of the present case, we see no compelling reason to depart from the rule that Republic firmly established. **Let it be remembered that shorn of its eminent domain and social justice aspects, what the agrarian land reform program involves is the purchase by the government, through the LBP, of agricultural lands for sale and distribution to farmers**. As a purchase, it involves an exchange of values — the landholdings in exchange for the LBP's payment. In determining the just compensation for this exchange, however, the measure to be borne in mind is not the taker's gain but the owner's loss since what is involved is the takeover of private property under the State's coercive power. **As mentioned above, in the value-for-value exchange in an eminent domain situation, the State must ensure that the individual whose property is taken is not shortchanged and must hence carry the burden of showing that the "just compensation" requirement of the Bill of Rights is satisfied.**

The owner's loss, of course, is not only his property but also its income-generating potential. Thus, when property is taken, full compensation of its value must immediately be paid to achieve a fair exchange for the property and the potential income lost. The just compensation is made available to the property owner so that he may derive income from this compensation, in the same manner that he would have derived income from his expropriated property. If full compensation is not paid for property taken, then the State must make up for the shortfall in the earning potential immediately

[25] *National Power Corporation v. Tiangco*, G. R. No. 170846, 06 February 2007, 514 SCRA 674.

[26] G.R. No. 164195, 12 October 2010, 632 SCRA 727.

lost due to the taking, and the absence of replacement property from which income can be derived; interest on the unpaid compensation becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness. (Emphasis supplied)

In the seminal case *Land Bank of the Philippines v. Natividad*,[27] **the Court rejected outright the contention** of Land Bank of the Philippines **that the compensation for property, subject of agrarian reform expropriation, should be based on the effectivity of the previous law** (Presidential Decree No. 27) on 21 October 1972. The Court **ruled that the compensation should be pegged to the time the property was taken in possession** in 1993 under the new CARL:

> **Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of PD 27, *ergo* just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous**. In *Office of the President, Malacañang, Manila v. Court of Appeals*, we ruled that the seizure of the landholding did not take place on the date of effectivity of PD 27 but would take effect on the payment of just compensation.
>
> **Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled**. Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the process concluded under the said law. Indeed, RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect, conformably with our ruling in *Paris v. Alfeche*.
>
> Section 17 of RA 6657 which is particularly relevant, providing as it does the guideposts for the determination of just compensation, reads as follows:
>
> > Sec. 17. Determination of Just Compensation. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax

[27] G.R. No. 127198, 16 May 2005, 458 SCRA 411.

> declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

It would certainly be inequitable to determine just compensation based on the guideline provided by PD 27 and EO 228 considering the DAR's failure to determine the just compensation for a considerable length of time. **That just compensation should be determined in accordance with RA 6657, and not PD 27 or EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample**.

In this case, the trial court arrived at the just compensation due private respondents for their property, taking into account its nature as irrigated land, location along the highway, market value, assessor's value and the volume and value of its produce. This Court is convinced that the trial court correctly determined the amount of just compensation due private respondents in accordance with, and guided by, RA 6657 and existing jurisprudence.[28] (Emphasis supplied)

Applied to the instant case, the more just and equitable solution is to reckon the period of the taking from the date of the notice

---

[28] See also *Land Bank v. Livioco*, G.R. No. 170685, 22 September 2010; *Land Bank v. J. L. Jocson and Sons*, G.R. No. 180803, 23 October 2009, 604 SCRA 373; *Land Bank v. Heirs of Asuncion Añonuevo vda. de Santos, et al.*, G. R. No. 179862, 03 September 2009, 598 SCRA 115; *DAR v. Tongson*, G.R. No. 171674, 04 August 2009; *Land Bank v. Carolina B. vda. de Abello, et al.,* G.R. No. 168631, 07 April 2009, 584 SCRA 342; *Land Bank v. Chico*, G.R. No. 168453, 13 March 2009, 581 SCRA 226; *Land Bank v. Pacita Agricultural Multi-Purpose Cooperative, Inc.,* G.R. No. 177607, 19 January 2009; *Land Bank v. Dumlao*, G.R. No. 167809, 27 November 2008, 572 SCRA 108; *Land Bank v. Heirs of Eleuterio Cruz*, G.R. No. 175175, 29 September 2008, 567 SCRA 31; *Land Bank v. Heirs of Angel Domingo*, G.R. No. 168533, 04 February 2008, 543 SCRA 627; *Land Bank v. Spouses Hermosa*, G.R. No. 166777, 10 July 2007, 527 SCRA 181; *Lubrica v. Land Bank*, G.R. No. 170220, 20 November 2006, 507 SCRA 415.

of coverage under the fifth approach, since this was the time that petitioner HLI was put on notice that its stock distribution option was defective and that its agricultural lands therein would be subject to compulsory coverage and direct land distribution under the CARL. It is argued that the time the SDOA was signed and/or the PARC Resolution was issued could be considered as the time petitioner HLI was given due notice that its agricultural lands would be subject of agrarian reform. This argument is undeniably unfair and contrary to uniform jurisprudence interpreting the constitutional dictum that just compensation in expropriations should approximate equivalent value that is real, substantial, full and ample. Landowners would be shortchanged if their real properties are taken by the State in exchange for compensation that is pegged at values two decades prior. In this case, unwarranted discrimination would be committed against petitioner HLI if the agricultural lands to be distributed to the FWBs are to be valued at their 1989 levels.

To be sure, the fourth approach explained above may approximate the value of the property at the date of the Notice of Coverage, but would unnecessarily call for meticulous accounting and valuation of improvements. Although the fourth approach would continue to peg the value of the agricultural land to its 1989 level, it recognizes the passage of an inordinate length of time and hopes to mitigate its unjust effects by adding the payment of interest. The award of interest may alleviate the hardship caused by depriving petitioner HLI of the current and fair market value of the property under the prevailing laws and rules, but the order for it to pay rentals for the lands from 1989[29] would negate the benefit of any interest, if not possibly saddle it with a heavier financial burden.

---

[29] "Since land reform coverage and the right to the transfer of the CARL-covered lands accrued to the FWBs as of May 11, 1989, HLI – which continued to possess and to control the covered land – should pay the qualified FWBs yearly rental for the use and possession and control over these lands. As a detail of land reform implementation the authority to determine the appropriate rentals belongs to the DAR using established norms and standards for the purpose. Proper adjustment, of course, should be made for the sale of the acquired lands to LIPCO and to the government as no rentals can be due for these portions after their sale." (Separate Opinion of Justice Brion)

Although Justice Brion reckoned the period for the valuation of the land to 21 November 1989, he recognized petitioner HLI's entitlement to the value of the improvements that it has introduced into the agricultural lands for the past twenty years. The proposition is akin to the Civil Code[30] situation where a landowner opts to acquire the improvements introduced by a builder in good faith and must necessarily pay their value.[31] Hence, although the land of petitioner HLI is expropriated by the government, there is a need for compensation for the introduction of the improvements actually installed by petitioner

---

[30] "The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and, in case of disagreement, the court shall fix the terms thereof." (CIVIL CODE, Art. 448)

"Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor." (CIVIL CODE, Art. 546)

"Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof." (CIVIL CODE, Art. 546)

[31] "Where the builder, planter or sower has acted in good faith, a conflict of rights arises between the owners, and it becomes necessary to protect the owner of the improvements without causing injustice to the owner of the land. In view of the impracticability of creating a state of forced co-ownership, the law has provided a just solution **by giving the owner of the land the option to acquire the improvements after payment of the proper indemnity**, or to oblige the builder or planter to pay for the land and the sower the proper rent. He cannot refuse to exercise either option. It is the owner of the land who is authorized to exercise the option, because his right is older, and because, by the principle of accession, he is entitled to the ownership of the accessory thing." (*Heirs of the Late Joaquin Limense, v. vda. De Ramos*, G. R. No. 152319, 28 October 2009, 604 SCRA 599 citing *Rosales v. Castelltort*, 472 SCRA 144, 161 [2005]).

HLI, such as roads and other infrastructure, which have evidently improved the value of the property, aside from its appreciation over time. In recognizing the necessity for compensating petitioner HLI for their improvements, pegging the values to its 1989 levels will not be as severely confiscatory, if the value will be included as part of the just compensation to be paid. I would even be willing to accept the formulation proposed by Justice Brion since it would, to a lesser amount, approximates a fair market value of the property. But to simply evaluate the property's worth to outdated levels and exclude entirely the improvements made and the market appreciation of the lands in all the 17 years that petitioner HLI invested in the lands is not even supportable by the Civil Code.

Furthermore, identifying and valuing the improvements in Hacienda Luisita introduced by petitioner HLI may pose another source of conflict that may protract the case further. In addition, their naked costs and book values may fail to account for the intangible effects and the appreciation of values that may result from improvements, such as roads. To obviate these possible deficiencies in approximating the fair value of the farm lands, their real value at the time of the notice of coverage, following the DAR's formula, would render a better accounting result and preclude complicated calculations.

The approximation of fair value of the expropriated lands as just compensation is not meant to increase the burdens of payment by the qualified FWBs. **When the framers of the Constitution originally determined that just compensation, as understood in prevailing jurisprudence, was to be given to landowners in agrarian reform expropriation, the point was clarified that the amounts to be awarded to the landowners were not the exact figures that would in turn be paid by the farmers, in other words it should be subsidized**:

MR. RODRIGO: I was about to say what Commissioner Concepcion said. I just want to add that the phrase "just compensation" already has a definite meaning in jurisprudence. And, of course, I would like to reiterate the fact **that "just compensation" here is not the amount paid by the farmers. It is the amount paid to the owner,**

and this does not necessarily have to come from the farmer. **The State should subsidize this and pay a just compensation to the owner and let the tenant farmer pay the state in accordance with the capacity of the farmer. If there is a difference let the State subsidize the difference**. … (Emphasis supplied)[32]

Thus, the original intention was that there should be **no strict correspondence** between the just compensation due to the landowner and the amounts to be paid by the farmworkers:

MR. MONSOD: However, as far as the source of the repayment is concerned, it may be that the famer is not able to afford the just compensation. This is a proper area where the State can come in, if it intends to give support or subsidy. That may be called for in order that the farmer will get a chance to own a piece of land. **Besides, there might not be a strict correspondence between a just compensation for the landowner and the capacity of the farmer to pay.**

MR. DAVIDE: As a matter of fact, the opening sentence of my proposal states: "It is the duty of the State." This means that the State should first expropriate, distribute and **then the government will deal with the farmers or farmworkers as to the mode of reimbursement or refunding the amount that the government had paid to the landowner, which should be a more just and equitable arrangement for the farmers and the farm workers**. It is now a duty.

MR. MONSOD: That is why I believe that his is consistent with the comments of Commissioner Tadeo because the objective of the agrarian reform is equity. It is really not efficiency or production, but the first objective is equity. In that sense, the State may have to step in to help the farmer pay for the land. (Emphasis supplied)[33]

Hence, there was an acknowledgement of the limited capacity of the farmers to pay for value of the expropriated lands under a willing-buyer-willing seller formulation. Thus, the obligation

---

[32] Minutes of the Deliberations of the Constitutional Commission, (07 August 1986), at pp. 17-18.

[33] Minutes of the Deliberations of the Constitutional Commission, (05 August 1986), p. 703.

was imposed on the State to subsidize payments in order to support the financial arrangements of the country's agrarian reform program. The fair value paid to the landowner for the distributed lands is to be shouldered by the State, in line with the right to just compensation and the limitations on the state power of expropriation. However, a different principle governs when it is the State that will receive amortization payments from the farmers for expropriated lands, namely the policy of social justice. Hence, the State's function is to subsidize the repayment schemes and offer terms that are affordable to the farmers considering their limited capacity to pay. The burden is now on the State to consider programs that are more financially viable in order to balance the rights of the landowners to just compensation with the social justice demands of the poor farmworkers with limited capabilities to simultaneously pursue agricultural enterprises and pay for the lands.

Petitioner HLI, as a corporate landowner, must undoubtedly share the costs and burdens of the country's type of agrarian reform scheme by surrendering the agricultural lands to the government for distribution to the qualified FWBs. But in order to come within the constitutional directives on eminent domain and just compensation, its sacrifice cannot be made to be overly burdensome as to force them to receive but a small fraction of current market values for its expropriated properties. In ruling for the payment of just compensation to petitioner HLI under the fifth approach — which is pegged to the date of notice of coverage under the prevailing laws, rules and jurisprudence — the Court will perform its obligation to uphold the dictates of social justice in distributing the lands in Hacienda Luisita to the qualified FWBs, but not to the extent of sacrificing the right of landowners and consigning them to accept the cheapest value for their lands. In *Land Bank of the Philippines v. Chico*,[34] the Court, through retired Justice Eduardo Nachura, succinctly summarized this point in this wise:

The **Comprehensive Agrarian Reform Program** was undertaken primarily for the benefit of our landless farmers. However, **the**

---

[34] G.R. No. 168453, 13 March 2009, 581 SCRA 226.

undertaking should not result in the oppression of landowners by pegging the cheapest value for their lands. Indeed, the taking of properties for agrarian reform purposes is a revolutionary kind of expropriation, but not at the undue expense of landowners who are also entitled to protection under the Constitution and agrarian reform laws. Verily, to pay respondent only ₱10,000.00 per hectare for his land today, after he was deprived of it since 1994, would be unjust and inequitable. (Emphasis supplied)

Sale of Distributed Lands to Third Parties

In my earlier Dissenting Opinion, I forwarded the position that once the agricultural lands are transferred and awarded to the qualified FWBs, they, as absolute landowners, should be able to make full use of the properties, including the right to sell them, considering the lapse of the ten-year prohibition under the CARL:

In addition, considering the lapse of the prohibitive period for the transfer of agricultural lands, nothing prevents the FWBs, as direct owner-beneficiaries of the Hacienda Luisita lands, from selling their ownership interest back to petitioner HLI, or to any other interested third-party, such as but not limited to the government, LBP, or other qualified beneficiaries, among others. Considering that the Hacienda Luisita lands **were placed under CARP coverage through the SDOA scheme of petitioner HLI on 11 May 1989 and the lapse of the two-year period for the approval of its compliance, the period prohibiting the transfer of awarded lands under CARL has undeniably lapsed**. As landowner-beneficiaries, the qualified FWBs are now free to transact with third parties with respect to their land interests, regardless of whether they have fully paid for the lands or not.

To make the qualified FWBs of Hacienda Luisita wait another 10 years from the issuance of the Certificate of Land Ownership Award (CLOA) or Emancipation Patent (EP) before being allowed to transfer the land is unduly prohibitive in the instant case. The prohibitive period under the CARL was meant to provide CARP beneficiaries sufficient time to profit from the awarded lands in order to sustain their daily living, pay off the yearly amortization, and earn modest savings for other needs. This period protected them from being influenced by dire necessity and short-sightedness and consequently,

selling their awarded lands to a willing buyer (oftentimes the previous landowner) in exchange for quick money. This reasoning ordinarily may have been availing during the first few years of the CARL, but becomes an unreasonable obstruction for the qualified FWBs of Hacienda Luisita, who have been made to endure a null and void SDOA for more than 20 years.

Undeniably, some of the lands under compulsory coverage have become more viable for non-agricultural purposes, as seen from the converted lands of LIPCO and RCBC. In fact, the then Municipality of Tarlac had unanimously approved the Luisita Land Use Plan covering 3,290 hectares of agricultural lands in Hacienda Luisita, owned by, among others, petitioner HLI; and reclassifying them for residential, commercial, industrial or institutional use. The development of these kinds of land in Hacienda Luisita would better serve the local communities through the increase in economic activities in the area and the creation of more domestic employment.

Similarly, qualified FWBs should be afforded the same freedom to have the lands awarded to them transferred, disposed of, or sold, if found to have substantially greater economic value as reclassified lands. The proceeds from the sale of reclassified lands in a free, competitive market may give the qualified FWBs greater options to improve their lives. The funds sourced from the sale may open up greater and more diverse entrepreneurial opportunities for them as opposed to simply tying them to the awarded lands. Severely restricting the options available to them with respect to the use or disposition of the awarded lands will only prolong their bondage to the land instead of freeing them from economic want. Hence, in the interest of equity, the ten-year prohibitive period for the transfer of the Hacienda Luisita lands covered under the CARL shall be deemed to have been lifted, and nothing shall prevent qualified FWBs from negotiating the sale of the lands transferred to them. (Emphasis supplied)

Concerns have been expressed that such a reading of the provisions of the CARL shows an indifference to the retention limits imposed, and that strict adherence to the law and the rules would dictate that the ten-year period should commence only upon the issuance and registration of the emancipation patent or certificate of land ownership award. However, considering the protracted litigation in this case and the years that the FWBs have been made to wait, I maintain that absolute

ownership be immediately transferred to them in this case, with the full freedom to transfer or sell the properties, if they so choose.

The rationale for the 10-year prohibition on the sale of the transferred land may have been laudable at the starting point of the CARL but it comes close to oppressing agrarian reform beneficiaries 20 years hence. The aim of the prohibition then was to ensure that agricultural lands would be retained by those who were awarded by government and to ensure their continued possession and enjoyment of the property for the purpose of cultivation.[35] It was to preclude farmers from becoming "easy prey to those who would like to tempt [them] with cash in exchange for inchoate title over the same" and thus allow non-tillers of the soil to acquire title over agricultural lands.[36] Hence, lands acquired under the CARL were sought to be retained for a decade as properties for purposes of agricultural cultivation, even when they were transferred or sold to other owners. However, significant time has passed and considerable developments have occurred in the neighboring areas of formerly exclusive agricultural lands, thus requiring a review of the initial assumptions. Are the acquired lands more economically beneficial or feasible as agricultural lands? Will these properties become more financially viable for other economic uses? Do the FWBs want to remain as farmers forever, or do they want to branch out to other profitable enterprises or interests? With these compelling questions, the current realities confronting the FWBs require a careful and considerate study of the application and interpretation of the laws that would extend their maximum benefit and uphold their welfare.

---

[35] "The object of agrarian reform is to vest in the farmer-beneficiary, to the exclusion of others, the rights to possess, cultivate and enjoy the landholding for himself; hence, to insure his continued possession and enjoyment thereof, he is prohibited by law to make any form of transfer except only to the government or by hereditary succession." (*Maylem v. Ellano*, G.R. No. 162721, 13 July 2009, 592 SCRA 440, citing *Torres v. Ventura*, 187 SCRA 96 [1990])

[36] *Estate of the Late Encarnacio vda. de Panlilio v. Dizon*, G.R. No. 148777 & 157598, 18 October 2007, citing *Torres v. Ventura*, 187 SCRA 96 (1990).

The qualified FWBs in Hacienda Luisita should not only be confined to a ten-year license to farm the distributed lands, but should be able to enjoy all the rights to the land and fruits thereof. As full owners, the qualified FWBs who would be awarded lands must be afforded the entire gamut of opportunities to make use of the land as their circumstances and capabilities see fit. Nothing prevents them from continuing to till the agricultural land, whether individually or as a collective, as in the case of a cooperative. However, the same freedom should be afforded to them when they see that the best economically and financially advantageous use of the property is to sell portions of the property, especially in this case in which developments in the neighboring lots have greatly enhanced the value thereof.

To prolong for a decade the FWBs' enjoyment of the right to transfer and dispose of portions of the agricultural lands is to continue to bind them to the land. Without any assistance from the government or other civic organizations, FWBs may be awarded a possible pyrrhic legal victory, in which they own the land but without the financial means to till and cultivate it. Freeing them from the strict application of the ten-year prohibition under the CARL, will allow them full discretion to dispose and transfer portions of the property as they see fit and as are suitable to their needs. This will release locked-up capital in the soil and enable the qualified FWBs to use the proceeds thereof in other productive enterprises or in the procurement of other assets necessary for tilling the remaining land.

To insist that the rights of the FWB sleep for a period of ten years is unrealistic and may seriously deprive them of real opportunities to capitalize on and maximize the victory of direct land distribution. The restriction will limit their access to credit markets, as studies in land reform have shown. In a World Bank Policy Research Report,[37] Klaus Deininger identified the counterproductive effects of transferability restrictions:

---

[37] Klaus Deininger, Land Policies for Growth and Poverty Reduction (June 2003), pp. 122-124 available at http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2003/08/08/000094946_0307250400474/Rendered/PDF/multi0page.pdf last visited on 11 November 2011.

Governments have frequently imposed restrictions on the transferability of land through the sales market on beneficiaries of land reform or settlers on formerly state-owned land to prevent them from selling or mortgaging their land. Such a restriction could be justified as a temporary measure to prevent the beneficiaries of a land reform program from selling their land based on inadequate information or in response to temporary imperfections in product and financial markets. **Even temporary restrictions on land mortgages can be counterproductive, however, as they would deprive beneficiaries from accessing credit during the establishment phase when they need it the most**. **The literature has reported cases where farmers were forced to resort to less efficient arrangements, such as usufruct mortgaging and use of wage labor, to gain access to credit**. Investigators have also noted this problem in Korea and **in the Philippines**, **where restrictions on land market activity have limited investment**. **Land received under land reform in Chile was freely transferable, and Jarvis (1985) views this as one of the key ingredients of its success**. Precluding land reform beneficiaries from sales in the medium term would reduce efficiency by preventing adjustments in response to differential beneficiary abilities, and could, if combined with rental restrictions, cause large tracts of land to be underutilized. **The danger of beneficiaries' undervaluing their land could be reduced through other means, and the goal of preventing small landowners from selling out in response to temporary shocks would be better served by ensuring that they have access to output and credit markets and to technical assistance, and by providing safety nets during disasters to avoid distress sales**.

Restrictions on land sales markets can increase the costs associated with certain actions, but if the rewards from circumventing them are high enough, will not eliminate them. For example, owners who have no desire to farm tend to disregard the temporary prohibition of land sales in Nicaragua and circumvent it by long-term rentals with the promise to sell, which because of the associated insecurity leads to much lower land prices.

A number of countries have combined initial privatization of land with a moratorium on land sales to prevent the possibility that, after decades of collectivism, new landowners' exposure to land sales markets may cause them to dispose of their assets without being aware of their true value, leading to negative social consequences and concentration of land in the hands of speculators. The example

of some CIS countries suggests that such concerns may not be completely unfounded. Moratoriums may be justified as a way of allowing new landowners to acquire better knowledge of their assets and prevent quick sell-offs at unrealistic prices in an environment where markets work imperfectly. In Albania this restriction has been combined with a right of first refusal, whereby before consummating a land sale to an outsider, neighbors or village members must be given the opportunity to acquire the land at the same price for some period. This has few adverse consequences and can help allay communities' fears of being bought out by outsiders.

General imposition of restrictions on the transferability of land by sale is unlikely to be enforceable or beneficial. In many situations such restrictions will have little impact in practice because of the absence of land or credit markets. Where appropriate institutions for intragroup decisionmaking are available, permitting the community to limit sales and giving it the right to decide whether to eventually allow sales to outsiders may be an acceptable compromise between equity and efficiency concerns. Restrictions on the marketability of land are common in many developing countries, and many customary or communal systems prohibit the sale of land to outsiders. Some countries, such as Bolivia, have a minimum holding size that cannot be mortgaged or alienated. While these regulations impose some losses in terms of foregone credit market access, they can also help to reduce undesirable social externalities from driving some people into destitution. As long as they are the product of a conscious choice by the group and the group has clear and transparent mechanisms for changing the land tenure regime, they are unlikely to be harmful. As traditional social ties loosen or the efficiency loss from the sales restriction becomes too high, groups are likely to allow sales to outsiders in some form. The recent constitutional reform of the land rights system in Mexico allows for free sales and rental within all *ejidos* and for decisionmaking by majority vote on whether to eliminate the restriction on sales to outsiders. An initial evaluation of the reforms suggests that with appropriate technical assistance communities are clearly able to make such decisions. (Emphasis supplied; citations omitted)

Imposing a ten-year restriction will decrease the desirability of these farm lands as collateral and will even increase the transaction costs for private creditors to extend farm loans to the small qualified FWBs. In fact, in the experience of other

countries like Venezuela, the government's imposition of transferability restrictions have compelled desperate farmers to resort to selling their awarded farm lands in the black market way below their fair value and have made "poor farmers even poorer":

> For example, in an attempt to curb formerly-landless peasants selling their newly acquired lands back to the large landowners, the INTI [National Land Institute] will hold the land title in an escrow account for three years. Once three years have passed, with the new landowner living and cultivating the land during that time period, title will pass to the landowner free from any government enacted restrictions that initially made the land inalienable. According to critics of the Chavez administration, these government restrictions on land transfers are tantamount to providing only licenses to farm the land, rather than actual ownership of it. Moreover, excessive restrictions on the alienability of land may actually burden the new farmers more, especially since they will be deprived of access to credit to improve their land and expand its size when it is economically prudent. **Desperate farmers will have to resort to selling their farmland at 40 to 60 percent below its fair market value on the black market due to the government restrictions currently in place**. **And with poor farmers having to sell their land at such a low level, such a provision made to assist the destitute will unintentionally "lead to making poor farmers even poorer than they otherwise would be**."[38] (Emphasis supplied; citations omitted)

Considering the perceived inadequacy of public funds to provide the qualified FWBs access to farm credits and loans to finance the cultivation of the awarded lands, it is necessary to afford them the prospect of soliciting private funds and loans to cultivate and develop their lands by freeing them from the 10-year prohibition period. At this delayed stage in the agrarian reform program covering Hacienda Luisita after the failed stock distribution mechanism, the protection afforded by inflexible restriction on the alienability of the awarded lands is greatly outweighed by the market opportunities available to the qualified FWBs if full ownership is given to them.

---

[38] Andy Mielnik, "*Hugo Chavez: Venezuela's New Bandit or Zorro*," 14 L. & Bus. Rev. Am. 591 (2008).

The agrarian reform policies placed in the Constitution and as implemented in the CARL were laudable efforts to address social injustice. However, Fr. Joaquin Bernas, S. J., a member of the Constitutional Commission, compared the previous attempts at agrarian reform and underscored the crucial role of effective public financing in the success of the program.[39] As aptly captured by then Senator Heherson Alvarez, funding became the defining line that would determine whether the promises of agrarian reform would remain a dream or become a reality:

Where will the funding come from? Without going to an involved accounting let me say that funding for this program will come from various sources already identified, among which are proceeds from the Assets Privatization Trust, the Presidential Commission on Good Government, the Economic Support Fund, PAGCOR, Philippine Charity Sweepstakes Office, the sales of government properties in Tokyo and if need be, from foreign sources or foreign borrowings.

Funding and cost were thoroughly considered in this bill in weeks, even months, as it became clear that implementability went hand in hand with cost, our Committee, in collaboration with financing institutions of the Government, studiously pored over details that drew the line between keeping agrarian reform a dream and making it a reality.[40] (Emphasis supplied)

After the fall of the martial law regime and at the start of the new democratic society, a "window of opportunity" was presented to the State to determine and adopt the type of land and agrarian

---

[39] "FR. BERNAS: I do not see the possibility of massive land reform unless the government somehow gets involved in the financings; and I think one of the reasons the past land reform program did not have the success that it gave the impression of having was precisely the fact that there was no effective financing system for it.

So all of these will have to be necessarily packaged into the land reform program." (Minutes of the Deliberations of the Constitutional Commission, [04 August 1986], p. 648)

[40] Sponsorship speech of Sen. Heherson Alvarez, chairperson of the Committee on Land Reform, Records of the Senate dated 26 June 1988, pp. 2975-2977.

reform to be implemented.[41] The newly formed administration enjoyed a strong mandate from the people, who desired change and would support a sweeping agrarian reform measure to distribute lands. In this scenario, the State could have chosen a more revolutionary approach, introducing into its agrarian reform program a more "confiscatory element."[42] Following the examples of other revolutionary governments, the State could have resorted to simply confiscating agricultural lands under the claim of social justice and the social function of lands, with little need of payment of full just compensation.[43]

However, the framers of the Constitution and the legislators at that time chose a different path and employed a traditional

---

[41] "Successful land reforms in this century have had many common characteristics. Often there is a 'window of opportunity' where land reform is possible. Land reform efforts necessitate significant political will to commit to change. In addition, grassroots support of the populace and threat of violent uprising can be an impetus for reform. The government must also have adequate financial resources or external support for the program. Successful land reforms, such as those in Japan, Taiwan, South Korea, Mexico, and certain states in India, have involved the mandatory expropriation of land, but with reasonable (although not full market value) compensation to the landowner." (Kristen Mitchell, "Market-Assisted Land Reform in Brazil: A New Approach to Address an Old Problem," 22 N.Y.L. SCh. J. Int'l & Comp. L. 557 [2003])

[42] "The bank's mission also called attention to the problem of 'just compensation' arguing that successful agrarian reform programmes have always 'included a confiscatory element.'" (James Putzel, A CAPTIVE LAND: THE POLITICS OF AGRARIAN REFORM IN THE PHILIPPINES [Ateneo de Manila University Press 1992] p. 288)

[43] "The most successful land reforms have been traditional programs that used a mandatory redistribution mechanism, and they often occurred during periods of political instability. In these situations, authoritarian governments have been able to forcibly remove property from wealthy landowners. Based on this history, some scholars question the feasibility of mandatory redistribution in a full democracy. In particular, scholars have begun to question the contemporary applicability of the traditional land reform model in many developing countries where governments cannot afford expensive social programs, and where peace, industrialization, and foreign investment are seen as more important than shifting the power balances within the country." (Andre Sawchenko, "Choosing a Mechanism for Land Distribution in the Philippines," 9 Pac. Rim L. & Pol'y J. 681 [2000])

land reform program, where landowners are paid approximately the full and fair market value of their expropriated properties. The competing interests of the influential landowners and the peasant agrarian unrest posed serious dilemmas to the nation's leaders and, in the end, resulted in an agrarian reform program that satisfied neither group:

> This campaign against agrarian reform placed Aquino in a very difficult situation. If in the first three months of the year Aquino had been forced to move more rapidly on land reform in response to peasant demands, these recent events had forced her to hesitate. Aquino was thus faced with a dilemma: either she decree agrarian reform and face the immediate threat of destabilization by those opposed to land reform, or she leave the task to Congress and perhaps forfeit legitimacy among the rural poor thereby precipitating the long-term destabilization of her government by fueling insurgency.[44]

The country thus bound itself to finance an ambitious and expensive land acquisition and redistribution scheme without the necessary public resources to fund it. The policy choice was made based on the examples of land reform in Japan, Taiwan, and South Korea,[45] which had adequate financial resources to fund a distributive land reform program.[46] Unfortunately, the country at that time was heavily burdened by foreign debt due to the excessive borrowings made during the Marcos regime. Worse, legislators pinned their hopes of the financial sustainability of the program on the future proceeds of Marcos ill-gotten wealth to be recovered by the Presidential Commission on Good

---

[44] Simeon Gilding, AGRARIAN REFORM AND COUNTER-REFORM UNDER THE AQUINO ADMINISTRATION: STUDY IN POST-MARCOS POLITICS (1993), p.11.

[45] "MR. OPLE: … We all know, those who have taken a glance at the history of land reform in Japan, Taiwan and Korea, that the economic miracles that have taken place in those countries and have compelled the admiration of the whole world, to a large extent, were rooted in the earlier land reform program pursued by their governments. …" (Minutes of the Deliberations of the Constitutional Commission, [08 August 1986], p. 83)

[46] Kristen Mitchell, "Market-Assisted Land Reform in Brazil: A New Approach to Address an Old Problem," 22 N.Y.L. Sch. J. Int'l & Comp. L. 557 (2003).

Government. That the country is still in the process of identifying and fully recovering these moneys from Marcos and his cronies only speak of the inadequate viability of the agrarian reform program. The unrealistic and naive expectations of financial self-sufficiency doomed the full implementation of a redistributive land reform.

For the Court to suddenly shift the burden to landowners 20 years after the government has chosen market value compensation over partial or total confiscation is to treat petitioner HLI with an uneven hand. The Court cannot simply reckon the valuation of the Hacienda Luisita properties from its 1989 levels based on the unspoken premise that the government does not possess sufficient public resources to pay the approximate fair market value of the expropriated lands. The framers of the Constitution, the legislators, and even this Court have long defined the concept of just compensation when the State exercises eminent domain that should apply squarely in land reform expropriation. The only plausible justification for antedating the valuation of the land to its 1989 levels would be the inability of the State to shoulder such amount. Yet, neither the PARC nor the DAR has shown in their Motion for Reconsideration in this case that the State has utter lack of available resources to shoulder such costs or is without any available schemes that would permit a staggered and affordable payment of just compensation to the landowner. Let the Court not pre-judge the ability or willingness of the government to pay just compensation under the same formula the latter applied to other agrarian reform cases.

Without any exceptional reason or circumstance obtaining, aside from a supposed lack of government funds (which has not been alleged by government), there is no apparent justification for denying petitioner HLI the fair market value of its property. To materially uplift the conditions of qualified FWBs who have been awarded agricultural lands, at the expense of imposing upon petitioner HLI old and low valuation levels, may have been permissible during those revolutionary times of 1987, but it has now become unacceptable due to standards that Congress and this Court itself have uniformly applied.

Inapplicability of the Operative Facts Doctrine

A brief disgression. The resort to the secret voting option under the first or third approach is premised on a misapplication of the operative facts doctrine. The majority has now abandoned the actual application of the operative facts doctrine to the HLI SDOA after realizing that indeed, as I had earlier stated, the most that the FWBs can hope to control in HLI is a third of the shares. Considering the outcome of the new voting, any discussion on the operative facts doctrine would therefore be primarily academic. But the new *ponencia* continues to insist that its description of the operative facts doctrine is correct. A clarification must be made to correctly place the application of the doctrine.

The general rule is that an unconstitutional law has no force and effect — it produces no rights, imposes no duties and affords no protection.[47] Hence, the pronouncement of unconstitutionality by the Court **retroacts to all acts undertaken between the effectivity of the law and the declaration of its invalidity.**

The doctrine of operative facts serves as an **exception** to this general rule.[48] The declaration of a law or an executive act as unconstitutional is given **limited retroactive application** in cases in which acts or circumstances may have arisen in the operation of the invalidated law prior to the pronouncement of invalidity. Considerations of equity would avert the injustice of nullifying the interim effects of a person's good faith reliance on the law's provisions. The cases involving the unconstitutionality of the debt moratorium laws and the non-payment of debts during the suspensive period prior to the declaration best exemplify the application of the exceptional doctrine of operative facts.[49] In these instances, equity interests

---

[47] *Planters Products, Inc. v. Fertiphil Corp.,* G.R. No. 166006, 14 March 2008, 548 SCRA 485.

[48] *Yap v. Thenamaris Ship's Management and Intermare Maritime Agencies, Inc.*, G.R. No. 179532, 30 May 2011.

[49] *Manila Motor Co., Inc., v. Flores*, G.R. No. L-9396, 16 August 1956, 99 Phil. 738; *De Agbayani v. Philippine National Bank*, G.R. No.

of the parties surpass the concern over the retroactive application of the law's unconstitutionality.

The application of the operative facts doctrine to the invalidated SDOA is being justified on the ground that what is being nullified is the **PARC's prior approval of the SDOA**, which is an executive act. According to the argument, since petitioners HLI and the FWBs have relied for the past two decades on the validity of the SDOA and accumulated benefits therefrom, it would be prejudicial to their interests if their prior acts would be wiped clean by the nullification of the SDOA. The reasoning is strained.

No law or executive act with respect to stock distribution options has been declared unconstitutional by the Court. For the operative facts doctrine to have been applied, a law or an executive act that was made effective for a temporary period should have been invalidated by the Court for being inherently in contravention of the Constitution and, thus, without force and effect from its very inception. Except for the previous Separate Opinions of Chief Justice Renato Corona and Justice Jose Mendoza, a majority of the Court generally refrained from making any declaration as to the constitutional validity of a stock distribution option on the ground that it is not the *lis mota* of the present Petition, and that the challenge was not timely made, among others.

What the Court invalidated was the SDOA, which was simply an application of the law, and not any statute or executive act, on the basis of its having violated the spirit and intent of the existing law. The invalidated PARC Resolution that approved the SDOA of Hacienda Luisita did not rise to the level of a legislative statute or executive act, in which the operative facts doctrine would become applicable.

In *Municipality of Malabang v. Benito*,[50] the Court recognized the applicability of the operative facts doctrine to an executive

---

L-23127, 29 April 1971, 38 SCRA 429; *Republic v. Herida*, G.R. No. L-34486, 27 December 1982, 119 SCRA 411; *Republic v. Court of First Instance*, G.R. No. L-29725, 27 January 1983, 120 SCRA 154.

[50] G.R. No. L-28113, 28 March 1969, 27 SCRA 533.

order (Executive Order No. 386) issued by then President Carlos P. Garcia, creating the municipality of Balabagan out of *sitios* and *barrios* of the municipality of Malabang,[51] based on earlier jurisprudence holding that the executive did not have authority to create municipal corporations.[52] In his Concurring Opinion, then Justice Enrique Fernando made explicit the application of the doctrine of operative facts only to executive acts that are quasi-legislative in nature, specifically in the creation of municipal corporations by the executive and the subsequent declaration of unconstitutionality by the judiciary:

Nothing can be clearer therefore in the light of the two above cases than that a previous declaration of invalidity of legislative

---

[51] "Executive Order 386 'created no office.' This is not to say, however, that the acts done by the municipality of Balabagan in the exercise of its corporate powers are a nullity because the executive order 'is, in legal contemplation, as inoperative as though it had never been passed.' For the existence of Executive Order 386 is 'an operative fact which cannot justly be ignored.'" (*Id.*)

[52] "Then, also, the power of control of the President over executive departments, bureaus or offices implies no more than the authority to assume directly the functions thereof or to interfere in the exercise of discretion by its officials. Manifestly, such control does not include the authority either to abolish an executive department or bureau, or to create a new one. **As a consequence, the alleged power of the President to create municipal corporations would necessarily connote the exercise by him of an authority even greater than that of control which he has over the executive departments, bureaus or offices**. In other words, Section 68 of the Revised Administrative Code does not merely fail to comply with the constitutional mandate above quoted. Instead of giving the President less power over local governments than that vested in him over the executive departments, bureaus or offices, it reverses the process and does the exact opposite, by conferring upon him more power over municipal corporations than that which he has over said executive departments, bureaus or offices.

… … …

WHEREFORE, the Executive Orders in question are hereby declared null and void *ab initio* and the respondent permanently restrained from passing in audit any expenditure of public funds in implementation of said Executive Orders or any disbursement by the municipalities above referred to. It is so ordered." (*Pelaez v. Auditor General*, G.R. No. L-23825, 24 December 1965, 15 SCRA 569)

acts would not be bereft of legal results. **Would that view hold true of nullification of executive acts?** There might have been doubts as to the correct answer before. There is none now.

A judicial decision annulling a presidential exercise of authority is not without its effect either. That much is evident from the holding now reached. The act stricken down, whether proceeding from the legislature or the Executive, could in the language of the *Chicot County* case, be considered, prior to the declaration of invalidity, as "an operative fact and may have consequences which cannot justly be ignored."

Thus the frontiers of the law have been extended, a doctrine which to some may come into play when a statute is voided is now considered equally applicable to a Presidential act that has met a similar fate. Such a result should not occasion surprise. That is to be expected.

There would be unjustified deviation from the doctrine of separation of powers if a consequence attached to the annulment of a statute is considered as not operative where an executive order is involved. The doctrine of co-equal or coordinate departments would be meaningless if a discrimination of the above sort were considered permissible. The cognizance taken of the prior existence of an enactment subsequently declared unconstitutional applies as well to a Presidential act thereafter successfully assailed. There was a time when it too did exist and, as such, a fact to be reckoned with, **though an infirm source of a legal right, if, as subsequently held, considered violative of a constitutional command.** (Emphasis supplied)

The PARC Resolution, while an executive act, is not an exercise of a quasi-legislative power by the executive, but a mere wrongful application of the law on stock distribution options under the CARL. The CARL provided the norms used to evaluate any stock distribution option and this was applied by the PARC in deciding whether to approve the SDOA. Hence, it was the interpretation of the PARC when it mistakenly approved the SDOA of petitioner HLI and the FWBs that has been declared invalid, and not the enabling law itself. The source of infirmity in this case lies not in the provisions of the CARL allowing stock distribution options, but in the erroneous approval previously granted by the PARC. The good faith reliance of petitioner

HLI with respect to the approval (albeit erroneous) of its SDOA does not justify the operation of the doctrine, since no less than this Court has found that the SDOA and its approval were in utter violation of the intent of the CARL on stock distribution options.

Furthermore, it would be incongruous to avoid the constitutionality issue of the stock distribution mechanism under the CARP on the ground that it is not the *lis mota* of the case, yet at the same time, invoke the operative facts doctrine. There is simply no room for the application of operative facts doctrine, absent an unconstitutionally invalid legislative or executive act.

The operative facts doctrine can only come into play as a rule of **equity** in cases where there is a vacuum in the law created by the subsequent declaration of nullity by the Court. In those instances where the operative facts doctrine was used (*i.e.*, debt moratorium cases), the unraveling of the effects of the declaration of unconstitutionality resorted to a dearth in the law and the need for the courts to provide guidance as to its retroactive application. **In this case, no such vacuum exists, as in fact the CARL itself provides for the ultimate consequence when a stock distribution plan or option is eventually invalidated - direct land distribution**.[53] The Court therefore need not exercise its equity jurisdiction.

Guiding Principles for the Operational Steps

I maintain that the **outright distribution of the agricultural lands in Hacienda Luisita to the qualified FWBs** should be immediately ordered owing to the absolute nullification of the SDOA. Considering the multilayered issues of implementation surrounding the case and imposed on the DAR, it is best to offer some guiding principles and values when executing the Court's orders in this landmark case.

---

[53] "If within two (2) years from the approval of this Act, the land or stock transfer envisioned above is not made or realized or the plan for such stock distribution approved by the PARC within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act." (CARL, Sec. 31)

1. *Scope of Covered Lands*

DAR shall first determine which of the lands in Hacienda Luisita previously owned by both petitioner HLI and TADECO should be included in the compulsory coverage, including the identification of the improvements previously introduced by the corporate landowners.

As previously discussed,[54] the nullification of the SDOA brings into question the preliminary arrangements made by petitioner HLI, TADECO and the qualified FWBs, specifically the unilateral decision of TADECO to segregate and select which of its lands (totaling 6,443 hectares) will be transferred to petitioner HLI for purposes of the SDOA (4,916 hectares), and which of those it will keep for itself (1,527 hectares). Whether the sizeable area of 1,527 hectares of farm lands should have been excluded from the SDOA at the time of its execution on 11 May 1989, is best determined by the DAR.

The lands determined by the DAR to be subject of compulsory coverage shall, nonetheless, exclude the following lands:

---

[54] "However, as pointed out by private respondent FARM, there were other lots in Hacienda Luisita that were not included in the stock distribution scheme, but should have been covered under the CARP. TADECO, as the previous agricultural landowner, preempted the determination of the lands to be covered under the CARP by selecting which of the agricultural lands it would transfer to petitioner HLI and consequently, subject to the SDOA. The DAR never approved the exclusion of the other lands that TADECO kept for itself. It seems incongruous to the intention of the CARP under a stock distribution agreement, to let the corporate landowner choose and select which of its agricultural lands would be included and which ones it would retain for itself. Serious doubts are entertained with respect to the process of inclusion and exclusion of agricultural lands for CARP coverage employed by the corporate landowner, especially since the excluded land area (1,527 hectares) involves one-third the size of the land TADECO surrendered for the SDOA (4,916 hectares). The exclusion of a substantial amount of land from the SDOA is highly suspicious and deserves a review by the DAR. Whether these lands were properly excluded should have been subject to the DAR's determination and validation. Thus, the DAR is tasked to determine the breadth and scope of the portion of the agricultural landholdings of TADECO and petitioner HLI that should have been the subject of CARP coverage at the time of the execution of the SDOA on 11 May 1989." (Dissenting Opinion)

a. The 300 out of the 500 hectares of converted lands, which are now titled in the names of LIPCO and RCBC, both of whom are considered innocent purchasers in good faith;

b. The 80 hectares of land purchased and acquired by the Bases Conversion Development Authority for the construction of a portion of the Subic-Clark-Tarlac Expressway; and

c. All homelots already awarded to the qualified FWBs.

2. *Preliminary Valuation of the Lands*

Based on its own rules and formula, DAR shall give a preliminary and objective valuation of the covered lands, whose values shall be pegged to the time of the Notice of Coverage issued on **02 January 2006**. This valuation is, of course, subject to a determination of just compensation by the proper court in case of disagreement.

Accounting and Compensation

Thereafter, DAR shall also make a factual determination of the values and amounts of benefits actually received by the qualified FWBs under the SDOA, including but not limited to the following:

a. Three percent (3%) total gross sales from the production of the agricultural lands

b. Homelots actually awarded to qualified FWBs

c. Any dividends received by qualified FWBs

d. The proceeds of the sale of the 300-hectare converted land and SCTEX land, if any, distributed to the FWBs

However, petitioner HLI shall have no claim over any salary, wage or benefit given to the farmworker, and neither shall the latter, qualified or otherwise, be required to return the same, since they received those benefits for services rendered in an employee-employer relationship, and not under the relationship established under the SDOA. However, all FWBs shall surrender all their shareholdings in petitioner HLI to the corporation.

Thereafter, the DAR shall calculate the amounts due to each of the parties, namely, petitioner HLI, Luisita Realty Corporation (LRC) and the qualified FWBs. These amounts shall be offset one another for purposes of convenience in order to arrive at a single amount to be paid:

Amounts due to petitioner HLI/LRC	Amounts due to qualified FWBs
a. The value of the total lands subject of compulsory coverage, excluding the 300-hectare converted lands of LIPCO and RCBC and the 80 hectares of SCTEX lands;	
b. The value of the 200-hectare converted lands, which shall be awarded to LRC;	
c. The 3% of the purchase price of the 300-hectare converted lands given to FWBs;	a. The purchase price of the 300-hectare converted lands; and
d. The 3% of the purchase price of the SCTEX lands, and the cost of titling and other expenses;	b. The price paid by the government for the 80-hectare SCTEX lands.
e. The 3% of total gross sales from the production of agricultural lands given to the FWBs;	
f. The values of the homelots awarded to the FWBs;	
g. Any dividend actually received by the FWBs.	

After determining the just compensation due to petitioner HLI, TADECO and LRC, the DAR shall settle the amount with the qualified FWBs under an affordable program or scheme

that takes cognizance of their ability to pay, under the existing rules and procedures.

3. *Support Services*

In order to ensure that the qualified FWBs can maximize the use of the lands awarded to them, the DAR, in the performance of its mandate, shall provide support services to them, including but not limited to adequate agricultural credit, technical assistance, and enhanced market infrastructures to improve the delivery and sale of their agricultural produce.

True agrarian reform must not be limited to the equitable redistribution of lands, but shall encompass the extension of supplemental public services that will enable the FWBs of Hacienda Luisita to realize and capitalize on the full potential of the lands given to them.

EPILOGUE

Twenty years after the CARL was issued and the hope of farmers and farmworkers across the country was renewed, the fulfillment of the promise of a sweeping agrarian reform program in the country to spur agricultural and economic growth has remained elusive. Although there have been instances of a successful redistribution of land, they are too few to have had a positive and appreciable impact in uplifting farmers across the nation. The main obstacles to the success of our agrarian reform program are its lack of financial viability and the lack of adequate public resources to ensure full implementation.

The wide gap between the just compensation due to the landowner and the ability of the farmer-beneficiaries to pay was intended to be subsidized by the State.[55] Despite the identification of the public resources that would be used by the

---

[55] "MR. RODRIGO: I was about to say what Commissioner Concepcion said. I just want to add that the phrase 'just compensation' already has a definite meaning in jurisprudence. And, of course, I would like to reiterate the fact that 'just compensation' here is not the amount paid by the farmers. It is the amount paid to the owner, and this does not necessarily have to come

government under the CARL,[56] these proved elusive or insufficient to successfully finance the costly agrarian reform program in the entire country. The result was the stifling of crucial developments in agriculture in the rural areas, and continuing agrarian unrest among the farmer-beneficiaries, who have remained destitute and unable to improve their families' quality of life.

In doing right by the qualified FWBs in Hacienda Luisita by ordering the distribution of the land in this case, the government must now face the current economic difficulties and devise creative solutions and programs for moving forward. The legal victory that the qualified FWBs have secured from this Court in awarding them the lands that they have tilled will only be felt if the State,

---

from the farmer. **The State should subsidize this and pay a just compensation to the owner and let the tenant farmer pay the state in accordance with the capacity of the farmer. If there is a difference let the State subsidize the difference**. ..." (Minutes of the Deliberations of the Constitutional Commission, [07 August 1986], at pp. 17-18)

[56] "The initial amount needed to implement this Act for the period of ten (10) years upon approval hereof shall be funded from the Agrarian Reform Fund created under Sections 20 and 21 of Executive Order No. 229.

Additional amounts are hereby authorized to be appropriated as and when needed to augment the Agrarian Reform Fund in order to fully implement the provisions of this Act.

Sources of funding or appropriations shall include the following:

a) Proceeds of the sales of the Assets Privatization Trust;

b) All receipts from assets recovered and from sales of ill-gotten wealth recovered through the Presidential Commission on Good Government;

c) Proceeds of the disposition of the properties of the Government in foreign countries;

d) Portion of amounts accruing to the Philippines from all sources of official foreign grants and concessional financing from all countries, to be used for the specific purposes of financing production credits, infrastructures, and other support services required by this Act;

e) Other government funds not otherwise appropriated.

All funds appropriated to implement the provisions of this Act shall be considered continuing appropriations during the period of its implementation." (CARL, Sec. 63)

especially the DAR, extends all the necessary support that will allow them to maximize the agricultural outputs of the lands. Long-term vision, responsive action plans and strong political will are necessary to realize the social justice tenets of the Constitution in the country's agrarian reform program. These tenets are aimed at ending economic disparities in the rural areas and affording Filipino farmer-beneficiaries the tools required to become more productive citizens. There is no better opportunity to start on this path than with full support for the qualified FWBs of Hacienda Luisita. This support should include full freedom to make use of the land by allowing the qualified FWBs to deal with them as any property owner can, including the right to immediately transfer the same.

DISPOSITIVE PORTION

Although I agree with the majority with respect to the revocation of the Stock Distribution Option Agreement, the immediate compulsory coverage of the agricultural lands in Hacienda Luisita under the Comprehensive Agrarian Reform Law, and their immediate distribution to the qualified farmworker-beneficiaries, I maintain my dissent regarding the following: (a) the amount of just compensation to be awarded to petitioner Hacienda Luisita, Inc., and Tarlac Development Corporation should be reckoned from the fair market value under the law, rules and jurisprudence, specifically as of the date of the issuance of the Notice of Coverage on 02 January 2006; (b) the 10-year limitation on the transferability of the awarded agricultural lands is no longer applicable, and the qualified farmworker-beneficiaries should be allowed to sell or transfer the properties, if they so desire; and (c) that the benefits received by the qualified FWBs be offset by the amount of just compensation due to petitioner Hacienda Luisita, Inc., Tarlac Development Corp., and Luisita Realty, Corp.

Thus, I maintain my previous Opinion on the following points:

1. Agricultural lands covered by the Comprehensive Agrarian Reform Law and previously held by the Tarlac Development Corp., including those transferred to petitioner Hacienda Luisita, Inc., shall be subject to compulsory coverage and immediately

distributed to the 6,296 original qualified farmworker-beneficiaries who signed the Stock Distribution Option Agreement; or, if deceased, their heirs, subject to the disposition of the converted lands expressed in the paragraph after the next, but shall necessarily exclude only the following:

a. 300 out of the 500 hectares of converted lands, now in the name of Luisita Industrial Park Corp., (LIPCO) and Rizal Commercial Banking, Corp., (RCBC);

b. 80 hectares of Subic-Clark-Tarlac Expressway (SCTEX) land; and

c. homelots already awarded to the qualified FWBs.

2. Petitioner HLI and Luisita Realty, Inc., shall be entitled to the payment of just compensation for the agricultural lands and the 200-hectare converted lands, which shall be based on their fair market value as of 02 January 2006, to be determined by the Department of Agrarian Reform; petitioner HLI shall not be held liable for the payment of any rentals for the use of the property with final turn-over of the lands to the qualified FWBs.

3. All shares of stock of petitioner HLI issued to the qualified FWBs, as beneficiaries of the direct land transfer, are nullified; and all such shares are restored to the name of TADECO, insofar as it transferred assets and liabilities to petitioner HLI as the spin-off corporation; but the shares issued to non-qualified FWBs shall be considered as additional and variable employee benefits and shall remain in their names.

4. Petitioner HLI shall have no claim over any of the salaries, wages and benefits given to farmworkers; and neither shall the farmworkers, qualified or not, be required to return the same, having received them for services rendered in an employer-employee relationship.

5. Petitioner HLI shall be liable to the qualified FWBs for the value received for the sale or transfer of the 300 out of the 500 hectares of converted lands, specifically the equivalent value of 12,000,000 shares of Centennary Holdings; for the 300-hectare

land assigned, but not less than ₱750,000,000; and the money received from the sale of the SCTEX land, less taxes and other legitimate expenses normally associated with the sale of land.

6. Petitioner HLI's liability shall be offset by payments actually received by qualified FWBs under the SDOA, namely:

a. Three percent (3%) total gross sales from the production of the agricultural lands;

b. The value of the homelots awarded to qualified FWBs;

c. Any dividend given to qualified FWBs; and

d. Proceeds of the sale of the 300-hectare converted land and SCTEX land, if any, distributed to the FWBs.

The DAR is **DIRECTED** to determine the scope of TADECO's and/or petitioner HLI's agricultural lands that should have been included under the compulsory coverage of CARL at the time the SDOA was executed on 11 May 1989, but excluding those directed to be excluded as stated above. This means that the unilateral designation of those lands by TADECO, of which only 4,916 hectares were counted as the farmers' agricultural land contribution to the SDO is to be disregarded and a new assessment is to be made by the DAR.

The DAR is also **ORDERED** to monitor the land distribution and extend support services that the qualified farmworker-beneficiaries may need in choosing the most appropriate and economically viable option for land distribution, and is further **REQUIRED** to render a compliance report on this matter one-hundred eighty (180) days after receipt of this Order. The compliance report shall include a determination of Hacienda Luisita's exact land area that shall be subject to compulsory coverage in accordance with the Decision.

Petitioner HLI is **REQUIRED** to render a complete accounting and to submit evidentiary proof of all the benefits given and extended to the qualified FWBs under the void SDOA – including but not limited to the dividends received, homelots awarded, and proceeds of the sales of the lands, which shall serve as bases for the offset of petitioner HLI's liabilities to the qualified

FWBs, and its accounting shall be subject to confirmation and verification by the DAR.

All titles issued over the 300-hectare converted land, including those under the names of petitioners-in-intervention Rizal Commercial Banking Corporation and Luisita Industrial Park Corporation and those awarded as homelots, are hereby **AFFIRMED** and **EXCLUDED** from the Notice of Compulsory coverage. The 200-hectare converted lands transferred to Luisita Realty, Inc., by petitioner Hacienda Luisita, Inc. is deemed covered by the direct land transfer under the CARP in favor of the qualified FWBs, subject to the payment of just compensation.

INDEX

INDEX

ACTIONS

Venue of real actions — Real action shall be commenced and tried in the proper court that has territorial jurisdiction over the area where the real property or any part thereof is situated. (Rep. of the Phils. *vs*. Sps. Guilalas, G.R. No. 159564, Nov. 16, 2011) p. 220

ADMINISTRATIVE LAW

Administrative cases — Must be established and proved with sufficient competent evidence. (Concerned Citizen *vs*. Divina, A.M. No. P-07-2369 (Formerly OCA IPI No. 06-2444-P), Nov. 16, 2011) p. 166

— Must not be based on mere allegation, conjectures and suppositions. *(Id.)*

ADMINISTRATIVE PROCEEDINGS

Burden of proof — Complainant has the burden of proving by substantial evidence the allegations in his/her complaint. (Atty. Ala *vs*. Judge Peras, A.M. No. RTJ-11-2283 [Formerly OCA I.P.I. No. 10-3478-RTJ], Nov. 16, 2011) p. 192

Quantum of proof required for a finding of guilt — Length of service and subsequent favorable performance ratings, considered. (Concerned Citizen *vs*. Divina, A.M. No. P-07-2369 [Formerly OCA IPI No. 06-2444-P], Nov. 16, 2011) p. 166

— Substantial evidence or such evidence as a reasonable mind may accept as adequate to support a conclusion. *(Id.)*

AMPARO, WRIT OF

Petition for — Application; elucidated. (In the Matter of the Petition for the Writ of Amparo and Habeas Data in Favor of Noriel H. Rodriguez *vs*. Macapagal Arroyo, G.R. No. 191805, Nov. 15, 2011) p. 84

— Right to security includes positive obligation of the government to investigate. *(Id.)*

Writ of — An extraordinary and independent remedy that provides rapid judicial relief, as it partakes of a summary proceeding that requires only substantial evidence to make the appropriate interim and permanent reliefs available to the petitioner. (In the Matter of the Petition for the Writ of Amparo and Habeas Data in Favor of Noriel H. Rodriguez *vs*. Macapagal Arroyo, G.R. No. 191805, Nov. 15, 2011) p. 84

ANTI-PORNOGRAPHY LAW (P.D. NO. 969)

Forfeiture of all materials involved — The decree mandates the confiscation and destruction of pornographic materials involved in violation of Article 201 of the Revised Penal Code even if the accused was acquitted. (Nogales *vs*. People of the Phils. and Presiding Judge Tita Bughao Alisuag, G.R. No. 191080, Nov. 21, 2011) p. 486

APPEALS

Factual findings of the Court of Appeals — The Court will not review the findings of fact of the Court of Appeals; exceptions, not present. (Co *vs*. Vargas, G.R. No. 195167, Nov. 16, 2011) p. 463

Factual findings of the Court of Appeals and Regional Trial Court upon the question of just compensation — Entitled to the greatest respect and are binding on the court. (Rep. of the Phils. *vs*. Sps. Tan Song Bok and Josefina S. Tan, G.R. No. 191448, Nov. 16, 2011) p. 337

Factual findings of the trial court — Entitled to great weight on appeal and should not be disturbed except for strong and valid reasons, because the trial court is in a better position to examine the demeanor of the witnesses while testifying. (Cua *vs*. People of the Phils., G.R. No. 166847, Nov. 16, 2011) p. 234

(Rep. of the Phils. *vs*. Sps. Leon and Eulalia Sellera Guilalas, G.R. No. 159564, Nov. 16, 2011) p. 220

Findings of fact in administrative proceedings — General rule does not apply when it is clear that a palpable mistake was committed by the quasi-judicial tribunal which needs rectification. (Functional, Inc. *vs*. Granfil, G.R. No. 176377, Nov. 16, 2011) p. 279

Petition for review on certiorari to the Supreme Court under Rule 45 — Covers only questions of law; exceptions are: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurb, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record. (Cua *vs*. People of the Phils., G.R. No. 166847, Nov. 16, 2011) p. 234

— Even in expropriation cases, questions of facts are beyond the pale of Rule 45 of the Rules of Court as a petition for review may only raise questions of law. (Rep. of the Phils. *vs*. Sps. Tan Song Bok and Josefina S. Tan, G.R. No. 191448, Nov. 16, 2011) p. 337

— No compelling reason to relax or suspend the procedural rules in the interest of substantial justice in case at bar. (People of the Phils. *vs*. CA, G.R. No. 187409, Nov. 16, 2011) p. 330

— Question of fact which requires a review of the evidence presented may not be raised. (Co *vs*. Vargas, G.R. No. 195167, Nov. 16, 2011) p. 463

ARREST

Legality of — The illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error. (People of the Phils. *vs.* POI Trestiza, G.R. No. 193833, Nov. 16, 2011) p. 420

ATTORNEYS

Administrative case against attorneys — No denial of due process despite the absence of adversarial trial-type proceeding as long as the parties were afforded opportunity to be heard and submit evidence. (Bayonla *vs.* Atty. Reyes, A.C. No. 4808, Nov. 22, 2011) p. 500

— Not affected by pendency of criminal charges. *(Id.)*

Attorney-client relationship — Can exist notwithstanding the close friendship between the complainant and the respondent lawyer. (Castro-Justo *vs.* Atty. Galing, A.C. No. 6174, Nov. 16, 2011) p. 139

— Highly fiduciary in nature; elucidated. (Freeman *vs.* Atty. Reyes, A.C. No. 6246 (Formerly CBD No. 00-730), Nov. 15, 2011) p. 47

— The relationship is established from the moment legal advice was sought from the lawyer. (Castro-Justo *vs.* Atty. Galing, A.C. No. 6174, Nov. 16, 2011) p. 139

Code of Professional Responsibility — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. (Freeman *vs.* Atty. Reyes, A.C. No. 6246 [Formerly CBD No. 00-730], Nov. 15, 2011) p. 47

— A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable. (Estavillo *vs.* Attys. Gemmo G. Guillermo and Erme S. Labayog, A.C. No. 6899, Nov. 16, 2011) p. 146

— Every case a lawyer accepts deserves his full attention, skill and competence, regardless of its importance and whether he accepts it for a fee or for free. *(Id.)*

Disbarment or suspension — Public interest is its primary objective and the real question for determination is whether or not the attorney is still fit to be allowed the privileges as such. (Freeman *vs*. Atty. Reyes, A.C. No. 6246 (Formerly CBD No. 00-730), Nov. 15, 2011) p. 47

Duties — When a lawyer receives money from the client for a particular purpose, the lawyer is bound to render an accounting. (Freeman *vs*. Atty. Reyes, A.C. No. 6246 (Formerly CBD No. 00-730), Nov. 15, 2011) p. 47

Gross misconduct — Failure to account for and to return money of the client. (Bayonla *vs*. Atty. Reyes, A.C. No. 4808, Nov. 22, 2011) p. 500

Prohibition against conflicting interest — Absence of monetary consideration does not exempt lawyers from complying therewith. (Castro-Justo *vs*. Atty. Galing, A.C. No. 6174, Nov. 16, 2011) p. 139

— Founded on principles of public policy and good taste; rationale. *(Id.)*

— Non-compliance therewith is not only a malpractice but also constitutes violation of the confidence resulting from the attorney-client relationship. *(Id.)*

ATTORNEY'S FEES

Award of — Concept of attorney's fees in the context of Article 111 of the Labor Code, expounded. (Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union and Eduardo Boreta *vs*. Mla. Water Co., Inc., G.R. No. 174179, Nov. 16, 2011) p. 262

— Extraordinary concept; in the award thereof, there need not be any showing that the employer acted maliciously or in bad faith; rationale. *(Id.)*

— Two commonly accepted concepts; explained. *(Id.)*

BILL OF RIGHTS

Right of the accused to be informed of the nature and cause of accusation — It is imperative that the complaint or

information filed against the accused be complete to meet its objectives. (People of the Phils. *vs*. Crisostomo, G.R. No. 183090, Nov. 14, 2011) p. 16

CERTIORARI

Petition for — As a rule, reassessment of the evidence is not proper; exception to the rule, applied. (Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union and Eduardo Boreta *vs*. Mla. Water Co., Inc., G.R. No. 174179, Nov. 16, 2011) p. 262

— Only questions of law may be entertained by the Supreme Court; application of any of the exceptions, not warranted. (Rep. of the Phils. *vs*. Sps. Leon and Eulalia Sellera Guilalas, G.R. No. 159564, Nov. 16, 2011) p. 220

— Question of fact distinguished from question of law. *(Id.)*

— Restricted to resolving errors of jurisdiction and grave abuse of discretion, and not errors of judgment. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011) p. 518

— Supreme Court has the discretion to determine whether a petition was filed under Rule 45 or 65 of the Rules of Court. (Mendoza *vs*. Familara and COMELEC, G.R. No. 191017, Nov. 15, 2011) p. 70

CLERKS OF COURT

Duties — It is the duty of the Clerk of Court to plan, direct, supervise, and coordinate sheriffs' activities of all divisions, sections and units in the Office of the Clerk of Court. (Atty. Ala *vs*. Judge Peras, A.M. No. RTJ-11-2283 (Formerly OCA I.P.I. No. 10-3478-RTJ), Nov. 16, 2011) p. 192

COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. NO. 6657)

Application of — All the benefits and homelots received by all the farmworker-beneficiaries shall be respected with no obligation to refund or to return them. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011) p. 518

— Allowing corporate landholders to continue owning the land by the mere expedient of divesting a proportion of their capital stock, equity or participation in favor of their workers or other qualified beneficiaries defeats the right of farmers and regular farmworkers who are landless to own directly or collectively the lands they till. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Corona, C.J., concurring and dissenting opinion*) p. 518

— Consequence of the revocation of the stock distribution plan; principle of set-off or compensation, applied. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Brion, J., separate concurring and dissenting opinion*) p. 518

— Control over the agricultural lands must always be in the hands of the qualified farmworker-beneficiaries. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011) p. 518

— Interest may be awarded when there is delay in the payment of just compensation. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Brion, J., separate concurring and dissenting opinion*) p. 518

— Matters involving strictly the administrative implementation and enforcement of agrarian reform laws are within the jurisdiction of the Department of Agrarian Reform. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011) p. 518

— Once final and executory, the conversion order can no longer be questioned. *(Id.)*

— Petitioner Hacienda Luisita, Inc.'s continued possession of the land does not negate taking and transferring of ownership to the farmworker-beneficiaries on November 21, 1989; petitioner Hacienda Luisita, Inc. deemed possessor in good faith. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Corona, C.J., concurring and dissenting opinion*) p. 518

— Presidential Agrarian Reform Council's revocation of the approval of the stock distribution plan carried with it the nullification of the stock distribution option agreement, and the restoration of the parties to their respective situations prior to the execution of the nullified agreement. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Brion, J., separate concurring and dissenting opinion*) p. 518

— Proceeds of the sale of the 500 hectare converted land and of the 80.51 hectare land used for the SCTEX should be given to the qualified farmworker-beneficiaries less taxes, and expenses relating to the transfer of titles as well as legitimate corporate expenses. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011) p. 518

(Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Brion, J., separate concurring and dissenting opinion*) p. 518

— Retention limits; 10-year prohibitive period reckoned from the issuance of the emancipation patent or certificate of land ownership award, and not the placing of the agricultural lands under CARP coverage. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011) p. 518

— Revocation of the approval of the stock distribution plan, affirmed; grounds, cited. *(Id.)*

— Rule on retention limits not applicable to stock distribution scheme but only to the buy-back scheme. *(Id.)*

— The Department of Agrarian Reform's land valuation is only preliminary and is not final and conclusive upon the landowner. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011) p. 518

— The farmworkers-beneficiaries are entitled to the proceeds of the sale of the 300 hectares land; expenditures for legitimate corporate purposes, not deductible. (Hacienda

Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Brion, J., separate concurring and dissenting opinion*) p. 518

— The rights, obligations and remedies of the parties to the stock distribution option agreement embodying the stock distribution plan are primarily governed by R.A. No. 6657 and petitioner Hacienda Luisita, Inc. cannot shield itself from Comprehensive Agrarian Reform Program coverage under the convenience of being a corporate entity. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011) p. 518

— Transfer of the land interests to third parties regardless of whether they have fully paid for the lands or not is a violation of the law. *(Id.)*

— Where the farmworker-beneficiaries are neither the collective naked owners nor the collective beneficial owners of the land they till, there can be no valid compliance with the Constitution's objective of collective ownership by farmers and farmworkers. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Corona, C.J., concurring and dissenting opinion*) p. 518

Just compensation — Factors in arriving at just compensation for landowners; general formula, elucidated. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Sereno, J., concurring and dissenting opinion*) p. 518

— Hacienda Luisita, Inc. is entitled to just compensation based on the market value of land as of November 21, 1989; the farmworker-beneficiaries should return the shares of stock which they received. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Corona, C.J., concurring and dissenting opinion*) p. 518

— Just compensation in expropriations should approximate equivalent value that is real, substantial, full and ample; the period of taking is reckoned from the date of the

notice of coverage. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Sereno, J., concurring and dissenting opinion*) p. 518

— Qualified farmworker-beneficiaries in Hacienda Luisita should be freed from the strict application of the ten-year prohibition under the law and should be allowed full discretion to dispose of the properties as they see fit. *(Id.)*

— Rights of landowners; the taking of properties for agrarian reform purposes should not result in the oppression of landowners by pegging the cheapest value for their lands. *(Id.)*

— The date of the notice of coverage is determinative of the just compensation that the landowner is entitled to for its expropriated lands. *(Id.)*

— The nature and character of land at the time of its taking are the principal criteria to determine just compensation to the landowner. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Bersamin, J., concurring and dissenting opinion*) p. 518

(Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Sereno, J., concurring and dissenting opinion*) p. 518

— The payment of just compensation to petitioner Hacienda Luisita, Inc. must be pegged to the date of notice of coverage under the prevailing laws, rules and jurisprudence. *(Id.)*

— The petitioner should be compensated for the value of the homelots granted to the farmworkers-beneficiaries pursuant to the discredited stock distribution plan. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Bersamin, J., concurring and dissenting opinion*) p. 518

— The reckoning date for purposes of determining just compensation should be left to the Department of Agrarian Reform and Landbank, and to the Special Agrarian Court in case of disagreement. *(Id.)*

— The value of the land at the time of the taking, not at the time of the rendition of judgment, should be taken into consideration in computing just compensation for expropriation proceedings. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Sereno, J., concurring and dissenting opinion*) p. 518

Section 27 of — Transferability of awarded lands; construed. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Brion, J., separate concurring and dissenting opinion*) p. 518

Section 31 of — Construed. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011) p. 518

— Unduly prevents the farmworker-beneficiaries from owning directly or collectively the lands they till. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Corona, C.J., concurring and dissenting opinion*) p. 518

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

"Buy-bust" operation — Legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors. (People of the Phils. *vs*. Salcena *y* Victorino, G.R. No. 192261, Nov. 16, 2011) p. 357

— The prosecution evidence, when placed under "severe testing" does not prove with moral certainty that a legitimate buy-bust operation was conducted against the appellant. *(Id.)*

Chain of custody rule — Each and every link in the custody must be accounted for, from the time the drug was retrieved from the suspect during the buy-bust operation to its submission to the forensic chemist until its presentation before the trial court. (People of the Phils. *vs*. Salcena *y* Victorino, G.R. No. 192261, Nov. 16, 2011) p. 357

— 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. (People of the Phils. *vs*. Bara *y* Asmad, G.R. No. 184808, Nov. 14, 2011) p. 39

Illegal sale of prohibited drugs — Elements: (1) that the transaction or sale took place; (2) the corpus delicti or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified. (People of the Phils. *vs*. Salcena *y* Victorino, G.R. No. 192261, Nov. 16, 2011) p. 357

(People of the Phils. *vs*. Bara *y* Asmad, G.R. No. 184808, Nov. 14, 2011) p. 39

CONSPIRACY

Existence of — May be implied from the series of events that transpired before, during or after the kidnapping incident. (People of the Phils. *vs*. POI Trestiza, G.R. No. 193833, Nov. 16, 2011) p. 420

CORPORATIONS

Doctrine of piercing the veil of corporate entity — Absent any allegation or proof of fraud or other public policy considerations, the existence of interlocking directors, officers and stockholders is not enough justification to pierce the veil of corporate fiction. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011) p. 518

COURT PERSONNEL

Conduct — Every act and word of all court personnel should be characterized by prudence, restraint, courtesy and diligence. (Concerned Citizen *vs*. Divina, A.M. No. P-07-2369 [Formerly OCA IPI No. 06-2444-P], Nov. 16, 2011) p. 166

— Must at all times be characterized by propriety and decorum, and, above all, be beyond suspicion. (Atty. Ala *vs*. Judge Peras, A.M. No. RTJ-11-2283 [Formerly OCA I.P.I. No. 10-3478-RTJ], Nov. 16, 2011) p. 192

— Respondent has shown her lack of dedication in the performance of her duties and failed to live up to the standard of efficiency and professionalism that the Judiciary demands from its court personnel. (Concerned Citizen *vs*. Divina, A.M. No. P-07-2369, Nov. 16, 2011) p. 166

Court stenographers — They ought to know that they perform an important role in running the machinery of our trial court system and that TSNs are vital for the speedy disposition of cases. (Concerned Citizen *vs*. Divina, A.M. No. P-07-2369 (Formerly OCA IPI No. 06-2444-P), Nov. 16, 2011) p. 166

Standard of ethics and morality — Court employees are required to maintain the people's faith in the courts as dispensers of justice whose image is mirrored by their actuations. (Oñate *vs*. Imatong, A.M. No. P-11-3009 (Formerly A.M. OCA I.P.I. No. 10-3386-P), Nov. 16, 2011) p. 184

DENIAL OF THE ACCUSED

Defense of — Cannot prevail over the positive testimony of the children. (People of the Phils. *vs.* Subesa *y* Moscardon, G.R. No. 193660, Nov. 16, 2011) p. 403

DOUBLE JEOPARDY

Existence of — A verdict of acquittal is immediately final, and a re-examination of the merits of such acquittal will put the accused in jeopardy for the same offense. (People of the Phils. *vs*. CA, G.R. No. 187409, Nov. 16, 2011) p. 330

ELECTIONS

Three-consecutive term limit rule — When not applicable. (Mendoza *vs*. Familara and COMELEC, G.R. No. 191017, Nov. 15, 2011) p. 70

EMPLOYMENT, KINDS OF

Probationary employment — Being a regular employee whose termination was illegal, respondent is entitled to the twin relief of reinstatement and backwages granted by the Labor Code; award of attorney's fees is also justified. (Tamson's Enterprises, Inc. *vs*. CA, G.R. No. 192881, Nov. 16, 2011) p. 384

— Even if probationary employees do not enjoy permanent status, they are accorded the constitutional protection of security of tenure. *(Id.)*

— The standards to be met must be made known to the probationary employee at the time of her employment. *(Id.)*

— There is probationary employment where the employee upon his engagement is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment based on reasonable standards made known to him at the time of engagement. *(Id.)*

— Where no standards are made known to the employee at the time of his or her employment, he or she shall be deemed a regular employee. *(Id.)*

EMPLOYMENT, TERMINATION OF

Abandonment — Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore; fact that respondent prayed for his reinstatement speaks against any intent to sever the employer-employee relationship with his employer. (Functional, Inc. *vs*. Granfil, G.R. No. 176377, Nov. 16, 2011) p. 279

— An employer cannot expediently escape liability for illegal dismissal by claiming that employee abandoned his work. *(Id.)*

— Being a matter of intention, abandonment cannot be inferred or presumed from equivocal acts; elements that must concur are: (1) failure to report for work or absence without valid or justifiable reason and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. *(Id.)*

— Employee's refusal to report for work after an order of reinstatement has been issued cannot be considered as abandonment. (Dup Sound Phils. and/or Manuel Tan *vs*. CA and Cirilo A. Pial, G.R. No. 168317, Nov. 21, 2011) p. 472

— Mere affidavit is insufficient to prove that the employee was not dismissed but abandoned his job. *(Id.)*

Due process requirement — When not complied with. (Dup Sound Phils. and/or Manuel Tan *vs*. CA and Cirilo A. Pial, G.R. No. 168317, Nov. 21, 2011) p. 472

Gross negligence and habitual neglect of duties — Gross negligence connotes want of care in the performance of one's duties; habitual neglect of duties implies repeated failure to perform one's duties for a period of time, depending on the circumstances. (PNB *vs*. Padao, G.R. Nos. 180849 and 187143, Nov. 16, 2011) p. 290

— Respondent's repeated failure to discharge his duties as a credit investigator of the bank amounted to gross and habitual neglect of duties under Article 282 (b) of the Labor Code. *(Id.)*

Habitual neglect of duties — Fact that there is no proof that respondent derived any benefit from the scheme is immaterial as what is crucial is that his gross and habitual negligence caused great damage to his employer. (PNB *vs*. Padao, G.R. Nos. 180849 and 187143, Nov. 16, 2011) p. 290

— In affixing his signature on the fraudulent reports and attesting to the falsehoods contained therein, respondent repeatedly failed to perform his duties as a credit investigator. *(Id.)*

Illegal dismissal — Rights of illegally dismissed employees, elucidated. (Dup Sound Phils. and/or Manuel Tan *vs*. CA and Cirilo A. Pial, G.R. No. 168317, Nov. 21, 2011) p. 472

— The burden of proof is upon the employer to show that the employee's termination from service is for just and valid cause. (Functional, Inc. *vs*. Granfil, G.R. No. 176377, Nov. 16, 2011) p. 279

Just causes — The law sets the valid grounds for termination as well as the proper procedure to be followed when terminating the services of an employee. (PNB *vs*. Padao, G.R. Nos. 180849 and 187143, Nov. 16, 2011) p. 290

Separation pay in lieu of reinstatement — Proper where reinstatement is no longer viable. (Dup Sound Phils. and/ or Manuel Tan *vs*. CA and Cirilo A. Pial, G.R. No. 168317, Nov. 21, 2011) p. 472

EVIDENCE

Admissibility of — The objection against the admission of any evidence must be made at the proper time, as soon as the grounds therefor become reasonably apparent, and if not so made, it will be understood to have been waived. (Cua *vs*. People of the Phils., G.R. No. 166847, Nov. 16, 2011) p. 234

Proof beyond reasonable doubt — A slightest doubt should be resolved in favor of the accused. (People of the Phils. *vs*. Salcena *y* Victorino, G.R. No. 192261, Nov. 16, 2011) p. 357

Weight and sufficiency of evidence in administrative cases — Only substantial evidence is required, not proof beyond reasonable doubt as in criminal cases, or preponderance of evidence as in civil cases; substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. (Freeman *vs*. Atty. Reyes, A.C. No. 6246 (Formerly CBD No. 00-730), Nov. 15, 2011) p. 47

EXECUTIVE DEPARTMENT

Command responsibility — Knowledge of the commission of irregularities, crimes or offenses is presumed when (a) the acts are widespread within the government official's area of jurisdiction; (b) the acts have been repeatedly or regularly committed within his area of responsibility; or (c) members of his immediate staff or office personnel are involved. (In the Matter of the Petition for the Writ of Amparo and Habeas Data in Favor of Noriel H. Rodriguez *vs*. Macapagal Arroyo, G.R. No. 191805, Nov. 15, 2011) p. 84

— Pertains to the responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflict; nothing precludes the Supreme Court from applying the doctrine of command responsibility in amparo proceedings to ascertain responsibility and accountability in extrajudicial killings and enforced disappearances. *(Id.)*

— To hold someone liable under the doctrine of command responsibility, the following elements must obtain: (a) the existence of a superior-subordinate relationship between the accused as superior and the perpetrator of the crime as his subordinate; (b) the superior knew or had reason to know that the crime was about to be or had been committed; and (c) the superior failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof. *(Id.)*

FRAUD

Extrinsic fraud — Fact that petitioners were not able to participate in the proceedings before the Court of Appeals is immaterial as they were not parties to the criminal case. (People of the Phils. *vs*. CA, G.R. No. 187409, Nov. 16, 2011) p. 330

— No circumstance exists that would justify a finding that extrinsic fraud was extant in the proceedings before the Court of Appeals; extrinsic fraud, defined. *(Id.)*

HABEAS DATA

Writ of — Provides a judicial remedy to protect a person's right to control information regarding oneself, particularly in instances where such information is being collected through unlawful means in order to achieve unlawful ends. (In the Matter of the Petition for the Writ of Amparo and Habeas Data in Favor of Noriel H. Rodriguez *vs*. Macapagal Arroyo, G.R. No. 191805, Nov. 15, 2011) p. 84

INDETERMINATE SENTENCE LAW

Application of — When proper. (People of the Phils. *vs*. Subesa *y* Moscardon, G.R. No. 193660, Nov. 16, 2011) p. 403

JUDGES

Administrative complaint against judges — Availability of judicial remedies precludes resort to criminal, civil or administrative proceedings against a judge. (Atty. Ala *vs*. Judge Peras, A.M. No. RTJ-11-2283, Nov. 16, 2011) p. 192

— Judicial remedies must be exhausted to prove malice and bad faith, and the allegations must be substantiated by substantial evidence. *(Id.)*

Duties — Must be free to judge, without pressure or influence from external forces or factors. (Atty. Ala *vs*. Judge Peras, A.M. No. RTJ-11-2283 (Formerly OCA I.P.I. No. 10-3478-RTJ), Nov. 16, 2011) p. 192

JUDICIAL DEPARTMENT

Judicial review — Doctrine of mootness; exceptions. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Corona, C.J., concurring and dissenting opinion*) p. 518

— If the court has the authority to promulgate rules that protect and enforce constitutional rights, it also has the duty to render decisions that ensure that constitutional rights are preserved and safeguarded, not diminished or modified. *(Id.)*

— Requirement of lis mota and the mootness doctrine are not constitutional requirements but simply prudential doctrines of justiciability fashioned by the court in the exercise of judicial restraint. *(Id.)*

— The court may not be hampered in the performance of its essential function to uphold the Constitution by prudential doctrines of justiciability. *(Id.)*

— Where a provision of a statute goes against the fundamental law, specially if it impairs basic rights and constitutional values, the court should not hesitate to strike it down as unconstitutional. *(Id.)*

JUDICIAL REVIEW

Application — Case and controversy as precondition for the Court's exercise of judicial review, elucidated. (Atty. Sana *vs*. Career Exec. Service Board, G.R. No. 192926, Nov. 15, 2011) p. 129

JURISDICTION

Exercise of — Judicial remedies against errors or irregularities committed in the exercise of jurisdiction. (Atty. Ala *vs*. Judge Peras, A.M. No. RTJ-11-2283 (Formerly OCA I.P.I. No. 10-3478-RTJ), Nov. 16, 2011) p. 192

KIDNAPPING WITH RANSOM

Commission of — Fact that appellant is a police officer does not exempt him from criminal liability for kidnapping. (People of the Phils. *vs*. POI Trestiza, G.R. No. 193833, Nov. 16, 2011) p. 420

LACHES

Doctrine of — Being an equitable doctrine, its application is controlled by equitable considerations. (Sps. Benjamin and Norma Garcia *vs*. Garcia, G.R. No. 169157, Nov. 14, 2011) p. 1

MALVERSATION OF PUBLIC FUNDS

Absence of direct evidence — Conviction is warranted even if there is no direct evidence of misappropriation and the only evidence is that there is a shortage in one's account which cannot be satisfactorily explained. (Cua *vs*. People of the Phils., G.R. No. 166847, Nov. 16, 2011) p. 234

Elements of — Established. (Cua *vs*. People of the Phils., G.R. No. 166847, Nov. 16, 2011) p. 234

MOOT AND ACADEMIC CASES

Concept — Exceptions to the moot and academic principle are: (1.) if there is a grave violation of the Constitution; (2.) the exceptional character of the situation and the paramount public interest is involved; (3.) when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; and (4.) the case is capable of repetition yet evading review. (Mendoza *vs*. Familara and COMELEC, G.R. No. 191017, Nov. 15, 2011) p. 70

MOTION TO DISMISS

Resolution of — Deferment until trial of the resolution of the motion to dismiss is prohibited. (Capiral *vs*. Simeona Capiral Robles and Vicente Capiral, G.R. No. 173628, Nov. 16, 2011) p. 254

Trial-type proceeding — Sanctioned in the sense that parties are allowed to present evidence and argue their respective positions before the court. (Capiral *vs*. Simeona Capiral Robles and Vicente Capiral, G.R. No. 173628, Nov. 16, 2011) p. 254

PARTIES TO CIVIL ACTIONS

Indispensable parties — Defined as parties-in-interests without whom there can be no final determination of an action; they must be joined either as plaintiffs or as defendants. (Sps. Garcia *vs*. Garcia, G.R. No. 169157, Nov. 14, 2011) p. 1

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT

Disability benefits — Claim therefor governed by the parties' employment contract. (Quizora *vs*. Denholm Crew Management [Phils.], Inc., G.R. No. 185412, Nov. 16, 2011) p. 313

— Granting that the disputable presumption provisions of the 2000 POEA-SEC apply, petitioner still has to prove that his illness was work related and that it must have existed during the term of his employment contract. *(Id.)*

PRESIDENT

Immunity from suit — A non-sitting president does not enjoy immunity from suit, even for the acts committed during his tenure. (In the Matter of the Petition for the Writ of *Amparo* and *Habeas Data* in Favor of Noriel H. Rodriguez *vs.* Macapagal Arroyo, G.R. No. 191805, Nov. 15, 2011) p. 84

PUBLIC OFFICERS AND EMPLOYEES

Conduct prejudicial to the best interest of the service — Refers to acts or omissions that violate the norm of public accountability and diminish or tend to diminish the people's faith in the Judiciary. (CA By: COC Teresita R. Marigomen *vs*. Manabat, Jr., A.M. No. CA-11-24-P (Formerly A.M. OCA I.P.I. No. 10-163-CA-P), Nov. 16, 2011) p. 157

Duties — Public officers and employees have the duty to act promptly on letters and request. (Atty. Ala *vs*. Judge Peras, A.M. No. RTJ-11-2283 (Formerly OCA I.P.I. No. 10-3478-RTJ), Nov. 16, 2011) p. 192

Negligence — Failure to strictly observe gun safety procedures. (CA By: COC Teresita R. Marigomen *vs*. Manabat, Jr., A.M. No. CA-11-24-P (Formerly A.M. OCA I.P.I. No. 10-163-CA-P), Nov. 16, 2011) p. 157

Simple misconduct — An unacceptable behavior that transgresses the established rules of conduct for public officers. (Oñate *vs*. Imatong, A.M. No. P-11-3009, Nov. 16, 2011) p. 184

— Includes commission of acts that offended acceptable standards of decency. *(Id.)*

Simple neglect of duty — Distinguished from gross neglect of duty. (CA By: COC Teresita R. Marigomen *vs*. Manabat, Jr., A.M. No. CA-11-24-P, Nov. 16, 2011) p. 157

RAPE

Commission of — A freshly broken hymen is not an essential element of rape and healed lacerations do not negate rape. (People of the Phils. *vs*. Crisostomo, G.R. No. 183090, Nov. 14, 2011) p. 16

— Distinguished from child abuse. *(Id.)*

— The accused in a prosecution for rape can be convicted on the basis of the sole testimony of the victim provided the victim and her testimony are credible, convincing, and consistent with human nature and the normal course of things. *(Id.)*

— When a woman or a girl-child says that she was raped, she says in effect all that is necessary to show that rape has indeed been committed. (People of the Phils. *vs*. Subesa *y* Moscardon, G.R. No. 193660, Nov. 16, 2011) p. 403

— When either one of the qualifying circumstances of relationship and minority is omitted or lacking, that which is pleaded in the Information and proved by the evidence may be considered as an aggravating circumstance. (People of the Phils. *vs*. Crisostomo, G.R. No. 183090, Nov. 14, 2011) p. 16

SHERIFFS

Simple neglect of duty — Failure to furnish complainant a copy of the sheriff's report, a case of. (Atty. Ala *vs*. Judge Peras, A.M. No. RTJ-11-2283, Nov. 16, 2011) p. 192

STATE POLICIES

Significance of labor — Provisions in the 1987 Constitution on social justice and the protection of labor underscore the importance and economic significance of labor. (PNB *vs*. Padao, G.R. Nos. 180849 and 187143, Nov. 16, 2011) p. 290

STATUTES

Constitutionality — The requirement of *lis mota* does not apply where question of constitutionality was raised by the parties and addressing such question is unavoidable. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Corona, C.J., concurring and dissenting opinion)* p. 518

Doctrine of operative facts — An exception to the general rule that the pronouncement of unconstitutionality by the court retroacts to all acts undertaken between the effectivity of the law and the declaration of its invalidity. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Sereno, J., concurring and dissenting opinion*) p. 518

— Can only come into play as a rule of equity in cases where there is a vacuum in the law created by the subsequent declaration of nullity by the court. *(Id.)*

— To be applicable, a law or an executive act that was made effective for a temporary period should have been invalidated by the court for being inherently in contravention of the Constitution and, thus, without force and effect from its very inception; the stock distribution options agreement was an application of the law, and not a statute or executive act. *(Id.)*

Operative fact doctrine — A principle fundamentally based on equity; equity should be refused to the iniquitous and guilty of inequity. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Corona, C.J., concurring and dissenting opinion*) p. 518

— Not confined to statutes and rules and regulations issued by the executive department that are accorded the same status as that of a statute or those which are quasi-legislative in nature; term "executive act," construed. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011) p. 518

— Not limited to laws subsequently declared unconstitutional or invalid but applies also to executive acts subsequently declared invalid. *(Id.)*

— Term "executive acts," construed. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011; *Brion, J., separate concurring and dissenting opinion*) p. 518

— The application of the operative fact doctrine to the qualified farmworker-beneficiaries is not iniquitous and prejudicial to their interest but actually beneficial and fair to them. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, Nov. 22, 2011) p. 518

— The court can apply the operative fact doctrine to acts and consequences that resulted from the reliance not only on a law or executive act which is quasi-legislative in nature but also on decisions or orders of the executive branch which were later nullified. *(Id.)*

SUPREME COURT

Power to order a change of venue — There must be serious and weighty reasons which would prevent the court of original jurisdiction from conducting a fair and impartial trial. (Atty. Ala *vs*. Judge Peras, A.M. No. RTJ-11-2283, Nov. 16, 2011) p. 192

WITNESSES

Credibility of — Applying the "objective" test, the court is of the considered view that the prosecution failed to present a complete picture of the buy-bust operation highlighted by the disharmony and inconsistencies in its evidence. (People of the Phils. *vs*. Salcena *y* Victorino, G.R. No. 192261, Nov. 16, 2011) p. 357

— Assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grilling examination. (People of the Phils. *vs*. POI Trestiza, G.R. No. 193833, Nov. 16, 2011) p. 420

(People of the Phils. *vs*. Subesa *y* Moscardon, G.R. No. 193660, Nov. 16, 2011) p. 403

— The confusion as to who confiscated the buy-bust money and from whom it was seized cast serious doubt on the credibility of the prosecution witnesses when considered together. (People of the Phils. *vs*. Salcena *y* Victorino, G.R. No. 192261, Nov. 16, 2011) p. 357

— The poseur-buyer's story of silent negotiation is not credible and does not conform to the natural course of things. *(Id.)*

CITATION

Page

I. LOCAL CASES

Abel *vs.* Philex Mining Corporation, G.R. No. 178976, July 31, 2009, 594 SCRA 683, 691-692 479
Adrimisin *vs.* Javier, A.C. No. 2591, Sept. 8, 2006, 501 SCRA 192, 198 68
AFI International Trading Corp. (Zamboanga Buying Station) *vs.* Lorenzo, G.R. No. 173256, Oct. 9, 2007, 535 SCRA 347, 353-355 .... 305, 484
Agoy *vs.* National Labor Relations Commission, 322 Phil. 636, 645 (1996) 397
Aklan Electric Cooperative, Inc. *vs.* National Labor Relations Commission, 380 Phil. 225, 237 290
Alcira *vs.* National Labor Relations Commission, G.R. No. 149859, June 9, 2004, 431 SCRA 508 .... 395, 397, 399
Alcover *vs.* Bacatan, 513 Phil. 77, 83 (2005) 181
Aldecoa-Delorino *vs.* Abellanosa, A.M. No. P-08-2472, Oct. 19, 2010, 633 SCRA 449, 462 176
Alejo *vs.* People, G.R. No. 173360, Mar. 28, 2008, 550 SCRA 326, 342 251
Alert Security and Investigation Agency, Inc. *vs.* Pasawilan, G.R. No. 182397, Sept. 14, 2011 304
Alfonso *vs.* Ignacio, 487 Phil. 1, 7 (2004) 176
Alicer *vs.* Compas, G.R. No. 187720, May 30, 2011 470
Aliño *vs.* Heirs of Angelica A. Lorenzo, G.R. No. 159550, June 27, 2008, 556 SCRA 139 470
Aliten *vs.* U-Need Lumber & Hardware, G.R. No. 168931, Sept. 12, 2006, 501 SCRA 577, 586 288
Almendarez, Jr. *vs.* Langit, A.C. No. 7057, July 25, 2006, 496 SCRA 402 515-516
Almuete *vs.* Andres, 421 Phil. 522, 531 (2001) 578
Alunan *vs.* Mirasol, 342 Phil. 467 (1997) 137
Amihan Bus Lines, Inc. *vs.* Romars International Gases Corporation, G.R. No. 180819, July 5, 2010, 623 SCRA 406, 411 335
Ang Ladlad LGBT Party *vs.* COMELEC, G.R. No. 190582, April 8, 2010 603
Angeles *vs.* Uy, Jr., A.C. No. 5019, April 6, 2000, 330 SCRA 6, 17 509

Page

Anonymous Letter-Complaint Against Atty. Miguel Morales, A.M. No. P-08-2519, Nov. 19, 2008, 571 SCRA 361, 385 216
Apo Fruits Corporation *vs*. Land Bank of the Philippines, G.R. No. 164195, Oct. 12, 2010, 632 SCRA 727, 739-741 .... 353, 649, 672
Apolinario *vs*. Flores, G.R. No. 152780, Jan. 22, 2007, 512 SCRA 113 190
Apostol *vs*. CA, G.R. No. 141854, Oct. 15, 2008, 569 SCRA 80, 92 578
Arcelona *vs.* CA, 345 Phil. 250, 267 (1997) 12-13
Association of Small Landowners in the Philippines *vs.* Secretary of Agrarian Reform, G.R. Nos. 78742, 79310, July 14, 1989, 175 SCRA 343 .... 662, 664
Asuncion *vs.* National Labor Relations Commission, 414 Phil. 329, 336 (2001) 402
Atlas Consolidated Mining and Development Corporation *vs*. Commissioner of Internal Revenue, G.R. No. 159490, Feb. 18, 2008, 546 SCRA 150 470
B. H. Berkenkotter & Co. *vs.* CA, G.R. No. 89980, Dec. 14, 1992, 216 SCRA 584 664
Balitaan *vs.* Court of First Instance of Batangas, 115 SCRA 729, 739 (1982) 29
Barcenas *vs.* Alvero, A.C. No. 8159, April 23, 2010, 619 SCRA 1 515
Barnachea *vs*. Quiocho, 447 Phil. 67, 75 (2003) 64
Baron *vs.* National Labor Relations Commission, G.R. No. 182299, Feb. 22, 2010, 613 SCRA 351, 359 228
Baron Republic Theatrical *vs.* Peralta, G.R. No. 170525, Oct. 2, 2009, 602 SCRA 258, 265 288
Bascos, Jr. *vs*. Taganahan, G.R. No. 180666, Feb. 18, 2009, 579 SCRA 653, 674-675 584
Bautista *vs*. Barrios, 9 SCRA 695 (1963) 145
Berbano *vs*. Barcelona, A.C. No. 6084, Sept. 3, 2003, 410 SCRA 258, 264 61-62
Berboso *vs.* CA, G.R. Nos. 141593-94, July 12, 2006, 494 SCRA 583, 602 586

Page

Bicol Agro-Industrial Producers Cooperative, Inc. (BAPCI) *vs*. Obias, G.R. No. 172077, Oct. 9, 2009, 603 SCRA 173, 192 233
Boac *vs*. Cadapan, G.R. Nos. 184461-62, 184495, 187109, May 31, 2011 114
Borbon II *vs*. Servicewide Specialists, Inc., 328 Phil. 150, 160 (1996) 252
Brito, Sr. *vs*. Dianala, G.R. No. 171717, Dec. 15, 2010 573
Brucal *vs*. Hon. Desierto, 501 Phil. 453, 465-466 (2005) 164
Burbe *vs*. Atty. Magulta, 432 Phil. 840 (2002) 144
Buted *vs*. Hernando, A.C. No. 1359, Oct. 17, 1991, 203 SCRA 1, 8 144
C.F. Sharp Crew Management, Inc. *vs*. Espanol, Jr., G.R. No. 155903, Sept. 14, 2007, 533 SCRA 424, 438-439 579
Cabatulan *vs*. Buat, G.R. No. 147142, Feb. 14, 2005, 451 SCRA 234, 247 .... 483, 485
Cabigting *vs*. San Miguel Foods, Inc., G.R. No. 167706, Nov. 5, 2009, 605 SCRA 14, 21 229
Camua, Jr. *vs*. National Labor Relations Commission, G.R. No. 158731, Jan. 25, 2007, 512 SCRA 677, 682 .... 288, 482
Canlas *vs*. CA, G.R. No. 77691, Aug. 8, 1988, 164 SCRA 160, 173-174 69
Casals *vs*. Tayud Golf and Country Club, Inc., G.R. No. 183105, July 22, 2009, 593 SCRA 468, 490 12-13
Castillo *vs*. Cruz, G.R. No. 182165, Nov. 25, 2009, 605 SCRA 628, 636 102
Castillo-Co *vs*. Barbers, G.R. No. 129952, June 16, 1998, 290 SCRA 717, 723 574
Catuiran *vs*. People, G.R. No. 175647, May 8, 2009, 587 SCRA 567, 580 383
Celaje *vs*. Soriano, A.C. No. 7418, Oct. 9, 2007, 535 SCRA 217, 222 64
Centeno *vs*. Villalon-Pornillos, G.R. No. 113092, Sept. 1, 1994, 236 SCRA 197, 206 574
Central Philippine Bandag Retreaders, Inc. *vs*. Diasnes, G.R. No. 163607, July 14, 2008, 558 SCRA 194 312
China Banking Corporation *vs*. Asian Construction and Development Corporation, G.R. No. 158271, April 8, 2008, 550 SCRA 585 470

Page

Citibank *vs*. Gatchalian, 310 Phil. 211, 217-218 (1995) 305
City Trucking, Inc. *vs*. Balajadia, G.R. No. 160769,
Aug. 9, 2006, 498 SCRA 309, 315 .... 482, 484
Clarion Printing House, Inc. *vs*. NLRC, 500 Phil. 61 (2005) 393
Coastal Safeway Marine Services, Inc. *vs*. Delgado,
G.R. No. 168210, June 17, 2008, 554 SCRA 590 325
Colegio San Agustin *vs*. NLRC, G.R. No. 87333,
Sept. 6, 1991, 201 SCRA 398 395
COMELEC *vs*. Cruz, G.R. No. 186616, Nov. 20, 2009,
605 SCRA 167 .... 72, 81
Commissioner of Internal Revenue *vs*. Central Luzon
Drug Corp., G.R. No. 148512, June 26, 2006,
492 SCRA 575, 581 602
Concha *vs*. Rubio, G.R. No. 162446, Mar. 29, 2010,
617 SCRA 22, 31 616
DAR *vs*. Tongson, G.R. No. 171674, Aug. 04, 2009 674
David *vs*. Macapagal-Arroyo, G.R. Nos. 171396, 171409,
May 3, 2006, 489 SCRA 160, 214-215 81
De Agbayani *vs*. Philippine National Bank (PNB),
G.R. No. L-23127, April 29, 1971,
38 SCRA 429 .... 569, 639, 691-692
De Asis *vs*. Hon. Romero, 148-B Phil. 710, 716-717 (1971) 455
Development Bank of the Philippines *vs*. Traders Royal Bank,
G.R. No. 171982, Aug. 18, 2010, 628 SCRA 404 471
Diesel Construction Co., Inc. *vs*. UPSI Property
Holdings, Inc., G.R. Nos. 154885 & 154937,
Mar. 24, 2008, 549 SCRA 12 470
Dionisio *vs*. Escano, 362 Phil. 46, 56-57 (1999) 214
Diversified Security, Inc. *vs*. Bautista, G.R. No. 152234,
April 15, 2010, 618 SCRA 289, 296 485
Dusit Hotel Nikko *vs*. Gatbonton, G.R. No. 161654,
May 5, 2006, 489 SCRA 671 399
E.G. & I. Construction *vs*. Sato, G.R. No. 182070,
Feb. 16, 2011 482
EPZA *vs*. Dulay, G.R. No. 59603, April 29, 1987,
233 Phil. 313 356
EPZA *vs*. Pulido, G.R. No. 188995, Aug. 24, 2011 355

Page

Espiritu *vs.* Ulep, A.C. No. 5808, May 4, 2005,
458 SCRA 1, 8-9 68
Estate of the Late Encarnacio *vda. de* Panlilio *vs.*
Dizon, G.R. No. 148777 & 157598, Oct. 18, 2007 682
Estrada *vs.* Desierto, G.R. Nos. 146710-15, 146738,
Mar. 2, 2001, 353 SCRA 452 .... 107, 109
Eusebio *vs.* Luis, 603 SCRA 576, 586-587 (2009) 665
Export Processing Zone Authority *vs.* Dulay,
149 SCRA 305 (1987) 669
Fil-Garcia, Inc. *vs.* Hernandez, A.C. No. 7129, July 16, 2008,
558 SCRA 400, 408-409 157
Filipro, Incorporated *vs.* National Labor Relations
Commission, G.R. No. 70546, Oct. 16, 1986,
145 SCRA 123, 229 Phil. 150 .... 304, 309
Flordeliz *vs.* People, G.R. No. 186441, Mar. 3, 2010,
614 SCRA 225 417
Flores *vs.* Abesamis, 341 Phil. 299, 312-313 (1997) 213-214
Forever Security & General Services *vs.* Flores,
G.R. No. 147961, Sept. 7, 2007, 532 SCRA 454, 468 482
Fort Bonifacio Development Corporation *vs.* Commissioner
of Internal Revenue, G.R. Nos. 158885 & 170680,
Oct. 2, 2009, 602 SCRA 159, 169 602
Fulache *vs.* ABS-CBN Broadcasting Corporation,
G.R. No. 183810, Jan. 21, 2010, 610 SCRA 567, 588 402
Gabatin *vs.* Land Bank of the Philippines, G.R. No. 148223,
Nov. 25, 2004, 444 SCRA 176 661
Galicia *vs.* Manliquez *Vda. De* Mindo, G.R. No. 155785,
April 13, 2007, 521 SCRA 85, 93-94 12-13
Gatchalian Promotions Talents Pool, Inc. *vs.* Naldoza,
Adm. Case No. 4017, Sept. 29, 1999, 315 SCRA 406, 413 512
Genuino Ice Co. *vs.* Lava, G.R. No. 190001, Mar. 23, 2011 485
Genuino Ice Co., Inc. *vs.* Magpantay, G.R. No. 147740,
June 27, 2006, 493 SCRA 195, 205-206 305
Golden Ace Builders *vs.* Talde, G.R. No. 187200,
May 5, 2010, 620 SCRA 283, 289 484
Gonzales *vs.* Abaya, G.R. No. 164007, Aug. 10, 2006,
498 SCRA 445 117

Page

Gonzales *vs*. Intermediate Appellate Court,
241 Phil. 630, 639-640 (1988) 307
Gunsi *vs*. COMELEC, G.R. No. 168792, Feb. 23, 2009,
580 SCRA 70, 76 80
Hacienda Primera Development Corporation *vs*.
Villegas, G.R. No. 186243, April 11, 2011 400
Hantex Trading Co., Inc. *vs*. CA, G.R. No. 148241,
Sept. 27, 2002, 390 SCRA 181, 189 480
Harborview Restaurant *vs.* Labro, G.R. No. 168273,
April 30, 2009, 587 SCRA 277, 281 287
Heirs of Nepomucena Paez *vs*. Torres, G.R. No. 104314,
Feb. 2, 2000, 324 SCRA 403, 412 260
Heirs of Lorenzo and Carmen Vidad *vs.* LBP,
G.R. No. 166461, April 30, 2010, 619 SCRA 609 .... 596, 668
Heirs of the Late Joaquin Limense *vs. Vda. De* Ramos,
G.R. No. 152319, Oct. 28, 2009, 604 SCRA 599 676
Henlin Panay Company *vs.* National Labor Relations
Commission, G.R. No. 180718, Oct. 23, 2009,
604 SCRA 362, 369 .... 288, 480
Hilado *vs.* David, 84 Phil. 569, 578 (1949) 144-145
Hodieng Concrete Products *vs.* Emilia,
491 Phil. 434, 440 (2005) 289
Hornilla *vs.* Atty. Salunat, 453 Phil. 108 (2003) 145
Ibay *vs.* Lim, 394 Phil. 415, 421-422. (2000) 182
In re Almacen, G.R. No. L-27654, Feb. 18, 1970,
31 SCRA 562, 600 62
In Re: Petition for Assistance in the Liquidation
of the Rural Bank of Bokod (Benguet), Inc., PDIC
vs. Bureau of Internal Revenue, G.R. No. 158261,
Dec.18, 2006, 511 SCRA 123, 141 590
International Catholic Migration Commission *vs.*
NLRC, 251 Phil. 560, 567 (1989) 397
Ito *vs.* De Vera, A.M. No. P-01-1478, Dec. 13, 2006,
511 SCRA 1, 11-12 165
Javellana, Jr. *vs*. Belen, G.R. Nos. 181913/182158,
Mar. 5, 2010, 614 SCRA 342, 352-353 485
Koruga *vs.* Arcenas, G.R. Nos. 168332 and 169053,
June 19, 2009, 590 SCRA 49, 68 590

Page

La Rosa *vs*. Ambassador Hotel, G.R. No. 177059,
Mar. 13, 2009, 581 SCRA 340, 347 289
Land Bank of the Philippines (LBP) *vs*. Barrido,
G.R. No. 183688, Aug. 18, 2010, 628 SCRA 454 668
CA, 258 SCRA 404 (1996) 664
Celada, G.R. No. 164876, Jan. 23, 2006, 479 SCRA 495 667
Chico, G.R. No. 168453, Mar. 13, 2009,
581 SCRA 226 .... 662, 674, 679
Colarina, G.R. No. 176410, Sept. 01, 2010,
629 SCRA 614 668
DAR, G.R. No. 171840, April 04, 2011 668
Dizon, G.R. No. 160394, Nov. 27, 2009,
606 SCRA 66 667-668
Dumlao, G.R. No. 167809, Nov. 27, 2008,
572 SCRA 108 .... 664, 667, 674
Escandor, G.R. No. 171685, Oct. 11, 2010,
632 SCRA 504 668
Gallego, Jr., G.R. No. 173226, Jan. 20, 2009,
576 SCRA 680 667
J. L. Jocson and Sons, G.R. No. 180803, Oct. 23, 2009,
604 SCRA 373 674
Kumassie Plantation, G.R. Nos. 177404 and 178097,
June 25, 2009, 591 SCRA 1 667
Lim, G.R. No. 171941, Aug. 02, 2007, 529 SCRA 129 667
Luciano, G.R. No. 165428, Nov. 25, 2009,
605 SCRA 426 667
Livioco, G.R. No. 170685, Sept. 22, 2010 .... 665, 674, 688
Natividad, G.R. No. 127198, May 16, 2005,
458 SCRA 411 673
Ong, G.R. No. 190755, Nov. 24, 2010,
636 SCRA 266, 280 573
Heirs of Eleuterio Cruz, G.R. No. 175175, Sept. 29, 2008,
567 SCRA 31 674
Heirs of Angel Domingo, G.R. No. 168533, Feb. 04, 2008,
543 SCRA 627 674
Heirs of Asuncion Añonuevo *Vda. de* Santos, et al.,
G.R. No. 179862, Sept. 03, 2009, 598 SCRA 115 674

Page

Pacita Agricultural Multi-Purpose Cooperative, Inc.,
G.R. No. 177607, Jan. 19, 2009 674
Rivera, G.R. No. 182431, Nov. 17, 2010, 635 SCRA 285 668
Rufino, G.R. Nos. 175644 and 175702, Oct. 02, 2009,
602 SCRA 399 667-668
Soriano, G.R. Nos. 180772, 180776, May 6, 2010,
620 SCRA 347 .... 649, 668
Spouses Banal, G.R. No. 143276, July 20, 2004,
434 SCRA 543 667
Spouses Hermosa, G.R. No. 166777, July 10, 2007,
527 SCRA 181 674
Suntay, G.R. No. 157903, Oct. 11, 2007, 535 SCRA 605 667
Vda. de Abello, et al., G.R. No. 168631, April 07, 2009,
584 SCRA 342 674
Latorre *vs*. Latorre, G.R. No. 183926, Mar. 29, 2010,
617 SCRA 88, 99 228
Lazaro *vs*. CA, G.R. No. 137761, April 6, 2000,
386 Phil. 412, 417 336
LCK Industries, Inc. *vs*. Planters Development Bank,
G.R. No. 170606, Nov. 23, 2007, 538 SCRA 634, 652 573
League of Cities of the Phils. *vs*. COMELEC,
G.R. Nos. 176951, 177499 and 178056, Aug. 24, 2010,
628 SCRA 819, 833 573
LECA Realty Corp. *vs*. Republic, G.R. No. 155605,
Sept. 27, 2006, 503 SCRA 563 356
Lemoine *vs*. Balon, Jr., A.C. No. 5829, Oct. 28, 2003,
414 SCRA 511 68
Leopard Integrated Services, Inc. *vs*. Macalinao,
G.R. No. 159808, Sept. 30, 2008, 567 SCRA 192, 197 479
Lima Land, Inc. *vs*. Cuevas, G.R. No. 169523,
June 16, 2010, 621 SCRA 36, 52 481
Litonjua Group of Companies *vs*. Vigan,
412 Phil. 627, 643-644 (2001) 402
Llosa-Tan *vs*. Silahis International Hotel,
260 Phil. 166 (1990) 307
Lubrica *vs*. Land Bank, G.R. No. 170220, Nov. 20, 2006,
507 SCRA 415 .... 674, 667

Page

Luna *vs.* Allado Construction Co., Inc., G.R. No. 175251, May 30, 2011 479
Macahilig *vs.* National Labor Relations Commission, G.R. No. 158095, Nov. 23, 2007, 538 SCRA 375, 385 .... 288, 479
Macarilay *vs.* Serina, A.C. No. 6591, May 4, 2005, 458 SCRA 12, 25 510
Macasero *vs.* Southern Industrial Gases Philippines, Inc., G.R. No. 178524, Jan. 30, 2009, 577 SCRA 500, 506 483
Magis Young Achievers' Learning Center *vs.* Manalo, G.R. No. 178835, Feb. 13, 2009, 579 SCRA 421, 431-432 397
Magsaysay Maritime Corporation and/or Cruise Ships Catering and Services International, N.V. *vs.* National Labor Relations Commission, G.R. No. 186180, Mar. 22, 2010, 616 SCRA 362 .... 327, 329
Manguerra *vs.* Arriesgado, A.M. No. RTC-04-1854, June 8, 2004, 431 SCRA 161, 163 216
Manila Motor Co., Inc. *vs.* Flores, G.R. No. L-9396, Aug. 16, 1956, 99 Phil. 738 691
Manzano *vs.* Soriano, A.C. No. 8051, April 7, 2009, 584 SCRA 1 68
Mariano *vs.* Garafin, A.M. No. RTJ-06-2024, Oct. 17, 2006, 504 SCRA 605, 614 214
Marquez *vs.* Baldoz, G.R. No. 143779, April 4, 2003, 400 SCRA 669, 675 261
Marquez *vs.* Meneses, Jr., Adm. Case No. 675, Dec. 17, 1999, 321 SCRA 1, 6 509-510
Maturan *vs.* Gonzales, A.C. No. 2597, Mar. 12, 1998, 287 SCRA 443, 446 144
Maylem *vs.* Ellano, G.R. No. 162721, July 13, 2009, 592 SCRA 440 682
Mendoza *vs.* Mayor Villas, G.R. No. 187256, Feb. 23, 2011 80-81
Meneses *vs.* Macalino, A.C. No. 6651, Feb. 27, 2006, 483 SCRA 212 64
Mercado *vs.* AMA Computer College-Parañaque City, Inc., G.R. No. 183572, April 13, 2010, 618 SCRA 218 .... 272, 397-398
Merrill Lynch Futures, Inc. *vs.* CA, G.R. No. 97816, July 24, 1992, 211 SCRA 824, 834 260

Page

Metro Construction, Inc. *vs.* Aman, G.R. No. 168324,
Oct. 12, 2009, 603 SCRA 335, 344 481
Metro Eye Security, Inc. *vs.* Salsona, G.R. No. 167637,
Sept. 28, 2007, 534 SCRA 375, 391 481
Metropolitan Bank & Trust Company *vs.* CA,
G.R. Nos. 86100-03, Jan. 23, 1990, 181 SCRA 367, 377 69
Microsoft Corporation *vs.* Maxicorp, Inc.,
481 Phil. 550 (2004) 471
Mondiguin *vs.* Abad, 160-A Phil. 672, 675 (1975) 219
Monreal *vs.* COMELEC, G.R. No. 184935, Dec. 21, 2009,
608 SCRA 717 72
Montoya *vs.* Transmed Manila Corporation,
G.R. No. 183329, Aug. 27, 2009, 597 SCRA 334 273
Mortera *vs.* Pagatpatan, A.C. No. 4562, June 15, 2005,
460 SCRA 99 515-516
Municipality of Malabang *vs.* Benito, G.R. No. L-28113,
Mar. 28, 1969, 27 SCRA 533 .... 569, 692
National Bookstore *vs.* CA, 428 Phil. 235, 245 (2002) 305
National Power Corporation *vs.* CA, 479 Phil. 850 (2004) 351
CA, G.R. No. 113194, Mar. 11, 1996, 254 SCRA 577 653
Chiong, 404 SCRA 527 (2003) 669
Henson, G.R. No. 129998, Dec. 29, 1998,
300 SCRA 751, 756 653
Purefoods Corporation, G.R. No. 160725,
Sept. 12, 2008, 565 SCRA 17 354
Tiangco, G.R. No. 170846, Feb. 06, 2007,
514 SCRA 674 .... 669, 672
New Ever Marketing, Inc. *vs.* CA, 501 Phil. 575, 586 (2005) 288
Nicolas *vs.* Del-Nacia Corp., G.R. No. 158026,
April 23, 2008, 552 SCRA 545, 556 584
Nombrado *vs.* Hernandez, 26 SCRA 13 (1968) 145
Nueva Ecija Electric Cooperative, (NEECO) II *vs.*
National Labor Relations Commission, G.R. No. 157603,
June 23, 2005, 461 SCRA 169, 182 482
Octaviano *vs.* National Labor Relations Commission,
G.R. No. 88636, Oct. 3, 1991, 202 SCRA 332, 337 399
Office of the Court Administrator *vs.* Claudio M. Lopez,
Process Server, Municipal Trial Court, Sudipen,
La Union, A.M. No. P-10-2788, Jan. 18, 2011 66

Page

Office of the Court Administrator *vs.* Montalla,
A.M. No. P-06-2269, Dec. 20, 2006, 511 SCRA 328, 331 177
Olaguer *vs.* Military Commission No. 34, G.R. Nos. 54558
and 69882, May 22, 1987, 150 SCRA 144 570
Oriental Shipmanagement Co., Inc. *vs.* Bastol,
G.R. No. 186289, June 29, 2010, 622 SCRA 352, 377 287
Oro Cam Enterprises, Inc. *vs.* CA, 377 Phil. 469, 480 (1999) 15
Ortiz *vs.* San Miguel Corporation, G.R. Nos. 151983-84,
July 31, 2008, 560 SCRA 654 276
Pagsibigan *vs.* People, G.R. No. 163868, June 4, 2009,
588 SCRA 249 243-244
Palu-ay *vs.* CA, G.R. No. 112995, July 30, 1998,
355 Phil. 94, 106 335
Pamintuan *vs.* Ente-Alcantara, 488 Phil. 279, 286 (2004) 215
PCI Leasing and Finance, Inc. *vs.* Giraffe-X Creative
Imaging, Inc., G.R. No. 142618, July 12, 2007,
527 SCRA 405, 422 574
PCL Shipping Philippines, Inc. *vs.* National Labor
Relations Commission, G.R. No. 153031, Dec. 14, 2006,
511 SCRA 44 275
Pelaez *vs.* Auditor General, G.R. No. L-23825,
Dec.24, 1965, 15 SCRA 569 693
Pena *vs.* Aparicio, A.C. No. 7298, June 25, 2007,
525 SCRA 444, 453 62
Pentagon Steel Corporation *vs.* CA, G.R. No. 174141,
June 26, 2009, 591 SCRA 160, 173 289
People *vs.* Agulay, G.R. No. 181747, Sept. 26, 2008,
566 SCRA 571, 594 370
Alegado, G.R. Nos. 93030-31, Aug. 21, 1991,
201 SCRA 37 32
Almorfe, G.R. No. 181831, Mar. 29, 2010,
617 SCRA 52, 61-62 381
Antido, G.R. No. 121098, Sept. 4, 1997,
278 SCRA 425, 452 28
Ayade, G.R. No. 188561, Jan. 15, 2010,
610 SCRA 246 415
Baga, G.R. No. 189844, Nov. 15, 2010,
634 SCRA 743, 749 369

Page

Balagat, G.R. No. 177163, April 24, 2009,
586 SCRA 640, 644-645 369
Baldo *y* Santain, G.R. No. 175238, Feb. 24, 2009,
580 SCRA 225 38
Bautista, G.R. No. 188601, June 29, 2010,
622 SCRA 524 462
Bayya, 327 SCRA 771, 777 (2000) 28-29
Begino *y* Grajo, G.R. No. 181246, Mar. 20, 2009,
582 SCRA 189 37-38
Bohol, 415 Phil. 749 (2001) 33
Bonaagua, G.R. No. 188897, June 6, 2011 417
Boromeo, G.R. No. 150501, June 3, 2004,
430 SCRA 533 32
Briones, G.R. No. 90319, Oct. 15, 1991,
202 SCRA 708 456
CA, G.R. No. 159261, Feb. 21, 2007,
516 SCRA 383, 397 337
Cabalquinto, G.R. No. 167693, Sept. 19, 2006,
502 SCRA 419 .... 19, 407
Cabebe, 290 SCRA 543 (1998) 32
Cabillan, 334 Phil. 912 (1997) 416
Calimlim, 416 Phil. 403, 420 (2001) 456
Campomanes, G.R. No. 187741, Aug. 9, 2010,
627 SCRA 494, 506-507 46
Canonigo, G.R. No. 133649, Aug. 4, 2000,
337 SCRA 310, 317 32
Concepcion, G.R. No. 178876, June 27, 2008,
556 SCRA 421, 439 370
Conde, 408 Phil. 532 (2001) 456
Cruz *y* Cruz, G.R. No. 187047, June 15, 2011 43
Cutamora, G.R. Nos. 133448-53, Oct. 6, 2000,
342 SCRA 231, 239 (2000) 28
Dahilig, G.R. No. 187083, June 13, 2011 35
De Guia, G.R. Nos. 107200-03, Nov. 9, 1993,
227 SCRA 614 456
De Guzman, G.R. No. 151205, June 9, 2004,
431 SCRA 516 370

Page

De Guzman, G.R. Nos. 98321-24, June 30, 1993,
224 SCRA 93 456
De la Cruz, G.R. No. 177222, Oct. 29, 2008,
570 SCRA 273, 283 369
De Leon, G.R. No. 186471, Jan. 25, 2010,
611 SCRA 118, 132 378
Del Monte, G.R. No. 179940, April 23, 2008,
552 SCRA, 627, 636 46
Dela Cruz, 432 Phil. 988 (2002) 27
Derpo, 250 Phil. 447 (1988) 416
Diaz, 338 Phil. 219, 230 (1997) 416
Domado, G.R. No. 172971, June 16, 2010,
621 SCRA 73, 85 45
Doria, 361 Phil. 595, 621 (1999) 370
Esperanza, 453 Phil. 54, 77 (2003) 37
Espino, Jr., G.R. No. 176742, June 17, 2008,
554 SCRA 682, 696-697 414
Flores, Jr., 442 Phil. 561, 569 (2002) 26, 28
Fragante, G.R. No. 182521, Feb. 9, 2011 418
Gaban, 331 Phil. 87 (1996) 416
Gabris, G.R. No. 116221, July 11, 1996, 258 SCRA 663 32
Glivano, G.R. No. 177565, Jan. 28, 2008,
542 SCRA 656 415
Gloria, G.R. No. 168476, Sept. 27, 2006,
503 SCRA 742 406
Gopio, G.R. No. 133925, Nov. 29, 2000,
346 SCRA 408, 429 33
Hermocilla, G.R. No. 175830, July 10, 2007,
527 SCRA 296, 305 37
Kamad, G.R. No. 174198, Jan. 19, 2010,
610 SCRA 295, 307-308 378
Lazaro, Jr., G.R. No. 186418, Oct. 16, 2009,
604 SCRA 250, 263-264 43
Lizada, 444 Phil. 67 (2003) 34
Lopez, 315 Phil. 59 (1995) 456
Macaya, G.R. Nos. 137185-86, Feb. 5, 2001,
351 SCRA 707, 714 33
Manambit, 338 Phil. 57, 91 (1997) 376

Page

Manlulu, G.R. No. 102140, April 22, 1994,
231 SCRA 701, 710 456
Marcos, G.R. No. 185380, June 18, 2009, 589 SCRA 661 38
Martinez, G.R. No. 191366, Dec. 13, 2010,
637 SCRA 791, 818 379
Mateo, G.R. Nos. 147678-87, July 7, 2004,
433 SCRA 640 24
Milan, 370 Phil. 493, 506 (1999) 384
Molas, 350 Phil. 333 (1998) 416
Naquita, G.R. No. 180511, July 28, 2008,
560 SCRA 430, 445-446 45-46
Ortiz, G.R. No. 179944, Sept. 4, 2009, 598 SCRA 452 417
Padilla, G.R. No. 167955, Sept. 30, 2009,
601 SCRA 385, 403 37
Pagaduan, G.R. No. 179029, Aug. 9, 2010,
627 SCRA 308, 322 378
Pagalasan, 452 Phil. 341, 363 (2003) 462
Palicte, G.R. No. 101088, Jan. 27, 1994,
229 SCRA 543, 547-548 32
Pepito, 335 Phil. 37, 46 (1997) 251
Peralta, G.R. No. 187531, Oct. 16, 2009,
604 SCRA 285, 291 38
Pringas, G.R. No. 175928, Aug. 31, 2007,
531 SCRA 828, 842-843 46
Ramos, 296 SCRA 559, 576 (1998) 29
Sangil, Sr., 342 Phil. 499, 502 (1997) 406
Santiano, 359 Phil. 928, 943 (1998) 458
Santos, G.R. No. 175593, Oct. 17, 2007,
536 SCRA 489, 505 383
Sinoro, 449 Phil. 370, 387 (2003) 253
Sumarago, 466 Phil. 956, 966 (2004) 32
Tampos, 455 Phil. 844, 859 (2003) 32
Tan, 432 Phil. 171, 198 (2002) 377
Teodoro, G.R. No. 185164, June 22, 2009,
590 SCRA 494, 507 45
Tonog, Jr., G.R. No. 144497, June 29, 2004,
433 SCRA 139, 153-154 457

Page

Perez-Rosario *vs*. CA, G.R. No. 140796, June 30, 2006, 494 SCRA 66, 92-93 594
Pfizer, Inc. *vs*. Velasco, G.R. No. 177467, Mar. 9, 2011 483
Philippine Airlines, Inc. *vs*. NLRC, G.R. No. 117038, Sept. 25, 1997, 279 SCRA 445, 458 290
Philippine Amusement & Gaming Corp. *vs*. Philippine Gaming Jurisdiction, Inc., et al., G.R. No. 177333, April 24, 2009, 586 SCRA 658, 664-665 602
Philippine Long Distance Telephone Company, Inc. *vs*. Tiamson, 511 Phil. 384, 394 (2005) 287
Pimentel *vs*. COMELEC, G.R. No. 126394, April 24, 1998, 289 SCRA 586, 597 574
Planters Products, Inc. *vs*. Fertiphil Corp., G.R. No. 166006, Mar. 14, 2008, 548 SCRA 485 691
PLDT *vs*. NLRC, et al., 247 Phil. 641(1988) 298
PNOC *vs*. Maglasang, G.R. No. 155407, Nov. 11, 2008, 570 SCRA 560, 571 351
Pormento, Sr. *vs*. Pontevedra, A.C. No. 5128, Mar. 31, 2005, 454 SCRA 167, 174 513
Protacio *vs*. Laya Mananghaya & Co., G.R. No. 168654, Mar. 25, 2009, 582 SCRA 417, 427 272
Province of North Cotabato *vs*. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), G.R. No. 183591, Oct. 14, 2008, 568 SCRA 402, 461 .... 137, 623
Public Interest Center, Inc. *vs*. Elma, G.R. No. 138965, June 30, 2006, 494 SCRA 53 570
Quiambao *vs*. Manila Electric Company, G.R. No. 171023, Dec. 18, 2009 312
R.B. Michael Press *vs*. Galit, G.R. No. 153510, Feb. 13, 2008, 545 SCRA 23, 35 481
Rasonable *vs*. NLRC, G.R. No. 117195, Feb. 20, 1996, 253 SCRA 815, 823-824 485
Rayos *vs*. Hernandez, G.R. No. 169079, Feb. 12, 2007, 515 SCRA 517, 527 69
Razon *vs*. Tagitis, G.R. No. 182498, Dec. 3, 2009, 606 SCRA 598 105
Re: De la Rosa, 27 Phil. 258 (1914) 145

Page

Regir *vs*. Regir, A.M. No. P-06-2282, Aug. 7, 2009,
595 SCRA 455 189
Republic *vs.* Cancio, G.R. No. 170147, Jan. 30, 2009,
577 SCRA 346 653
Court of First Instance, G.R. No. L-29725, Jan. 27, 1983,
120 SCRA 154 692
Gingoyon, G.R. No. 166429, Dec. 19, 2005,
478 SCRA 474 661
Herida, G.R. No. L-34486, Dec. 27, 1982,
119 SCRA 411 692
Ker and Company Limited, 383 SCRA 584 (2002) 664
Sandiganbayan, G.R. No. 152154, July 15, 2003,
406 SCRA 190, 252 13
Vda. de Castellvi, G.R. No. L-20620, Aug. 15, 1974,
157 Phil. 329 664
Retired Employee *vs*. Manubag, A.M. No. P-10-2833,
Dec. 14, 2010, 638 SCRA 86 191
Reyes *vs.* CA, 456 Phil. 520, 539-540 (2003) 275
Jamora, A.M. No. P-06-2224, April 30, 2010,
619 SCRA 601, 607 217
Pablico, A.M. No. P-06-2109, Nov. 27, 2006,
508 SCRA 146, 156 164
Rimbunan Hijau Group of Companies *vs.* Oriental
Wood Processing Corporation, G.R. No. 152228,
Sept. 23, 2005, 470 SCRA 650 259
Robinsons Galleria/Robinsons Supermarket Corporation
and/or Jess Manuel *vs.* Ranchez, G.R. No. 177937,
Jan. 19, 2011, 640 SCRA 142 396
Rosales *vs*. Castelltort, 472 SCRA 144, 161 (2005) 676
Roxas *vs.* Arroyo, G.R. No. 189155, Sept. 7, 2010,
630 SCRA 211, 239 103
RTG Construction, Inc. *vs*. Facto, G.R. No. 163872,
Dec. 21, 2009, 608 SCRA 615 276
Rubrico *vs*. Arroyo, G.R. No. 183871, Feb. 18, 2010,
613 SCRA 233 111
Rutter *vs.* Esteban, 93 Phil. 68 (1953) 640
Saludaga *vs*. Sandiganbayan, G.R. No. 184537,
April 23, 2010, 619 SCRA 364, 374 574

Page

Saludo, Jr. *vs.* CA, G.R. No. 121404, May 3, 2006,
489 SCRA 14, 19 512
Salvaloza *vs.* National Labor Relations Commission,
G.R. No. 182086, Nov. 24, 2010, 636 SCRA 184, 194 479
Samalio *vs.* CA, G.R. No. 140079, Mar. 31, 2005,
454 SCRA 462, 472-473 513
Samarca *vs.* Arc-Men Industries, Inc.,
459 Phil. 506, 515 (2003) 289
Sameer Overseas Placement Agency, Inc. *vs.* National Labor
Relations Commission, 375 Phil. 535, 540 (1999) 400
Santos *vs.* Orlino, 357 Phil. 102, 108 (1998) 213
Santuyo *vs.* Benito, A.M. No. P-05-1997, Aug. 3, 2006,
497 SCRA 461, 468 218
Sawadjaan *vs.* CA, 498 Phil. 552, 556, 560 (2005) 304, 306, 308
Secretary of National Defense *vs.* Manalo,
G.R. No. 180906, Oct. 7, 2008, 568 SCRA 1, 42 102
Session Delights Ice Cream and Fast Foods *vs.* CA,
G.R. No. 172149, Feb. 8, 2010, 612 SCRA 10, 26-27 485
Seven Star Textile Company *vs.* Dy, G.R. No. 166846,
Jan. 24, 2007, 512 SCRA 486, 498 .... 288, 290
Small *vs.* Banares, A.C. No. 7021, Feb. 21, 2007,
516 SCRA 323 .... 64, 515-516
Soriano *vs.* Bravo, G.R. No. 152086, Dec. 15, 2010,
638 SCRA 403, 420 .... 580, 634
Sotto *vs.* Commission on Elections,
76 Phil. 516, 522 (1946) 622
Spic N' Span Services Corporation *vs.* Paje, G.R. No. 174084,
Aug. 25, 2010, 629 SCRA 261, 269-270 303
Spouses Andrada *vs.* Pilhino Sales Corporation,
G.R. No. 156448, Feb. 23, 2011 470
Spouses Aya-ay *vs.* Arpahil Shipping Corporation,
516 Phil. 628, 639 (2006) 287
Spouses Bautista *vs.* Sula, 530 SCRA 406 (2007) 191
Spouses Lee *vs.* LBP, G.R. No. 170422, Mar. 07, 2008,
548 SCRA 52 667
Spouses Rabanal *vs.* Atty. Tugade,
432 Phil. 1064, 1068 (2002) 63

Page

Suyat, Jr. *vs.* Torres, G.R. No. 133530, Oct. 25, 2004,
441 SCRA 265, 274-275 579
Suzuki *vs.* Tiamson, Adm. Case No. 6542, Sept. 30, 2005,
471 SCRA 129, 141 511
Tabora *vs.* Carbonell, A. M. No. RTJ-08-2145,
June 18, 2010, 621 SCRA 196 191
Tacloban Far East Marketing Corporation *vs.* CA,
G.R. No. 182320, Sept. 11, 2009, 599 SCRA 662, 670 287
Tan *vs.* Barrios, G.R. Nos. 85481-82, Oct. 18, 1990,
190 SCRA 686 570
Tan Boon Bee & Co., Inc. *vs.* Jarencio,
163 SCRA 205 (1988) 585
The Heirs of George Poe *vs.* Malayan Insurance
Company, Inc., G.R. No. 156302, April 7, 2009 574
Titania *vs.* Ocampo, 200 SCRA 472 (1991) 145
Tolentino *vs.* People, G.R. No. 170396, Aug. 31, 2006,
500 SCRA 721, 724 579
Tomas *vs.* Tomas, G.R. No. L-36897, June 25, 1980,
98 SCRA 280 307
Torres *vs.* Ventura, 187 SCRA 96 (1990) 682
Toyota Motor Phils. Corp. Workers Association *vs.*
NLRC, G.R. Nos. 158786 & 158789, Oct. 19, 2007,
537 SCRA 171 311
Traders Royal Bank Employees Union-Independent *vs.*
NLRC, 336 Phil. 705, 712 (1997) 270
Triple Eight Integrated Services, Inc. *vs.* National Labor
Relations Commission, 359 Phil. 955, 964 (1998) 287
Tubola, Jr. *vs.* Sandiganbayan, G.R. No. 154042,
April 11, 2011 245
Union Industries, Inc. *vs.* Vales, G.R. No. 140102,
Feb. 9, 2006, 482 SCRA 17, 22 479
Uniwide Sales Warehouse Club *vs.* National Labor
Relations Commission, G.R. No. 154503, Feb. 29, 2008,
547 SCRA 220, 239 482
Valdez *vs.* People, G.R. No. 170180, Nov. 23, 2007,
538 SCRA 611, 633 370
Vallacar Transit, Inc. *vs.* Catubig, G.R. No. 175512,
May 30, 2011 243

Page

Velarde *vs*. Lopez, Inc., G.R. No. 153886, Jan. 14, 2004,
419 SCRA 422, 431-432 585
Velayo-Fong *vs.* Velayo, G.R. No. 155488, Dec. 6, 2006,
510 SCRA 320 228
Velez *vs*. De Vera, A.C. No. 6697, B.M. No. 1227 and
A.M. No. 05-5-15-SC, July 25, 2006, 496 SCRA 345 67
Villafuerte *vs*. Cortez, A.C. No. 3455, April 14, 1998,
288 SCRA 687 63
Villamar *vs*. People, G.R. No. 178652, Dec. 8, 2010,
637 SCRA 584, 590 243
Villanueva *vs*. Sandiganbayan, G.R. No. 95627,
Aug. 16, 1991, 200 SCRA 722, 734 251
Yano *vs.* Sanchez, G.R. No. 186640, Feb. 11, 2010,
612 SCRA 347, 362 105
Yap *vs*. Thenamaris Ship's Management and
Intermare Maritime Agencies, Inc., G.R. No. 179532,
May 30, 2011 691
Yutivo Sons Hardware Co. *vs.* CTA, 1 SCRA 160 (1961) 585

II. FOREIGN CASES

Ashton *vs*. Cameron County Water Imp. Dist. No. 1,
298 U.S. 513 (1936) 638
Chicot County Drainage Dist. *vs.* Baxter States Bank,
308 US 317, 318-319, 60 S. Ct. 317 638
Grievance Committee *vs*. Rottner, 152 Conn. 59,
203 A 2d 82 (1954) 145
Norton *vs*. Shelby County, 118 US 425, 442 639
Pierce *vs.* Palmer, 31 R.I. 432 145
Regina *vs*. Murphy, 172 Eng. Rep. 502 (1837) 462
State by Department of Highways *vs.* McGuckin,
242 Mont 81, 788 P2d 926 661

Page

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

1987 Constitution
Art. II, Sec. 18 303
Art. III, Secs. 1, 9 661
Art. VII, Sec. 15 .... 130, 135, 137-138
Sec. 18 116
Art. VIII, Sec. 1 138
Sec. 5 (4) 219
Sec. 5 (5) 623
Art. IX-B, Sec. 7, par. 2 570
Art. XI, Sec. 1 182
Art. XIII, Sec. 4 .... 620, 629-630, 633, 661
Sec. 18 124

B. STATUTES

Batas Pambansa
B.P. Blg. 22 141-142
B.P. Blg. 881, Sec. 261 (g), as amended 132
Civil Code, New
Art. 7 641
Art. 448 676
Arts. 525-526 632
Art. 544 633
Art. 546 676
Art. 1702 275
Art. 2208, par. 7 275
Code of Conduct for Court Personnel
Canon 1, Sec. 4 174
Code of Professional Responsibility
Canon 15, Rule 15.03 .... 142, 144
Canon 16, Rules 16.01, 16.03 .... 63, 509, 516
Canon 18 155
Rule 18.03 .... 152, 155, 157

Page

Executive Order
E.O. No. 3, Sec. 1 134
E.O. No. 32 640
E.O. No. 226 116
E.O. No. 229, Sec. 10 607
Secs. 20-21 700
E.O. No. 386 693
E.O. No. 883 .... 130-131, 136
Sec. 1 134
Labor Code
Art. 3 303
Art. 4 275
Art. 111 .... 270, 274-278
Art. 223 483
Art. 279 .... 304, 402, 483
Art. 281 396
Art. 282 .... 304, 311, 480
(b) 305, 307
Penal Code, Revised
Art. 11 (6) 308
Art. 172 333
Art. 201 .... 493, 498-499
Art. 217 .... 241, 244
Art. 266-A 19-20, 26, 29, 35, 37
A (2) 413, 417
B 417
B (1) 35
Art. 267 .... 424, 457
Presidential Decree
P.D. No. 27 673
P.D. No. 442 (Labor Code of the Phils.) 303
P.D. No. 626 319
P.D. No. 969 498-499
Proclamation
Proc. No. 843 .... 223, 230

Page

Republic Act
R.A. No. 6657 (Comprehensive Agrarian Reform
Law of 1988), Sec. 17 667
Sec. 18 654
Sec. 22 616
Sec. 27 .... 597, 601
Sec. 31 .... 565, 573, 575, 578, 592
Sec. 33 655
Sec. 57 654
R.A. No. 6700 667
R.A. No. 6713 215
R.A. No. 6758 (Salary Standardization Law) 266
R.A. No. 7160 (Local Government Code of 1991),
as amended 72
R.A. No. 7610 .... 413, 417
Sec. 5 (b) 19-20, 26, 35, 418
Sec. 29 406-407
R.A. No. 7659, Sec. 8 424
R.A. No. 8353 35
R.A. No. 8974 353
R.A. No. 9164, Sec. 2 .... 72-73, 75
R.A. No. 9165 (Comprehensive Dangerous Drugs
Act of 2002), Art. II, Sec. 5 .... 40, 42-43, 363, 369
Secs. 8, 11-12 453
Sec. 21 .... 45, 367-368
R.A. No. 9262, Sec. 44 407
Revised Rule on Summary Procedure
Sec. 4 156
par. 2 151
Rule on the Writ of Amparo
Sec. 14 103
Rule on the Writ of Habeas Data
Sec. 16 103
Rule on Violence against Women and Their Children
Sec. 40 407
Rules of Court
Rule 16, Sec. 2 .... 258-259, 261
Sec. 3 .... 258, 261

Page

Rule 39, Sec. 14 217
Rule 45 .... 80, 243, 255, 265, 295
Sec. 2 336
Rule 64 72
Rule 65 .... 72, 80, 269, 271-272
Rule 70, Sec. 6 153
Rule 124, Sec. 13, par. c 43
Rule 132, Sec. 36 252
Rule 133, Secs. 1-2, 5 66
Sec. 7 260
Rule 136, Sec. 17 .... 173, 175
Rule 138, Sec. 27 510
Rule 141, Sec. 11 .... 172-173, 175, 182-183
Rules on Civil Procedure, 1997
Rule 14, Sec. 1 227
Rule 45 .... 228, 282, 390, 423, 463
Rules on Criminal Procedure, 2000
Rule 113, Sec. 5 454
Rules on Criminal Procedure, 1985
Rule 110, Sec. 8 27

C. OTHERS

NLRC Rules of Procedure
Rule V, Sec. 19 300
Omnibus Rules Implementing the Labor Code
Book VI, Rule I, Sec. 6 396
Sec. 6 (d) 400
Uniform Rules on Administrative Cases in the Civil Service
Rule IV, Sec. 52 165
(B)(1) 217

D. BOOKS
(Local)

Agpalo, Statutory Construction, 2003 p. 204 574
R.E. Agpalo, Statutory Construction 125

Page

(5th Edition, 2003) 602
C.A. Azucena, Jr., The Labor Code With Comments
and Cases, Volume 1, 6th Ed., p. 352 279
Ricardo J. Francisco, Criminal Procedure, 270-271
(2nd Ed., 1994) 28
Pineda, Legal and Judicial Ethics, p. 199 (1999 Ed.) 145
Luis B. Reyes, 2 The Revised Penal Code:
Criminal Law 542 (1998) 458

II. FOREIGN AUTHORITIES

BOOKS

26 Am. Jur. 2nd Ed., Sec. 157 664
Chemerinsky, Erwin, Constitutional Law: Principles
and Policies, 3rd Edition (2006), p. 52 629