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OF THE

PHILIPPINES

FROM

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MANILA
2014

Prepared
by

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SPECIAL THIRD DIVISION

[A.M. No. P-09-2686. March 21, 2012]
(Formerly OCA I.P.I. No. 06-2441-P)

PRISCILLA L. HERNANDO, *complainant, vs.* **JULIANA Y. BENGSON, Legal Researcher, RTC, Branch 104, Quezon City,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; PENALTY IMPOSED, MODIFIED. — After a review of the records, the Court affirmed its earlier findings regarding the complicity of Bengson in the failed titling of Hernando's property. This is based on the report of the Executive Judge tasked to investigate the case as well as the recommendation submitted by the OCA. The Court, however, reconsidered the earlier imposed penalty following the pronouncement in *Largo v. CA.* x x x. Similarly, applying the same standard to the present case, the Court agrees with the position taken by Hernando – that Bengson should be liable under Rule IV, Section 52 (A) 20 for Conduct prejudicial to the best interest of the service in view of her act of offering her services for facilitation of the land transfer papers at the BIR and representing that her half-sister and niece had the capacity to facilitate the titling of subject property. Accordingly, the penalty imposed on Bengson was modified in this wise: **WHEREFORE**, the motion for reconsideration is **GRANTED,**

our Resolution dated March 10, 2010 is **MODIFIED**. Juliana Y. Bengson, Legal Researcher, Regional Trial Court, Branch 104, Quezon City, is found **GUILTY** of Conduct prejudicial to the best interest of the service and is hereby ordered **SUSPENDED** for six (6) months and one (1) day from the service without pay. She is further ordered to restitute the amount of PhP76,000.00 plus legal interest to Priscilla Hernando, starting from the year 2003.

APPEARANCES OF COUNSEL

Hernandez & Surtida Law Office for complainant.
Pacifico C. Yadao for respondent.

R E S O L U T I O N

MENDOZA, *J.*:

This resolves the Urgent *Ex-parte* Motion & Manifestation for Clarification filed by respondent Juliana Y. Bengson *(Bengson)* seeking to clarify.

"whether or not the 30-day and one-day suspension of the respondent pursuant to the Resolution dated March 10, 2010 is a continuation of the second modified Resolution dated March 28, 2011 suspending the same respondent for another six months and one day."[1]

In its March 10, 2010 Resolution, the Court initially found Bengson guilty of Simple Misconduct as recommended by the Investigating Judge and the Office of the Court Administrator *(OCA).* Questioning the penalty imposed, private complainant Priscilla L. Hernando *(Hernando)* moved for a reconsideration thereof.

In her motion, Hernando pointed out that Bengson's act of offering to facilitate the land transfer papers at the Bureau of Internal Revenue *(BIR)* was akin to "conduct prejudicial to the best interest of the service" and, thus, should be

[1] *Rollo,* p. 639.

punished as such pursuant to the ruling in *Largo v. Court of Appeals*.[2] In the same motion, Hernando sought restitution of the aggregate amount of ₱76,000.00 given to Bengson as a "just debt."

In her comment, Bengson claimed that she had no interest whatsoever in the land transfers referred to and that she merely accommodated the request of the daughter of Hernando.

After a review of the records, the Court affirmed its earlier findings regarding the complicity of Bengson in the failed titling of Hernando's property. This is based on the report of the Executive Judge tasked to investigate the case as well as the recommendation submitted by the OCA. The Court, however, reconsidered the earlier imposed penalty following the pronouncement in *Largo v. CA*. In the Resolution of March 28, 2011, the Court stated:

> In resolving this question, a review of the Court's disposition in the case of *Largo v. CA* is instructional. In that case, it was explained that an administrative offense constitutes 'misconduct' when it has direct relation to, and is connected with, the performance of the official duties of the one charged.
>
> > 'x x x. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer, x x x. It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office, x x x.'
>
> Thus, misconduct refers to a transgression of an established and definite rule of action, more specifically, some unlawful behavior or gross negligence by the public officer charged.

---

[2] G.R. No. 177244, November 20, 2007, 537 SCRA 721, 733.

It must be noted however that in that case, no proof was offered to show that Largo's actions being complained of were related to or performed by him in taking advantage of his position. His actions did not have any direct relation to or connection with the performance of his official duties. Hence, it was concluded that Largo acted in his private capacity, and thus, cannot be made liable for misconduct. But, considering that Largo's questioned conduct tarnished the image and integrity of his public office, he must still be held liable for conduct prejudicial to the best interest of the service. The basis for his liability is found in Republic Act No. 6713 (R.A. 6713) or the Code of Conduct and Ethical Standards for Public Officials and Employees. The Code, particularly Section 4 (c) thereof, commands that public officials and employees shall at all times respect the rights of others, and shall refrain from doing acts contrary to public safety and public interest. And Largo's actuations fell short of this standard.

Similarly, applying the same standard to the present case, the Court agrees with the position taken by Hernando - that Bengson should be liable under Rule IV, Section 52 (A) 20 for Conduct prejudicial to the best interest of the service in view of her act of offering her services for facilitation of the land transfer papers at the BIR and representing that her half-sister and niece had the capacity to facilitate the titling of subject property.[3]

Accordingly, the penalty imposed on Bengson was modified in this wise:

WHEREFORE, the motion for reconsideration is **GRANTED**, our Resolution dated March 10, 2010 is **MODIFIED**. Juliana Y. Bengson, Legal Researcher, Regional Trial Court, Branch 104, Quezon City, is found **GUILTY** of Conduct prejudicial to the best interest of the service and is hereby ordered **SUSPENDED** for six (6) months and one (1) day from the service without pay. She is further ordered to restitute the amount of PhP76,000.00 plus legal interest to Priscilla Hernando, starting from the year 2003.[4]

WHEREFORE, the Court clarifies that the original penalty of suspension of 30 days and 1 day pursuant to the Resolution

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[3] *Rollo*, p. 592.

[4] *Id.* at 595.

of March 10, 2010 was modified and increased to 6 months and 1 day suspension pursuant to the Resolution of March 28, 2011. The period of suspension that she has served pursuant to the March 10, 2010 Resolution shall form part of, and will be credited to her service of, the penalty imposed by the March 28, 2011 Resolution.

SO ORDERED.

Corona, C.J., Velasco, Jr. (Chairperson), Peralta, and *Reyes, JJ.*, concur.

FIRST DIVISION

[G.R. No. 146754. March 21, 2012]

SPOUSES JESSE CACHOPERO AND BEMA CACHOPERO, *petitioners, vs.* **RACHEL CELESTIAL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; EMPLOYED TO COMPEL THE PERFORMANCE, WHEN REFUSED, OF A MINISTERIAL, AS OPPOSED TO A DISCRETIONARY DUTY; APPLIES AS A REMEDY WHEN THE PETITIONER'S RIGHT IS FOUNDED CLEARLY IN LAW AND IS NOT DOUBTFUL.— The writ of *mandamus* is aimed to compel a respondent, who failed to execute his/her legal duty, or unlawfully excluded another from the enjoyment of an entitled right or office, to perform the act needed to be done in order to protect the rights of the petitioner. Simply put, "*mandamus* is employed to compel the performance, when refused, of a ministerial, as opposed to a discretionary, duty." In *Tay v. Court of Appeals*, this Court elucidated on when a writ of *mandamus* may issue, to wit: In order that a writ of *mandamus* may issue, it is essential that the person petitioning for the same has a clear legal right to

the thing demanded and that it is the imperative duty of the respondent to perform the act required. It neither confers powers nor imposes duties and is never issued in doubtful cases. It is simply a command to exercise a power already possessed and to perform a duty already imposed. In addition, *mandamus* applies as a remedy when the petitioner's right is founded clearly in law and is not doubtful.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; COMPROMISE AGREEMENT; CONCEPTS AND EFFECTS. — In the case at bar, Celestial's petition for *mandamus* is anchored on her rights emanating from the Compromise Agreement she executed with the spouses Cachopero. Article 2028 of the Civil Code defines a compromise as follows: A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced. Article 2037 of the Civil Code provides for the effects of a compromise agreement, to wit: A compromise has upon the parties the effect and authority of *res judicata*; but there shall be no execution except in compliance with a judicial compromise. Expounding on the concept of compromise agreements, this Court, in *Air Transportation Office v. Gopuco, Jr.*, said: [W]e have time and again ruled that a compromise agreement, when not contrary to law, public order, public policy, morals, or good customs, is a valid contract which is the law between the parties. It is a contract perfected by mere consent, whereby the parties, making reciprocal concessions, avoid litigation or put an end to one already commenced. It has the force of law and is conclusive between the parties, and courts will not relieve parties from obligations voluntarily assumed, simply because their contracts turned out to be unwise. x x x.

3. REMEDIAL LAW; JUDGMENTS; EXECUTION; STAY OF IMMEDIATE EXECUTION ON GROUND OF SUPERVENING EVENT, WHEN PROPER. — Unless the spouses Cachopero can show this Court that there is a supervening event, which occurred after the judgment of the MTC, and which brought about a material change in their situation *vis-à-vis* that of Celestial, the latter has the right to have the compromise agreement executed, according to its terms. This Court's pronouncements in *Silverio, Jr. v. Filipino Business Consultants, Inc.*, are instructive, and we quote as follows:

> To justify the stay of immediate execution, the supervening events must have a direct effect on the matter already litigated and settled. Or, the supervening events must create a substantial change in the rights or relations of the parties which would render execution of a final judgment unjust, impossible or inequitable making it imperative to stay immediate execution in the interest of justice. We find that no such supervening events exist in this case so as to justify the stay of the execution of Civil Case No. 711.

APPEARANCES OF COUNSEL

Jesus P. Amparo for petitioners.
Littie Sarah Agdeppa for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *certiorari*[1] seeking to vacate and set aside the September 4, 2000 Decision[2] and January 19, 2001 Resolution[3] of the Court of Appeals in **CA-G.R. SP No. 52655**.

Petitioner Jesse Cachopero, married to co-petitioner Bema Cachopero (spouses Cachopero), is the younger brother of respondent Rachel Celestial (Celestial). Celestial owned an old residential house (old house) situated on Lot No. 2586-G-28 (LRC) Psd-105462 (hereinafter, "Celestial's lot") at Poblacion 8, Midsayap, Cotabato, Philippines.[4] A major portion of this house stood on the eastern part of the 344-square meter-lot (subject land) immediately adjoining Celestial's lot. The subject land was formerly part of the Salunayan Creek that became

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 20-26; penned by Associate Justice Rodrigo V. Cosico with Associate Justices Godardo A. Jacinto and Bienvenido L. Reyes, concurring.

[3] *Id.* at 27.

[4] *Id.* at 37.

dry as a result of the construction of an irrigation canal by the National Irrigation Administration.[5]

On July 21, 1989, Celestial filed an Ejectment case, which was docketed as **Civil Case No. 711**, against the spouses Cachopero before the Municipal Trial Court (MTC) of Midsayap.

In her Complaint,[6] Celestial alleged that the spouses Cachopero had been living in her house for free and out of tolerance since 1973. Celestial claimed that when the condition of the old house had become uninhabitable, she decided to have it demolished. However, the spouses Cachopero refused to vacate the premises.

In the meantime, on August 10, 1989, Celestial and the spouses Cachopero entered into a Compromise Agreement,[7] the terms and conditions of which are quoted as follows:

> That Spouses Jesse Cachopero and Bema Cachopero, defendants in this case, are going to vacate the premises in question and transfer the old house subject of this ejectment case [to] the back of Lot No. 2586-G-28 (LRC) Psd-105462, located at 8, Midsayap, Cotabato, within eight (8) months from today, but not later than April 30, 1990;
>
> That in transferring the old house subject of this suit to the back of Lot No. 2586-G-28 (LRC) Psd-105462 of plaintiff, plaintiff shall shoulder all expenses in dismantling said house and in the reconstruction of said house, plaintiff binds herself to pay fifty (50%) percent of the costs of labor and expenses in transferring the said house;
>
> That plaintiff is willing to give a two (2) meter wide exit alley on the eastern portion of Lot No. 2586-G-28 (LRC) Psd-105462 and on the southern portion of said lot as roadright-of-way up to the point of the NIA road on the west of Lot No. 2586-G-28 (LRC) Psd-105462;
>
> That defendants hereby promise to remove all their improvements introduced fronting the residence of the plaintiff before August 31,

---

[5] *Celestial v. Cachopero*, 459 Phil. 903, 911 (2003).

[6] *Rollo*, pp. 28-31.

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

1989; and the plaintiff shall likewise remove all her existing improvements on the same area;

That the parties are waiving their respective claims for moral damages, as well as attorney's fees as appearing in the Complaint and Counter-Claim appearing in their Answer in order to totally have this case amicably settled.

WHEREFORE, premises considered, it is most respectfully prayed that Judgment be rendered by this Honorable Court base[d] on the terms and conditions of this Compromise Agreement.

Midsayap, Cotabato, August 10, 1989.

On August 10, 1989, the MTC rendered a judgment, approving the Compromise Agreement, to wit:

WHEREFORE, finding the Compromise Agreement to be in accordance with law and equity, the same is hereby approved and judgment is rendered pursuant to, and in accordance with the terms and conditions therein stipulated.[8]

On July 17, 1990, then Deputy Sheriff Benedicto F. Flauta issued the Sheriff's Return in the above Ejectment case, *viz*:

Respectfully returned to the Honorable Court, Municipal Trial Court, Midsayap, Cotabato the herein attached original copy of the writ of Execution issued in the above-entitled case with the information that:

1. Defendants Jesse and Bema is (sic) found to be out of the real estate property of the plaintiff;

2. The boundary of the defendants and the plaintiff is distinct; and

3. The improvements introduced by the defendants fronting the residence of the plaintiff is already outside the lot of the plaintiff.

WHEREFORE, the undersigned had nothing to do except to return the said Writ of Execution for whatever the Honorable Court may deem necessary and appropriate for both parties.[9]

---

[8] *Id.* at 36.

[9] *Id.* at 41.

However, as the portion of the house beyond Celestial's lot was not demolished, Celestial filed a Motion for the Issuance of an *Alias* Writ of Execution, with a prayer to cite the Deputy Sheriff in Contempt for not executing the Writ of Execution issued on May 17, 1990.[10]

Since the MTC had not yet received the Sheriff's Return, it ordered the Deputy Provincial Sheriff to comment on the Motion and on August 16, 1990, the latter complied. The pertinent portions of said Comment are quoted as follows:

> That on May 30, 1990, the undersigned met one of the defendants at the premises of the subject area and three days after, the same met the plaintiff in the same area; the same informations were obtained which are top confidential except that their boundary is distinct;
>
> That the defendants are no longer within the metes and bounds of the plaintiff's property;
>
> That Lot No. 25[8]6-[G]-28 is the only base (sic) of this case and no other lots more; and,
>
> That the defendants had complied [with] the Compromise Agreement which was the basis of the Court.
>
> WHEREFORE, in view of the foregoing, the undersigned respectfully submit, that he has fully complied with the Writ of Execution issued by the Honorable Court in this case.[11]

Based on the above, the MTC denied the Motion for the Issuance of an *Alias* Writ of Execution on August 30, 1990. The MTC likewise denied Celestial's Motion for Reconsideration on November 20, 1990, and highlighted the fact that the agreement was for the spouses Cachopero to vacate Celestial's lot, which was the land subject of the Ejectment case. The MTC further said that it had no jurisdiction or power to decide a question not in issue.[12]

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[10] *Id.* at 42.

[11] *Id.* at 51.

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

Celestial filed a petition for *mandamus* before the Regional Trial Court (RTC), Branch 18, of Midsayap, Cotabato, praying that the MTC be ordered to issue an *Alias* Writ of Execution in the Ejectment case and that the Sheriff be directed to enforce such *Alias* Writ of Execution. Celestial furthermore prayed for the RTC to order the spouses Cachopero to pay her damages, attorney's fees, litigation expenses, and costs of suit. This was docketed as **Special Civil Case No. 051**.[13]

In response, MTC Judge Nestor Flauta said that the old house constructed on Celestial's lot had already been demolished. Whatever remained undemolished were owned by the spouses Cachopero, and were not put in issue in the Ejectment case. Thus, Judge Flauta averred, "to order the demolition of the undemolished improvements outside of the property of [Celestial] would be tantamount to lack of jurisdiction and/or grave abuse of discretion on the part of the [MTC]."[14]

On July 27, 1992, the RTC conducted an ocular inspection to determine whether or not the Compromise Agreement was executed in accordance with its terms.[15]

On March 20, 1997, the RTC issued an **Order**[16] dismissing the petition for *mandamus* for lack of merit. The RTC ratiocinated in this wise:

> *Mandamus* does not lie where there was no right of petitioner which was excluded from exercising and there is no duty on the part of respondent Judge to perform (*Villa Rey Transit, Inc. vs. Bello*, 10 SCRA 238).
>
> The law concedes to judges and courts the right to decide questions according to their judgment and their understanding of the law and if their decision in that regard is not correct or contrary to law, appeal, not *Mandamus*, is the remedy. (*Santiago Labor Union vs. Tabique*, 17 SCRA 286.)[17]

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[13] CA *rollo*, p. 50.

[14] *Rollo*, p. 49.

[15] *Id.* at 88-96.

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

[17] *Id.* at 53.

Acting on Celestial's Motion for Reconsideration, the RTC on September 1, 1997, rendered an Order granting such motion, and setting aside its earlier Order of March 20, 1997.[18]

Meanwhile Jesse Cachopero had already instituted a petition, docketed as Special Civil Case No. 070, for *certiorari*, prohibition, and *mandamus* with preliminary injunction and temporary restraining order, assailing the orders of the Department of Environment and Natural resources (DENR), which denied his Miscellaneous Sales Application (MSA) over a portion of the subject land. This petition and Jesse Cachopero's subsequent Motion for Reconsideration, were denied by the RTC for lack of merit and non-exhaustion of administrative remedies. Undaunted, Jesse Cachopero assailed the above orders in a petition for *certiorari*, prohibition, and *mandamus*, filed before the Court of Appeals. This was docketed as **CA-G.R. No. 45927**.[19]

On February 3, 1999, the RTC rendered a Resolution,[20] again dismissing Celestial's petition for *mandamus*, but on the ground that the issuance of an *Alias* Writ of Execution in Civil Case No. 711 depended on the outcome of Special Civil Case No. 070, which involved the subject land that Jesse Cachopero had applied for.[21] The RTC said that the foregoing "circumstance is a supervening cause necessitating refusal to issue an *alias* writ of execution."[22]

Celestial brought this matter to the Court of Appeals and claimed that the RTC itself found that part of the old house, subject of the compromise agreement, was still standing or undemolished. Thus, she posited the following issues for the Court of Appeals' resolution:

1. Can the Honorable Regional Trial Court set a condition – other than that provided in the Judgment itself – for the implementation

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[18] *Id.* at 101.

[19] *Celestial v. Cachopero, supra* note 5 at 916.

[20] *Rollo*, pp. 97-100.

[21] *Id.* at 11.

[22] *Id.* at 99.

and execution of the said judgment in Civil Case No. 711?

2. Was it legal, lawful and proper and did the Honorable Regional Trial Court act without or in excess and/or grave abuse of discretion when it ordered and directed the execution of the Judgment in Civil Case No. 711, subject to the outcome of Special Civil Case No. 070, which is never a condition in the said judgment sought to be executed in full? or

3. Did the Honorable Regional Trial Court, act without and in excess or abuse of discretion and against the law and jurisprudence, in dismissing the petition for *Mandamus* and making the issuance of a Writ of Execution subjected to the outcome of Special Civil Case No. 070, which is never a condition made in said Judgment sought to be executed?[23]

On September 4, 2000, the Court of Appeals came out with its Decision in favor of Celestial. The *fallo* reads:

IN VIEW WHEREOF, the resolution in Special Civil Case No. 051 dated February 3, 1999 is hereby set aside. As prayed for by petitioner, respondent Judge is hereby directed to issue an *alias* Writ of Execution in Ejectment Case No. 711 ordering the full and complete implementation of the judicially approved compromise judgment.[24]

In finding merit in Celestial's appeal, the Court of Appeals said that a compromise judgment is immediately executory and once judicially approved, has the force of *res judicata* between the parties, which should not be disturbed except for the vices of consent or perjury. More importantly, the Court of Appeals held:

What is involved in Ejectment Case No. 711 is only the material possession of the lot litigated therein. In Special Civil Case No. 070, what is involved is the issue of who between the parties therein has a better right to purchase the lot of the public domain the pendency of which may not abate the execution of the compromise judgment in Ejectment Case No. 711.[25]

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[23] CA *rollo*, p. 29.

[24] *Rollo*, p. 26.

[25] *Id.* at 25.

Resolving the spouses Cachopero's Motion for Reconsideration, the Court of Appeals reiterated its position in its Resolution of January 19, 2001 and said:

> Movants may not be allowed to renege from their express undertaking "to vacate the premises and transfer the old house at the back of lot 2586-[G]-28" and/or "to remove all of their improvements" from the premises in dispute embodied in the judicially approved compromise in Ejectment Case No. 111. Reiterated here, for emphasis, is the Court's previous holding that the pendency of Civil Case No. 070 (on appeal in the Supreme Court) which calls for the determination of who between the litigants possesses as superior right to purchase the land of the public domain will not bar the execution of the executory compromise judgment.[26]

The spouses Cachopero then elevated their case to this Court, praying that the Court of Appeals' Decision and Resolution be vacated and set aside, and to declare that the RTC was correct in dismissing the case for *mandamus*.

On May 30, 2002, Celestial filed a Motion for the Issuance of a Status Quo Order and/or a Writ of Preliminary Injunction,[27] alleging that while the case was pending in this Court, the spouses Cachopero had been making constructions and had been planting trees and plants on the subject land. Celestial claims that the spouses Cachopero's actions will cause her great and grave injustice.

In the meantime, **CA-G.R. No. 45927,** which was originally **Special Civil Case No. 070**, had already reached this Court upon Celestial's pleading, after the Court of Appeals granted Jesse Cachopero's petition, reversed and set aside the assailed orders of the RTC, and ordered the DENR to process Jesse Cachopero's MSA.[28] Celestial's petition, docketed as **G.R. No. 142595**, was denied for lack of merit by this Court on October 15, 2003.[29]

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[26] *Id.* at 27.

[27] *Id.* at 275-281.

[28] *Celestial v. Cachopero*, *supra* note 5 at 915-916.

[29] *Id.* at 931.

Issues

The following are the issues presented by the spouses Cachopero for this Court's resolution:

1. Will *Mandamus* lie to compel the Regional Trial Court to issue an *alias* Writ of Execution to execute a compromise agreement which the Provincial Sheriff, the Municipal Trial Court, and the Regional Trial Court ruled to have been properly executed?

2. Will *Mandamus* lie to compel the Regional Trial Court to eject Petitioners from the land they occupy and applied for under MSA XII-6-1669 after demolition of the contested house by virtue of a compromise agreement in an ejectment case?[30]

Discussion

The spouses Cachopero are insisting that the Writ of Execution had been properly implemented as they had already vacated Celestial's lot, which according to them, was the subject matter of the Ejectment case against them. They argue that to eject them also from the subject land, which they applied for in the DENR, and which was put in issue in Special Civil Case No. 070, and then G.R. No. 142595 before this Court, would be going beyond what was agreed upon by the parties.

Celestial on the other hand, claims that G.R. No. 142595 has no bearing on this case. She asseverates that it was clear not only from the Sheriff's own return, but also from the ocular inspection conducted by the RTC, that the old house, which was the subject matter of the compromise agreement, was only partially demolished.

We affirm the Court of Appeals.

A petition for *mandamus*, under Rule 65 of the 1997 Rules of Civil Procedure, provides:

SEC. 3. *Petition for mandamus.* – When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an

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[30] *Rollo*, p. 8.

act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

The writ of *mandamus* is aimed to compel a respondent, who failed to execute his/her legal duty, or unlawfully excluded another from the enjoyment of an entitled right or office, to perform the act needed to be done in order to protect the rights of the petitioner.[31] Simply put, "*mandamus* is employed to compel the performance, when refused, of a ministerial, as opposed to a discretionary, duty."[32]

In *Tay v. Court of Appeals*,[33] this Court elucidated on when a writ of *mandamus* may issue, to wit:

> In order that a writ of *mandamus* may issue, it is essential that the person petitioning for the same has a clear legal right to the thing demanded and that it is the imperative duty of the respondent to perform the act required. It neither confers powers nor imposes duties and is never issued in doubtful cases. It is simply a command to exercise a power already possessed and to perform a duty already imposed.[34]

In addition, *mandamus* applies as a remedy when the petitioner's right is founded clearly in law and is not doubtful.[35]

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[31] *Reliance Surety & Insurance Co., Inc. v. Hon. Amante, Jr.*, 501 Phil. 86, 102 (2005).

[32] *Albay Accredited Constructors Association v. Honorable Ombudsman Desierto*, 516 Phil. 308, 325 (2006).

[33] 355 Phil. 381 (1998).

[34] *Id.* at 397.

[35] *Manalo v. PAIC Savings Bank*, 493 Phil. 854, 860 (2005).

In the case at bar, Celestial's petition for *mandamus* is anchored on her rights emanating from the Compromise Agreement she executed with the spouses Cachopero.

Article 2028 of the Civil Code defines a compromise as follows:

> A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.

Article 2037 of the Civil Code provides for the effects of a compromise agreement, to wit:

> A compromise has upon the parties the effect and authority of *res judicata*; but there shall be no execution except in compliance with a judicial compromise.

Expounding on the concept of compromise agreements, this Court, in *Air Transportation Office v. Gopuco, Jr.*,[36] said:

> [W]e have time and again ruled that a compromise agreement, when not contrary to law, public order, public policy, morals, or good customs, is a valid contract which is the law between the parties. It is a contract perfected by mere consent, whereby the parties, making reciprocal concessions, avoid litigation or put an end to one already commenced. It has the force of law and is conclusive between the parties, and courts will not relieve parties from obligations voluntarily assumed, simply because their contracts turned out to be unwise. x x x.[37]

Likewise, in *Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) v. Abella*,[38] this Court pronounced:

> Prevailing case law provides that "a compromise once approved by final orders of the court has the force of *res judicata* between the parties and should not be disturbed except for vices of consent or forgery. Hence, 'a decision on a compromise agreement is final and executory.' Such agreement has the force of law and is conclusive

[36] 501 Phil. 228 (2005).

[37] *Id.* at 239.

[38] G.R. No. 153904, January 17, 2005, 448 SCRA 549.

on the parties. It transcends its identity as a mere contract binding only upon the parties thereto, as it becomes a judgment that is subject to execution in accordance with the Rules. Judges therefore have the ministerial and mandatory duty to implement and enforce it." Hence, compromise agreements duly approved by the courts are considered the decisions in the particular cases they involve.[39]

The terms of the compromise agreement involved herein are clear and unequivocal. The spouses Cachopero agreed to vacate Celestial's lot **and transfer the old house to the land at the back of Celestial's lot**. While it has been shown that the spouses Cachopero had already removed part of the old house, Jesse Cachopero himself admitted, during the ocular inspection done by the RTC, that part of the old house beyond Celestial's lot were not demolished nor removed, to wit:

COURT:

Q This house here which is now remain standing in the lot enclosed with bamboo fence, was it existing at the time of the filing of the complaint between you and defendants at the time the decision was rendered?

JESSE CACHOPERO:

A Yes, your Honor.

x x x x x x x x x

ATTY. AGDEPPA:

That the roofing is a part of the old house that was brought down when the second story was destroyed, your Honor.

x x x x x x x x x

COURT:

There is a structure which has been destroyed and above the remaining structure of which a shade of galvanized iron was made. Yes…

JESSE CACHOPERO:

A part of the second floor which was lowered down.

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[39] *Id.* at 565-566.

COURT:

> Another questions – This structure here was already existing during the time of the filing of the complaint in the Municipal Court?

JESSE CACHOPERO:

> Yes, your Honor.

ATTY. AMPARO:

> When the two story building was demolished, how did the remaining portion looks like?

JESSE CACHOPERO:

> It looks like a *bahay kubo*, sir.

ATTY. AMPARO:

> When the building was demolished, what improvement did you introduce?

JESSE CACHOPERO:

> The walling made of rough wood, sir.

ATTY. AMPARO:

> How about this wall on the other side of the remaining structure?

JESSE CACHOPERO:

> It is part of the old building, sir.

x x x x

COURT:

> In other words it has already been paid for the expenses of the demolition.
>
> Why was the other parts of the building not included in the demolition which was made at the instance of the plaintiff?

RACHEL CELESTIAL:

> Because he objected and according to him (Jesse Cachopero) it is beyond my property, your Honor.[40]

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[40] *Rollo*, pp. 151-155.

It is clear from the records and the facts of this case that the real reason Celestial wanted to eject the spouses Cachopero from the subject land is to reclaim the use of such land for herself. This can be gleaned from the fact that in their compromise agreement, she was willing to shoulder the expenses of transferring the old house to the area at the back of her own lot. This fact runs counter to her claim that she was ejecting her brother and his wife from the old house due to its dilapidated and uninhabitable condition. However, Celestial's intention has nothing to do with the validity of the compromise agreement, which the spouses Cachopero freely signed, and on which the MTC based its judgment.

This Court agrees with the Court of Appeals that Special Civil Case No. 070, which became G.R. No. 142595 when it was elevated to this Court, has nothing to do with the case before us. The spouses Cachopero anchor their right on the MSA that they filed with the DENR over the subject land, whereas this case concerns the compromise agreement they executed with Celestial.

Although Celestial's petition in G.R. No. 142595 was denied, and the Court of Appeals' ruling ordering the DENR to process the spouses Cachopero's MSA over the subject lot was affirmed, **what is involved herein is the transfer of the old house from the subject land, and not the subject land itself**. However, the spouses Cachopero have not shown this Court that their MSA had indeed been approved.

Unless the spouses Cachopero can show this Court that there is a supervening event, which occurred after the judgment of the MTC, and which brought about a material change in their situation *vis-à-vis* that of Celestial, the latter has the right to have the compromise agreement executed, according to its terms.[41]

This Court's pronouncements in *Silverio, Jr. v. Filipino Business Consultants, Inc.*,[42] are instructive, and we quote as follows:

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[41] *Silverio, Jr. v. Filipino Business Consultants, Inc.*, 504 Phil. 150, 161-162 (2005).

[42] *Id.*

To justify the stay of immediate execution, the supervening events must have a direct effect on the matter already litigated and settled. Or, the supervening events must create a substantial change in the rights or relations of the parties which would render execution of a final judgment unjust, impossible or inequitable making it imperative to stay immediate execution in the interest of justice.[43]

We find that no such supervening events exist in this case so as to justify the stay of the execution of Civil Case No. 711.

WHEREFORE, the petition is hereby **DENIED** and the September 4, 2000 Decision and January 19, 2001 Resolution of the Court of Appeals in **CA-G.R. SP No. 52655** are **AFFIRMED.**

SO ORDERED.

Corona, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Perlas-Bernabe,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 171765. March 21, 2012]

THE INCORPORATORS OF MINDANAO INSTITUTE, INC. and THE BOARD OF TRUSTEES OF MINDANAO INSTITUTE, INC., represented by ENGR. VICTORIOSO D. UDARBE, *petitioners, vs.* **THE UNITED CHURCH OF CHRIST IN THE PHILIPPINES, acting through AGUSAN DISTRICT CONFERENCE UNITED CHURCH OF CHRIST IN THE PHILIPPINES, represented by REV. RODOLFO BASLOT,** *respondent.*

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[43] *Id.* at 162.

[*] Per Special Order No. 1207 dated February 23, 2012.

SYLLABUS

1.REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; DEFINED AND EXPLAINED. — The writ of preliminary injunction enjoined UCCP from taking control and management of MI and preventing petitioners from discharging their functions in its management. Thus, the Court shall confine itself only with the concerned writ and not the merits of the cases, which are still pending with the RTC. A preliminary injunction, being a preservative remedy for the protection of substantive rights or interests, is not a cause of action in itself but merely a provisional remedy, an adjunct to a main suit. A preliminary injunction is defined under Section 1, Rule 58 of the Rules of Court, as follows: Section 1. *Preliminary injunction defined; classes*. — A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. x x x A preliminary injunction is a provisional remedy that a party may resort to in order to preserve and protect certain rights and interests during the pendency of an action. The objective of a writ of preliminary injunction is to preserve the *status quo* until the merits of the case can be fully heard. *Status quo* is the last actual, peaceable and uncontested situation which precedes a controversy.

2. ID.; ID.; ID.; REQUISITES. — [S]ection 3, Rule 58 of the Rules of Court, enumerates the grounds for the issuance of a writ of preliminary injunction x x x. Based on the foregoing provision, the Court in *St. James College of Parañaque v. Equitable PCI Bank* ruled that the following requisites must be proved before a writ of preliminary injunction will issue: (1) The applicant must have a clear and unmistakable right to be protected, that is, a right in *esse*; (2) There is a material and substantial invasion of such right; (3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.

3. ID.; ID.; ID.; THE WRIT MAY BE ISSUED ONLY UPON CLEAR SHOWING OF AN ACTUAL EXISTING RIGHT TO BE PROTECTED DURING THE PENDENCY OF THE PRINCIPAL ACTION; ISSUANCE OF INJUNCTIVE WRIT

NOT PROPER WHERE COMPLAINANT'S RIGHT IS DOUBTFUL OR DISPUTED. — It bears stressing that to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown. A writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. When the complainant's right or title is doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of injunctive relief is not proper. In the present case, the records fail to reveal any clear and unmistakable right on the part of petitioners. They posit that they are suing in behalf of MI's interests by preventing UCCP from unlawfully wresting control of MI's properties. Their claimed derivative interest, however, has been disputed by UCCP in both its Answer with Counterclaim in Special Civil Action Case No. 03-02 and its Complaint in Civil Case No. 09-2003, wherein MI itself, represented by Dr. Batitang himself, is its co-petitioner. Evidently, the conflicting claims of the parties regarding the issue of ownership over MI's property create the impression that the petitioners' derivative right, used as basis for the issuance of the preliminary injunction, is far from clear. Petitioners claimed right is still indefinite, at least until it is properly threshed out in a trial, negating the presence of a right *in esse* that requires the protection of an injunctive writ. Verily, petitioners cannot lay claim to a clear and positive right based on the 2003 Amended AOI**,** the provisions of which are strongly disputed and alleged to be invalidly obtained.

4. JUDICIAL ETHICS; JUDGES; DISQUALIFICATION; GROUNDS. — The pertinent rule on the mandatory disqualification of judicial officers is laid down in Rule 137 Section 1 of the Rules of Court. Section 1 thereof provides: SECTION 1. *Disqualification of judges*. – No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniary interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity of affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record. Moreover, Rule 3.12 of Canon 3 of the Code of Judicial Conduct,

which took effect from October 20 1989 until May 31, 2004, the applicable rule then, reads as follows: A judge should take no part in a proceeding where the judge's impartiality might reasonably be questioned. These cases include, among others, proceedings where: x x x (d) the judge is related by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree. The prohibitions under the afore-quoted provisions of the Rules are clear. The disqualification is mandatory and gives the judicial officer concerned no discretion but to inhibit himself from trying or sitting in a case. The rationale, therefore, is to preserve the people's faith and confidence in the judiciary's fairness and objectivity.

5. ID.; ID.; ID.; WHERE THE DISQUALIFYING FACT IS INDUBITABLE AND THE PARTIES TO THE CASE MAKE NO WAIVER OF SUCH DISQUALIFICATION, SECTION 1, RULE 137 OF THE RULES OF COURT COMPLETELY STRIPS THE JUDGE OF AUTHORITY TO PROCEED. — While the Court finds it ludicrous that it was the counsel of UCCP, Atty. Poculan, who sought the inhibition of Judge Doyon, considering that the law firm of the latter's son is his collaborating counsel, still the mandatory prohibition applies. Judge Doyon should have immediately inhibited himself from the case upon learning of the entry of appearance of his son's law firm. Where the disqualifying fact is indubitable and the parties to the case make no waiver of such disqualification, as in the case at bench, Section 1, Rule 137 of the Rules of Court forthwith completely strips the judge of authority to proceed.

APPEARANCES OF COUNSEL

Rolando F. Carlota for petitioners.
Poculan & Associates Law Office for respondent.

D E C I S I O N

MENDOZA, *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court are the September 30, 2005 Decision[1] and the March 1, 2006 Resolution[2] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 79156, which dissolved the Writ of Preliminary Injunction[3] dated July 9, 2003 issued by the Regional Trial Court of Cabadbaran, Agusan del Norte, Branch 34 *(RTC)*.

The Factual and Procedural Antecedents

On April 29, 2003, Gregorio D. Calo, Zoilito L. Cepeda, Victorioso D. Udarbe, Tita B. Udarbe, Edgar B. Palarca, Louie Libarios, Anna Mae Pelegrino, Cirilia A. Sanchez, Anita V. Carloto and Eduardo Andit, the incorporators of Mindanao Institute Inc. *(MI Incorporators)*, represented by Engineer Victorioso D. Udarbe *(Engr. Udarbe)*,[4] filed a Petition for Declaratory Relief with Prayer for a Temporary Restraining Order *(TRO)* and Preliminary Injunction[5] against the United Church of Christ in the Philippines *(UCCP)*, acting through the Agusan District Conference of the United Church of Christ in the Philippines and represented by Reverend Rodolfo Baslot *(Rev. Baslot)*, before the RTC, which was docketed as Special Civil Action Case No. **03-02**. The incorporators prayed that Mindanao Institute, Inc. *(MI)* be declared the sole owner of the assets and properties of MI and to prevent the impending takeover by UCCP of MI's properties. They averred that UCCP was unlawfully claiming ownership of MI's properties.

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[1] *Rollo*, pp. 24-34. Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justice Edgardo A. Camello and Associate Justice Rodrigo F. Lim, Jr.

[2] *Id.* at 37-40.

[3] *Id.* at 97-98. Issued by Executive Judge Orlando F. Doyon.

[4] *Id.* at 68-69. Gathered based on the *Amended Articles of Incorporation* annexed to the petition.

[5] *Id.* at 45-54.

On June 5, 2003, UCCP filed its Answer with Counterclaim,[6] asserting its ownership of MI's properties based on certain documents.[7] It claimed that the question of ownership in this case was a settled issue and required no further discourse because "they constitute a majority of the Board of Trustees and, therefore, in complete control thereof x x x."[8]

On June 10, 2003, the RTC issued a TRO[9] against UCCP reasoning out that MI would suffer grave and irreparable damages if the ownership and possession of its assets and properties would be transferred to UCCP. The RTC disposed:

> WHEREFORE, it appearing that petitioners will suffer grave injustice and irreparable injury, let a temporary restraining order against respondents be issued restraining respondents, their representatives, attorneys, agents or any other person acting in their behalf from seizing control and management of the assets and properties of Mindanao Institute.
>
> IT IS ORDERED.[10]

Meanwhile, UCCP received copies of MI's Amended Articles of Incorporation[11] *(2003 Amended AOI)* which was adopted by the MI Incorporators on May 9, 2003 and approved by the Securities and Exchange Commission *(SEC)* on May 26, 2003.

On June 11, 2003, UCCP, represented by Rev. Baslot, and MI, represented by its President Dr. Edgardo R. Batitang *(Dr. Batitang)*, lodged a Complaint for Declaration of Nullity of the 2003 Amended Articles of Incorporation and By-Laws of

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[6] *Id.* at 55-61.

[7] *Id.* at 57. The documents referred to by respondent UCCP in its *Answer with Counterclaim* are the ff: 1) Articles of Incorporation of MI; 2) Deed of Donation; 3) Deed of Quitclaim.

[8] Answer, Par. 5, *id.* at 57.

[9] *Rollo*, pp. 61a-62.

[10] *Id.*

[11] *Id.* at 63-69.

Mindanao Institute with Prayer for the Issuance of Temporary Restraining Order and Preliminary Injunction and/or Damages[12] before the RTC, which was docketed as Civil Case No. **09-2003.** UCCP and MI asserted that the Amendment of MI's Articles of Incorporation effected by signatories in a reckless and hasty fashion was accomplished without the required majority vote in clear violation of Section 16[13] of Corporation Code.[14] Of the ten (10) signatures appearing in the 2003 Amended AOI constituting 2/3 of the Board of Trustees of MI, five (5) were affixed by mere representatives who were not duly authorized to vote. Further, UCCP and MI, as represented by Dr. Batitang, stressed that the procedure in the acceptance of corporate members as embodied in the Amended By-Laws contains discriminatory provisions, wherein certain members maybe subjected to confirmation and acceptance or rejection, but aimed specifically at members to be nominated by UCCP.

On June 17, 2003, the signatories moved to dismiss[15] the complaint for declaration of nullity of the 2003 Amended AOI. They contended that the SEC, in approving the amendments to the Articles of Incorporation and By-Laws, was exercising its quasi-judicial function and, therefore, a co-equal body of the RTC. Thus, the RTC could not grant any of the reliefs prayed for by UCCP.

At the scheduled joint hearing of Special Civil Action Case No. 03-02 and Civil Case No. 09-2003 to determine the propriety

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[12] *Id.* at 70-87.

[13] Sec. 16. Amendment of Articles of Incorporation. Unless otherwise prescribed by this Code or by special law, and for legitimate purposes, any provision or matter stated in the articles of incorporation may be amended by a majority vote of the board of directors or trustees and the vote or written assent of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, without prejudice to the appraisal right of dissenting stockholders in accordance with the provisions of this Code, or the vote or written assent of at least two-thirds (2/3) of the members if it be a non-stock corporation.

x x x x x x x x x

[14] Batas Pambansa Blg. 68.

[15] *Rollo*, pp. 88-90.

of the issuance of a writ of preliminary injunction, the Law Office of Bernabe, Doyon, Bringas and Partners entered its appearance[16] as collaborating counsel for UCCP. Incidentally, Atty. Roy Doyon *(Atty. Doyon)*, the son of Executive Judge Orlando F. Doyon *(Judge Doyon)*, was one of the partners in the said law firm. This prompted Atty. Nelbert T. Poculan, UCCP's lead counsel, to move for the inhibition of Judge Doyon from the case. On the other hand, Atty. Rolando F. Carlota, MI Incorporators' counsel, expressed no objection to the continued participation of Judge Doyon in the proceedings of the case despite the said development.

Subsequently, Judge Doyon proceeded with the joint hearing. Thereafter, the RTC granted the MI incorporators' prayer for preliminary injunction against UCCP in its Omnibus Order[17] dated July 4, 2003, the decretal portion of which states:

> WHEREFORE, the prayer for issuance of a Temporary Restraining Order in Civil Case No. 09-2003 is hereby denied with finality.
>
> As prayed for in Special Civil Case No. 03-02, let a Writ of Preliminary Injunction be issued, restraining, prohibiting, and enjoining respondents, UNITED CHURCH OF CHRIST IN THE PHILIPPINES (UCCP) acting thru AGUSAN DISTRICT CONFERENCE (ADC-UCCP), represented by Rev. Rodolfo Baslot, their agents, representatives, attorneys, and any other persons acting for and in their behalf from taking over, seizing control, managing, or administering MINDANAO INSTITUTE and preventing plaintiffs in discharging their functions and duties in the management, control and administration of the school, its premises and assets, upon plaintiffs putting up a bond in the amount of ₱200,000.00 duly approved by the Court, which bond shall be executed in favour of the defendants to answer for whatever damages they may sustain by reason of or arising from the issuance of the writ in the event that the Court will finally rule that the plaintiffs are not entitled thereto.
>
> IT IS SO ORDERED.

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[16] *Id.* at 95-96.

[17] CA *rollo*, pp. 36-38.

In issuing the preliminary injunction against UCCP, the RTC explained:

The prayer for the issuance of a Temporary Restraining Order, hereinafter known as TRO, in Civil Case No. 09-2003, is anchored on the assumption that the Amended Articles of Incorporation and Amended By-Laws of Mindanao Institute adopted on May 26, 2003, is null and void for being ultra vires. However, at this stage of the proceedings where the action of the Court is generally based on initial and incomplete evidence, the Court cannot just precipitately rule that the amendments were ultra vires acts of the respondents.

It should be stressed that the questioned Amended Articles of Incorporation and By-Laws is duly approved by the Securities and Exchange Commission, hereinafter referred to as SEC. As such, there being no evidence thus far presented to the contrary, the presumption is that the official duty of the SEC has been regularly performed.

Thus, the actuations of respondents in Civil Case No. 09-2003 based on those documents are presumptively valid unless declared void by this Court after a full-blown trial. In other words, plaintiffs at this stage, have not shown the existence of a clear legal right which has been violated warranting the issuance of a TRO, because before a TRO or injunction is issued, it is essential that there must be a right in esse or the existence of a right to be protected and that the act against which the injunction is issued is a violation of such right.

On the other hand, plaintiffs in Special Civil Case No. 03-02 have shown that they have the legal right in the management and administration of Mindanao Institute because their actuations are based in an Amended Articles of Incorporation and By-Laws duly approved by the SEC. The allegation that it was approved by the SEC in record time cannot be taken as evidence that per se the approval was against any law, rule or regulation.

It is precisely for this reason that the Court issued a TRO because from the amendments, plaintiffs in Special Civil Case No. 03-02 and respondents in Civil Case No. 09-2003 have clear legal rights over the management and administration of Mindanao Institute and that the acts of plaintiffs in Civil Case No. 09-2003 and respondents in Special Civil Case No. 03-02 are in violation of those rights. Pending determination, therefore, of the principal action in Special Civil Case No. 03-02, the Court is inclined to issue a preliminary

injunction to protect and preserve the rights of plaintiffs.[18]

UCCP moved for a reconsideration but the same was denied by the RTC in its Resolution[19] dated August 15, 2003.

In its Omnibus Order[20] dated August 20, 2003, Judge Doyon inhibited himself from the cases citing the fact that his son's law firm entered its appearance as collaborating counsel for UCCP.

Disappointed with the unfavorable ruling, UCCP and MI, as represented by Dr. Batitang, sought relief with the CA *via* a petition for *certiorari* under Rule 65 of the Rules of Court alleging grave abuse of discretion on the part of the RTC in issuing the assailed order.

The CA granted the petition in its September 30, 2005 Decision, the *fallo* of which reads:

> WHEREFORE, above premises considered, the instant Petition is **GRANTED.** The writ of preliminary injunction issued against the United Church of Christ in the Philippines (UCCP) in Special Civil Case No. 02-03 is hereby **DISSOLVED.** No pronouncement as to costs.
>
> SO ORDERED.[21]

The CA reasoned, among others, that the petition for *certiorari* (Civil Case No. 09-2003) having been jointly filed by UCCP and MI, as represented by Dr. Batitang, was adequate evidence to support the conclusion that MI did not require any injunctive relief from UCCP. The CA also stated that in actions for declaratory relief, the court was only called upon to determine the parties' rights and obligations. Citing *Republic v. Court of Appeals,*[22] it reasoned out that the RTC could not issue injunction

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[18] *Id.* at 34-35. Citations omitted.

[19] *Id.* at 52-55.

[20] *Id.* at 56.

[21] *Rollo,* p. 33.

[22] 383 Phil. 398 (2000).

in an action for declaratory relief in as much as the right of the MI incorporators had not yet been violated. Moreover, it stated that the subsequent inhibition of Judge Doyon in the cases was pursuant to the rules on compulsory disqualification of a judge under Rule 3.12(d) of the Code of Judicial Conduct.[23]

The MI incorporators, represented by Engr. Udarbe, moved for reconsideration but the motion was denied by the CA in its Resolution dated March 1, 2006.

Hence, this petition.

THE ISSUES

I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS, SPECIAL TWENTY THIRD DIVISION, IN AN ORIGINAL ACTION FOR *CERTIORARI* UNDER RULE 65 ERRED IN CONSIDERING AND RULING ON FACTUAL ISSUES NOT YET HEARD AND TRIED IN THE COURT OF ORIGIN AND BASED ITS DECISION THEREON.

II

WHETHER OR NOT THE HONORABLE COURT OF APPEALS, SPECIAL TWENTY THIRD DIVISION ERRED IN ITS APPLICATION OF RULE 3.12(D) OF THE CODE OF JUDICIAL ETHICS UNDER THE FACTS AND CIRCUMSTANCES SURROUNDING THIS CASE.[24]

In their Memorandum,[25] the petitioners argue that the CA went beyond the province of a writ of *certiorari* by resolving factual questions which should appropriately be threshed out in the trial. On the inhibition, they pointed out that it was solely

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[23] A judge should take no part in a proceeding where the judge's impartiality might reasonably be questioned. These cases include, among others, proceedings where:

(d) the judge is related by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree.

[24] *Rollo*, p. 10.

[25] *Id.* at 190-204.

the law partner of Judge Doyon's son, Atty. J. Ma. James L. Bringas *(Atty. Bringas)*, who personally entered his appearance as collaborating counsel, and not the law firm. Furthermore, they claim that Atty. Doyon, Judge Doyon's son, was neither present in court on the day Atty. Bringas entered his appearance nor was he present in any of the previous hearings of the subject cases. Hence, petitioners claim that Rule 3.12(d) of the Code of Judicial Conduct[26] is not applicable in this case because Atty. Doyon never represented any party in any of the subject cases being heard by Judge Doyon.

In its Memorandum,[27] respondent claims that the petition for review on *certiorari* filed by the petitioners was not properly verified as to authorize Engr. Udarbe to file the same - a fatal procedural infirmity. Further, it points out that petitioners are raising questions of fact in their petition not cognizable by this Court.

THE COURT'S RULING

The petition lacks merit.

The Court is called upon to resolve the issue of whether or not the CA erred in dissolving the writ of preliminary injunction issued against UCCP. The writ of preliminary injunction enjoined UCCP from taking control and management of MI and preventing petitioners from discharging their functions in its management. Thus, the Court shall confine itself only with the concerned writ and not the merits of the cases, which are still pending with the RTC. A preliminary injunction, being a preservative remedy for the protection of substantive rights or interests, is not a cause of action in itself but merely a provisional remedy, an adjunct to a main suit.[28]

A preliminary injunction is defined under Section 1, Rule 58 of the Rules of Court, as follows:

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[26] *Supra* note 23.

[27] *Rollo,* pp. 170-188.

[28] *Pahila-Garrido v. Tortogo,* G.R. No. 156358, August 17, 2011.

Section 1. *Preliminary injunction defined; classes.* — A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. x x x

A preliminary injunction is a provisional remedy that a party may resort to in order to preserve and protect certain rights and interests during the pendency of an action.[29] The objective of a writ of preliminary injunction is to preserve the *status quo* until the merits of the case can be fully heard. *Status quo* is the last actual, peaceable and uncontested situation which precedes a controversy.[30]

Significantly, Section 3, Rule 58 of the Rules of Court, enumerates the grounds for the issuance of a writ of preliminary injunction:

SEC. 3. *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

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[29] *Limitless Potentials, Inc. v. Court of Appeals,* G.R. No. 164459, April 24, 2007, 522 SCRA 70, 82.

[30] *Preysler, Jr. v. Court of Appeals,* 527 Phil. 129, 136 (2006), citing *Cortez-Estrada v. Heirs of Domingo Samut/Antonia Samut,* 491 Phil. 458, 472 (2005); *Los Baños Rural Bank, Inc. v. Africa*, 433 Phil. 930, 945 (2002).

Based on the foregoing provision, the Court in *St. James College of Parañaque v. Equitable PCI Bank*[31] ruled that the following requisites must be proved before a writ of preliminary injunction will issue:

(1) The applicant must have a clear and unmistakable right to be protected, that is, a right in *esse*;

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

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

(4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[32] [Underscoring supplied]

It bears stressing that to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown. A writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action.[33] When the complainant's right or title is doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of injunctive relief is not proper.[34]

In the present case, the records fail to reveal any clear and unmistakable right on the part of petitioners. They posit that they are suing in behalf of MI's interests by preventing UCCP from unlawfully wresting control of MI's properties. Their claimed derivative interest, however, has been disputed by UCCP in

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[31] G.R. No. 179441, August 9, 2010, 627 SCRA 328, 344, citing *Biñan Steel Corporation v. Court of Appeals*, 439 Phil. 688, 703-704 (2002); *Hutchison Ports Philippines, Ltd. v. Subic Bay Metropolitan Authority*, 393 Phil. 843, 859 (2000).

[32] *Id.*

[33] *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.*, G.R. No. 165950, August 11, 2010, 628 SCRA 79, 88, citing *Borromeo v. Court of Appeals*, G.R. No. 169846, March 28, 2008, 550 SCRA 269, 280; *Lim v. Court of Appeals*, 517 Phil. 522, 527 (2006).

[34] *Barayuga v. Adventist University of the Philippines*, G.R. No. 168008, August 17, 2011.

both its Answer with Counterclaim in Special Civil Action Case No. 03-02 and its Complaint in Civil Case No. 09-2003, wherein MI itself, represented by Dr. Batitang himself, is its co-petitioner. Evidently, the conflicting claims of the parties regarding the issue of ownership over MI's property create the impression that the petitioners' derivative right, used as basis for the issuance of the preliminary injunction, is far from clear. Petitioners claimed right is still indefinite, at least until it is properly threshed out in a trial, negating the presence of a right *in esse* that requires the protection of an injunctive writ. Verily, petitioners cannot lay claim to a clear and positive right based on the 2003 Amended AOI**,** the provisions of which are strongly disputed and alleged to be invalidly obtained.

As regards the issue of Judge Doyon's disqualification to sit as judge in the subject cases, the Court agrees with the CA. The pertinent rule on the mandatory disqualification of judicial officers is laid down in Rule 137 of the Rules of Court. Section 1 thereof provides:

> SECTION 1. *Disqualification of judges.* – No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniary interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record. [Underscoring supplied]
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> x x x x x x x x x .

Moreover, Rule 3.12 of Canon 3 of the Code of Judicial Conduct, which took effect from October 20, 1989 until May 31, 2004, the applicable rule then, reads as follows:

> A judge should take no part in a proceeding where the judge's impartiality might reasonably be questioned. These cases include, among others, proceedings where:

x x x x x x x x x

(d) the judge is related by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree. [Underscoring supplied]

The prohibitions under the afore-quoted provisions of the Rules are clear. The disqualification is mandatory and gives the judicial officer concerned no discretion but to inhibit himself from trying or sitting in a case. The rationale, therefore, is to preserve the people's faith and confidence in the judiciary's fairness and objectivity.[35]

While the Court finds it ludicrous that it was the counsel of UCCP, Atty. Poculan, who sought the inhibition of Judge Doyon, considering that the law firm of the latter's son is his collaborating counsel, still the mandatory prohibition applies. Judge Doyon should have immediately inhibited himself from the case upon learning of the entry of appearance of his son's law firm. Where the disqualifying fact is indubitable and the parties to the case make no waiver of such disqualification, as in the case at bench, Section 1, Rule 137 of the Rules of Court forthwith completely strips the judge of authority to proceed.[36]

WHEREFORE, the petition is **DENIED.** The assailed September 30, 2005 Decision and March 1, 2006 Resolution of the Court of Appeals, in CA-G.R. SP No. 79156, are hereby **AFFIRMED.**

SO ORDERED.

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

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[35] *Busilac Builders, Inc. v. Judge Charles A. Aguilar*, A.M. No. RTJ-03-1809, October 17, 2006, 504 SCRA 585, 598, citing *Ortiz v. Jaculbe, Jr.*, 500 Phil. 142, 147 (2005); *Pimentel v. Salanga*, 128 Phil. 176, 183 (1967); *Hacienda Benito, Inc. v. Court of Appeals*, 237 Phil. 46, 63 (1987).

[36] *Geotina v. Gonzales*, 148-B Phil. 556, 568-569 (1971).

SECOND DIVISION

[G.R. No. 172712. March 21, 2012]

STRADCOM CORPORATION, *petitioner, vs.* **HONORABLE HILARIO L. LAQUI as Acting Presiding Judge of the Regional Trial Court of Quezon City, Branch 97 and DTECH MANAGEMENT, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; MOOT AND ACADEMIC; A CASE BECOMES MOOT AND ACADEMIC WHEN, BY VIRTUE OF SUPERVENING EVENTS, THERE IS NO MORE ACTUAL CONTROVERSY BETWEEN THE PARTIES AND NO USEFUL PURPOSE CAN BE SERVED IN PASSING UPON THE MERITS; CASE AT BAR. — Where a case has become moot and academic, there is no more justiceable controversy, so that a declaration thereon would be of no practical value. A case becomes moot and academic when, by virtue of supervening events, there is no more actual controversy between the parties and no useful purpose can be served in passing upon the merits. Since they are constituted to pass upon substantial rights, courts of justice will not consider questions where no actual interests are involved. As a rule, courts decline jurisdiction over such cases or dismiss them on the ground of mootness. Our perusal of the record shows that STRADCOM's petition assailing the CA's decision which upheld the validity of the writ of preliminary injunction issued by the RTC had been rendered moot and academic.

2. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; RESORTED TO BY A LITIGANT FOR THE PRESERVATION OR PROTECTION OF HIS RIGHTS OR INTEREST AND FOR NO OTHER PURPOSE DURING THE PENDENCY OF THE PRINCIPAL ACTION; THE MOOTNESS OF THE MAIN CASE RENDERED THE ISSUE OF THE VALIDITY OF THE WRIT OF PRELIMINARY INJUNCTION ISSUED BY THE REGIONAL TRIAL COURT MOOT AND ACADEMIC. — Considering that DTECH's main case has been already mooted, it stands to reason that the issue

of the validity of the writ of preliminary injunction issued by the RTC had likewise been mooted. Indeed, a preliminary injunction is a provisional remedy, an adjunct to the main case subject to the latter's outcome. It is resorted to by a litigant for the preservation or protection of his rights or interest and for no other purpose during the pendency of the principal action. Under the above-discussed factual milieu, we find no more reason to determine whether or not the RTC's grant of the writ of preliminary injunction sought by DTECH amounted to grave abuse of discretion.

3. ID.; CIVIL PROCEDURE; ACTIONS; MOOT AND ACADEMIC; COURTS SHOULD ABSTAIN FROM EXPRESSING ITS OPINION WHERE NO LEGAL RELIEF IS NEEDED OR CALLED FOR; EXCEPTIONS; NOT PRESENT. — While courts should abstain from expressing its opinion where no legal relief is needed or called for, we are well aware of the fact that the "moot and academic" principle is not a magical formula that should automatically dissuade courts from resolving a case. Accordingly, it has been held that a court will decide a case, 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. None of these exceptions is, however, present in this case.

APPEARANCES OF COUNSEL

Francisco Paredes and Morales Law Office for petitioner.
Abesamis Law Offices for private respondent.

D E C I S I O N

PEREZ, *J.*:

Assailed in this petition for review on *certiorari* filed pursuant to Rule 45 of the *1997 Rules of Civil Procedure* is the Decision dated 8 May 2006[1] rendered by the Fourteenth Division of the Court of Appeals (CA) in CA-G.R. SP No. 87233, dismissing for lack of merit the petition for *certiorari* and prohibition filed by petitioner Stradcom Corporation (***STRADCOM***) which sought the nullification of the Resolutions dated 3 March 2004 and 16 August 2004 in turn issued in Civil Case No. Q03-49859 by public respondent, the Hon. Hilario Laqui, as Acting Presiding Judge of the Regional Trial Court (***RTC***), Branch 97, Quezon City.[2]

On 19 June 2003, respondent DTech Management Incorporated (***DTECH***), filed a complaint for injunction, with prayer for Issuance of a Preliminary Injunction and Temporary Restraining Order against the Land Transportation Office (***LTO***), represented by Assistant Secretary Robert T. Lastimoso. Docketed as Civil Case No. Q03-49859 before the RTC,[3] the complaint alleged that, in May 2001, DTECH submitted to the LTO a proposal to remedy problems relating to Compulsory Third Party Liability (***CTPL***) insurance of motor vehicles, specifically the proliferation of fake or duplicate CTPL insurance policies or Certificates of Cover (***COC***) which resulted in non-payment of claims thereon and loss of government revenues. To determine the viability of the proposal which entailed the computerization of all CTPL insurance transactions, the LTO conducted consultations with the Insurance Commission (***IC***), the Insurance and Surety Association of the Philippines, Inc. (***ISAP***) and DTECH. An acceptable information technology (***IT***) solution denominated

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[1] Penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Edgardo P. Cruz and Sesinando E. Villon.

[2] CA *rollo*, CA-G.R. SP No. 87233, 8 May 2006 Decision, pp. 486-502.

[3] Records, Vol. I, Civil Case No. Q03-49859, DTECH's 6 June 2003 Complaint, pp. 1-32.

as the COC Authentication System (***COCAS***) was eventually approved whereby COCs issued by insurance companies would undergo authentication and verification by IT service providers chosen by ISAP. Through its own selection and bidding process, ISAP hired DTECH to undertake the COC verification process while SQL Wizard, Inc. (***SQL***) likewise engaged to handle the COC authentication process.[4]

DTECH further averred that, on 1 July 2002, a Memorandum of Understanding (***MOU***) was executed by the LTO, IC and ISAP which affirmed, among other matters, DTECH's accreditation and qualification "as an entity that could effectively and efficiently provide the required IT services in the verification end of the COCAS." Consistent with the MOU, the LTO, IC, ISAP and DTECH also executed a Memorandum of Agreement (***MOA***) on the same date, specifying the terms and conditions of DTECH's engagement as "the sole IT service provider for the verification of COC for a term of five (5) years commencing on July 24, 2002 until July 24, 2007." Under the MOA, verification was defined as "the act of having an authenticated COC validated through the process of the on-line verification via the internet, SMS and other present day information technology and telecommunications applications." For each and every verification, DTECH was allowed to charge a fee of ₱20.00, exclusive of VAT, payable by the insurance company concerned within thirty (30) days from receipt of the billing therefor. After purportedly investing millions of pesos and exerting diligent effort to comply with its obligations under the MOA, DTECH maintained that, without any burden on public coffers, its initial operations yielded dramatic improvements and huge benefits to the government and the public.[5]

Despite the foregoing factual antecedents, however, DTECH claimed that, on 17 January 2003, LTO wrote ISAP, suggesting the termination of DTECH's services in view of its supposed failure to interconnect with the LTO IT Motor Vehicle Registration

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

[5] *Id.* at 6-10.

System (***LTO IT MVRS***) owned and operated by STRADCOM under a Build Operate and Own (***BOO***) contract with the Department of Transportation and Communication (***DOTC***)/ LTO. LTO further issued a Memorandum Circular directing that all COCs must be registered and verified under the LTO IT MVRS and that only COCs thus authenticated and verified would be thereafter accepted. The strict implementation of the foregoing directive was required in the 10 March 2003 Memorandum Circular issued by LTO, in blatant disregard of the meetings conducted by the parties to discuss the recall and/ or postponement of the implementation thereof. Although the implementation of the directive was briefly suspended, the LTO went on to issue yet another Memorandum Circular on 28 April 2003, instructing all its officials and employees to accept COCs "***that have been verified and authenticated on-line, real time either by [STRADCOM's] CTPL COC Authentication Facility or ISAP-[SQL]-[DTECH]***." On 26 May 2003, the LTO notified the IC, ISAP and DTECH of its termination of the 1 July 2002 MOA, in view of the latter's failure to integrate the COCAS with the existing workflow of the LTO and its offices nationwide.[6]

DTECH maintained that LTO's termination of its services and cancellation of the COCAS is violative of its contractual rights, the law as well as principles of fairness and due process. Since it was never a part of the parties' agreement, DTECH's alleged failure to interconnect with LTO MVRS is neither a valid ground for the termination of its services nor a reason to give undue advantage to STRADCOM. Emphasizing its considerable investments in the setting up the IT infrastructure required nationwide for the COCAS as well as its hiring of hundreds of personnel, installation of facilities and entry into service contracts required by the endeavor, DTECH argued that the pre-termination of the five-year term for which it was designated the sole IT provider for the verification of COCs and/or the performance of its functions by another private IT service would not only cause injustice and irreparable damage

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[6] *Id.* at 11-21.

but would also engender confusion in the insurance industry and to the general public.[7]

Over the opposition interposed by the LTO, the RTC issued the 25 June 2003 order granting DTECH's application for the issuance of a temporary restraining order (***TRO***) against the termination of the implementation of the parties' 1 July 2002 MOA.[8] Contending that the complaint was fatally defective and failed to state a cause of action, LTO filed an urgent motion to dismiss dated 8 July 2003, with opposition to DTECH's application for a writ of preliminary injunction for lack of showing of a right ***in esse*** and the resultant irreparable injury from the act complained against.[9] On 1 August 2003, the RTC issued two (2) resolutions, denying LTO's motion to dismiss[10] and granting DTECH's application for a writ of preliminary injunction which was deemed necessary pending the determination of the validity of the MOA's termination at the trial of the case on the merits.[11] Upon DTECH's posting of the bond which was fixed at ₱1,500,000.00, the RTC went on to issue the corresponding writ of preliminary prohibitory injunction dated 4 August 2003, restraining LTO from implementing the termination of the MOA.[12]

On 6 August 2003, STRADCOM filed a motion for leave to admit its answer-in-intervention, manifesting its legal interest in the matter in litigation and its intent to unite with LTO in resisting the complaint. In its attached answer-in-intervention, STRADCOM averred that, on 26 March 1998, it executed with the DOTC a BOO Agreement for the implementation of infrastructure facilities in accordance with Republic Act (***R.A.***) No. 6957, as amended by R.A. 7718. Having been authorized

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[7] *Id.* at 22-29.

[8] RTC's 25 June 2003 Order, *id.* at 84.

[9] LTO's 8 July 2003 Urgent Motion to Dismiss, *id.* at 87-100.

[10] RTC's 1 August 2003 Resolution, *id.* at 121-123.

[11] RTC's 1 August 2003 Resolution, *id.* at 124-125.

[12] RTC's 4 August 2003 Writ of Preliminary Prohibitory Injunction, *id.* at 150-151.

to design, construct and operate the IT system for the DOTC/LTO, STRADCOM argued that the 1 July 2002 MOU and MOA breached the BOO Agreement which included the verification of COCs granted to DTECH without the requisite public bidding. With the latter's failure to comply with its contractual undertakings despite repeated warnings, STRADCOM claimed that LTO validly terminated the MOA on 26 May 2003 and effectively mooted DTECH's cause of action for injunction. STRADCOM likewise called attention to the prohibition against the issuance of a TRO and/or preliminary injunction against national infrastructure[13] projects like those Covered by R.A. Nos. 6957[14] and 7718.[15]

On 21 August 2003, LTO moved for the reconsideration of the RTC's 1 August 2003 Resolution.[16] With the admission of its answer-in-intervention, STRADCOM, in turn, filed its 15 October 2003 motion for the dissolution of the preliminary injunction issued in the case.[17] On 3 March 2004, the RTC issued a resolution, denying the motions filed by LTO and STRADCOM upon the following findings and conclusions: (a) the pleadings so far filed required factual issues which can only be determined after trial of the case on the merits; (b) as LTO's agents insofar as the COCAS is concerned, the IC and ISAP are not indispensable parties to the case; (c) in the absence of government capital investment thereon, the COCAS do not come within the purview of the prohibition against injunctive orders and writs under R.A. 8975; (d) there is no adequate showing

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[13] STRADCOM's 6 August 2003 Answer-in-Intervention, *id.* at 154-162.

[14] *An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes.*

[15] *An Act Amending Certain Sections of Republic Act No. 6957, Entitled 'An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes.*

[16] Records, Vol. I, Civil Case No. Q03-49859, LTO's 19 August 2003 Motion for Reconsideration, pp. 200-214.

[17] STRADCOM's 15 October 2003 Motion to Dissolve Writ of Preliminary Injunction, *id.* at 255-261.

that the verification of the COCs is included in the BOO Agreement between DOTC/LTO and STRADCOM which even participated in the bidding ISAP conducted for the COCAS; and, (e) DTECH was able to demonstrate that the damage it would suffer as a consequence of the pre-termination of the MOA went beyond monetary injury.[18] STRADCOM's motion for reconsideration of the foregoing resolution was denied for lack of merit in the RTC's Resolution dated 16 August 2004.[19]

Aggrieved, STRADCOM filed the Rule 65 petition for *certiorari* and prohibition which, docketed before the CA as CA-G.R. SP No. 87233, was dismissed for lack of merit in the herein assailed Decision dated 8 May 2006. In affirming the RTC's Resolutions dated 3 March 2004 and 16 August 2004, the CA's then Fourteenth Division ruled that the writ of preliminary prohibitory injunction issued *a quo* was directed against the pre-termination of the 1 July 2002 MOA and not STRADCOM's BOO Agreement with the LTO. Finding that the scope of the BOO Agreement had yet to be threshed out in the trial of the case on the merits, the CA discounted the grave abuse of discretion STRADCOM imputed against the RTC which, in issuing the injunctive writ, was found to be exercising a discretionary act outside the ambit of a writ of prohibition. Absent showing of manifest abuse, the CA desisted from interfering with the RTC's exercise of its discretion in issuing the injunctive writ as it involved determination of factual issues which is not the function of appellate courts.[20]

Unfazed, STRADCOM filed the petition at bench, urging the reversal of the CA's 8 May 2006 Decision on the following grounds:

A.

THE HONORABLE APPELLATE COURT SERIOUSLY ERRED IN SUSTAINING RESPONDENT JUDGE HILARIO L. LAQUI'S PATENT GRAVE ABUSE OF DISCRETION AMOUNTING TO

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[18] RTC's 3 March 2004 Resolution, *id.* at 308-315.

[19] RTC's 16 August 2004 Resolution, *id.* at 367-369.

[20] CA *rollo*, CA-G.R. SP No. 87233, 8 May 2006 Decision, pp. 486-502.

LACK OF OR EXCESS OF JURISDICTION IN RULING THAT THE "COCAS" SUBJECT OF THE MEMORANDUM OF AGREEMENT IS NOT A "GOVERNMENT INFRASTRUCTURE PROJECT" WITHIN THE CONTEMPLATION OF THE LAW PARTICULARLY COVERED BY THE BAN ON COURTS FROM ISSUING TRO/ PRELIMINARY INJUNCTION CONTEMPLATED BY P.D. 1818 AS AMENDED BY R.A. 8975 AND ADMINISTRATIVE CIRCULAR NO. 07-99 DATED JUNE 25, 1999, BY NOT TAKING INTO ACCOUNT THE BUILD-OWN-AND-OPERATE AGREEMENT EXECUTED BETWEEN THE REPUBLIC OF THE PHILIPPINES THROUGH THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATION (DOTC/LTO) AND PETITIONER STRADCOM CORPORATION COVERED BY R.A. 6957, AS AMENDED BY R.A. 7718.

B.

THE HONORABLE APPELLATE COURT GRIEVOUSLY ERRED IN SUSTAINING RESPONDENT JUDGE HILARIO L. LAQUI'S OBVIOUS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION IN RULING THAT PETITIONER STRADCOM IS IN ESTOPPEL FOR HAVING PARTICIPATED IN THE BIDDING CONDUCTED BY ISAP FOR THE PURPOSE OF CHOOSING THE INFORMATION TECHNOLOGY (IT) SERVICE PROVIDER FOR THE COCAS WHICH IS IN VIOLATION OF THE BOO AGREEMENT.

C.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING RESPONDENT JUDGE HILARIO L. LAQUI'S PATENT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION IN ISSUING A WRIT OF PRELIMINARY INJUNCTION AGAINST AN ACCOMPLISHED ACT, AN ACT IN CLEAR VIOLATION OF THE RULE ON FAIT ACOMPLI.

D.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING RESPONDENT JUDGE HILARIO L. LAQUI'S GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED WRIT OF INJUNCTION DESPITE CLEAR AND SERIOUS

VIOLATIONS OF RESPONDENT DTECH WHO COME TO COURT OF EQUITY WITH UNCLEAN HANDS.[21]

We find the denial of STRADCOM's petition in order.

Where a case has become moot and academic, there is no more justiceable controversy, so that a declaration thereon would be of no practical value.[22] A case becomes moot and academic when, by virtue of supervening events,[23] there is no more actual controversy between the parties and no useful purpose can be served in passing upon the merits.[24] Since they are constituted to pass upon substantial rights, courts of justice will not consider questions where no actual interests are involved.[25] As a rule, courts decline jurisdiction over such cases or dismiss them on the ground of mootness.[26]

Our perusal of the record shows that STRADCOM's petition assailing the CA's decision which upheld the validity of the writ of preliminary injunction issued by the RTC had been rendered moot and academic. It is beyond dispute, after all, that DTECH commenced its main action for injunction for no other purpose than to restrain the LTO from putting into effect its termination of the 1 July 2002 MOA and, with it, DTECH's services as sole IT provider of the verification aspect of the COCAS. In its 6 June 2003 complaint, DTECH specifically sought the following reliefs:

WHEREFORE, it is most respectfully prayed that:

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[21] *Rollo,* p. 11.

[22] *Paloma v. Court of Appeals*, 461 Phil. 269, 276 (2003).

[23] *Vilando v. House of Representatives Electoral Tribunal*, G.R. Nos. 192147 & 192149, 23 August 2011.

[24] *Samson v. Caterpillar, Inc.*, G.R. No. 169882, 12 September 2007, 533 SCRA 88, 96.

[25] *Huibonhoa v. Concepcion,* G.R. No. 153785, 3 August 2006, 497 SCRA 562, 572.

[26] *Mendoza v. Villas*, G.R. No. 187256, 23 February 2011, 644 SCRA 347, 357.

(a) immediately upon receipt of this complaint, a temporary restraining order be issued restraining [LTO] and all other agencies, parties or persons acting for and in his behalf and under its authority from – terminating and/or otherwise giving effect and implementing the termination of the [MOA] dated July 01, 2002 and the COCAS and/or the services of [DTECH] as IT service provider of the verification aspect of the COC Authentication System; allowing any other IT service provider or party to perform the function of [DTECH] as the sole IT service provider for the verification of Certificates of Cover of motor vehicles for registration and in any way disrupting the function of [DTECH] as such, either directly or indirectly, by terminating the MOA and/or rendering the rights of the parties emanating therefrom to become ineffective, moot and academic;

(b) after due notice and hearing, a writ of preliminary injunction be issued in the same tenor as that of the temporary restraining order herein prayed for; and

(c) thereafter, making the injunction permanent within the period of effectivity of the [MOA] by and among the LTO, IC, ISAP and [DTECH] dated July 01, 2002.[27] (underscoring supplied)

As may be gleaned from the MOA, however, the engagement of DTECH as exclusive IT service provider for the verification aspect of the COCAS was only for a limited period of five years. In specifying the term of the agreement, Section 2 of the MOA provides that, "(t)he engagement of [DTECH] by ISAP as the sole IT service provider for the verification of COCs shall be five (5) years commencing on July 24, 2002 until July 24, 2007, renewable for the same period of time under such terms and conditions mutually acceptable, subject to the provisions of Sections 7[28] and 8[29] hereof."[30] Having been prompted by LTO's supposed wrongful pre-termination of the MOA on 26 May 2003, it cannot, therefore, be gainsaid that DTECH's cause of action for injunction had been mooted by the supervening expiration of the term agreed upon by the parties.

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[27] Records, Vol. I, Civil Case No. Q03-49859, pp. 29-30.

[28] On the "Responsibilities of [the] IC".

[29] On the "Pre-Termination of [the] Agreement".

[30] Records, Vol. I, Civil Case No. Q03-49859, p. 49.

Considering that DTECH's main case has been already mooted, it stands to reason that the issue of the validity of the writ of preliminary injunction issued by the RTC had likewise been mooted. Indeed, a preliminary injunction is a provisional remedy, an adjunct to the main case subject to the latter's outcome.[31] It is resorted to by a litigant for the preservation or protection of his rights or interest and for no other purpose during the pendency of the principal action.[32] Under the above-discussed factual milieu, we find no more reason to determine whether or not the RTC's grant of the writ of preliminary injunction sought by DTECH amounted to grave abuse of discretion.

While courts should abstain from expressing its opinion where no legal relief is needed or called for,[33] we are well aware of the fact that the "moot and academic" principle is not a magical formula that should automatically dissuade courts from resolving a case. Accordingly, it has been held that a court will decide a case, 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.[34] None of these exceptions is, however, present in this case.

WHEREFORE, premises considered, the petition is **DENIED** for having been rendered moot and academic.

SO ORDERED.

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

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[31] *Bustamante v. Court of Appeals,* 430 Phil. 797, 808 (2002).

[32] *Toyota Motor Phils. Corporation Workers' Association (TMPCWA) v. Court of Appeals,* 458 Phil. 661, 682 (2003).

[33] *Korea Exchange Bank v. Hon. Rogelio C. Gonzales,* G.R. No. 139460, 31 March 2006, 486 SCRA 166, 176.

[34] *Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP),* G.R. Nos. 183591, 183752, 183893, 183951, 183962, 14 October 2008, 568 SCRA 402, 460.

THIRD DIVISION

[G.R. No. 173155. March 21, 2012]

R.S. TOMAS, INC., *petitioner, vs.* **RIZAL CEMENT COMPANY, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; BAD FAITH; DEFINED AND CONSTRUED. — Bad faith does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud. Fraud has been defined to include an inducement through insidious machination. Insidious machination refers to a deceitful scheme or plot with an evil or devious purpose. Deceit exists where the party, with intent to deceive, conceals or omits to state material facts and, by reason of such omission or concealment, the other party was induced to give consent that would not otherwise have been given. These are allegations of fact that demand clear and convincing proof. They are serious accusations that can be so conveniently and casually invoked, and that is why they are never presumed. In this case, the evidence presented is insufficient to prove that respondent acted in bad faith or fraudulently in dealing with petitioner.

2. ID.; ID.; BREACH OF CONTRACT; DEFINED; PRESENT IN CASE AT BAR. — [W]e find that there was not only delay but non-completion of the projects undertaken by petitioner without justifiable ground. Undoubtedly, petitioner is guilty of breach of contract. Breach of contract is defined as the failure without legal reason to comply with the terms of a contract. It is also defined as the failure, without legal excuse, to perform any promise which forms the whole or part of the contract. In the present case, petitioner did not complete the projects. This gives respondent the right to terminate the contract by serving petitioner a written notice.

3. ID.; ID.; ID.; LIABILITY; AWARD OF LIQUIDATED DAMAGES, PROPER; RETURN OF EXCESS PAYMENTS AND

THE COST OF CONTRACTING THIRD PARTY, SUSTAINED. — Consequently, and pursuant to the agreement of the parties, petitioner is liable for liquidated damages in the amount of ₱29,440.00 per day of delay, which shall be limited to a maximum of 10% of the project cost or ₱294,400.00. In this case, petitioner bound itself to complete the projects within 120 days from December 29, 1990. However, petitioner failed to fulfill the same prompting respondent to engage the services of another contractor on November 14, 1991. Thus, despite the lapse of eleven months from the time of the effectivity of the contract entered into between respondent and petitioner, the latter had not completed the projects. Undoubtedly, petitioner may be held to answer for liquidated damages in its maximum amount which is 10% of the contract price. While we have reduced the amount of liquidated damages in some cases, because of partial fulfillment of the contract and/or the amount is unconscionable, we do not find the same to be applicable in this case. It must be recalled that the contract entered into by petitioner consists of three projects, all of which were not completed by petitioner. Moreover, the percentage of work accomplishment was not adequately shown by petitioner. Hence, we apply the general rule not to ignore the freedom of the parties to agree on such terms and conditions as they see fit as long as they are not contrary to law, morals, good customs, public order or public policy. Thus, as agreed upon by the parties, we apply the 10% liquidated damages. Considering that petitioner was already in delay and in breach of contract, it is liable for damages that are the natural and probable consequences of its breach of obligation. Since advanced payments had been made by respondent, petitioner is bound to return the excess *vis-à-vis* its work accomplishments. In order to finish the projects, respondent had to contract the services of another contractor. We, therefore, find no reason to depart from the CA conclusion requiring the return of the excess payments as well as the payment of the cost of contracting Geostar, in addition to liquidated damages.

APPEARANCES OF COUNSEL

Padilla Reyes & Dela Torre Law Offices for petitioner.
Angara Abello Concepcion Regala & Cruz for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner R.S. Tomas, Inc. against respondent Rizal Cement Company, Inc. assailing the Court of Appeals (CA) Decision[1] dated December 19, 2005 and Resolution[2] dated June 6, 2006 in CA-G.R. CV No. 61049. The assailed decision reversed and set aside the Regional Trial Court[3] (RTC) Decision[4] dated June 5, 1998 in Civil Case No. 92-1562.

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

On December 28, 1990, respondent and petitioner entered into a Contract[5] for the supply of labor, materials, and technical supervision of the following projects:

1. J.O. #P-90-212 – Wiring and installation of primary and secondary lines system.

2. J.O. #P-90-213 – Supply and installation of primary protection and disconnecting switch.

3. J.O. #P-90-214 – Rewinding and conversion of one (1) unit 3125 KVA, 34.5 KV/2.4 KV, 3ø Transformer to 4000 KVA, 34.5 KV/480V, 3ø Delta Primary, Wye with neutral secondary.[6]

Petitioner agreed to perform the above-mentioned job orders. Specifically, it undertook to supply the labor, equipment,

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[1] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Edgardo F. Sundiam, concurring, *rollo*, pp. 57-68.

[2] CA *rollo*, pp. 110-111.

[3] Branch 150, City of Makati.

[4] Penned by Judge Zeus C. Abrogar; records, pp. 611-625.

[5] Exhibit "A", Exhibits for the Plaintiff, pp. 1-8.

[6] *Id.* at 1.

supervision, and materials as specified in the detailed scope of work.[7] For its part, respondent agreed to pay the total sum of ₱2,944,000.00 in consideration of the performance of the job orders. Petitioner undertook to complete the projects within one hundred twenty (120) days from the effectivity of the contract.[8] It was agreed upon that petitioner would be liable to respondent for liquidated damages in the amount of ₱29,440.00 per day of delay in the completion of the projects which shall be limited to 10% of the project cost.[9] To secure the full and faithful performance of all its obligations and responsibilities under the contract, petitioner obtained from Times Surety & Insurance Co. Inc. (Times Insurance) a performance bond[10] in an amount equivalent to fifty percent (50%) of the contract price or ₱1,458,618.18. Pursuant to the terms of the contract, respondent made an initial payment of ₱1,458,618.18 on January 8, 1991.[11]

In a letter[12] dated March 9, 1991, petitioner requested for an extension of seventy-five (75) days within which to complete the projects because of the need to import some of the materials needed. In the same letter, it also asked for a price adjustment of ₱255,000.00 to cover the higher cost of materials.[13] In another letter[14] dated March 27, 1991, petitioner requested for another 75 days extension for the completion of the transformer portion of the projects for failure of its supplier to deliver the materials.

On June 14, 1991,[15] petitioner manifested its desire to complete the project as soon as possible to prevent further losses and

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7 *Id.* at 2.

8 *Id.* at 3.

9 *Id.* at 4.

10 Exhibit "C", Exhibits for the Plaintiff, pp. 20-21.

11 Exhibits for the Plaintiff, pp. 22-23.

12 Exhibit "2", records, pp. 447-449.

13 Records, p. 447.

14 Exhibit "3", *id.* at 448-449.

15 Exhibit "7", *id.* at 461-463.

maintain goodwill between the companies. Petitioner requested for respondent's assistance by facilitating the acquisition of materials and supplies needed to complete J.O. #P-90-212 and J.O. #P-90-213 by directly paying the suppliers. It further sought that it be allowed to back out from J.O. #P-90-214 covering the rewinding and conversion of the damaged transformer.

In response[16] to petitioner's requests, respondent, through counsel, manifested its observation that petitioner's financial status showed that it could no longer complete the projects as agreed upon. Respondent also informed petitioner that it was already in default having failed to complete the projects within 120 days from the effectivity of the contract. Respondent further notified petitioner that the former was terminating the contract. It also demanded for the refund of the amount already paid to petitioner, otherwise, the necessary action would be instituted. Respondent sent another demand letter[17] to Times Insurance for the payment of ₱1,472,000.00 pursuant to the performance bond it issued.

On November 14, 1991,[18] respondent entered into two contracts with Geostar Philippines, Inc. (Geostar) for the completion of the projects commenced but not completed by petitioner for a total consideration of ₱3,435,000.00.

On December 14, 1991, petitioner reiterated its desire to complete J.O. #P-90-212 and J.O. #P-90-213 and to exclude J.O. #P-90-214,[19] but the same was denied by respondent in a letter[20] dated January 14, 1992. In the same letter, respondent pointed out that amicable settlement is impossible. Hence, the *Complaint for Sum of Money*[21] filed by respondent against

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[16] Embodied in a letter dated June 25, 1991, Exhibit "G", Exhibits for the Plaintiff, p. 26.

[17] Exhibit "H", *id.* at 27.

[18] Exhibits "M" and "N", *id.* at 35-50.

[19] Exhibit "J", *id.* at 31-32.

[20] Exhibit "K", *id.* at 33.

[21] Records, pp. 1-6.

petitioner and Times Surety & Insurance Co., Inc. praying for the payment of the following: ₱493,695.00 representing the amount which they owed respondent from the downpayment and advances made by the latter *vis-à-vis* the work accomplishment; ₱2,550,945.87 representing the amount incurred in excess of the cost of the projects as agreed upon; ₱294,000.00 as liquidated damages; plus interest and attorney's fees.[22]

Times Insurance did not file any pleading nor appeared in court. For its part, petitioner denied[23] liability and claimed instead that it failed to complete the projects due to respondent's fault. It explained that it relied in good faith on respondent's representation that the transformer subject of the contract could still be rewound and converted but upon dismantling the core-coil assembly, it discovered that the coils were already badly damaged and the primary bushing broken. This discovery allegedly entailed price adjustment. Petitioner thus requested respondent for additional time within which to complete the project and additional amount to finance the same. Petitioner also insisted that the proximate cause of the delay is the misrepresentation of the respondent on the extent of the defect of the transformer.

After the presentation of the parties' respective evidence, the RTC rendered a decision on June 5, 1998 in favor of petitioner, the dispositive portion of which reads:

> Wherefore, finding defendant-contractor's evidence more preponderant than that of the plaintiff, judgment is hereby rendered in favor of the defendant-contractor against the plaintiff and hereby orders:
>
> (1) that the instant case be DISMISSED;
>
> (2) that plaintiff pays defendant the amount of ₱4,000,000.00; for moral and exemplary & other damages;
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> (3) ₱100,000.00 for attorney's fees and cost of suit.
>
> SO ORDERED.[24]

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[22] *Id.* at 5.

[23] Embodied in its Answer dated November 23, 1992, *id.* at 59-65.

[24] Records, p. 620.

The RTC held that the failure of petitioner to complete the projects was not solely due to its fault but more on respondent's misrepresentation and bad faith.[25] Therefore, the Court dismissed respondent's complaint. Since respondent was found to have committed deceit in its dealings with petitioner, the court awarded damages in favor of the latter.[26]

Respondent, however, successfully obtained a favorable decision when its appeal was granted by the CA. The appellate court reversed and set aside the RTC decision and awarded respondent ₱493,695.34 for the excess payment made to petitioner, ₱508,510.00 for the amount spent in contracting Geostar and ₱294,400.00 as liquidated damages.[27] Contrary to the conclusion of the RTC, the CA found that petitioner failed to prove that respondent made fraudulent misrepresentation to induce the former to enter into the contract. It further held that petitioner was given the opportunity to inspect the transformer before offering its bid.[28] This being so, the CA added that petitioner's failure to avail of such opportunity is inexcusable, considering that it is a company engaged in the electrical business and the contract involved a sizable amount of money.[29] As to the condition of the subject transformer unit, the appellate court found the testimony of petitioner's president insufficient to prove that the same could no longer be rewound or converted.[30] Considering that advance payments had been made to petitioner, the court deemed it necessary to require it to return to respondent the excess amounts, *vis-à-vis* its actual accomplishment.[31] In addition to the refund of the excess payment, the CA also ordered the reimbursement of what respondent paid to Geostar for the

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[25] *Id.*

[26] *Id.*

[27] *Rollo*, p. 67.

[28] *Id.* at 64-65.

[29] *Id.* at 65.

[30] *Id.*

[31] *Id.* at 66.

unfinished projects of petitioner as well as the payment of liquidated damages as stipulated in the contract.[32]

Aggrieved, petitioner comes before the Court in this petition for review on *certiorari* under Rule 45 of the Rules of Court raising the following issues: (1) whether or not respondent was guilty of fraud or misrepresentation as to the actual condition of the transformer subject of the contract;[33] (2) whether or not the evidence presented by petitioner adequately established the true nature and condition of the subject transformer;[34] (3) whether or not petitioner is guilty of inexcusable delay in the completion of the projects;[35] (4) whether or not petitioner is liable for liquidated damages;[36] and (5) whether or not petitioner is liable for the cost of the contract between respondent and Geostar.[37]

The petition is without merit.

The case stemmed from an action for sum of money or damages arising from breach of contract. The contract involved in this case refers to the rewinding and conversion of one unit of transformer to be installed and energized to supply respondent's power requirements.[38] This project was embodied in three (3) job orders, all of which were awarded to petitioner who represented itself to be capable, competent, and duly licensed to handle the projects.[39] Petitioner, however, failed to complete the projects within the agreed period allegedly because of misrepresentation and fraud committed by respondent as to the true nature of the subject transformer. The trial court found that respondent indeed failed to inform petitioner of the true condition of the transformer

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[32] *Id.* at 66-67.

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

[34] *Id.* at 30-34.

[35] *Id.* at 19.

[36] *Id.* at 34.

[37] *Id.* at 37.

[38] Exhibit "A", Exhibits for the Plaintiff, pp. 1-2.

[39] *Id.* at 2.

which amounted to fraud thereby justifying the latter's failure to complete the projects. The CA, however, had a different conclusion and decided in favor of respondent. Ultimately, the issue before us is whether or not there was breach of contract which essentially is a factual matter not usually reviewable in a petition filed under Rule 45.[40]

In resolving the issues, the Court inquires into the probative value of the evidence presented before the trial court.[41] Petitioner, indeed, endeavors to convince us to determine once again the weight, credence, and probative value of the evidence presented before the trial court.[42] While in general, the findings of fact of the CA are final and conclusive and cannot be reviewed on appeal to the Court because it is not a trier of facts,[43] there are recognized exceptions[44] as when the findings of fact are conflicting, which is obtaining in this case. The conflicting conclusions of the trial and appellate courts impel us to re-examine the evidence presented.

After a thorough review of the records of the case, we find no reason to depart from the conclusions of the CA.

It is undisputed that petitioner and respondent entered into a contract for the supply of labor, materials, and technical

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[40] *Dueñas v. Guce-Africa*, G.R. No. 165679, October 5, 2009, 603 SCRA 11, 20.

[41] *Heirs of Jose Marcial K. Ochoa namely: Ruby B. Ochoa, Micaela B. Ochoa and Jomar B. Ochoa v. G & S Transport Corporation*, G.R. No. 170071, March 9, 2011.

[42] *Dueñas v. Guce-Africa, supra* note 40, at 19.

[43] *Japan Airlines v. Simangan*, G.R. No. 170141, April 22, 2008, 552 SCRA 341, 357.

[44] Among the recognized exceptions are: (a) when the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (b) when the inference made is manifestly mistaken, absurd or impossible; (c) where there is grave abuse of discretion; (d) when the judgment is based on a misapprehension of facts; (e) when the findings of facts are conflicting; and (f) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee. (*Id.* at 357-358.)

supervision primarily for the rewinding and conversion of one (1) unit of transformer and related works aimed at providing the power needs of respondent. As agreed upon by the parties, the projects were to be completed within 120 days from the effectivity of the contract. Admittedly, however, respondent failed, not only to perform its part of the contract on time but, in fact, to complete the projects. Petitioner tried to exempt itself from the consequences of said breach by passing the fault to respondent. It explained that its failure to complete the project was due to the misrepresentation of the respondent. It claimed that more time and money were needed, because the condition of the subject transformer was worse than the representations of respondent. Is this defense tenable?

We answer in the negative.

Records show that petitioner indeed asked for price adjustment and extension of time within which to complete the projects. In its letter[45] dated March 9, 1991, petitioner anchored its request for extension on the following grounds:

> 1. To maximize the existing 3125 KVA to 4000 KVA capacity using the same core, we will replace the secondary windings from rectangular type to copper sheet which is more accurate in winding to the required number of turns than using parallel rectangular or circular type of copper magnet wires. However, these copper sheets are not readily available locally in volume quantities, and therefore, we will be importing this material and it will take 60 days minimum time for its delivery.
>
> 2. We also find it difficult to source locally the replacement for the damaged high voltage bushing.
>
> 3. The delivery of power cable no. 2/0 will also be delayed. This will take 90 days to deliver from January 1991.[46]

Also in its letter[47] dated March 27, 1991, petitioner informed respondent that the projects would be completed within the

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[45] Exhibit "2", records, p. 447.

[46] *Id.*

[47] Exhibit "3", records, pp. 448-449.

contract time table but explained that the delivery of the transformer would only be delayed. The reasons advanced by petitioner to justify the delay are as follows:

1. Our supplier for copper sheets cannot complete the delivery until April 30, 1991.

2. Importation of HV Bushing will take approximately 45 days delivery per advice of our supplier. x x x[48]

Clearly, in the above letters, petitioner justified its inability to complete the projects within the stipulated period on the alleged unavailability of the materials to be used to perform the projects as stated in the job orders. Nowhere in said letters did petitioner claim that it could not finish the projects, particularly the conversion of the transformer unit because the defects were worse than the representation of respondent. In other words, there was no allegation of fraud, bad faith, concealment or misrepresentation on the part of respondent as to the true condition of the subject transformer. Even in its letter[49] dated May 25, 1991, petitioner only requested respondent that payment to the first progress billing be released as soon as possible and without deduction. It further proposed that respondent make a direct payment to petitioner's suppliers.

It was only in its June 14, 1991 letter[50] when petitioner raised its observations that the subject transformer needed more repairs than what it knew during the bidding.[51] In the same letter, however, petitioner repeated its request that direct payment be made by respondent to petitioner's suppliers.[52] More importantly, petitioner admitted that it made a judgment error when it quoted for only ₱440,770.00 for the contract relating to J.O. #P-90-214 based on limited information.

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[48] *Id.* at 448.

[49] Exhibit "4", records, p. 450.

[50] Exhibit "7", *id.* at 461-463.

[51] Records, p. 462.

[52] *Id.* at 463.

It can be inferred from the foregoing facts that there was not only a delay but a failure to complete the projects as stated in the contract; that petitioner could not complete the projects because it did not have the materials needed; and that it is in need of financial assistance.

As the Court sees it, the bid submitted by petitioner may have been sufficient to be declared the winner but it failed to anticipate all expenses necessary to complete the projects. [53] When it incurred expenses it failed to foresee, it began requesting for price adjustment to cover the cost of high voltage bushing and difference in cost of copper sheet and rectangular wire.[54] However, the scope of work presented by respondent specifically stated that the wires to be used shall be pure copper and that there was a need to supply new bushings for the complete rewinding and conversion of 3125 KVA to 4 MVA Transformer.[55] In other words, petitioner was aware that there was a need for complete replacement of windings to copper and of secondary bushings.[56] It is, therefore, improper for petitioner to ask for additional amount to answer for the expenses that were already part and parcel of the undertaking it was bound to perform. For petitioner, the contract entered into may have turned out to be an unwise investment, but there is no one to blame but petitioner for plunging into an undertaking without fully studying it in its entirety.[57]

The Court likewise notes that petitioner repeatedly asked for extension allegedly because it needed to import the materials and that the same could not be delivered on time. Petitioner also repeatedly requested that respondent make a direct payment to the suppliers notwithstanding the fact that it contracted with

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[53] See *National Power Corporation v. Premier Shipping Lines, Inc.*, G.R. Nos. 179103 and 180209, September 17, 2009, 600 SCRA 153, 176.

[54] Records, p. 447.

[55] Exhibit "A-3", Exhibits for the Plaintiff, p. 12.

[56] Exhibit "A-5", *id.* at 16.

[57] *National Power Corporation v. Premier Shipping Lines, Inc.*, *supra* note 53.

respondent for the supply of labor, materials, and technical supervision. It is, therefore, expected that petitioner would be responsible in paying its suppliers because respondent is not privy to their (petitioner and its suppliers) contract. This is especially true in this case since respondent had already made advance payments to petitioner. It appears, therefore, that in offering its bid, the source and cost of materials were not seriously taken into consideration. It appears, further, that petitioner had a hard time in fulfilling its obligations under the contract that is why it asked for financial assistance from respondent. This is contrary to petitioner's representation that it was capable, competent, and duly licensed to handle the projects.

As to the alleged damaged condition of the subject transformer, we quote with approval the CA conclusion in this wise:

> In the same vein, We cannot readily accept the testimony of Tomas that the transformer unit was severely damaged and was beyond repair as it was not substantiated with any other evidence. R.S. Tomas could have presented an independent expert witness whose opinion may corroborate its stance that the transformer unit was indeed incapable of being restored. To our mind, the testimony of Tomas is self-serving as it is easy to concoct, yet difficult to verify.[58]

This lack of evidence, coupled with petitioner's failure to raise the same at the earliest opportunity, belies petitioner's claim that it could not complete the projects because the subject transformer could no longer be repaired.

Assuming for the sake of argument that the subject transformer was indeed in a damaged condition even before the bidding which makes it impossible for petitioner to perform its obligations under the contract, we also agree with the CA that petitioner failed to prove that respondent was guilty of bad faith, fraud, deceit or misrepresentation.

Bad faith does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a known duty through

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[58] *Rollo*, p. 65.

some motive or interest or ill will that partakes of the nature of fraud.[59] Fraud has been defined to include an inducement through insidious machination. Insidious machination refers to a deceitful scheme or plot with an evil or devious purpose. Deceit exists where the party, with intent to deceive, conceals or omits to state material facts and, by reason of such omission or concealment, the other party was induced to give consent that would not otherwise have been given.[60] These are allegations of fact that demand clear and convincing proof. They are serious accusations that can be so conveniently and casually invoked, and that is why they are never presumed.[61] In this case, the evidence presented is insufficient to prove that respondent acted in bad faith or fraudulently in dealing with petitioner.

Petitioner in fact admitted that its representatives were given the opportunity to inspect the subject transformer before it offered its bid. If indeed the transformer was completely sealed, it should have demanded that the same be opened if it found it necessary before it offered its bid. As contractor, petitioner had been remiss in its obligation to obtain as much information as possible on the actual condition of the subject transformer or at least it should have provided a qualification in its bid so as to make clear its right to claim contract price and time adjustment.[62] As aptly held by the CA, considering that petitioner is a company engaged in the electrical business and the contract it had entered into involved a sizable amount of money, its failure to conduct an inspection of the subject transformer is inexcusable.[63]

In sum, the evidence presented by the parties lead to the following conclusions: (1) that the projects were not completed

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[59] *Cathay Pacific Airways, Ltd. v. Vasquez*, G.R. No. 150843, March 14, 2003, 399 SCRA 207, 220.

[60] *Id.*

[61] *Id.*

[62] But see *Advanced Foundation Construction Systems Corporation v. New World Properties and Ventures, Inc.*, G.R. Nos. 143154 and 143177, June 21, 2006, 491 SCRA 557, 564.

[63] *Rollo*, p. 65.

by petitioner; (2) that petitioner was given the opportunity to inspect the subject transformer; (3) that petitioner failed to thoroughly study the entirety of the projects before it offered its bid; (4) that petitioner failed to complete the projects because of the unavailability of the required materials and that petitioner needed financial assistance; (5) that the evidence presented by petitioner were inadequate to prove that the subject transformer could no longer be repaired; and (6) that there was no evidence to show that respondent was in bad faith, acted fraudulently, or guilty of deceit and misrepresentation in dealing with petitioner.

In view of the foregoing disquisitions, we find that there was not only delay but non-completion of the projects undertaken by petitioner without justifiable ground. Undoubtedly, petitioner is guilty of breach of contract. Breach of contract is defined as the failure without legal reason to comply with the terms of a contract. It is also defined as the failure, without legal excuse, to perform any promise which forms the whole or part of the contract.[64] In the present case, petitioner did not complete the projects. This gives respondent the right to terminate the contract by serving petitioner a written notice. The contract specifically stated that it may be terminated for any of the following causes:

1. Violation by Contractor of the terms and conditions of this Contract;

2. Non-completion of the Work within the time agreed upon, or upon the expiration of extension agreed upon;

3. Institution of insolvency or receivership proceedings involving Contractor; and

4. Other causes provided by law applicable to this contract.[65]

Consequently, and pursuant to the agreement of the parties,[66] petitioner is liable for liquidated damages in the amount of ₱29,440.00 per day of delay, which shall be limited to a maximum

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[64] *Cathay Pacific Airways, Ltd. v. Vasquez, supra* note 59, at 219.

[65] Exhibit "A", Exhibits for the Plaintiff, p. 5.

[66] *Id.* at 4.

of 10% of the project cost or ₱294,400.00. In this case, petitioner bound itself to complete the projects within 120 days from December 29, 1990. However, petitioner failed to fulfill the same prompting respondent to engage the services of another contractor on November 14, 1991. Thus, despite the lapse of eleven months from the time of the effectivity of the contract entered into between respondent and petitioner, the latter had not completed the projects. Undoubtedly, petitioner may be held to answer for liquidated damages in its maximum amount which is 10% of the contract price. While we have reduced the amount of liquidated damages in some cases,[67] because of partial fulfillment of the contract and/or the amount is unconscionable, we do not find the same to be applicable in this case. It must be recalled that the contract entered into by petitioner consists of three projects, all of which were not completed by petitioner. Moreover, the percentage of work accomplishment was not adequately shown by petitioner. Hence, we apply the general rule not to ignore the freedom of the parties to agree on such terms and conditions as they see fit as long as they are not contrary to law, morals, good customs, public order or public policy.[68] Thus, as agreed upon by the parties, we apply the 10% liquidated damages.

Considering that petitioner was already in delay and in breach of contract, it is liable for damages that are the natural and probable consequences of its breach of obligation.[69] Since advanced payments had been made by respondent, petitioner is bound to return the excess *vis-à-vis* its work accomplishments. In order to finish the projects, respondent had to contract the

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[67] *Urban Consolidated Constructors Philippines, Inc. v. Insular Life Assurance Co., Inc.*, G.R. No. 180824, August 28, 2009, 597 SCRA 450; *Filinvest Land, Inc. v. Court of Appeals*, G.R. No. 138980, September 20, 2005, 470 SCRA 260.

[68] *Urban Consolidated Constructors Philippines, Inc. v. Insular Life Assurance Co., Inc.*, G.R. No. 180824, *supra*, at 461; *Filinvest Land, Inc. v. Court of Appeals*, *supra*, at 269.

[69] *H.L. Carlos Construction, Inc. v. Marina Properties Corp.*, 466 Phil. 182, 204 (2004).

services of another contractor. We, therefore, find no reason to depart from the CA conclusion requiring the return of the excess payments as well as the payment of the cost of contracting Geostar, in addition to liquidated damages.[70]

WHEREFORE, premises considered, the petition is hereby **DENIED.** The Court of Appeals Decision dated December 19, 2005 and resolution dated June 6, 2006 in CA-G.R. CV No. 61049 are **AFFIRMED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 173857. March 21, 2012]

LEONCIA MANUEL & MARINA S. MUDLONG, *petitioners, vs.* **LEONOR SARMIENTO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTIONS. — Under Section 1, Rule 45 of the Rules of Court, providing for appeals by *certiorari* before the Supreme Court, it is clearly enunciated that only questions of law may be set forth. The Court may resolve questions of fact only in exceptional cases as follows: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when

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[70] *Id.*

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 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.

2. ID.; ID.; ID.; THE VALIDITY OF THE NOTARIZED AUTHORITY TO SELL IS A QUESTION OF FACT; CASE AT BAR. — [A]careful review by this Court of the records of this case would show that the appellate court did not err in its factual findings. The appellate court correctly stated that respondent was able to prove her case against petitioners by a preponderance of evidence. It found respondent's testimony to be credible, positive and supported by documentary evidence. The validity of the notarized authority to sell which granted respondent exclusive authority to sell the property of Leoncia Manuel for one month, which was reckoned from the date of notarization of the document on March 8, 1997, is a factual issue, which had been determined by the trial court and the Court of Appeals with the same finding.

3. ID.; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS; CONCLUSIVE ON THE PARTIES AND CARRY MORE WEIGHT WHEN THE SAID COURT AFFIRMS THE FACTUAL FINDINGS OF THE TRIAL COURT; APPLICATION IN CASE AT BAR. — The notarized exclusive authority to sell entitles respondent to the amount of commission stated therein, which is the difference between petitioner Marina Mudlong's asking price of ₱65.00 per square meter and the actual selling price of ₱90.00 per square meter. Thus, the difference of ₱25.00 per square meters multiplied by the land area of 23,959 square meters amounts to the commission of ₱598,975.00, which amount the Court of Appeals awarded to respondent. The sale of the property was consummated on March 25, 1997 as evidenced by the Deed of Absolute Sale, which date is within the period of respondent's exclusive authority to sell. Moreover, the Court

of Appeals found that respondent worked on the sale of the property, as she had the title of the property reconstituted, had the property surveyed, paid the real estate taxes, and secured a tax clearance thereon. Further, respondent talked to the buyer, provided the documents he requested, and they even agreed on the selling price of ₱100.00 per square meter. However, the buyer later went directly to the owner of the property, and the selling price was lowered to ₱90.00 per square meter. These circumstances show that the Court of Appeals did not err in affirming the trial court's decision that respondent was entitled to the payment of her commission for the sale of the subject property within the period of respondent's exclusive authority to sell. x x x 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. The Court has carefully reviewed the records of this case and finds no cogent reason to overturn the finding of the Court of Appeals.

APPEARANCES OF COUNSEL

Natividad Law Office for petitioners.
Mark G. Arcilla for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Decision[2] of the Court of Appeals in CA-G.R. CV No. 64449 promulgated on July 14, 2006, which affirmed with modification the Decision of the Regional Trial Court of Malolos, Bulacan, Branch 81 (trial court) finding petitioners Leoncia Manuel and Marina Mudlong liable to pay respondent Leonor Sarmiento her broker's commission as well as moral and exemplary damages.

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Santiago Javier Ranada, with Associate Justices Portia Aliño Hormachuelos and Amelita G. Tolentino, concurring; *rollo,* pp. 38-49.

The facts, as culled from the decision of the Court of Appeals and the records, are as follows:

Petitioner Leoncia Manuel appointed her granddaughter, petitioner Marina Mudlong, as her attorney-in-fact,[3] granting her the authority to sell a parcel of land containing an area of 23,959 square meters located in Tigbe (Diliman), Norzagaray, Bulacan, registered in her (Leoncia Manuel) name. In turn, Marina Mudlong informed several real estate brokers that the said property was for sale, including respondent Leonor Sarmiento.

In anticipation of the sale of the property and her eventual reimbursement, respondent voluntarily undertook the reconstitution of the title over the subject property, its survey, as well as the payment of real estate taxes and tax clearances thereon.

In March 1997, Chiao Liong Tan, a businessman, was looking for a property to purchase in Norzagaray, Bulacan. Chiao Liong Tan's secretary, Antonia de Leon, told Josie Buluran, a broker, about it. Josie Buluran and other brokers, namely, Ernesto Sanchez and Lucy Eustaquio, started looking for a property for Chiao Liong Tan. Josie Buluran asked Rodolfo Santos, a former *barangay* captain of Partida, Norzagaray, if he knew of any property that might be for sale in the area. Rodolfo Santos told Josie Buluran that the property of Leoncia Manuel, which was adjacent to his land, was for sale, and that she should get in touch with respondent, because the title and other documents of the property were in her possession. He referred Josie Buluran to his wife, Teodora "Doray" Santos, to facilitate her introduction to respondent. Thus, Josie Buluran went to Doray Santos, who told respondent about Chiao Liong Tan's interest in the property of Leoncia Manuel.

On May 7, 1997, Chiao Liong Tan, Antonia de Leon, Josie Buluran and Lucy Eustaquio went to the property of petitioner Leoncia Manuel. Thereafter, they went to the house of the spouses Rodolfo and Doray Santos to meet respondent. Chiao Liong Tan asked respondent if she could give him the complete

[3] *Kasunduan*, Exhibit "8", records, p. 37.

documents of Leoncia Manuel's property. Respondent showed Chiao Liong Tan the photocopy of the title of the said property and the old tax receipts. Chiao Liong Tan told respondent that he needed the new plan and new tax receipts plus the tax clearance. He asked respondent if she could provide the said documents by 2:00 p.m. of that day.

Hence, at 2:00 p.m. of March 7, 1997, respondent and Josie Buluran went to Chiao Liong Tan's office in Binondo to present the documents he requested. At the end of their meeting, Chiao Liong Tan agreed to buy the property of Leoncia Manuel at ₱100.00 per square meter, and asked respondent to produce her authority to sell.

On March 8, 1997, respondent, the spouses Rodolfo and Doray Santos, and Lucy Eustaquio went to petitioner Marina Mudlong's house to ask her to execute an exclusive authority to sell in respondent's favor. It appears that respondent brought two blank authority to sell forms, which petitioner Marina Mudlong both signed.

Respondent filled in the first form to reflect her real agreement with petitioner Marina Mudlong: (1) the asking price for the property was ₱65.00 per square meter; (2) respondent's commission would be the difference between Marina Mudlong's asking price and the price agreed upon by the buyer; (3) the term of respondent's exclusive authority to sell was for one month, which was reckoned from the date the said document was notarized on March 8, 1997.[4]

On the other hand, the second form reflected the asking price as ₱120.00 per square meter, and respondent's commission was 5% of the agreed price. This was the unnotarized authority to sell that respondent submitted to Chiao Liong Tan as part of her selling strategy.[5]

Although respondent submitted all the documents required by Chiao Liong Tan, he did not get in touch with her again. On

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[4] Exhibit "A", *id.* at 6.

[5] Exhibit "8", *id.* at 126.

March 25, 1997, Chiao Liong Tan bought the property directly from petitioner Marina Mudlong at the price of ₱90.00 per square meter, or for the total price of ₱2,156,310.00.[6]

On April 7, 1997, after respondent learned that she had been excluded from the sale, she sent two demand letters[7] to petitioner Marina Mudlong, asking to be reimbursed the amount of ₱35,000.00 for the expenses she incurred in reconstituting the title over the subject property, having it surveyed, and in paying the real estate taxes and tax clearances thereon. In addition, respondent asked for 10% of the selling price obtained from Chiao Liong Tan as her commission, since the sale was consummated during the one-month validity of her exclusive authority to sell.

Marina Mudlong ignored respondent's demand. Thus, on June 5, 1997, respondent filed a Complaint[8] for collection of sum of money with damages against Marina Mudlong and her grandmother, Leoncia Manuel.

In their Answer,[9] petitioners denied having given respondent an exclusive authority to sell. They stated that the authority to sell form presented by respondent was blank, or without detail when petitioner Marina Mudlong signed it, and that they never intended respondent's authority to be exclusive for one month from March 8, 1997.

Further, petitioners explained that respondent's negotiation with the buyer bogged down, because the buyer lost trust and confidence in her for her misrepresentation and she ceased to be a party to the negotiations.

Petitioners alleged that the only brokers who are entitled to a commission from the sale are the spouses Rodolfo and Doray Santos, Josie Buluran, Antonia de Leon, and Lucy Eustaquio, as they were the ones who found the buyer, and pursued the sale to its conclusion.

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[6] Exhibit "B", *id*. at 9.

[7] Records, pp. 14-15.

[8] *Id*. at 2.

[9] *Id*. at 29.

During the trial, respondent presented some receipts for the expenses that she incurred in getting the documents for the property of petitioner Manuel, which receipts totalled ₱669.78. She admitted that she lost the receipts of her other expenses.

On the other hand, to show that respondent's authority to sell was not exclusive, petitioner Marina Mudlong presented two copies of authority to sell, both dated March 11, 1997, that she had granted to Antonia de Leon and Rodolfo Santos[10] as well as to Josie Buluran and Lucy Eustaquio.[11]

The main issue before the trial court was whether the plaintiff, herein respondent, being an exclusive agent, was entitled to her commission for the sale of the property of defendants, petitioners herein.

On June 4, 1999, the trial court rendered a Decision[12] in favor of respondent. The trial court held that the authority to sell clearly provides that the authority given by petitioner Marina Mudlong to respondent was exclusive in nature, which meant that the public would have to negotiate only with respondent for the sale of the property of Leoncia Manuel. The dispositive portion of the Decision reads:

WHEREFORE, judgment is hereby rendered —

1. ordering the defendants to, jointly and severally, pay the plaintiff the amount of ₱323,815.00 as actual and compensatory damages;

2. ordering the defendants to, jointly and severally, pay the plaintiff the amount of ₱10,000.00 as attorney's fees and ₱1,000.00 per appearance in court;

3. ordering the defendants to, jointly and severally, pay the plaintiff the amount of ₱50,000.00 as moral damages and another ₱50,000.00 as exemplary damages; and

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[10] Exhibit "1", *id.* at 35.

[11] Exhibit "2", *id.* at 36.

[12] *Rollo*, pp. 32-37.

4. pay the costs of the suit.[13]

Petitioners appealed the trial court's decision to the Court of Appeals, alleging that the trial court erred in finding that there was due execution of the authority to sell; in considering respondent as one of the agents entitled to a commission; in not finding that there were other agents in the transaction; in giving credence to the sole and uncorroborated testimony of respondent; and that the trial court erred in appreciating the facts of the case.

The Court of Appeals affirmed the decision of the trial court with modification. The dispositive portion of the Decision reads:

> WHEREFORE, the decision appealed from is AFFIRMED with MODIFICATION, in that the amount of actual and compensatory damages awarded to Leonor Sarmiento is INCREASED to ₱599,644.78, while the award of attorney's fees is DELETED.[14]

The Court of Appeals held that the trial court correctly found that the notarized authority to sell executed by petitioner Marina Mudlong, in favor of respondent, was validly executed; hence, its terms must be given effect. Since the sale to the buyer was consummated within the period of respondent's exclusive authority to sell, respondent was entitled to a commission of ₱25.00 per square meter, or a total of ₱598,975.00. The appellate court found that respondent worked on the sale of the property, and provided the buyer with the documents that facilitated the sale of the property. It held that the presence of the other agents, namely, Rodolfo Santos, Josie Buluran, Antonia de Leon, and Lucy Eustaquio, did not detract from the exclusive nature of the authority to sell that petitioner Marina Mudlong had granted to respondent. It stated that the fact that Marina Mudlong granted the other brokers an authority to sell on March 11, 1997, *after* she had already constituted respondent as her exclusive agent on March 8, 1997, and *during the validity* of respondent's

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

[14] *Id*. at 48.

exclusive authority to sell, underscores Marina Mudlong's bad faith and intentional breach of her contract with respondent.

The Court of Appeals upheld the award of ₱50,000.00 as moral damages to respondent, as it found that the breach of contract by petitioner Marina Mudlong was attended by bad faith, citing Article 2220 of the Civil Code. The appellate court stated that it was apparent that respondent suffered from wounded feelings, because despite all the work that she had put into the sale of the subject property, petitioner Mudlong excluded respondent from the sale, granted authorities to sell to the other brokers during the effectivity of respondent's exclusive authority to sell, and withheld respondent's rightful commission from her.

The appellate court also upheld the award of exemplary damages in the amount of ₱50,000.00 to set an example for the public good.[15] It ruled that the exclusive authority to sell granted by petitioner Marina Mudlong to respondent is a valid contract that has the effect of law between the parties, and Mudlong's wanton breach thereof should not be countenanced lest it set a bad precedent in the community.

However, the appellate court deleted the grant of attorney's fees by the trial court, as the reasons or grounds therefor were not stated in the body of the decision.[16]

Thereafter, petitioners filed this petition before this Court, raising the following issues:

I

[THE] COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION IN FINDING RESPONDENT AS EXCLUSIVE AGENT/BROKER OF THE PETITIONERS NOTWITHSTANDING EVIDENCE TO THE CONTRARY.

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[15] Citing *Lamis v. Ong*, G.R. No. 148923, August 11, 2005, 466 SCRA 510.

[16] Citing *Delos Santos v. Jebsen Maritime, Inc.*, G.R. No. 154185, November 22, 2005, 475 SCRA 656.

II

[THE] COURT OF APPEALS SERIOUSLY ERRED IN HOLDING EXCLUSIVE APPOINTMENT OF RESPONDENT IN THE AUTHORITY GRANTED, SHALL EXCLUDE OTHER AGENTS OR CO-AGENTS TO A FEE OR COMMISSION, GRANTING *ARGUENDO*, THAT SAID AUTHORITY REMAINS VALID AND EFFECTIVE AS AGAINST THE PETITIONERS.[17]

Petitioners contend that the Court of Appeals erred in finding respondent as exclusive agent of petitioners despite evidence to the contrary, that is, there were two sets of authority to sell, one notarized, while the other was unnotarized; the unnotarized authority to sell was presented to the buyer, while the notarized authority to sell was presented to the court as the basis for respondent's action. According to petitioners, the only authority to sell that should be recognized is the unnotarized authority to sell presented to the buyer, as the said authority played a vital and determining role, without which there could be no meeting of the minds between the buyer and the seller with respect to the sale of the property.

Petitioners also contend that the Court of Appeals erred in upholding the finding of the trial court that respondent was entitled to the payment of commission by reason of the exclusive nature of the notarized authority to sell granted to respondent, even if respondent was not able to close the sale of the property between petitioners and the buyer. They argue that the Court of Appeals erred in holding that the presence of the other agents did not detract from the exclusive nature of the authority to sell granted to respondent.

The main issues raised are: (1) whether or not the notarized exclusive authority to sell granted to respondent is valid; and (2) whether or not respondent is entitled to her broker's commission.

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[17] *Rollo*, p. 22.

Under Section 1, Rule 45 of the Rules of Court, providing for appeals by *certiorari* before the Supreme Court, it is clearly enunciated that only questions of law may be set forth.[18] The Court may resolve questions of fact only in exceptional cases[19] as follows:

(1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of 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 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.[20]

Petitioners contend that (1) the Court of Appeals committed errors in its findings of facts as the appellate court delved on speculations; (2) the inferences it made are mistaken or absurd; (3) there was misapprehension of facts; and (4) the facts are conflicting, contrary to the admission of respondent, and contradicted by the evidence on record.

However, a careful review by this Court of the records of this case would show that the appellate court did not err in its factual findings. The appellate court correctly stated that respondent was able to prove her case against petitioners by

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[18] *Tayco v. Heirs of Concepcion Tayco-Flores*, G.R. No. 168692, December 13, 2010, 637 SCRA 742.

[19] *Id.*

[20] *Id.* at 748.

a preponderance of evidence. It found respondent's testimony to be credible, positive and supported by documentary evidence.

The validity of the notarized authority to sell which granted respondent exclusive authority to sell the property of Leoncia Manuel for one month, which was reckoned from the date of notarization of the document on March 8, 1997, is a factual issue, which had been determined by the trial court and the Court of Appeals with the same finding. This Court also reviewed the subject authority to sell, and agrees that the Court of Appeals correctly held, thus:

> The trial court correctly found that the authority to sell executed by Marina in favor of Leonor was validly executed. *First*, Leonor's authority to sell was notarized. Thus, there is a presumption that it had been validly executed. A notarized document has in its favor the presumption of regularity, and can be contradicted only by clear and convincing evidence. *Second*, while insisting that the authority to sell form had been blank when she signed it, Marina does not deny the genuineness of her signature thereon. *Third*, the authority to sell presented by Leonor to Marina was a pre-printed form, with the title "Authority to Sell" clearly spelled out on top of the document. Even if it were true that the details of the form were not yet inserted therein when Marina signed it, she knew, or should have known, from its title, that she had signed an authority to sell in favor of Leonor. Thus, her having signed it in blank was an implied authorization for Leonor to fill it up according to their agreement. In the absence of clear and convincing evidence that Marina and Leonor had an agreement different from that appearing in the signed authority to sell, it is presumed that the signed contract embodies their complete and true agreement. The presumption of regularity, the evidentiary weight conferred upon public documents with respect to its execution, as well as the statements and the authenticity of the signatures thereon, therefore, stand.
>
> Since the authority to sell is valid and binding, its terms must be given effect. Under the authority to sell, Marina instituted Leonor, for 1 month from 8 March 1997, to be the exclusive selling agent of the subject property, with the right to earn a commission equivalent to the difference between Marina's asking price of ₱65.00 per square

meter and the actual selling price. Since the sale to Chiao Liong Tan was consummated at ₱90.00 per square meter, and executed on 25 March 1997, within the period of Leonor's exclusive authority to sell, it follows that she is entitled to a commission of ₱25.00 per square meter, or a total of ₱598,975.00.

Moreover, it is beyond cavil that Leonor had worked on the sale of the subject property, as shown by her efforts to have its title reconstituted, to have it surveyed, to pay its real estate taxes, and to secure a tax clearance thereon. Marina cannot deny that Leonor had talked to Chiao Liong Tan and produced the documents that enabled the sale to push through. Without those documents, Chiao Liong Tan would not have purchased the property.

Unfortunately, Leonor was not able to produce all the receipts pertaining to the expenses that she had incurred in relation to the documentation of the subject property. All the same, she is entitled to be reimbursed for those expenses that she was able to prove, in the amount of ₱669.78.

The presence of the other agents, namely, Rodolfo, Josie, Antonia de Leon, and Lucy Eustaquio does not detract from the exclusive nature of the authority to sell that Marina had granted to Leonor. As Leonor explained, these other brokers were merely her informants. In fact, from the record, it would appear that these other brokers were not even necessary to the sale, as Chiao Liong Tan had already made up his mind to purchase the property even without their help. As Chiao Liong Tan told Leonor, he only needed to see the documents of the subject property and he was all set to buy it. The fact that Marina also granted the other brokers an authority to sell on 11 March 1997, *after* she had already constituted Leonor as her exclusive agent on 8 March 1997, and *during the validity* of Leonor's exclusive authority to sell, underscores Marina's bad faith and intentional breach of her contract with Leonor.[21]

The notarized exclusive authority to sell entitles respondent to the amount of commission stated therein, which is the difference between petitioner Marina Mudlong's asking price of ₱65.00 per square meter and the actual selling price of ₱90.00 per square meter. Thus, the difference of ₱25.00 per square meters

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[21] *Rollo*, pp. 44-46.

multiplied by the land area of 23,959 square meters amounts to the commission of ₱598,975.00, which amount the Court of Appeals awarded to respondent. The sale of the property was consummated on March 25, 1997 as evidenced by the Deed of Absolute Sale,[22] which date is within the period of respondent's exclusive authority to sell. Moreover, the Court of Appeals found that respondent worked on the sale of the property, as she had the title of the property reconstituted, had the property surveyed, paid the real estate taxes, and secured a tax clearance thereon. Further, respondent talked to the buyer, provided the documents he requested, and they even agreed on the selling price of ₱100.00 per square meter. However, the buyer later went directly to the owner of the property, and the selling price was lowered to ₱90.00 per square meter. These circumstances show that the Court of Appeals did not err in affirming the trial court's decision that respondent was entitled to the payment of her commission for the sale of the subject property within the period of respondent's exclusive authority to sell.

The unnotarized authority to sell presented to the buyer with a higher asking price of ₱120.00 was, as the Court of Appeals stated, a selling strategy[23] that already included the commission that respondent would gain from the sale. Respondent testified that the buyer agreed to the price of ₱100.00 per square meter.[24] However, the buyer no longer contacted her and went straight to the seller, and the final selling price agreed upon was ₱90.00 per square meter. Hence, contrary to the contention of petitioners, the variation in the unnotarized authority to sell cannot affect the validity of the notarized authority to sell, which is the basis of respondent's commission. The alleged revocation of the authority to sell of respondent was not raised in the lower court; hence, it could not be raised for the first time on appeal.[25]

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

[23] TSN, March 10, 1998, pp. 11-21.

[24] TSN, February 3, 1998, pp. 38-39.

[25] *De la Rama Steamship Co. v. National Development Co.*, G.R. No. L-26966, October 30, 1970, 35 SCRA 567.

As regards the informants of respondent, namely, Josie Buluran, the spouses Rodolfo and Doray Santos, and Lucy Eustaquio, respondent testified that they will get their commission from her.[26]

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. [27] The Court has carefully reviewed the records of this case and finds no cogent reason to overturn the findings of the Court of Appeals.

WHEREFORE, the petition is **DENIED.** The Decision of the Court of Appeals in CA-G.R. CV No. 64449, dated July 14, 2006, is **AFFIRMED.**

Costs against petitioners.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 184478. March 21, 2012]

JAIME S. PEREZ, both in his personal and official capacity as Chief, Marikina Demolition Office, *petitioner, vs.* **SPOUSES FORTUNITO L. MADRONA and YOLANDA B. PANTE,** *respondents.*

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[26] TSN, January 15, 1998, pp. 20-28.

[27] *Marquez v. Court of Appeals*, G.R. No. 116689, April 3, 2000, 329 SCRA 567, 577.

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; REQUISITES. — For injunction to issue, two requisites must concur: first, there must be a right to be protected and second, the acts against which the injunction is to be directed are violative of said right. Here, the two requisites are clearly present: there is a right to be protected, that is, respondents' right over their concrete fence which cannot be removed without due process; and the act, the summary demolition of the concrete fence, against which the injunction is directed, would violate said right.

2. CIVIL LAW; PROPERTY; NUISANCE; UNLESS A THING IS NUISANCE *PER SE*, IT MAY NOT BE ABATED SUMMARILY WITHOUT JUDICIAL INTERVENTION; APPLICATION IN CASE AT BAR. — If petitioner indeed found respondents' fence to have encroached on the sidewalk, his remedy is not to demolish the same summarily after respondents failed to heed his request to remove it. Instead, he should go to court and prove respondents' supposed violations in the construction of the concrete fence. Indeed, unless a thing is a nuisance *per se*, it may not be abated summarily without judicial intervention. x x x Respondents' fence is not a nuisance *per se*. By its nature, it is not injurious to the health or comfort of the community. It was built primarily to secure the property of respondents and prevent intruders from entering it. And as correctly pointed out by respondents, the sidewalk still exists. If petitioner believes that respondents' fence indeed encroaches on the sidewalk, it may be so proven in a hearing conducted for that purpose. Not being a nuisance *per se*, but at most a nuisance *per accidens*, its summary abatement without judicial intervention is unwarranted.

3. ID.; DAMAGES; AWARD OF ATTORNEY'S FEES AND COST OF SUIT; JUSTIFIED IN CASE AT BAR. — As respondents were forced to file a case against petitioner to enjoin the impending demolition of their property, the award of attorney's fees and costs of suit is justified. Clearly, respondents wanted to settle the problem on their alleged encroachment without resorting to court processes when they replied by letter after receiving petitioner's first notice. Petitioner, however, instead of considering the points raised in respondents' reply-letter,

required them to submit the relocation plan as if he wants respondents to prove that they are not encroaching on the sidewalk even if it was he who made the accusation of violation in the first place. And when he did not get the "proof" he was requiring from respondents, he again sent a notice with a threat of summary demolition. This gave respondents no other choice but to file an injunction complaint against petitioner to protect their rights.

4. ID.; ID.; MORAL DAMAGES; AWARD THEREOF IS PROPER FOR THE SLEEPLESS NIGHTS AND ANXIETY SUFFERED BY THE CLAIMANT. — With regard to respondents' claim for moral damages, this Court rules that they are entitled thereto in the amount of ₱10,000.00 pursuant to Article 2217 of the Civil Code. As testified to by respondents, they suffered anxiety and sleepless nights since they were worried what would happen to their children who were left by themselves in their Marikina residence while they were in Ormoc City if petitioner would make real his threat of demolition on their fence.

5. ID.; ID.; EXEMPLARY DAMAGES; MAY BE AWARDED TO SERVE AS AN EXAMPLE TO OTHER PUBLIC OFFICIALS TO BE MORE CIRCUMSPECT IN THE PERFORMANCE OF THEIR DUTIES. — We likewise hold that respondents are entitled to exemplary damages in the amount of ₱5,000.00 to serve as an example to other public officials that they should be more circumspect in the performance of their duties.

APPEARANCES OF COUNSEL

Marikina City Legal Office for petitioner.
Rolando P. Quimbo for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to set aside the March 31, 2008 Decision[1] and September

[1] *Rollo*, pp. 10-19. Penned by Associate Justice Edgardo P. Cruz with Associate Justices Fernanda Lampas Peralta and Enrico A. Lanzanas concurring.

10, 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV. No. 83675. The CA affirmed *in toto* the Decision[3] of the Regional Trial Court (RTC) of Marikina City, Branch 192 granting respondents' prayer for injunction against petitioner.

The antecedents follow:

Respondent-spouses Fortunito Madrona and Yolanda B. Pante are registered owners of a residential property located in Lot 22, Block 5, France Street corner Italy Street, Greenheights Subdivision, Phase II, Marikina City and covered by Transfer Certificate of Title No. 169365[4] of the Registry of Deeds of Marikina. In 1989, respondents built their house thereon and enclosed it with a concrete fence and steel gate.

In 1999, respondents received the following letter dated May 25, 1999 from petitioner Jaime S. Perez, Chief of the Marikina Demolition Office:

Owner Judge F.L. Madrona
Lot 22 B. 5 Phase II
Green Heights[, Concepcion,] Marikina City

G./ Gng. F.L. Madrona[:]

Ito po ay may kinalaman sa bahay/istruktura na inyong itinayo sa (naturang lugar), Marikina, *Kalakhang Maynila.*

Bakod umusli sa Bangketa

Ang naturang pagtatayo ng bahay/istruktura ay isang paglabag sa umiiral na batas/programa na ipatutupad ng Pamahalaang Bayan ng Marikina na nauukol sa:

[√] PD 1096
(National Building Code of the Philippines)

[ ] PD 772
(Anti-Squatting Law)

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[2] *Id.* at 21. Penned by Associate Justice Edgardo P. Cruz with Associate Justices Fernanda Lampas Peralta and Magdangal M. De Leon concurring.

[3] Records, Folder I, pp. 222-232.

[4] Records, Folder II, p. 1.

[√] *Programa sa Kalinisan at Disiplina sa Bangketa*

[ ] RA 7279
(Urban Development and Housing Act of 1992)

[ ] PD 296
(Encroachment on rivers, esteros, drainage channels and other waterways)

[√] RA 917 as amended by Section 23, PD. No. 17, DO No. 4 Series of 1987
(Illegally occupied/constructed improvements within the road right-of-way)

Dahil po dito, kayo ay binibigyan ng taning na Pitong (7) araw simula sa pagkatanggap ng sulat na ito para kusang alisin ang inyong istruktura. Ang hindi ninyo pagsunod sa ipinag-uutos na ito ay magbubunsod sa amin upang gumawa ng kaukulang hakbang na naa[a]yon sa itinatadhana ng Batas.

Sa inyong kaalaman, panuntuan at pagtalima.

Lubos na gumagalang,

(Sgd.)

JAIME S. PEREZ
Tagapamahala
Marikina Demolition Office[5]

As response, respondent Madrona sent petitioner a three-page letter[6] dated June 8, 1999 stating that the May 25, 1999 letter (1) contained an accusation libelous in nature as it is condemning him and his property without due process; (2) has no basis and authority since there is no court order authorizing him to demolish their structure; (3) cited legal bases which do not expressly give petitioner authority to demolish; and (4) contained a false accusation since their fence did not in fact extend to the sidewalk.

On June 9, 1999, respondents received a letter[7] from petitioner requesting them to provide his office a copy of the relocation

[5] *Id.* at 4.

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

[7] *Id.* at 11.

survey on the subject property. Respondents, however, did not oblige because it was as if petitioner was fishing evidence from them.

More than a year later or on February 28, 2001, petitioner sent another letter[8] with the same contents as the May 25, 1999 letter but this time giving respondents ten days from receipt thereof to remove the structure allegedly protruding to the sidewalk. This prompted respondents to file a complaint[9] for injunction before the Marikina City RTC on March 12, 2001.

In respondents' injunction complaint, they alleged that (1) petitioner's letters made it appear that their fence was encroaching on the sidewalk and directed them to remove it, otherwise he would take the corresponding action; (2) petitioner's threat of action would be damaging and adverse to respondents and appears real, earnest and imminent; (3) the removal of their fence, which would include the main gate, would certainly expose the premises and its occupants to intruders or third persons; (4) petitioner has no legal authority to demolish structures in private properties and the laws he cited in his letters do not give him any authority to do so; (5) respondents enjoy the legal presumption of rightful possession of every inch of their property; (6) if petitioner accuses them of erroneous possession, he should so prove only through the proper forum which is the courts; (7) their fence is beside the sidewalk and the land on which it stands has never been the subject of acquisition either by negotiation or expropriation from the government; (8) petitioner's intended act of demolition even in the guise of a road right of way has no factual or legal basis since there is no existing infrastructure project of the national government or Marikina City government; and (9) petitioner's letter and his intended act of demolition are malicious, unfounded, meant only to harass respondents in gross violation of their rights and in excess and outside the scope of his authority, thereby rendering him accountable both in his personal and official capacity.

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[8] *Id.* at 8.

[9] Records, Folder I, pp. 3-11.

Respondents likewise sought the issuance of a temporary restraining order (TRO) and a writ of preliminary injunction to enjoin petitioner and all persons acting under him from doing any act of demolition on their property and that after trial, the injunction be made permanent. They also prayed for moral and exemplary damages and attorney's fees.

On March 14, 2001, petitioner was served the corresponding summons.[10]

On March 16, 2001, the RTC issued a TRO against petitioner.[11]

On March 29, 2001, petitioner filed an Urgent *Ex Parte* Motion for Extension to File Answer[12] until April 13, 2001. It appears however that petitioner's counsel failed to file an Answer within the extended period requested. Thus, on motion[13] of respondents, petitioner was declared in default on July 13, 2001.[14]

On July 25, 2001, petitioner filed a Motion to Lift Order of Default (with *Ex-Parte* Motion to Admit Answer and Notice Entry of Appearance).[15] According to petitioner's new counsel, an answer was not filed due to the former counsel's voluminous work load as lone lawyer in the City Legal Office.

On December 10, 2001, the RTC issued an Order[16] denying the motion to lift the order of default. Aside from finding that the motion failed to include a notice of hearing, the RTC also held that the alleged cause of delay is not excusable as voluminous work load of the counsel cannot justify the disregard of court processes or failure to abide by the period fixed by the rules and since the delay consisted not only a few days but over a hundred and three days. Petitioner moved to reconsider the

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[10] *Id.* at 17.

[11] *Id.* at 23-24.

[12] *Id.* at 43-44.

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

[14] *Id.* at 46.

[15] *Id.* at 69-73.

[16] *Id.* at 81-82.

order but the same was denied by the RTC in its March 6, 2002 Order.[17]

Petitioner thereafter filed a petition for *certiorari*[18] before the CA assailing the default order. Thus, on April 18, 2002, the RTC issued an order suspending the proceedings of the injunction case "until such time when the Petition for *Certiorari* shall have been disposed of with finality."[19]

On August 20, 2002, the CA rendered a decision[20] dismissing the petition for *certiorari* for lack of merit. Petitioner moved to reconsider the appellate court's decision, but the motion was denied by Resolution[21] dated January 30, 2003.

On September 15, 2003, the RTC issued an Order[22] dismissing the injunction complaint without prejudice. It held that respondents "have not instituted any action before th[e] Court showing that they are still interested in further prosecuting th[e] case" and "[i]n accordance with Section 3, Rule 17 of the Rules of Court, the Court is constrained to dismiss the complaint for failure of [respondents] to prosecute their complaint for an unreasonable length of time." However, upon motion of respondents, the dismissal order was set aside and the complaint was reinstated by Order[23] dated December 3, 2003. The RTC agreed with the observation of respondents that it was the court which suspended the proceedings in the injunction case pending final disposition of the petition for *certiorari* before the CA, and when the RTC issued the dismissal order, there was yet no entry of judgment from the CA and so it cannot be said that the petition was already "disposed of with finality." Respondents were then allowed to present their evidence *ex parte* before the branch clerk of court.

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[17] *Id.* at 113.

[18] *Id.* at 122-137.

[19] *Id.* at 143.

[20] *Id.* at 149-157.

[21] *Id.* at 175-176.

[22] *Id.* at 178-179.

[23] *Id.* at 202-203.

On July 27, 2004, the RTC rendered a Decision[24] in favor of respondents. The *fallo* of the RTC decision reads:

> WHEREFORE, Judgment is hereby rendered in favor of the plaintiffs. As prayed for, defendant Jaime S. Perez, Chief of the Demolition Office of Marikina City, or any person acting for and in his behalf as well as the successors to his office, is permanently enjoined from performing any act which would tend to destroy or demolish the perimeter fence and steel gate of the plaintiffs' property situated at Lot 22, Block 5, France Street corner Italy Street, Phase II, Greenheights Subdivision, Concepcion, Marikina City.
>
> Defendant is further ordered to pay the amount of Twenty Thousand (₱20,000.00) Pesos as attorney's fees and Five Thousand (₱5,000.00) Pesos for the costs of suit.[25]

The RTC held that respondents, being lawful owners of the subject property, are entitled to the peaceful and open possession of every inch of their property and petitioner's threat to demolish the concrete fence around their property is tantamount to a violation of their rights as property owners who are entitled to protection under the Constitution and laws. The RTC also ruled that there is no showing that respondents' fence is a nuisance *per se* and presents an immediate danger to the community's welfare, nor is there basis for petitioner's claim that the fence has encroached on the sidewalk as to justify its summary demolition.

Petitioner appealed the RTC decision to the CA. On March 31, 2008, the appellate court rendered the assailed decision affirming the RTC decision.

Hence this petition based on the following grounds:

I.

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN AFFIRMING THE ACTION OF THE LOWER COURT IN REINSTATING/REVIVING THE COMPLAINT FILED BY THE RESPONDENTS.

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[24] *Id.* at 222-232.

[25] *Id.* at 231-232.

II.

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN AFFIRMING THE RULING OF THE LOWER COURT THAT THE RESPONDENTS ARE ENTITLED TO PERMANENT INJUNCTION, THEREBY RESTRAINING THE PETITIONER OR ANYONE ACTING FOR AND ON HIS BEHALF FROM CARRYING OUT THE THREATENED DEMOLITION OF THEIR PERIMETER FENCE AND STEEL GATE.

III.

THE COURT OF APPEALS COMMITTED A REVERSIBLE [ERROR] IN AFFIRMING THE RULING OF THE LOWER COURT ORDERING THE PETITIONER TO PAY THE RESPONDENTS THE AMOUNTS OF TWENTY THOUSAND PESOS (₱20,000.00) AS ATTORNEY'S FEES AND FIVE THOUSAND PESOS (₱5,000.00) AS COSTS OF SUIT.[26]

Essentially, the issues to be resolved in the instant case are: (1) Did the trial court err in reinstating the complaint of respondents? (2) Are the requisites for the issuance of a writ of injunction present? and (3) Is petitioner liable to pay attorney's fees and costs of suit?

Petitioner argues that there was express admission of negligence by respondents and therefore, reinstatement of their dismissed complaint was not justified.

We disagree.

A perusal of the respondents' motion for reconsideration[27] of the order of dismissal reveals that there was no admission of negligence by respondents, either express or implied. Respondents only contended that (1) they were under the impression that it would be the RTC which would issue the order to continue the proceedings once it considers that the petition before the CA had already been disposed of with finality, and (2) their counsel's records do not show that the CA had

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[26] *Rollo*, p. 32.

[27] Records, Folder I, pp. 189-191.

already issued an entry of judgment at the time the dismissal order was issued. They also only stated that they followed up with the CA the issuance of the entry of judgment but they were just told to wait for its delivery by mail. Petitioner's imputation that respondents expressly admitted negligence is therefore clearly unfounded.

Additionally, as correctly found by both the RTC and the CA, it did not appear that respondent lost interest in prosecuting their case nor was their counsel negligent in handling it. Accordingly, there was no basis for the dismissal order and reinstatement of respondents' complaint was justified.

As to the propriety of the issuance of the writ of injunction, petitioner claims that the requisites therefor are not present in the instant case. Petitioner contends that service of a mere notice cannot be construed as an invasion of a right and only presupposes the giving of an opportunity to be heard before any action could be taken. He also claims that it is clear from the records of the case that respondents' concrete fence was constructed on a part of the sidewalk in gross violation of existing laws and ordinance and thus, they do not have absolute right over the same. According to petitioner, the encroachment is clearly apparent in the Sketch Plan of the government geodetic engineer as compared to the Location Plan attached to respondents' complaint. He likewise contends that the clearing of the sidewalks is an infrastructure project of the Marikina City Government and cannot be restrained by the courts as provided in Presidential Decree No. 1818.[28] Lastly, petitioner points out that the trial court should not have merely relied on the testimonies of respondents alleging that his men were already in the subdivision and destroying properties on other streets to prove that there was urgent necessity for the issuance of the writ.

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[28] PROHIBITING COURTS FROM ISSUING RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS IN CASES INVOLVING INFRASTRUCTURE AND NATURAL RESOURCE DEVELOPMENT PROJECTS OF, AND PUBLIC UTILITIES OPERATED BY, THE GOVERNMENT. Issued on January 16, 1981.

We disagree.

For injunction to issue, two requisites must concur: first, there must be a right to be protected and second, the acts against which the injunction is to be directed are violative of said right.[29] Here, the two requisites are clearly present: there is a right to be protected, that is, respondents' right over their concrete fence which cannot be removed without due process; and the act, the summary demolition of the concrete fence, against which the injunction is directed, would violate said right.

If petitioner indeed found respondents' fence to have encroached on the sidewalk, his remedy is not to demolish the same summarily after respondents failed to heed his request to remove it. Instead, he should go to court and prove respondents' supposed violations in the construction of the concrete fence. Indeed, unless a thing is a nuisance *per se*, it may not be abated summarily without judicial intervention.[30] Our ruling in *Lucena Grand Central Terminal, Inc. v. JAC Liner, Inc.*, on the need for judicial intervention when the nuisance is not a nuisance *per se*, is well worth mentioning. In said case, we ruled:

> Respondents can not seek cover under the general welfare clause authorizing the abatement of nuisances without judicial proceedings. That tenet applies to a nuisance per se, or one which affects the immediate safety of persons and property and may be summarily abated under the undefined law of necessity (Monteverde v. Generoso, 52 Phil. 123 [1982]). The storage of copra in the quonset building is a legitimate business. By its nature, it can not be said to be injurious to rights of property, of health or of comfort of the community. If it be a nuisance per accidens it may be so proven in a hearing conducted for that purpose. It is not *per se* a nuisance warranting its summary abatement without judicial intervention. [Underscoring supplied.]

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[29] *Philippine Economic Zone Authority v. Carantes*, G.R. No. 181274, June 23, 2010, 621 SCRA 569, 578-579, citing *City Government of Baguio City v. Masweng*, G.R. No. 180206, February 4, 2009, 578 SCRA 88, 99.

[30] *Lucena Grand Central Terminal, Inc. v. JAC Liner, Inc.*, G.R. No. 148339, February 23, 2005, 452 SCRA 174, 191.

In *Pampanga Bus Co., Inc. v. Municipality of Tarlac* where the appellant-municipality similarly argued that the terminal involved therein is a nuisance that may be abated by the Municipal Council via an ordinance, this Court held: "Suffice it to say that in the abatement of nuisances the provisions of the Civil Code (Articles 694-707) must be observed and followed. This appellant failed to do."[31]

Respondents' fence is not a nuisance *per se*. By its nature, it is not injurious to the health or comfort of the community. It was built primarily to secure the property of respondents and prevent intruders from entering it. And as correctly pointed out by respondents, the sidewalk still exists. If petitioner believes that respondents' fence indeed encroaches on the sidewalk, it may be so proven in a hearing conducted for that purpose. Not being a nuisance *per se*, but at most a nuisance *per accidens*, its summary abatement without judicial intervention is unwarranted.

Regarding the third issue, petitioner argues that he was just performing his duties and as public officer, he is entitled to the presumption of regularity in the performance of his official functions. Unless there is clear proof that he acted beyond his authority or in evident malice or bad faith, he contends that he cannot be held liable for attorney's fees and costs of suit.

Respondents, for their part, counter that the presumption of regularity has been negated by the fact that despite their reply to the first notice, which put petitioner on notice that what he was doing was *ultra vires*, he still reiterated his earlier demand and threat of demolition. Having been warned by respondents that his acts were in fact violations of law, petitioner should have been more circumspect in his actions and should have pursued the proper remedies that were more in consonance with the dictates of due process. Respondents further pray for moral damages for the serious anxieties and sleepless nights

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[31] *Id.*, citing *Estate of Gregoria Francisco v. Court of Appeals*, G.R. No. 95279, July 25, 1991, 199 SCRA 595, 601 and *Pampanga Bus Co., Inc. v. Municipality of Tarlac*, No. L-15759, December 30, 1961, 3 SCRA 816, 827-828.

they suffered and exemplary damages to serve as an example to other public officials that they should be more circumspect in the performance of their duties.

We agree with respondents.

As respondents were forced to file a case against petitioner to enjoin the impending demolition of their property, the award of attorney's fees and costs of suit is justified. Clearly, respondents wanted to settle the problem on their alleged encroachment without resorting to court processes when they replied by letter after receiving petitioner's first notice. Petitioner, however, instead of considering the points raised in respondents' reply-letter, required them to submit the relocation plan as if he wants respondents to prove that they are not encroaching on the sidewalk even if it was he who made the accusation of violation in the first place. And when he did not get the "proof" he was requiring from respondents, he again sent a notice with a threat of summary demolition. This gave respondents no other choice but to file an injunction complaint against petitioner to protect their rights.

With regard to respondents' claim for moral damages, this Court rules that they are entitled thereto in the amount of ₱10,000.00 pursuant to Article 2217[32] of the Civil Code. As testified to by respondents, they suffered anxiety and sleepless nights since they were worried what would happen to their children who were left by themselves in their Marikina residence while they were in Ormoc City if petitioner would make real his threat of demolition on their fence.

We likewise hold that respondents are entitled to exemplary damages in the amount of ₱5,000.00 to serve as an example to other public officials that they should be more circumspect in the performance of their duties.

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[32] ART. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

WHEREFORE, the March 31, 2008 Decision and September 10, 2008 Resolution of the Court of Appeals in CA-G.R. CV. No. 83675 are **AFFIRMED with MODIFICATION.** Petitioner Jaime S. Perez, Chief of the Demolition Office of Marikina City is **ORDERED** to pay respondent Spouses Fortunito L. Madrona and Yolanda B. Pante moral damages in the amount of ₱10,000.00 and exemplary damages in the amount of ₱5,000.00.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Perlas-Bernabe,* JJ.,* concur.

SECOND DIVISION

[G.R. No. 184719. March 21, 2012]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HEIRS OF JESUS S. YUJUICO, MARIETTA V. YUJUICO and DR. NICOLAS VALISNO, SR.,** *respondents.*

[G.R. No. 184720. March 21, 2012]

DEPARTMENT OF AGRARIAN REFORM, represented by SECRETARY NASSER PANGANDAMAN, *petitioner, vs.* **HEIRS OF JESUS YUJUICO, MARIETTA YUJUICO and NICOLAS VALISNO, SR.,** *respondents.*

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* Designated additional member per Special Order No. 1207 dated February 23, 2012.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM LAWS; JUST COMPENSATION; DETERMINATION THEREOF IS ULTIMATELY A JUDICIAL FUNCTION. — We held that the determination of just compensation is ultimately a judicial function, to wit: "The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "justness" of the decreed compensation." x x x "The determination of just compensation under P.D. No. 27, like in Section 16 (d) of R.A. 6657 or the CARP Law, is not final or conclusive. This is evident from the succeeding paragraph of Section 2 of E.O. 228." x x x What is clear from all of these instances is that although a law may suggest or provide a method or formula to be used in determining the value of expropriated properties or just compensation, the value arrived at in applying it is not and should not be considered final and absolute. No law can deprive the courts of the power to review, alter, or modify the amount arrived at if they believe it to be unfair or unjust. The final determination of the proper amount of compensation still rests upon the court. This Court has already categorically declared in *LBP v. Domingo Soriano* that if the issue of just compensation is not settled prior to the passage of the CARL, it should be computed in accordance with the said law, although the property was acquired under P.D. 27.

2. ID.; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (CARL); JUST COMPENSATION; DETERMINATION THEREOF SHOULD BE STRICTLY IN ACCORDANCE WITH THE APPLICABLE DEPARTMENT OF AGRARIAN REFORM REGULATIONS; CLARIFIED. — In *Land Bank of the Philippines v. Celada,* the Court ruled that the factors enumerated under Section 17 of R.A. 6657 had already been translated into a basic formula by the DAR as reflected in A.O. 5 x x x. *In Land Bank of the Philippines v. Spouses Banal,*

we remanded the case to the SAC for further reception of evidence, because the trial court had based its valuation upon a different formula and had not conducted any hearing for the reception of evidence. The mandatory application of the aforementioned guidelines in determining just compensation was reiterated in *Land Bank of the Philippines v. Lim* and *Land Bank of the Philippines v. Heirs of Eleuterio Cruz*, wherein we also ordered the remand of the cases to the SAC for the determination of just compensation strictly in accordance with the applicable DAR regulations.

3. ID.; ID.; ID.; TO COMPUTE JUST COMPENSATION, IT IS NECESSARY TO DETERMINE THE ACTUAL TIME OF TAKING. — It is necessary to determine the actual time of taking, as it is the value of the properties at that time that should be used to compute the just compensation. It will also be the date when the applicable interest in expropriation cases begins to accrue.

4. ID.; ID.; ID.; REMAND OF THE CASE TO THE COURT OF APPEALS FOR PROPER DETERMINATION OF JUST COMPENSATION, ORDERED; RATIONALE. — The exact date when each property was taken from respondents cannot be determined from the evidence already presented by the parties. The exact amount already paid to and received by respondents as initial payment should also be determined, as this amount will be deducted from whatever amount will be awarded to them as just compensation. x x x The evidence on record is not sufficient to enable this Court to determine the said amount. We find that since some of the lands had already been acquired even before the CARL became effective, the acceleration of the final disposition of this case is warranted. Hence, we deem it best to commission the CA as our agent *pro hac vice* to receive and evaluate the evidence of the parties. Its mandate is to ascertain the just compensation due in accordance with this Decision, applying Section 17 of R.A. 6657 and A.O. 5. The case is remanded to the appellate court, which is ordered to require the parties to submit further evidence to establish the actual amount already received by respondents as payment for their properties and the actual date of the taking thereof. The CA is also ordered to admit evidence to determine the Market Value per Tax Declaration of the expropriated properties and the capitalized net income and/or the comparable sales thereof.

The resulting figures shall be used to compute the land value using the equation reflected in A.O. 5.

APPEARANCES OF COUNSEL

LBP Legal Services Group for Land Bank of the Phils.
Eulogio A. Quipse for respondents.

D E C I S I O N

SERENO, *J.*:

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, assailing the 23 May 2008 Decision[2] of the Court of Appeals (CA) in CA-GR SP Nos. 90905 and 91047. The CA reversed the Decision of the Regional Trial Court (RTC), which upheld the assertion of Spouses Jesus Y. Yujuico and Marietta V. Yujuico (respondents) that they should be paid by the government in the amount of ₱150,000 per hectare of land distributed by public respondent Department of Agrarian Reform (DAR) to their farmer-beneficiaries.

Respondents were the registered owners of eight parcels of land as reflected in the following Transfer Certificates Title (TCT):[3]

Lot 1 – 52.9200 hectares (TCT No. NT-77818)

Lot 2 – 53.1741 hectares (TCT No. NT-77819)

Lot 3 – 44.5588 hectares (TCT No. NT-174919)

Lot 4 – 49.1347 hectares (TCT No. NT-77820)

Lot 5 – 52.9200 hectares (TCT No. NT-77821)

Lot 6 – 45.8068 hectares (TCT No. NT-77822)

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[1] *Rollo*, pp. 23-74.

[2] *Rollo*, pp. 9-19; Penned by Associate Justice Mario L. Guariña III and concurred in by Associate Justices Japar B. Dimaampao and Romeo F. Barza.

[3] *Rollo*, p. 238.

Lot 7 – 37.6290 hectares (TCT No. NT-77823)

Lot 8 – 20.9027 hectares (TCT No. NT-110213)

The DAR claims that, following the mandate of Presidential Decree No. 27 (P.D. 27)[4] and Executive Order No. 228 (E.O. 228), Lots 3, 4, and 7 and parts of Lots 1, 5, and 6 were placed under the Operation Land Transfer (OLT) program of the government.[5] The remaining parts of Lots 1, 5, and 6 were covered by Republic Act No. 6657 (R.A. 6657), otherwise known as the Comprehensive Agrarian Reform Law of 1988 (CARL).[6] As a consequence of these moves, the properties were acquired by the DAR and thereafter distributed to the proper farmer-beneficiaries.

The Land Bank of the Philippines (LBP) offered respondents the amount of ₱2,422,883.88 as payment for their properties. Not satisfied with this amount, respondents filed an action for the payment of just compensation with the DAR Adjudication Board (DARAB) of Nueva Ecija, Cabanatuan City. After several hearings, the hearing adjudicator passed away.

Realizing that "there are many important and crucial issues related to the payment of just compensation, that are beyond the competence and jurisdiction of DARAB to decide and rule on,"[7] respondents filed a Complaint for determination and payment

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[4] P.D. 27, October 21, 1972, DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR.

[5] E.O. 228, July 17, 1987, DECLARING FULL LAND OWNERSHIP TO QUALIFIED FARMER BENEFICIARIES COVERED BY PRESIDENTIAL DECREE NO. 27: DETERMINING THE VALUE OF REMAINING UNVALUED RICE AND CORN LANDS SUBJECT TO P.D. NO. 27; AND PROVIDING FOR THE MANNER OF PAYMENT BY THE FARMER BENEFICIARY AND MODE OF COMPENSATION TO THE LANDOWNER.

[6] *Rollo,* p. 260.

[7] *Id.* at 239.

of just compensation[8] before the Special Agrarian Court (SAC) of the RTC on 20 August 2001, even before the DARAB could resolve the case. On 29 November 2001, they filed an Amended Complaint.[9]

Pending resolution of the Complaint, initial payments for some of the lots were accepted by respondents from the LBP. The parties agreed that these amounts should be deducted from whatever total amount the court would award to respondents. According to the LBP, ₱2,422,883.88 in the form of cash and bonds had already been deposited in the account of respondents.[10] However, Atty. Leandro Valisno, the lawyer and administrator of their properties, claims that his clients received only the following initial payments: ₱128,221.36 for Lot 1; ₱300,483.24 for Lot 4; ₱176,880.08 for Lot 5; and ₱205,516.75 for Lot 6[11] – or a total of ₱811,101.43. Yet, for no apparent reason, in the Memorandum they filed with this Court, they claim that the total amount they received as payment was only ₱810,806.43.[12]

During the pendency of the case with the trial court, Jesus Yujuico died. Consequently, his heirs—his surviving spouse and six of his children—were substituted as respondents in the case.[13]

In its Answer to the Amended Complaint,[14] the DAR avers that the determination of the just compensation for the Lots placed under the OLT program should be governed by the provisions of P.D. 27 and E.O. 228.[15]

Paragraph 4 of P.D. 27 reads:

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[8] RTC Records, pp. 2-7.

[9] *Rollo,* pp. 237-244; RTC Records, pp. 45-52.

[10] *Rollo,* p. 35.

[11] RTC Records, p. 380.

[12] *Rollo,* p. 456.

[13] RTC Records, p. 383.

[14] *Rollo,* pp. 230-232.

[15] *Rollo,* p. 232.

For the purpose of determining the cost of the land to be transferred to the tenant-farmer pursuant to this Decree, the value of the land shall be equivalent to two and one-half (2 1/2) times the average harvest of three normal crop years immediately preceding the promulgation of this Decree;

Section 2 of E.O. 228 provides:

Sec. 2. Henceforth, the valuation of rice and corn lands covered by P.D. No. 27 shall be based on the average gross production determined by the Barangay Committee on Land Production in accordance with Department Memorandum Circular No. 26, Series of 1973, and related issuances and regulations of the Department of Agrarian Reform. The average gross production per hectare shall be multiplied by two and a half (2.5), the product of which shall be multiplied by Thirty Five Pesos (₱35.00), the government support price for one cavan of 50 kilos of palay on October 21, 1972, or Thirty One Pesos (₱31.00), the government support price for one cavan of 50 kilos of corn on October 21, 1972, and the amount arrived at shall be the value of the rice and corn land, as the case may be, for the purpose of determining its cost to the farmer and compensation to the landowner.

Lease rentals paid to the landowner by the farmer beneficiary after October 21, 1972, shall be considered as advance payment for the land. In the event of dispute with the land owner regarding the amount of lease rental paid by the farmer beneficiary, the Department of Agrarian Reform and the Barangay Committee on Land Production concerned shall resolve the dispute within thirty (30) days from its submission pursuant to Department of Agrarian Reform Memorandum Circular No. 26, Series of 1973, and other pertinent issuances. In the event a party questions in court the resolution of the dispute, the landowner's compensation claim shall still be processed for payment and the proceeds shall be held in trust by the Trust Department of the Land Bank in accordance with the provisions of Section 5 hereof, pending the resolution of the dispute before the court.

The DAR concludes that if the foregoing provisions were reduced to an equation, this would be the resulting formula:

"Land Value (LV) = AGP x 2.5 x ₱35.00 x no. of has."[16] The LBP concurs and asserts the same formula.[17]

As the taking of the other properties were carried out through the application of the provisions of the CARL, the DAR submits that it is the CARL that should be used or applied in determining the value of these properties.

The DAR issued Administrative Order No. 5, Series of 1998 (A.O. 5) in order to implement Section 17 of the CARL, which reads:

> **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 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 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.

The LBP asserts that in determining the value of respondents' properties, it merely applied and conformed to the mandate of Section 17 of the CARL as implemented by A.O. 5.[18]

Respondents, for their part, explain that the lots expropriated yielded an average of 90-100 cavans per harvest per hectare. They claim that since their properties are surrounded by the Diapo River and the Tamale Creek, these have a natural year-round supply of irrigation water, making it possible for them to have two harvesting periods per year.[19]

Respondents thus insist that in determining the just compensation owed to them, the following formula should be

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[16] *Rollo,* p. 261.

[17] See *rollo,* p. 341.

[18] *Rollo,* p. 341.

[19] *Id.* at 241.

adhered to: "90 cavans x 50 kgs. x 204.8507 has. x ₱6.00/kg. x 2 cropping season = total amount payable."[20]

They further submit that P.D. 27 is inapplicable to this case, since the Emancipation Patents (EPs) issued to the farmer-beneficiaries in Lots 1, 5, and 7[21] were issued "not in 1972 when P.D. 27 was approved, but just after the approval of CARP."[22] Since P.D. 27 is not the proper law to be applied, respondents assert thus:

> Consequently, the just compensation for the aforementioned titled lands should legally be plugged and anchored in the vicinity of sales of lands thereat in 1988-1991 when said lands were issued E.P.s and other like titles.[23]

Respondents presented as a witness the Municipal Assessor, who testified that the prevailing market price of the properties in the area at the time they were taken was from ₱150,000 to 200,000 per hectare. This testimony was, in petitioner's opinion, corroborated by the testimonies of their other witness, the manager of a community rural bank in the area. The bank manager testified that he followed the aforementioned appraisal values in processing loan applications.[24]

Out of the 357.0461 hectares of agricultural land owned by respondents, the DAR took 204.8507 hectares, for which respondents demand that they be justly compensated in the amount of ₱30,727,605.[25] This amount is the product of 204.8507 hectares multiplied by ₱150,000.

The DAR claims that with respect to Lot 2 respondents have no cause of action against it, because it never endorsed to the LBP the alleged transfer of this property "for either processing

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[20] *Id.* at 242.

[21] See *rollo*, p. 344.

[22] *Rollo*, p. 344.

[23] *Id.* at 344-345.

[24] *Id.* at 345.

[25] *Id.* at 241.

and payment (R.A. 6657) or simply payment (P.D. 27/E.O. 228)."[26] In the same vein, the LBP also claims that no cause of action can be imputed to it by respondents in this regard. It contends that, until and unless the DAR endorses the claim folder of a particular landholding to respondents, there arises no obligation to determine the value of the lot—much less, pay the value thereof to the owners.[27]

The questions that need to be resolved in this case are the following:

1. The exact land area actually taken by the government from respondents;

2. The law that should be followed in determining the amount owed by the government to respondents for such taking; and

3. The amount the government should pay respondents.

In a Decision[28] dated 30 January 2005, the RTC asserted that the Supreme Court had already declared the application of E.O. 228 and P.D. 27 in valuing expropriated properties as "unfair and unjust" to landowners,[29] to wit:

> Tackling the issues formulated by the parties, the Supreme Court has ruled in several decisions that the application of Executive Order No. 228 in conjunction with the provisions of P.D. No. 27, used by defendants DAR and LBP, in arriving at a valuation of properties is unfair and unjust to the landowner. For just compensation means the equivalent for the value of the property at the time of its taking. Anything beyond is more and anything short of that is less, than just compensation.
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> The valuation at an average of ₱3,120.25 per hectare for the lands of plaintiffs covered by PD 27 is ridiculously low. Hence the formula used by the DAR and LBP using that provided under PD 27 and

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[26] *Id.* at 260.

[27] *Id.* at 342.

[28] RTC Records, pp. 377-387, penned by Judge Lydia Bauto Hipolito.

[29] RTC Records, p. 384 citing *Export Processing Zone v. Dulay*, 233 Phil. 313 (1987).

Executive Order No. 228 in arriving at the landholdings' valuation should be disregarded.

On the other hand regarding those covered by R.A. 6657, the valuation at an average of ₱18,000.00 per hectare, more or less, is still low. In this connection the Court is convinced that it is not the just compensation contemplated by law.[30]

The trial court found that the actual area of the landholding placed under the coverage of land reform was 179.2302 hectares.[31] Finding that the price of ₱150,000 per hectare was more reflective of the actual value of the properties, the RTC awarded an amount of ₱26,884,530 in favor of respondents. The dispositive portion reads:

WHEREFORE, let judgment be rendered ordering defendant Department of Agrarian Reform through the defendant Land Bank of the Philippines to pay plaintiffs the Heirs of Jesus Yujuico, and Marietta Valisno-Yujuico, the total amount of Twenty Six Million Eight Hundred Eighty Four Thousand Five Hundred Thirty (₱26,884,530.00) Philippine Currency, representing the just compensation of the property with a total area of 179.2302 hectares, situated at Digmala (formerly Macabaclay), Bongabon, Nueva Ecija, covered by: (1) TCT No. NT-77818; (2) TCT No. NT-77819; (3) TCT No. NT-174919; (4) TCT No. NT-77820; (5) TCT No. NT-77821; (6) TCT No. NT-77822; and (7) TCT No. NT-77823, with legal interest of six percent (6%) per annum from date of taking (which the Court determines to be November 29, 2001) until fully paid.

SO ORDERED.[32]

The RTC made no pronouncement in its Decision on Lot 8.

Both the LBP and the DAR filed their Motions for Reconsideration (MR), while respondents filed a partial MR. The trial court denied the MRs of LBP and the DAR on 22 July 2005, but it granted the partial MR of respondents and

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[30] *Id.* at p. 384.

[31] *Id.* at 386.

[32] *Id.* at 387.

changed the date from which legal interest shall accrue—from 29 November 2001 to June 1989, because the EPs had been awarded to the land tillers as early as June 1988 until October 2001.

The LBP and the DAR filed Petitions for Review, which were later consolidated by the appellate court.

In determining whether to apply the formula ordered by P.D. 27 and E.O. 28 or that found in Section 17 of the CARL in relation to its implementing regulation A.O. 5, the CA ruled that it should be the law in effect on the date of payment and not—as the LBP insists—the law in effect at the time of the taking, to wit:

> The question of what formula to use in determining the value of the property taken raises the corollary issue of whether the value should be computed as of the time of taking or time of payment. An erudite discussion of the issue in *Lubrico vs. Land Bank of the Philippines,* 507 SCRA 415 underscores the date of payment as the reckoning point in the determination of value. In that case, the landowners were deprived of their property since 1972 but had not yet received payment when the Supreme Court handed down its decision in 2006. The tribunal noted that expropriation proceedings had been initiated under PD 27 but were not completed when RA 6657 was passed. It was held that since the process was to be completed under RA 6657, the method of valuation in that statute must be followed.
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> The Land Bank still insists that the lands should be valued under the laws in effect at the time of taking. Hence, for lands taken under PD 27, the formula in PD 27 should be followed, for those under EO 228, the formula in EO 228 should be used, and for those under RA 6657, the formula of that statue should apply. However, from the very records of Land Bank, the earliest payment was made in March 1992 – *long after CARP was in effect*. Subsequent payments were effected until 2003. Following judicial doctrine, the valuation must be determined under RA 6657 as implemented by AO 5.[33]

In support of this stance, the CA stated that the date of taking used to be the date when the interest would begin to

[33] CA *rollo*, p. 636.

accrue. However, this Court, in *Land Bank of the Philippines v. Wycoco*,[34] already ruled that "interest is no longer imposed x x x unless there is a finding of delay to justify interest as damages,"[35] making any final determination – with regard to that date – completely superfluous.

Thereafter, the appellate court decided to order the return of the records of the case to the trial court "for the re-computation of the valuation of the properties."[36] The dispositive portion of the CA Decision reads:

> IN VIEW OF THE FOREGOING, the decision subject of review is SET ASIDE. Let this case be remanded to the Special Agrarian Court for it to proceed with dispatch on the computation of the final valuation of the lands in accordance with our decision.
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> SO ORDERED.[37]

The LBP filed an MR[38] of the CA Decision, but the motion was denied through a Resolution[39] dated 30 September 2008. Hence, this appeal via a Petition for Review[40] under Rule 45.

The LBP presents its own breakdown[41] of the lots taken by the DAR; the respective land areas thereof; the law used as basis for the taking; the just compensation supposedly due to respondents for the expropriation of the said properties; and the status of the payment, *viz*:

1) Lot 1

a) Acquired under P.D. 27 and E.O. 228

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34 464 Phil. 83 (2004).

35 *Rollo,* p. 17.

36 *Id.*

37 *Id.*

38 *Rollo,* pp. 92-128.

39 *Rollo,* p. 89.

40 *Id.* at 23-74.

41 See *rollo,* pp. 31-33.

-11.3945 hectares taken

-just compensation of ₱35,553.69 fully paid

b) Acquired under the CARL

-33.6187 hectares taken

-just compensation of ₱613,174.16 partially paid

2) Lot 4

a) Acquired under P.D. 27 and E.O. 228

-49.1347 hectares

-just compensation of ₱85,476.14 fully paid

3) Lot 5

a) Acquired under P.D. 27 and E.O. 228

-15.17186 hectares

-just compensation of ₱176,880.00 fully paid

b) Acquired under the CARL

-8.9257 hectares

-just compensation of ₱155,516.75 unpaid

4) Lot 6

a) Acquired under P.D. 27 and E.O. 228

-18.3063 hectares

- just compensation of ₱57,120.23 fully paid

b) Acquired under the CARL

-13.8215 hectares

- just compensation of ₱303,615.78 fully paid

5) Lot 7

a) Acquired under P.D. 27 and E.O. 228

-27.5143 hectares

-just compensation of ₱480,544.40 unpaid

The breakdown shows that only Lots 1(b), 5(b) and 7 – all of which were taken pursuant to the CARL – remain unpaid.

This Court cannot determine, based on the allegations of the LBP, if the latter paid respondents ₱613,174.16 as part of an undetermined total sum for Lot 1(b), or if the bank has made an undetermined partial payment for the ₱613,174.16 it owes to respondents for Lot 1(b); the same is true for Lot 5(b). As to Lot 7, respondents claim that the entire amount of ₱480,544.40 remains unpaid.

The LBP prays that this Court annul and set aside the CA's Decision or, in the alternative, resolve the issue of just compensation by upholding the legality of the amount of ₱2,422,883.88 deposited in respondents' favor as just compensation.[42]

The trial court's finding with respect to the actual land area expropriated is supported by the evidence on record.

In the Memorandum[43] respondents submitted to the RTC on 13 September 2004, the 204.8507 hectares for which they demanded compensation in their original Complaint became 215.7187 hectares; and the ₱30,727,605 became ₱87,177,000. In the Memorandum[44] they submitted to this Court, the total land area was again changed from 215.7187 hectares to 204.8507

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[42] *Rollo,* p. 70.

[43] *Rollo,* pp. 343-349.

[44] *Rollo,* pp. 454-464.

hectares. Meanwhile, their lawyer admitted that the total land area actually acquired by the DAR was only 204 hectares.[45]

Still, in the Memorandum submitted by respondents to this Court, they present no evidence or argument against the finding of the RTC that the actual land area taken from them was only 179.2302 hectares, to wit:

> Respondents, from its inception, claimed payment for just compensation for their 204.8507 hectares of Rice Land acquired and distributed by petitioners to farmer beneficiaries. Nevertheless, the Special Agrarian Court made a findings (sic) that only 179.2302 hectares of respondent properties were actually taken for land reform. Be that as it may, respondents are primarily obsessed for a fair and just compensation contemplated by applicable rules and guidelines which is the equivalent of the value of the properties at the time of taking. Any thing beyond is more and anything short of that is less than just compensation.[46]

For its part, the LBP claims that only a total of 201.8897 hectares was taken from respondents.[47] However, based on the breakdown presented in its Petition for Review, LBP now claims that only a total of 177.89026 hectares was taken from respondents.

The RTC resorted to several documents to ascertain the total landholding or actual area placed under the coverage of land reform. Taking all the pieces of evidence presented to it, the court found that the actual area acquired by the government was 179.2302 hectares, broken down as follows:

Lot 1	-	11.3945
	-	31. 2950
Lot 2	-	21.6034
Lot 3	-	22.1848

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[45] RTC Records, p. 380.

[46] *Rollo,* p. 458.

[47] See *rollo,* p. 48.

Lot 4	-	27.3940
Lot 5	-	15.7186
	-	19.1239
Lot 6	-	18.3063
	-	8.9257
Lot 7	-	3.2840

The RTC also ruled that even though LBP claimed that the DAR had never transmitted the folder of Lot 2 to the bank for payment, the evidence showed that 21.6034 hectares had actually been taken from respondents.

The trial court also found that respondents failed to present evidence to prove that Lot 8 had been acquired by the government for land reform.

The CA adopted these findings.

We sustain the foregoing factual findings of the trial court, as they are supported by the evidence on record. The trial court examined the annotations at the back of the titles of the properties, the allegations of the LBP in its Answer, and the letters from the Valuation and Landowner's Compensation Office of the LBP and, from there, arrived at the aforementioned figures.[48]

If the issue of just compensation is not settled prior to the passage of the CARL, the said compensation should be computed in accordance with the said law, even though the property was acquired under P.D. 27.

We shall now rule on the allegation of LBP that the RTC and the appellate court should have used either P.D. 27 in relation

[48] RTC Records, p. 386.

to E.O. 228 or the CARL in relation to A.O. 5 – depending on which law was used to acquire the properties – in determining just compensation.

LBP avers that the CA erred when the latter ordered the RTC to determine the value of respondents' rice lands, following the mandate of the CARL, even though these lots were acquired pursuant to P.D. 27 and E.O. 228.[49] LBP argues that E.O. 229, which provides for the mechanism of the CARL, specifically states that P.D. 27 shall continue to operate with respect to rice and corn lands covered thereunder despite the passage of the CARL.[50] The LBP thus insists that the valuation of lands acquired under the OLT should be made in accordance with the mandate of P.D. 27 and E.O. 228, because the CARL did not repeal or supersede P.D. 27.[51]

Resolving these allegations, the trial court boldly proclaimed that this Court, in *Export Processing Zone Authority v. Dulay*,[52] had already declared the use of E.O. 228 and P.D. 27 in valuing expropriated properties as "unfair and unjust" to the landowner.[53]

The case cited above focused on the validity of certain provisions that dictate the proper method for computing just compensation. We declared as unconstitutional these provisions in P.D. 76, 464, 794 and 1533. We ruled that the methods of valuation found in those laws may serve only as guiding principles or one of the factors to be considered in determining just compensation, but they may not substitute for the court's own judgment as to what amount should be awarded and how to arrive at that amount. We held that the determination of just compensation is ultimately a judicial function, to wit:

> The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature

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[49] *Rollo*, pp. 43-44.

[50] *Id.*

[51] *Id.*

[52] 233 Phil. 313 (1987).

[53] RTC Records, p. 384.

may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "justness" of the decreed compensation.[54]

Thus, this Court ruled that those provisions are unconstitutional insofar as they allow an impermissible encroachment on judicial prerogatives.

Export Processing Zone Authority v. Dulay never discussed P.D. 27. Contrary to the trial court's assertion, we had already affirmed the constitutionality of P.D. 27 in *Sigre v. Court of Appeals, et al.*,[55] *viz*:

> The objection that P.D. 27 is unconstitutional as it sets limitations on the judicial prerogative of determining just compensation is bereft of merit. P.D. 27 provides:
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> "For the purpose of determining the cost of the land to be transferred to the tenant-farmer pursuant to this Decree, the value of the land shall be equivalent to two and one half (2 ½) times the average harvest of three normal crop years immediately preceding the promulgation of this Decree;"
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> x x x x x x x x x
>
> The determination of just compensation under P.D. No. 27, like in Section 16 (d) of R.A. 6657 or the CARP Law, is not final or conclusive. This is evident from the succeeding paragraph of Section 2 of E.O. 228.
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> x x x x x x x x x
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> x x x, unless both the landowner and the tenant-farmer accept the valuation of the property by the Barrio Committee on Land Production and the DAR, the parties may bring the dispute to court in order to determine the appropriate amount of compensation, a task unmistakably within the prerogative of the court.

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[54] *Supra* note 52, at 236.

[55] 435 Phil. 711, 723-725 (2002).

What is clear from all of these instances is that although a law may suggest or provide a method or formula to be used in determining the value of expropriated properties or just compensation, the value arrived at in applying it is not and should not be considered final and absolute. No law can deprive the courts of the power to review, alter, or modify the amount arrived at if they believe it to be unfair or unjust. The final determination of the proper amount of compensation still rests upon the court.

This Court has already categorically declared in *LBP v. Domingo Soriano*[56] that if the issue of just compensation is not settled prior to the passage of the CARL, it should be computed in accordance with the said law, although the property was acquired under P.D. 27, *viz*:

In the instant case, while the subject lands were acquired under Presidential Decree No. 27, the complaint for just compensation was only lodged before the court on 23 November 2000 or long after the passage of Republic Act No. 6657 in 1988. Therefore, Section 17 of Republic Act No. 6657 should be the principal basis of the computation for just compensation. As a matter of fact, the factors enumerated therein had already been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of Republic Act No. 6657. The formula outlined in DAR Administrative Order No. 5, series of 1998 should be applied in computing just compensation, thus:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration.[57]

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[56] G.R. Nos. 180772 and 180776, 6 May 2010, 620 SCRA 347.

[57] *LBP v. Domingo Soriano,* G.R. Nos. 180772 and 180776, 6 May 2010, 620 SCRA 347, 353; citing *Land Bank of the Philippines v. Celada,* 479 SCRA 495, 508 (2006).

The same rule holds true for the present case. While some of the lands were acquired under P.D. 27, the Complaint for just compensation was lodged before the court only on 20 August 2001, long after the passage of the CARL, or on 15 June 1988.

We have, in several cases by reason of equity, applied the CARL in determining just compensation for lands acquired under P.D. 27 and before the effectivity of the CARL.[58]

Additional evidence is required to determine the precise amount already received by respondents; to determine the actual time of taking to identify when interest shall begin to accrue; and to supply the figures needed to apply the formula found in A.O. 5, series of 1998.

Respondents insist that the LBP erred when it followed A.O. 5 and relied on the market value of the lots, as reflected in respondents' Tax Declarations, because the bank should have used the prevailing market price of the lots at the time they were taken as mandated by the CARL.[59] In addition, respondents aver that the market value appearing on the Tax Declarations should not be used as basis, since they are not accurate, to wit:

> Moreover, the market value appearing on the Tax Declaration of the property made as the basis of the defendant Land Bank in the determination of just compensation, is both incredible and unreliable for being purely self-serving. They are simply the product of the individual act of the landowners who are always inclined to declare a much lower market value to maximized (sic) tax liability. This procedure as a matter of fact has been exemplified thru the testimony given in court by the Municipal Assessor of Bongabon, N. Ecija. x x x[60]

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[58] *LBP v. Heirs of Asuncion Añonuevo vda. de Santos*, G.R. No. 179862, 3 September 2009, 598 SCRA 115.

[59] *Rollo,* p. 345.

[60] *Id.*

We disagree.

In *Land Bank of the Philippines v. Celada*,[61] the Court ruled that the factors enumerated under Section 17 of R.A. 6657 had already been translated into a basic formula by the DAR as reflected in A.O. 5, which provides:

A. There shall be one basic formula for the valuation of lands covered by VOS or CA:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

The above formula shall be used if all three factors are present, relevant and applicable.

A1. When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

A2. When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9) + (MV x 0.1)

A3. When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

In no case shall the value of idle land using the formula MV x 2 exceed the lowest value of land within the same estate under consideration or within the same *barangay* or municipality (in that order) approved by LBP within one (1) year from receipt of claimfolder.

In Land Bank of the Philippines v. Spouses Banal,[62] we remanded the case to the SAC for further reception of evidence, because the trial court had based its valuation upon a different

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[61] *Land Bank of the Philippines v. Celada*, 515 Phil. 467, 480 (2006).

[62] 478 Phil. 701 (2004).

formula and had not conducted any hearing for the reception of evidence.

The mandatory application of the aforementioned guidelines in determining just compensation was reiterated in *Land Bank of the Philippines v. Lim*[63] and *Land Bank of the Philippines v. Heirs of Eleuterio Cruz*,[64] wherein we also ordered the remand of the cases to the SAC for the determination of just compensation strictly in accordance with the applicable DAR regulations.

With respect to the time of taking, the LBP believes that it should be the date P.D. 27 became effective, to wit:

> 7.33 The issue as to **when is the date of taking** which is the basis in the determination of just compensation, has long been settled in this jurisdiction. The Honorable Supreme Court in its doctrinal pronouncement in the case of ***Locsin vs. Valenzuela***, *supra*, ruled that:
>
> "In respect of land subjected to OLT, **the tenant-farmers became the owners of the land they tilled as of the effective date of Presidential Decree No. 27, *i.e.*, 21 October 1972.** (Emphasis in the original)"[65]

The RTC, on the other hand, decided to peg the time of taking from the filing of the Complaint, *viz*:

> Based on the annotations on the titles, emancipation patents were awarded or issued as early as June 21, 1988 (EP 45739/TCT NT-77818), others were issued on different dates the latest of which is on October 11, 2001 (EP 87958/TCT NT-77822) or a span of thirteen (13) years. for practical purposes therefore, the Court arbitrarily sets the date of taking on November 29, 2001 when the Amended Complaint (p. 45, record) was filed.[66]

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[63] G.R. No. 171941, 2 August 2007, 529 SCRA 129.

[64] G.R. No. 175175, 29 September 2008, 567 SCRA 31.

[65] *Rollo*, p. 63.

[66] RTC Records, p. 387.

It is necessary to determine the actual time of taking, as it is the value of the properties at that time that should be used to compute the just compensation. It will also be the date when the applicable interest in expropriation cases begins to accrue. The exact date when each property was taken from respondents cannot be determined from the evidence already presented by the parties.

The exact amount already paid to and received by respondents as initial payment should also be determined, as this amount will be deducted from whatever amount will be awarded to them as just compensation.

According to the LBP, ₱2,422,883.88 has already been deposited in the account of respondents.[67] However, the latter claim that the total amount they have received as payment is only ₱810,806.43.[68]

Neither the RTC nor the appellate court made a pronouncement as to the total amount already received by respondents as initial payment.

The evidence on record is not sufficient to enable this Court to determine the said amount.

We find that since some of the lands had already been acquired even before the CARL became effective, the acceleration of the final disposition of this case is warranted. Hence, we deem it best to commission the CA as our agent *pro hac vice* to receive and evaluate the evidence of the parties. Its mandate is to ascertain the just compensation due in accordance with this Decision, applying Section 17 of R.A. 6657 and A.O. 5.[69]

The case is remanded to the appellate court, which is ordered to require the parties to submit further evidence to establish

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[67] *Rollo*, p. 35.

[68] *Id.* at 456.

[69] *LBP v. Luciano*, G.R. No. 165428, 25 November 2009, 605 SCRA 426.

the actual amount already received by respondents as payment for their properties and the actual date of the taking thereof. The CA is also ordered to admit evidence to determine the Market Value per Tax Declaration of the expropriated properties and the capitalized net income and/or the comparable sales thereof. The resulting figures shall be used to compute the land value using the equation reflected in A.O. 5.

WHEREFORE, in view of the foregoing, the Petition is *PARTLY GRANTED*, and the case is *REMANDED* to the Court of Appeals, Manila, which is ordered to do as follows:

(1) **RECEIVE** evidence and **DETERMINE** the exact amount already paid to and received by respondents, Heirs of Jesus S. Yujuico, as initial payment for the taking of the following:

(a) 42.6895 hectares taken from TCT No. NT-77818

(b) 21.6034 hectares taken from TCT No. NT-77819

(c) 22.1848 hectares taken from TCT No. NT-174919

(d) 27.3940 hectares taken from TCT No. NT-77820

(e) 34.8425 hectares taken from TCT No. NT-77821

(f) 27.2320 hectares taken from TCT No. NT-77822

(g) 3.2840 hectares taken from TCT No. NT-77823

(2) **RECEIVE** evidence and **DETERMINE** the actual date when the government took possession of each of the above-listed properties or when the Department of Agrarian Reform distributed them to the farmer-beneficiaries.

(3) **RECEIVE** evidence and **DETERMINE** with dispatch the following values of the properties enumerated in the first paragraph:

(a) Market Value per Tax Declaration at the time of taking; and

(b) Capitalized Net Income and/or the Comparable Sales at the time of taking.

(4) **COMPUTE** the just compensation due respondents for the 179.2302 hectares taken from them by using the foregoing established values of the expropriated properties in accordance with the guidelines set by Section 17 of R.A. 6657 and the formula decreed in DAR A.O. No. 5, series of 1998.

(5) **SUBTRACT** from the determined total amount of just compensation the determined total amount already received by respondents as initial payment.

(6) **IMPOSE** on the resulting amount the applicable interest rate from the time of the taking of the properties until the full payment thereof.

The Court of Appeals is directed to conclude the proceedings and submit to this Court a report on its findings and recommended conclusions within forty-five (45) days from notice of this Decision. The Court of Appeals is further directed to raffle the case immediately upon receipt of this Decision.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 185568. March 21, 2012]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PETRON CORPORATION,** *respondent.*

SYLLABUS

1. TAXATION; OMNIBUS INVESTMENTS CODE OF 1987 (E.O. 226); TAX CREDIT; DEFINED AND CONSTRUED. — Article 21 of E.O. 226 defines a tax credit as follows: ARTICLE 21. "Tax credit" shall mean any of the credits against taxes and/or duties equal to those actually paid or would have been paid to evidence which a tax credit certificate shall be issued by the Secretary of Finance or his representative, or the Board, if so delegated by the Secretary of Finance. The tax credit certificates including those issued by the Board pursuant to laws repealed by this Code but without in any way diminishing the scope of negotiability under their laws of issue are transferable under such conditions as may be determined by the Board after consultation with the Department of Finance. The tax credit certificate shall be used to pay taxes, duties, charges and fees due to the National Government; Provided, That the tax credits issued under this Code shall not form part of the gross income of the grantee/transferee for income tax purposes under Section 29 of the National Internal Revenue Code and are therefore not taxable: Provided, further, That such tax credits shall be valid only for a period of ten (10) years from date of issuance. Under Article 39 (j) of the Omnibus Investment Code of 1987, tax credits are granted to entities registered with the Bureau of Investment (BOI) and are given for taxes and duties paid on raw materials used for the manufacture of their export products.

2. ID.; REVENUE REGULATION (RR) NO. 5-2000; TAX CREDIT CERTIFICATE (TCC); MANNER OF ISSUANCE AND CONDITIONS FOR THEIR USE; CLARIFIED. — A TCC is defined under Section 1 of Revenue Regulation (RR) No. 5-2000, issued by the BIR on 15 August 2000, as follows: B. Tax Credit Certificate — means a certification, duly issued to the taxpayer named therein, by the Commissioner or his duly authorized representative, reduced in a BIR Accountable Form in accordance with the prescribed formalities, acknowledging that the grantee-taxpayer named therein is legally entitled a tax credit, the money value of which may be used in payment or in satisfaction of any of his internal revenue tax liability (except those excluded), or may be converted as a cash refund, or may otherwise be disposed of in the manner and in accordance with the limitations, if any, as may be prescribed by the provisions

of these Regulations. RR 5-2000 prescribes the regulations governing the manner of issuance of TCCs and the conditions for their use, revalidation and transfer. Under the said regulation, a TCC may be used by the grantee or its assignee in the payment of its direct internal revenue tax liability. It may be transferred in favor of an assignee subject to the following conditions: 1) the TCC transfer must be with prior approval of the Commissioner or the duly authorized representative; 2) the transfer of a TCC should be limited to one transfer only; and 3) the transferee shall strictly use the TCC for the payment of the assignee's direct internal revenue tax liability and shall not be convertible to cash. A TCC is valid only for 10 years subject to the following rules: (1) it must be utilized within five (5) years from the date of issue; and (2) it must be revalidated thereafter or be otherwise considered invalid.

3. ID.; ID.; ID.; STRINGENT PROCESS OF VERIFICATION BY VARIOUS SPECIALIZED GOVERNMENT AGENCIES; EXPLAINED. — The processing of a TCC is entrusted to a specialized agency called the "One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center" ("Center"), created on 07 February 1992 under Administrative Order (A.O.) No. 226. Its purpose is to expedite the processing and approval of tax credits and duty drawbacks. The Center is composed of a representative from the DOF as its chairperson; and the members thereof are representatives of the Bureau of Investment (BOI), Bureau of Customs (BOC) and Bureau of Internal Revenue (BIR), who are tasked to process the TCC and approve its application as payment of an assignee's tax liability. A TCC may be assigned through a Deed of Assignment, which the assignee submits to the Center for its approval. Upon approval of the deed, the Center will issue a DOF Tax Debit Memo (DOF-TDM), which will be utilized by the assignee to pay the latter's tax liabilities for a specified period. Upon surrender of the TCC and the DOF-TDM, the corresponding Authority to Accept Payment of Excise Taxes (ATAPET) will be issued by the BIR Collection Program Division and will be submitted to the issuing office of the BIR for acceptance by the Assistant Commissioner of Collection Service. This act of the BIR signifies its acceptance of the TCC as payment of the assignee's excise taxes. Thus, it is apparent that a TCC undergoes a stringent process of verification by various specialized government agencies before

it is accepted as payment of an assignee's tax liability.

4. ID.; ID.; ID.; TCCS ARE VALID AND EFFECTIVE UPON ITS ISSUANCE AND ARE NOT SUBJECT TO A POST-AUDIT AS A SUSPENSIVE CONDITION FOR THEIR VALIDITY, SUSTAINED. — We held in *Petron v. CIR* (*Petron*), which is on all fours with the instant case, that TCCs are valid and effective from their issuance and are not subject to a post-audit as a suspensive condition for their validity. Our ruling in *Petron* finds guidance from our earlier ruling in *Shell*, which categorically states that a TCC is valid and effective upon its issuance and is not subject to a post-audit. The implication on the instant case of the said earlier ruling is that Petron has the right to rely on the validity and effectivity of the TCCs that were assigned to it. In finally determining their effectivity in the settlement of respondent's excise tax liabilities, the validity of those TCCs should not depend on the results of the DOF's post-audit findings. x x x In addition, *Shell* and *Petron* recognized an exception that holds the transferee/assignee liable if proven to have been a party to the fraud or to have had knowledge of the fraudulent issuance of the subject TCCs. As earlier mentioned, the parties entered into a joint stipulation of facts stating that Petron did not participate in the procurement or issuance of those TCCs. Thus, we affirm the CTA *En Banc*'s ruling that respondent was an innocent transferee for value thereof. x x x In the light of the main ruling in this case, we affirm the CTA *En Banc* Decision finding Petron to be an innocent transferee for value of the subject TCCs. Consequently, the Tax Returns it filed for the years 1995 to 1998 are not considered fraudulent. Hence, the CIR had no legal basis to assess the excise taxes or any penalty surcharge or interest thereon, as respondent had already paid the appropriate excise taxes using the subject TCCs.

5. REMEDIAL LAW; EVIDENCE; JUDICIAL ADMISSIONS; A JUDICIAL ADMISSION REQUIRES NO PROOF; EXCEPTION. — Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof. The Court cannot lightly set it aside, especially when the opposing party relies upon it and accordingly dispenses with further proof of the fact already admitted. The exception provided in Rule 129, Section 4 is that an admission may be contradicted only by a showing that it was made through a palpable mistake, or that no such admission was made.

6. ID.; APPEALS; THE FUNDAMENTAL RULE IS THAT THE SCOPE OF JUDICIAL REVIEW UNDER RULE 45 OF THE RULES OF COURT IS CONFINED ONLY TO ERRORS OF LAW; APPLICATION IN CASE AT BAR. — The fundamental rule is that the scope of our judicial review under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of fact. It is basic that where it is the sufficiency of evidence that is being questioned, there is a question of fact. Evidently, the CIR does not point out any specific provision of law that was wrongly interpreted by the CTA *En Banc* in the latter's assailed Decision. Petitioner anchors its contention on the alleged existence of the sufficiency of evidence it had proffered to prove that Petron was involved in the perpetration of fraud in the transfer and utilization of the subject TCCs, an allegation that the CTA *En Banc* failed to consider. We have consistently held that it is not the function of this Court to analyze or weigh the evidence all over again, unless there is a showing that the findings of the lower court are totally devoid of support or are glaringly erroneous as to constitute palpable error or grave abuse of discretion. Such an exception does not obtain in the circumstances of this case.

7. CIVIL LAW; ESTOPPEL; A WELL-ENTRENCHED PRINCIPLE IS THAT ESTOPPEL DOES NOT APPLY TO THE GOVERNMENT ESPECIALLY ON MATTERS OF TAXATION; EXCEPTION; PRESENT IN CASE AT BAR. — We recognize the well-entrenched principle that estoppel does not apply to the government, especially on matters of taxation. Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents. As an exception, however, this general rule cannot be applied if it would work injustice against an innocent party. Petron, in this case, was not proven to have had any participation in or knowledge of the CIR's allegation of the fraudulent transfer and utilization of the subject TCCs. Respondent's status as a transferee in good faith and for value of these TCCs has been established and even stipulated upon by petitioner. Respondent was thereby provided ample protection from the adverse findings subsequently made by the Center. Given the circumstances, the CIR's invocation of the non-applicability of estoppel in this case is misplaced.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Belo Gozon Elma Parel Asuncion & Lucila for respondent.

D E C I S I O N

SERENO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure filed by the Commissioner of Internal Revenue (CIR) assailing the Decision[1] dated 03 December 2008 of the Court of Tax Appeals *En Banc* (CTA *En Banc*) in CTA EB No. 311. The assailed Decision reversed and set aside the Decision[2] dated 04 May 2007 of the Court of Tax Appeals Second Division (CTA Second Division) in CTA Case No. 6423, which ordered respondent Petron Corporation (Petron) to pay deficiency excise taxes for the taxable years 1995 to 1998, together with surcharges and delinquency interests imposed thereon.

Respondent Petron is a corporation engaged in the production of petroleum products and is a Board of Investment (BOI) – registered enterprise in accordance with the provisions of the Omnibus Investments Code of 1987 (E.O. 226) under Certificate of Registration Nos. 89-1037 and D95-136.[3]

The Facts

The CTA *En Banc* in CTA EB Case No. 311 adopted the findings of fact by the CTA Second Division in CTA Case No.

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[1] *Rollo*, pp. 47-80. The CTA *En Banc* Decision dated 03 December 2008 in CTA EB No. 311 penned by CTA Associate Justice Caesar A. Casanova and concurred in by CTA Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castaneda, Jr., Lovell R. Bautista, Erlinda P. Uy and Olga Palanca-Enriquez.

[2] *Rollo*, pp. 81-107. The CTA Second Division Decision dated 04 May 2007 in CTA Case No. 6423 was penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castaneda, Jr., and Olga Palanca-Enriquez.

[3] *Rollo*, p. 48.

6423. Considering that there are no factual issues in this case, we likewise adopt the findings of fact by the CTA *En Banc*, as follows:

As culled from the records and as agreed upon by the parties in their Joint Stipulation of Facts and Issues, these are the facts of the case.

During the period covering the taxable years 1995 to 1998, petitioner (herein respondent Petron) had been an assignee of several Tax Credit Certificates (TCCs) from various BOI-registered entities for which petitioner utilized in the payment of its excise tax liabilities for the taxable years 1995 to 1998. The transfers and assignments of the said TCCs were approved by the Department of Finance's One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (DOF Center), composed of representatives from the appropriate government agencies, namely, the Department of Finance (DOF), the Board of Investments (BOI), the Bureau of Customs (BOC) and the Bureau of Internal Revenue (BIR).

Taking ground on a BOI letter issued on 15 May 1998 which states that 'hydraulic oil, penetrating oil, diesel fuels and industrial gases are classified as supplies and considered the suppliers thereof as qualified transferees of tax credit,' petitioner acknowledged and accepted the transfers of the TCCs from the various BOI-registered entities.

Petitioner's acceptance and use of the TCCs as payment of its excise tax liabilities for the taxable years 1995 to 1998, had been continuously approved by the DOF as well as the BIR's Collection Program Division through its surrender and subsequent issuance by the Assistant Commissioner of the Collection Service of the BIR of the Tax Debit Memos (TDMs).

On January 30, 2002, respondent [herein petitioner CIR] issued the assailed Assessment against petitioner for deficiency excise taxes for the taxable years 1995 to 1998, in the total amount of ₱739,003,036.32, inclusive of surcharges and interests, based on the ground that the TCCs utilized by petitioner in its payment of excise taxes have been cancelled by the DOF for having been fraudulently issued and transferred, pursuant to its EXCOM Resolution No. 03-05-99. Thus, petitioner, through letters dated August 31, 1999 and September 1, 1999, was required by the DOF Center to submit copies of its sales invoices and delivery receipts showing the consummation

of the sale transaction to certain TCC transferors.

Instead of submitting the documents required by the respondent, on February 27, 2002, petitioner filed its protest letter to the 'Assessment' on the grounds, among others, that:

> a. The BIR did not comply with the requirements of Revenue Regulations 12-99 in issuing the "assessment" letter dated January 30, 2002, hence, the assessment made against it is void;
>
> b. The assignment/transfer of the TCCs to petitioner by the TCC holders was submitted to, examined and approved by the concerned government agencies which processed the assignment in accordance with law and revenue regulations;
>
> c. There is no basis for the imposition of the 50% surcharge in the amount of ₱159,460,900.00 and interest penalties in the amount of ₱260,620,335.32 against it;
>
> d. Some of the items included in the 'assessment' are already pending litigation and are subject of the case entitled '*Commissioner of Internal Revenue vs. Petron Corporation*,' C.A. GR SP No. 55330 (CTA Case No. 5657) and hence, should no longer be included in the 'assessment'; and
>
> e. The assessment and collection of alleged excise tax deficiencies sought to be collected by the BIR against petitioner through the January 30, 2002 letter are already barred by prescription under Section 203 of the National Internal Revenue Code.

On 27 March 2002, respondent, through Assistant Commissioner Edwin R. Abella served a Warrant of Distraint and/or Levy on petitioner to enforce payment of the ₱739,003,036.32 tax deficiencies.

Respondent allegedly served the Warrant of Distraint and/or Levy against petitioner without first acting on its letter-protest. Thus, construing the Warrant of Distraint and/or Levy as the final adverse decision of the BIR on its protest of the assessment, petitioner filed the instant petition before this Honorable Court [referring to the CTA Second Division] on April 2, 2002.

On April 30, 2002, respondent filed his Answer, raising the following as his Special Affirmative Defenses:

> 6. In a post-audit conducted by the One-Stop Inter-Agency Tax Credit and Duty Drawback Center (Center) of the Department

of Finance (DOF), pursuant to the Center's Excom Resolution No. 03-05-99, it was found that TCCs issued to Alliance Thread Co., Inc., Allstar Spinning, Inc., Diamond Knitting Corp., Fiber Technology Corp., Filstar Textile Industrial Corp., FLB International Fiber Corp., Jantex Philippines, Inc., Jibtex Industrial Corp., Master Colour System Corp. and Spintex International, Inc. were fraudulently obtained and were fraudulently transferred to petitioner. As a result of said findings, the TCCs and the Tax Debit Memos (TDMs) issued by the Center to petitioner against said TCCs were cancelled by the DOF;

7. Prior to the cancellation of the aforesaid TCCs and TDMs, petitioner had utilized the same in the payment of its excise tax liabilities. With such cancellation, the TCCs and TDMs have no value in money or money's worth and, therefore, the excise taxes for which they were used as payment are now deemed unpaid;

8. The cancellation by the DOF of the aforesaid TCCs and TDMs has the presumption of regularity upon which respondent may validly rely;

9. Petitioner was informed by the DOF of the post-audit conducted on the TCCs and was given the opportunity to submit documents showing that the TCCs were transferred to it in payment of petroleum products allegedly delivered by it to the TCC transferors upon which the TCC transfers were approved, with the admonition that failure to submit the required documents would result in the cancellation of the transfers. Petitioner was also informed of the cancellation of the TCCs and TDMs and the reason for their cancellation;

10. Since petitioner is deemed not to have paid its excise tax liabilities, a pre-assessment notice is not required under Section 228 of the Tax Code;

11. The letter dated January 20, 2002 (should be January 30, 2002), demanding payment of petitioner's excise tax liabilities explicitly states the basis for said demand, *i.e.*, the cancellation of the TCCs and TDMs;

12. The government is never estopped from collecting legitimate taxes due to the error committed by its agents (*Visayas Cebu Terminal, Inc. vs. Commissioner of Internal Revenue*, 13 SCRA 257; *Atlas Consolidated Mining and Development*

Corporation vs. Commissioner of Internal Revenue, 102 SCRA 246). The acceptance by the Bureau of Internal Revenue of the TCCs fraudulently obtained and fraudulently transferred to petitioner as payment of its excise tax liabilities turned out to be a mistake after the post-audit was conducted. Hence, said payments were void and the excise taxes may be validly collected from petitioner.

13. As found in the post-audit, petitioner and the TCC transferors committed fraud in the transfer of the TCCs when they made appear (sic) that the transfers were in consideration for the delivery of petroleum products by petitioner to the TCCs transferors, for which reason said transfers were approved by the Center, when in fact there were no such deliveries;

14. Petitioner used the TCCs fraudulently obtained and fraudulently transferred in the payment of excise taxes declared in its excise tax returns with intent to evade tax to the extent of the value represented by the TCCs, thereby rendering the returns fraudulent;

15. Since petitioner wilfully filed fraudulent returns, it is liable for the 50% surcharge and 20% annual interest imposed under Sections 248 and 249 of the Tax Code;

16. Since petitioner wilfully filed fraudulent returns with intent to evade tax, the prescriptive period to collect the tax is ten (10) years from the discovery of the fraud pursuant to Section 222 of the Tax Code; and

17. The case pending in the Court of Appeals (CA-G.R. Sp. No. 55330 [CTA Case No. 5657]), and the case at bar have distinct causes of action. The former involves the invalid transfers of the TCCs to petitioner on the theory that it is not a qualified transferee thereof, while the latter involves the fraudulent procurement of said TCCs and the fraudulent transfers thereof to petitioner.

However, on November 12, 2002, respondent filed a Manifestation informing this Court that on May 29, 2002, it had reduced the amount of deficiency excise taxes to ₱720,923,224.74 as a result of its verification that some of the TCCs which formed part of the original "Assessment" were already included in a case previously filed with this Court. In effect, the amount of deficiency excise taxes is recomputed as follows:

Transferor	Basic Tax	Surcharge	Interest	Total
Alliance Thread Co. Inc.	₱12,078,823.00	₱6,039,411.50	₱16,147,293.21	₱34,265,527.21
Allstar Spinning, Inc.	37,265,310.00	18,632,655.00	49,781,486.95	105,679,451.95
Diamond Knitting Corporation	36,764,587.00	18,382,293.50	49,264,758.35	104,411,638.85
Fiber Technology Corp.	25,300,911.00	12,650,455.50	34,295,655.90	72,247,022.40
Filstar Textile Corp.	40,767,783.00	20,383,891.50	54,802,550.16	115,954,224.66
FLB International Fiber Corp.	25,934,695.00	12,967,347.50	34,977,257.14	73,879,299.64
Jantex Philippines, Inc.	12,036,192.00	6,018,096.00	15,812,547.24	33,866,835.24
Jibtex Industrial Corp.	15,506,302.00	7,753,151.00	20,610,319.52	43,869,772.52
Master Colour system Corp.	33,333,536.00	16,666,768.00	44,822,167.06	94,822,471.06
Spintex International Inc.	14,912,408.00	7,456,204.00	19,558,368.71	41,926,980.71
Total	**₱253,900,547.00**	**₱126,950,273.50**	**₱340,072,404.24**	**₱720,923,224.74**

During the pendency of the case, but after respondent had already submitted his Formal Offer of Evidence for this Court's consideration, he filed an 'Urgent Motion to Reopen Case' on August 24, 2004 on the ground that additional evidence consisting of documents presented to the Center in support of the TCC transferor's claims for tax credit as well as document supporting the applications for approval of the transfer of the TCCs to petitioner, must be presented to prove the fraudulent issuance and transfer of the subject TCCs. Respondent submits that it is imperative on his part to do so considering that, without necessarily admitting that the evidence presented in the case of *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*, to prove fraud is not clear and convincing, he may suffer the same fate that had befallen upon therein respondent when this Court held, among others, that 'there is no clear and convincing evidence that the Tax Credit Certificates (TCCs) transferred to Shell (for brevity) and used by it in the payment of excise taxes, were fraudulently issued to the TCC transferors and were fraudulently transferred to Shell.'

An 'Opposition to Urgent Motion to Reopen Case' was filed by petitioner on September 3, 2004 contending that to sustain respondent's motion would 'smack of procedural disorder and spawn a reversion of the proceedings. While litigation is not a game of technicalities, it is a truism that every case must be presented in accordance with the prescribed procedure to insure an orderly administration of justice.'

On October 4, 2004, this Court resolved to grant respondent's Motion and allowed respondent to present additional evidence in support of his arguments, but deferred the resolution of respondent's original Formal Offer of Evidence until after the respondent has terminated his presentation of evidence. Subsequent to this Court's Resolution, respondent then filed on October 20, 2004, a Request for the Issuance of Subpoena *Duces Tecum* to the Executive Director

of the Center or his duly authorized representative, and on October 21, 2004, a Subpoena *Ad Testificandum* to Ms. Elizabeth R. Cruz, also of the Center.

Petitioner filed a 'Motion for Reconsideration (Re: Resolution dated October 4, 2004)' on October 27, 2004, with respondent filing his 'Opposition' on November 4, 2004, and petitioner subsequently filing its 'Reply to Opposition' on December 20, 2004. Petitioner's motion was denied by this Court in a Resolution dated February 28, 2005 for lack of merit.

On March 18, 2005, petitioner filed an 'Urgent Motion to Revert Case to the First Division' with respondent's 'Manifestation' filed on April 6, 2005 stating that 'the question of which Division of this Honorable Court shall hear the instant case is an internal matter which is better left to the sound discretion of this Honorable Court without interference by a party litigant'. On April 28, 2005, this Court denied the Motion of petitioner for lack of merit.

On November 7, 2005, the Court finally resolved respondent's 'Formal Offer of Evidence' filed on May 7, 2004 and 'Supplemental Formal Offer of Evidence' filed on August 25, 2005. On November 22, 2005, respondent filed a 'Motion for Partial Reconsideration' of the Court's Resolution to admit Exhibits 31 and 31-A on the ground that he already submitted and offered certified true copies of said exhibits, which the Court granted in its Resolution on January 19, 2006.

However, on February 10, 2006, respondent filed a 'Motion to Amend Formal Offer of Evidence' praying that he be allowed to amend his formal offer since some exhibits although attached thereto were inadvertently not mentioned in the Formal Offer of Evidence. Petitioner's 'Opposition' was filed on March 14, 2006. This Court granted respondent's motion in the Resolution dated April 24, 2006 and considering that the parties already filed their respective Memoranda, this case was then considered submitted for decision.

On May 16, 2006, however, respondent filed an 'Omnibus Motion' praying that this Court take judicial notice of the fact that the TCCs issued by the Center, including the TCCs in this instant case, contained the standard 'Liability Clause' and that the case be consolidated with CTA Case No. 6136, on the ground that both cases involve the same parties and common questions of law or fact. An 'Opposition/Comment on Omnibus Motion' was filed by petitioner on June 26, 2006, and

'Reply to Opposition/Comment' was filed by respondent on July 17, 2006.

In a Resolution promulgated on September 1, 2006, this Court granted respondent's motion only insofar as taking judicial notice of the fact that each of the dorsal side of the TCCs contains the subject 'liability clause', but denied respondent's motion to consolidate considering that C.T.A. Case No. 6136 was already submitted for decision on April 24, 2006.[4]

The Ruling of the Court of Tax Appeals–Second Division (CTA Case No. 6423)

On 04 May 2007, the CTA Second Division promulgated a Decision in CTA Case No. 6423, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, petitioner is **ORDERED TO PAY** the respondent the reduced amount of **SIX HUNDRED MILLION SEVEN HUNDRED SIXTY NINE THOUSAND THREE HUNDRED FIFTY THREE AND 95/100 PESOS (₱600,769,353.95)**, representing petitioner's deficiency excise taxes for the taxable years 1995 to 1998, recomputed as follows:

Transferor	Basic Tax	25% Surcharge	20% Interest	Total
Alliance Thread Co. Inc.	12,078,823.00	3,019,705.75	13,456,077.68	28,554,606.43
Allstar Spinning, Inc.	37,265,310.00	9,316,327.50	41,484,572.46	88,066,209.96
Diamond Knitting Corporation	36,764,587.00	9,191,146.75	41,053,965.29	87,009,699.04
Fiber Technology Corp.	25,300,911.00	6,325,227.75	28,579,713.25	60,205,852.00
Filstar Textile Corp.	40,767,783.00	10,191,945.75	45,668,791.80	96,628,520.55
FLB International Fiber Corp.	25,934,695.00	6,483,673.75	29,147,714.28	61,566,083.03
Jantex Philippines, Inc.	12,036,192.00	3,009,048.00	13,177,122.70	28,222,362.70
Jibtex Industrial Corp.	15,506,302.00	3,876,575.50	17,175,266.27	36,558,143.77
Master Colour system Corp.	33,333,536.00	8,333,384.00	37,351,805.88	79,018,725.88
Spintex International Inc.	14,912,408.00	3,728,102.00	16,298,640.59	34,939,150.59
Total	**₱253,900,547.00**	**₱63,475,136.75**	**₱283,393,670.20**	**₱600,769,353.95**

In addition, petitioner is **ORDERED TO PAY** the respondent **TWENTY FIVE PERCENT (25%) LATE PAYMENT SURCHARGE AND TWENTY PERCENT (20%) DELIQUENCY**

[4] *Rollo*, pp. 48-54.

INTEREST per annum on the amount of **SIX HUNDRED MILLION SEVEN HUNDRED SIXTY NINE THOUSAND THREE HUNDRED FIFTY THREE & 95/100 PESOS (₱600,769,353.95)**, computed from June 27, 2002 until the amount is fully paid.

SO ORDERED.[5]

The CTA Second Division held Petron liable for deficiency excise taxes on the ground that the cancellation by the DOF of the TCCs previously issued to and utilized by respondent to settle its tax liabilities had the effect of nonpayment of the latter's excise taxes. These taxes corresponded to the value of the TCCs Petron used for payment. The CTA Second Division ruled that payment can only occur if the instrument used to discharge an obligation represents its stated value.[6] It further ruled that Petron's acceptance of the TCCs was considered a contract entered into by respondent with the CIR and subject to post-audit,[7] which was considered a suspensive condition governed by Article 1181 of the Civil Code.[8]

Further, the CTA Second Division found that the circumstances pertaining to the issuance of the subject TCCs and their transfer to Petron "brim with fraud."[9] Hence, the said court concluded that since the TCCs used by Petron were found to be spurious, respondent was deemed to have not paid its excise taxes and ought to be liable to the CIR in the amount of ₱600,769,353.95 plus 25% interests and 20% surcharges.[10]

Petron filed a Motion for Reconsideration[11] of the Decision of the CTA Second Division, which denied the motion in a

[5] *Id.* at 106-107.

[6] *Id.* at 97.

[7] *Id.* at 98.

[8] Civil Code of the Philippines, Art. 1181. In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition.

[9] *Rollo*, p. 102.

[10] *Id.* at 104.

[11] *Id.* at 108.

Resolution dated 14 August 2007.[12] The court reiterated its conclusion that the TCCs utilized by Petron to pay the latter's excise tax liabilities did not result in payment after these TCCs were found to be fraudulent in the post-audit by the DOF. The CTA Second Division also affirmed its ruling that Petron was liable for a 25% late payment surcharge and 20% surcharges under Section 248[13] of the National Internal Revenue Code (NIRC) of 1997.[14]

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[12] *Id.* at 140.

[13] The 1997 National Internal Revenue Code–Section 248 - Civil Penalties. -

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or

(2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or

(4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return: Provided, further, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.

[14] *Rollo*, p. 145.

Aggrieved, Petron appealed the Decision to the CTA *En Banc* through a Petition for Review, which was docketed as CTA EB No. 311. In its Petition, Petron alleged that the Second Division erred in holding respondent liable to pay the amount of ₱600,769,353.95 in deficiency excise taxes with penalties and interests covering the taxable years 1995-1998. Petron prayed that the said Decision be reversed and set aside, and that CIR be enjoined from collecting the contested excise tax deficiency assessment.[15]

The CTA *En Banc* summed up into one issue the grounds relied upon by Petron in its Petition for Review, as follows:

> Whether or not the Second Division erred in holding petitioner liable for the amount of ₱600,769,353.95 as deficiency excise taxes for the years 1995-1998, including surcharges and interest, plus 25% surcharge and 20% delinquency interest per annum from June 27, 2002 until the amount is fully paid.[16]

The Ruling of the Court of Tax Appeals En Banc (CTA EB Case No. 311)

On 03 December 2008, the CTA *En Banc* promulgated a Decision, which reversed and set aside the CTA Second Division on 04 May 2007. The former absolved Petron from any deficiency excise tax liability for taxable years 1995 to 1998. Its ruling in favor of Petron was anchored on this Court's pronouncements in *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue* (*Shell*),[17] which found that the factual background and legal issues therein were similar to those in the present case.

In resolving the issues, the CTA *En Banc* adopted the main points in *Shell*, which it quoted at length as basis for deciding the appeal in favor of Petron. The gist of the main points of *Shell* cited by the said court is as follows:

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[15] *Id.* at 151.

[16] *Id.* at 59.

[17] G.R. No. 172598, 21 December 2007, 541 SCRA 316.

a) The issued TCCs are immediately valid and effective and are not subject to a post-audit as a suspensive condition[18]

b) A TCC is subject only to the following conditions:

i) Post-audit in the event of a computational discrepancy

ii) A reduction for any outstanding account with the BIR and/or BOC

iii) A revalidation of the TCC if not utilized within one year from issuance or date of utilization[19]

c) A transferee of a TCC should only be a BOI-registered firm under the Implementing Rules and Regulations of Executive Order (E.O.) No. 226.[20]

d) The liability clause in the TCCs provides only for the solidary liability of the transferee relative to its transfer in the event it is a party to the fraud.[21]

e) A transferee can rely on the Center's approval of the TCCs' transfer and subsequent acceptance as payment of the transferee's excise tax liability.[22]

f) A TCC cannot be cancelled by the Center, as it was already cancelled after the transferee had applied it as payment for the latter's excise tax liabilities.[23]

The CTA *En Banc* also found that Petron had no participation in or knowledge of the fraudulent issuance and transfer of the subject TCCs. In fact, the parties made a joint stipulation on this matter in CTA Case No. 6423 before the CTA Second Division.[24]

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[18] *Rollo*, p. 62.

[19] *Id.* at 66.

[20] *Id.*

[21] *Id.* at 69.

[22] *Id.* at 70.

[23] *Id.* at 71.

[24] *Id.* at 76.

In resolving the issue of whether the government is estopped from collecting taxes due to the fault of its agents, the CTA *En Banc* quoted *Shell* as follows:

> While we agree with respondent that the State in the performance of government function is not estopped by the neglect or omission of its agents, and nowhere is this truer than in the field of taxation, **yet this principle cannot be applied to work injustice against an innocent party**.[25] (Emphasis supplied.)

Finally, the CTA *En Banc* ruled that Petron was considered an innocent transferee of the subject TCCs and may not be prejudiced by a re-assessment of excise tax liabilities that respondent has already settled, when due, with the use of the TCCs.[26] Petron is thus considered to have not fraudulently filed its excise tax returns. Consequently, the assessment issued by the CIR against it had no legal basis.[27] The dispositive portion of the assailed 03 December 2008 Decision of the CTA *En Banc* reads:

> *WHEREFORE*, the instant petition for Review is hereby **GRANTED**. Accordingly, the May 4, 2007 Decision and August 14, 2007 Resolution of the CTA Second Division in CTA Case No. 6423 entitled, "*Petron Corporation, petitioner vs. Commissioner of Internal Revenue, respondent*", are hereby **REVERSED** and **SET ASIDE**. In addition, the demand and collection of the deficiency excise taxes of **PETRON** in the amount of ₱600,769,353.95 excluding penalties and interest covering the taxable years 1995 to 1998 are hereby **CANCELLED** and **SET ASIDE**, and respondent-Commissioner of Internal Revenue is hereby **ENJOINED** from collecting the said amount from **PETRON**.
>
> *SO ORDERED.*[28]

The CIR moved for the reconsideration of the CTA *En Banc* Decision, but the motion was denied in a Resolution dated 14 August 2007.[29]

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[25] *Id.* at 77.

[26] *Supra* note 25.

[27] *Id.* at 78.

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

[29] *Id.* at 12.

The Issues

The CIR appealed the Decision of the CTA *En Banc* by filing a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.[30] Petitioner assails the Decision by raising the following issues:

> THE COURT OF TAX APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT RESPONDENT PETRON IS NOT LIABLE FOR ITS EXCISE TAX LIABILITIES FROM 1995 TO 1998."
>
> ARGUMENTS
>
> I
>
> THE CTA *EN BANC* ERRED IN FINDING THAT RESPONDENT PETRON WAS NOT SHOWN TO HAVE PARTICIPATED IN THE FRAUDULENT ACTS. THE FINDING OF THE CTA SECOND DIVISION THAT THE TAX CREDIT CERTIFICATES WERE FRAUDULENTLY TRANSFERRED BY THE TRANSFEROR-COMPANIES TO RESPONDENT IS SUPPORTED BY SUBSTANTIAL EVIDENCE. RESPONDENT WAS INVOLVED IN THE PERPETRATION OF FRAUD IN THE TCCS' TRANSFER AND UTILIZATION.
>
> II
>
> RESPONDENT CANNOT VALIDLY CLAIM THE RIGHT OF INNOCENT TRANSFEREE FOR VALUE. AS ASSIGNEE/ TRANSFEREE OF THE TCCS, RESPONDENT MERELY SUCCEEDED TO THE RIGHTS OF THE TCC ASSIGNORS/ TRANSFERORS. ACCORDINGLY, IF THE TCCS ASSIGNED TO RESPONDENT WERE VOID, IT DID NOT ACQUIRE ANY VALID TITLE OVER THE TCCS.
>
> III
>
> THE GOVERNMENT IS NOT ESTOPPED FROM COLLECTING TAXES DUE TO THE MISTAKES OF ITS AGENTS.

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[30] *Id.* at 11.

IV

RESPONDENT IS LIABLE FOR 25% SURCHARGE AND 20% INTEREST PER ANNUM PURSUANT TO THE PROVISIONS OF SECTIONS 248 AND 249 OF THE NIRC. MOREOVER, SINCE RESPONDENT'S RETURNS WERE FALSE, THE ASSESSMENT PRESCRIBES IN TEN (10) YEARS FROM THE DISCOVERY OF THE FALSITY THEREOF PURSUANT TO SECTION 22 OF THE SAME CODE.[31]

The Court's Ruling

We **DENY** the CIR's Petition for lack of merit.

Article 21 of E.O. 226 defines a tax credit as follows:

ARTICLE 21. "Tax credit" shall mean any of the credits against taxes and/or duties equal to those actually paid or would have been paid to evidence which a tax credit certificate shall be issued by the Secretary of Finance or his representative, or the Board, if so delegated by the Secretary of Finance. The tax credit certificates including those issued by the Board pursuant to laws repealed by this Code but without in any way diminishing the scope of negotiability under their laws of issue are transferable under such conditions as may be determined by the Board after consultation with the Department of Finance. The tax credit certificate shall be used to pay taxes, duties, charges and fees due to the National Government; Provided, That the tax credits issued under this Code shall not form part of the gross income of the grantee/transferee for income tax purposes under Section 29 of the National Internal Revenue Code and are therefore not taxable: Provided, further, That such tax credits shall be valid only for a period of ten (10) years from date of issuance.

Under Article 39 (j) of the Omnibus Investment Code of 1987,[32] tax credits are granted to entities registered with the

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[31] *Rollo*, pp. 25-26.

[32] E. O. 226 – The Omnibus Investment Code of 1987:

ARTICLE 39. Incentives to Registered Enterprises. — All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment:

xxx xxx xxx

(j) Tax Credit for Taxes and Duties on Raw Materials. — Every registered enterprise shall enjoy a tax credit equivalent to the national internal revenue

Bureau of Investment (BOI) and are given for taxes and duties paid on raw materials used for the manufacture of their export products.

A TCC is defined under Section 1 of Revenue Regulation (RR) No. 5-2000, issued by the BIR on 15 August 2000, as follows:

> B. Tax Credit Certificate — means a certification, duly issued to the taxpayer named therein, by the Commissioner or his duly authorized representative, reduced in a BIR Accountable Form in accordance with the prescribed formalities, acknowledging that the grantee-taxpayer named therein is legally entitled a tax credit, the money value of which may be used in payment or in satisfaction of any of his internal revenue tax liability (except those excluded), or may be converted as a cash refund, or may otherwise be disposed of in the manner and in accordance with the limitations, if any, as may be prescribed by the provisions of these Regulations.

RR 5-2000 prescribes the regulations governing the manner of issuance of TCCs and the conditions for their use, revalidation and transfer. Under the said regulation, a TCC may be used by the grantee or its assignee in the payment of its direct internal revenue tax liability.[33] It may be transferred in favor of an assignee subject to the following conditions: 1) the TCC transfer must be with prior approval of the Commissioner or the duly authorized representative; 2) the transfer of a TCC should be limited to one transfer only; and 3) the transferee shall strictly use the TCC for the payment of the assignee's direct internal revenue tax liability and shall not be convertible to cash.[34] A

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taxes and customs duties paid on the supplies, raw materials and semi-manufactured products used in the manufacture, processing or production of its export products and forming part thereof; Provided, however, That the taxes on the supplies, raw materials and semi-manufactured products domestically purchased are indicated as a separate item in the sales invoice.

Nothing herein shall be construed as to preclude the Board from setting a fixed percentage of exports sales as the approximate tax credit for taxes and duties of raw materials based on an average or standard usage for such materials in the industry.

[33] RR 5-2000, Sec. 3.

[34] *Id.* at Sec. 4 (a) & (b).

TCC is valid only for 10 years subject to the following rules: (1) it must be utilized within five (5) years from the date of issue; and (2) it must be revalidated thereafter or be otherwise considered invalid.[35]

The processing of a TCC is entrusted to a specialized agency called the "One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center" ("Center"), created on 07 February 1992 under Administrative Order (A.O.) No. 226. Its purpose is to expedite the processing and approval of tax credits and duty drawbacks.[36] The Center is composed of a representative from the DOF as its chairperson; and the members thereof are representatives of the Bureau of Investment (BOI), Bureau of Customs (BOC) and Bureau of Internal Revenue (BIR), who are tasked to process the TCC and approve its application as payment of an assignee's tax liability.[37]

A TCC may be assigned through a Deed of Assignment, which the assignee submits to the Center for its approval. Upon approval of the deed, the Center will issue a DOF Tax Debit Memo (DOF-TDM),[38] which will be utilized by the assignee to pay the latter's tax liabilities for a specified period. Upon surrender of the TCC and the DOF-TDM, the corresponding Authority to Accept Payment of Excise Taxes (ATAPET) will be issued by the BIR Collection Program Division and will be submitted to the issuing office of the BIR for acceptance by the Assistant Commissioner of Collection Service. This act of the BIR signifies its acceptance of the TCC as payment of the assignee's excise taxes.

Thus, it is apparent that a TCC undergoes a stringent process of verification by various specialized government agencies before it is accepted as payment of an assignee's tax liability.

In the case at bar, the CIR disputes the ruling of the CTA *En Banc*, which found Petron to have had no participation in the

[35] *Id.* at Sec. 5 (a), (b), (c) & (d).

[36] A.O. 226, Sec. 3.

[37] *Id.* at Sec. 2.

[38] http://taxcredit.dof.gov.ph/services_hatdm.htm (last visited on 27 February 2012).

fraudulent procurement and transfer of the TCCs. Petitioner believes that there was substantial evidence to support its allegation of a fraudulent transfer of the TCCs to Petron.[39] The CIR further contends that respondent was not a qualified transferee of the TCCs, because the latter did not supply petroleum products to the companies that were the assignors of the subject TCCs.[40]

The CIR bases its contentions on the DOF's post-audit findings stating that, for the periods covering 1995 to 1998, Petron did not deliver fuel and other petroleum products to the companies (the transferor companies) that had assigned the subject TCCs to respondent. Petitioner further alleges that the findings indicate that the transferor companies could not have had such a high volume of export sales declared to the Center and made the basis for the issuance of the TCCs assigned to Petron.[41] Thus, the CIR impugns the CTA *En Banc* ruling that respondent was a transferee in good faith and for value of the subject TCCs.[42]

Not finding merit in the CIR's contention, we affirm the ruling of the CTA *En Banc* finding that Petron is a transferee in good faith and for value of the subject TCCs.

From the records, we observe that the CIR had no allegation that there was a deviation from the process for the approval of the TCCs, which Petron used as payment to settle its excise tax liabilities for the years 1995 to 1998.

The CIR quotes the CTA Second Division and urges us to affirm the latter's Decision, which found Petron to have participated in the fraudulent issuance and transfer of the TCCs. However, any merit in the position of petitioner on this issue is negated by the Joint Stipulation it entered into with Petron in the proceedings before the said Division. As correctly noted

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[39] *Rollo*, p. 27.

[40] *Id.* at 28-29.

[41] *Id.* at 100.

[42] *Supra* note 25.

by the CTA *En Banc*, herein parties jointly stipulated before the Second Division in CTA Case No. 6423 as follows:

> 13. That petitioner (Petron) did not participate in the procurement and issuance of the TCCs, which TCCs were transferred to Petron and later utilized by Petron in payment of its excise taxes.[43]

This stipulation of fact by the CIR amounts to an admission and, having been made by the parties in a stipulation of facts at pretrial, is treated as a judicial admission. Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof.[44] The Court cannot lightly set it aside, especially when the opposing party relies upon it and accordingly dispenses with further proof of the fact already admitted. The exception provided in Rule 129, Section 4 is that an admission may be contradicted only by a showing that it was made through a palpable mistake, or that no such admission was made. In this case, however, exception to the rule does not exist.

We agree with the pronouncement of the CTA *En Banc* that Petron has not been shown or proven to have participated in the alleged fraudulent acts involved in the transfer and utilization of the subject TCCs. Petron had the right to rely on the joint stipulation that absolved it from any participation in the alleged fraud pertaining to the issuance and procurement of the subject TCCs. The joint stipulation made by the parties consequently obviated the opportunity of the CIR to present evidence on this matter, as no proof is required for an admission made by a party in the course of the proceedings.[45] Thus, the CIR cannot now be allowed to change its stand and renege on that admission.

Moreover, a close examination of the arguments proffered by the CIR in their Petition calls for a reevaluation of the

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[43] *Rollo*, p. 76.

[44] 1997 Rules of Court, Rule 129. What Need be Proven:

Section 4**.** *Judicial admissions.* — An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

[45] *Toshiba v. CIR*, G.R. No. 157594, 09 March 2010, 614 SCRA 526.

sufficiency of evidence in the case. The CIR seeks to persuade this Court to believe that there is substantial evidence to prove that Petron committed a misrepresentation, because the petroleum products were delivered not to the transferor but to other companies.[46] Thus, the TCCs assigned by the transferor companies to Petron were fraudulent. Clearly, a recalibration of the sufficiency of evidence presented by the CIR is needed for a different conclusion to be reached.

The fundamental rule is that the scope of our judicial review under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of fact.[47] It is basic that where it is the sufficiency of evidence that is being questioned, there is a question of fact.[48] Evidently, the CIR does not point out any specific provision of law that was wrongly interpreted by the CTA *En Banc* in the latter's assailed Decision. Petitioner anchors its contention on the alleged existence of the sufficiency of evidence it had proffered to prove that Petron was involved in the perpetration of fraud in the transfer and utilization of the subject TCCs, an allegation that the CTA *En Banc* failed to consider. We have consistently held that it is not the function of this Court to analyze or weigh the evidence all over again, unless there is a showing that the findings of the lower court are totally devoid of support or are glaringly erroneous as to constitute palpable error or grave abuse of discretion.[49] Such an exception does not obtain in the circumstances of this case.

The CIR claims that Petron was not an innocent transferee for value, because the TCCs assigned to respondent were void. Petitioner based its allegations on the post-audit report of the DOF, which declared that the subject TCCs were obtained through fraud and, thus, had no monetary value.[50] The CIR

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[46] *Rollo*, p. 28.

[47] *Republic v. Javier*, G.R. No. 179905, 19 August 2009, 596 SCRA 481.

[48] *Land Bank of the Philippines v. Court of Appeals*, 416 Phil. 774 (2001).

[49] *FGU Insurance Corporation v. Court of Appeals*, 494 Phil. 342 (2005).

[50] *Rollo*, p. 32.

adds that the TCCs were subject to a post-audit by the Center to complete the payment of the excise tax liability to which they were applied. Petitioner further contends that the Liability Clause of the TCCs makes the transferee or assignee solidarily liable with the original grantee for any fraudulent act pertinent to their procurement and transfer. The CIR assails the contrary ruling of the CTA *En Banc*, which confined the solidary liability only to the original grantee of the TCCs. Thus, petitioner believes that the correct interpretation of the Liability Clause in the TCCs makes Petron and the transferor companies or the original grantee solidarily liable for any fraudulent act or violation of the pertinent laws relating to the transfers of the TCCs. [51]

We are not persuaded by the CIR's position on this matter.

The Liability Clause of the TCCs reads:

> Both the TRANSFEROR and the TRANSFEREE shall be jointly and severally liable for any fraudulent act or violation of the pertinent laws, rules and regulations relating to the transfer of this TAX CREDIT CERTIFICATE.

The scope of this solidary liability, as stated in the TCCs, was clarified by this Court in *Shell*, as follows:

> The above clause to our mind clearly provides only for the solidary liability relative to the transfer of the TCCs from the original grantee to a transferee. There is nothing in the above clause that provides for the liability of the transferee in the event that the validity of the TCC issued to the original grantee by the Center is impugned or where the TCC is declared to have been fraudulently procured by the said original grantee. **Thus, the solidary liability, if any, applies only to the sale of the TCC to the transferee by the original grantee.** Any fraud or breach of law or rule relating to the issuance of the TCC by the Center to the transferor or the original grantee is the latter's responsibility and liability. The transferee in good faith and for value may not be unjustly prejudiced by the fraud committed by the claimant or transferor in the procurement or issuance of the TCC from the Center. It is not only unjust but well-nigh violative of the constitutional right not to be deprived of one's property without due process of

[51] *Id.* at 31.

law. Thus, a re-assessment of tax liabilities previously paid through TCCs by a transferee in good faith and for value is utterly confiscatory, more so when surcharges and interests are likewise assessed.

A transferee in good faith and for value of a TCC who has relied on the Center's representation of the genuineness and validity of the TCC transferred to it may not be legally required to pay again the tax covered by the TCC which has been belatedly declared null and void, that is, after the TCCs have been fully utilized through settlement of internal revenue tax liabilities. Conversely, when the transferee is party to the fraud as when it did not obtain the TCC for value or was a party to or has knowledge of its fraudulent issuance, said transferee is liable for the taxes and for the fraud committed as provided for by law.[52] (Emphasis supplied.)

We also find that the post-audit report, on which the CIR based its allegations, does not have the effect of a suspensive condition that would determine the validity of the TCCs.

We held in *Petron v. CIR* (*Petron*),[53] which is on all fours with the instant case, that TCCs are valid and effective from their issuance and are not subject to a post-audit as a suspensive condition for their validity. Our ruling in *Petron* finds guidance from our earlier ruling in *Shell*, which categorically states that a TCC is valid and effective upon its issuance and is not subject to a post-audit. The implication on the instant case of the said earlier ruling is that Petron has the right to rely on the validity and effectivity of the TCCs that were assigned to it. In finally determining their effectivity in the settlement of respondent's excise tax liabilities, the validity of those TCCs should not depend on the results of the DOF's post-audit findings. We held thus in *Petron*:

As correctly pointed out by Petron, however, the issue about the immediate validity of TCCs and the use thereof in payment of tax liabilities and duties are not matters of first impression for this Court. Taking into consideration the definition and nature of tax credits and TCCs, this Court's Second Division definitively ruled in the aforesaid

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[52] G.R. No. 172598, 21 December 2007, 541 SCRA 316.

[53] G.R. No. 180385, 28 July 2010, 626 SCRA 100.

Pilipinas Shell case that the post audit is not a suspensive condition for the validity of TCCs, thus:

> Art. 1181 tells us that the condition is suspensive when the acquisition of rights or demandability of the obligation must await the occurrence of the condition. However, Art. 1181 does not apply to the present case since the parties did NOT agree to a suspensive condition. Rather, specific laws, rules, and regulations govern the subject TCCs, not the general provisions of the Civil Code. Among the applicable laws that cover the TCCs are EO 226 or the Omnibus Investments Code, Letter of Instructions No. 1355, EO 765, RP-US Military Agreement, Sec. 106 (c) of the Tariff and Customs Code, Sec. 106 of the NIRC, BIR Revenue Regulations (RRs), and others. Nowhere in the aforementioned laws does the post-audit become necessary for the validity or effectivity of the TCCs. Nowhere in the aforementioned laws is it provided that a TCC is issued subject to a suspensive condition.
>
> xxx xxx xxx
>
> . . . (T)he TCCs are immediately valid and effective after their issuance. As aptly pointed out in the dissent of Justice Lovell Bautista in CTA EB No. 64, this is clear from the Guidelines and instructions found at the back of each TCC, which provide:
>
> 1. This Tax Credit Certificate (TCC) shall entitle the grantee to apply the tax credit against taxes and duties until the amount is fully utilized, in accordance with the pertinent tax and customs laws, rules and regulations.
>
> xxx xxx xxx
>
> 4. To acknowledge application of payment, the One-Stop-Shop Tax Credit Center shall issue the corresponding Tax Debit Memo (TDM) to the grantee.
>
> The authorized Revenue Officer/Customs Collector to which payment/utilization was made shall accomplish the Application of Tax Credit at the back of the certificate and affix his signature on the column provided."

The foregoing guidelines cannot be clearer on the validity and effectivity of the TCC to pay or settle tax liabilities of the grantee or transferee, as they do not make the effectivity and validity of the

TCC dependent on the outcome of a post-audit. In fact, if we are to sustain the appellate tax court, it would be absurd to make the effectivity of the payment of a TCC dependent on a post-audit since there is no contemplation of the situation wherein there is no post-audit. Does the payment made become effective if no post-audit is conducted? Or does the so-called suspensive condition still apply as no law, rule, or regulation specifies a period when a post-audit should or could be conducted with a prescriptive period? Clearly, a tax payment through a TCC cannot be both effective when made and dependent on a future event for its effectivity. Our system of laws and procedures abhors ambiguity.

Moreover, if the TCCs are considered to be subject to post-audit as a suspensive condition, the very purpose of the TCC would be defeated as there would be no guarantee that the TCC would be honored by the government as payment for taxes. No investor would take the risk of utilizing TCCs if these were subject to a post-audit that may invalidate them, without prescribed grounds or limits as to the exercise of said post-audit.

The inescapable conclusion is that the TCCs are not subject to post-audit as a suspensive condition, and are thus valid and effective from their issuance.[54]

In addition, *Shell* and *Petron* recognized an exception that holds the transferee/assignee liable if proven to have been a party to the fraud or to have had knowledge of the fraudulent issuance of the subject TCCs. As earlier mentioned, the parties entered into a joint stipulation of facts stating that Petron did not participate in the procurement or issuance of those TCCs. Thus, we affirm the CTA En Banc's ruling that respondent was an innocent transferee for value thereof.

On the issue of estoppel, petitioner contends that the TCCs, which the Center had continually approved as payment for respondent's excise tax liabilities, were subsequently found to be void. Thus, the CIR insists that the government is not estopped from collecting from Petron the excise tax liabilities that had accrued to the latter as a result of the voidance of these TCCs. Petitioner argues that the State should not be

[54] *Supra* note 52.

prejudiced by the neglect or omission of government employees entrusted with the collection of taxes.[55]

We are not persuaded by the CIR's argument.

We recognize the well-entrenched principle that estoppel does not apply to the government, especially on matters of taxation. Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents.[56] As an exception, however, this general rule cannot be applied if it would work injustice against an innocent party.[57]

Petron, in this case, was not proven to have had any participation in or knowledge of the CIR's allegation of the fraudulent transfer and utilization of the subject TCCs. Respondent's status as a transferee in good faith and for value of these TCCs has been established and even stipulated upon by petitioner.[58] Respondent was thereby provided ample protection from the adverse findings subsequently made by the Center.[59] Given the circumstances, the CIR's invocation of the non-applicability of estoppel in this case is misplaced.

On the final issue it raised, the CIR contends that a 25% surcharge and a 20% interest per annum must be imposed upon Petron for respondent's excise tax liabilities as mandated under Sections 248 and 249 of the National Internal Revenue Code (NIRC).[60] Petitioner considers the tax returns filed by respondent

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[55] *Rollo*, pp. 34-35.

[56] *Secretary of Finance v. Oro*, G.R. No. 156946, 15 July 2009, 593 SCRA 14.

[57] *Supra* note 52.

[58] *Rollo*, p. 76.

[59] *Supra* note 53.

[60] National Internal Revenue Code:

Section 248. - Civil Penalties. –

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

xxx xxx xxx

for the years 1995 to 1998 as fraudulent on the basis of the post-audit finding that the TCCs were void. It argues that the prescriptive period within which to lawfully assess Petron for its tax liabilities has not prescribed under Section 222 (a)[61] of the Tax Code. The CIR explains that respondent's assessment on 30 January 2002 of respondent's deficiency excise tax for the years 1995 to 1998 was well within the ten-year prescription period.[62]

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(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or

Section 249. Interest. –

(A) In General. - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) Deficiency Interest. - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) Delinquency Interest**.** - In case of failure to pay:

xxx xxx xxx (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

[61] National Internal Revenue Code:

Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

[62] *Rollo*, p. 40.

In the light of the main ruling in this case, we affirm the CTA En Banc Decision finding Petron to be an innocent transferee for value of the subject TCCs. Consequently, the Tax Returns it filed for the years 1995 to 1998 are not considered fraudulent. Hence, the CIR had no legal basis to assess the excise taxes or any penalty surcharge or interest thereon, as respondent had already paid the appropriate excise taxes using the subject TCCs.

WHEREFORE, the CIR's Petition is **DENIED** for lack of merit. The CTA En Banc Decision dated 03 December 2008 in CTA EB No. 311 is hereby **AFFIRMED** *in toto*. No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 186030. March 21, 2012]

NORMA DELOS REYES *VDA*. DEL PRADO, EULOGIA R. DEL PRADO, NORMITA R. DEL PRADO and RODELIA R. DEL PRADO, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; IN A PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT ONLY QUESTIONS OF LAW MAY BE RAISED; RATIONALE. — Settled is the rule that in a petition for review under Rule 45, only questions of law may be raised. It is not this Court's function to analyze or weigh all over again evidence already

considered in the proceedings below, our jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court. The resolution of factual issues is the function of the lower courts, whose findings on these matters are received with respect. A question of law which we may pass upon must not involve an examination of the probative value of the evidence presented by the litigants. This is clear under Section 1, Rule 45 of the Rules of Court, as amended.

2. ID.; ID.; ID.; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED. — The distinction between a question of law and a question of fact is settled. There is a question of law when the doubt or difference arises as to what the law is on a certain state of facts. Such a question does not involve an examination of the probative value of the evidence presented by the litigants or any of them. On the other hand, there is a question of fact when the doubt arises as to the truth or falsehood of the alleged facts or when the query necessarily invites calibration of the whole evidence, considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to one another and to the whole, and the probabilities of the situation.

3. ID.; ID.; ID.; EXCEPTIONS. — There are recognized exceptions to this rule on questions of law as subjects of petitions for review, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures, (2) when the inference made is manifestly mistaken, absurd or impossible, (3) when there is grave abuse of discretion, (4) when the judgment is based on misapprehension of facts, (5) when the findings of fact are conflicting, (6) when in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee, (7) when the CA's findings are contrary to those by the trial court, (8) when the findings are conclusions without citation of specific evidence on which they are based, (9) when the acts 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 CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different

conclusion.

4. CRIMINAL LAW; REVISED PENAL CODE; FALSIFICATION UNDER ART. 171 PAR. 4 IN RELATION TO ART. 172; ELEMENTS; PRESENT IN CASE AT BAR. — [W]e find no cogent reason to reverse the CA decision appealed from, considering that the elements of the crime of falsification under Art. 171, par. 4 of the Revised Penal Code, in relation to Art. 172 thereof, were duly proved during the proceedings below. Said elements are as follows: (a) The offender makes in a public document untruthful statements in a narration of facts; (b) The offender has a legal obligation to disclose the truth of the facts narrated by him; and (c) The facts narrated by the offender are absolutely false. x x x The obligation of the petitioners to speak only the truth in their deed of succession is clear, taking into account the very nature of the document falsified. The deed, which was transformed into a public document upon acknowledgement before a notary public, required only truthful statements from the petitioners. It was a legal requirement to effect the cancellation of the original certificate of title and the issuance of new titles by the Register of Deeds.The false statement made in the deed greatly affected the indefeasibility normally accorded to titles over properties brought under the coverage of land registration, to the injury of Corazon who was deprived of her right as a landowner, and the clear prejudice of third persons who would rely on the land titles issued on the basis of the deed. We cannot subscribe to the petitioners' claim of good faith because several documents prove that they knew of the untruthful character of their statement in the deed of succession. The petitioners' alleged good faith is disputed by their prior confirmation and recognition of Corazon's right as an heir, because despite knowledge of said fact, they included in the deed a statement to the contrary. The wrongful intent to injure Corazon is clear from their execution of the deed, showing a desire to appropriate only unto themselves the subject parcel of land. Corazon was unduly deprived of what was due her not only under the provisions of the law on succession, but also under contracts that she had previously executed with the petitioners.

APPEARANCES OF COUNSEL

Castro Castro & Associates for petitioners.
The Solicitor General for respondent.

D E C I S I O N

REYES, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court, which seeks to assail and set aside the following issuances of the Court of Appeals (CA) in the case docketed as CA-G.R. CR No. 31225 and entitled *"Norma Delos Reyes Vda. Del Prado, Eulogia R. Del Prado, Normita R. Del Prado and Rodelia R. Del Prado v. People of the Philippines"*:

1) the Decision[1] dated September 15, 2008 affirming with modification the decision and order of the Regional Trial Court (RTC), Branch 38, Lingayen, Pangasinan in Criminal Case No. L-8015; and

2) the Resolution[2] dated January 6, 2009 denying the motion for reconsideration of the Decision of September 15, 2008.

The Factual Antecedents

This petition stems from an Information for falsification under Article 172, in relation to Article 171(4), of the Revised Penal Code filed against herein petitioners Norma Delos Reyes *Vda*. Del Prado (Norma), Normita Del Prado (Normita), Eulogia Del Prado (Eulogia) and Rodelia[3] Del Prado (Rodelia) with the Municipal Trial Court (MTC) of Lingayen, Pangasinan, allegedly committed as follows:

> That on or about the 19th day of July, 1991, in the [M]unicipality of Lingayen, [P]rovince of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did then and there wil[l]fully, unlawfully and feloniously falsified, execute[d]

[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Isaias P. Dicdican and Marlene Gonzales-Sison, concurring; *rollo*, pp. 32-45.

[2] *Id.* at 51-52.

[3] Also known as Rodilla Del Prado in other documents.

and cause[d] the preparation of the DEED OF SUCCESSION, by stating and making it appear in said document that they were the only heirs of the late Rafael del Prado, when in truth and in fact, all the accused well knew, that Ma. Corazon Del Prado-Lim is also an heir who is entitled to inherit from the late Rafael Del Prado, and all the accused deliberately used the DEED OF SUCCESSION to claim ownership and possession of the land mentioned in the DEED OF SUCCESSION to the exclusion of the complainant Ma. Corazon Del Prado-Lim to her damage and prejudice.

Contrary to Art. 172 in relation to Art. 171, par. 4 of the Revised Penal Code.[4]

Upon arraignment, the accused therein entered their plea of "not guilty". After pre-trial conference, trial on the merits ensued.

The prosecution claimed that Ma. Corazon Del Prado-Lim (Corazon), private complainant in the criminal case, was the daughter of the late Rafael Del Prado (Rafael) by his marriage to Daisy Cragin (Daisy). After Daisy died in 1956, the late Rafael married Norma with whom he had five children, namely: Rafael, Jr., Antonio, Eulogia, Normita and Rodelia.

The late Rafael died on July 12, 1978. On October 29, 1979, Corazon, as a daughter of the late Rafael, and Norma, as the late Rafael's surviving spouse and representative of their five minor children, executed a "Deed of Extra-Judicial Partition of the Estate of Rafael Del Prado" to cover the distribution of several properties owned by the late Rafael, including the parcel of land covered by Original Certificate of Title (OCT) No. P-22848, measuring 17,624 square meters, more or less, and situated at Libsong, Lingayen, Pangasinan.

Per agreement of the heirs, Corazon was to get a 3,000-square meter portion of the land covered by OCT No. P-22848. This right of Corazon was also affirmed in the Deed of Exchange dated October 15, 1982 and Confirmation of Subdivision which she executed with Norma.

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[4] CA *rollo*, p. 121.

Corazon, however, later discovered that her right over the subject parcel of land was never registered by Norma, contrary to the latter's undertaking. The petitioners instead executed on July 19, 1991 a Deed of Succession wherein they, together with Rafael, Jr. and Antonio, partitioned and adjudicated unto themselves the property covered by OCT No. P-22848, to the exclusion of Corazon. The deed was notarized by Loreto L. Fernando (Loreto), and provides in part:

> WHEREAS, on the 12[th] day of July 1978, RAFAEL DEL PRADO[,] SR., died intestate in the City of Dagupan, leaving certain parcel of land, and more particularly described and bounded to wit:
>
> ORIGINAL CERTIFICATE OF TITLE NO. P-22848
>
> "A certain parcel of land (Lot No. 5518, Cad-373-D) Lingayen Cadastre, situated in Poblacion, Lingayen, Pangasinan, Island of Luzon. Bounded on the NE., by Lots Nos. 5522, 5515; and 6287; on the SE., by Lots Nos. 5516, 5517, 55 and Road; on the SW., by Road, and Lots Nos. 5521, 5510, and 5520; and on the NW., by Road; x x x containing an area of SEVENTEEN THOUSAND SIX HUNDRED TWENTY-FOUR (17,624) Square Meters, more or less. Covered by Psd-307996 (LRC), consisting of two lots. Lot No. 5510-A and Lot 5518-B."
>
> WHEREAS, the **parties hereto are the only heirs of the decedent**, the first name, is the surviving spouse and the rest are the children of the decedent;
>
> x x x x x x x x x
>
> NOW, THEREFORE, for and in consideration of the premises and invoking the provisions of Rule 74, Sec. 1 of the Rules of Court, the parties hereto do by these presents, agree to divide and partition the entire estate above[-]described and accordingly adjudicate, as they do hereby adjudicate the same among themselves, herein below specified to wit:
>
> x x x x x x x x x[5]

By virtue of the said Deed of Succession, OCT No. P-22848 was cancelled and several new titles were issued under the

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[5] *Rollo*, pp. 36-37.

names of Corazon's co-heirs. When Corazon discovered this, she filed a criminal complaint against now petitioners Norma, Eulogia, Normita and Rodelia. Antonio and Rafael, Jr. had both died before the filing of said complaint.

Among the witnesses presented during the trial was Loreto, who confirmed that upon the request of Norma and Antonio, he prepared and notarized the deed of succession. He claimed that the petitioners appeared and signed the document before him.

For their defense, the petitioners denied having signed the Deed of Succession, or having appeared before notary public Loreto. They also claimed that Corazon was not a daughter, but a niece, of the late Rafael. Norma claimed that she only later knew that a deed of succession was prepared by her son Antonio, although she admitted having executed a deed of real estate mortgage in favor of mortgagee Prudential Bank over portions of the subject parcel of land already covered by the new titles.

The Ruling of the MTC

The MTC rejected for being unsubstantiated the petitioners' denial of any participation in the execution of the deed of succession, further noting that they benefited from the property after its transfer in their names. Thus, on August 9, 2006, the court rendered its decision[6] finding petitioners Norma, Eulogia, Normita and Rodelia guilty beyond reasonable doubt of the crime charged, sentencing them to suffer an indeterminate penalty of four months and one day of *arresto mayor* as minimum to two years and four months and one day of *prision correccional* as maximum. They were also ordered to pay a fine of ₱5,000.00 each, with subsidiary imprisonment in case of non-payment of fine.

Considering the minority of Rodelia at the time of the commission of the crime, she was sentenced to suffer the penalty of four months of *arresto mayor*, plus payment of fine of

[6] CA *rollo*, pp. 157-166.

₱5,000.00, with subsidiary imprisonment in case of non-payment.

All the petitioners were ordered to indemnify Corazon in the amount of ₱10,000.00 as attorney's fees, and to pay the costs of suit.

Unsatisfied with the MTC's ruling, the petitioners filed a motion for new trial on the grounds of alleged gross error of law, irregularities during the trial, and new and material evidence. To prove that they did not intend to exclude Corazon from the estate of the late Rafael, the petitioners cited their recognition of Corazon's right to the estate in the deed of extra-judicial partition, confirmation of subdivision, deed of exchange, joint affidavit and petition for guardianship of minors Rafael, Jr., Eulogia, Antonio and Normita, which they had earlier executed.[7] Again, the petitioners denied having signed the deed of succession, and instead insisted that their signatures in the deed were forged.

The motion was denied by the MTC *via* a resolution[8] dated December 21, 2006, prompting the filing of an appeal with the RTC.

The Ruling of the RTC

On August 10, 2007, the RTC rendered its decision[9] affirming the MTC's decision, with modification in that the case against Rodelia was dismissed in view of her minority at the time of the commission of the crime. The decretal portion of the decision reads:

> WHEREFORE, premises considered, the appealed Decision of the Municipal Trial Court of Lingayen, Pangasinan dated August 9, 2006 is hereby AFFIRMED, but modified as to accused Rodelia R. Del Prado as the case against her is hereby DISMISSED on account of her minority at the time of the commission of the offense.
>
> SO ORDERED.[10]

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[7] *Id.* at 171-182.

[8] *Id.* at 211-213.

[9] *Id.* at 111-120.

[10] *Id.* at 120.

A motion for reconsideration was denied for lack of merit by the RTC *via* its resolution[11] dated October 31, 2007. Hence, Norma, Eulogia and Normita filed a petition for review with the CA.

The Ruling of the CA

On September 15, 2008, the CA rendered its decision[12] dismissing the petition and affirming the RTC's ruling, with modification as to the imposable penalty under the Indeterminate Sentence Law. The decretal portion of the decision reads:

> WHEREFORE, premises considered, the appeal is **DISMISSED**. The appealed Decision dated August 10, 2007 and Order dated October 31, 2007 of the Regional Trial Court, Branch 38, Pangasinan, in Crim. Case No. L-8015 are **AFFIRMED** with **MODIFICATION** that appellants Norma delos Reyes *Vda*. Del Prado, Eulogia R. Del Prado and Normita R. Del Prado are hereby sentenced to suffer an indeterminate penalty of one (1) year and one (1) day *of arresto mayor*, as minimum, to three (3) years, six (6) months and twenty-one (21) days of *prision correccional*, as maximum.
>
> SO ORDERED.[13]

The motion for reconsideration filed by the petitioners was denied by the CA in its resolution[14] dated January 6, 2009. Feeling aggrieved, the petitioners appealed from the decision and resolution of the CA to this Court, through a petition for review on *certiorari*[15] under Rule 45 of the Rules of Court.

The Present Petition

The petitioners present the following assignment of errors to support their petition:

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11 *Id.* at 236.

12 *Supra* note 1.

13 *Id.* at 44.

14 *Supra* note 2.

15 *Rollo*, pp. 17-30.

A. WITH DUE RESPECT, THE LOWER COURT CLEARLY ERRED IN FINDING THAT COMPLAINANT MA. CORAZON DEL PRADO-LIM WAS EXCLUDED AS AN HEIR OF THE LATE RAFAEL DEL PRADO.

B. WITH DUE RESPECT, THE LOWER COURT CLEARLY ERRED IN NOT APPRECIATING THE FACT THAT IN SEVERAL DOCUMENTS/INSTRUMENTS EXECUTED BY THE PETITIONERS WITH THE PARTICIPATION OF COMPLAINANT MS. CORAZON DEL PRADO-LIM, SHE WAS SPECIFICALLY NAMED AS AN HEIR WITH CORRESPONDING SHARES/INHERITANCE IN THE ESTATE OF THE LATE RAFAEL DEL PRADO.

C. WITH DUE RESPECT, THE LOWER COURT CLEARLY ERRED IN FAILING TO APPRECIATE THE GOOD FAITH OF THE PETITIONERS WHICH NEGATES THE COMMISSION OF THE OFFENSE OF FALSIFICATION ON THEIR PART.

D. WITH DUE RESPECT, THE LOWER COURT CLEARLY ERRED IN CONVICTING THE PETITIONERS WITHOUT ANY FACTUAL AND LEGAL BASIS, THE PRESUMPTION OF INNOCENCE OF THE PETITIONERS NOT HAVING BEEN OVERCOME BY THE PROSECUTION'S EVIDENCE.

E. WITH DUE RESPECT [THE LOWER COURT ERRED] IN NOT HOLDING THAT THE CASE IS PURELY CIVIL ONE[,] NOT CRIMINAL.[16]

To support their assigned errors, the petitioners invoke the existence and contents of the several documents which they had presented before the MTC, including the deed of extrajudicial partition of the estate of Rafael Del Prado dated October 29, 1979, confirmation of subdivision, deed of exchange and petition in the guardianship proceedings for the minor Del Prado children filed by Norma, in which documents they claim to have indicated and confirmed that Corazon is also an heir of the late Rafael. Given these documents, the petitioners insist that they cannot be charged with falsification for having excluded Corazon as an heir of their decedent.

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[16] *Rollo,* pp. 17-18.

In sum, the issue for this Court's resolution is whether or not the CA erred in affirming the petitioners' conviction for falsification, notwithstanding the said petitioners' defense that they never intended to exclude private complainant Corazon from the estate of the late Rafael.

This Court's Ruling

The petition is bound to fail.

Only questions of law may be raised in petitions for review on *certiorari* under Rule 45 of the Rules of Court.

First, the questions being raised by the petitioners refer to factual matters that are not proper subjects of a petition for review under Rule 45. Settled is the rule that in a petition for review under Rule 45, only questions of law may be raised. It is not this Court's function to analyze or weigh all over again evidence already considered in the proceedings below, our jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court. The resolution of factual issues is the function of the lower courts, whose findings on these matters are received with respect. A question of law which we may pass upon must not involve an examination of the probative value of the evidence presented by the litigants.[17] This is clear under Section 1, Rule 45 of the Rules of Court, as amended, which provides:

> Section 1. *Filing of petition with Supreme Court*. – A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition** may include an application for a writ of preliminary injunction or other provisional remedies and **shall raise only questions of law, which must be distinctly set forth.** The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency. (Emphasis supplied)

[17] *Vallacar Transit, Inc. v. Catubig*, G.R. No. 175512, May 30, 2011.

The distinction between a question of law and a question of fact is settled. There is a question of law when the doubt or difference arises as to what the law is on a certain state of facts. Such a question does not involve an examination of the probative value of the evidence presented by the litigants or any of them. On the other hand, there is a question of fact when the doubt arises as to the truth or falsehood of the alleged facts or when the query necessarily invites calibration of the whole evidence, considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to one another and to the whole, and the probabilities of the situation.[18]

Contrary to these rules, the petitioners ask us to review the lower courts' factual finding on Corazon's exclusion in the subject deed of succession, to reconsider its contents and those of the other documentary evidence which they have submitted with the court *a quo,* all of which involve questions of fact rather than questions of law. In their assignment of errors, petitioners even fully question the factual basis for the courts' finding of their guilt. However, as we have explained in *Medina v. Asistio, Jr.*:[19]

> Petitioners' allegation that the Court of Appeals "grossly disregarded" their Exhibits "A", "B", "C", "D" and "E", in effect, asks us to re-examine all the [evidence] already presented and evaluated – as well as the findings of fact made – by the Court of Appeals. Thus, in *Sotto v. Teves* (86 SCRA 154 [1978]), [w]e held that the appreciation of evidence is within the domain of the Court of Appeals because its findings of fact are not reviewable by this Court (*Manlapaz v. CA*, 147 SCRA 236 [1987]; *Knecht v. CA*, 158 SCRA 80 [1988] and a long line of cases).
>
> It is not the function of this Court to analyze or weigh such evidence all over again. Our jurisdiction is limited to reviewing errors of law that may have been committed by the lower court. (*Nicolas*[,] *et al., v. CA*, 154 SCRA 635 [1987]; *Tiongco v. de la Merced*, 58 SCRA 89 [1974]).

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[18] *Guzman v. Commission on Elections*, G.R. No. 182380, August 28, 2009, 597 SCRA 499, 509.

[19] G.R. No. 75450, November 8, 1990, 191 SCRA 218, 223.

There are recognized exceptions to this rule on questions of law as subjects of petitions for review, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures, (2) when the inference made is manifestly mistaken, absurd or impossible, (3) when there is grave abuse of discretion, (4) when the judgment is based on misapprehension of facts, (5) when the findings of fact are conflicting, (6) when in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee, (7) when the CA's findings are contrary to those by the trial court, (8) when the findings are conclusions without citation of specific evidence on which they are based, (9) when the acts 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 CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[20] After a consideration of the petitioners' arguments, this Court holds that the present appeal does not fall under any of these exceptions.

There can be no good faith on the part of the petitioners since they knew of the untruthful character of statements contained in their deed of succession.

Even granting that the present petition may be admitted, we find no cogent reason to reverse the CA decision appealed from, considering that the elements of the crime of falsification under Art. 171, par. 4 of the Revised Penal Code, in relation to Art. 172 thereof, were duly proved during the proceedings below. Said elements are as follows:

(a) The offender makes in a public document untruthful statements in a narration of facts;

[20] *Andrada v. Pilhino Sales Corporation*, G.R. No. 156448, February 23, 2011.

(b) The offender has a legal obligation to disclose the truth of the facts narrated by him; and

(c) The facts narrated by the offender are absolutely false.[21]

These elements are based on the provisions of Art. 172, in relation to Art. 171, par. 4, of the Revised Penal Code, which reads:

Art. 171. *Falsification by public officer, employee or notary or ecclesiastical minister*. – The penalty of *prision mayor* and a fine not to exceed ₱5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x x x x x x x

4. Making untruthful statements in narration of facts;

x x x x x x x x x

Art. 172. *Falsification by private individual and use of falsified documents*. – The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than ₱5,000 pesos shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and

2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.

x x x x x x x x x

The material document claimed to be falsified in this case is the Deed of Succession dated July 19, 1991, the presentation of which before the Register of Deeds and other government agencies allowed the cancellation of OCT No. P-22848, and

[21] *Galeos v. People*, G.R. Nos. 174730-37, February 9, 2011, 642 SCRA 485, 506, citing *Fullero v. People*, G.R. No. 170583, September 12, 2007, 533 SCRA 97, 114.

the issuance of several new titles in its stead. The first and third elements were committed by the inclusion in the subject deed of the clause that states, "(w)hereas, the parties hereto are the only heirs of the decedent, the first name, is the surviving spouse and the rest are the children of the decedent."[22] The untruthfulness of said statement is clear from the several other documents upon which, ironically, the petitioners anchor their defense, such as the deed of extrajudicial partition dated October 29, 1979, the parties' confirmation of subdivision, deed of exchange and Norma's petition for guardianship of her then minor children. Specifically mentioned in these documents is the fact that Corazon is also a daughter, thus an heir, of the late Rafael.

The obligation of the petitioners to speak only the truth in their deed of succession is clear, taking into account the very nature of the document falsified. The deed, which was transformed into a public document upon acknowledgement before a notary public, required only truthful statements from the petitioners. It was a legal requirement to effect the cancellation of the original certificate of title and the issuance of new titles by the Register of Deeds. The false statement made in the deed greatly affected the indefeasibility normally accorded to titles over properties brought under the coverage of land registration, to the injury of Corazon who was deprived of her right as a landowner, and the clear prejudice of third persons who would rely on the land titles issued on the basis of the deed.

We cannot subscribe to the petitioners' claim of good faith because several documents prove that they knew of the untruthful character of their statement in the deed of succession. The petitioners' alleged good faith is disputed by their prior confirmation and recognition of Corazon's right as an heir, because despite knowledge of said fact, they included in the deed a statement to the contrary. The wrongful intent to injure Corazon is clear from their execution of the deed, showing a

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[22] CA *rollo*, p. 114; *rollo*, p. 36.

desire to appropriate only unto themselves the subject parcel of land. Corazon was unduly deprived of what was due her not only under the provisions of the law on succession, but also under contracts that she had previously executed with the petitioners.

WHEREFORE, premises considered**,** the petition for review on *certiorari* is hereby **DENIED.** The Decision dated September 15, 2008 and Resolution dated January 6, 2009 of the Court of Appeals in CA-G.R. CR No. 31225 are hereby **AFFIRMED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 186499. March 21, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MELECIO DE LOS SANTOS, JR.,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; EXPLAINED. — As the accused-appellant was convicted of the crime of rape that was charged to have been committed on February 14, 1995, the applicable provision of law in this case is Article 335 of the Revised Penal Code. The said provision reads: ART. 335. *When and how rape is committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances: 1. By using force or intimidation; 2. When the woman is deprived of reason or otherwise unconscious; and 3. **When the woman is under twelve years of age** or is demented. We held in *People v. Valenzuela* that: Rape under paragraph 3 of [the above] article is termed

statutory rape as it departs from the usual modes of committing rape. What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old. Thus, force, intimidation, and physical evidence of injury are immaterial; **the only subject of inquiry is the age of the woman and whether carnal knowledge took place**. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern evil from good.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF A CHILD VICTIM IS GIVEN FULL WEIGHT AND CREDIT; RATIONALE; CASE AT BAR. — *Vidar v. People* declares that "the assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand; a vantage point denied appellate courts - and when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court." x x x We keep in mind the well-entrenched doctrine that the testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and immaturity are generally badges of truth and sincerity. The testimony of AAA was further bolstered by the medical findings of Dr. Plaza who attested to the presence of "deep, hymenal notches at 3 o'clock and 9 o'clock positions" in AAA's organ, which led the physician to conclude that it was indeed possible that AAA was sexually abused. BBB, the younger sister of AAA, likewise pointed to the accused-appellant as the perpetrator of the dastardly act against AAA.

3. ID.; ID.; DENIAL AS A DEFENSE; DENIAL WITHOUT ANY STRONG EVIDENCE TO SUPPORT IT CAN SCARCELY OVERCOME THE POSITIVE DECLARATION BY THE VICTIM OF THE INVOLVEMENT OF THE ACCUSED IN THE CRIME ATTRIBUTED TO HIM; APPLICATION IN CASE AT BAR. — The defense of denial on the part of the accused-appellant cannot likewise exculpate him in the case at bar. The accused-appellant testified that on the afternoon of February 14, 1995, the accused-appellant claimed that he was at their house in Escalante, Negros attending to his sick father Melecio

de los Santos, Sr. He even alleged that his father died on February 20, 1995. He further stated that he did not go back to x x x in the year 1995. He contended that the last time he went to the house of AAA was on September 2, 1997 when he informed them of his impending marriage. He stated that he indeed got married on September 10, 1997. The Court notes that the above testimony of the accused-appellant was without any substantial corroboration. The death certificate of Melecio de los Santos, Sr. and the marriage certificate of the accused-appellant, which were offered in evidence to support the accused-appellant's claims, were not squarely in point. The said certificates evidenced only the fact of death of Melecio de los Santos, Sr. and the fact of marriage of the accused-appellant, respectively, and in no way proved with certainty the whereabouts of the accused-appellant on the date the incident of rape was committed. In *People v. Nieto*, we stressed that "[i]t is an established jurisprudential rule that a mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crimes attributed to him." The accused-appellant likewise failed to impute any ill motive on the part of the prosecution witnesses that would have impelled them to prevaricate and charge him falsely.

4. ID.; ID.; DOCUMENTARY EVIDENCE; CERTIFICATE OF BIRTH; AGE OF VICTIM IN STATUTORY RAPE PROVEN BY BIRTH CERTIFICATE DESPITE THE DIFFERENCE IN THE SPELLING OF THE NAME OF THE PERSON REFERRED TO THEREIN; CASE AT BAR. — With respect to minority as an element of statutory rape, the age of AAA was proven by the certificate of birth duly presented in trial by AAA. In the said certificate, the date of birth of AAA was November 4, 1984. Thus, AAA was below 12 years of age, or specifically, only ten (10) years, three (3) months and ten (10) days old, when the accused-appellant sexually abused her on February 14, 1995. Although the defense objected to the presentation of the said certificate in view of the difference in the spelling of the name of the person referred to therein and the name of AAA, the same was already explained by the latter when she testified that she also went by the name stated in the certificate of birth and that she was the same person named therein.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO–DE CASTRO, *J.*:

In this appeal, the accused-appellant Melecio de los Santos, Jr. seeks the reversal of the Decision[1] of the Court of Appeals dated August 31, 2007 in CA-G.R. CEB CR.-H.C. No. 00394, which affirmed the Decision[2] dated March 3, 2005 of the Regional Trial Court (RTC) of Cebu City, Branch 7, in Criminal Case Nos. CBU-51855 and CBU-51856. The trial court imposed the penalty of *reclusion perpetua* upon the accused-appellant after finding him guilty of one count of rape.

The accused-appellant was charged with two (2) counts of statutory rape committed against AAA[3] in two informations, the accusatory portions of which provide:

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[1] *Rollo*, pp. 2-11; penned by Associate Justice Agustin S. Dizon with Associate Justices Isaias P. Dicdican and Pampio A. Abarintos, concurring.

[2] Records, pp. 171-180; penned by Judge Simeon P. Dumdum, Jr.

[3] The real name or any other information tending to establish the identity of the private complainant and those of her immediate family or household members shall be withheld in accordance with R.A. No. 7610, An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation and for Other Purposes; R.A. No. 9262, An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for other Purposes; Sec. 40 of A.M. No. 04-10-11-SC, known as "Rule on Violence Against Women and Their Children" effective November 15, 2004; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

Thus, the private offended party shall be referred to as **AAA**. The initials **BBB** shall refer to the younger sister of the private offended party, whereas **CCC** shall stand for the name of the father of the private offended party. The initials **XXX** shall denote the place where the crime was allegedly committed.

CRIMINAL CASE NO. CBU-51855

The undersigned accuses MELECIO DELOS SANTOS *alias* "NOYNOY" of the crime of Statutory Rape, committed as follows:

That on or about the 14th day of February 1995 at around 1:30 o'clock in the afternoon, more or less, at [XXX], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, younger brother of the mother of the victim [AAA], a minor, ELEVEN (11) years old at the time of the commission of the offense, with abuse of confidence, taking advantage of the absence of the parents of the victim who at the time of the commission of the offense were working and while the victim was alone, with the use of a deadly knife for use in slicing fish commonly known as "INIGPAKAS", through force, intimidation and threats, did then and there willfully, unlawfully and feloniously engage and have carnal knowledge with the victim against her will, to the damage and prejudice of the said victim.[4]

CRIMINAL CASE NO. CBU-51856

That sometime in September 1995 at [XXX], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, younger brother of the mother of the victim [AAA], a minor, Eleven (11) years old at the time of the commission of the offense, with abuse of confidence, through force, intimidation and threats, did then and there willfully, unlawfully and feloniously engage and have sexual intercourse with the said victim against her will, to the damage and prejudice of the victim.[5]

During the accused-appellant's arraignment on April 18, 2000, he entered a plea of not guilty to the above charges.[6] On July 25, 2000, the pre-trial conference of the cases was terminated with the parties stipulating on the following facts:

1. That accused and the mother of the complainant are brother and sister;

2. That the defense of the accused is denial; [and]

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[4] Records, p. 1.

[5] *Id.* at 172.

[6] *Id.* at 23.

3. That the accused is facing two crimes of Statutory Rape which are jointly heard in this pre-trial conference.[7]

The joint trial of the cases, thereafter, commenced.

The testimony of the private complainant, AAA, was first presented by the prosecution. AAA testified that she was born on November 4, 1984 at XXX.[8] She had two brothers and three sisters.[9] She said that the accused-appellant was the younger brother of her mother but he had a different surname because he was adopted by another couple when he was still young.[10] She narrated that on February 14, 1995, the accused-appellant first arrived from Negros to stay in their house at XXX. At about 1:30 p.m. on the said date, AAA and her younger sister, BBB, were sitting on the stairs of their house while the accused-appellant was at the window. Their mother soon arrived and called BBB to help in the former's place of work. BBB went with their mother. AAA said that her mother told her to wash the dishes and clean the house. Thereafter, she went to their room to lie down because she had a stomachache. The accused-appellant then closed the windows and the door. He got a knife from the kitchen and pointed the same at her. He told her to undress but she refused so he tore off her dress. He went on top of her and he was naked. She said that his penis penetrated her organ. He was still holding the knife when he placed himself on top of her. He told her that if she will reveal the incident to anyone he will kill her family. After that, he left her. She did not tell her parents about the abuse she suffered because she was afraid.[11]

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[7] *Id.* at 37.

[8] During trial, the prosecution counsel marked as evidence a copy of the birth certificate of AAA. The counsel for the defense, however, manifested that there was a slight difference in the name of the person referred to in the birth certificate and the name of AAA. (TSN, September 12, 2000, p. 5.)

[9] TSN, May 17, 2001, p. 7.

[10] TSN, October 12, 2000, pp. 4-5.

[11] TSN, May 17, 2001, pp. 9-15.

AAA further testified that the accused-appellant came back to their house sometime in September 1995. At a certain day in the said month when her parents and siblings were not in their house, the accused-appellant undressed her again and pointed a knife at her. AAA stated that the accused-appellant raped her by inserting his penis into her organ. Thereafter, the accused-appellant left because AAA's father, CCC, requested him to accompany the latter in his work. After that, the accused-appellant went back to Negros. AAA added that she did not tell her parents about the second incident of rape as she was still afraid of the accused-appellant's threat that he will kill her family.[12]

AAA said that she decided to reveal the incidents of rape to the members of her family when she was about 14 or 15 years old. She first related the incidents to her aunt but the latter did not believe her. She next informed her parents. When her mother found out about the sexual abuse, the latter also did not believe her and she was even slapped. On the other hand, her father, CCC, got mad. He brought her to the Vicente Sotto Memorial Medical Center (VSMMC) and she was examined by a physician. Her father also brought her to the police station at Talisay where they prepared an affidavit.[13]

CCC, the father of AAA, was next called to the witness stand. He testified that on February 14, 1995, the accused-appellant temporarily stayed at their house. The latter again visited their house on September 19, 1995. It was in the year 1999 that AAA first told him about the incidents of rape that occurred in February and September 1995. When he asked her why she did not tell him about the rape incidents at the time they occurred, she answered that she was threatened by the accused-appellant. She told him that the incidents took place at their house and she was threatened every time she was raped. It was only after several years that AAA got the courage to tell him of the sexual abuse.[14]

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[12] *Id.* at 15-17.

[13] *Id.* at 17-18.

[14] TSN, August 28, 2001, pp. 6-10.

CCC further stated that in 1995, AAA was only 11 years old. When he found out that his daughter was raped, he "got wild and even destroyed [his] own house." He was able to confront the accused-appellant when the latter was still in prison. The accused-appellant asked for his forgiveness but CCC told him that he could not do anything because the victim was his daughter. AAA was examined by a physician and the result of the examination was that it was possible that she was sexually molested.[15]

The testimony of Dr. Paulette Chelo M. Plaza,[16] one of the physicians who examined AAA, was also presented by the prosecution. She testified that, as a standard operating procedure, she would initially interview a patient regarding the circumstances of the crime committed against the latter and, afterwards, a physical examination of the patient would be conducted. She said that she could not recall the results of her interview with AAA but since the medical report indicated that AAA was sexually abused, the said fact must have been related to her by AAA.[17] The conclusions stated in the medical certificate were as follows:

1.) Disclosure of sexual abuse.

2.) Deep, hymenal notches at 3 O'clock and 9 O'clock positions are suspicious for sexual abuse.[18]

Based on the medical record, Dr. Plaza confirmed that she and Dr. Celso S. Pacana, Jr. examined AAA. As to the injuries sustained by AAA, she explained the meaning of the deep notches 3 o'clock and 9 o'clock position. She stated that a deep notch was like an excavation or a cut in the hymenal tissue and that the presence of notches indicated that there was a penetration in the vagina. The notches could have been caused by sexual

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[15] *Id.* at 11-12.

[16] TSN, January 10, 2002; also spelled in other parts of the records as Dr. Polychielo M. Plaza.

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

[18] Records, p. 7.

intercourse or any object that might have been inserted in the victim's organ. She reiterated that, based on her findings and that of Dr. Pacana, she concluded that it was possible that AAA was sexually abused.[19]

Police Officer 1 (PO1) Rea N. Taladua also testified for the prosecution. She stated that on July 19, 1999, she was assigned at the Talisay Police Station and her duties therein were to entertain cases concerning women and children. In connection therewith, she issued a certification in relation to the rape case of AAA.[20]

Finally, the prosecution presented the testimony of BBB, the younger sister of AAA. BBB testified that on February 14, 1995, she was 8 years old, while AAA was 11 years old. At about 1:00 p.m. on the said date, she was at their house with AAA and the accused-appellant. She and AAA were talking with each other while sitting at the stairway of their house. The accused-appellant was by the window of the house about five meters away. He then approached them and told them to go upstairs. Only AAA went up the house and he suddenly closed the door. BBB said that she did not go upstairs because she was afraid of the way the accused-appellant looked at them. BBB immediately clarified that when the accused-appellant told them to go upstairs, they tried to run away. AAA was not able to get away, however, because her dress was caught in the stairs. The accused-appellant grabbed AAA and dragged her inside the house. AAA tried to free herself but the accused-appellant poked a knife at her neck. The accused-appellant took AAA inside the house and closed the door.[21]

BBB said that she just sat at the stairs crying. She heard AAA ask for help, as well as the sounds of struggling inside the house. She pleaded for the accused-appellant not to harm AAA. Later, the accused-appellant opened the door and went

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[19] TSN, January 10, 2002, pp. 17-20.

[20] TSN, December 5, 2002, p. 3.

[21] TSN, February 13, 2003, pp. 6-11.

out of the house. He told her not to tell her mother about the incident otherwise he will kill them all. She then went inside and saw AAA lying unconscious near the door. She dragged AAA towards the room to change the latter's clothes. In the evening, the accused-appellant came back to their house when her parents were already there. She did not tell her parents about the incident because she was afraid that the accused-appellant would kill them. When her parents looked for AAA, she told them that the latter went to bed early as she was not feeling well.[22]

After the conclusion of the presentation of its testimonial evidence, the prosecution formally offered in evidence the following documents: (1) the Birth Certificate of AAA (Exhibit A);[23] (2) the Sworn Statement of AAA (Exhibit B);[24] (3) the Medical Certificate of AAA issued by the VSMMC (Exhibit F);[25] (4) the Certification of the entry of AAA's complaint in the Talisay Police Station blotter (Exhibit D);[26] and (5) the letter of Sidney R. Segales, a Records Officer at the VSMMC, stating that AAA was admitted in the said hospital for a medical examination (Exhibit E).[27]

On the other hand, the defense presented the lone testimony of the accused-appellant to negate the prosecution's version of facts.

The accused-appellant testified that he met CCC, the father of AAA, when he first visited Talisay on December 19, 1993. He likewise did not know the mother of AAA before that time as he was only three months old when he was adopted by another couple from Escalante, Negros Occidental. On his first visit to the house of AAA, he stayed for a week. He

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[22] *Id.* at 12-18.

[23] Records, p. 62.

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

[25] *Id.* at 7.

[26] *Id.* at 8.

[27] *Id.* at 74.

visited them again on October 20, 1994. He also stayed there for a week. On the afternoon of February 14, 1995, the accused-appellant claimed that he was at their house in Escalante, Negros attending to his sick adoptive father, Melecio de los Santos, Sr. In fact, he said that his father died on February 20, 1995. He denied that he was in XXX on the day that the first incident of rape allegedly occurred. He also said that he did not go to XXX for the entire month of September 1995. According to him, the travel time from Escalante to XXX was more or less four hours.[28] He further stated that he did not go back to XXX in the year 1995. The last time he went back to the house of AAA was on September 2, 1997 when he informed them that he was about to get married. He stayed there for only a day. He said that he in fact got married on September 10, 1997.

The accused-appellant contended that he only learned about the case against him on January 27, 2000. At that time, he was working as a tricycle driver in Escalante. He found out about the case when he was approached by a certain Senior Police Officer 3 (SPO3) Mateo Cabus, who told him that there was a warrant for his arrest in Cebu and that he should go with the said police officer to the police station for an investigation. The warrant of arrest was not shown to him. He was brought to the municipal jail in Escalante. When the police officer asked him about the case, he told them that he knew nothing about the same.[29] He related that, at the time he was investigated in the municipal jail in Escalante, he was neither assisted by counsel, nor informed of his right to be assisted by counsel. On February 1, 2000, he was brought to the Talisay Jail where he was also subjected to an investigation. He said that he could not give the police officers any answer because he did not know anything about the complaint against him. He also said that he was neither assisted by counsel nor informed of his right to be assisted by counsel when he was being investigated upon.[30]

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[28] TSN, September 11, 2003, pp. 3-8.

[29] TSN, January 5, 2004, pp. 4-8.

[30] TSN, March 18, 2004, pp. 3-5.

The accused-appellant recounted that at around 3:00 p.m. in the afternoon of January 27, 2000, his wife came for a visit and told him that the private complainant in the rape case against him was AAA. He said that he was shocked upon learning of the said fact and he told his wife to plead with AAA's parents because the accusations against him were not true. His wife told him that it was CCC and AAA who wanted to pursue the case. The accused-appellant added that while he was detained at the Talisay Jail, CCC allegedly came to visit him. He pleaded for the latter's mercy, telling him that the charges were untrue. CCC, however, told him that he should plead guilty so that life sentence and not the death penalty would be prayed for. The accused-appellant said that he refused to do so and insisted that he did not do anything to AAA. CCC allegedly threatened him that if he did not admit the charges, he would be mauled inside the detention cell. After that, he was indeed mauled by his fellow prisoners but he no longer reported the incident to the jail management. He was detained at the Talisay Jail for one month and three days and, on May 3, 2000, he was transferred to the Cebu Provincial Detention and Rehabilitation Center.[31]

Thereafter, the defense formally offered the following evidence: (1) the Death Certificate of Melecio de los Santos, Sr., stating that the said person in fact died on February 20, 1995 (Exhibit 1);[32] and (2) the Marriage Certificate between the accused-appellant and a certain Vicenta Sevillana, stating that the said the individuals were married on September 10, 1997 (Exhibit 2).[33]

On March 3, 2005, the RTC rendered judgment pronouncing the guilt of the accused-appellant as follows:

> **Wherefore**, in view of the foregoing considerations, in Criminal Case No. CBU-51856, by reason of the failure of the prosecution to prove his guilt beyond reasonable doubt, the Court acquits Melecio de los Santos, Jr.

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[31] *Id.* at 6-8.

[32] Records, p. 151.

[33] *Id.* at 152.

In Criminal Case No. CBU-51855, however, the Court finds accused Melecio de los Santos, Jr., guilty beyond reasonable doubt as principal of the crime of Rape, penalized under Art. 355 of the Revised Penal Code, and sentences accused Melecio de los Santos, Jr., to *reclusion perpetua*, with all the accessory penalties attached by law.

The accused shall be credited in the service of his sentence with the full time during which he has undergone preventive imprisonment, under the conditions set out in Article 29 of the Revised Penal Code.

The Court directs the accused to indemnify the private offended party civil indemnity in the amount of ₱50,000.00 moral damages in the amount of ₱50,000.00, and exemplary damages in the amount of ₱25,000.00 and to pay the costs.[34]

The trial court ruled that the evidence for the prosecution duly established the guilt of the accused-appellant with respect to Criminal Case No. CBU-51855, which pertained to the first incident of rape that was alleged to have been committed on February 14, 1995. The trial court held that the testimony of AAA that the accused-appellant had sexual intercourse with her was supported by the medical certificate issued by and testified to by Dr. Plaza. The certificate of birth of AAA established that she was below 12 years of age at the time of the commission of the rape on February 14, 1995. Furthermore, the trial court deemed insignificant the variance in the testimonies of AAA and BBB with respect to the whereabouts of BBB when the first incident of rape occured. Upon the other hand, the trial court was not convinced of the defense of denial proffered by the accused-appellant in view of the paucity of the supporting evidence therefor. With regard to Criminal Case No. CBU-51856, which refers to the second incident of rape allegedly committed in September 1995, the trial court acquitted the accused-appellant as it found insufficient and lacking in detail the testimony of AAA thereon.

The accused-appellant interposed an appeal of the above judgment before the Court of Appeals.[35]

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[34] *Id.* at 179-180.

[35] *Id.* at 182.

On August 31, 2007, the Court of Appeals issued the assailed decision in CA-G.R. CEB CR.-H.C. No. 00394, disposing of the case as follows:

> *WHEREFORE*, premises considered, the assailed decision is ***AFFIRMED in toto***.[36]

The appellate court upheld the judgment of the RTC that the guilt of the accused-appellant was proven beyond reasonable doubt in Criminal Case No. CBU-51855. The appellate court explained that the trial court correctly appreciated the credibility of the prosecution witnesses. The discrepancy in the testimonies of AAA and BBB was not found to be fatal to the prosecution's case since it was "understandable, even anticipated, that there would be minor lapses and inaccuracies when a young woman is made to recount detail by detail, her frightful ordeal."[37] The Court of Appeals further ruled that the accused-appellant failed to properly object to the presentation of AAA's birth certificate during the trial. As such, the accused-appellant was deemed to have admitted that the person mentioned in the birth certificate was in fact AAA. The appellate court also rejected the accused-appellant's denial as he failed to provide any corroborative evidence to prove the same. The accused-appellant likewise did not impute any improper motive on the part of AAA that would have impelled the latter to falsely testify against him.[38]

The accused-appellant seasonably filed a notice of appeal,[39] which was given due course by the Court of Appeals.[40] In a Resolution[41] dated June 29, 2009, the Court accepted the appeal and required the parties to file their supplemental briefs, if any, within thirty days from notice. The prosecution and the defense both manifested that they will no longer file any supplemental

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[36] *Rollo*, p. 10.

[37] *Id.* at 6.

[38] *Id.* at 7-10.

[39] CA *rollo*, p. 122.

[40] *Id.* at 143.

[41] *Rollo*, p. 16.

brief, adopting instead the respective briefs[42] they filed before the Court of Appeals.

In praying for his acquittal, the accused-appellant invoked the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE EVIDENCE OF THE PROSECUTION AND [DISREGARDING] THE EVIDENCE OF THE ACCUSED-APPELLANT.[43]

The accused-appellant stresses that, in a criminal case, the elements of a crime must be proven beyond reasonable doubt and the credibility of the testimonies must be firmly established. Though his defense of denial is weak, the accused-appellant asserts that the prosecution is not thereby absolved of the burden of proving his guilt with the requisite quantum of evidence.

We deny the appeal.

As the accused-appellant was convicted of the crime of rape that was charged to have been committed on February 14, 1995, the applicable provision of law in this case is Article 335[44] of the Revised Penal Code.[45] The said provision reads:

ART. 335. *When and how rape is committed.* — Rape is committed by having carnal knowledge of a woman under any

[42] *Id.* at 17-24.

[43] CA *rollo*, p. 67.

[44] The crime was committed before Article 335 of the Revised Penal Code, as amended, was repealed by Republic Act No. 8353 (the Anti-Rape Law of 1997), which took effect on October 22, 1997.

[45] As amended by Republic Act No. 7659, entitled An Act to Impose the Death Penalty on Certain Heinous Crimes Amending for that Purpose the Revised Penal Code, as Amended, Other Special Laws, and for Other Purposes. The said law took effect on December 31, 1993.

of the following circumstances:

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. **When the woman is under twelve years of age** or is demented. (Emphasis ours.)

We held in *People v. Valenzuela*[46] that:

> Rape under paragraph 3 of [the above] article is termed *statutory rape* as it departs from the usual modes of committing rape. What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old. Thus, force, intimidation, and physical evidence of injury are immaterial; **the only subject of inquiry is the age of the woman and whether carnal knowledge took place**. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern evil from good.[47] (Emphasis ours.)

After a meticulous review of the records of the instant case, the Court holds that the totality of the evidence adduced by the prosecution proved the guilt of the accused-appellant beyond reasonable doubt.

We also find no reason to disturb the trial court's appreciation of the credibility of the prosecution witnesses' testimonies. *Vidar v. People*[48] declares that "the assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand; a vantage point denied appellate courts - and when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court."[49]

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[46] G.R. No. 182057, February 6, 2009, 578 SCRA 157.

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

[48] G.R. No. 177361, February 1, 2010, 611 SCRA 216.

[49] *Id.* at 230.

In the instant case, the Court finds trustworthy the straightforward testimony of AAA that it was the accused-appellant who forcibly had carnal knowledge of her on that fateful afternoon of February 14, 1995. AAA detailed with sufficient clarity how she was sexually abused by the accused-appellant. We keep in mind the well-entrenched doctrine that the testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and immaturity are generally badges of truth and sincerity.[50] The testimony of AAA was further bolstered by the medical findings of Dr. Plaza who attested to the presence of "deep, hymenal notches at 3 o'clock and 9 o'clock positions" in AAA's organ, which led the physician to conclude that it was indeed possible that AAA was sexually abused. BBB, the younger sister of AAA, likewise pointed to the accused-appellant as the perpetrator of the dastardly act against AAA.[51]

Anent the alleged inconsistencies in the testimonies of AAA and BBB, the Court is not swayed. To recall, AAA testified that at about 1:30 p.m. on February 14, 1995, AAA and BBB were sitting on the stairs of their house while the accused-appellant was at the window. Thereafter, their mother arrived and summoned BBB to help in the former's place of work. BBB left with their mother, thus, leaving AAA alone with the accused-appellant. On the other hand, BBB testified that at around 1:00 p.m., she was at their house with AAA and the accused-appellant. BBB stated that she in fact witnessed how the accused-appellant grabbed AAA and dragged her inside the house. On this matter, we agree with the findings of the RTC and the Court of Appeals that the same merely pertained to insignificant details and not the gravamen of the offense charged. Indeed, the Court already had the occasion to rule in *People v. Suarez*[52] that:

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[50] *People v. Corpuz*, 517 Phil. 622, 636-637 (2006).

[51] TSN, February 13, 2003.

[52] 496 Phil. 231 (2005).

Discrepancies referring only to minor details and collateral matters — not to the central fact of the crime — do not affect the veracity or detract from the essential credibility of witnesses' declarations, as long as these are coherent and intrinsically believable on the whole. The Court has recognized that even the most candid of witnesses make erroneous, confused or inconsistent statements, especially when they are young and easily overwhelmed by the atmosphere in the courtroom. It would be too much to expect a 14-year-old to remember each detail of her harrowing experience.[53]

The defense of denial on the part of the accused-appellant cannot likewise exculpate him in the case at bar. The accused-appellant testified that on the afternoon of February 14, 1995, the accused-appellant claimed that he was at their house in Escalante, Negros attending to his sick father Melecio de los Santos, Sr. He even alleged that his father died on February 20, 1995. He further stated that he did not go back to XXX in the year 1995. He contended that the last time he went to the house of AAA was on September 2, 1997 when he informed them of his impending marriage. He stated that he indeed got married on September 10, 1997. The Court notes that the above testimony of the accused-appellant was without any substantial corroboration. The death certificate of Melecio de los Santos, Sr. and the marriage certificate of the accused-appellant, which were offered in evidence to support the accused-appellant's claims, were not squarely in point. The said certificates evidenced only the fact of death of Melecio de los Santos, Sr. and the fact of marriage of the accused-appellant, respectively, and in no way proved with certainty the whereabouts of the accused-appellant on the date the incident of rape was committed. In *People v. Nieto*,[54] we stressed that "[i]t is an established jurisprudential rule that a mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crimes attributed to him."[55] The accused-appellant likewise failed to impute any ill motive on

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[53] *Id.* at 243.

[54] G.R. No. 177756, March 3, 2008, 547 SCRA 511.

[55] *Id.* at 527.

the part of the prosecution witnesses that would have impelled them to prevaricate and charge him falsely.

With respect to minority as an element of statutory rape, the age of AAA was proven by the certificate of birth duly presented in trial by AAA. In the said certificate, the date of birth of AAA was November 4, 1984. Thus, AAA was below 12 years of age, or specifically, only ten (10) years, three (3) months and ten (10) days old, when the accused-appellant sexually abused her on February 14, 1995. Although the defense objected[56] to the presentation of the said certificate in view of the difference in the spelling of the name of the person referred to therein and the name of AAA, the same was already explained by the latter when she testified that she also went by the name stated in the certificate of birth and that she was the same person named therein.

The Court affirms the RTC and the Court of Appeals' award of civil indemnity and moral damages in favor of AAA. However, the award of exemplary damages is increased to ₱30,000.00 in accordance with current jurisprudence.[57]

WHEREFORE, the appeal is **DENIED.** The Decision dated August 31, 2007 of the Court of Appeals in CA-G.R. CEB CR.-H.C. No. 00394 is **AFFIRMED WITH MODIFICATION** that the award of exemplary damages is increased to ₱30,000.00. The accused is ordered to pay legal interest on all damages awarded at the legal rate of 6% from the date of finality of this Decision. No costs.

SO ORDERED.

Corona, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Perlas-Bernabe,*[*] *JJ.,* concur.

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[56] Records, p. 120.

[57] *People v. Pacheco,* G.R. No. 187742, April 20, 2010, 618 SCRA 606, 618.

[*] Per Special Order No. 1207 dated February 23, 2012.

SECOND DIVISION

[G.R. Nos. 189161 & 189173. March 21, 2012]

JUDGE ADORACION G. ANGELES, *petitioner, vs.* **HON. MA. MERCEDITAS N. GUTIERREZ, Ombudsman; HON. ORLANDO C. CASIMIRO, Overall Deputy Ombudsman; HON. SYLVIA A. SEVERO, Graft Investigator and Prosecution Officer I; HON. MARILOU B. ANCHETA-MEJICA, Acting Director, PIAB-D; HON. JOSE T. DE JESUS, JR., Assistant Ombudsman, PAMO; All of the Ombudsman; and SSP EMMANUEL Y. VELASCO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*, CONSTRUED. — *[C]ertiorari* is an extraordinary prerogative writ that is never demandable as a matter of right. Also, it is meant to correct only errors of jurisdiction and not errors of judgment committed in the exercise of the discretion of a tribunal or an officer. This is especially true in the case of the exercise by the Ombudsman of its constitutionally mandated powers. That is why this Court has consistently maintained its well-entrenched policy of non-interference in the Ombudsman's exercise of its investigatory and prosecutorial powers.

2. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION, DEFINED; NOT PRESENT IN CASE AT BAR. — This Court acknowledges exceptional cases calling for a review of the Ombudsman's action when there is a charge and sufficient proof to show grave abuse of discretion. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction; or the exercise of power in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility. The abuse must be in a manner so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. The determination of grave abuse of discretion as the exception to the general rule of non-interference in the

Ombudsman's exercise of its powers is precisely the province of the extraordinary writ of *certiorari*. However, we highlight the exceptional nature of that determination.

3. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OMBUDSMAN; SUPREME COURT WILL NOT ORDINARILY INTERFERE WITH THE OMBUDSMAN'S EXERCISE OF HIS INVESTIGATIVE AND PROSECUTORIAL POWERS WITHOUT GOOD AND COMPELLING REASONS. — The general rule has always been non-interference by the courts in the exercise by the office of the prosecutor or the Ombudsman of its plenary investigative and prosecutorial powers. In *Esquivel v. Ombudsman*, we explained thus: The Ombudsman is empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. **Settled is the rule that the Supreme Court will not ordinarily interfere with the Ombudsman's exercise of his investigatory and prosecutory powers without good and compelling reasons to indicate otherwise**. Said exercise of powers is based upon the constitutional mandate and the court will not interfere in its exercise. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman, but upon practicality as well. Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the office and the courts, in much the same way that courts will be swamped if they had to review the exercise of discretion on the part of public prosecutors each time they decided to file an information or dismiss a complaint by a private complainant.

4. ID.; ID.; ID.; ID.; TO CONDUCT A PRELIMINARY INVESTIGATION IS DISCRETIONARY UPON THE OMBUDSMAN. — The determination by the Ombudsman of probable cause or of whether there exists a reasonable ground to believe that a crime has been committed, and that the accused is probably guilty thereof, is usually done after the conduct of a preliminary investigation. However, a preliminary investigation is by no means mandatory. The Rules of Procedure of the Office of the Ombudsman (Ombudsman Rules of Procedure), specifically Section 2 of Rule II, states: *Evaluation*.

— Upon evaluating the complaint, the investigating officer shall recommend whether it may be: a) **dismissed outright for want of palpable merit**; b) referred to respondent for comment; c) indorsed to the proper government office or agency which has jurisdiction over the case; d) forwarded to the appropriate officer or official for fact-finding investigation; e) referred for administrative adjudication; or f) **subjected to a preliminary investigation**. Thus, the Ombudsman need not conduct a preliminary investigation upon receipt of a complaint. Indeed, we have said in *Knecht v. Desierto* and later in *Mamburao, Inc. v. Office of the Ombudsman* and *Karaan v. Office of the Ombudsman* that should investigating officers find a complaint utterly devoid of merit, they may recommend its outright dismissal. Moreover, **it is also within their discretion to determine whether or not preliminary investigation should be conducted.** The Court has undoubtedly acknowledged the powers of the Ombudsman to **dismiss a complaint outright without a preliminary investigation** in *The Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*.

5. ID.; ID.; ENGAGING IN PRIVATE PRACTICE OF LAW; NOT PRESENT WHEN THE LAWYER WAS NOT CUSTOMARILY OR HABITUALLY HOLDING HIMSELF OUT TO THE PUBLIC AS LAWYER AND DEMANDING PAYMENT FOR THOSE SERVICES. — [R]espondent's isolated act of filing a pleading did not necessarily constitute private practice of law. We have, in fact, said so in *Maderada v. Mediodea*, citing *People v. Villanueva*: Private practice has been defined by this Court as follows: "Practice is more than an isolated appearance, for it consists in frequent or customary action, a succession of acts of the same kind. In other words, it is frequent habitual exercise. Practice of law to fall within the prohibition of statute [referring to the prohibition for judges and other officials or employees of the superior courts or of the Office of the Solicitor General from engaging in private practice] has been interpreted as customarily or habitually holding one's self out to the public, as a lawyer and demanding payment for such services. x x x." Clearly, by no stretch of the imagination can the act of respondent Velasco be considered private practice, since he was not customarily or habitually holding himself out to the public as a lawyer and demanding payment for those services.

The appellate court also noted that, on the contrary, he filed the motion in good faith and in the honest belief that he was performing his duty as a public servant.

6. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER IS ENJOINED FROM FILING MULTIPLE ACTIONS ARISING FROM THE SAME CAUSE AND FROM MISUSING COURT PROCESS; CASE AT BAR. — Canon 12 of the Code of Professional Responsibility enjoins a lawyer from filing multiple actions arising from the same cause and from misusing court process. Judging from the number of cases and the vengeful tone of the charges that the parties have hurled against each other in their pleadings, they seem more bent on settling what has become a personal score between them, rather than on achieving the ends of justice. The parties are warned against trifling with court process. This case shall, hopefully, serve as a reminder of their ethical and professional duties and put an immediate end to their recriminations.

APPEARANCES OF COUNSEL

Alentajan Law Office for petitioner.

D E C I S I O N

SERENO, *J.*:

The Case

This is a special civil action for *certiorari* under Rule 65 of the 1997 Rules of Court. The Court is once again asked to determine whether the Office of the Ombudsman (Ombudsman) committed grave abuse of discretion in the exercise of its discretionary powers to investigate and prosecute criminal complaints.

This Petition dated 01 September 2009 seeks to set aside the Joint Order[1] dated 21 March 2007 of the Ombudsman (the questioned Joint Order) exonerating respondent Senior State

[1] Annex "B" of the Petition for *Certiorari*; *rollo*, pp. 33-42.

Prosecutor Emmanuel Y. Velasco (respondent Velasco or respondent) from the charges filed by petitioner Judge Adoracion G. Angeles (petitioner Judge Angeles or petitioner).

The Facts

The Complaint filed with the Ombudsman

Petitioner Judge Angeles was, at the time this Petition was filed, the Presiding Judge of Branch 121 of the Caloocan City Regional Trial Court (RTC); while private respondent Velasco was a senior state prosecutor at the Department of Justice (DOJ).

On 20 February 2007, petitioner Judge Angeles filed a criminal Complaint against respondent Velasco with the Ombudsman[2] and sought his indictment before the Sandiganbayan for the following acts allegedly committed in his capacity as a prosecutor:

> 1. Giving an unwarranted benefit, advantage or preference to the accused in a criminal case for smuggling by failing to present a material witness;
>
> 2. Engaging in private practice by insisting on the reopening of child abuse cases against petitioner;
>
> 3. Falsifying a public document to make it appear that a clarificatory hearing on the child abuse Complaint was conducted.[3]

Failure to present a material witness

According to the Complaint, respondent Velasco, who was the trial prosecutor in a criminal case involving the smuggling of jewelry,[4] failed to present a material witness in the aforesaid case.[5] The witness, a gemmologist of the Bureau of Customs,

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[2] Docketed as Case Nos. OMB-C-C-07-0103-C and OMB-C-A-O7-0117-C.

[3] Complaint (Annex "C" of the Petition for *Certiorari*), *rollo*, pp. 43-50.

[4] *People of the Philippines v. Daniel Lintag*, docketed as Criminal Case No. 99-0-129 and raffled off to Branch 108 of the Pasay City Regional Trial Court, presided by Judge Priscilla Mijares.

[5] *Supra* note 3, at 6-7; *rollo*, pp. 48-49.

was to testify on the type of substance making up the pieces of smuggled jewelry.[6]

According to petitioner, considering the materiality of the gemmologist's testimony, which respondent must have known of, since he was the handling trial prosecutor of the case, his failure to offer the said testimony in court shows that he tried to suppress the evidence in favor of the accused in the said case. This act was alleged to be in violation of Section 3(e) of the Anti Graft and Corrupt Practices Act,[7] which considers as a corrupt practice the acts of public officers that give unwarranted benefits to any private party through either manifest partiality, evident bad faith, or gross inexcusable negligence in the discharge of their official functions.[8]

The gemmologist, however, was eventually presented as a witness after respondent Velasco had filed a Motion to adduce additional evidence in the said case.[9]

Insistence on the reopening of child abuse cases

The second act complained of refers to respondent Velasco's filing of two Petitions to reopen the child abuse cases filed against petitioner Judge Angeles. Petitioner was previously charged with inflicting physical and psychological abuse on Maria

[6] Motion to Present Additional Witness (Annex "I" of Complaint), *rollo*, p. 134.

[7] "*Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions." (Republic Act No. 3019, Section 3)

[8] *Supra* note 3, at 6; *rollo*, p. 48.

[9] *Id.*

Mercedes Vistan, her 13-year-old grandniece.[10] Respondent was the one who conducted the preliminary investigation of the Complaint for child abuse and later indicted petitioner for 21 counts thereof.[11] However, the DOJ later on reversed respondent Velasco's recommendation[12] upon a Petition for Review filed by petitioner. Consequently, the Informations, which had been filed in the meantime, were ordered withdrawn by the trial court.[13] Petitioner later filed an administrative Complaint against respondent for gross misconduct, gross ignorance of the law, incompetence, and manifest bad faith arising from the alleged malicious indictment.

According to petitioner, the move of respondent to reopen the child abuse cases was allegedly meant to exact vengeance for petitioner's filing of the above-mentioned administrative Complaint.[14] Meanwhile, the two Petitions to reopen the child abuse cases, which were filed by respondent in the DOJ and the Office of the President, were denied for having been filed in the wrong venues.

Petitioner alleges in her Complaint that since respondent Velasco was not the trial prosecutor in the said case, his unauthorized act of filing two Petitions to reopen the child abuse cases constituted a violation of Section 7(b)(2) of the Code of Conduct and Ethical Standards for Public Officials and Employees.[15] This code considers as unlawful the acts of public

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[10] *Supra* note 3, at 4-6; *rollo*, pp. 46-48.

[11] Resolution dated 20 June 1999 (Annex "A" of Complaint), *rollo*, pp. 51-58.

[12] Resolution dated 4 April 2000 (Annex "B" of Complaint), *rollo*, pp. 59-70.

[13] Order of the RTC dated 3 May 2000 (Annex "C" of Complaint), *rollo*, p. 71.

[14] *Supra* note 3, at 4; *rollo*, p. 46.

[15] "*Prohibited Acts and Transactions.* - In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

officials and employees engaging in the private practice of their profession, unless authorized by the Constitution or by law.[16] This single act of moving to reopen the child abuse cases was the only instance of private practice imputed to respondent Velasco. No other act constituting private practice was cited by petitioner.

Falsification of Public Document

The alleged falsification of public document arose from the same preliminary investigation conducted by respondent in the child abuse cases mentioned above. According to petitioner Judge Angeles, respondent Velasco made it appear that he had conducted a clarificatory hearing on the Complaint for child abuse on 22 June 1999 as shown in the Minutes[17] of the said hearing.[18] Petitioner alleges that Leonila Vistan, the witness who supposedly attended the hearing, was seriously sick and could not have appeared at the alleged clarificatory hearing.[19] Moreover, respondent had, in fact, resolved the cases two days earlier, on 20 June 1999, as shown by the date on the Resolution indicting petitioner. Thus, the latter alleges, the Minutes of the hearing on 22 June 1999 must have been falsified by respondent by making it appear that Leonila Vistan had participated in an inexistent proceeding. This act is in violation of Article 171 of

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xxx xxx xxx

(b) Outside employment and other activities related thereto. - Public officials and employees during their incumbency shall not:

xxx xxx xxx

(2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions;

xxx xxx xxx" (Republic Act No. 6173, Section 7)

[16] *Supra* note 3, at 4-5; *rollo*, pp. 46-47.

[17] Minutes of the Clarificatory Hearing dated 22 June 1999 (Annex "D" of Complaint), *rollo*, p. 72.

[18] *Supra* note 3, at 2-3; *rollo*, pp. 44-45.

[19] *Id.* at 3, *rollo*, p. 45.

the Revised Penal Code,[20] which criminalizes it as a falsification of a public document.[21]

The Decision of the Ombudsman

In the questioned Joint Order, the Ombudsman dismissed the charges against respondent Velasco. It found that after evaluation of the facts and evidence presented by complainant, there was no cause to conduct a preliminary investigation or an administrative adjudication with regard to the charges.

On the first charge of suppression of testimonial evidence in connection with the smuggling case, the Ombudsman dismissed the charge on the ground that petitioner had no sufficient personal interest in the subject matter of the grievance.[22] The Ombudsman explained that petitioner was neither one of the parties nor the presiding judge in the said criminal case and, therefore, had no personal interest in it.

Moreover, granting that the personal interest of petitioner was not in issue, respondent Velasco acted based on his discretion as prosecutor and his appreciation of the evidence in the case,

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[20] Falsification by public officer, employee or notary or ecclesiastic minister. – The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x x x x x x x

2. causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate; (Revised Penal Code, Article 171)

[21] *Supra* note 3, at 3; *rollo*, p. 45.

[22] Pursuant to paragraph 4, Section 20 of R.A. 6770 (The Ombudsman Act), which states:

Section 20. Exceptions. — The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

x x x x x x x x x

(4) The complainant has no sufficient personal interest in the subject matter of the grievance; xxx

and any lapse in his judgment cannot be a source of criminal liability. The Ombudsman said that it had no authority to investigate the prosecutor's exercise of discretion, unless there was sufficient evidence that the exercise was tainted with malice and bad faith.[23]

The Ombudsman likewise dismissed the second charge of private practice of profession on the ground of failure to exhaust administrative remedies.[24] It pointed out that petitioner should have first elevated her concern to the DOJ, which had primary jurisdiction over respondent's actions and conduct as public prosecutor.[25] Moreover, the Ombudsman found that respondent Velasco was not engaged in private practice when he filed the two Petitions for the reopening of the child abuse cases against petitioner, since he was the investigating prosecutor of the said cases.[26]

Finally, on the falsification of a public document, which was also dismissed, the Ombudsman said that the issue should have been raised earlier, when petitioner Judge Angeles filed her Petition for Review of the Resolution of respondent Velasco. Moreover, petitioner should have substantiated the allegation of falsification, because the mere presentation of the alleged falsified document did not in itself establish falsification. The Ombudsman also ruled that with the belated filing of the charge and the reversal by the DOJ of respondent Velasco's Resolution indicting petitioner, the materiality of the alleged falsified document is no longer in issue.[27]

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[23] Joint Order of the Ombudsman (Annex "B" of the Petition for *Certiorari*), pp. 8-9; *rollo*, pp. 40-41.

[24] Pursuant to The Ombudsman Act, Sec. 20, par. 1, which states:

Section 20. Exceptions. — The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

(1) The complainant has an adequate remedy in another judicial or quasi-judicial body;xxx

[25] *Supra* note 23, at 6-7; *rollo*, pp. 38-39.

[26] *Id.* at 7-8; *rollo*, pp. 39-40.

[27] *Id.* at 5-6; *rollo*, pp. 37-38.

Petitioner filed a Motion for Reconsideration[28] of the questioned Joint Order, which was denied by the Ombudsman for lack of merit.[29]

Hence, the present Rule 65 Petition.

Issue

Whether the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the Complaint against respondent Velasco.

The Court's Ruling

We dismiss the Petition.

I

Power of the Court over the Ombudsman's Exercise of its Investigative and Prosecutorial Powers

As a general rule, the Court does not interfere with the Ombudsman's exercise of its investigative and prosecutorial powers without good and compelling reasons. Such reasons are clearly absent in the instant Petition.

At the outset, we emphasize that *certiorari* is an extraordinary prerogative writ that is never demandable as a matter of right. Also, it is meant to correct only errors of jurisdiction and not errors of judgment committed in the exercise of the discretion of a tribunal or an officer. This is especially true in the case of the exercise by the Ombudsman of its constitutionally mandated powers. That is why this Court has consistently maintained its well-entrenched policy of non-interference in the Ombudsman's exercise of its investigatory and prosecutorial powers.[30]

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[28] Motion for Reconsideration dated 14 January 2008 (Annex "D" of the Petition for *Certiorari*), *rollo,* pp. 135-157.

[29] Ombudsman Joint Order dated 30 June 2008 (Annex "A" of the Petition for *Certiorari*), *rollo,* pp. 29-32.

[30] *Kalalo v. Office of the Ombudsman*, G.R. No. 158189, 23 April 2010, 619 SCRA 141; *ABS-CBN Broadcasting Corporation v. Office of the Ombudsman*, G.R. No. 133347, 23 April 2010, 619 SCRA 130; *De*

General Rule of Non-Interference with the Plenary Powers of the Ombudsman

The general rule has always been non-interference by the courts in the exercise by the office of the prosecutor or the Ombudsman of its plenary investigative and prosecutorial powers. In *Esquivel v. Ombudsman*,[31] we explained thus:

The Ombudsman is empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. **Settled is the rule that the Supreme Court will not ordinarily interfere with the Ombudsman's exercise of his investigatory and prosecutory powers without good and compelling reasons to indicate otherwise**. Said exercise of powers is based upon the constitutional mandate and the court will not interfere in its exercise. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman, but upon practicality as well. Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the office and the courts, in much the same way that courts will be swamped if they had to review the exercise of discretion on the part of public

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Guzman v. Gonzalez, G.R. No. 158104, 26 March 2010, 616 SCRA 546; *People of the Philippines v. Castillo*, G.R. No. 171188, 19 June 2009, 590 SCRA 95; *Presidential Commission on Good Government v. Desierto*, G.R. No. 139296, 23 November 2007, 538 SCRA 207; *Acuña v. Deputy Ombudsman for Luzon*, 490 Phil. 640 (2005); *Andres v. Cuevas*, 499 Phil. 36 (2005); *Reyes v. Hon. Atienza*, 507 Phil. 653 (2005); *Jimenez v. Tolentino*, 490 Phil. 367 (2005); *Nava v. Commission on Audit*, 419 Phil. 544 (2001); *Baylon v. Office of the Ombudsman*, 423 Phil. 705 (2001); *Cabahug v. People of the Philippines*, 426 Phil.490 (2002); *Esquivel v. Ombudsman*, 437 Phil. 702 (2002); *Flores v. Office of the Ombudsman*, 437 Phil. 684 (2002); *Roxas v. Hon. Vasquez*, 411 Phil. 276 (2001); *Layus v. Sandiganbayan*, 377 Phil. 1067 (1999), *Rodrigo v. Sandiganbayan*, 362 Phil. 646 (1999); *Camanag v. Hon. Guerrero*, 335 Phil. 945 (1997); *Ocampo v. Ombudsman*, G.R. Nos. 103446-47, 30 August 1993, 225 SCRA 725; *Young v. Office of the Ombudsman*, G.R. No. 110736, 27 December 1993, 228 SCRA 718.

[31] 437 Phil. 702 (2002).

prosecutors each time they decided to file an information or dismiss a complaint by a private complainant. (Emphasis supplied; citations omitted.)

In *Presidential Commission on Good Government v. Desierto*,[32] we further clarified the plenary powers of the Ombudsman. We emphasized that if the latter, using professional judgment, finds a case dismissible, the Court shall respect that finding, unless the exercise of such discretionary power was tainted with grave abuse of discretion.

The Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto[33] explained the rationale for the plenary powers of the Ombudsman, which is **virtually free** from legislative, executive or judicial intervention. Its plenary powers were constitutionally designed to insulate it from outside pressure and improper influence. Accordingly, the Court has consistently respected and recognized, as we do now in this case, the independence and competence of the Ombudsman, as it acts as "the champion of the people and the preserver of the integrity of public service."

The Discretionary Nature of Preliminary Investigation

The determination by the Ombudsman of probable cause or of whether there exists a reasonable ground to believe that a crime has been committed, and that the accused is probably guilty thereof, is usually done after the conduct of a preliminary investigation. However, a preliminary investigation is by no means mandatory.

The Rules of Procedure of the Office of the Ombudsman (Ombudsman Rules of Procedure),[34] specifically Section 2 of Rule II, states:

Evaluation. — Upon evaluating the complaint, the investigating officer shall recommend whether it may be: a) **dismissed outright**

[32] G.R. No. 139296, 23 November 2007, 538 SCRA 207.

[33] 415 Phil. 135 (2001).

[34] Administrative Order No. 07 of the Ombudsman.

for want of palpable merit; b) referred to respondent for comment; c) indorsed to the proper government office or agency which has jurisdiction over the case; d) forwarded to the appropriate officer or official for fact-finding investigation; e) referred for administrative adjudication; or f) **subjected to a preliminary investigation**.

Thus, the Ombudsman need not conduct a preliminary investigation upon receipt of a complaint. Indeed, we have said in *Knecht v. Desierto*[35] and later in *Mamburao, Inc. v. Office of the Ombudsman*[36] and *Karaan v. Office of the Ombudsman*[37] that should investigating officers find a complaint utterly devoid of merit, they may recommend its outright dismissal. Moreover, **it is also within their discretion to determine whether or not preliminary investigation should be conducted.**

The Court has undoubtedly acknowledged the powers of the Ombudsman to **dismiss a complaint outright without a preliminary investigation** in *The Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*.[38]

We reiterate that the Ombudsman has full discretion to determine whether a criminal case should be filed, including whether a preliminary investigation is warranted. The Court therefore gives due deference to the Ombudsman's decision to no longer conduct a preliminary investigation in this case on the criminal charges levelled against respondent Velasco.

II

No Grave Abuse of Discretion in the Ombudsman's Evaluation of Evidence

This Court acknowledges exceptional cases calling for a review of the Ombudsman's action when there is a charge and sufficient proof to show grave abuse of discretion.

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35 353 Phil. 494 (1998).

36 398 Phil. 762 (2000).

37 476 Phil. 536 (2004).

38 *Supra* note 31.

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction; or the exercise of power in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility. The abuse must be in a manner so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[39]

The determination of grave abuse of discretion as the exception to the general rule of non-interference in the Ombudsman's exercise of its powers is precisely the province of the extraordinary writ of *certiorari*. However, we highlight the exceptional nature of that determination.

In this Petition, we do not find any grave abuse of discretion that calls for the Court's exceptional divergence from the general rule.

Notably, the burden of proof to show grave abuse of discretion is on petitioner, and she has failed to discharge this burden. She merely states why she does not agree with the findings of the Ombudsman, instead of demonstrating and proving grave abuse of discretion. In her arguments, petitioner would also have us pass upon the factual findings of the Ombudsman. That we cannot do, for this Court is not a trier of facts.

Even if we were to extend liberally the exception to the general rule against the review of the findings of the Ombudsman, an examination of the records would show that no grave abuse of discretion was demonstrated to warrant a reversal of the Joint Order dismissing the Complaint against respondent Velasco.

A. On the first charge of suppression of evidence

On the charge of suppression of evidence arising from the failure of respondent Velasco to present the testimony of a material witness, the Ombudsman found – and we defer to its findings – that he acted based on his discretion as prosecutor

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[39] *Roquero v. The Chancellor of UP-Manila*, G.R. No. 181851, 9 March 2010, 614 SCRA 723.

and on his appreciation of the evidence in the case, and any lapse in his judgment cannot be a source of criminal liability. The Ombudsman also found that there was no sufficient evidence that the failure of respondent to present the witness was tainted with malice; or that the failure of respondent to do so gave any private party unwarranted benefit, advantage or preference in the discharge of the former's official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence.

Moreover, in G.R. No. 187596,[40] a case involving the same incidents and parties as the present Petition, this Court affirmed the factual findings of the Court of Appeals (CA). We take judicial notice of the CA's factual finding that the charge of suppression of evidence by respondent in the smuggling case was dispelled by the Chief State Prosecutor himself in a Certification dated 17 October 2002.[41] The Certification vouching for the integrity and competence of respondent in his handling of the smuggling case states:

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[40] *Judge Adoracion G. Angeles v. SSP Emmanuel Y. Velasco*, G.R. No. 187596, 29 June 2009 (Unpublished).

[41] In the said case, petitioner Judge Adoracion Angeles filed on 25 April 2003, an administrative case against respondent Velasco before the DOJ for gross misconduct, gross ignorance of the law, incompetence and manifest bad faith on the basis of six charges. The charges include the very same three charges in the Complaint before the Ombudsman, which dismissed the same, a dismissal that is now the subject of the present Petition for Review on *Certiorari*. The administrative case was dismissed by the DOJ on 9 February 2004. Her Motion for Reconsideration was denied on 11 June 2004. She then elevated her case to the Office of the President, which dismissed her Petition for Review on 4 July 2005 and denied her Motion for Reconsideration on 13 September 2006. She then filed a Petition for Review under Rule 43 of the 1997 Rules of Court before the CA, which dismissed her Petition in a Decision dated 30 June 2008 and denied her Motion for Reconsideration in a Resolution dated 24 April 2009. Thus, petitioner filed a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court before the Supreme Court, which on 29 June 2009 denied her Petition for failure to comply with procedural rules, as well as for failure to sufficiently show that the CA committed any reversible error in its assailed Decision and Resolution.

This is to certify that I had never called the attention nor even had castigated State Prosecutor EMMANUEL Y. VELASCO with regard to the way he handled the case of *People of the Philippines versus Lintag, et al.* (Pasay Regional Trial Court, Criminal Case Number 99-0129, for violation of the Tariff and Customs Code of the Philippines) specifically with regard to the aspect of the presentation of one of the prosecution's witnesses, a gemologist (sic). In fact, SP Velasco successfully prosecuted said case.[42]

Thus, we find no grave abuse of discretion in the Ombudsman's dismissal of the first charge.

However, we need to clarify that we cannot subscribe to the other reason for the Ombudsman's dismissal of the charge pursuant to paragraph 4, Section 20 of the Ombudsman Act. The provision allows the Ombudsman to decide not to conduct the necessary investigation of any administrative act or omission complained of, if it believes that the complainant has no sufficient personal interest in the subject matter of the grievance. It is clear that, in relation to Section 19, Section 20 of the Ombudsman Act applies only to administrative cases. As for Section 19, its subject heading is "Administrative Complaints." It lists acts or omissions that may be the subject of a complaint on which the Ombudsman shall act. On the other hand, the subject heading of Section 20 is "Exceptions." It lists the exceptional situations in which the Ombudsman has the option not to investigate an administrative complaint even when its subject is an act or omission listed in Section 19. That both Sections 19 and 20 of the Ombudsman Act apply only to administrative complaints is made even clearer in the Ombudsman Rules of Procedure. Their counterpart provisions appear in the Ombudsman Rules of Procedure under Rule III which outlines the procedure for administrative cases.[43] Clearly, then, paragraph 4, Section 20

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[42] Decision of the CA in CA-GR SP No. 96353 (Annex "B" of respondent's Comment on the Petition for *Certiorari)*, pp. 24-25; *rollo*, pp. 244-245.

[43] Rule III, Procedure in Administrative Cases

Section 1. Grounds for administrative complaint. – An administrative complaint may be filed for acts or omissions which are:

of the Ombudsman Act applies only to administrative complaints. It should not have been used by the Ombudsman as a ground to dismiss the first charge, since the Complaint filed by petitioner before the Ombudsman was criminal in nature. The criminal nature of petitioner's Complaint is clear from its prayer seeking the indictment of respondent before the Ombudsman.[44] This lapse notwithstanding, we do not find any arbitrariness or whim in the manner that the Ombudsman disposed of the charge. If there was any abuse of discretion at all, it was not grave.

B. On the second charge of private practice

The Ombudsman found that respondent Velasco was not engaged in private practice when he filed two Petitions for the reopening of the child abuse cases against petitioner on the ground that respondent was acting in his capacity as the investigating prosecutor of the said cases. Again, this Court takes judicial notice of the CA's finding in G.R. No. 187596, adverted to earlier, that respondent's isolated act of filing a

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a) contrary to law or regulations;

b) unreasonable, unfair, oppressive or discriminatory;

c) inconsistent with the general course of an agency's functions though in accordance with law;

d) based on a mistake of law or an arbitrary ascertainment of facts;

e) in the exercise of discretionary powers but for an improper purpose;

f) otherwise irregular, immoral or devoid of justification;

g) due to any delay or refusal to comply with the referral or directive of the Ombudsman or any of his deputies against the officer or employee to whom it was addressed; and

h) such other grounds provided for under E.O. 292 and other applicable laws.

xxx xxx xxx

Section 4. Evaluation. – Upon receipt of the complaint, the same shall be evaluated to determine whether the same may be:

a) dismissed outright for any of the grounds stated under Section 20 of RA 6770, provided, however, that the dismissal thereof is not mandatory and shall be discretionary on the part of the Ombudsman or the Deputy Ombudsman concerned;

[44] *Supra* note 3, at 7; *rollo*, p. 49.

pleading did not necessarily constitute private practice of law.[45] We have, in fact, said so in *Maderada v. Mediodea*,[46] citing *People v. Villanueva*:[47]

Private practice has been defined by this Court as follows:

"Practice is more than an isolated appearance, for it consists in frequent or customary action, a succession of acts of the same kind. In other words, it is frequent habitual exercise. Practice of law to fall within the prohibition of statute [referring to the prohibition for judges and other officials or employees of the superior courts or of the Office of the Solicitor General from engaging in private practice] has been interpreted as customarily or habitually holding one's self out to the public, as a lawyer and demanding payment for such services. x x x."

Clearly, by no stretch of the imagination can the act of respondent Velasco be considered private practice, since he was not customarily or habitually holding himself out to the public as a lawyer and demanding payment for those services. The appellate court also noted that, on the contrary, he filed the motion in good faith and in the honest belief that he was performing his duty as a public servant.[48]

Thus, the Ombudsman did not commit any grave abuse of discretion when it dismissed the second charge against respondent Velasco.

However, we again need to point out that we do not share the Ombudsman's finding that the charge is dismissible on the ground of failure to exhaust administrative remedies pursuant to paragraph 1, Section 20 of the Ombudsman Act. As already explained earlier, the said provision applies only to administrative cases, while the Complaint before the Ombudsman was not administrative, but criminal, in nature. Still, we do not find any abuse of discretion when the Ombudsman proffered this ground for dismissing the second charge.

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45 *Supra* note 40, at 21; *rollo*, p. 241.

46 459 Phil. 701 (2003).

47 121 Phil. 894 (1965).

48 *Supra* note 40, at 22; *rollo*, p. 242.

C. On the third charge of falsification of public document

Finally, the Ombudsman correctly found that the charge of falsification had not been substantiated, and that the mere presentation of the alleged manufactured document alone would not in itself establish falsification. To recall, petitioner Angeles claimed that Leonila Vistan could not have appeared before respondent Velasco because she was sick, but offered no supporting evidence. Also, it does not follow that a clarificatory hearing could not have been conducted, just because respondent Velasco had prepared a Resolution on 20 June 1999, two days before that hearing.

Moreover, as found by the CA in G.R. No. 187596 adverted to earlier, a clarificatory hearing was in fact conducted. The appellate court found that the declarations of petitioner could not prevail over the positive assertion of Percival Abril and Jesusa Hernandez, who testified that they had seen Leonila Vistan before Velasco at the clarificatory hearing on 22 June 1999.[49]

However, the Court differs with the Ombudsman on the latter's pronouncement that the issue of falsification of public document should have been raised by petitioner earlier, when she filed her Petition for Review of the Resolution of respondent Velasco; and that, consequently, the charge of falsification of a public document was no longer in issue because of its belated filing. We draw attention to the fact that the Petition for Review of respondent's Resolution indicting petitioner Judge Angeles was under an entirely different proceeding. The purpose of the Petition was to reverse the aforesaid Resolution, and not to exact criminal liability on respondent for the crime of falsification of a public document, as in the Complaint before the Ombudsman. Thus, it cannot be said that the issue of falsification of a public document in the criminal Complaint was raised belatedly, because the Complaint was not a continuation of the previous Petition for Review of respondent's Resolution. The two proceedings were completely independent of each other. This lapse, however, did not constitute grave abuse of discretion.

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[49] *Supra* note 40, at 21; *rollo*, p. 241.

In sum, this Court finds no compelling reason to depart from its long-standing policy of non-interference in the exercise by the Ombudsman of its investigatory and prosecutorial powers which, as we have emphasized, are plenary.

Although the Court diverges from some of the conclusions reached by the Ombudsman, we find that its dismissal of the charges against respondent Velasco was arrived at after a rational deliberation. Such deliberation was shown by its reasoned disposition of the case in the exercise of its constitutionally mandated discretionary powers. The Ombudsman did not overstep the boundaries of its plenary powers and acted within the permissible limits. We do not find any arbitrariness or abuse that was so gross and patent in the manner it exercised its discretion as would warrant this Court's reversal.

Absent a clear showing of grave abuse of discretion, we uphold the findings of the Ombudsman.

Final Note

Finally, the Court notes with strong disapproval both parties' resort to abuse of the judicial processes of this Court. This is the third case we know of that the parties have filed against each other, and that has reached the Supreme Court.[50]

This fact is especially regrettable, considering that petitioner as judge and respondent as prosecutor should have been well-cognizant of our clogged court dockets and should have thus exercised more restraint in filing cases against each other. Canon 12 of the Code of Professional Responsibility enjoins a lawyer from filing multiple actions arising from the same cause and from misusing court process.[51] Judging from the number of cases and the vengeful tone of the charges that the parties have hurled against each other in their pleadings, they seem more bent on

[50] The two other cases are *Judge Adoracion Angeles v. Hon. Manuel E. Gaite*, G.R. No. 176596, 23 March 2011, and *Judge Adoracion Angeles v. Emmanuel Y. Velasco*, G.R. No. 187596, 29 June 2009 (Unpublished).

[51] The pertinent Rules implementing Canon 12 state:

Rule 12.02 – A lawyer shall not file multiple actions arising from the same cause.

settling what has become a personal score between them, rather than on achieving the ends of justice.[52]

The parties are warned against trifling with court process. This case shall, hopefully, serve as a reminder of their ethical and professional duties and put an immediate end to their recriminations.

WHEREFORE, we **DISMISS** the Petition for *Certiorari* filed by Judge Adoracion G. Angeles. We **AFFIRM** the two Joint Orders of the Ombudsman in Case Nos. OMB-C-C-07-0103-C and OMB-C-A-O7-0117-C dated 21 March 2007 and 30 June 2008, respectively.

SO ORDERED.

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

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Rule 12.04 – A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

[52] In this Petition, petitioner Judge Angeles claims that respondent insisted on reopening the child abuse cases against her to "avenge himself" for petitioner's filing of an administrative Complaint against him. Respondent Velasco, for his part, claims that petitioner is merely "continuously seeking revenge" against him for recommending that she be indicted for 21 counts of child abuse. This has been the theme of their recriminations in this Petition and in the other cases involving them.

SECOND DIVISION

[G.R. No. 190342. March 21, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CIPRIANO CARDENAS *y* GOFRERICA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF *SHABU*; ELEMENTS. — Under Section 5 of R.A. 9165, the elements that must be proven for the successful prosecution of the illegal sale of *shabu* are as follows: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and its payment. The State has the burden of proving these elements and is obliged to present the *corpus delicti* in court to support a finding of guilt beyond reasonable doubt.

2. ID.; ID.; ID.; BUY-BUST OPERATION; CHAIN OF CUSTODY RULE; SUBSTANTIAL COMPLIANCE WITH THE PROCEDURAL ASPECT THEREOF DOES NOT NECESSARILY RENDER THE SEIZED DRUG ITEMS INADMISSIBLE; CASE AT BAR. — In *People v. Salonga*, we held that it is essential for the prosecution to prove that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit. Its identity must be established with unwavering exactitude for it to lead to a finding of guilt. Thus, drug enforcement agents and police officers involved in a buy-bust operation are required by R.A. 9165 and its implementing rules to mark all seized evidence at the buy-bust scene. x x x The chain of custody is defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements R.A. No. 9165: x x x To protect the civil liberties of the innocent, the rule ensures that the prosecution's evidence meets the stringent standard of proof beyond reasonable doubt. We have held, however that substantial compliance with the procedural aspect of the chain of custody rule does not necessarily render the seized drug items inadmissible. In *People v. Ara*, we ruled that R.A. 9165

and its IRR do not require strict compliance with the chain of custody rule.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT ARE GENERALLY CONCLUSIVE AND BINDING UPON THE APPELLATE COURT; CASE AT BAR. — The credibility of witnesses is a matter best examined by, and left to, the trial courts. The time-tested doctrine is that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge. Unlike appellate magistrates, it is the judge who can weigh such testimonies in light of the witnesses' demeanor and manner of testifying, and who is in a unique position to discern between truth and falsehood. Thus, appellate courts will not disturb the credence, or lack of it, accorded by the trial court to the testimonies of witnesses. This is especially true when the trial court's findings have been affirmed by the appellate court. For them the said findings are considered generally conclusive and binding upon this Court, unless it be manifestly shown that the trial court had overlooked or arbitrarily disregarded facts and circumstances of significance. We, thus affirm the assailed Decision of the appellate court and uphold the conviction of the accused.

APPEARANCES OF COUNSEL

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

D E C I S I O N

SERENO, *J.*:

This is an appeal from the Decision[1] dated 19 February 2009 of the Court of Appeals (CA) Second Division in CA-G.R. CR-H.C. No. 02634, which affirmed the conviction of accused-

[1] *Rollo*, pp. 2-12. The Decision dated 19 February 2009 of the CA Second Division was penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justice Portia Alino-Hormachuelos and former CA (now Supreme Court) Associate Justice Jose Catral Mendoza.

appellant for violation of Section 5, Article II of Republic Act No. 9165 (R.A. 9165), the Comprehensive Dangerous Drugs Act of 2002. Appellant was convicted by the Regional Trial Court (RTC) of Quezon City, Branch 103 in Criminal Case No. Q-03-114312 for selling the prohibited drug methylamphetamine hydrochloride or *shabu*.[2]

The Facts

On 07 January 2003, an Information was filed against accused Cipriano Cardenas *y* Gofrerica, *alias* "Ope," for violation of Section 5, Article II of R.A. 9165, allegedly committed as follows:

> That on or about the 6th day of January, 2003 in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, willfully, and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point zero five (0.05) gram of white crystalline substance containing Methylamphetamine Hydrochloride otherwise known as "*SHABU*" a dangerous drug.
>
> CONTRARY TO LAW.[3]

Upon arraignment, the accused pleaded "Not guilty" to the crime charged.[4]

Prosecution's Version of the Facts

The evidence for the prosecution shows that around 12 p.m. of 06 January 2003, the Detection and Special Operations Division of the Criminal Investigation Division Group (DSOD-CIDG) in Camp Crame received a report from its confidential informant regarding the rampant selling of *shabu* by a certain Cipriano Cardenas (*a.k.a.* "Ope") at the Payatas Area in Quezon City. Acting on the information, a team was organized to conduct a

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[2] RTC Records, pp. 144-146. The Decision dated 03 January 2007 in Criminal Case No. Q-03-114312 was penned by Presiding Judge Jaime N. Salazar, Jr.

[3] RTC Records, p. 1.

[4] *Id.* at 17.

buy-bust operation. Police Officer (PO) 3 Edgardo Palacio was head of the team and PO3 Rene Enteria was designated to act as the poseur-buyer.[5] They marked a ₱100 bill with the initials "ERP" on the lower right portion of its dorsal side and used the money in the buy-bust operation.[6] The team agreed that upon the consummation of the sale, PO3 Enteria would throw away his cigarette to signal the moment at which the drug pusher would be arrested.[7]

The team proceeded to Lupang Pangako, *Barangay* Payatas, Quezon City to conduct the buy-bust operation. At the site, PO3 Enteria was guided by the confidential informant and closely followed by PO3 Palacio and two other team members. They chanced upon the accused wearing camouflage pants and standing near a small house located on a pathway.[8] Approaching the accused, the informant introduced the police officer as the person interested to buy *shabu*. PO3 Enteria was asked how much he wanted to buy, and he answered "₱100." The accused then took out a clear plastic sachet containing a white crystalline substance from his pocket and handed it to PO3 Enteria. After handing the marked ₱100 bill to the accused, the police officer threw away his cigarette as a signal of the consummation of the buy-bust operation.[9]

PO3 Palacio and the rest of the team, who were just 15 meters away from the scene, immediately approached, arrested the accused, and frisked the latter. PO3 Palacio recovered two (2) other clear plastic sachets from the accused's right pocket. The three sachets were marked "CC-1," "CC-2" and "CC-3" – "CC" representing the initials of the accused, Cipriano Cardenas.[10] He was then brought to Camp Crame, where he

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5 *Id.* at 144.

6 TSN, 14 March 2003, p. 12.

7 *Id.* at 11.

8 RTC Records, p. 148.

9 *Id.*

10 *Id.*

was booked and investigated. The plastic sachets recovered from him were transmitted to the PNP Crime Laboratory for analysis upon the request of Police Chief Inspector Ricardo N. Sto. Domingo, Jr. of the DSOD–CIDG.[11] The results of the Initial Laboratory Report dated 07 January 2003[12] showed that the white crystalline substance contained in the three (3) heat-sealed plastic sachets tested positive for methylamphetamine hydrochloride, or *shabu*, with a total weight of 0.05 gram.[13]

On 07 January 2003, an Information for violation of Section 5, Article II of R.A. 9165, was filed against the accused.[14] The case was raffled to the Regional Trial Court (RTC), National Judicial Capital Region of Quezon City, Branch 103 and docketed as Criminal Case No. Q-03-114312.

The Accused's Version of the Facts

The accused had a different version of the facts surrounding his arrest. He claimed that around 3:00 p.m. of 06 January 2003, while he was walking home, four persons handcuffed him and forced him to board a vehicle.[15] He was taken to the CIDG office at Camp Crame, where he was informed that he was being arrested for selling *shabu*. While inside the investigation room, one of the men who arrested him gave the investigator a ₱100 bill. He claimed to have not seen the alleged *shabu* at the time of his arrest or even during the CIDG investigation or during the inquest at the public prosecutor's office.[16]

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[11] *Id.* at 7.

[12] This initial result was followed by the issuance of an official report by the PNP Crime Laboratory in Camp Crame denominated as Chemistry Report No. D-002-03 dated 07 January 2003, which states that the qualitative examination yielded positive for methylamphetamine hydrochloride, a dangerous drug. This was marked as Exhibit "G" for the prosecution; RTC Records, p. 10.

[13] The three plastic sachets were individually marked and weighed as follows: "CC-1" – 0.01 gram; "CC-2" – 0.01 gram and "CC-3" – 0.03 gram. RTC Records, pp. 9-10.

[14] *Id.* at 1.

[15] TSN, 26 April 2005, p. 3.

[16] TSN, 30 May 2005, pp. 4-6.

The Ruling of the Trial Court

A full-blown trial was held by the RTC, before which were presented PO3 Palacio and PO3 Enteria as witnesses for the prosecution. For the defense, only the accused testified in his defense. On 03 January 2007, the RTC promulgated a Decision[17] convicting him of the crime charged. The trial court gave credence to the testimonies and pieces of evidence presented by the prosecution. It ruled that the police operation had followed the normal course of a drug entrapment operation and that the arresting officers presented as prosecution witnesses were credible based on their candid and honest demeanor. The RTC considered as absurd the allegation of the accused that he had been whimsically arrested by the police officers during the operation. It found as weak and inconceivable his uncorroborated denial of the charge.

The dispostive portion of the RTC Decision reads:

> ACCORDINGLY, judgement is hereby rendered finding the accused CIRPIANO CARDENAS *y* GOFRERICA **GUILTY** beyond reasonable doubt of the crime of violation of Section 5 of R.A. 9165 (drug pushing) as charged and he is hereby sentenced to a jail term of **LIFE IMPRISONMENT** and to pay a fine of ₱500,000.00.
>
> The 3 sachets of *shabu* involved in this case are ordered transmitted to the PDEA thru the DDB for proper care and disposition as required by R.A. 9165.
>
> SO ORDERED.

The Ruling of the Court of Appeals

The accused appealed his conviction to the CA, which docketed the case as CA-G.R. CR-H.C. No. 02634. On 19 February 2009, the appellate court, through its Second Division, promulgated a Decision[18] affirming the trial court's conviction of the accused. It ruled that the prosecution was able to establish the necessary elements to prove the illegal sale of drugs under

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[17] *Supra* note 2.

[18] *Supra* note 1.

Section 5, Article II of R.A. 9165. It also found that the prosecution witnesses were credible when they testified on the custody and identity of the drugs confiscated from the accused. Thus, it affirmed *in toto* the RTC's Decision, which it found to be supported by the facts and law. The accused filed a Motion for Reconsideration, but it was denied by the appellate court for lack of merit.

The Issues

The accused elevated his appeal to this Court raising this lone issue:

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN CONVICTING THE ACCUSED-APPELLANT DESPITE NON-COMPLIANCE WITH THE REQUIREMENTS FOR THE PROPER CUSTODY OF SEIZED DANGEROUS DRUGS UNDER R.A. NO. 9165.[19]

The defense alleges that the arresting officers did not follow the required procedure for the handling of seized drugs in a buy-bust operation as stated in Section 21 of the Implementing Rules and Regulations (IRR) of R.A. 9165.[20] It points out that there is a dearth of evidence to prove that the plastic sachets recovered from the accused were marked at the crime scene in his presence immediately upon confiscation thereof.[21] Thus, the defense argues that due to the arresting officers' noncompliance with the correct procedure, the accused is entitled to an acquittal.[22]

The Ruling of the Court

We **DENY** the appeal of the accused for lack of merit and accordingly affirm the assailed Decision of the CA.

Under Section 5 of R.A. 9165, the elements that must be proven for the successful prosecution of the illegal sale of *shabu*

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[19] *Rollo*, p. 33.

[20] *Id.* at 34.

[21] *Id.* at 36.

[22] *Id.* at 41.

are as follows: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and its payment.[23] The State has the burden of proving these elements and is obliged to present the *corpus delicti* in court to support a finding of guilt beyond reasonable doubt.[24]

In the instant case, the defense does not raise any issue with regard the sale and delivery of the illegal drugs for which the accused was arrested. The point of contention pertains to the noncompliance by the arresting officers with Section 21, Article II of the IRR implementing R.A. 9165 regarding the chain of custody of seized drugs. This is an important matter because, if proven, substantial gaps in the chain of custody of the seized drugs would cast serious doubts on the authenticity of the evidence presented in court and entitle the accused to an acquittal.

In *People v. Salonga*,[25] we held that it is essential for the prosecution to prove that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit. Its identity must be established with unwavering exactitude for it to lead to a finding of guilt. Thus, drug enforcement agents and police officers involved in a buy-bust operation are required by R.A. 9165 and its implementing rules to mark all seized evidence at the buy-bust scene. Section 21 (a), Article II of the IRR, states:

> SECTION 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.
>
> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were

[23] *People v. Ara*, G.R. No. 185011, 23 December 2009, 609 SCRA 304.

[24] *People v. Coreche*, G.R. No. 182528, 14 August 2009, 596 SCRA 350.

[25] G.R. No. 186390, 02 October 2009, 602 SCRA 783.

confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

The defense wants to impress upon this Court that the arresting officers did not conduct a physical inventory of the items seized and failed to photograph them in the presence of the accused and of other personalities specified by Section 21 (a), Article II of the IRR of R.A. 9165.[26] It argues that this lapse on the part of the police officers involved in the buy-bust operation raise uncertainty and doubts as to the identity and integrity of the articles seized from the accused – whether they were the same items presented at the trial court that convicted him. Based on this noncompliance by the arresting officers, the defense prays for the acquittal of the accused.

We are not persuaded by these arguments.

The chain of custody is defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements R.A. No. 9165:

b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and used in court as evidence, and the final disposition.

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[26] *Rollo*, pp. 35-36.

To protect the civil liberties of the innocent, the rule ensures that the prosecution's evidence meets the stringent standard of proof beyond reasonable doubt. We have held, however that substantial compliance with the procedural aspect of the chain of custody rule does not necessarily render the seized drug items inadmissible. In *People v. Ara*,[27] we ruled that R.A. 9165 and its IRR do not require strict compliance with the chain of custody rule:

> As recently highlighted in *People v. Cortez* and *People v. Lazaro, Jr.*, RA 9165 and its subsequent Implementing Rules and Regulations (IRR) do not require strict compliance as to the chain of custody rule. The arrest of an accused will not be invalidated and the items seized from him rendered inadmissible on the sole ground of non-compliance with Sec. 21, Article II of RA 9165. We have emphasized that **what is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused**."
>
> Briefly stated, non-compliance with the procedural requirements under RA 9165 and its IRR relative to the custody, photographing, and drug-testing of the apprehended persons, is not a serious flaw that can render void the seizures and custody of drugs in a buy-bust operation. (Emphasis supplied.)

In the instant case, we find that the chain of custody of the seized prohibited drugs was not broken. The testimony of PO3 Palacio shows that he was the one who recovered from the accused the three plastic sachets of *shabu,* together with the marked money. He also testified that he was the one who personally brought the request for examination to the PNP Crime Laboratory and had the plastic sachets examined there. During the trial of the case, he positively identified the plastic sachets that he had recovered from the accused and had marked "CC-1, "CC-2" and "CC-3." The pertinent portions of the testimony of PO3 Palacio are as follows:

FIS. JURADO:

Q. And after you recovered the buy-bust money and these three

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[27] *Supra* note 23.

plastic sachets of *shabu*, what did you do with the accused?

WITNESS:

A. We brought them to the office.

FIS. JURADO:

Q. What happened to (sic) the office?

WITNESS:

A. He was investigated.

FIS. JURADO:

Q. How about the three plastic sachets, what did you do with these three plastic sachets.

WITNESS:

A. We have examined it at the Crime Laboratory.

FIS. JURADO:

Q. How does (sic) it brought to the Crime Laboratory?

WITNESS:

A We asked a request from our investigator.

FIS. JURADO:

Q. Is this the same request for laboratory examination that you are referring to?

WITNESS:

A. Yes sir.

FIS. JURADO:

Q. Who brought this request to the Crime Laboratory for examination?

WITNESS:

A. I sir.

FIS. JURADO:

Q. Where does it show the delivery?

WITNESS:

A. Here your honor.

(Witness pointing in open court to the document the request for laboratory examination the date when it was delivered.)

xxx xxx xxx

FIS. JURADO:

Q. xxx xxx xxx

May we request that the said documents be marked as Exhibit F and if the said plastic sachet would be shown to you, how will you be able to identify the same?

WITNESS:

A. I can identify it because it has a marking sir CC-1, CC-2, and CC-3 your Honor.

FIS. JURADO:

Q. You mean to say to this Honorable Court that the three plastic sachets has (sic) a marking CC-1, CC-2, and CC-3?

WITNESS:

A. Yes your Honor.

FIS. JURADO:

Q. What was (sic) CC stands for?

WITNESS:

A. The name of our suspect Cipriano Cardenas your Honor.[28]

PO3 Rene Enteria, who had acted as the poseur-buyer in the buy-bust operation, corroborated the testimony of PO3 Palacio and indicated that the latter was in custody of the seized drugs from the time the accused was arrested until these were sent to the crime laboratory for chemical analysis. We quote the relevant portions of PO3 Enteria's testimony from the records:

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[28] TSN, 14 March 2003, pp. 14-18.

FIS. ARAULA:

After you said a while ago that you made a pre-arranged signal, what happened then after that?

WITNESS:

PO3 Palacio approached us and arrested the subject sir.

FIS. ARAULA:

When PO3 Palacio arrested the accused, where was (sic) you?

WITNESS:

I was behind them sir.

FIS. ARAULA:

Where is the buy bust money when Palacio arrested the accused?

WITNESS:

It was recovered to (sic) Ope sir.

FIS. ARAULA:

After arresting the accused, what happened then?

WITNESS:

We returned to the police station sir.

FIS. ARAULA:

What happened to the police station?

WITNESS:

The suspect was investigated sir.

FIS. ARAULA:

Who was in possession of that transparent plastic sachet when you were going to the police station?

WITNESS:

I was the one sir.

xxx xxx xxx

FIS. ARAULA:

If that transparent plastic sachet be shown to you, can you identify that?

WITNESS:

Yes sir.

FIS ARAULA:

Showing to you this transparent plastic sachet, what can you say about this?

WITNESS:

This is the one that I purchased sir.

FIS. ARAULA:

It appears that there are three (3) transparent plastic sachets in this case, in fact this is the one that you purchased, how about these two (2) other transparent plastic sachets, where did it came (sic) from?

WITNESS:

It was recovered by Palacio after the arrest of the suspect sir.

FIS. ARAULA:

Why did you say that this is the transparent plastic sachet containing *shabu* that you purchased?

WITNESS:

Because I remember the size sir.

FIS. ARAULA:

That is the only reason, due to the size of the transparent plastic sachet?

WITNESS:

I also has (sic) initial in the plastic sir.

FIS. ARAULA:

What is the initial?

WITNESS:

Palacio was the one who made the marking sir.

xxx xxx xxx

FIS. ARAULA:

How about the evidence that you confiscated in relation to this Section 5, R.A. 9165 against the accused, where was that when there was an investigation?

WITNESS:

It was brought to the Crime Laboratory for examination sir.[29]

CROSS EXAMINATION:

ATTY. CABAROS:

Who actually recovered the *shabu* from the accused?

WITNESS:

Palacio sir.

xxx xxx xxx

COURT:

Why is it that it could (sic) seem that Palacio was the one who marked the money and he marked also all the three (3) plastic sachets? You never mark with your initial the buy bust money and you never mark with your initial that particular plastic sachet you said that was given to you by the accused, how come that it was always Palacio (who) made the marking and you as poseur buyer did not mark the items?

WITNESS:

Because when we made (the) marking, we make only one marking, your Honor.[30]

REDIRECT EXAMINATION:

FIS. ARAULA:

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[29] TSN, 29 September 2004, pp. 9-10.

[30] *Id.* at 12-13.

When this Palacio placed this mark, all the evidences that was confiscated from the accused, where were you?

WITNESS:

I was near Palacio sir.

FIS. ARAULA:

So you noticed that Palacio placed his markings to the evidences?

WITNESS:

Yes sir.[31] (Emphasis supplied.)

From these testimonies of the police officers, the prosecution established that they had custody of the drugs seized from the accused from the moment he was arrested, during the time he was transported to the CIDG office in Camp Crame, and up to the time the drugs were submitted to the crime laboratory for examination. The said police officers also identified the seized drugs with certainty when these were presented in court. With regard to the handling of the seized drugs, there are no conflicting testimonies or glaring inconsistencies that would cast doubt on the integrity thereof as evidence presented and scrutinized in court. To the unprejudiced mind, the testimonies show without a doubt that the evidence seized from the accused at the time of the buy-bust operation was the same one tested, introduced, and testified to in court. In short, there is no question as to the integrity of the evidence.

Although we find that the police officers did not strictly comply with the requirements of Section 21, Article II of the IRR implementing R.A. 9165, the noncompliance did not affect the evidentiary weight of the drugs seized from the accused, because the chain of custody of the evidence was shown to be unbroken under the circumstances of the case. We held thus in *Zalameda v. People of the Philippines*[32]:

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[31] TSN, 29 September 2004, p. 17.

[32] G.R. No. 183656, 04 September 2009, 598 SCRA 537.

Jurisprudence teems with pronouncements that failure to strictly comply with Section 21(1), 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. What is of utmost importance is the *preservation of the integrity and the evidentiary value of the seized items,* as these would be utilized in the determination of the guilt or innocence of the accused. In the present case, we see substantial compliance by the police with the required procedure on the custody and control of the confiscated items, thus showing that the integrity of the seized evidence was not compromised. We refer particularly to the succession of events established by evidence, to the overall handling of the seized items by specified individuals, to the test results obtained, under a situation where no objection to admissibility was ever raised by the defense. All these, to the unprejudiced mind, show that the evidence seized were the same evidence tested and subsequently identified and testified to in court. In *People v. Del Monte*, we explained:

> We would like to add that non-compliance with Section 21 of said law, particularly the making of the inventory and the photographing of the drugs confiscated and/or seized, will not render the drugs inadmissible in evidence. Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is *not excluded by the law or these rules*. For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will accorded it by the courts. x x x
>
> **We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to non-compliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is non-compliance with said section, is not of admissibility, but of weight – evidentiary merit or probative value – to be given the evidence. The weight to be given by the courts on said evidence depends on the circumstances obtaining in each case.** (Emphasis supplied.)

On the other hand, the accused alleges that he did not commit the crime he was charged with and claims to have not seen the evidence presented by the prosecution. It was established that he sold the seized drugs to PO3 Enteria during the buy-bust

operation, and that the sachets were found in his possession. These facts establish the elements of Section 5, R.A. 9165. The only issue the appellant raises before us is the noncompliance by the police officer with the correct procedure for the handling of the evidence seized from him. We have no reason to doubt the police officers who gave detailed accounts of what they did during the buy-bust operation. Their testimonies have adequately established the unbroken chain of custody of the seized drugs and have led us to affirm the conviction of the accused.

The credibility of witnesses is a matter best examined by, and left to, the trial courts. The time-tested doctrine is that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge. Unlike appellate magistrates, it is the judge who can weigh such testimonies in light of the witnesses' demeanor and manner of testifying, and who is in a unique position to discern between truth and falsehood. Thus, appellate courts will not disturb the credence, or lack of it, accorded by the trial court to the testimonies of witnesses. This is especially true when the trial court's findings have been affirmed by the appellate court. For them the said findings are considered generally conclusive and binding upon this Court, [33] unless it be manifestly shown that the trial court had overlooked or arbitrarily disregarded facts and circumstances of significance.[34] We, thus affirm the assailed Decision of the appellate court and uphold the conviction of the accused.

WHEREFORE, the appeal is **DENIED.** The CA Decision in CA-G.R. CR-H.C. No. 02634, *People of the Philippines v. Cipriano Cardenas y Gofrerica* dated 19 February 2009, is **AFFIRMED** in all respects.

SO ORDERED.

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

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[33] *People v. Lazaro, Jr.*, G.R. No. 186418, 16 October 2009, 604 SCRA 250.

[34] *People v. Daria, Jr.*, G.R. No. 186138, 11 September 2009, 599 SCRA 688.

THIRD DIVISION

[G.R. No. 191913. March 21, 2012]

SPO2 LOLITO T. NACNAC, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS. — The Revised Penal Code provides the requisites for a valid self-defense claim: ART. 11. *Justifying circumstances*.—The following do not incur any criminal liability: 1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur: First. Unlawful aggression; Second. Reasonable necessity of the means employed to prevent or repel it; Third. Lack of sufficient provocation on the part of the person defending himself.

2. ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION AS AN INDISPENSABLE ELEMENT, EXPLAINED; PRESENT IN CASE AT BAR. — Unlawful aggression is an indispensable element of self-defense. We explained, "Without unlawful aggression, self-defense will not have a leg to stand on and this justifying circumstance cannot and will not be appreciated, even if the other elements are present." It would "presuppose an actual, sudden and unexpected attack or imminent danger on the life and limb of a person—not a mere threatening or intimidating attitude—but most importantly, at the time the defensive action was taken against the aggressor. x x x There is aggression in contemplation of the law only when the one attacked faces real and immediate threat to one's life. The peril sought to be avoided must be imminent and actual, not just speculative." x x x Ordinarily, as pointed out by the lower court, there is a difference between the act of drawing one's gun and the act of pointing one's gun at a target. The former cannot be said to be unlawful aggression on the part of the victim. In *People v. Borreros*, We ruled that "for unlawful aggression to be attendant, there must be a real danger to life or personal safety. Unlawful aggression requires an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude x x x. Here, the act of the

[deceased] of allegedly drawing a gun from his waist cannot be categorized as unlawful aggression. Such act did not put in real peril the life or personal safety of appellant." The facts surrounding the instant case must, however, be differentiated from current jurisprudence on unlawful aggression. The victim here was a trained police officer. He was inebriated and had disobeyed a lawful order in order to settle a score with someone using a police vehicle. A warning shot fired by a fellow police officer, his superior, was left unheeded as he reached for his own firearm and pointed it at petitioner. Petitioner was, therefore, justified in defending himself from an inebriated and disobedient colleague. Even if We were to disbelieve the claim that the victim pointed his firearm at petitioner, there would still be a finding of unlawful aggression on the part of the victim.

3. ID.; ID.; ID.; ID.; REASONABLE MEANS EMPLOYED; THE LONE GUNSHOT WOUND INFLICTED ON THE VICTIM WAS A REASONABLE MEANS CHOSEN BY THE ACCUSED IN DEFENDING HIMSELF; CASE AT BAR. — To successfully invoke self-defense, another requisite is that the means employed by the accused must be reasonably commensurate to the nature and the extent of the attack sought to be averted. Supporting petitioner's claim of self-defense is the lone gunshot wound suffered by the victim. The nature and number of wounds inflicted by the accused are constantly and unremittingly considered as important indicia. x x x In the instant case, the lone wound inflicted on the victim supports the argument that petitioner feared for his life and only shot the victim to defend himself. The lone gunshot was a reasonable means chosen by petitioner in defending himself in view of the proximity of the armed victim, his drunken state, disobedience of an unlawful order, and failure to stand down despite a warning shot.

4. ID.; ID.; ID.; ID.; LACK OF SUFFICIENT PROVOCATION; PRESENT WHEN THE ACCUSED GAVE A LAWFUL ORDER AND FIRED A WARNING SHOT BEFORE SHOOTING THE ARMED AND DRUNK VICTIM; CASE AT BAR. — The last requisite for self-defense to be appreciated is lack of sufficient provocation on the part of the person defending himself or herself. As gleaned from the findings of the trial court, petitioner gave the victim a lawful order and fired a warning shot before shooting the armed and drunk victim. Absent from the shooting incident was any evidence on petitioner sufficiently provoking

the victim prior to the shooting.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT AND ITS EVALUATION ARE ENTITLED TO GREAT RESPECT AND WILL NOT BE DISTURBED ON APPEAL; EXCEPTION; PRESENT IN CASE AT BAR. — The rule is that factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal. This rule is binding except where the trial court has overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance. As earlier pointed out, the trial court did not consider certain facts and circumstances that materially affect the outcome of the instant case. We must, therefore, acquit petitioner. Given the peculiar circumstances of this case, We find that the prosecution was unable to establish beyond reasonable doubt the guilt of petitioner. Even the OSG shares this view in its Comment appealing for his acquittal.

APPEARANCES OF COUNSEL

Fidel Thaddeus L. Borja for petitioner.
The Solicitor General for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

Every circumstance favoring the accused's innocence must be duly taken into account. The proof against the accused must survive the test of reason. Strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the accused could be laid the responsibility for the offense charged. If the prosecution fails to discharge the burden, then it is not only the accused's right to be freed; it is, even more, the court's constitutional duty to acquit him.[1]

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[1] *People v. Muleta*, G.R. No. 130189, June 25, 1999, 309 SCRA 148, 175-176; citing *People v. Mejia*, G.R. Nos. 118940-41, July 7, 1997, 275 SCRA 127, 155. (Emphasis supplied.)

This treats of the Motion for Reconsideration of Our Resolution dated August 25, 2010, affirming the July 20, 2009 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 30907 entitled *People of the Philippines v. SPO2 Lolito T. Nacnac*. The CA affirmed the May 23, 2007 Judgment[3] in Criminal Case No. 10750-14 of the Regional Trial Court (RTC), Branch 14 in Laoag City, which convicted petitioner of homicide.

The Facts

An Information charged the accused as follows:

> That on or about February 20, 2003, in Dingras, Ilocos Norte, and within the jurisdiction of this Honorable Court, accused SPO2 Lolito I. Nacnac, a public officer, being then a member of the Philippine National Police, assigned with the Dingras Police Station, Dingras, Ilocos Norte, did then and there willfully, unlawfully and feloniously, with intent to kill, shoot one SPO1 Doddie Espejo with a gun resulting into the latter's death.[4]

A reverse trial ensued upon the claim of self-defense by the accused. As summarized by CA,[5] the shooting incident happened as follows:

> The victim, SPO1 Doddie Espejo[,] had a history of violent aggression and drunkenness. He once attacked a former superior, P/Insp. Laurel Gayya, for no apparent reason. On the day of his death, he visited a cock house for merriment. He was shot by accused-appellant [petitioner] on February 20, 2003 at around 10:00 p.m. at the Dingras Police Station, Dingras, Ilocos Norte.
>
> On that fateful night of February 20, 2003, accused-appellant, the victim and a number of other police officers were on duty. Their shift started at 8:00 in the morning of the same day, to end at 8:00 the next morning. Accused-appellant, being the highest ranking officer

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[2] Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Arturo G. Tayag.

[3] Penned by Presiding Judge Francisco R.D. Quilala.

[4] *Rollo*, p. 45.

[5] *Id.* at 47.

during the shift, was designated the officer-of-the-day. Shortly before 10:00 in the evening, the victim, together with then SPO1 Eduardo Basilio, took the patrol tricycle from the station grounds. When accused-appellant saw this, he stopped the victim and his colleague from using the tricycle. The victim told accused-appellant that he (the victim) needed it to go to Laoag City to settle a previous disagreement with a security of a local bar.

Accused-appellant still refused. He told the victim that he is needed at the station and, at any rate, he should stay at the station because he was drunk. This was not received well by the victim. He told accused-appellant in Ilocano: *"Iyot ni inam kapi"* (Coitus of your mother, cousin!). The victim alighted from the tricycle. SPO1 Eduardo Basilio did the same, went inside the office, and left the accused-appellant and the victim alone. The victim took a few steps and drew his .45 caliber gun which was tucked in a holster on the right side of his chest. Accused-appellant then fired his M-16 armalite upward as a warning shot. Undaunted, the victim still drew his gun. Accused-appellant then shot the victim on the head, which caused the latter's instantaneous death. Accused-appellant later surrendered to the station's Chief of Police.

The RTC Ruling

The RTC found the accused guilty of the crime charged. The RTC held that the claim of self-defense by the accused was unavailing due to the absence of unlawful aggression on the part of the victim. The dispositive portion of the RTC Judgment reads:

WHEREFORE, the accused SPO2 Lolito Nacnac is found GUILTY beyond reasonable doubt of the crime of homicide. Taking into account the mitigating circumstance of voluntary surrender, the Court hereby sentences him to an indeterminate penalty ranging from EIGHT YEARS of *prision mayor* as minimum to FOURTEEN YEARS of *reclusion temporal* as maximum. He is also ordered to pay the heirs of the deceased (1) ₱50,000.00 as indemnity for his death, (2) ₱100,000.00 as actual damages, (3) ₱50,000.00 as moral damages, and (4) ₱20,000.00 as attorney's fees. Costs against the accused.[6]

The CA Ruling

On appeal, the CA affirmed the findings of the RTC. It held that the essential and primary element of unlawful aggression

[6] *Id.* at 192.

was lacking. It gave credence to the finding of the trial court that no one else saw the victim drawing his weapon and pointing it at accused Senior Police Officer 2 (SPO2) Lolito T. Nacnac. The *fallo* of the CA Decision reads:

> WHEREFORE, the instant appeal is *DISMISSED* for lack of merit and the challenged Judgment dated May 23, 2007 in Criminal Case No. 10750-14 is *AFFIRMED IN TOTO*.[7]

On August 25, 2010, this Court issued a Resolution, denying Nacnac's petition for review for failure to sufficiently show that the CA committed any reversible error in the challenged decision and resolution as to warrant the exercise of this Court's appellate jurisdiction.

On October 11, 2010, petitioner filed a Motion for Reconsideration of this Court's Resolution dated August 25, 2010. On March 21, 2012, this Court granted the Motion and reinstated the petition. Petitioner raises the following issues:

> 1. [Whether the CA erroneously held that] the victim's drawing of his handgun or pointing it at the petitioner is not sufficient to constitute unlawful aggression based on existing jurisprudence.
>
> 2. [Whether the CA incorrectly appreciated the photo] showing the victim holding his handgun in a peculiar manner despite the fact that no expert witness was presented to testify thereto x x x.
>
> 3. [Whether petitioner] has met the second and third requisites of self-defense x x x.[8]

Petitioner argues that he did not receive a just and fair judgment based on the following: (1) the trial court did not resort to expert testimony and wrongly interpreted a photograph; (2) the trial court ignored the evidence proving unlawful aggression by the victim; (3) the trial court ignored the two gun reports and two empty shells found at the crime scene which support the claim that petitioner fired a warning shot; and (4) the trial court failed to appreciate petitioner's act of self-defense. Petitioner also

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[7] *Id.* at 58.

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

claims that the CA gravely erred in not giving proper weight and due consideration to the Comment of the Office of the Solicitor General (OSG).

In its Comment[9] dated April 27, 2011, the OSG avers that petitioner is entitled to an acquittal, or at the very least, not one but two mitigating circumstances.

Our Ruling

We revisit Our ruling in the instant case.

The Revised Penal Code provides the requisites for a valid self-defense claim:

ART. 11. *Justifying circumstances*.—The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

Unlawful Aggression

Unlawful aggression is an indispensable element of self-defense. We explained, "Without unlawful aggression, self-defense will not have a leg to stand on and this justifying circumstance cannot and will not be appreciated, even if the other elements are present."[10] It would "presuppose an actual, sudden and unexpected attack or imminent danger on the life and limb of a person—not a mere threatening or intimidating attitude—but most importantly, at the time the defensive action was taken against the aggressor. x x x There is aggression in

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[9] *Id.* at 322-332.

[10] *Palaganas v. People*, G.R. No. 165483, September 12, 2006, 501 SCRA 533, 552.

contemplation of the law only when the one attacked faces real and immediate threat to one's life. The peril sought to be avoided must be imminent and actual, not just speculative."[11]

As We held:

> Even the cocking of a rifle without aiming the firearm at any particular target is not sufficient to conclude that one's life was in imminent danger. Hence, a threat, even if made with a weapon, or the belief that a person was about to be attacked, is not sufficient. It is necessary that the intent be ostensibly revealed by an act of aggression or by some external acts showing the commencement of actual and material unlawful aggression.[12]

The following exchange showing actual and material unlawful aggression transpired during the examination of petitioner:[13]

> Atty. Lazo: At any rate, when you again prevented them from getting the tricycle telling them again that they should not get the tricycle, what happened next?
>
> Accused: When police officer Basilio alighted from the tricycle SPO1 Espejo also alighted sir.
>
> Q What did Doddie Espejo do when he alighted from the tricycle?
>
> A I saw him hold his firearm tucked on his right waist. (witness demonstrating by placing his right hand at his right sideways). And he was left handed, sir.
>
> Q And what happened next?
>
> A When I saw him holding his firearm that was the time I fired a warning shot, sir.
>
> Q And when you fired [a] warning shot, what happened next?
>
> A He drew his firearm, sir.

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[11] *People v. Dagani*, G.R. No. 153875, August 16, 2006, 499 SCRA 64, 74.

[12] *People v. Rubiso*, G.R. No. 128871, March 18, 2003, 399 SCRA 267, 273-274.

[13] *Rollo*, pp. 143-145, 150.

Q When he drew his firearm, what did you do?

A When he drew his firearm I shot him [on] his head once, sir.

x x x x

Atty. Cajigal:

Q By the way, what kind of firearm did the victim draw from his waist?

A Cal. 45, sir.

Q What firearm did you use in defending yourself?

A M-16 armalite, sir.

x x x x

Q Alright, you mean to tell the Honorable Court then that at the time that you pointed or squeezed the trigger of your gun the cal. 45 was already pointed at you?

A Yes, sir.

Q Did you ever observe if he squeezed the trigger but the gun [was] already pointed at you?

A He just pointed his firearm at me, sir.

Q Who first pointed his firearm, the victim pointed his firearm at you before you pointed your firearm at him?

A The victim, sir.

Q In short, it was the victim whose gun was first pointed at you?

A Yes, sir.

Q And that was the time when you raised your armalite and also pointed the same at him is that right?

A Yes, that was the time that I shot him, sir. (Emphasis supplied.)

According to the trial court, petitioner's claim that the victim pointed his gun at petitioner was a mere afterthought. It ruled that petitioner's sworn statement and direct testimony as well as the testimonies of SPO1 Eduardo Basilio and SPO2 Roosevelt

Ballesteros only established that the victim drew his gun. The trial court went on to differentiate the act of drawing a gun and pointing it at a target. It held that the mere act of drawing a gun cannot be considered unlawful aggression. In denying petitioner's motion for reconsideration, the CA affirmed the trial court's findings and further held that petitioner had fuller control of his physical and mental faculties in view of the victim's drunken state. It concluded that the likelihood of the victim committing unlawful aggression in "his inebriated state" was "very slim."[14]

We disagree. The characterization as a mere afterthought of petitioner's testimony on the presence of unlawful aggression is not supported by the records.

The following circumstances negate a conviction for the killing of the victim:

(1) The drunken state of the victim;

(2) The victim was also a police officer who was professionally trained at shooting;

(3) The warning shot fired by petitioner was ignored by the victim;

(4) A lawful order by petitioner was ignored by the victim; and

(5) The victim was known for his combative and drunken behavior.

As testified by the victim's companion, SPO1 Basilio, petitioner ordered him and the victim not to leave because they were on duty. SPO1 Basilio also confirmed that the victim was inebriated and had uttered invectives in response to petitioner's lawful order.[15]

Ordinarily, as pointed out by the lower court, there is a difference between the act of drawing one's gun and the act of pointing one's gun at a target. The former cannot be said to be unlawful aggression on the part of the victim. In *People*

[14] *Id.* at 63.

[15] *Id.* at 132.

v. Borreros,[16] We ruled that "for unlawful aggression to be attendant, there must be a real danger to life or personal safety. Unlawful aggression requires an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude x x x. Here, the act of the [deceased] of allegedly drawing a gun from his waist cannot be categorized as unlawful aggression. Such act did not put in real peril the life or personal safety of appellant."

The facts surrounding the instant case must, however, be differentiated from current jurisprudence on unlawful aggression. The victim here was a trained police officer. He was inebriated and had disobeyed a lawful order in order to settle a score with someone using a police vehicle. A warning shot fired by a fellow police officer, his superior, was left unheeded as he reached for his own firearm and pointed it at petitioner. Petitioner was, therefore, justified in defending himself from an inebriated and disobedient colleague. Even if We were to disbelieve the claim that the victim pointed his firearm at petitioner, there would still be a finding of unlawful aggression on the part of the victim. We quote with approval the OSG's argument[17] on this point:

> A police officer is trained to shoot quickly and accurately. A police officer cannot earn his badge unless he can prove to his trainors that he can shoot out of the holster quickly and accurately x x x. Given this factual backdrop, there is reasonable basis to presume that the appellant indeed felt his life was actually threatened. Facing an armed police officer like himself, who at that time, was standing a mere five meters from the appellant, the [latter] knew that he has to be quick on the draw. It is worth emphasizing that the victim, being a policeman himself, is presumed to be quick in firing.
>
> Hence, it now becomes reasonably certain that in this specific case, it would have been fatal for the appellant to have waited for SPO1 Espejo to point his gun before the appellant fires back.

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[16] G.R. No. 125185, May 5, 1999, 306 SCRA 680, 690.

[17] *Rollo*, p. 262.

Reasonable Means Employed

To successfully invoke self-defense, another requisite is that the means employed by the accused must be reasonably commensurate to the nature and the extent of the attack sought to be averted.[18]

Supporting petitioner's claim of self-defense is the lone gunshot wound suffered by the victim. The nature and number of wounds inflicted by the accused are constantly and unremittingly considered as important indicia.[19] In *People v. Catbagan*,[20] We aptly held:

> The means employed by the person invoking self-defense is reasonable if equivalent to the means of attack used by the original aggressor. Whether or not the means of self-defense is reasonable depends upon the nature or quality of the weapon, the physical condition, the character, the size and other circumstances of the aggressor; as well as those of the person who invokes self-defense; and also the place and the occasion of the assault.

In the instant case, the lone wound inflicted on the victim supports the argument that petitioner feared for his life and only shot the victim to defend himself. The lone gunshot was a reasonable means chosen by petitioner in defending himself in view of the proximity of the armed victim, his drunken state, disobedience of an unlawful order, and failure to stand down despite a warning shot.

Lack of Sufficient Provocation

The last requisite for self-defense to be appreciated is lack of sufficient provocation on the part of the person defending himself or herself. As gleaned from the findings of the trial court, petitioner gave the victim a lawful order and fired a warning

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[18] *People v. Escarlos*, G.R. No. 148912, September 10, 2003, 410 SCRA 463, 479.

[19] *People v. Rabanal*, G.R. No. 146687, August 22, 2002, 387 SCRA 685, 695.

[20] G.R. Nos. 149430-32, February 23, 2004, 423 SCRA 535, 557-558.

shot before shooting the armed and drunk victim. Absent from the shooting incident was any evidence on petitioner sufficiently provoking the victim prior to the shooting.

All told, We are convinced that petitioner was only defending himself on the night he shot his fellow police officer. The rule is that factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal.[21] This rule is binding except where the trial court has overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance.[22] As earlier pointed out, the trial court did not consider certain facts and circumstances that materially affect the outcome of the instant case. We must, therefore, acquit petitioner.

Given the peculiar circumstances of this case, We find that the prosecution was unable to establish beyond reasonable doubt the guilt of petitioner. Even the OSG shares this view in its Comment appealing for his acquittal.

WHEREFORE, petitioner's Motion for Reconsideration is **GRANTED**. The CA Decision dated July 20, 2009 in CA-G.R. CR-H.C. No. 30907 is **REVERSED** and **SET ASIDE.** Petitioner SPO2 Lolito T. Nacnac is **ACQUITTED** of homicide on reasonable doubt.

The Director of the Bureau of Prisons is ordered to immediately **RELEASE** petitioner from custody, unless he is being held for some other lawful cause, and to **INFORM** this Court within five (5) days from receipt of this Decision of the date petitioner was actually released from confinement.

SO ORDERED.

Peralta, Abad, Mendoza, and *Perlas-Bernabe, JJ.*, concur.

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[21] *People v. Jubail*, G.R. No. 143718, May 19, 2004, 428 SCRA 478, 495.

[22] *People v. Lotoc*, G.R. No. 132166, May 19, 1999, 307 SCRA 471, 480.

SECOND DIVISION

[G.R. No. 192180. March 21, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* ***ALIAS*** **KINO LASCANO (at large) and ALFREDO DELABAJAN** ***ALIAS*** **TABOYBOY,** accused. **ALFREDO DELABAJAN,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; THE IDENTIFICATION OF AN ACCUSED BY HIS VOICE HAS BEEN ACCEPTED PARTICULARLY IN CASES WHERE THE RAPE VICTIM HAS KNOWN THE PERPETRATOR FOR A LONG TIME; CASE AT BAR. — In her September 20, 2000 testimoy, AAA narrated in detail how the appellant and Kino threatened to kill her, and then took turns in raping her. AAA explained that she recognized her assailants through their respective voices. We emphasize that the victim, although blind, knew the identities of her two assailants because they were her neighbors. AAA explained that Kino and the appellant often went to her residence in *Sitio* Maraga-as because they were the friends of her brother. Notably, the appellant admitted that her talked to AAA on many occasions. We view AAA's testimony to be clear, convincing and credible considering especially the corroboration it received from the medical certificate and testimony of Dr. Simeon. Our examination of the records shows no indication that we should view the victim's testimony in a suspicious light. It bears stressing that identification of an accused by his voice has been accepted, particularly in cases where, as in this case, the victim has known the perpetrator for a long time; for the blind voice recognition must be a special sense that has been developed to a very high degree. Besides, it is inconceivable that a blind woman would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her.

2. ID.; ID.; DEFENSE OF ALIBI IS INHERENTLY WEAK AND EASILY FABRICATED; PRESENT IN CASE AT BAR. — It

is settled that the defense of alibi is inherently weak and easily fabricated, particularly when it is corroborated only by the wife of the appellant, as in this case. In order for the defense of alibi to prosper, it is not enough to prove that the appellant was somewhere else when the offense was committed, but it must likewise be demonstrated that he was so far away that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission. In the present case, the appellant admitted that *Sitio* Pasakayon is just a 30-minute walk from *Sitio* Maraga-as. Considering how near he was to the place where the crime was committed, the appellant's alibi cannot be given any value. Clearly, the defense failed to prove that it was physically impossible for the appellant to have been at the *locus criminis* at the time of the commission of the rapes.

3. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS; ESTABLISHED IN CASE AT BAR. — For a charge of rape to prosper under Article 266-A of the Revised Penal Code, as amended, the prosecution must prove that (1) the offender had carnal knowledge of a woman; and (2) **he accompanied such act through force, threat, or intimidation,** or when she was deprived of reason or otherwise unconscious, or when she was under twelve years of age or was demented. x x x Thus, to us, the prosecution positively established the elements of rape required under Article 266-A of the Revised Penal Code. *First*, the appellant and Kino succeeded in having carnal knowledge with the victim. AAA was steadfast in her assertion that both the appellant and kino had raped her, as a result which, she felt pain. She also felt that something "sticky" came out of the appellant's and Kino' private parts. *Second*, the assailants employed force, threat and intimidation in satisfying their bestial desires. According to AAA, the appellant and Kino threatened to kill her if she refused to obey them.

4. ID.; ID.; ID.; CONSPIRACY, WHEN PRESENT; EACH OF THE ACCUSED IS RESPONSIBLE NOT ONLY FOR THE RAPE PERSONALLY COMMITTED BUT ALSO FOR THE RAPE COMMITTED BY THE OTHER AS WELL. — "Conspiracy exists when the acts of the accused demonstrate a common design towards the accomplishment of the same unlawful purpose." In the present case, the acts of Kino and of the appellant clearly indicate a unity of action: (1) Kino and the appellant entered

the victim's house at around 9:00 p.m.; (2) Kino and the appellant ordered the victim to lie down, and threatened to kill her if she refused to do so; (3) Kino undressed AAA, while the appellant tied her hands; (4) the appellant held AAA's feet, while Kino inserted his penis into the victim's private parts; and (5) the appellant raped AAA afterwards. Clearly, the appellant and Kino performed specific acts with such closeness and coordination as to indicate an unmistakably common purpose or design to commit the felony. Thus, they are liable for two (2) counts of rape on account of a clear conspiracy between them, shown by their obvious concerted efforts to perpetrate, one after the other, the rapes. Each of them is responsible not only for the rape committed personally by him but also for the rape committed by the other as well.

5. **ID.; ID.; ID.; EACH AND EVERY CHARGE OF RAPE IS A SEPARATE AND DISTINCT CRIME THAT THE LAW REQUIRES TO BE PROVEN BEYOND REASONABLE DOUBT; CASE AT BAR. —** It is settled that each and every charge of rape is a separate and distinct crime that the law requires to be proven beyond reasonable doubt. The prosecution's evidence must pass the exacting test of moral certainty that the law demands to satisfy the burden of overcoming the appellant's presumption of innocence. AAA's testimonies on two of the sexual abuses were explicit, detailing the participations of the appellant and Kino, and clearly illustrating all the elements of the crime. However, AAA's statements that the appellant and Kino each raped her three times were too general and clearly inadequate to establish beyond reasonable doubt that each accused committed two other succeeding rapes. Her testimonies were overly generalized and lacked specific details on how the other rapes were committed. We stress that a witness is not permitted to make her own conclusion of law; whether the victim had been raped is a conclusion for this Court to make based on the evidence presented.

6. **ID.; ID.; ID.; IMPOSABLE PENALTY. —** Under Article 266-B of the Revised Penal Code, the penalty of *reclusion perpetua* to death shall be imposed whenever the rape is committed by two or more persons. Since *reclusion perpetua* and death are two indivisible penalties, Article 63 of the Revised Penal Code applies; When there are neither mitigating nor aggravating

circumstances in the commission of the deed, as in this case, the lesser penalty shall be applied. The lower courts were, therefore, correct in imposing the penalty of *reclusion perpetua* on the appellant. It bears noting that under Article 266-B, paragraph 10 of the Revised Penal Code, the death penalty shall be imposed when the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime. However, the information in the present case merely stated that the victim was blind; it did not specifically allege that the appellant knew of her blindness at the time of the commission of the rape. Hence, we cannot impose the death penalty on the appellant.

7. ID.; ID.; ID.; CIVIL LIABILITIES; AWARD OF CIVIL INDEMNITY AND OTHER DAMAGES, PROPER. — The award of civil indemnity to the rape victim is mandatory upon the finding that rape took place. Moral damages, on the other hand, are awarded to rape victims without need of proof other than the fact of rape, under the assumption that the victim suffered moral injuries from the experience she underwent. Therefore, this Court affirms the award of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, based on prevailing jurisprudence. In addition, we likewise award exemplary damages in the amount of ₱30,000.00 for each count of rape. The award of Exemplary damages is justified under Article 2229 of the Civil Code to set a public example or correction for the public good.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

We decide the appeal, filed by Alfredo Delabajan (*appellant*), from the decision[1] of the Court of Appeals (*CA*) dated May 25, 2006 in CA-G.R. CEB-CR-H.C. No. 00228. The CA decision

[1] Penned by Associate Justice Isaias P. Dicdican, and concurred in by Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr.; *rollo*, pp. 4-12.

affirmed with modification the November 26, 2001 decision[2] of the Regional Trial Court (*RTC*), Branch 23, Allen, Northern Samar, and found the appellant guilty beyond reasonable doubt of three (3) counts of rape, sentencing him to suffer the penalty of *reclusion perpetua* for each count.

The RTC Decision

In its November 26, 2001 decision, the RTC found the appellant guilty beyond reasonable doubt of three (3) counts of rape. It gave credence to the testimony of AAA[3] that *alias* Kino Lascano and the appellant took turns in raping her. According to the trial court, the victim recognized her assailants through their respective voices. The trial court held that a public accusation by a blind Filipina whose virtue has been unblemished is worthy of belief. It also disregarded the appellant's alibi, as he failed to show that it was physically impossible for him to be at the scene of the crime. The RTC sentenced the appellant to suffer the penalty of *reclusion perpetua* for each count, and to pay the victim the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, also for each count.[4]

The CA Decision

On intermediate appellate review, the CA affirmed the RTC decision with the modification that the appellant is guilty beyond reasonable doubt of six (6) counts of qualified rape. It held that the appellant actively participated with Kino in raping AAA; he tied the victim's hands, and then held her feet when Kino was raping her. In addition, AAA's testimony was corroborated by the medical findings of Dr. Ethel Simeon. The appellate court also rejected the appellant's alibi in light of the victim's positive declaration, and for the appellant's failure to show that it was physically impossible for him to be at the *locus criminis*.[5]

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[2] CA *rollo*, pp. 23-32.

[3] Pursuant to our ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] CA *rollo*, p. 32.

[5] *Supra* note 1.

Our Ruling

We dismiss the appeal, but modify the counts of rape committed and the awarded indemnities.

Sufficiency of Prosecution Evidence

For a charge of rape to prosper under Article 266-A of the Revised Penal Code, as amended, the prosecution must prove that (1) the offender had carnal knowledge of a woman; and (2) **he accompanied such act through force, threat, or intimidation**, or when she was deprived of reason or otherwise unconscious, or when she was under twelve years of age or was demented.[6]

In her September 20, 2000 testimony, AAA narrated in detail how the appellant and Kino threatened to kill her, and then took turns in raping her. AAA explained that she recognized her assailants through their respective voices. We emphasize that the victim, although blind, knew the identities of her two assailants because they were her neighbors. AAA explained that Kino and the appellant often went to her residence in *Sitio* Maraga-as because they were the friends of her brother. Notably, the appellant admitted that he talked to AAA on many occasions.

We view AAA's testimony to be clear, convincing and credible considering especially the corroboration it received from the medical certificate and testimony of Dr. Simeon. Our examination of the records shows no indication that we should view the victim's testimony in a suspicious light. It bears stressing that identification of an accused by his voice has been accepted, particularly in cases where, as in this case, the victim has known the perpetrator for a long time;[7] for the blind voice recognition must be a special sense that has been developed to a very high degree. Besides, it is inconceivable that a blind woman would

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[6] *People v. Cañada*, G.R. No. 175317, October 2, 2009, 602 SCRA 378, 388.

[7] See *People v. Bandin*, G.R. No. 176531, April 24, 2009, 586 SCRA 633, 639; *People v. Reynaldo*, 353 Phil. 883, 893 (1998); and *People v. Calixtro*, 271 Phil. 317, 328 (1991).

concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her. Thus, to us, the prosecution positively established the elements of rape required under Article 266-A of the Revised Penal Code. *First*, the appellant and Kino succeeded in having carnal knowledge with the victim. AAA was steadfast in her assertion that both the appellant and Kino had raped her, as a result of which, she felt pain. She also felt that something "sticky" came out of the appellant's and Kino' private parts. *Second*, the assailants employed force, threat and intimidation in satisfying their bestial desires. According to AAA, the appellant and Kino threatened to kill her if she refused to obey them.

The Presence of Conspiracy

We agree with the CA that the appellant and Kino conspired in sexually assaulting AAA. "Conspiracy exists when the acts of the accused demonstrate a common design towards the accomplishment of the same unlawful purpose."[8] In the present case, the acts of Kino and of the appellant clearly indicate a unity of action: (1) Kino and the appellant entered the victim's house at around 9:00 p.m.; (2) Kino and the appellant ordered the victim to lie down, and threatened to kill her if she refused to do so; (3) Kino undressed AAA, while the appellant tied her hands; (4) the appellant held AAA's feet, while Kino inserted his penis into the victim's private parts; and (5) the appellant raped AAA afterwards.

Clearly, the appellant and Kino performed specific acts with such closeness and coordination as to indicate an unmistakably common purpose or design to commit the felony. Thus, they are liable for two (2) counts of rape on account of a clear conspiracy between them, shown by their obvious concerted efforts to perpetrate, one after the other, the rapes. Each of them is responsible not only for the rape committed personally by him but also for the rape committed by the other as well.

[8] *People v. Dela Torre*, G.R. No. 176637, October 6, 2008, 567 SCRA 651, 657.

The Appellant's Defenses

We reject the appellant's claim that he was gathering coconuts in *Sitio* Pasakayon on the date and time of the rapes. It is settled that the defense of alibi is inherently weak and easily fabricated, particularly when it is corroborated only by the wife of the appellant, as in this case. In order for the defense of alibi to prosper, it is not enough to prove that the appellant was somewhere else when the offense was committed, but it must likewise be demonstrated that he was so far away that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[9]

In the present case, the appellant admitted that *Sitio* Pasakayon is just a 30-minute walk from *Sitio* Maraga-as. Considering how near he was to the place where the crime was committed, the appellant's alibi cannot be given any value. Clearly, the defense failed to prove that it was physically impossible for the appellant to have been at the *locus criminis* at the time of the commission of the rapes.

The Court also finds unmeritorious the appellant's contention that AAA had been instigated by Wawing Lascano to falsely testify against him. The appellant alleged that Wawing was mad at him because he struck the latter's pigs. Aside from being uncorroborated, we find this claim implausible as the victim has no relation at all to Wawing. It is inconceivable that a young girl would be willing to drag her honor to a merciless public scrutiny, and expose herself and her family to scandal upon the mere command and instigation of a complete stranger.

The Other Rapes Not Proven With Moral Certainty

As earlier stated, the CA convicted the appellant of six (6) counts of qualified rape. After a meticulous reading of the records, we sustain the appellant's conviction for only two (2) counts of rape. It is settled that each and every charge of rape is a separate and distinct crime that the law requires to be proven

[9] *People v. Malones*, 469 Phil. 301, 329 (2004).

beyond reasonable doubt.[10] The prosecution's evidence must pass the exacting test of moral certainty that the law demands to satisfy the burden of overcoming the appellant's presumption of innocence.[11]

AAA's testimonies on two of the sexual abuses were explicit, detailing the participations of the appellant and Kino, and clearly illustrating all the elements of the crime. However, AAA's statements that the appellant and Kino each raped her three times were too general and clearly inadequate to establish beyond reasonable doubt that each accused committed two other succeeding rapes. Her testimonies were overly generalized and lacked specific details on how the other rapes were committed. We stress that a witness is not permitted to make her own conclusion of law; whether the victim had been raped is a conclusion for this Court to make based on the evidence presented.[12]

The Proper Penalty

Under Article 266-B of the Revised Penal Code, the penalty of *reclusion perpetua* to death shall be imposed whenever the rape is committed by two or more persons. Since *reclusion perpetua* and death are two indivisible penalties, Article 63[13] of the Revised Penal Code applies; when there are neither mitigating nor aggravating circumstances in the commission of the deed, as in this case, the lesser penalty shall be applied. The lower courts were, therefore, correct in imposing the penalty of *reclusion perpetua* on the appellant.

It bears noting that under Article 266-B, paragraph 10 of the Revised Penal Code, the death penalty shall be imposed when the offender knew of the mental disability, emotional

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[10] See *People of the Philippines v. Ernesto Mercado*, G.R. No. 189847, May 30, 2011.

[11] See *People of the Philippines v. Henry Arpon y Juntilla*, G.R. No. 183563, December 14, 2011.

[12] *People v. Matunhay*, G.R. No. 178274, March 5, 2010, 614 SCRA 307, 319.

[13] Rules for the application of indivisible penalties.

disorder and/or physical handicap of the offended party at the time of the commission of the crime. However, the information in the present case merely stated that the victim was blind; it did not specifically allege that the appellant knew of her blindness at the time of the commission of the rape. Hence, we cannot impose the death penalty on the appellant.

The Civil Indemnities

The award of civil indemnity to the rape victim is mandatory upon the finding that rape took place. Moral damages, on the other hand, are awarded to rape victims without need of proof other than the fact of rape, under the assumption that the victim suffered moral injuries from the experience she underwent. Therefore, this Court affirms the award of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, based on prevailing jurisprudence.[14]

In addition, we likewise award exemplary damages in the amount of ₱30,000.00 for each count of rape.[15] The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example or correction for the public good.

WHEREFORE, the decision of the Court of Appeals dated May 25, 2006 in CA-G.R. CEB-CR-H.C. No. 00228 is **AFFIRMED** with the following **MODIFICATIONS**: (a) Alfredo Delabajan is found guilty beyond reasonable doubt of two (2) counts of rape; and (b) he is further ordered to pay the victim the amount of ₱30,000.00 as exemplary damages for each count of rape.

SO ORDERED.

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

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[14] See *People of the Philippines v. Bernabe Pangilinan y Crisostomo*, G.R. No. 183090, November 14, 2011; *People of the Philippines v. Marcelo Perez*, G.R. No. 191265, September 14, 2011; and *People of the Philippines v. Alex Condes y Guanzon*, G.R. No. 187077, February 23, 2011.

[15] See *People of the Philippines v. Vicente Publico y Amodia*, G.R. No. 183569, April 13, 2011.

THIRD DIVISION

[G.R. No. 196358. March 21, 2012]

JANDY J. AGOY, *petitioner, vs.* **ARANETA CENTER, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; MINUTE RESOLUTIONS; WHEN ISSUED; ELUCIDATED. — Minute resolutions are issued for the prompt dispatch of the actions of the Court. While they are the results of the deliberations by the Justices of the Court, they are promulgated by the Clerk of Court or his assistants whose duty is to inform the parties of the action taken on their cases by quoting verbatim the resolutions adopted by the Court. Neither the Clerk of Court nor his assistants take part in the deliberations of the case. They merely transmit the Court's action in the form prescribed by its Internal Rules: x x x As the Court explained in *Borromeo v. Court of Appeals*, no law or rule requires its members to sign minute resolutions that deny due course to actions filed before it or the Chief Justice to enter his certification on the same. The notices quote the Court's actual resolutions denying due course to the subject actions and these already state the required legal basis for such denial. To require the Justices to sign all its resolutions respecting its action on new cases would be unreasonable and unnecessary.

2. ID.; ID.; ID.; MINUTE RESOLUTIONS DISMISSING THE ACTIONS FILED BEFORE THE COURT CONSTITUTE ACTUAL ADJUDICATIONS ON THE MERITS; CLARIFIED. — While the Constitution requires every court to state in its decision clearly and distinctly the fact and the law on which it is based, the Constitution requires the court, in denying due course to a petition for review, merely to state the legal basis for such denial. x x x With the promulgation of its Internal Rules, the Court itself has defined the instances when cases are to be adjudicated by decision, signed resolution, unsigned resolution or minute resolution. Among those instances when a minute resolution shall issue is when the Court "denies a petition filed under Rule 45 of the [Rules of Court], citing as

legal basis the absence of reversible error committed in the challenged decision, resolution, or order of the court below." The minute resolutions in this case complied with this requirement. The Court has repeatedly said that minute resolutions dismissing the actions filed before it constitute actual adjudications on the merits. They are the result of thorough deliberation among the members of the Court. When the Court does not find any reversible error in the decision of the CA and denies the petition, there is no need for the Court to fully explain its denial, since it already means that it agrees with and adopts the findings and conclusions of the CA. The decision sought to be reviewed and set aside is correct. It would be an exercise in redundancy for the Court to reproduce or restate in the minute resolution denying the petition the conclusions that the CA reached.

APPEARANCES OF COUNSEL

Engracio M. Icasiano for petitioner.
Irene C. De Quiroz for respondent.

R E S O L U T I O N

ABAD, *J.*:

This case reiterates the Court's ruling that the adjudication of a case by minute resolution is an exercise of judicial discretion and constitutes sound and valid judicial practice.

The Facts and the Case

On June 15, 2011 the Court denied petitioner Jandy J. Agoy's petition for review through a minute resolution that reads:

"G.R. No. 196358 ***(Jandy J. Agoy vs. Araneta Center, Inc.***).- The Court resolves to **GRANT** petitioner's motion for extension of thirty (30) days from the expiration of the reglementary period within which to file a petition for review on *certiorari*.

The court further resolves to **DENY** the petition for review on *certiorari* assailing the Decision dated 19 October 2010 and Resolution dated 29 March 2011 of the Court of Appeals (CA), Manila, in CA-

G.R. SP No. 108234 for failure to show that the CA committed reversible error when it affirmed the dismissal of petitioner Jandy J. Agoy. Petitioner's repeated delays in remitting the excess cash advances and admission that he spent them for other purposes constitute serious misconduct and dishonesty which rendered him unworthy of the trust and confidence reposed in him by respondent Araneta Center, Inc."

Apparently, however, Agoy doubted the authenticity of the copy of the above minute resolution that he received through counsel since he promptly filed a motion to rescind the same and to have his case resolved on its merits via a regular resolution or decision signed by the Justices who took part in the deliberation. In a related development, someone claiming to be Agoy's attorney-in-fact requested an investigation of the issuance of the resolution of June 15, 2011.

On September 21, 2011 the Court denied Agoy's motion to rescind the subject minute resolution and confirmed the authenticity of the copy of the June 15, 2011 resolution. It also treated his motion to rescind as a motion for reconsideration and denied the same with finality.

Upon receipt of the Court's September 21, 2011 resolution, Agoy filed a motion to rescind the same or have his case resolved by the Court *En Banc* pursuant to Section 13 in relation to Sec. 4(3), Article VIII of the 1987 Constitution. Agoy reiterated his view that the Court cannot decide his petition by a minute resolution. He thus prayed that it rescind its June 15 and September 21, 2011 resolutions, determine whether it was proper for the Court to resolve his petition through a minute resolution, and submit the case to the Court *en banc* for proper disposition through a signed resolution or decision.

Questions Presented

At the heart of petitioner's motions are the following questions:

1. Whether or not the copies of the minute resolutions dated June 15, 2011 and September 21, 2011 that Agoy received are authentic; and

2. Whether or not it was proper for the Court to deny his petition through a minute resolution.

The Court's Rulings

One. The notices of the minute resolutions of June 15 and September 21, 2011 sent to Agoy, bearing the signatures of Assistant Clerk of Court Teresita Aquino Tuazon and Deputy Division Clerk of Court Wilfredo V. Lapitan, both printed on pink paper and duly received by counsel for petitioner as evidenced by the registry return cards, are authentic and original copies of the resolutions. The Court has given Tuazon and Lapitan the authority to inform the parties under their respective signatures of the Court's actions on the incidents in the cases.

Minute resolutions are issued for the prompt dispatch of the actions of the Court. While they are the results of the deliberations by the Justices of the Court, they are promulgated by the Clerk of Court or his assistants whose duty is to inform the parties of the action taken on their cases by quoting verbatim the resolutions adopted by the Court.[1] Neither the Clerk of Court nor his assistants take part in the deliberations of the case. They merely transmit the Court's action in the form prescribed by its Internal Rules:

Sec. 7. *Form of notice of a minute resolution.*—A notice of minute resolution shall be embodied in a letter of the Clerk of Court or the Division Clerk of Court notifying the parties of the action or actions taken in their case. In the absence of or whenever so deputized by the Clerk of Court or the Division Clerk of Court, the Assistant Clerk of Court or Assistant Division Clerk of Court may likewise sign the letter which shall be in the following form:

(SUPREME COURT Seal)

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

[1] *Borromeo v. Court of Appeals*, 264 Phil. 388, 393 (1990).

EN BANC/____ DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc/___ Division issued a Resolution dated _____, which reads as follows:

"G.R./UDK/A.M./A.C. No. ____ (TITLE).—(QUOTE RESOLUTION)"

Very truly yours,

(Sgd.)
CLERK OF COURT/Division Clerk of Court

As the Court explained in *Borromeo v. Court of Appeals*,[2] no law or rule requires its members to sign minute resolutions that deny due course to actions filed before it or the Chief Justice to enter his certification on the same. The notices quote the Court's actual resolutions denying due course to the subject actions and these already state the required legal basis for such denial. To require the Justices to sign all its resolutions respecting its action on new cases would be unreasonable and unnecessary.

Based on last year's figures, the Court docketed a total of 5,864 new cases, judicial and administrative. The United States Supreme Court probably receives lesser new cases since it does not have administrative supervision of all courts. Yet, it gives due course to and decides only about 100 cases per year. Agoy's demand that this Court give due course to and decide all cases filed with it on the merits, including his case, is simply unthinkable and shows a lack of discernment of reality.

Two. While the Constitution requires every court to state in its decision clearly and distinctly the fact and the law on which it is based, the Constitution requires the court, in denying due course to a petition for review, merely to state the legal basis for such denial.

Sec. 14. No decision shall be rendered by any court without

[2] *Id.* at 394.

expressing therein clearly and distinctly the facts and the law on which it is based. **No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor**.[3] (Emphasis supplied)

With the promulgation of its Internal Rules, the Court itself has defined the instances when cases are to be adjudicated by decision, signed resolution, unsigned resolution or minute resolution.[4] Among those instances when a minute resolution shall issue is when the Court "denies a petition filed under Rule 45 of the [Rules of Court], citing as legal basis the absence of reversible error committed in the challenged decision, resolution, or order of the court below."[5] The minute resolutions in this case complied with this requirement.

The Court has repeatedly said that minute resolutions dismissing the actions filed before it constitute actual adjudications on the merits.[6] They are the result of thorough deliberation among the members of the Court.[7] When the Court does not find any reversible error in the decision of the CA and denies the petition, there is no need for the Court to fully explain its denial, since it already means that it agrees with and adopts the findings and conclusions of the CA. The decision sought to be reviewed and set aside is correct.[8] It would be an exercise in redundancy for the Court to reproduce or restate in the minute resolution denying the petition the conclusions that the CA reached.

Agoy questions the Court's act of treating his motion to rescind as a motion for reconsideration, arguing that it had no basis for doing so. But the Court was justified in its action since his motion to rescind asked the Court to review the merits of his case again.

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[3] CONSTITUTION (1987), Art. VIII, Sec. 14.

[4] See The Internal Rules of the Supreme Court, Rule 13, Sec. 6.

[5] The Internal Rules of the Supreme Court, Rule 13, Sec. 6(d).

[6] *Smith Bell & Co. (Phils.), Inc. v. Court of Appeals*, 274 Phil. 472, 479 (1991).

[7] See also The Internal Rules of the Supreme Court, Rule 13, Sec. 3.

[8] *Smith Bell & Co. (Phils.), Inc. v. Court of Appeals*, *supra* note 6, at 479-480.

WHEREFORE, the Court **DENIES** petitioner Jandy J. Agoy's motion to rescind dated December 21, 2011 and the Motion for Clarification and to Resolve Pending Incidents dated January 31, 2012 for lack of merit.

The Court shall not entertain further pleadings or motions in this case. Let entry of judgment be issued.

SO ORDERED.

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

EN BANC

[A.M. No. MTJ-07-1667. April 10, 2012]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE JAMES V. GO and Clerk of Court MA. ELMER M. ROSALES, Municipal Trial Court in Cities (MTCC), Branch 2, Butuan City,** *respondents.*

SYLLABUS

JUDICIAL ETHICS; JUDGES; DISMISSAL FROM SERVICE; WHERE DELIBERATE AND CONTINUOUS REFUSAL OF A JUDGE TO COMPLY WITH THE COURT'S RESOLUTIONS WARRANTS THE IMPOSITION OF DISMISSAL FROM THE SERVICE. — Resolutions of this Court should not be treated lightly. As a judge, respondent must be the first to exhibit respect for authority. x x x The disrespect of respondent becomes more pronounced as the Court has noted that to date, he has not even complied with its latest Resolution of February 2, 2011 nor adequately complied with the Decision dated September 27, 2007. x x x In the present case, we find that Judge Go

failed to heed the above pronouncements. He did not file the required comment to our show cause resolutions despite several opportunities granted him by this Court. His willful disobedience and disregard to our show-cause resolutions constitutes grave and serious misconduct affecting his fitness and worthiness of the honor and integrity attached to his office. It is noteworthy that Judge Go was afforded several opportunities to explain his failure to decide the subject cases long pending before his court and to comply with the directives of this Court, but he has failed, and continuously refuses to heed the same. This continued refusal to abide by lawful directives issued by this Court is glaring proof that he has become disinterested to remain with the judicial system to which he purports to belong. In view of the foregoing, we find that the dismissal of the respondent judge from service is indeed warranted. This Court has long maintained the policy of upholding competence and integrity in the administration of justice. Incompetence and inefficiency have no place in the judiciary. Respondent's indifference to the charges against him only proves his lack of commitment to the duties of his office, making him unfit to continue in public service.

D E C I S I O N

***PER CURIAM*:**

Once again, in this administrative case, the Court is called to rule on the question of whether respondent Judge James V. Go, presiding judge of the Municipal Trial Court in Cities (MTCC), Branch 2, Butuan City, is still fit to continue as a member of the bench. The Court takes upon this matter again in light of the violations Judge Go subsequently committed after he was found administratively liable by this Court on September 27, 2007.

This administrative case stemmed from a judicial audit and physical inventory of pending cases conducted from September 25, 2006 to October 2, 2006 by the Office of the Court Administrator (OCA) in the said court.

The audit team found that as of audit date, Judge Go failed to immediately arraign the accused in 632 criminal cases, to

archive 140 criminal cases, to act on summons (should be subpoenas) issued in 477 criminal cases, to act on 13 cases which had not been acted upon for a considerable length of time, to resolve the pending incidents or motions in 15 criminal cases, to act on 17 civil cases from the time of their filing, to take further action on 32 civil cases, and to resolve motions or incidents in 88 civil cases. The audit team also noted the reports of some court officials and employees that Judge Go would always leave the court in the morning after finishing all hearings scheduled for the day and would return only on the following day. When the audit team confronted the judge, he replied that he leaves early to rest as he suffered a stroke before, and that being a judge, he is not required to render eight hours of service a day. The OCA recommended that the judicial audit report be treated as an administrative complaint against Judge Go.[1]

On October 4, 2006, the Integrated Bar of the Philippines, Butuan City and Agusan del Norte Chapter, likewise issued Resolution No. 2, Series of 2006,[2] expressing disappointment over Judge Go's inefficiency and incompetence, which has caused undue delay in the disposition of cases pending before his court. The Resolution was submitted to the OCA and was docketed as A.M. No. 07-9-221-MTCC.

In a Memorandum[3] dated December 29, 2006, the OCA required Judge Go to take appropriate action on 1262 criminal cases and 32 civil cases that have not been acted upon for a considerable length of time, to take appropriate action on 17 civil cases which have not been acted upon since their filing, to resolve the pending incidents or motions in 15 criminal cases and 88 civil cases that have remained unresolved beyond the reglementary period, and to decide with dispatch 21 civil cases that have remained undecided beyond the reglementary period. The OCA likewise directed Judge Go to resolve the pending

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[1] *Rollo*, A.M. No. MTJ-07-1667 (formerly A.M. No. 07-1-02-MTCC), pp. 61, 67.

[2] *Rollo*, A.M. No. 07-9-221-MTCC, pp. 11-13.

[3] *Rollo*, A.M. No. MTJ-07-1667 (formerly A.M. No. 07-1-02-MTCC), pp. 102-161.

motions or incidents in 30 cases and to decide 17 cases submitted for decision, all within the reglementary period, and to furnish the OCA with copies of his orders, resolutions and decisions on the said cases. Judge Go was additionally ordered (1) to render eight hours of service every working day pursuant to various circulars[4] of the Court; (2) to conduct the raffle of cases every Monday and/or Thursday pursuant to A.M. No. 03-8-02-SC and to submit compliance within 15 days from notice. Lastly, the OCA directed him to immediately issue orders on newly filed cases indicating whether the cases are being tried under the regular procedure or under the summary procedure as mandated by Section 2 of the Rules on Summary Procedure.

On January 29, 2007, the Court resolved to treat the judicial audit report as an administrative complaint for gross inefficiency and gross neglect of duty against Judge Go and his clerk of court, Ma. Elmer M. Rosales, and required them to comment within 15 days from notice.[5] The audit report, which was formerly docketed as A.M. No. 07-1-02-MTCC, was also re-docketed as A.M. No. MTJ-07-1667.

Instead of filing a comment, Judge Go wrote a letter[6] dated March 12, 2007 addressed to the Court Administrator, as follows:

Sir:

I hereby deny all the allegations in the judicial audit report.

I am electing formal hearing.

Thank you.

Very truly yours,

(Sgd.)
JAMES V. GO
Judge

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[4] Circular No. 13-87 dated July 1, 1987, Circular No. 1 dated January 28, 1988, Circular No. 2-99 dated January 15, 1999, Circular No. 63-2001 dated October 3, 2001 and Circular No. 87-2001 dated November 29, 2001.

[5] *Rollo*, A.M. No. MTJ-07-1667 (formerly A.M. No. 07-1-02-MTCC), p. 165.

[6] *Id.* at 231.

Nonetheless, Judge Go transmitted copies of *constancia*, orders and decisions[7] but did not act on the remaining cases. Neither did he respond to the issue of rendering eight hours of service every working day.

On September 27, 2007, the Court rendered a decision[8] finding Judge Go and his clerk of court administratively liable. The Court held:

> ACCORDINGLY, we find:
>
> x x x x
>
> 2. Clerk of Court Ma. Elmer M. Rosales guilty of manifest negligence in the performance of her duties and is ordered to pay a **FINE** in the amount of ₱5,000.00, with **WARNING** that a repetition of the same or similar act will be dealt with more severely. She is also **DIRECTED** to inform the Court, through the Office of the Court Administrator, of the status of Civil Case Nos. 8141 and 8142;
>
> 3. Judge James V. Go guilty of undue delay in rendering decision or order and is hereby **SUSPENDED** from office for three months without salary or other benefits effective upon receipt of this Resolution. He is also **FINED** in the amount of ₱10,000.00 for his display of manifest indifference to the Resolution of this Court and further **REPRIMANDED** for his failure to strictly observe office hours. He is **WARNED** that a repetition of the same or similar act/acts will be dealt with more severely. He is also **DIRECTED** to fully comply with the directives of the Memorandum dated December 29, 2006, within sixty (60) days from receipt of this Resolution.
>
> Clerk of Court Rosales and Judge Go are **DIRECTED** to inform this Court of the respective dates of receipt of this Resolution.
>
> The Office of the Court Administrator is likewise **DIRECTED** to conduct an investigation on the allegation that some court personnel in Butuan City do not observe the eight-hour working day service requirement and to submit a Report thereon to this Court.

[7] *Id.* at 325-759.

[8] *Id.* at 865-876. Penned by Associate Justice Consuelo Ynares-Santiago with Associate Justices Ma. Alicia Austria-Martinez, Minita V. Chico-Nazario, Antonio Eduardo B. Nachura and Ruben T. Reyes concurring.

SO ORDERED.[9]

On October 15, 2007, the Court, upon the recommendation of the OCA, resolved to consolidate A.M. No. 07-9-221-MTCC with A.M. No. MTJ-07-1667.[10] Subsequently, on December 3, 2007, the Court resolved to consider A.M. No. 07-9-221-MTCC closed and terminated considering that this Court's September 27, 2007 Decision in A.M. No. MTJ-07-1667 has resolved the issues raised by the IBP, Butuan City and Agusan del Norte Chapter, on the delay in the disposition of cases in the subject court.[11]

Judge Go paid the imposed fine and served the penalty of suspension from October 22, 2007 to January 22, 2008. On three separate occasions, he also submitted matrices of the action taken on the cases subject of the audit without, however, attaching any notice of hearing, order, resolution or decision. He submitted (1) a 17-page matrix attached to a letter dated May 20, 2009;[12] (2) a 2-page matrix annexed to his letter dated August 24, 2009;[13] and (3) an 11-page matrix attached to a letter dated September 1, 2009.[14] In the said letters, he stated that the attached matrices were his and his co-respondent's comments.

In a Resolution[15] dated March 9, 2009, the Court directed Judge Go to (1) fully comply with the directives regarding the remaining cases that require his immediate action and submit compliance therewith within 60 days from notice; (2) resolve the pending incidents or motions which remained unresolved despite the lapse of the reglementary period to resolve the same and to furnish the OCA copies of the resolutions within 10

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[9] *Id.* at 875-876.

[10] *Rollo*, A.M. No. 07-9-221-MTCC, p. 33.

[11] *Id.* at 34-35.

[12] *Id.* at 66-83.

[13] *Rollo*, A.M. No. MTJ-07-1667 (formerly A.M. No. 07-1-02-MTCC), pp. 1319-1322.

[14] *Id.* at 1332-1333.

[15] *Rollo*, A.M. No. 07-9-221-MTCC, pp. 39-65.

days from date of rendition; (3) decide with dispatch the civil cases which were already submitted for decision but which have not been decided beyond the reglementary period to decide the same and furnish the OCA copies of the decisions within 10 days from the rendition of the said decisions; (4) comply with the provisions of Circular No. 13-87 dated July 1, 1987, Circular No. 1 dated January 28, 1988, Circular No. 2-99 dated January 15, 1999, Circular No. 63-2001 dated October 3, 2001 and Circular No. 87-2001 dated November 29, 2001, among others, on the rendition of eight hours of service every working day; (5) comply with the provisions of the Administrative Matter No. 03-8-02-SC on the Guidelines on the Selection and Appointment of Executive Judges and Defining their Powers, Prerogatives and Duties, which mandate that the raffling of cases be regularly conducted at two o'clock in the afternoon every Mondays and/or Thursdays as warranted by the number of cases to be raffled; (6) submit compliance with said guidelines within 15 days from receipt; and (7) immediately issue orders on newly filed cases indicating whether the cases are being tried under the regular procedure or summary procedure as mandated by Section 2 of the Rule on Summary Procedure and submit compliance therewith also within 15 days from receipt. Judge Go was likewise directed to explain within 15 days from receipt why he should not be administratively charged anew for his contumacious disregard of the directives of the Court.

On April 28, 2010, the Court issued another resolution, directing Judge Go to inform the Court of the action taken on each of the cases subject of this administrative matter by furnishing the Court, through the OCA, with copies of his orders, resolutions, decisions, subpoenas and warrants relative to said cases within 30 days from notice. The Court also ordered Judge Go to fully comply with the directives of the Resolution dated March 9, 2009, also within 30 days from notice.[16] A copy of the Resolution was received in the MTCC, Branch 2, Butuan City, on June 15, 2010.[17] However,

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[16] *Rollo*, A.M. No. MTJ-07-1667 (formerly A.M. No. 07-1-02-MTCC), p. 1328.

[17] Per registry return receipt, *id*. at 1328 (reverse portion).

respondent judge again failed to comply with the Court's directives.

Thus, on February 2, 2011, the Court directed Judge Go to show cause why he should not be administratively dealt with for noncompliance with the previous Resolution and reiterated the directive for him to submit copies of the decisions, orders, subpoenas and warrants issued in the remaining cases subject of the March 9, 2009 Resolution, both within fifteen (15) days from notice.[18] Despite the lapse of a considerable length of time, however, Judge Go still failed to fully comply with the Court's directives in the Resolutions dated March 9, 2009 and April 28, 2010.

Noting Judge Go's deplorable failure to comply with the said directives, the OCA in a Memorandum[19] dated December 1, 2011, recommended to the Court that Judge Go be dismissed from the service. The OCA stated that under Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, violation of Supreme Court rules, directives and circulars, and gross inefficiency are categorized as less serious charges with the following sanctions: (a) suspension from office without salary and other benefits for not less than one nor more than three months; or (b) a fine of more than ₱10,000 but not exceeding ₱20,000. However, considering that Judge Go had previously been suspended by the Court for three (3) months and fined in the amount of ₱10,000 in the Decision dated September 27, 2007, and considering further that he had repeatedly ignored and failed to abide with the directives of the Court's Resolutions regarding the submission of copies or orders, resolutions and decisions on cases subject of the judicial audit, the OCA recommended that Judge Go be dismissed from the service, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to reemployment in any branch, agency or instrumentality of the government including government-owned or controlled corporations for his display of manifest indifference to the Resolutions of this Court.

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[18] *Id.* at 1335.

[19] *Id.* at 1339-1343.

The recommendations of the OCA are well-taken.

Resolutions of this Court should not be treated lightly. As a judge, respondent must be the first to exhibit respect for authority.[20] *Gaspar v. Adaoag*[21] teaches:

> Judges should respect the orders and decisions of higher tribunals much more so this Court from which all other courts should take their bearings. A resolution of the Supreme Court should not be construed as a mere request and should not be complied with partially, inadequately or selectively.

The disrespect of respondent becomes more pronounced as the Court has noted that to date, he has not even complied with its latest Resolution of February 2, 2011 nor adequately complied with the Decision dated September 27, 2007.

In *Guerrero v. Judge Deray*,[22] the Court held that a judge "who deliberately and continuously fails and refuses to comply with the resolution of [the Supreme] Court *is guilty of gross misconduct and insubordination*." This ruling was reiterated in *Dela Cruz v. Vallarta*[23] and *Visbal v. Tormis*.[24] Also in *Guerrero*, this Court held that "indifference or defiance to the Court's orders or resolutions may be punished with dismissal, suspension or fine as warranted by the circumstances."[25]

In the present case, we find that Judge Go failed to heed the above pronouncements. He did not file the required comment to our show cause resolutions despite several opportunities granted him by this Court. His willful disobedience and disregard to our show-cause resolutions constitutes grave and serious misconduct affecting his fitness and worthiness of the honor and integrity

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[20] *Office of the Court Administrator v. Legaspi, Jr.*, A.M. No. MTJ-06-1661, January 25, 2007, 512 SCRA 570, 583.

[21] A.M. No. MTJ-04-1565, August 16, 2006, 499 SCRA 1, 6.

[22] 442 Phil. 85, 95 (2002). Italics in the original.

[23] A.M. No. MTJ-04-1531, March 6, 2007, 517 SCRA 465, 477-478.

[24] A.M. No. MTJ-07-1692, November 28, 2007, 539 SCRA 9, 17.

[25] *Supra* note 22.

attached to his office.[26] It is noteworthy that Judge Go was afforded several opportunities to explain his failure to decide the subject cases long pending before his court and to comply with the directives of this Court, but he has failed, and continuously refuses to heed the same. This continued refusal to abide by lawful directives issued by this Court is glaring proof that he has become disinterested to remain with the judicial system to which he purports to belong.[27]

In view of the foregoing, we find that the dismissal of the respondent judge from service is indeed warranted. This Court has long maintained the policy of upholding competence and integrity in the administration of justice. Incompetence and inefficiency have no place in the judiciary. Respondent's indifference to the charges against him only proves his lack of commitment to the duties of his office, making him unfit to continue in public service.

WHEREFORE, respondent Judge James V. Go, presiding judge of the Municipal Trial Court in Cities, Branch 2, Butuan City is **DISMISSED** from the service, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to reemployment in any branch, agency or instrumentality of the government including government-owned or controlled corporations.

This Decision is immediately **EXECUTORY.**

SO ORDERED.

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

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

Perez, J., no part. Acted on matter as Court Administrator.

Perlas-Bernabe, J., on official leave.

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[26] See *Longboan v. Polig,* A.M. No. R-704-RTJ, June 14, 1990, 186 SCRA 557, 561.

[27] See *Parane v. Reloza,* A.M. No. MTJ-92-718, November 7, 1994, 238 SCRA 1, 4.

EN BANC

[A.M. No. P-11-2912. April 10, 2012]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **MARY LOU C. SARMIENTO, Interpreter II, Branch 57, Metropolitan Trial Court, San Juan City, and ARTURO F. ANATALIO, Sheriff, Branch 58, Metropolitan Trial Court, San Juan City,** *respondents.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; NEGLECT OF DUTY; INSERTION OF EXHIBIT IN THE RECORDS WHILE IN THE EMPLOYEE'S POSSESSION CONSTITUTES SIMPLE NEGLECT OF DUTY; PENALTY. — Granting that there was no direct evidence that Sarmiento inserted the demand letter as Exhibit "12", it could not be denied that the insertion happened while the records were still with Branch 57 in Sarmiento's possession. This is bolstered by Judge Rosete's claim that the records were intact and without alterations when he received them. It could only mean that when he received the records, the demand letter was already inserted as Exhibit "12". Sarmiento could not escape liability by simply claiming ignorance of the insertion. The occurrence of the insertion while the records were still in Sarmiento's possession shows neglect of her duties. x x x In view of the foregoing, we adopt the recommendation of the OCA finding Sarmiento guilty of simple neglect of duty. Simple neglect of duty is the failure to give attention to a task, or the disregard of a duty due to carelessness or indifference. It is a less grave offense punishable by suspension of one month and one day to six months for the first offense. Thus, we also adopt the recommendation of the OCA that Sarmiento be imposed the penalty of suspension from the service for one month and one day with a stern warning that a repetition of the same or similar conduct in the future will be dealt with more severely.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court are administrative charges for Simple Neglect of Duty against Mary Lou C. Sarmiento (Sarmiento), Interpreter II of Branch 57, Metropolitan Trial Court of San Juan City (MeTC-San Juan) and Arturo F. Anatalio (Anatalio), Sheriff of Branch 58, MeTC-San Juan.

The Antecedent Facts

This administrative case is an offshoot of *Chua v. Sorio*,[1] where respondent Eleanor A. Sorio (Sorio) of Branch 57, MeTC-San Juan, was found guilty of grave misconduct and conduct prejudicial to the best interest of the service and fined ₱5,000.

For clarity, we reproduce the facts of the *Sorio* case, as follows:

> Complainant Rufina Chua filed in the MeTC (Branch 57) of San Juan City two criminal cases, docketed as Criminal Case Nos. 44739 and 51988, for alleged violation of the Bouncing Checks Law, involving two Interbank checks amounting to ₱9,563,900.00 issued by William Chiok, the accused in both cases. Upon the inhibition of Presiding Judge Leodegario Quilatan, the two cases were transferred to Branch 58. The presiding judge of Branch 58, Judge Maxwel Rosete, directed the consolidation of the two cases. After trial, Judge Rosete rendered a decision acquitting the accused. Judge Rosete held that the two Interbank checks, which were not drawn to apply on account or for value, were not within the contemplation of the Bouncing Checks Law.
>
> When complainant read the decision, she noticed that the cited check numbers, dates, and amounts of the two Interbank checks were interchanged. Thinking that this mistake was used as basis in acquitting the accused, complainant asked for the records of the case, specifically Criminal Case No. 44739. She discovered that (i) in the formal offer of evidence by the accused, the exhibit markings of several

[1] A.M. No. P-07-2409, 7 April 2010, 617 SCRA 474.

items of the documentary evidence had been altered; (ii) exhibits 26, 27, 28, 29, 30, and 31 had missing pages when compared with her photocopy of the evidence marked during trial, and (iii) the transcript of stenographic notes (TSN) dated 17 February 1999, which contained an admission by the accused that he negotiated the settlement of the cases with the complainant, was missing.

The complainant wrote the Office of the Court Administrator (OCA) requesting an investigation on the changes found on the exhibits and the missing TSN dated 17 February 1999 in the records of Criminal Case No. 44739. The OCA directed Executive Judge Elvira D.C. Panganiban of the MeTC of San Juan City to investigate.

In her report, Judge Panganiban confirmed the missing TSN, which was no longer included in the Table of Contents when the records of the case were forwarded to Branch 58 upon the inhibition of Judge Quilatan of Branch 57. Judge Panganiban also found that exhibit markings in the formal offer of evidence were not consistent with the TSN. The demand letter dated 25 October 1995 was inserted as exhibit 12 in lieu of another document marked as exhibit 12 during the trial on 6 November 1998. Judge Panganiban also confirmed that exhibit 26, marked during trial, was changed in the formal offer of evidence and did not include pages 2 and 3. Judge Panganiban further confirmed that exhibits 27, 28, 29, 30, and 31 were all changed, had missing pages, and bore no signature of the court officer in the formal offer of evidence.

Lastly, Judge Panganiban observed that a portion of the decision, particularly pages 11-12, mistook check no. 03020694 as issued ahead of check no. 03020693. In her report, Judge Panganiban quoted that portion of Judge Rosete's decision:

> One thing more, the prosecution claims that the checks in suit were issued by the accused simultaneously or at least on the same occasion although it is unclear whether it was July 11, 1995 or August 15, 1995. But be that as it may, why is it that Interbank Check No. 03020694 appears to have been issued ahead of the other check despite the fact that following the sequential numbers of the checks, the latter check must have been issued ahead of Interbank Check No. 03020694 because Interbank Check No. 03020693 would have or fall due on a later date which was on August 15, 1995? With such another unexplained circumstance, no other possibility could be said to have happened except a conclusion that the checks in suit

were not issued on one and the same occasion and they did not pertain to one and the same transaction contrary to the claim of the prosecution.

However, from the records of the case, Judge Panganiban verified that check no. 03020693 bore the date 11 July 1995 while check no. 03020694 was dated 15 August 1995.[2]

The Court directed Sorio to file her comment but she failed to comply with the Court's directive. The Court then referred the case to Judge Amelia Manalastas (Judge Manalastas) of the Regional Trial Court of Pasig City, Branch 268, for further investigation. Thus:

x x x At the hearing conducted on 9 March 2009, Sorio testified that she knew nothing about the missing TSN and the alterations made in the exhibits as she was then on leave. She claimed she was merely prevailed upon by Sarmiento to drop by the office to sign the transmittal letter of the records. Sorio further testified that Sarmiento was the one in charge of marking the exhibits and that Anatalio was the one who retrieved the TSN. Thus, Judge Manalastas summoned Sarmiento and Anatalio to attend the hearing set on 23 March 2009 to clarify Sorio's allegations.

At the hearing, Sarmiento admitted she was the one who marked the exhibits presented in Criminal Case No. 44739. She also stated that she collated all the TSN into a separate volume. The first volume consisted of the case records of Criminal Case No. 44739, while the second volume contained the TSN. She claimed she had finished the index of the first volume, the transmittal letter of which Sorio had signed, when Anatalio arrived, asking permission to borrow the TSN dated 17 February 1999 because Judge Rosete needed them. Sarmiento admitted she allowed Anatalio to get the TSN even if she had not numbered them yet, hoping he would return them as soon as possible. Sarmiento testified that Anatalio never returned the TSN to her. For his part, Anatalio testified he could not remember having borrowed the TSN. However, his signature appeared on the transmittal letter of case records, which indicated he indeed received the TSN.[3]

Judge Manalastas found Sorio liable for falsification of records and recommended her dismissal from the service for gross

[2] *Id*. at 475-477. Footnotes omitted.

[3] *Id*. at 478-479.

dishonesty and grave misconduct. However, the Office of the Court Administrator (OCA), which reviewed the Report of Judge Manalastas, found that Sorio was only guilty of simple neglect of duty for her failure to supervise the persons under her, and for failure to check that the records she was transmitting were true, accurate and complete. The OCA recommended that Sorio be suspended for one month and one day, with a stern warning, and that she be fined ₱5,000 for willfully disregarding the Court's order. The OCA likewise recommended that Sarmiento and Anatalio be included as respondents for conduct prejudicial to the best interest of the service and for violation of office rules, respectively. The OCA further recommended that Sarmiento be suspended for six months and one day with a stern warning and Anatalio be reprimanded with a stern warning.

The Court found reasonable ground to hold Sorio liable for grave misconduct and conduct highly prejudicial to the best interest of the service. The Court dismissed Sorio from the service, with forfeiture of all benefits and with prejudice to re-employment in the Government or any subdivision, instrumentality, or agency thereof, including government-owned or controlled corporations. The Court further fined Sorio in the amount of ₱5,000.

However, the Court ruled that while Sarmiento and Anatalio should be made respondents in the *Sorio* case, they were not named as respondents in the complaint. As such, the Court ruled they should first be formally charged and given a chance to file their comments. The Court directed the Executive Judge of the Regional Trial Court of Pasig City to conduct further investigation on the possible administrative liability of Sarmiento and Anatalio and to submit his recommendation within 45 days from receipt of the Court's Resolution.

The Report of Executive Judge

In his Report dated 2 July 2010, Judge Isagani A. Geronimo (Judge Geronimo), 1st Vice Executive Judge of the Regional Trial Court of Pasig City, recommended the exoneration of Sarmiento and Anatalio from any administrative liability. Judge Geronimo found the explanations of Sarmiento and Anatalio

exculpating and ruled that the acts they committed were not considered violative of office rules nor conduct prejudicial to the best interest of the service.

Judge Geronimo noted that Chua, in particular, observed the following irregularities: (1) the inconsistency of the formal offer of evidence with that of the TSN where a demand letter was inserted as Exhibit "12" in lieu of the exhibit reflected in the TSN; (2) the exclusion of pages of Exhibits "26", "27", "28", "29", "30" and "31" which did not bear the signature of the court officer; and (3) the missing TSN dated 17 February 1999 which was not included in the table of contents when the records of the case were forwarded to Branch 58.

Judge Geronimo found merit in Sarmiento's explanation that as reflected in the TSN dated 6 November 1998, the evidence presented before her which was subsequently marked as Exhibit "12" was a fax transaction receipt and not a demand letter. Further, the TSN of 17 November 1998 showed that what were presented before Sarmiento and marked as Exhibits "26" to "31" were the original passbooks and the markings were made on their cover. However, the defense counsel attached the photocopies of the passbooks in his formal offer of evidence. As such, the markings on the photocopies were not clear and readable. The formal offer of evidence was made before Branch 58 when the case was already transferred and Sarmiento had no participation in the offer. As regards the missing TSN of 17 February 1999, the Order of Branch 58 showed that the hearing was cancelled and reset on that date because of the absence of the defense counsel.

Judge Geronimo likewise found that the transmission of the TSN of Criminal Case No. 44739 without proper indexing was reasonably explained by Sarmiento and Anatalio. Judge Geronimo found that Anatalio's participation in the transmission was only in compliance with the request of Judge Maxwel Rosete (Judge Rosete) of Branch 58 to whom the case was raffled. Anatalio immediately gave the records of the case to Judge Rosete. Judge Geronimo found that while there was no indexing, Sarmiento made a notation on the receipt of the records that they were

received by Anatalio together with Volume II containing the TSN which was not yet included in the Index of Volume II and Transmittal.

The Report and Recommendation of the OCA

In a Memorandum dated 1 February 2011,[4] the OCA ruled that Judge Geronimo's recommendations conflict with the OCA's recommendations in the *Sorio* case. The OCA ruled that Sarmiento and Anatalio were not included in the original complaint "simply because their participation in the loss or alteration of the court records were not then brought to attention." The OCA further ruled that "after according them due process and giving their 'day in court,' so to speak, we cannot just exonerate them as recommended by Investigating Judge Geronimo."

The OCA ruled that Sarmiento and Anatalio did not observe their respective responsibilities. The OCA ruled that Sarmiento should have finished the indexing first before she lent the records to Judge Rosete and that Anatalio should have returned them so Sarmiento could finish the markings.

The OCA recommended that Sarmiento and Anatalio be found guilty of simple neglect of duty and be imposed the penalty of suspension for one month and one day with a stern warning that a repetition of the same or similar offense in the future will be dealt with more severely.

The Issue

The only issue in this case is whether Sarmiento and Anatalio are guilty of simple neglect of duty that warrants the imposition of the penalty of suspension.

The Ruling of this Court

There are matters in this case regarding the participation of Sarmiento and Anatalio in the irregularities complained by Chua that were not fully explained in the *Sorio* case perhaps due to the fact that they were not respondents in that case.

[4] Signed by Court Administrator Jose Midas P. Marquez and Assistant Court Administrator Thelma C. Bahia.

We will first discuss the supposed missing TSN of 17 February 1999.

In the course of Judge Geronimo's investigation of this case, it was established that there was no missing TSN because the hearing on 17 February 1999 was cancelled due to the absence of the defense lawyer and the witness for that day. This was reflected in the court's Order[5] of even date. The hearing of 17 February 1999 was supposed to be a continuation of the trial for the defense. Due to the defense counsel's absence, the prosecution moved that the defense be considered to have waived further presentation of evidence and that the case be deemed submitted for decision. However, defense counsel was given an opportunity to explain his absence. The 17 February 1999 Order, in part, reads:

x x x x.

This Court for the sake of substantial justice, before acting on the said oral motion of the prosecution, hereby directs Atty. Espiritu to reduce in writing within Seventy Two (72) Hours his explanation for his absence thus delaying the speedy trial of this case.

WHEREFORE, in view of the above, this Court hereby held in abeyance the resolution on the oral motion of Atty. Avecilla and upon receipt of the written explanation of Atty. Espiritu, the Court will act accordingly.

In the meantime, due to the absence of the defense counsel as well as the witness for the accused, let today's hearing be cancelled and the same is reset to FEBRUARY 23, 1999 at 2:00 P.M. SHARP.

Notify all the parties and lawyers concerned.

SO ORDERED.[6]

Hence, Sarmiento was able to prove before Judge Geronimo that she was not responsible for the "loss" of the TSN of 17 February 1999.

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[5] Signed by Judge Leodegario C. Quilatan.

[6] *Rollo*, p. 240.

On the matter of the alterations and exclusions of some of the exhibits, it was established that the formal offer of evidence was done after the case was transferred to Branch 58. As explained by Sarmiento, the several original passbooks were marked before Branch 57 as Exhibits "26" to "31". In the formal offer of evidence before Branch 58, counsel for the defense attached photocopies of the marked original passbooks instead of the marked original passbooks. Hence, some of the markings were not clear or not legible on the submitted photocopies of the passbooks. As pointed out by Judge Geronimo, Sarmiento had no participation in the offer of evidence. If there were alterations or exclusions of exhibits during the formal offer of evidence before Branch 58, Sarmiento could not be made liable for them.

However, there remains the issue of the insertion of Exhibit "12" among the exhibits transferred to Branch 58. Sarmiento explained that what was presented to her for marking was a fax transaction receipt, as evidenced by the TSN of 6 November 1998. She claimed that she had no knowledge of the insertion of the demand letter as Exhibit "12". Judge Geronimo accepted the explanation and pointed out that in the *Sorio* case, Judge Rosete himself stated that when he rendered his decision, "all the exhibits offered by the prosecution and the defense were intact, without any alterations."[7]

We do not agree with Judge Geronimo.

Granting that there was no direct evidence that Sarmiento inserted the demand letter as Exhibit "12," it could not be denied that the insertion happened while the records were still with Branch 57 in Sarmiento's possession. This is bolstered by Judge Rosete's claim that the records were intact and without alterations when he received them. It could only mean that when he received the records, the demand letter was already inserted as Exhibit "12." Sarmiento could not escape liability by simply claiming ignorance of the insertion. The occurrence of the insertion while the records were still in Sarmiento's possession shows neglect of her duties.

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[7] *Supra* note 1, at 478.

Finally, as regards the transmission of the records from Branch 57 to Branch 58 before the completion of the indexing, it should be remembered that both Sarmiento and Anatalio acted upon the request of Judge Rosete. Anatalio only acted as the messenger who received the records in compliance with Judge Rosete's order. There was no evidence that he kept the records as he, in fact, immediately turned them over to Judge Rosete. As for Sarmiento, she was aware that the indexing was not yet complete but she transmitted the records in compliance with the request of Judge Rosete. She still exercised precaution by making the proper notation on the transmittal letter that the records received by Anatalio included Volume II containing the TSN which was not yet included in the Index. Anatalio signed the transmittal receipt with this notation.

In view of the foregoing, we adopt the recommendation of the OCA finding Sarmiento guilty of simple neglect of duty. Simple neglect of duty is the failure to give attention to a task, or the disregard of a duty due to carelessness or indifference.[8] It is a less grave offense punishable by suspension of one month and one day to six months for the first offense.[9] Thus, we also adopt the recommendation of the OCA that Sarmiento be imposed the penalty of suspension from the service for one month and one day with a stern warning that a repetition of the same or similar conduct in the future will be dealt with more severely.

As regards Anatalio, whose only participation in the incident was getting the records from Branch 57 and giving them to Judge Rosete upon the latter's instructions, he cannot be faulted for any misconduct or negligence.

WHEREFORE, we find Mary Lou C. Sarmiento **GUILTY** of Simple Neglect of Duty and impose upon her the penalty of **SUSPENSION** for One Month and One Day with a stern warning

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[8] *Office of the Court Administrator v. Garcia-Rañoco*, A.M. No. P-03-1717, 6 March 2008, 547 SCRA 670.

[9] *Lao v. Mabutin*, A.M. No. MTJ-06-1646, 16 July 2008, 558 SCRA 411, citing Revised Uniform Rules on Administrative Cases in the Civil Service, Section 52(B)(1).

that a repetition of the same or similar act in the future will be dealt with more severely. We **DISMISS** the administrative charge against Arturo F. Anatalio.

SO ORDERED.

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

Perlas-Bernabe, J., on official leave.

EN BANC

[A.M. No. RTJ-10-2232. April 10, 2012]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE CADER P. INDAR, Presiding Judge and Acting Presiding Judge of the Regional Trial Court, Branch 14, Cotabato City and Branch 15, Shariff Aguak, Maguindanao, respectively,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; GROSS MISCONDUCT AND DISHONESTY; ISSUANCE OF DECISIONS ON NUMEROUS ANNULMENT OF MARRIAGE CASES WITHOUT CONDUCTING ANY JUDICIAL PROCEEDINGS IS A REPREHENSIBLE ACT OF GROSS MISCONDUCT AND DISHONESTY. — The Court condemns Judge Indar's reprehensible act of issuing Decisions that voided marital unions, without conducting any judicial proceedings. Such malfeasance not only makes a mockery of marriage and its life-changing consequences but likewise grossly violates the basic norms of truth, justice, and due process. Not only that, Judge

Indar's gross misconduct greatly undermines the people's faith in the judiciary and betrays public trust and confidence in the courts. Judge Indar's utter lack of moral fitness has no place in the Judiciary. Judge Indar deserves nothing less than dismissal from the service. The Court defines dishonesty as: x x x a "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." In this case, Judge Indar issued Decisions on numerous annulment of marriage cases when in fact he did not conduct any judicial proceedings on the cases. Not even the filing of the petitions occurred. Judge Indar made it appear in his Decisions that the annulment cases complied with the stringent requirements of the Rules of Court and the strict statutory and jurisprudential conditions for voiding marriages, when quite the contrary is true, violating Canon 3 of the Code of Judicial Conduct which mandates that a judge "perform official duties honestly."

2. ID.; ID.; ID.; ID.; IMPOSITION OF THE ULTIMATE PENALTY OF DISMISSAL FROM THE SERVICE IS WARRANTED IN VIEW OF ATTENDANT AGGRAVATING CIRCUMSTANCE OF HABITUALITY. — The Court notes that this is not Judge Indar's first offense. In *A.M. No. RTJ-05-1953*, the Court imposed on him a fine of ₱10,000 for violating Section 5, Rule 58 of the Rules of Court, when he issued a preliminary injunction without any hearing and prior notice to the parties. In another case, *A.M. No. RTJ-07-2069*, the Court found him guilty of gross misconduct for committing violations of the Code of Judicial Conduct and accordingly fined him ₱25,000. Since this is Judge Indar's third offense, showing the depravity of his character and aggravating the serious offenses of gross misconduct and dishonesty, the Court imposes on Judge Indar the ultimate penalty of dismissal from the service, with its accessory penalties, pursuant to Section 11, Rule 140 of the Rules of Court.

3. ID.; ID.; ID.; ID.; A JUDGE FOUND GUILTY OF GROSS MISCONDUCT AND DISHONESTY ALSO DESERVES DISBARMENT. — Judge Indar's gross misconduct and dishonesty likewise constitute a breach of x x x Canons [1 and 7]of the Code of Professional Responsibility[.] x x x In addition, Judge Indar's dishonest act of issuing decisions making

> it appear that the annulment cases underwent trial and complied with the Rules of Court, laws, and established jurisprudence violates the lawyer's oath to "do no falsehood, nor consent to the doing of any in court." Such violation is also a ground for disbarment. x x x Considering that Judge Indar is guilty of gross misconduct and dishonesty, constituting violations of the Lawyer's Oath, and Canons 1 and 7 and Rule 1.01 of the Code of Professional Responsibility, Judge Indar deserves disbarment.

D E C I S I O N

***PER CURIAM*:**

This is an administrative complaint for gross misconduct and dishonesty against respondent Judge Cader P. Indar, Al Haj (Judge Indar), Presiding Judge of the Regional Trial Court (RTC), Branch 14, Cotabato City and Acting Presiding Judge of the RTC, Branch 15, Shariff Aguak, Maguindanao.

This case originated from reports by the Local Civil Registrars of Manila and Quezon City to the Office of the Court Administrator (OCA) that they have received an alarming number of decisions, resolutions, and orders on annulment of marriage cases allegedly issued by Judge Indar.

To verify the allegations against Judge Indar, the OCA conducted a judicial audit in RTC-Shariff Aguak, Branch 15, where the Audit Team found that the list of cases submitted by the Local Civil Registrars of Manila and Quezon City do not appear in the records of cases received, pending or disposed by RTC-Shariff Aguak, Branch 15. Likewise, the annulment decisions did not exist in the records of RTC-Cotabato, Branch 14. The Audit Team further observed that the case numbers in the list submitted by the Local Civil Registrars are not within the series of case numbers recorded in the docket books of either RTC-Shariff Aguak or RTC-Cotabato.

At the same time, the Audit Team followed-up Judge Indar's compliance with Deputy Court Administrator (DCA) Jesus Edwin

A. Villasor's 1st Indorsement, dated 15 February 2010, relative to the letter[1] of Ms. Miren Galloway, Manager-Permanent Entry Unit, Australian Embassy, Manila (Australian Embassy letter), asking confirmation on the authenticity of Judge Indar's decision, dated 23 May 2007, in Spec. Proc. No. 06-581, entitled "*Chona Chanco Aguiling v. Alan V. Aguiling*," for Declaration of Nullity of Marriage. As regards this case, the Audit Team found that Spec. Proc. No. 06-584 does not exist in the records of cases filed, pending or disposed by RTC-Shariff Aguak.

Subsequently, the Audit Team made the following conclusions:

1. The list in Annexes A; A-1; A-2 and A-3 are not found in the list of cases filed, pending or decided in the Regional Trial Court, Branch 15, Shariff Aguak [Maguindanao] which is based in Cotabato City, nor in the records of the Office of the Clerk of Court of Regional Trial Court, Cotabato City;

2. There are apparently decisions of cases which are spurious, as these did not pass through the regular process such as filing, payment of docket fees, trial, *etc.* which are now circulating and being registered in Local Civil Registrars throughout the country, the extent of which is any body's guess;

3. The authenticity of the signatures appearing thereon could only be validated by handwriting experts of the National Bureau of Investigation (NBI);

4. The participation of any lower court officials and/or employees could not be ascertained except probably through a more thorough discreet investigation and or entrapment; [and]

5.There is a possibility that more of this (sic) spurious documents may appear and cause damage to the Court's Integrity.[2]

Meanwhile, in compliance with DCA Villasor's Indorsement and in response to the Australian Embassy letter, Judge Indar

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[1] Dated 25 November 2009 and addressed to then Court Administrator Jose P. Perez (now a member of this Court).

[2] Contained in the Memorandum addressed to then Chief Justice Reynato S. Puno and signed by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Jesus Edwin A. Villasor.

explained, in a Letter dated 10 March 2010, that "this court is a Court of General Jurisdiction and can therefore act even on cases involving Family Relations. Hence, the subject decision rendered by this Court annulling the marriage of your client is VALID and she is free to marry."[3]

In a Memorandum dated 26 April 2010, the OCA recommended that (1) the matter be docketed as a regular administrative matter; (2) the matter be assigned to a Court of Appeals Justice for Investigation, Report, and Recommendation; and (3) Judge Indar be preventively suspended, pending investigation.

In a Resolution dated 4 May 2010, the Court *En Banc* (1) docketed this administrative matter as A.M. No. RTJ-10-2232,[4] and (2) preventively suspended Judge Indar pending investigation of this case.

The case was initially raffled to Justice Rodil V. Zalameda of the Court of Appeals, Manila for investigation. The case was re-raffled to Justice Angelita A. Gacutan (Justice Gacutan) of the Court of Appeals, Cagayan de Oro due to its proximity to the Regional Trial Courts involved.

Justice Gacutan set the case for hearing on several dates and sent the corresponding notices of hearing to Judge Indar at his known addresses, namely, his official stations in RTC-Cotabato and RTC-Shariff Aguak and residence address.

The first notice of hearing dated 21 June 2010, which was sent *via* registered mail and private courier LBC, scheduled the hearings on 14, 15, and 16 July 2010 and directed Judge Indar to submit in affidavit form his explanation. The LBC records show that this notice, which was delivered to Judge Indar's official stations, was received by one Mustapha Randang on 28 June 2010.

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[3] Addressed to Ms. Miren Galloway, Manager-Permanent Entry Unit, Australian Embassy, Manila and copy furnished to DCA Villasor.

[4] Formerly A.M. No. 10-4-21-SC (*Re: Several Decisions in Annulment of Marriage Cases Received by the Local Civil Registrars of Manila and Quezon City Allegedly Issued by Judge Cader P. Indar, Acting Presiding Judge, Regional Trial Court, Branch 15, Shariff Aguak, Maguindanao*).

The scheduled hearing was postponed and reset to 20, 21 and 22 July 2010. The notice of postponement was sent to Judge Indar *via* registered mail on 6 July 2010 to his official stations and was received again by Mustapha Randang on 8 July 2010.

Judge Indar failed to attend the hearing as rescheduled and to submit the affidavit as required. Thus, in an Order of 23 July 2010, Justice Gacutan directed Judge Indar to explain his non-appearance, and reset the hearing to 10 and 11 August 2010. The Order was sent to his residence address in M. Tan Subdivision, Gonzalo Javier St., Rosary Heights, Cotabato City. The LBC report indicated that the Order was received by a certain Mrs. Asok.

Justice Gacutan also sent a letter dated 23 July 2010 addressed to Atty. Umaima L. Silongan (Atty. Silongan), Acting Clerk of Court of RTC-Cotabato, directing her to serve the notice of hearing scheduled on 10 and 11 August 2010 to Judge Indar and to report the steps taken to effect service of the same. Atty. Silongan submitted a Return of Service, informing that the notices sent to Judge Indar had remained unserved, as the latter left Cotabato City in April 2010 and his location since then was unknown.

In a Resolution of 28 September 2010, this Court directed Justice Gacutan to conduct further investigation to determine the authenticity of the questioned decisions allegedly rendered by Judge Indar annulling certain marriages. The Court required Justice Gacutan to ascertain whether the cases were properly filed in court, and who are the parties responsible for the issuance of the questioned decisions, and to submit a report thereon within 60 days from receipt of the Resolution.

In compliance with the Court's Resolution, Justice Gacutan directed the Local Civil Registrars of Manila and Quezon City and Atty. Silongan to submit certified true copies of the questioned decisions and to testify thereon.

Only the Civil Registrars were present during the hearings on 4 and 5 November 2010. Their testimonies are summarized as follows:

"Testimonies of Ma. Josefina Encarnacion A. Ocampo, City Civil Registrar of Manila
TSN, November 4, 2010

As City Civil Registrar, she is mandated to receive all registered documents that will affect the status of the person like the birth, death and marriage contract, court decrees regarding annulment, adoption, legitimization, the affidavit using the surname of the father, naturalization, the selection of citizenship, *etc*. The documents are forwarded to their office after they are being registered by the concerned parties.

In the case of annulment of marriage, a copy of the decision is submitted to the Civil Registrar by the one who had his marriage annulled. Per administrative order, it is the duty of the Clerk of Court to furnish them a copy of the Decision. After the copies of decisions are submitted to them, they are mandated to verify the authenticity of the decision by writing a verification letter to the Clerk of Court before making the annotation or changing the parties' status.

She identified the list of cases of annulment of marriages and petitions changing status of persons (annexes "A-1" and "A-2") which all came from a court in Cotabato. All the cases listed in A-2 have already been confirmed or annotated in the records of the Manila Civil Registry. She affirmed that the said cases in the list were certified true by the clerk of court. As their duty to annotate the said decrees to their records are merely ministerial, they do not question the decrees however peculiar they may seem.

The cases listed in the document marked as Annex A-2 were also cases that came from Cotabato City for their annotation. Although these cases have been certified true by the Clerk of Court, their annotation and confirmation were held in abeyance due to the on-going investigation of Judge Indar."

"Testimony of Salvador Cariño,
Chief of Records Division, City Civil Registrar of Quezon City
TSN, November 4, 2010

He generally supervises the retrieval of all the records or documents in their office. He also signs certified true copies of birth, marriage contract, death certificate and certified true copies of Court's decisions furnished to them by different courts.

With regards the decisions issued by the Court in provinces, once the Judge issued the decision regarding the annulment, the parties

concern should first register the decision to the Local Civil Registrar where the court is situated. After they receive the decision from the Administrative Division, they would call or write the concerned Local Civil Registrar to authenticate or verify the records. He identified the cases coming from a Cotabato court that were submitted to them for annotation.

The subject decisions listed in the annexes which were decided by a court in Cotabato City were already annotated and verified. However he could not ascertain who from the court verified the authenticity or existence of such decisions as he was not the one who personally called to verify and authenticate them from the court where the listed Decisions/Orders originate."[5]

The Civil Registrar of Manila submitted copies of Decisions, Orders and Resolutions, all signed by Judge Indar, in forty three (43) cases for annulment of marriage, correction of entry and other similar cases from RTC-Cotabato City, Branch 15. All the decisions were accompanied by the corresponding Letter of Atty. Silongan, affirming each of the decisions as true and authentic based on the records, while thirty six (36) of such decisions are accompanied by Atty. Silongan's certification affirming the genuineness of Judge Indar's signature affixed on the Decisions.[6]

On the other hand, the Civil Registrar of Quezon City submitted twenty five (25) Decisions, Orders, and Resolutions issued by RTC-Cotabato City, Branch 15, which were transmitted to the Registrar's office for annotation and recording. All the Decisions were signed by Judge Indar, and accompanied by Certificates of Finality affirming the genuineness of Judge Indar's signature appearing above the name of Judge Cader P. Indar. The Certificates of Finality were issued by Atty. Silongan and in one case, by Abie Amilil, the OIC-Branch Clerk of Court.[7]

Meanwhile, Atty. Silongan, despite notice, failed to attend the hearing. She explained in a Manifestation of 8 November

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[5] Report of Justice Borreta, pp. 5-6.

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

[7] *Id.* at 7.

2010 that she received the Notice only on 8 November 2010 because she was on leave from 1 October 1 to 30 November 2010. Thus, the hearing was reset to 11 and 12 January 2011. However, on the scheduled hearing, Atty. Silongan still failed to appear.

Justice Gacutan sought the assistance of the National Bureau of Investigation (NBI) to locate the whereabouts of Judge Indar, as well as of Atty. Silongan. After several exchanges of correspondence, the NBI, in a Letter dated 22 March 2011, provided the residence addresses of both Judge Indar and Atty. Silongan.

Meanwhile, Judge George C. Jabido (Judge Jabido), Acting Presiding Judge of RTC-Shariff Aguak, Branch 15, was directed to verify the authenticity of the records of the subject Decisions and to appear at the hearing on 29 March 2011. The hearing was canceled due to the judicial reorganization in the Court of Appeals.

This administrative matter was re-raffled to Justice Abraham B. Borreta (Justice Borreta) since Justice Gacutan was reassigned to Manila effective 11 April 2011. Justice Borreta set the hearing on 27 to 29 June 2011. Notices of hearing were sent to Judge Indar and Atty. Silongan at the addresses provided by the NBI and at their previous mailing addresses. The registered mails addressed to Judge Indar were returned for the following reasons: (1) "addressee out of town, move to another place" and (2) addressee "unknown." The Notice sent to Atty. Silongan was also returned and per LBC report, the consignee has moved to an unknown address.

Judge Jabido, who was notified of the hearing, testified that:

> In compliance with the directive of the Investigating Justice to verify the authenticity of the records of the listed decisions, judgments and orders, he issued memos to the officers of the Court, the Branch Clerk of Court, the docket clerk, directing them to produce and secure copies of the minutes and other documents related therein. He personally checked the records of the RTC. The Records of the RTC are bereft of evidence to show that regular and true proceedings

were had on these cases. There is no showing that a docket fee has been paid for each corresponding cases. There is also no showing that the parties were notified of a scheduled hearing as calendared. There is also no record that a hearing was conducted. No stenographic notes of the actual proceedings were also made. He could not also determine when the said cases were submitted for decision as it was not calendared for that purpose.[8]

Judge Jabido also submitted a report, portions of which read:

The undersigned took extra efforts to locate any record of the cases involving the parties as enumerated in the list. The undersigned even issued Memorandum to the Branch Clerk of Court, the docket clerk and other responsible officers of the Court to produce and secure copies of any pleading/documents related to these cases enumerated in the list but his efforts proved futile, hence:

a) to this Court, there is no record on file of all the enumerated cases contained in the list.

b) to this Court, it is bereft of any evidence on whether the Hon. Judge Indar conducted a hearing in these cases.

x x x x

There is absence of any record showing compliance of the same. It is hereby submitted that the manner upon which the questioned annulment and correction cases, as contained herein in the attached list, allegedly decided by the Hon. Judge Indar were commenced are clearly doubtful.

Firstly, there is no showing of compliance on the rules prescribed.

x x x x

There is no showing that a verified Petition was officially filed in writing and giving (sic) an opportunity for the Respondents to be heard by himself or by counsel. x x x[9]

To support his findings, Judge Jabido submitted: (1) copies of the Letters and Memoranda mentioned in the report; (2) the Calendar of Cases in RTC-Cotabato, Branch 15, on various

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

[9] *Id.* at 9.

dates from the period starting April 2007 to 20 October 2009; and (3) the Docket Inventory in Civil Cases, Criminal Cases and Other Cases for the period of January to December 2009 in RTC-Cotabato, Branch 15.

Subpoenas were sent to some of the parties in the questioned decisions, namely: Grace Elizarde Reyes (Special Case No. 1049), Buenaventura Mojica (Apl. Proc. No. 08-1931), Marie Christine N. Florendo (Civil Case No. 519), Jesse Yamson Faune, Jr. (Special Civil Case 08-2366), Rosemarie Tongson Ramos (Special Case No. 08-1871) and Melissa Sangan-Demafelis (Spl. Proc. 07-2262) to determine whether they filed the petitions for annulment of marriage and whether proceedings were actually had before Judge Indar's sala in relation to their cases. All the subpoenas were returned to the Court of Appeals.

In his Report dated 2 September 2011, Justice Borreta first determined whether the requirements of due process had been complied with since there was no proof that Judge Indar personally and actually received any of the notices sent to him in the course of the investigation.

Justice Borreta differentiated administrative due process with judicial due process. He stated that "while a day in court is a matter of right in judicial proceedings, it is otherwise in administrative proceedings since they rest upon different principles."

Justice Borreta noted that all possible means to locate Judge Indar and to personally serve the court notices to him were resorted to. The notices of hearing were sent to Judge Indar's known addresses, namely, his sala in RTC-Cotabato Branch 14 and RTC-Shariff Aguak Branch 15, and at his residence address. However, none of the notices appeared to have been personally received by Judge Indar.

Notwithstanding, Justice Borreta concluded that the requirements of due process have been complied with. Justice Borreta stated that Judge Indar was aware of a pending administrative case against him. The notice of this Court's Resolution of 4 May 2010, preventively suspending Judge Indar,

was mailed and sent to him at his sala in RTC-Shariff Aguak, Branch 15.

Justice Borreta proceeded to determine Judge Indar's administrative liability, and found the latter guilty of serious misconduct and dishonesty.

According to Justice Borreta, Judge Indar's act of issuing decisions on annulment of marriage cases without complying with the stringent procedural and substantive requirements of the Rules of Court for such cases clearly violates the Code of Judicial Conduct. Judge Indar made it appear that the annulment cases underwent trial, when the records show no judicial proceedings occurred.

Moreover, Judge Indar's act of "affirming in writing before the Australian Embassy the validity of a decision he allegedly rendered," when in fact that case does not appear in the court's records, constitutes dishonesty.

Justice Borreta recommended the dismissal of Judge Indar from service, and the investigation of Atty. Silongan, who is not included as respondent in this case, on her participation in the certification of the authenticity of the spurious Decisions.

The sole issue in this case is whether Judge Indar is guilty of gross misconduct and dishonesty.

We agree with the findings of the Investigating Justice.

The Uniform Rules on Administrative Cases in the Civil Service, which govern the conduct of disciplinary and non-disciplinary proceedings in administrative cases, clearly provide that technical rules of procedure and evidence do not strictly apply to administrative proceedings. Section 3, Rule I of the Uniform Rules states:

> Section 3. Technical Rules in Administrative Investigations. – Administrative investigations shall be conducted without necessarily adhering strictly to the technical rules of procedure and evidence applicable to judicial proceedings.

In *Cornejo v. Gabriel*,[10] the Court held that notice and hearing are not indispensable in administrative investigations, thus:

> The fact should not be lost sight of that we are dealing with an administrative proceeding and not with a judicial proceeding. As Judge Cooley, the leading American writer on constitutional Law, has well said, due process of law is not necessarily judicial process; much of the process by means of which the Government is carried on, and the order of society maintained, is purely executive or administrative, which is as much due process of law, as is judicial process. **While a day in court is a matter of right in judicial proceedings, in administrative proceedings it is otherwise since they rest upon different principles. In certain proceedings, therefore, of an administrative character, it may be stated, without fear of contradiction, that the right to a notice and hearing are not essential to due process of law.** x x x[11] (Emphasis supplied; citations omitted)

It is settled that "technical rules of procedure and evidence are not strictly applied to administrative proceedings. Thus, administrative due process cannot be fully equated with due process in its strict judicial sense."[12] It is enough that the party is given the chance to be heard before the case against him is decided.[13] Otherwise stated, in the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of the opportunity to be heard.[14]

The Court emphasized in *Cornejo*[15] the Constitutional precept that public office is a public trust,[16] which is the underlying

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[10] 41 Phil. 188, 193-194 (1920).

[11] *Id.*, cited in *De Bisschop v. Galang*, 118 Phil. 246 (1963).

[12] *Office of the Court Administrator v. Canque*, A.M. No. P-04-1830, 4 June 2009, 588 SCRA 226, 236.

[13] *Montemayor v. Bundalian*, 453 Phil. 158, 167 (2003), citing *Ocampo v. Office of the Ombudsman*, 379 Phil. 21 (2000). See *Hernando v. Francisco*, 123 Phil. 938, 947 (1966).

[14] See *Gannapao v. Civil Service Commission*, G.R. No. 180141, 31 May 2011, 649 SCRA 595, citing *Montoya v. Varilla*, G.R. No. 180146, 18 December 2008, 574 SCRA 831, 841.

[15] *Supra* note 10.

[16] Section 1, Article XI of the 1987 Constitution provides:

principle for the relaxation of the requirements of due process of law in administrative proceedings, thus:

> Again, for this petition to come under the due process of law prohibition, it would be necessary to consider an office as "property." It is, however, well settled in the United States, that **a public office is not property within the sense of the constitutional guaranties of due process of law, but is a public trust or agency.**[17] (Emphasis supplied)

In this case, Judge Indar was given ample opportunity to controvert the charges against him. While there is no proof that Judge Indar personally received the notices of hearing issued by the Investigating Justices, the first two notices of hearing were received by one Mustapha Randang of the Clerk of Court, RTC-Cotabato, while one of the notices was received by a certain Mrs. Asok, who were presumably authorized and capable to receive notices on behalf of Judge Indar.

Further, Judge Indar cannot feign ignorance of the administrative investigation against him because aside from the fact that the Court's Resolution suspending him was mailed to him, his preventive suspension was reported in major national newspapers.[18] Moreover, Judge Indar was repeatedly sent notices of hearings to his known addresses. Thus, there was due notice on Judge Indar of the charges against him. However, Judge Indar still failed to file his explanation and appear at the scheduled

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Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

[17] *Supra* note 10 at 194.

[18] The Philippine Star, *Cotabato RTC judge suspended (http://www.philstar.com/Article.aspx?articleId=572643&publicationSubCategoryId=67*; accessed 9 March 2012); Malaya, *Cotabato judge sacked over annulment cases* (http://www.malaya.com.ph/05062010/news9.html; accessed 9 March 2012); Manila Bulletin, *Judge gets indefinite suspension* (http://www.mb.com.ph/articles/256119/judge-gets-indefinite-suspension; accessed 9 March 2012).

hearings. Consequently, the investigation proceeded *ex parte* in accordance with Section 4, Rule 140 of the Rules of Court.[19]

Public office is a public trust.[20] This constitutional principle requires a judge, like any other public servant and more so because of his exalted position in the Judiciary, to exhibit at all times the highest degree of honesty and integrity.[21] As the visible representation of the law tasked with dispensing justice, a judge should conduct himself at all times in a manner that would merit the respect and confidence of the people.[22]

Judge Indar miserably failed to live up to these exacting standards.

In *Office of the Court Administrator v. Lopez*,[23] the Court explained the difference between simple misconduct and grave misconduct, thus:

> The Court defines misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. As distinguished

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[19] SEC. 4. *Hearing*. — The Investigating Justice or Judge shall set a day for the hearing and send notice thereof to both parties. At such hearing, the parties may present oral and documentary evidence. If after due notice the respondent fails to appear, the investigation shall proceed *ex parte*.

The Investigating Justice or Judge shall terminate the investigation within ninety (90) days from the date of its commencement or within such extension as the Supreme Court may grant.

[20] Section 1, Article XI of the 1987 Constitution provides:

Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

[21] *Mercado v. Salcedo*, A.M. No. RTJ-03-1781, 16 October 2009, 604 SCRA 4, 19-20.

[22] *Id.* at 20.

[23] A.M. No. P-10-2788, 18 January 2011, 639 SCRA 633, 638.

from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct.

In this case, Judge Indar issued decisions on numerous annulment of marriage cases which do not exist in the records of RTC-Shariff Aguak, Branch 15 or the Office of the Clerk of Court of the Regional Trial Court, Cotabato City. There is nothing to show that (1) proceedings were had on the questioned cases; (2) docket fees had been paid; (3) the parties were notified of a scheduled hearing as calendared; (4) hearings had been conducted; or (5) the cases were submitted for decision. As found by the Audit Team, the list of case titles submitted by the Local Civil Registrars of Manila and Quezon City are not found in the list of cases filed, pending or decided in RTC, Branch 15, Shariff Aguak, nor in the records of the Office of the Clerk of Court of the Regional Trial Court, Cotabato City. In other words, Judge Indar, who had sworn to faithfully uphold the law, issued decisions on the questioned annulment of marriage cases, without any showing that such cases underwent trial and complied with the statutory and jurisprudential requisites for voiding marriages. Such act undoubtedly constitutes gross misconduct.

The Court condemns Judge Indar's reprehensible act of issuing Decisions that voided marital unions, without conducting any judicial proceedings. Such malfeasance not only makes a mockery of marriage and its life-changing consequences but likewise grossly violates the basic norms of truth, justice, and due process. Not only that, Judge Indar's gross misconduct greatly undermines the people's faith in the judiciary and betrays public trust and confidence in the courts. Judge Indar's utter lack of moral fitness has no place in the Judiciary. Judge Indar deserves nothing less than dismissal from the service.

The Court defines dishonesty as:

x x x a "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or

integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[24]

In this case, Judge Indar issued Decisions on numerous annulment of marriage cases when in fact he did not conduct any judicial proceedings on the cases. Not even the filing of the petitions occurred. Judge Indar made it appear in his Decisions that the annulment cases complied with the stringent requirements of the Rules of Court and the strict statutory and jurisprudential conditions for voiding marriages, when quite the contrary is true, violating Canon 3 of the Code of Judicial Conduct which mandates that a judge "perform official duties honestly."

As found by the Audit Team, the list of cases submitted by the Local Civil Registrars of Manila and Quezon City do not appear in the records of cases received, pending, or disposed by RTC-Shariff Aguak, Branch 15, which Judge Indar presided. The cases do not likewise exist in the docket books of the Office of the Clerk of Court, RTC-Cotabato. The Audit Team also noted that the case numbers in the list are not within the series of case numbers recorded in the docket books of either RTC-Shariff Aguak or RTC-Cotabato.

Moreover, Judge Jabido, Acting Presiding Judge of RTC-Shariff Aguak, Branch 15, verified the records of the trial court and found nothing to show that proceedings were had on the questioned annulment cases. There was nothing in the records to show that (1) petitions were filed; (2) docket fees were paid; (3) the parties were notified of hearings; (4) hearings were calendared and actually held; (5) stenographic notes of the proceedings were taken; and (6) the cases were submitted for decision.

Among the questioned annulment decrees is Judge Indar's Decision dated 23 May 2007, in Spec. Proc. No. 06-581, entitled "*Chona Chanco Aguiling v. Alan V. Aguiling.*" Despite the fact that no proceedings were conducted in the case, Judge Indar declared categorically, in response to the Australian

[24] *De Vera v. Rimas*, A.M. No. P-06-2118, 12 June 2008, 554 SCRA 253, 259.

Embassy letter, that the Decision annulling the marriage is valid and that petitioner is free to marry. In effect, Judge Indar confirms the truthfulness of the contents of the annulment decree, highlighting Judge Indar's appalling dishonesty.

The Court notes that this is not Judge Indar's first offense. In *A.M. No. RTJ-05-1953*,[25] the Court imposed on him a fine of ₱10,000 for violating Section 5, Rule 58 of the Rules of Court, when he issued a preliminary injunction without any hearing and prior notice to the parties. In another case, *A.M. No. RTJ-07-2069*,[26] the Court found him guilty of gross misconduct for committing violations of the Code of Judicial Conduct and accordingly fined him ₱25,000.

Since this is Judge Indar's third offense, showing the depravity of his character and aggravating[27] the serious offenses of gross

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[25] Entitled *Sampiano v. Indar*, 21 December 2009, 608 SCRA 597.

[26] Entitled *Espina & Madarang, Co. v. Indar*, 14 December 2011.

[27] Sections 53 and 54 of the Uniform Rules on Administrative Cases in the Civil Service provide:

Section 53. *Extenuating, Mitigating, Aggravating, or Alternative Circumstances.* — In the determination of the penalties imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the offense shall be considered.

The following circumstances shall be appreciated:

a. Physical illness

b. Good faith

c. Taking undue advantage of official position

d. Taking undue advantage of subordinate

e. Undue disclosure of confidential information

f. Use of government property in the commission of the offense

g. Habituality

h. Offense is committed during office hours and within the premises of the office or building

i. Employment of fraudulent means to commit or conceal the offense

j. Length of service in the government

k. Education, or

l. Other analogous circumstances. (Emphasis supplied)

misconduct and dishonesty,[28] the Court imposes on Judge Indar the ultimate penalty of dismissal from the service, with its accessory penalties, pursuant to Section 11, Rule 140 of the Rules of Court.[29]

Section 54. *Manner of imposition.* — When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.

b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.

c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

d. Where aggravating and mitigating circumstances are present, paragraph (a) shall be applied where there are more mitigating circumstances present; paragraph (b) shall be applied when the circumstances equally offset each other; and paragraph (c) shall be applied when there are more aggravating circumstances.

[28] Section 8, Rule 140 of the Rules of Court provides:

SEC. 8. *Serious charges*. — Serious charges include:

1. Bribery, direct or indirect;

2. Dishonesty and violations of the Anti-Graft and Corrupt Practices Law (R.A. No. 3019);

3. Gross misconduct constituting violations of the Code of Judicial Conduct;

4. Knowingly rendering an unjust judgment or order as determined by a competent court in an appropriate proceeding;

5. Conviction of a crime involving moral turpitude;

6. Willful failure to pay a just debt;

7. Borrowing money or property from lawyers and litigants in a case pending before the court;

8. Immorality;

9. Gross ignorance of the law or procedure;

10. Partisan political activities; and

11. Alcoholism and/or vicious habits. (Emphasis supplied)

[29] Section 11, Rule 140 of the Rules of Court provides:

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

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from

This administrative case against Judge Indar shall also be considered as a disciplinary proceeding against him as a member of the Bar, in accordance with *AM. No. 02-9-02-SC*.[30] This Resolution entitled "Re: Automatic Conversion of Some Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan; Judges of Regular and Special Courts; and Court Officials Who are Lawyers as Disciplinary Proceedings Against Them Both as Such Officials and as Members of the Philippine Bar," provides:

> **Some administrative cases against** Justices of the Court of Appeals and the Sandiganbayan; **judges of regular and special courts**; and the court officials who are lawyers **are based on grounds which are likewise grounds for the disciplinary action of members of the Bar** for violation of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics, or for such other forms of breaches of conduct that have been traditionally recognized as grounds for the discipline of lawyers.
>
> **In any of the foregoing instances, the administrative case shall also be considered a disciplinary action against the respondent** justice, **judge** or court official concerned **as a member of the Bar.** The respondent may forthwith be required to comment on the complaint and show cause why he should not also be suspended, disbarred or otherwise disciplinary sanctioned as a member of the Bar. **Judgment in both respects may be incorporated in one decision or resolution.** (Emphasis supplied)

Indisputably, Judge Indar's gross misconduct and dishonesty likewise constitute a breach of the following Canons of the Code of Professional Responsibility:

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reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;

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

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

[30] *Cañada v. Suerte*, A.M. No. RTJ-04-1884, 22 February 2008, 546 SCRA 414; *Samson v. Caballero*, A.M. No. RTJ-08-2138, 5 August 2009, 595 SCRA 423; *Office of the Court Administrator v. Ismael*, A.M. No. RTJ 07-2045, 19 January 2010, 610 SCRA 281.

CANON 1 - A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND FOR LEGAL PROCESSES.

Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful act.

CANON 7 - A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION.

In addition, Judge Indar's dishonest act of issuing decisions making it appear that the annulment cases underwent trial and complied with the Rules of Court, laws, and established jurisprudence violates the lawyer's oath to "do no falsehood, nor consent to the doing of any in court." Such violation is also a ground for disbarment. Section 27, Rule 138 of the Rules of Court provides:

SEC. 27. *Disbarment and 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 willful disobedience of any lawful order of a superior court, or for corruptly or willfully 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. (Emphasis supplied)

In *Samson v. Caballero*,[31] where the Court automatically disbarred the respondent judge, pursuant to the provisions of *AM. No. 02-9-02-SC*, the Court held:

Under the same rule, a respondent "may forthwith be required to comment on the complaint and show cause why he should not also be suspended, disbarred or otherwise disciplinary sanctioned as member of the Bar." The rule does not make it mandatory, before respondent may be held liable as a member of the bar, that respondent be required to comment on and show cause why he should not be

[31] A.M. No. RTJ-08-2138, 5 August 2009, 595 SCRA 423, 435-436.

disciplinary sanctioned as a lawyer separately from the order for him to comment on why he should not be held administratively liable as a member of the bench. In other words, an order to comment on the complaint is an order to give an explanation on why he should not be held administratively liable not only as a member of the bench but also as a member of the bar. This is the fair and reasonable meaning of "automatic conversion" of administrative cases against justices and judges to disciplinary proceedings against them as lawyers. This will also serve the purpose of A.M. No. 02-9-02-SC to avoid the duplication or unnecessary replication of actions by treating an administrative complaint filed against a member of the bench also as a disciplinary proceeding against him as a lawyer by mere operation of the rule. Thus, a disciplinary proceeding as a member of the bar is impliedly instituted with the filing of an administrative case against a justice of the Sandiganbayan, Court of Appeals and Court of Tax Appeals or a judge of a first- or second-level court.

It cannot be denied that respondent's dishonesty did not only affect the image of the judiciary, it also put his moral character in serious doubt and rendered him unfit to continue in the practice of law. Possession of good moral character is not only a prerequisite to admission to the bar but also a continuing requirement to the practice of law. If the practice of law is to remain an honorable profession and attain its basic ideals, those counted within its ranks should not only master its tenets and principles but should also accord continuing fidelity to them. **The requirement of good moral character is of much greater import, as far as the general public is concerned, than the possession of legal learning.** (Emphasis supplied)

Considering that Judge Indar is guilty of gross misconduct and dishonesty, constituting violations of the Lawyer's Oath, and Canons 1 and 7 and Rule 1.01 of the Code of Professional Responsibility, Judge Indar deserves disbarment.

In so far as Atty. Silongan, is concerned, we adopt Justice Borreta's recommendation to conduct an investigation on her alleged participation in the authentication of the questioned Decisions.

WHEREFORE, the Court finds respondent Judge Cader P. Indar, Al Haj, Presiding Judge of the RTC, Branch 14, Cotabato City and Acting Presiding Judge of the RTC, Branch 15, Shariff

Aguak, Maguindanao, guilty of Gross Misconduct and Dishonesty for which he is **DISMISSED** from the service, with forfeiture of all benefits due him, except accrued leave benefits, if any, with prejudice to re-employment in any branch of the government, including government-owned or controlled corporations.

Judge Indar is likewise **DISBARRED** for violation of Canons 1 and 7 and Rule 1.01 of the Code of Professional Responsibility and his name **ORDERED STRICKEN** from the Roll of Attorneys.

Let a copy of this Decision be entered into Judge Indar's record as a member of the bar and notice of the same be served on the Integrated Bar of the Philippines and on the Office of the Court Administrator for circulation to all courts in the country.

The Office of the Court Administrator is **ORDERED** to investigate Atty. Umaima L. Silongan, Acting Clerk of Court of the Regional Trial Court, Cotabato City, on her alleged participation in the authentication of the questioned Decisions on the annulment of marriage cases issued by Judge Indar.

Let copies of this Decision be forwarded to the Local Civil Registrars of the City of Manila and Quezon City, the same to form part of the records of Decisions of Judge Indar on the annulment of marriages filed with their offices.

This Decision is immediately executory.

SO ORDERED.

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

Perlas-Bernabe, J., on official leave.

EN BANC

[G.R. Nos. 147036-37. April 10, 2012]

Petitioner-Organizations, namely: PAMBANSANG KOALISYON NG MGA SAMAHANG MAGSASAKA AT MANGGAGAWA SA NIYUGAN (PKSMMN), COCONUT INDUSTRY REFORM MOVEMENT (COIR), BUKLOD NG MALAYANG MAGBUBUKID, PAMBANSANG KILUSAN NG MGA SAMAHANG MAGSASAKA (PAKISAMA), CENTER FOR AGRARIAN REFORM, EMPOWERMENT AND TRANSFORMATION (CARET), PAMBANSANG KATIPUNAN NG MGA SAMAHAN SA KANAYUNAN (PKSK); Petitioner-Legislator: REPRESENTATIVE LORETA ANN ROSALES; and Petitioner-Individuals, namely: VIRGILIO V. DAVID, JOSE MARIE FAUSTINO, JOSE CONCEPCION, ROMEO ROYANDOYAN, JOSE V. ROMERO, JR., ATTY. CAMILO L. SABIO, and ATTY. ANTONIO T. CARPIO, *petitioners, vs.* **EXECUTIVE SECRETARY, SECRETARY OF AGRICULTURE, SECRETARY OF AGRARIAN REFORM, PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, THE SOLICITOR GENERAL, PHILIPPINE COCONUT PRODUCERS FEDERATION, INC. (COCOFED), and UNITED COCONUT PLANTERS BANK (UCPB),** *respondents.*

[G.R. No. 147811. April 10, 2012]

TEODORO J. AMOR, representing the Peasant Alliance of Samar and Leyte (PASALEY), DOMINGO C. ENCALLADO, representing Aniban ng Magsasaka at Manggagawa sa Niyugan (AMMANI), and VIDAL M. PILIIN, representing the Laguna Coalition, *petitioners, vs.* **EXECUTIVE SECRETARY, SECRETARY OF AGRICULTURE, SECRETARY**

OF AGRARIAN REFORM, PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, THE SOLICITOR GENERAL, PHILIPPINE COCONUT PRODUCERS FEDERATION, UNITED COCONUT PLANTERS BANK, *respondents.*

SYLLABUS

1. POLITICAL LAW ; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF PRESIDENTIAL DECREES 755, 961 AND 1468 (P.D.s 755, 961 & 1468) AND EXECUTIVE ORDERS 312 AND 313 (E.O.s 312 & 313); LEGAL STANDING OF COCONUT FARMERS' ORGANIZATIONS AND OTHER PETITIONERS, UPHELD; REASONS. — The Court has to uphold petitioners' right to institute these petitions. The petitioner organizations in these cases represent coconut farmers on whom the burden of the coco-levies attaches. It is also primarily for their benefit that the levies were imposed. The individual petitioners, on the other hand, join the petitions as taxpayers. The Court recognizes their right to restrain officials from wasting public funds through the enforcement of an unconstitutional statute. This so-called taxpayer's suit is based on the theory that expenditure of public funds for the purpose of executing an unconstitutional act is a misapplication of such funds. Besides, the 1987 Constitution accords to the citizens a greater participation in the affairs of government. Indeed, it provides for people's initiative, the right to information on matters of public concern (including the right to know the state of health of their President), as well as the right to file cases questioning the factual bases for the suspension of the privilege of writ of *habeas corpus* or declaration of martial law. These provisions enlarge the people's right in the political as well as the judicial field. It grants them the right to interfere in the affairs of government and challenge any act tending to prejudice their interest.

2. ID.; ID.; ID.; NATURE AND CHARACTER OF COCO-LEVY FUNDS, DISCUSSED. — For some time, different and conflicting notions had been formed as to the nature and ownership of the coco-levy funds. The Court, however, finally put an end to the dispute when it categorically ruled in *Republic of the Philippines v. COCOFED* that these funds are not only

affected with public interest; they are, in fact, *prima facie* public funds**.** *Prima facie* means a fact presumed to be true unless disproved by some evidence to the contrary. The Court was satisfied that the coco-levy funds were raised pursuant to law to support a proper governmental purpose. They were raised with the use of the police and taxing powers of the State for the benefit of the coconut industry and its farmers in general. The COA reviewed the use of the funds. The Bureau of Internal Revenue (BIR) treated them as public funds and the very laws governing coconut levies recognize their public character. The Court has also recently declared that the coco-levy funds are in the nature of taxes and can only be used for public purpose. Taxes are enforced proportional contributions from persons and property, levied by the State by virtue of its sovereignty for the support of the government and for all its public needs. Here, the coco-levy funds were imposed pursuant to law, namely, R.A. 6260 and P.D. 276. The funds were collected and managed by the PCA, an independent government corporation directly under the President. And, as the respondent public officials pointed out, the pertinent laws used the term ***levy***, which means *to tax*, in describing the exaction. Of course, unlike ordinary revenue laws, R.A. 6260 and P.D. 276 did not raise money to boost the government's general funds but to provide means for the rehabilitation and stabilization of a threatened industry, the coconut industry, which is so affected with public interest as to be within the police power of the State. The funds sought to support the coconut industry, one of the main economic backbones of the country, and to secure economic benefits for the coconut farmers and farm workers. The subject laws are akin to the sugar liens imposed by Sec. 7(b) of P.D. 388, and the oil price stabilization funds under P.D. 1956, as amended by E.O. 137. x x x The coco-levy funds, x x x belong to the government and are subject to its administration and disposition. Thus, these funds, including its incomes, interests, proceeds, or profits, as well as all its assets, properties, and shares of stocks procured with such funds must be treated, used, administered, and managed as public funds. Lastly, the coco-levy funds are evidently special funds.

3. ID.; ID.; ID.; SIMILAR PROVISIONS OF P.D.s 755, 961 AND 1468 WHICH SUBSTANTIALLY DECLARED COCO-LEVY FUNDS PRIVATE PROPERTIES OF COCONUT FARMERS ARE VOID. — The Court has, however, already passed upon

this question in *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Republic of the Philippines.* It held as unconstitutional Section 2 of P.D. 755 for "effectively authorizing the PCA to utilize portions of the CCS Fund to pay the financial commitment of the farmers to acquire UCPB and to deposit portions of the CCS Fund levies with UCPB interest free. And as there also provided, the CCS Fund, CID Fund and like levies that PCA is authorized to collect shall be considered as non-special or fiduciary funds to be transferred to the general fund of the Government, meaning they shall be deemed private funds." Identical provisions of [P.D.s 961 and 1468] likewise declared coco-levy funds private properties of coconut farmers. x x x [T]he raising of money by levy on coconut farm production, a form of taxation as already stated, began in 1971 for the purpose of developing the coconut industry and promoting the interest of coconut farmers. The use of the fund was expanded in 1973 to include the stabilization of the domestic market for coconut-based consumer goods and in 1974 to divert part of the funds for obtaining direct benefit to coconut farmers. After five years or in 1976, however, P.D. 961 declared the coco-levy funds private property of the farmers. P.D. 1468 reiterated this declaration in 1978. But neither presidential decree actually turned over possession or control of the funds to the farmers in their private capacity. The government continued to wield undiminished authority over the management and disposition of those funds. In any event, such declaration is void. There is ownership when a thing pertaining to a person is completely subjected to his will in everything that is not prohibited by law or the concurrence with the rights of another. An owner is free to exercise all attributes of ownership: the right, among others, to possess, use and enjoy, abuse or consume, and dispose or alienate the thing owned. The owner is of course free to waive all or some of these rights in favor of others. But in the case of the coconut farmers, they could not, individually or collectively, waive what have not been and could not be legally imparted to them. Section 2 of P.D. 755, Article III, Section 5 of P.D. 961, and Article III, Section 5 of P.D. 1468 completely ignore the fact that coco-levy funds are public funds raised through taxation. And since taxes could be exacted only for a public purpose, they cannot be declared private properties of individuals although such individuals fall within a distinct group of persons. x x x [T]he assailed provisions, which removed

the coco-levy funds from the general funds of the government and declared them private properties of coconut farmers, do not appear to have a color of social justice for their purpose. The levy on copra that farmers produce appears, in the first place, to be a business tax judging by its tax base. The concept of farmers-businessmen is incompatible with the idea that coconut farmers are victims of social injustice and so should be beneficiaries of the taxes raised from their earnings. It would altogether be different of course if the laws mentioned set apart a portion of the coco-levy fund for improving the lives of destitute coconut farm owners or workers for their social amelioration to establish a proper government purpose. The support for the poor is generally recognized as a public duty and has long been an accepted exercise of police power in the promotion of the common good. But the declarations do not distinguish between wealthy coconut farmers and the impoverished ones. And even if they did, the Government cannot just embark on a philanthropic orgy of inordinate dole-outs for motives political or otherwise. Consequently, such declarations are void since they appropriate public funds for private purpose and, therefore, violate the citizens' right to substantive due process.

4. ID.; ID.; ID.; E.O.s 312 AND 313 ARE DECLARED VOID FOR BEING VIOLATIVE OF ARTICLE IX-D, SECTION 2(1) OF THE CONSTITUTION; THE SUBJECT E.O.s ALSO CONTRAVENE P.D.s 898 AND 1445. — [S]ince coco-levy funds are taxes, the provisions of x x x E.O.s 312 and 313 that remove such funds and the assets acquired through them from the jurisdiction of the COA violate Article IX-D, Section 2(1) of the 1987 Constitution. Section 2(1) vests in the COA the power and authority to examine uses of government money and property. The cited x x x E.O.s also contravene Section 2 of P.D. 898 (Providing for the Restructuring of the Commission on Audit), which has the force of a statute. And there is no legitimate reason why such funds should be shielded from COA review and audit. The PCA, which implements the coco-levy laws and collects the coco-levy funds, is a government-owned and controlled corporation subject to COA review and audit. x x x [T]he E.O.s also transgress P.D. 1445, Section 84(2), the first part by the previously mentioned Sections of E.O. 313 and the second part by Section 4 of E.O. 312 and Sections 6 and 7 of E.O. 313. E.O. 313 vests the power to administer, manage,

and supervise the operations and disbursements of the Trust Fund it established (capitalized with SMC shares bought out of coco-levy funds) in a Coconut Trust Fund Committee. x x x Section 4 of E.O. 312 does essentially the same thing. It vests the management and disposition of the assistance fund generated from the sale of coco-levy fund-acquired assets into a Committee of five members. x x x In effect, the above transfers the power to allocate, use, and disburse coco-levy funds that P.D. 232 vested in the PCA and transferred the same, without legislative authorization and in violation of P.D. 232, to the Committees mentioned above. An executive order cannot repeal a presidential decree which has the same standing as a statute enacted by Congress.

5. ID.; ID.; ID.; E.O. 313 ALSO VIOLATES ARTICLE VI, SECTION 29(3) OF THE CONSTITUTION. — E.O. 313 suffers from an additional infirmity. Its title, "*Rationalizing the Use of the Coconut Levy Funds by Constituting a 'Fund for Assistance to Coconut Farmers' as an Irrevocable Trust Fund and Creating a Coconut Trust Fund Committee for the Management thereof*" tends to mislead. Apparently, it intends to create a trust fund out of the coco-levy funds to provide economic assistance to the coconut farmers and, ultimately, benefit the coconut industry. But on closer look, E.O. 313 strays from the special purpose for which the law raises coco-levy funds in that it permits the use of coco-levy funds for improving productivity in other food areas. x x x E.O. 313 above runs counter to the constitutional provision which directs that all money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. Assisting other agriculturally-related programs is way off the coco-fund's objective of promoting the general interests of the coconut industry and its farmers.

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D E C I S I O N

ABAD, *J.*:

These are consolidated petitions to declare unconstitutional certain presidential decrees and executive orders of the martial law era relating to the raising and use of coco-levy funds.

The Facts and the Case

On June 19, 1971 Congress enacted Republic Act (R.A.) 6260[1] that established a Coconut Investment Fund (CI Fund) for the development of the coconut industry through capital financing.[2] Coconut farmers were to capitalize and administer the Fund through the Coconut Investment Company (CIC)[3] whose objective was, among others, to advance the coconut farmers' interests. For this purpose, the law imposed a levy of ₱0.55 on the coconut farmer's first domestic sale of every 100 kilograms of copra, or its equivalent, for which levy he was to get a receipt convertible into CIC shares of stock.[4]

About a year following his proclamation of martial law in the country or on August 20, 1973 President Ferdinand E. Marcos issued Presidential Decree (P.D.) 276,[5] which established a Coconut Consumers Stabilization Fund (CCS Fund), to address the crisis at that time in the domestic market for coconut-based consumer goods. The CCS Fund was to be built up through the imposition of a ₱15.00-levy for every first sale of 100 kilograms of copra *resecada*.[6] The levy was to cease after

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[1] Entitled AN ACT INSTITUTING A COCONUT INVESTMENT FUND AND CREATING A COCONUT INVESTMENT COMPANY FOR THE ADMINISTRATION THEREOF.

[2] *Id.*, Section 2.

[3] *Id.*

[4] *Id.*, Section 8.

[5] Entitled ESTABLISHING A COCONUT CONSUMERS STABILIZATION FUND.

[6] *Id.*, Section 1(a).

a year or earlier provided the crisis was over. Any remaining balance of the Fund was to revert to the CI Fund established under R.A. 6260.[7]

A year later or on November 14, 1974 President Marcos issued P.D. 582,[8] creating a permanent fund called the Coconut Industry Development Fund (CID Fund) to channel for the ultimate direct benefit of coconut farmers part of the levies that they were already paying. The Philippine Coconut Authority (PCA) was to provide ₱100 million as initial capital of the CID Fund and, thereafter, give the Fund at least ₱0.20 per kilogram of copra *resecada* out of the PCA's collection of coconut consumers stabilization levy. In case of the lifting of this levy, the PCA was then to impose a permanent levy of ₱0.20 on the first sale of every kilogram of copra to form part of the CID Fund.[9] Also, under P.D. 582, the Philippine National Bank (PNB), then owned by the Government, was to receive on deposit, administer, and use the CID Fund.[10] P.D. 582 authorized the PNB to invest the unused portion of the CID Fund in easily convertible investments, the earnings of which were to form part of the Fund.[11]

In 1975 President Marcos enacted P.D. 755[12] which approved the acquisition of a commercial bank for the benefit of the coconut farmers to enable such bank to promptly and efficiently realize the industry's credit policy.[13] Thus, the PCA bought 72.2% of the shares of stock of First United Bank, headed by Pedro Cojuangco.[14]

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[7] *Id.*, Section 2.

[8] Entitled FURTHER AMENDING PRESIDENTIAL DECREE NO. 232, AS AMENDED.

[9] *Id.*, Section 3-B(c).

[10] *Id.*, Section 3-B.

[11] *Supra* note 9.

[12] Entitled APPROVING THE CREDIT POLICY FOR THE COCONUT INDUSTRY AS RECOMMENDED BY THE PHILIPPINE COCONUT AUTHORITY AND PROVIDING FUNDS THEREFOR.

[13] *Id.*, Section 1.

[14] *Republic of the Philippines v. Sandiganbayan*, G.R. No. 118661, January 22, 2007, 512 SCRA 25.

Due to changes in its corporate identity and purpose, the bank's articles of incorporation were amended in July 1975, resulting in a change in the bank's name from First United Bank to United Coconut Planters Bank (UCPB).[15]

On July 14, 1976 President Marcos enacted P.D. 961,[16] the Coconut Industry Code, which consolidated and codified existing laws relating to the coconut industry. The Code provided that surpluses from the CCS Fund and the CID Fund collections, not used for replanting and other authorized purposes, were to be invested by acquiring shares of stock of corporations, including the San Miguel Corporation (SMC), engaged in undertakings related to the coconut and palm oil industries.[17] UCPB was to make such investments and equitably distribute these for free to coconut farmers.[18] These investments constituted the Coconut Industry Investment Fund (CIIF). P.D. 961 also provided that the coconut levy funds (coco-levy funds) shall be owned by the coconut farmers in their private capacities.[19] This was reiterated in the PD 1468[20] amendment of June 11, 1978.

In 1980, President Marcos issued P.D. 1699,[21] suspending the collections of the CCS Fund and the CID Fund. But in 1981 he issued P.D. 1841[22] which revived the collection of

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[15] *Id.*

[16] Entitled AN ACT TO CODIFY THE LAWS DEALING WITH THE DEVELOPMENT OF THE COCONUT AND OTHER PALM OIL INDUSTRY AND FOR OTHER PURPOSES.

[17] *Id.,* Article III, Section 9.

[18] *Id.,* Article III, Section 10.

[19] *Id.,* Article III, Section 5.

[20] Entitled REVISING PRESIDENTIAL DECREE NUMBERED NINE HUNDRED SIXTY ONE.

[21] Entitled AN ACT SUSPENDING THE COLLECTION OF THE COCONUT CONSUMERS STABILIZATION FUND LEVY AND SIMILAR LEVIES AND PROVIDING IN CONNECTION THEREWITH APPROPRIATE MEASURES TO CUSHION THE ADVERSE EFFECTS THEREOF ON THE COCONUT FARMERS.

[22] Entitled PRESCRIBING A SYSTEM OF FINANCING THE SOCIO-ECONOMIC AND DEVELOPMENTAL PROGRAM FOR THE BENEFIT

coconut levies. P.D. 1841 renamed the CCS Fund into the Coconut Industry Stabilization Fund (CIS Fund).[23] This Fund was to be earmarked proportionately among several development programs, such as coconut hybrid replanting program, insurance coverage for the coconut farmers, and scholarship program for their children.[24]

In November 2000 then President Joseph Estrada issued Executive Order (E.O.) 312,[25] establishing a *Sagip Niyugan* Program which sought to provide immediate income supplement to coconut farmers and encourage the creation of a sustainable local market demand for coconut oil and other coconut products.[26] The Executive Order sought to establish a ₱1-billion fund by disposing of assets acquired using coco-levy funds or assets of entities supported by those funds.[27] A committee was created to manage the fund under this program.[28] A majority vote of its members could engage the services of a reputable auditing firm to conduct periodic audits.[29]

At about the same time, President Estrada issued E.O. 313,[30] which created an irrevocable trust fund known as the Coconut

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OF THE COCONUT FARMERS AND ACCORDINGLY AMENDING THE LAWS THEREON.

[23] *Id.,* Section 5.

[24] *Id.,* Section 1.

[25] Entitled ESTABLISHING THE ERAP'S *SAGIP NIYUGAN* PROGRAM AS AN EMERGENCY MEASURE TO ALLEVIATE THE PLIGHT OF COCONUT FARMERS ADVERSELY AFFECTED BY LOW PRICES OF COPRA AND OTHER COCONUT PRODUCTS, AND PROVIDING FUNDS THEREFOR.

[26] *Id.,* Section 1.

[27] *Id.,* Section 4.

[28] *Id.*

[29] *Id.,* Section 5.

[30] Entitled RATIONALIZING THE USE OF THE COCONUT LEVY FUNDS BY CONSTITUTING A "FUND FOR ASSISTANCE TO COCONUT FARMERS" AS AN IRREVOCABLE TRUST FUND AND CREATING A COCONUT TRUST FUND COMMITTEE FOR THE MANAGEMENT THEREOF.

Trust Fund (the Trust Fund). This aimed to provide financial assistance to coconut farmers, to the coconut industry, and to other agri-related programs.[31] The shares of stock of SMC were to serve as the Trust Fund's initial capital.[32] These shares were acquired with CII Funds and constituted approximately 27% of the outstanding capital stock of SMC. E.O. 313 designated UCPB, through its Trust Department, as the Trust Fund's trustee bank. The Trust Fund Committee would administer, manage, and supervise the operations of the Trust Fund.[33] The Committee would designate an external auditor to do an annual audit or as often as needed but it may also request the Commission on Audit (COA) to intervene.[34]

To implement its mandate, E.O. 313 directed the Presidential Commission on Good Government, the Office of the Solicitor General, and other government agencies to exclude the 27% CIIF SMC shares from Civil Case 0033, entitled *Republic of the Philippines v. Eduardo Cojuangco, Jr., et al.*, which was then pending before the Sandiganbayan and to lift the sequestration over those shares.[35]

On January 26, 2001, however, former President Gloria Macapagal-Arroyo ordered the suspension of E.O.s 312 and 313.[36] This notwithstanding, on March 1, 2001 petitioner organizations and individuals brought the present action in G.R. 147036-37 to declare E.O.s 312 and 313 as well as Article III, Section 5 of P.D. 1468 unconstitutional. On April 24, 2001 the other sets of petitioner organizations and individuals instituted G.R. 147811 to nullify Section 2 of P.D. 755 and Article III, Section 5 of P.D.s 961 and 1468 also for being unconstitutional.

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31 *Id.*, Section 2.

32 *Id.*, Section 3.

33 *Id.*, Section 6.

34 *Id.*, Section 13.

35 *Id.*, Section 14.

36 http://www.afrim.org.ph/Archives/2001/BusinessWorld/September/17/Estrada%20s%20EOs%20creating%20coco%20levy%20trust%20fund%20challenged.txt (last accessed July 8, 2011).

The Issues Presented

The parties submit the following issues for adjudication:

Procedurally –

1. Whether or not petitioners' special civil actions of *certiorari* under Rule 65 constituted the proper remedy for their actions; and

2. Whether or not petitioners have legal standing to bring the same to court.

On the substance –

3. Whether or not the coco-levy funds are public funds; and

4. Whether or not (a) Section 2 of P.D. 755, (b) Article III, Section 5 of P.D.s 961 and 1468, (c) E.O. 312, and (d) E.O. 313 are unconstitutional.

The Rulings of the Court

First. UCPB questions the propriety of the present petitions for *certiorari* and *mandamus* under Rule 65 on the ground that there are no ongoing proceedings in any tribunal or board or before a government official exercising judicial, quasi-judicial, or ministerial functions.[37] UCPB insists that the Court exercises appellate jurisdiction with respect to issues of constitutionality or validity of laws and presidential orders.[38]

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[37] *Macalintal v. Commission on Elections*, 453 Phil. 586, 625 (2003).

[38] 1987 Constitution, Article VIII, **Section 5**. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.

(2) Review, revise, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(a) All **cases in which the constitutionality or validity** of any treaty, international or executive agreement, **law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.**

(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto. x x x (Emphasis ours)

But, as the Court previously held, where there are serious allegations that a law has infringed the Constitution, it becomes not only the right but the duty of the Court to look into such allegations and, when warranted, uphold the supremacy of the Constitution.[39] Moreover, where the issues raised are of paramount importance to the public, as in this case, the Court has the discretion to brush aside technicalities of procedure.[40]

Second. The Court has to uphold petitioners' right to institute these petitions. The petitioner organizations in these cases represent coconut farmers on whom the burden of the coco-levies attaches. It is also primarily for their benefit that the levies were imposed.

The individual petitioners, on the other hand, join the petitions as taxpayers. The Court recognizes their right to restrain officials from wasting public funds through the enforcement of an unconstitutional statute.[41] This so-called taxpayer's suit is based on the theory that expenditure of public funds for the purpose of executing an unconstitutional act is a misapplication of such funds.[42]

Besides, the 1987 Constitution accords to the citizens a greater participation in the affairs of government. Indeed, it provides for people's initiative, the right to information on matters of public concern (including the right to know the state of health of their President), as well as the right to file cases questioning the factual bases for the suspension of the privilege of writ of *habeas corpus* or declaration of martial law. These provisions enlarge the people's right in the political as well as the judicial field. It grants them the right to interfere in the affairs of government and challenge any act tending to prejudice their interest.

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[39] *Tañada v. Angara*, 338 Phil. 546, 574 (1997).

[40] *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 634 (2000).

[41] *Phil. Constitution Assn., Inc. v. Mathay*, 124 Phil. 890, 898 (1966).

[42] *Tan v. Macapagal*, 150 Phil. 778, 783 (1972).

Third. For some time, different and conflicting notions had been formed as to the nature and ownership of the coco-levy funds. The Court, however, finally put an end to the dispute when it categorically ruled in *Republic of the Philippines v. COCOFED*[43] that these funds are not only affected with public interest; they are, in fact, *prima facie* public funds**.** *Prima facie* means a fact presumed to be true unless disproved by some evidence to the contrary.[44]

The Court was satisfied that the coco-levy funds were raised pursuant to law to support a proper governmental purpose. They were raised with the use of the police and taxing powers of the State for the benefit of the coconut industry and its farmers in general. The COA reviewed the use of the funds. The Bureau of Internal Revenue (BIR) treated them as public funds and the very laws governing coconut levies recognize their public character.[45]

The Court has also recently declared that the coco-levy funds are in the nature of taxes and can only be used for public purpose.[46] Taxes are enforced proportional contributions from persons and property, levied by the State by virtue of its sovereignty for the support of the government and for all its public needs.[47] Here, the coco-levy funds were imposed pursuant to law, namely, R.A. 6260 and P.D. 276. The funds were collected and managed by the PCA, an independent government corporation directly under the President.[48] And, as the respondent public officials pointed out, the pertinent laws used

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43 423 Phil. 735 (2001).

44 *Black's Law Dictionary* (5th ed., 1979), p. 1071.

45 *Supra* note 43, at 772.

46 *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Republic of the Philippines*, G.R. Nos. 177857-58 and 178193, January 24, 2012.

47 *TAX PRINCIPLES AND REMEDIES*, Japar B. Dimaampao, (2nd ed., 2005), p.1; citing 1 Cooley 62.

48 *Supra* note 20, Article II, Section 1.

the term ***levy***,[49] which means *to tax*,[50] in describing the exaction.

Of course, unlike ordinary revenue laws, R.A. 6260 and P.D. 276 did not raise money to boost the government's general funds but to provide means for the rehabilitation and stabilization of a threatened industry, the coconut industry, which is so affected with public interest as to be within the police power of the State.[51] The funds sought to support the coconut industry, one

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[49] R.A. 6260 –

Section 8. *The Coconut Investment Fund*. There shall be **levied** on the coconut farmer a sum equivalent to fifty-five centavos (₱0.55) on the first domestic sale of every one hundred kilograms of copra, or its equivalent in terms of other coconut products, for which he shall be issued a receipt which shall be converted into shares of stock of the Company upon its incorporation as a private entity in accordance with Section seven hereof. x x x (Emphasis ours)

P.D. 276 –

1. x x x

(a) A **levy**, initially, of ₱15.00 per 100 kilograms of copra resecada or its equivalent in other coconut products, shall be imposed on every first sale, in accordance with the mechanics established under R.A. 6260, effective at the start of business hours on August 10, 1973.

The proceeds from the **levy** shall be deposited with the Philippine National Bank or any other government bank to the account of the Coconut Consumers Stabilization Fund, as a separate trust fund which shall not form part of the general fund of the government. (Emphasis ours)

P.D. 582 –

Section 3-B. Coconut Industry Development Fund. x x x

c) x x x As the initial funds of the Coconut Industry Development Fund, the Authority is hereby directed to pay to the Coconut Industry Development Fund the amount of One Hundred Million Pesos (₱100,000,000.00) out of its collections of the coconut consumers stabilization levy and thereafter the Authority shall pay to the said Fund an amount equal to at least twenty centavos (₱0.20) per kilogram of copra resecada or its equivalent out of its current collections of the coconut consumers stabilization levy. In the event that the coconut consumers stabilization levy is lifted, a permanent **levy** of twenty centavos (₱0.20) is thereafter automatically imposed on the first sale of every kilogram of copra or its equivalent in terms of other coconut products x x x. (Emphasis ours)

[50] *Black's Law Dictionary* (5th ed., 1979), p. 816.

[51] *Republic of the Philippines v. COCOFED, supra* note 43, at 765, citing *Caltex Philippines, Inc. v. Commission on Audit*, G.R. No. 92585,

of the main economic backbones of the country, and to secure economic benefits for the coconut farmers and farm workers. The subject laws are akin to the sugar liens imposed by Sec. 7(b) of P.D. 388,[52] and the oil price stabilization funds under P.D. 1956,[53] as amended by E.O. 137.[54]

Respondent UCPB suggests that the coco-levy funds are closely similar to the Social Security System (SSS) funds, which have been declared to be *not* public funds but properties of the SSS members and held merely in trust by the government.[55] But the SSS Law[56] collects premium contributions. It does not collect taxes from members for a specific public purpose. They pay contributions in exchange for insurance protection and benefits like loans, medical or health services, and retirement packages. The benefits accrue to every SSS member, not to the public, in general.[57]

Furthermore, SSS members do not lose ownership of their contributions. The government merely holds these in trust, together with his employer's contribution, to answer for his future benefits.[58] The coco-levy funds, on the other hand, belong

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May 8, 1992, 208 SCRA 726, 756 and *Osmeña v. Orbos*, G.R. No. 99886, March 31, 1993, 220 SCRA 703, 711.

[52] Entitled CREATING THE PHILIPPINE SUGAR COMMISSION.

[53] Entitled IMPOSING AN *AD VALOREM* TAX ON CERTAIN MANUFACTURED OILS AND OTHER FUELS; BUNKER FUEL OIL AND DIESEL FUEL OIL; REVISING THE RATES OF SPECIFIC TAX THEREON; ABOLISHING THE OIL INDUSTRY SPECIAL FUND; AND FOR OTHER PURPOSES.

[54] Entitled EXPANDING THE SOURCES AND UTILIZATION OF THE OIL PRICE STABILIZATION FUND (OPSF) BY AMENDING PRESIDENTIAL DECREE NO. 1956.

[55] *Catholic Archbishop of Manila v. Social Security Commission*, 110 Phil. 616, 622 (1961).

[56] Republic Act 1161.

[57] *Rollo* (G.R. Nos. 147036-37), p. 362, Public Respondents' REPLY to COMMENT of UCPB.

[58] *REVIEWER IN LABOR AND SOCIAL LEGISLATION*, Samson S. Alcantara and Samson B. Alcantara, Jr., (2004 ed., with 2007 Supplement), p. 982.

to the government and are subject to its administration and disposition. Thus, these funds, including its incomes, interests, proceeds, or profits, as well as all its assets, properties, and shares of stocks procured with such funds must be treated, used, administered, and managed as public funds.[59]

Lastly, the coco-levy funds are evidently special funds. In *Gaston v. Republic Planters Bank*,[60] the Court held that the State collected stabilization fees from sugar millers, planters, and producers for a special purpose: to finance the growth and development of the sugar industry and all its components. The fees were levied for a special purpose and, therefore, constituted special fund when collected. Its character as such fund was made clear by the fact that they were deposited in the PNB (then a wholly owned government bank) and not in the Philippine Treasury. In *Osmeña v. Orbos*,[61] the Court held that the oil price stabilization fund was a special fund mainly because this was segregated from the general fund and placed in what the law referred to as a trust account. Yet it remained subject to COA scrutiny and review. The Court finds no substantial distinction between these funds and the coco-levy funds, except as to the industry they each support.

Fourth. Petitioners in G.R. 147811 assert that Section 2 of P.D. 755 above is void and unconstitutional for disregarding the public character of coco-levy funds. The subject section provides:

Section 2. *Financial Assistance.* x x x and since the operations, and activities of the Philippine Coconut Authority are all in accord with the present social economic plans and programs of the Government, all collections and levies which the Philippine Coconut Authority is authorized to levy and collect such as but not limited

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[59] *Republic of the Philippines v. COCOFED, supra* note 43, at 776, citing Executive Order 277, DIRECTING THE MODE OF TREATMENT UTILIZATION, ADMINISTRATION AND MANAGEMENT OF THE COCONUT LEVY FUNDS, September 24, 1995.

[60] 242 Phil. 377 (1988).

[61] *Osmeña v. Orbos, supra* note 51.

to the Coconut Consumers' Stabilization Levy, and the Coconut Industry Development Fund as prescribed by Presidential Decree No. 582 **shall not be considered or construed, under any law or regulation, special and/or fiduciary funds and do not form part of the general funds of the national government** within the contemplation of Presidential Decree No. 711. (Emphasis ours)

The Court has, however, already passed upon this question in *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Republic of the Philippines*.[62] It held as unconstitutional Section 2 of P.D. 755 for "effectively authorizing the PCA to utilize portions of the CCS Fund to pay the financial commitment of the farmers to acquire UCPB and to deposit portions of the CCS Fund levies with UCPB interest free. And as there also provided, the CCS Fund, CID Fund and like levies that PCA is authorized to collect shall be considered as non-special or fiduciary funds to be transferred to the general fund of the Government, meaning they shall be deemed private funds."

Identical provisions of subsequent presidential decrees likewise declared coco-levy funds private properties of coconut farmers. Article III, Section 5 of P.D. 961 reads:

Section 5. *Exemptions.* The Coconut Consumers Stabilization Fund and the Coconut Industry Development Fund as well as all disbursements of said funds for the benefit of the coconut farmers as herein authorized **shall not be construed or interpreted, under any law or regulation, as special and/or fiduciary funds, or as part of the general funds of the national government** within the contemplation of P.D. No. 711; **nor as a subsidy, donation, levy, government funded investment, or government share within the contemplation of P.D. 898**, **the intention being that said Fund and the disbursements thereof as herein authorized for the benefit of the coconut farmers shall be owned by them in their own private capacities**. (Emphasis ours)

Section 5 of P.D. 1468 basically reproduces the above provision, thus–

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[62] *Supra* note 46.

Section 5. Exemption. — The Coconut Consumers Stabilization Fund and the Coconut Industry Development Fund, as well as all disbursements as herein authorized, **shall not be construed or interpreted, under any law or regulation, as special and/or fiduciary funds, or as part of the general funds of the national government** within the contemplation of P.D. 711; **nor as subsidy, donation, levy government funded investment, or government share within the contemplation of P.D. 898, the intention being that said Fund and the disbursements thereof as herein authorized for the benefit of the coconut farmers shall be owned by them in their private capacities**: Provided, however, That the President may at any time authorize the Commission on Audit or any other officer of the government to audit the business affairs, administration, and condition of persons and entities who receive subsidy for coconut-based consumer products x x x. (Emphasis ours)

Notably, the raising of money by levy on coconut farm production, a form of taxation as already stated, began in 1971 for the purpose of developing the coconut industry and promoting the interest of coconut farmers. The use of the fund was expanded in 1973 to include the stabilization of the domestic market for coconut-based consumer goods and in 1974 to divert part of the funds for obtaining direct benefit to coconut farmers. After five years or in 1976, however, P.D. 961 declared the coco-levy funds private property of the farmers. P.D. 1468 reiterated this declaration in 1978. But neither presidential decree actually turned over possession or control of the funds to the farmers in their private capacity. The government continued to wield undiminished authority over the management and disposition of those funds.

In any event, such declaration is void. There is ownership when a thing pertaining to a person is completely subjected to his will in everything that is not prohibited by law or the concurrence with the rights of another.[63] An owner is free to exercise all attributes of ownership: the right, among others, to possess, use and enjoy, abuse or consume, and dispose or alienate the thing owned.[64] The owner is of course free to waive all

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[63] *Cojuangco v. Sandiganbayan*, G.R. No. 183278, April 24, 2009, 586 SCRA 790, 796.

[64] *Id.* at 797.

or some of these rights in favor of others. But in the case of the coconut farmers, they could not, individually or collectively, waive what have not been and could not be legally imparted to them.

Section 2 of P.D. 755, Article III, Section 5 of P.D. 961, and Article III, Section 5 of P.D. 1468 completely ignore the fact that coco-levy funds are public funds raised through taxation. And since taxes could be exacted only for a public purpose, they cannot be declared private properties of individuals although such individuals fall within a distinct group of persons.[65]

The Court of course grants that there is no hard-and-fast rule for determining what constitutes public purpose. It is an elastic concept that could be made to fit into modern standards. Public purpose, for instance, is no longer restricted to traditional government functions like building roads and school houses or safeguarding public health and safety. Public purpose has been construed as including the promotion of social justice. Thus, public funds may be used for relocating illegal settlers, building low-cost housing for them, and financing both urban and agrarian reforms that benefit certain poor individuals. Still, these uses relieve volatile iniquities in society and, therefore, impact on public order and welfare as a whole.

But the assailed provisions, which removed the coco-levy funds from the general funds of the government and declared them private properties of coconut farmers, do not appear to have a color of social justice for their purpose. The levy on copra that farmers produce appears, in the first place, to be a business tax judging by its tax base. The concept of farmers-businessmen is incompatible with the idea that coconut farmers are victims of social injustice and so should be beneficiaries of the taxes raised from their earnings.

It would altogether be different of course if the laws mentioned set apart a portion of the coco-levy fund for improving the

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[65] *Planters Products, Inc. v. Fertiphil Corporation*, G.R. No. 166006, March 14, 2008, 548 SCRA 485, 510, citing *CONSTITUTIONAL LAW*, Isagani Cruz, (1998 ed.), p. 90.

lives of destitute coconut farm owners or workers for their social amelioration to establish a proper government purpose. The support for the poor is generally recognized as a public duty and has long been an accepted exercise of police power in the promotion of the common good.[66] But the declarations do not distinguish between wealthy coconut farmers and the impoverished ones. And even if they did, the Government cannot just embark on a philanthropic orgy of inordinate dole-outs for motives political or otherwise.[67] Consequently, such declarations are void since they appropriate public funds for private purpose and, therefore, violate the citizens' right to substantive due process.[68]

On another point, in stating that the coco-levy fund "shall not be construed or interpreted, under any law or regulation, as special and/or fiduciary funds, or as part of the general funds of the national government," P.D.s 961 and 1468 seek to remove such fund from COA scrutiny.

This is also the fault of President Estrada's E.O. 312 which deals with ₱1 billion to be generated out of the sale of coco-fund acquired assets. Thus–

> **Section 5.** *Audit of Fund and Submission of Report*. – The Committee, by a majority vote, **shall engage the services of a reputable auditing firm to conduct periodic audits of the fund.** It shall render a quarterly report on all pertinent transactions and availments of the fund to the Office of the President within the first three (3) working days of the succeeding quarter. (Emphasis ours)

E.O. 313 has a substantially identical provision governing the management and disposition of the Coconut Trust Fund capitalized with the substantial SMC shares of stock that the coco-fund acquired. Thus–

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[66] *Binay v. Domingo*, G.R. No. 92389, September 11, 1991, 201 SCRA 508, 516.

[67] *Id.*

[68] *Pepsi-Cola Bottling Company of the Philippines, Inc. v. Municipality of Tanauan, Leyte*, 161 Phil. 591, 602 (1976).

Section 13. Accounting. — x x x

The Fund **shall be audited annually or as often as necessary by an external auditor designated by the Committee.** The Committee **may** also request the Commission on Audit to conduct an audit of the Fund. (Emphasis ours)

But, since coco-levy funds are taxes, the provisions of P.D.s 755, 961 and 1468 as well as those of E.O.s 312 and 313 that remove such funds and the assets acquired through them from the jurisdiction of the COA violate Article IX-D, Section 2(1)[69] of the 1987 Constitution. Section 2(1) vests in the COA the power and authority to examine uses of government money and property. The cited P.D.s and E.O.s also contravene Section 2[70] of P.D. 898 (Providing for the Restructuring of the Commission on Audit), which has the force of a statute.

[69] **Section 2.** (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and **expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government,** or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity x x x. (Emphasis ours)

[70] **Section 2.** *Jurisdiction of The Commission on Audit.* The Authority and powers of the Commission on Audit shall extend to and comprehend all matters relating to auditing and accounting procedures, systems, and controls, including inquiry into the utilization of resources and operating performance, the keeping of the general accounts of the Government, the preservation of vouchers pertaining thereto, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as the examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies, and instrumentalities. **The said jurisdiction extends to all government-owned or controlled corporations and other self-governing boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental entities subsidized by the Government, those funded**

And there is no legitimate reason why such funds should be shielded from COA review and audit. The PCA, which implements the coco-levy laws and collects the coco-levy funds, is a government-owned and controlled corporation subject to COA review and audit.

E.O. 313 suffers from an additional infirmity. Its title, "*Rationalizing the Use of the Coconut Levy Funds by Constituting a 'Fund for Assistance to Coconut Farmers' as an Irrevocable Trust Fund and Creating a Coconut Trust Fund Committee for the Management thereof*" tends to mislead. Apparently, it intends to create a trust fund out of the coco-levy funds to provide economic assistance to the coconut farmers and, ultimately, benefit the coconut industry.[71] But on closer look, E.O. 313 strays from the special purpose for which the law raises coco-levy funds in that it permits the use of coco-levy funds for improving productivity in other food areas. Thus:

> **Section 2.** Purpose of the Fund. — The Fund shall be established for the purpose of financing programs of assistance for the benefit of the coconut farmers, the coconut industry, **and other agri-related programs intended to maximize food productivity, develop business opportunities in the countryside, provide livelihood alternatives, and promote anti-poverty programs.** (Emphasis ours)
>
> x x x x x x x x x
>
> **Section 9.** Use and Disposition of the Trust Income. — The Coconut Trust Fund Committee, on an annual basis, shall determine and establish the amount comprising the Trust Income. After such determination, the Committee shall earmark, allocate and disburse the Trust Income for the following purposes, namely:
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> x x x x x x x x x
>
> (d) **Thirty percent (30%) of the Trust Income shall be used to assist and fund agriculturally-related programs** for the Government, as reasonably determined by the Trust Fund Committee, implemented

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by donations through the Government, those required to pay levies or government share, and those partly funded by the Government. (Emphasis ours)

[71] *Supra* note 30, Whereas clauses.

for the purpose of: (i) maximizing food productivity in the agriculture areas of the country, (ii) enhancing the upliftment and well-being of the living conditions of farmers and agricultural workers, (iii) developing viable industries and business opportunities in the countryside, (iv) providing alternative means of livelihood to the direct dependents of agriculture businesses and enterprises, and (v) providing financial assistance and support to coconut farmers in times of economic hardship due to extremely low prices of copra and other coconut products, natural calamities, world market dislocation and similar occurrences, including financial support to the ERAP's *Sagip Niyugan* Program established under Executive Order No. 312 dated November 3, 2000; x x x. (Emphasis ours)

Clearly, E.O. 313 above runs counter to the constitutional provision which directs that all money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only.[72] Assisting other agriculturally-related programs is way off the coco-fund's objective of promoting the general interests of the coconut industry and its farmers.

A final point, the E.O.s also transgress P.D. 1445,[73] Section 84(2),[74] the first part by the previously mentioned sections of E.O. 313 and the second part by Section 4 of E.O. 312 and Sections 6 and 7 of E.O. 313. E.O. 313 vests the power to

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[72] *Supra* note 38, Article VI, **Section 29.** x x x

(3) **All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only**. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government. (Emphasis ours)

[73] Entitled ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES.

[74] **Section 84.** *Disbursement of government funds.*

x x x x x x x x x

2. Trust funds shall not be paid out of any public treasury or depository except in fulfillment of the purpose for which the trust was created or funds received, and upon authorization of the legislative body, or head of any other agency of the government having control thereof, and subject to pertinent budget law, rules and regulations.

administer, manage, and supervise the operations and disbursements of the Trust Fund it established (capitalized with SMC shares bought out of coco-levy funds) in a Coconut Trust Fund Committee. Thus–

Section 6. Creation of the Coconut Trust Fund Committee. — **A Committee is hereby created to administer, manage and supervise the operations of the Trust Fund**, chaired by the President with ten (10) members, as follows:

(a) four (4) representatives from the government sector, two of whom shall be the Secretary of Agriculture and the Secretary of Agrarian Reform who shall act as Vice Chairmen;

(b) four (4) representatives from coconut farmers' organizations, one of whom shall come from a list of nominees from the Philippine Coconut Producers Federation Inc. ("COCOFED");

(c) a representative from the CIIF; and

(d) a representative from a non-government organization (NGO) involved in agricultural and rural development.

All decisions of the Coconut Trust Fund Committee shall be determined by a majority vote of all the members.

The Coconut Trust Fund Committee shall perform the functions and duties set forth in Section 7 hereof, with the skill, care, prudence and diligence necessary under the circumstances then prevailing that a prudent man acting in like capacity would exercise.

The members of the Coconut Trust Fund Committee shall be appointed by the President and shall hold office at his pleasure.

The Coconut Trust Fund Committee is authorized to hire administrative, technical and/or support staff as may be required to enable it to effectively perform its functions and responsibilities. (Emphasis ours)

Section 7. Functions and Responsibilities of the Committee. — The Coconut Trust Fund Committee shall have the following functions and responsibilities:

(a) set the investment policy of the Trust Fund;

(b) establish priorities for assistance giving preference to small coconut farmers and farmworkers which shall be reviewed periodically and revised as necessary in accordance with

changing conditions;
(c) receive, process and approve project proposals for financing by the Trust Fund;
(d) **decide on the use of the Trust Fund's income or net earnings including final action on applications for assistance, grants and/or loans**;
(e) avail of professional counsel and services by retaining an investment and financial manager, if desired;
(f) **formulate the rules and regulations governing the allocation, utilization and disbursement of the Fund**; and
(g) perform such other acts and things as may be necessary proper or conducive to attain the purposes of the Fund. (Emphasis ours)

Section 4 of E.O. 312 does essentially the same thing. It vests the management and disposition of the assistance fund generated from the sale of coco-levy fund-acquired assets into a Committee of five members. Thus, Section 4 of E.O. 312 provides –

Section 4. *Funding*. – Assets acquired through the coconut levy funds or by entities financed by the coconut levy funds identified by the President for appropriate disposal or sale, shall be sold or disposed to generate a maximum fund of ONE BILLION PESOS (₱1,000,000,000.00) which shall be **managed by a Committee composed of a Chairman and four (4) members to be appointed by the President whose term shall be co-terminus with the Program.** x x x (Emphasis ours)

In effect, the above transfers the power to allocate, use, and disburse coco-levy funds that P.D. 232 vested in the PCA and transferred the same, without legislative authorization and in violation of P.D. 232, to the Committees mentioned above. An executive order cannot repeal a presidential decree which has the same standing as a statute enacted by Congress.

UCPB invokes the principle of separability to save the assailed laws from being struck down. The general rule is that where part of a statute is void as repugnant to the Constitution, while another part is valid, the valid portion, if susceptible to being separated from the invalid, may stand and be enforced. When the parts of a statute, however, are so mutually dependent and connected, as conditions, considerations, or compensations for each other, as to warrant a belief that the legislature intended

them as a whole, the nullity of one part will vitiate the rest. In which case, if some parts are unconstitutional, all the other provisions which are thus dependent, conditional, or connected must consequently fall with them.[75]

But, given that the provisions of E.O.s 312 and 313, which as already stated invalidly transferred powers over the funds to two committees that President Estrada created, the rest of their provisions became non-operational. It is evident that President Estrada would not have created the new funding programs if they were to be managed by some other entity. Indeed, he made himself Chairman of the Coconut Trust Fund and left to his discretion the appointment of the members of the other committee.

WHEREFORE, the Court **GRANTS** the petition in G.R. 147036-37, **PARTLY GRANTS** the petition in G.R. 147811, and declares the following **VOID**:

a) **E.O. 312**, for being repugnant to Section 84(2) of P.D. 1445, and Article IX-D, Section 2(1) of the Constitution; and

b) **E.O. 313**, for being in contravention of Section 84(2) of P.D. 1445, and Article IX-D, Section 2(1) and Article VI, Section 29(3) of the Constitution.

The Court has previously declared Section 2 of P.D. 755 and Article III, Section 5 of P.D.s 961 and 1468 unconstitutional.

SO ORDERED.

Corona, C.J., Velasco, Jr., Brion, Bersamin, Del Castillo, Villarama, Jr., Perez, Mendoza, Sereno, and *Reyes, JJ.,* concur.

Carpio, J., no part; he is a petitioner in G.R. Nos. 147036-37.

Leonardo-de Castro and *Peralta, JJ.,* no part due to prior participations in a related case.

Perlas-Bernabe, J., on official leave.

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[75] *STATUTORY CONSTRUCTION,* Ruben E. Agpalo, (5th ed., 2003), pp. 37-38.

SECOND DIVISION

[A.C. No. 5098. April 11, 2012]

JOSEFINA M. ANIÑON, *complainant, vs.* **ATTY. CLEMENCIO SABITSANA, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; PROSCRIPTION AGAINST REPRESENTATION OF CONFLICTING INTERESTS; EXPLAINED . — The relationship between a lawyer and his/her client should ideally be imbued with the highest level of trust and confidence. This is the standard of confidentiality that must prevail to promote a full disclosure of the client's most confidential information to his/her lawyer for an unhampered exchange of information between them. Needless to state, a client can only entrust confidential information to his/her lawyer based on an expectation from the lawyer of utmost secrecy and discretion; the lawyer, for his part, is duty-bound to observe candor, fairness and loyalty in all dealings and transactions with the client. Part of the lawyer's duty in this regard is to avoid representing conflicting interests, a matter covered by Rule 15.03, Canon 15 of the Code of Professional Responsibility[.] x x x "The proscription against representation of conflicting interests applies to a situation where the opposing parties are present clients in the same action or in an unrelated action." The prohibition also applies even if the "lawyer would not be called upon to contend for one client that which the lawyer has to oppose for the other client, or that there would be no occasion to use the confidential information acquired from one to the disadvantage of the other as the two actions are wholly unrelated." To be held accountable under this rule, it is "enough that the opposing parties in one case, one of whom would lose the suit, are present clients and the nature or conditions of the lawyer's respective retainers with each of them **would affect** the performance of the duty of undivided fidelity to both clients."

2. ID.; ID.; ID.; CIRCUMSTANCES SHOWING VIOLATION OF THE RULE AGAINST REPRESENTATION OF CONFLICTING INTERESTS, PRESENT. — On the basis of the attendant facts

of the case, we find substantial evidence to support Atty. Sabitsana's violation of the above rule, as established by the following circumstances on record: **One**, his legal services were initially engaged by the complainant to protect her interest over a certain property. The records show that upon the legal advice of Atty. Sabitsana, the Deed of Sale over the property was prepared and executed in the complainant's favor. **Two**, Atty. Sabitsana met with Zenaida Cañete to discuss the latter's legal interest over the property subject of the Deed of Sale. At that point, Atty. Sabitsana already had knowledge that Zenaida Cañete's interest clashed with the complainant's interests. **Three**, despite the knowledge of the clashing interests between his two clients, Atty. Sabitsana accepted the engagement from Zenaida Cañete. **Four,** Atty. Sabitsana's actual knowledge of the conflicting interests between his two clients was demonstrated by his own actions: *first*, he filed a case against the complainant in behalf of Zenaida Cañete; *second*, he impleaded the complainant as the defendant in the case; and *third*, the case he filed was for the annulment of the Deed of Sale that he had previously prepared and executed for the complainant. By his acts, not only did Atty. Sabitsana agree to represent one client against another client in the same action; he also accepted a new engagement that entailed him to contend and oppose the interest of his other client in a property in which his legal services had been previously retained.

3. ID.; ID.; ID.; PENALTY FOR MISCONDUCT FOR REPRESENTING CONFLICTING INTERESTS. — [W]e find — as the IBP Board of Governors did — Atty. Sabitsana guilty of misconduct for representing conflicting interests. We likewise agree with the penalty of suspension for one (1) year from the practice of law recommended by the IBP Board of Governors. This penalty is consistent with existing jurisprudence on the administrative offense of representing conflicting interests.

D E C I S I O N

BRION, *J.*:

We resolve this disbarment complaint against Atty. Clemencio Sabitsana, Jr. who is charged of: (1) violating the lawyer's duty to preserve confidential information received from his

client;[1] and (2) violating the prohibition on representing conflicting interests.[2]

In her complaint, Josefina M. Aniñon (*complainant*) related that she previously engaged the legal services of Atty. Sabitsana in the preparation and execution in her favor of a Deed of Sale over a parcel of land owned by her late common-law husband, Brigido Caneja, Jr. Atty. Sabitsana allegedly violated her confidence when he subsequently filed a civil case against her for the annulment of the Deed of Sale in behalf of Zenaida L. Cañete, the legal wife of Brigido Caneja, Jr. The complainant accused Atty. Sabitsana of using the confidential information he obtained from her in filing the civil case.

Atty. Sabitsana admitted having advised the complainant in the preparation and execution of the Deed of Sale. However, he denied having received any confidential information. Atty. Sabitsana asserted that the present disbarment complaint was instigated by one Atty. Gabino Velasquez, Jr., the notary of the disbarment complaint who lost a court case against him (Atty. Sabitsana) and had instigated the complaint for this reason.

The Findings of the IBP Investigating Commissioner

In our Resolution dated November 22, 1999, we referred the disbarment complaint to the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. In his Report and Recommendation dated November 28, 2003, IBP Commissioner Pedro A. Magpayo Jr. found Atty. Sabitsana administratively liable for representing conflicting interests. The IBP Commissioner opined:

> In *Bautista vs. Barrios*, it was held that a lawyer may not handle a case to nullify a contract which he prepared and thereby take up inconsistent positions. Granting that Zenaida L. Cañete, respondent's present client in Civil Case No. B-1060 did not initially learn about the sale executed by Bontes in favor of complainant thru the confidences and information divulged by complainant to respondent in the course of the preparation of the said deed of sale, respondent

[1] *Rollo*, pp. 5-6. See paragraphs 6, 9 and 10 of the complaint.

[2] *Ibid*.

nonetheless has a duty to decline his current employment as counsel of Zenaida Cañete in view of the rule prohibiting representation of conflicting interests.

In re De la Rosa clearly suggests that a lawyer may not represent conflicting interests in the absence of the written consent of all parties concerned given after a full disclosure of the facts. In the present case, no such written consent was secured by respondent before accepting employment as Mrs. Cañete's counsel-of-record. x x x

x x x x x x x x x

Complainant and respondent's present client, being contending claimants to the same property, the conflict of interest is obviously present. There is said to be inconsistency of interest when on behalf of one client, it is the attorney's duty to contend for that which his duty to another client requires him to oppose. In brief, if he argues for one client this argument will be opposed by him when he argues for the other client. Such is the case with which we are now confronted, respondent being asked by one client to nullify what he had formerly notarized as a true and valid sale between Bontes and the complainant. (footnotes omitted)[3]

The IBP Commissioner recommended that Atty. Sabitsana be suspended from the practice of law for a period of one (1) year.[4]

The Findings of the IBP Board of Governors

In a resolution dated February 27, 2004, the IBP Board of Governors resolved to adopt and approve the Report and Recommendation of the IBP Commissioner after finding it to be fully supported by the evidence on record, the applicable laws and rules.[5] The IBP Board of Governors agreed with the IBP Commissioner's recommended penalty.

Atty. Sabitsana moved to reconsider the above resolution, but the IBP Board of Governors denied his motion in a resolution dated July 30, 2004.

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[3] Pages 7 to 8 of the Report and Recommendation.

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

[5] Resolution No. XVI-2004-124.

The Issue

The issue in this case is whether Atty. Sabitsana is guilty of misconduct for representing conflicting interests.

The Court's Ruling

After a careful study of the records, we agree with the findings and recommendations of the IBP Commissioner and the IBP Board of Governors.

The relationship between a lawyer and his/her client should ideally be imbued with the highest level of trust and confidence. This is the standard of confidentiality that must prevail to promote a full disclosure of the client's most confidential information to his/her lawyer for an unhampered exchange of information between them. Needless to state, a client can only entrust confidential information to his/her lawyer based on an expectation from the lawyer of utmost secrecy and discretion; the lawyer, for his part, is duty-bound to observe candor, fairness and loyalty in all dealings and transactions with the client.[6] Part of the lawyer's duty in this regard is to avoid representing conflicting interests, a matter covered by Rule 15.03, Canon 15 of the Code of Professional Responsibility quoted below:

> Rule 15.03. -A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

"The proscription against representation of conflicting interests applies to a situation where the opposing parties are present clients in the same action or in an unrelated action."[7] The prohibition also applies even if the "lawyer would not be called upon to contend for one client that which the lawyer has to oppose for the other client, or that there would be no occasion to use the confidential information acquired from one to the disadvantage of the other as the two actions are wholly unrelated."[8] To be held accountable

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[6] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 15.

[7] *Quiambao v. Bamba*, Adm. Case No. 6708, August 25, 2005, 468 SCRA 1, 11.

[8] *Ibid.*

under this rule, it is "enough that the opposing parties in one case, one of whom would lose the suit, are present clients and the nature or conditions of the lawyer's respective retainers with each of them **would affect** the performance of the duty of undivided fidelity to both clients."[9]

Jurisprudence has provided three tests in determining whether a violation of the above rule is present in a given case.

One test is whether a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client. Thus, if a lawyer's argument for one client has to be opposed by that same lawyer in arguing for the other client, there is a violation of the rule.

Another test of inconsistency of interests is **whether the acceptance of a new relation would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty**. Still another test is whether the lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.[10] [emphasis ours]

On the basis of the attendant facts of the case, we find substantial evidence to support Atty. Sabitsana's violation of the above rule, as established by the following circumstances on record:

One, his legal services were initially engaged by the complainant to protect her interest over a certain property. The records show that upon the legal advice of Atty. Sabitsana, the Deed of Sale over the property was prepared and executed in the complainant's favor.

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[9] *Ibid.*

[10] *Id.* at 10-11, citing *Tiania v. Ocampo*, A.C. Nos. 2285 and 2302, August 12, 1991, 200 SCRA 472, 479; *Abaqueta v. Florido*, A.C. No. 5948, January 22, 2003, 395 SCRA 569; *Pormento, Sr. v. Pontevedra*, A.C. No. 5128, March 31, 2005, 454 SCRA 167; and Ruben E. Agpalo, *Legal Ethics* 223 (6th ed. 1997), citing *Memphis & Shelby County Bar Assn. v. Sanderson*, 52 Tenn. App. 684; 378 SW2d 173 (1963); B.A. Op. 132 (15 March 1935).

Two, Atty. Sabitsana met with Zenaida Cañete to discuss the latter's legal interest over the property subject of the Deed of Sale. At that point, Atty. Sabitsana already had knowledge that Zenaida Cañete's interest clashed with the complainant's interests.

Three, despite the knowledge of the clashing interests between his two clients, Atty. Sabitsana accepted the engagement from Zenaida Cañete.

Four, Atty. Sabitsana's actual knowledge of the conflicting interests between his two clients was demonstrated by his own actions: *first*, he filed a case against the complainant in behalf of Zenaida Cañete; *second*, he impleaded the complainant as the defendant in the case; and *third*, the case he filed was for the annulment of the Deed of Sale that he had previously prepared and executed for the complainant.

By his acts, not only did Atty. Sabitsana agree to represent one client against another client in the same action; he also accepted a new engagement that entailed him to contend and oppose the interest of his other client in a property in which his legal services had been previously retained.

To be sure, Rule 15.03, Canon 15 of the Code of Professional Responsibility provides an exception to the above prohibition. However, we find no reason to apply the exception due to Atty. Sabitsana's failure to comply with the requirements set forth under the rule. Atty. Sabitsana did not make a full disclosure of facts to the complainant and to Zenaida Cañete before he accepted the new engagement with Zenaida Cañete. The records likewise show that although Atty. Sabitsana wrote a letter to the complainant informing her of Zenaida Cañete's adverse claim to the property covered by the Deed of Sale and, urging her to settle the adverse claim; Atty. Sabitsana however did not disclose to the complainant that he was also being engaged as counsel by Zenaida Cañete.[11] Moreover, the records show that Atty. Sabitsana failed to obtain the written consent of his

[11] *Rollo*. p. 82.

two clients, as required by Rule 15.03, Canon 15 of the Code of Professional Responsibility.

Accordingly, we find — as the IBP Board of Governors did — Atty. Sabitsana guilty of misconduct for representing conflicting interests. We likewise agree with the penalty of suspension for one (1) year from the practice of law recommended by the IBP Board of Governors. This penalty is consistent with existing jurisprudence on the administrative offense of representing conflicting interests.[12]

We note that Atty. Sabitsana takes exception to the IBP recommendation on the ground that the charge in the complaint was only for his alleged disclosure of confidential information, not for representation of conflicting interests. To Atty. Sabitsana, finding him liable for the latter offense is a violation of his due process rights since he only answered the designated charge.

We find no violation of Atty. Sabitsana's due process rights. Although there was indeed a specific charge in the complaint, we are not unmindful that the complaint itself contained allegations of acts sufficient to constitute a violation of the rule on the prohibition against representing conflicting interests. As stated in paragraph 8 of the complaint:

> Atty. Sabitsana, Jr. accepted the commission as a Lawyer of ZENAIDA CANEJA, now Zenaida Cañete, to recover lands from Complainant, including this land where lawyer Atty. Sabitsana, Jr. has advised his client [complainant] to execute the second sale[.]

Interestingly, Atty. Sabitsana even admitted these allegations in his answer.[13] He also averred in his Answer that:

> 6b. Because the defendant-to-be in the complaint (Civil Case No. B-1060) that he would file on behalf of Zenaida Caneja-Cañete was

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[12] *Quiambao v. Bamba*, *supra* note 7, at 16, citing *Vda. de Alisbo v. Jalandoon, Sr.*, Adm. Case No. 1311, July 18, 1991, 199 SCRA 321; *Philippine National Bank v. Cedo*, Adm. Case No. 3701, March 28, 1995, 243 SCRA 1; *Maturan v. Gonzales*, A.C. No. 2597, March 12, 1998, 287 SCRA 443; and *Northwestern University, Inc. v. Arquillo*, A.C. No. 6632, August 2, 2005, 465 SCRA 513.

[13] *Rollo*, p. 55.

his former client (herein complainant), respondent asked [the] permission of Mrs. Cañete (which she granted) that he would first write a letter (Annex "4") to the complainant proposing to settle the case amicably between them but complainant ignored it. Neither did she object to respondent's handling the case in behalf of Mrs. Cañete on the ground she is now invoking in her instant complaint. So respondent felt free to file the complaint against her.[14]

We have consistently held that the essence of due process is simply the opportunity to be informed of the charge against oneself and 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.[15] These opportunities were all afforded to Atty. Sabitsana, as shown by the above circumstances.

All told, disciplinary proceedings against lawyers are *sui generis*.[16] 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. We likewise aim to ensure the proper and honest administration of justice by purging the profession of members who, by their misconduct, have proven themselves no longer worthy to be entrusted with the duties and responsibilities of an attorney.[17] This is all that we did in this case. Significantly, we did this to a degree very much lesser than what the powers of this Court allows it to do in terms of the imposable penalty. In this sense, we have already been lenient towards respondent lawyer.

WHEREFORE, premises considered, the Court resolves to **ADOPT** the findings and recommendations of the Commission

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[14] *Id.* at 55-56.

[15] *Teresita T. Bayonla v. Atty. Purita A. Reyes*, A.C. No. 4808, November 22, 2011, citing *Samalio v. Court of Appeals*, G.R. No. 140079, March 31, 2005, 454 SCRA 462.

[16] *Teresita T. Bayola v. Atty. Purita A. Reyes, supra* note 13, citing *Suzuki v. Tiamson*, Adm. Case No. 6542, September 30, 2005, 471 SCRA 129.

[17] *Ibid.*

on Bar Discipline of the Integrated Bar of the Philippines. Atty. Clemencio C. Sabitsana, Jr. is found **GUILTY** of misconduct for representing conflicting interests in violation of Rule 15.03, Canon 15 of the Code of Professional Responsibility. He is hereby **SUSPENDED** for one (1) year from the practice of law.

Atty. Sabitsana is **DIRECTED** to inform the Court of the date of his receipt of this Decision so that we can determine the reckoning point when his suspension shall take effect.

SO ORDERED.

Peralta,[*] *Perez, Sereno,* and *Reyes, JJ.*, concur.

SECOND DIVISION

[A.C. No. 7880. April 11, 2012]

WILLIAM HECTOR MARIA, *petitioner, vs.* ATTY. WILFREDO R. CORTEZ, *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; NOTARY PUBLIC; POWERS AND FUNCTIONS, EXPLAINED. — A notary public is empowered to perform a variety of notarial acts, most common of which are the acknowledgement and affirmation of documents or instruments. In the performance of these notarial acts, the notary public must be mindful of the significance of the notarial seal affixed on documents. The notarial seal converts a document from a private to a public instrument, after which it

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[*] Additional Member vice Justice Antonio T. Carpio per raffle dated March 19, 2012.

may be presented as evidence without need for proof of its genuineness and due execution. Thus, notarization should not be treated as an empty, meaningless or routinary act. x x x It should be noted that a notary public's function should not be trivialized and a notary public must discharge his powers and duties which are impressed with public interest, with accuracy and fidelity. A notary public exercises duties calling for carefulness and faithfulness. Notaries must inform themselves of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions.

2. ID.; ID.; ID.; NOTARIZING A DOCUMENT WITHOUT PERSONALLY VERIFYING THE AUTHENTICITY OF ITS SIGNATORIES IS NEGLIGENCE. — [I]t was clearly established that the respondent notarized the subject SPA without having Gundaway and Namnama personally appear before him as required by law. In his Answer, he stated that he merely relies on his two secretaries in scrutinizing all contents of documents including the authenticity of its signatories before the documents are brought to him for his notarial signature. This was what actually transpired with regard to the subject SPA when Emmanuel went to the respondent's office to have the SPA notarized. The secretaries were familiar with Emmanuel for being a long time *Barangay* Chairman. With the secretaries' assurance that they knew Emmanuel in person, the respondent affixed his notarial signature on the SPA without even requiring the physical presence of Gundaway and Namnama whose names appear as signatories on the SPA. The respondent's excuse that the SPA was never used or has been replaced during the registration of the subject lands is of no moment. The fact remains that the SPA was notarized without complying with the requirements of the law. x x x We agree with the IBP that the respondent's Answer to the complaint, is virtually an admission that he failed to exercise the due diligence required of him in the performance of the duties of notary public. Such negligence can not be countenanced and definitely warrants sanction from the Court.

3. ID.; ID.; ID.; ID.; PENALTY OF SUSPENSION FOR SIX (6) MONTHS AS A NOTARY PUBLIC, IMPOSED. — In imposing the penalty, the Court is mindful that removal from the Bar should not really be decreed when any punishment less severe - reprimand, temporary suspension or fine - would accomplish

the end desired. Considering the circumstances of the case, particularly the absence of bad faith and the fact that this is the first infraction lodged against him for the past 20 years, the Court finds that a suspension of six (6) months as notary public would suffice. The respondent, and for that matter, all notaries public, are hereby cautioned to be very careful and diligent in ascertaining the true identities of the parties executing the document before them, especially when it involves disposition of a property, as this Court will deal with such cases more severely in the future.

D E C I S I O N

REYES, *J.*:

This is an administrative complaint[1] filed by William Hector Maria (William) against respondent Atty. Wilfredo R. Cortez for having notarized a Special Power of Attorney (SPA) without verifying the authenticity of the signatures contained therein in violation of the Notarial Law.

The factual antecedents are as follows:

Complainant William is a citizen of New Zealand, and married to Ernita Villanueva-Maria (Ernita) from Bio, Tagudin, Ilocos Sur. Sometime in September 2005, the complainant and his wife Ernita (Spouses Maria) took a vacation in Ilocos Sur from Australia. They met Emmanuel Biteng (Emmanuel) and Ethel Biteng (Ethel), collectively called as Spouses Biteng, who represented themselves as caretakers of certain parcels of land purportedly for sale and specifically covered by Original Certificates of Title (OCT) Nos. P-69632 and P-69595, situated in Sevilla and Paratong, Ilocos Sur, respectively. Taking interest over the same, Spouses Maria had the metes and bounds surveyed and came to know that the properties were separately registered under the names of Emmanuel's aunts namely: Gundaway Biteng (Gundaway) and Namnama B. Alberto (Namnama), and his late father Pascual Biteng (Pascual).

[1] *Rollo,* pp. 2-5.

Being confronted with the issue on ownership, Emmanuel presented an SPA allegedly signed by Gundaway and Namnama, appointing him as their attorney-in-fact in all transactions pertaining to the subject properties. The SPA was notarized by the respondent and entered in his Notarial Register as Document No. 1553, Page No. 313, Book No. XV, Series of 2005.[2]

The complainant, however, doubted the authenticity of the document as it appeared to be a mere photocopy. Besides, he learned that both Gundaway and Namnama were living abroad, who allegedly never came home to execute an SPA in favor of Emmanuel. Spouses Biteng, however, promised to send Spouses Maria a duly signed SPA notarized in the USA. Relying on their word, Ernita affixed her signature on the Deed of Sale (as to the land owned by Gundaway and Namnama) and Deed of Adjudication with Sale (as to the land owned by the late Pascual).

When Spouses Maria were back in Australia, they received a communication from the Philippines together with a General Power of Attorney (GPA) signed by Gundaway and Namnama executed in Daly City, California, USA; but said document was allegedly not authenticated by the Philippine Embassy.

In the early part of 2006, Spouses Maria found out that Transfer Certificates of Title (TCTs) over the subject properties have already been issued in their names but were in the possession of the Spouses Biteng who refused to deliver to them due to some misunderstanding. This prompted the Spouses Maria to get in touch with Gundaway and Namnama in the USA who told them that they (Gundaway and Namnana) did not execute any SPA in favor of Emmanuel.

On April 4, 2006, the complainant came back to the Philippines and reviewed all the pertinent documents involved in the sale of the subject properties and noticed that they were all notarized by the respondent. Hence, the complainant filed the instant administrative case which prayed for the respondent's suspension

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

as a notary public and for his disbarment for violating his sworn duty as a lawyer.

In his Answer,[3] the respondent asserted that he had no active participation in the sale nor did he exert any influence over the parties into agreeing to said sale; that his two well-trusted secretaries carefully scrutinized every document, specifically the identities of the parties involved and the authenticity of their signatures, before they were brought to him for his notarial signature.

The respondent also averred that the SPA he notarized was not the one used in the registration of the subject properties, since it was replaced with another one upon the insistence of Spouses Maria, who eventually signed the two (2) Deeds of Sale on the same day. He even asseverated that the complainant should not have allowed his wife to sign the two Deeds of Sale if he doubted the authenticity of the SPA. More importantly, the respondent stressed that he was merely being implicated in the feud between the parties regarding the selling price of the subject properties. The parties have settled their differences and the titles of the land were finally turned over to Spouses Maria. In support thereof, he presented the following documents, to wit: (1) Affidavit executed by Emmanuel stating that Spouses Maria refused to pay the price they agreed upon and did threaten to declare the transaction illegal by filing the instant administrative complaint against the respondent; (2) OCTs Nos. P-69632,[4] P-69595[5] and P-69635[6] over the subject properties, issued in the name of Ernita, married to William;[7] and (3) the Joint Affidavit[8] of his secretaries attesting to the respondent's integrity as a member of the Integrated Bar of the Philippines (IBP). The respondent, thus, prayed for the dismissal of the complaint.

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

[4] *Id.* at 19.

[5] *Id.* at 20.

[6] *Id.* at 21

[7] *Id.*

[8] *Id.* at 22.

The instant case was referred to the IBP for investigation, report and recommendation.

The Investigating Commissioner set the case for mandatory conference on August 4, 2006 which was reset to September 8, 2006. However, only the respondent was present. In an Order[9] dated September 8, 2006, the IBP Commission on Bar Discipline terminated the conference and ordered the parties to submit their respective Position Papers.

In his report,[10] Investigating Commissioner Acerey C. Pacheco found the respondent administratively liable for having notarized the SPA in the absence of the alleged affiants and without knowing whether or not the signatures appearing therein belong to the supposed affiants. As it appeared, the signatures were falsified considering that Gundaway and Namnama were not aware of such SPA. The Investigating Commissioner further stated that it was of no moment that such SPA was not utilized in registering the sale as alleged by the respondent. The mere fact that the respondent notarized such SPA with an acknowledgement that these affiants have personally appeared before him as a Notary Public when in fact, they did not, makes the respondent administratively liable. Thus, the Investigating Commissioner recommended that the respondent be reprimanded and denied commission as a notary public for a period of one (1) year.[11]

The IBP Board of Governors adopted the report and recommendation and issued Resolution No. XVIII-2007-275 dated November 2, 2007 which states:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and for respondent's violation of the Rules on Notarial

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9 *Id.* at 29-30.

10 *Id.* at 41-45.

11 *Id.* at 45.

Practice, Atty. Wilfredo R. Cortez is hereby **REPRIMANDED** and **DISQUALIFIED** from being Commissioned as Notary Public for one (1) year.[12]

A motion for reconsideration was promptly filed by the respondent, pleading that the penalty of disqualification from being commissioned as notary public for one year was too harsh. He reiterated that he was a victim of circumstances considering that the instant administrative case merely arose from the misunderstanding between the parties. The respondent alleged that he has not committed any fraud, dishonesty or deliberate injustice to anyone. For the past twenty years (20) engaging in notarial works, he has not committed any kind of misconduct which may destroy his honor and reputation as a member of the legal profession.[13]

In Resolution No. XIX-2011-399 dated June 26, 2011, the IBP Board of Governors denied the respondent's motion for reconsideration which was duly noted by the Court in a resolution issued on October 12, 2011.

The findings of the IBP are well-taken.

A notary public is empowered to perform a variety of notarial acts, most common of which are the acknowledgement and affirmation of documents or instruments. In the performance of these notarial acts, the notary public must be mindful of the significance of the notarial seal affixed on documents. The notarial seal converts a document from a private to a public instrument, after which it may be presented as evidence without need for proof of its genuineness and due execution. Thus, notarization should not be treated as an empty, meaningless or routinary act.[14]

Rule IV, Section 2(b) of the 2004 Rules on Notarial Practice reads:

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[12] *Id.* at 40.

[13] *Id.* at 48-51.

[14] *Sajid D. Agagon v. Atty. Artemio F. Bustamante*, A.C. No. 5510, December 10, 2007.

Section 2. Prohibitions –

xxx x x x xxx

(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document –

(1) is not in the notary's presence personally at the time of the notarization; and

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

In the instant case, it was clearly established that the respondent notarized the subject SPA without having Gundaway and Namnama personally appear before him as required by law. In his Answer, he stated that he merely relies on his two secretaries in scrutinizing all contents of documents including the authenticity of its signatories before the documents are brought to him for his notarial signature. This was what actually transpired with regard to the subject SPA when Emmanuel went to the respondent's office to have the SPA notarized. The secretaries were familiar with Emmanuel for being a long time *Barangay* Chairman. With the secretaries' assurance that they knew Emmanuel in person, the respondent affixed his notarial signature on the SPA without even requiring the physical presence of Gundaway and Namnama whose names appear as signatories on the SPA.

The respondent's excuse that the SPA was never used or has been replaced during the registration of the subject lands is of no moment. The fact remains that the SPA was notarized without complying with the requirements of the law.

It should be noted that a notary public's function should not be trivialized and a notary public must discharge his powers and duties which are impressed with public interest, with accuracy and fidelity.[15] A notary public exercises duties calling for carefulness and faithfulness. Notaries must inform themselves

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[15] *Follosco v. Atty. Mateo*, 466 Phil. 305, 312 (2004). (Citation omitted)

of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions.[16]

We agree with the IBP that the respondent's Answer to the complaint, is virtually an admission that he failed to exercise the due diligence required of him in the performance of the duties of notary public. Such negligence can not be countenanced and definitely warrants sanction from the Court. In imposing the penalty, the Court is mindful that removal from the Bar should not really be decreed when any punishment less severe - reprimand, temporary suspension or fine - would accomplish the end desired.[17]

Considering the circumstances of the case, particularly the absence of bad faith and the fact that this is the first infraction lodged against him for the past 20 years, the Court finds that a suspension of six (6) months as notary public would suffice. The respondent, and for that matter, all notaries public, are hereby cautioned to be very careful and diligent in ascertaining the true identities of the parties executing the document before them, especially when it involves disposition of a property, as this Court will deal with such cases more severely in the future.[18]

WHEREFORE, premises considered, respondent Atty. Wilfredo R. Cortez is hereby **REPRIMANDED** and **DISQUALIFIED** from being commissioned as Notary Public for six (6) months.

SO ORDERED.

Carpio, Brion, Perez, and *Sereno, JJ.,* concur.

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[16] *Heirs of the Late Spouses Lucas and Francisca Villanueva v. Beradio*, A.C. No. 6270, January 22, 2007, 512 SCRA 17, 22.

[17] *Rizalina L. Gemina v. Atty. Isidro S. Madamba*, A.C. No. 6689, August 24, 2011.

[18] *Vda. de Bernardo, v. Atty. Restauro,* 452 Phil. 745, 752 (2003).

THIRD DIVISION

[A.M. No. P-11-3002. April 11, 2012]
(Formerly A.M. No. 11-9-96-MTCC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **MS. ESTRELLA NINI, Clerk of Court II, Municipal Trial Court in Cities-Bogo, City of Cebu,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; DUTIES AND FUNCTIONS OF CLERKS OF COURT, EXPLAINED. — Settled is the role of clerks of court as judicial officers entrusted with the delicate function with regard to collection of legal fees. They are expected to correctly and effectively implement regulations relating to proper administration of court funds. Clerks of court perform a delicate function as designated custodians of the court's funds, revenues, records, properties, and premises. As such, they are generally regarded as treasurer, accountant, guard, and physical plant manager thereof. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Clerks of court are officers of the law who perform vital functions in the prompt and sound administration of justice. Their office is the hub of adjudicative and administrative orders, processes and concerns. Hence, in case of a lapse in the performance of their sworn duties, the Court finds no room for tolerance and is then constrained to impose the necessary penalty to the erring officer. x x x It is hereby emphasized that it is the duty of clerks of court to perform their responsibilities faithfully, so that they can fully comply with the circulars on deposits of collections. They are reminded to deposit immediately with authorized government depositaries the various funds they have collected because they are not authorized to keep those funds in their custody. x x x Safekeeping of funds and collections is essential to an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds. x x x It bears stressing that Clerks of Court are the chief

administrative officers of their respective courts, and, with regard to the collection of legal fees, they perform a delicate function as judicial officers entrusted with the correct and effective implementation of regulations thereon. Even the undue delay in the remittances of amounts collected by them at the very least constitutes misfeasance.

2. ID.; ID.; ID.; FAILURE OF A CLERK OF COURT TO FOLLOW THE GUIDELINES FOR PROPER ADMINISTRATION OF COURT FUNDS CONSTITUTES NEGLECT OF DUTY. — It is clear in the findings of the audit team, as bolstered by Nini's admission, that irregularities in the administration of court funds were indeed committed. In her explanation, Nini chiefly blamed her heavy workload for the lapses discovered by the audit team. She attributed her shortcomings to the heavy weight of her responsibilities as an accountable officer and an officer of the court performing the tasks of an administrative officer, liaison officer and supply and property custodian. Due to this, she would often deposit funds beyond the time allowed, resulting in unremitted interest and forfeited cashbonds. Everytime she would cause the withdrawal of interest of fiduciary funds, her practice was to place the amount inside an envelope to be locked inside her vault together with other envelopes containing collections from different funds, decisions of cases due for promulgation, unused official receipts, and marked money used as evidence in criminal cases. Undoubtedly, Nini failed to perform her duty to the degree expected of her office. x x x Nini must have been acquainted with the tasks of her office. She is expected to have assumed her office with a degree of competence and alacrity worthy of this esteemed position in the Judiciary. Hence, she should have been ready to discharge her sworn duties with the conviction to do away with whining and nitpicking. The Court cannot countenance this attitude, lest pardons for ineptitude become the practice in its ranks. Indeed, the Court zealously aims to safeguard the people's faith in the Judiciary by improving the route by which justice is served. Certainly, an officer who constantly bleats about the complexity of his responsibilities resultantly neglects his duties. Such an officer does not aid in the Judiciary's goal and must then bear the appropriate penalty. x x x Records show that SC Circular Nos. 13-92 and 5-93 were not followed by Nini. These issuances provide the guidelines for the proper administration of court

funds. The former orders that all fiduciary collections "shall be deposited immediately by the Clerk of Court concerned upon receipt thereof, with an authorized government depositary bank," while the latter designates the Landbank of the Philippines, as such. Further, the irregularities found by the audit team point to Nini's ignorance of Circular No. 50-95, which mandates that all collections from bail bonds, rental deposits, and other fiduciary collections should be deposited with the Land Bank of the Philippines *(LBP)* upon receipt by the Clerk of Court within twenty-four (24) hours. x x x Nini's unwarranted failure to fulfill these responsibilities deserves administrative sanction. Delay in the remittance of collection constitutes neglect of duty.

3. ID.; ID.; ID.; ID.; PENALTY. — Under the Civil Service Rules and Omnibus Rules Implementing it, simple neglect of duty is a less grave offense penalized with suspension for one month and one day to six months for the first offense, and dismissal for the second offense. x x x [T]he Court resolves to declare Estrella Y. Nini, Clerk of Court, Municipal Trial Court in Cities, Bogo City, Cebu, **GUILTY** of Gross Neglect of Duty for which she is ordered **SUSPENDED** for six (6) months from service, **FINED** Five Thousand (₱5,000.00) Pesos for delayed remittances of Fiduciary Fund collections and failure to collect the required STF for Civil Cases, and **WARNED** that a repetition of the same or similar offense shall be dealt with more severely.

D E C I S I O N

MENDOZA, *J.*:

This administrative matter originated from a financial audit conducted by the Office of the Court Administrator *(OCA)* on the books of accounts of the Municipal Trial Court in Cities, Bogo City, Cebu [formerly Municipal Circuit Trial Court Bogo-San Remigio, Cebu] *(MTCC)* pursuant to Travel Order No. 37-2011 dated February 17, 2011.

The books of accounts of the MTCC were last audited in September 1995 in view of the retirement of former Clerk of Court, Rosela M. Condor. The audit noted an under-remittance of ₱367.80 for the Judiciary Development Fund *(JDF)* account which was already restituted on December 14, 1995.

In this case, the financial audit examination covered the accountability of Estrella Y. Nini *(Nini)* who was appointed as permanent Clerk of Court on February 6, 1996. In a previous audit conducted by the Regional Commission on Audit *(RCOA)*, it appeared that Nini disclosed cash shortages amounting to ₱125,050.20 for the Fiduciary Fund. The said amount was deposited the next day.

Covering the period from October 1, 1995 to March 31, 2011, the OCA financial audit yielded the following results:[1]

a. The cash examination conducted on April 4, 2011 disclosed a shortage of ₱1,400.00, while undeposited collections of ₱153,750.00 were deposited to their respective accounts immediately after the cash count.[2]

b. All Supreme Court official receipts requisitioned from the Property Division, Office of Administrative Services *(OAS)* - Office of the Court Administrator were duly accounted for.[3]

c. Anent the Fiduciary Fund, the books of the Clerk of Court revealed an over withdrawal of the cashbond posted in Criminal Case No. 8664 amounting to ₱30,000.00. When confronted by the audit team, Nini admitted that she inadvertently released the said amount to the bondsman on June 11, 2009. She explained that she immediately called the attention of the latter, asking that the amount be returned, but the amount was returned on installment. Hence, the amount was fully returned only in March 2011. The full amount, however, was kept inside her vault and was only deposited on April 12, 2011, upon the instruction of the audit team.[4]

d. Nini likewise withdrew several forfeited bailbonds including interests from the fiduciary funds during the period of March 31, 2008 to September 30, 2010 amounting to ₱52,000.00 and ₱35,665.00, respectively. These were not immediately deposited to the GF-New Account, but rather kept inside the vault. According to Nini, she

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[1] Reported in OCA Memorandum dated September 1, 2011, *rollo*, pp. 3-10.

[2] *Id.* at 4.

[3] *Id.*

[4] *Id.* at 5.

completely forgot about the envelopes kept inside the vault because of her voluminous office tasks and duties. She also admitted that she did not know to what account she should deposit the same. Again, upon the directive of the audit team, the forfeited bailbonds plus interests were deposited only on April 13, 2011.[5]

e. Collections made from February 4, 2011 to March 23, 2011 were only deposited by the Clerk of Court on April 3 and 4, 2011. Nini incurred late deposits for the Fiduciary Fund since 1997 up to present.[6]

f. With regard to the Sheriff's Trust Fund *(STF)*, the audit team discovered that Nini failed to collect the mandatory ₱1,000.00 STF for every civil case filed in court to defray the expenses incurred in the service of summons and other court processes. Nini admitted this and reasoned that no guidelines were issued regarding the said fund.[7]

g. The court's file copies of financial reports were organized, orderly and complete, thus, the team had no difficulty in verifying the accuracy and correctness of the court's financial reports. Moreover, all transactions affecting the collections, deposits and withdrawals of the funds maintained by the court were properly recorded in their respective Official Cashbooks.[8]

h. Certain overages and shortages were noted in the various court funds, as follows:

A) Judiciary Development Fund (JDF)

Total Collections, from 6/1/96 to 3/31/11	₱978,433.45
Less: Total Deposits, same period	978,483.45
Balance of Accountability/ Shortage	(₱ 50.00)

The overage of 50.00 was due to the over deposit of collections for the month of March 2011.

B) Special Allowance for the Judiciary Fund (SAJF)

Total Collections, from 11/11/03 to 3/31/11	₱568,213.00
Less: Total Deposits, same period	562,498,80
Balance of Accountability/ Over Remittance	₱ 5,714.20

[5] *Id.* at 6.

[6] *Id.*

[7] *Id.*

[8] *Id.* at 9.

The shortage of ₱5,714.20 resulted from the following:

Erroneous deposits of SAJF collections to:	
GF- New Account	₱ 2,200.00
GF- Old Account	2,370.00
Undeposited collections (March 2011)	1,175.20
Over-remittances:	
June 20, 2008	(30.80)
Nov. 2010	(0.20)
Total	₱ 5,714.20

The undeposited SAJF collections over 1,175.00 for March 18-30, 2011 were included in the cash examination and were deposited on April 4, 2011.

C) General Fund (GF)

A. New

Total Collections, from 10/14/09 to 3/31/11	₱ 00.00
Less: Total Deposits, same period	2,200.00
Balance of Accountability/ Overage	(₱ 2,200.00)

The overage of 2,200.00 is comprised of SAJF collections erroneously receipted and deposited to this fund. The General Fund-New comprises all confiscated bailbonds and earned net interest withdrawn from the Fiduciary Fund account.

B. Old

Total Collections, from 7/1/97 to 3/31/11Shortage	₱ 117,264.80
Less: Total Deposits, same period	119,634.80
Balance of Accountability/Shortage	₱ (2,370.00)

The overage of 2,370.00 was due to the erroneous remittance of collections to General Fund account instead of remitting the same to the Special Allowance for the Judiciary Fund Account.

D) Mediation Fund

Total Collections, from 7/1/05 to 3/31/11	₱ 251,500.00
Less: Total Deposits, same period	246,000.00
Balance of Accountability/Shortage	₱ 5,500.00

The shortage of ₱5,500.00 pertains to March 2011 collections which was deposited on April 5, 2011.

i. The shortages/accountability of Nini was summarized by the audit team in this wise:

Fund	Accountability	Remarks
FF	₱ 204,000.00	Deposited on 3,4,12 & 15, 2011
STF	0.00	No collection
JDF	(50.00)	Over-remittance
SAJ	5,714.00	Erroneous deposit of SAJ collections
GF-New	(2,000.00)	Erroneous Deposit to GF account
GF-Old	(2,370.00)	Erroneous Deposit to GF account
Mediation	5,500.00	Deposited on April 4, 2011
Total	₱ 210,794.00	

Recommendation of the OCA

In a memorandum dated September 2, 2011,[9] the OCA recommended that Nini be:

a. SUSPENDED for **SIX (6) Months**, for incurring cash shortages material in amount;

b. FINED in the amount of **Five Thousand Pesos (₱5,000.00)** for delayed remittances of Fiduciary Fund collections which deprived the Court of the possible interest income if the collections were deposited on time; and

c. STERLY WARNED that a repetition of the same or similar offense shall be dealt with more severely."

With respect to Presiding Judge Dante R. Manreal *(Judge Manreal)*, the OCA recommended that he be:

a. **DIRECTED** to **DESIGNATE** an Acting Clerk of Court and he/she be **DIRECTED** to **COLLECT** the mandatory One Thousand Pesos (₱1,000.00) for every case filed in court pursuant to paragraph 2, Section 10 of the Amended Administrative Circular No. 35-2004 and **OPEN** a new account for Sheriff's Trust Fund (STF) transactions with the Land Bank of the Philippines (LBP) under the name of the court,

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

with the Executive/Presiding Judge and OIC/Clerk of Court as authorized signatories.

b. **ADVISED** to **STRICTLY MONITOR** the financial transactions of MTCC, Bogo City, Cebu, in strict adherence to the issuances of the Court and **STUDY** and **IMPLEMENT** procedures that would strengthen internal control over financial transactions.

The Court's Ruling

Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.[10] Those charged with the dispensation of justice, from the justices and judges to the lowliest clerks, should be circumscribed with the heavy burden of responsibility. Not only must their conduct at all times be characterized by propriety and decorum but, above all else, it must be beyond suspicion.[11] Thus, the Court does not hesitate to condemn and sanction such improper conduct, act or omission of those involved in the administration of justice that violates the norm of public accountability and diminishes or tends to diminish the faith of the public in the Judiciary.[12]

It is clear in the findings of the audit team, as bolstered by Nini's admission, that irregularities in the administration of court funds were indeed committed. In her explanation,[13] Nini chiefly blamed her heavy workload for the lapses discovered by the audit team. She attributed her shortcomings to the heavy weight of her responsibilities as an accountable officer and an officer of the court performing the tasks of an administrative officer, liaison officer and supply and property custodian. Due to this,

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[10] Sec. 1 of Article XI of the 1987 Constitution.

[11] *Re: Financial Audit on the Books of Account of Ms. Laura D. Delantar, Clerk of Court, MTC, Leyte, Leyte*, 520 Phil. 434 (2006).

[12] *Mendoza v. Mabutas*, A.M. No. MTJ-88-142, June 17, 1993, 223 SCRA 411, 419.

[13] *Rollo*, pp. 104-105.

she would often deposit funds beyond the time allowed, resulting in unremitted interest and forfeited cashbonds. Everytime she would cause the withdrawal of interest of fiduciary funds, her practice was to place the amount inside an envelope to be locked inside her vault together with other envelopes containing collections from different funds, decisions of cases due for promulgation, unused official receipts, and marked money used as evidence in criminal cases.

Undoubtedly, Nini failed to perform her duty to the degree expected of her office. Settled is the role of clerks of court as judicial officers entrusted with the delicate function with regard to collection of legal fees. They are expected to correctly and effectively implement regulations relating to proper administration of court funds. Clerks of court perform a delicate function as designated custodians of the court's funds, revenues, records, properties, and premises. As such, they are generally regarded as treasurer, accountant, guard, and physical plant manager thereof. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Clerks of court are officers of the law who perform vital functions in the prompt and sound administration of justice. Their office is the hub of adjudicative and administrative orders, processes and concerns.[14] Hence, in case of a lapse in the performance of their sworn duties, the Court finds no room for tolerance and is then constrained to impose the necessary penalty to the erring officer. Surely, Nini must have been acquainted with the tasks of her office. She is expected to have assumed her office with a degree of competence and alacrity worthy of this esteemed position in the Judiciary. Hence, she should have been ready to discharge her sworn duties with the conviction to do away with whining and nitpicking. The Court cannot countenance this attitude, lest pardons for ineptitude become the practice in its ranks. Indeed, the Court zealously aims to safeguard the people's faith in the Judiciary by improving the

[14] *OCA v. Nelia D.C. Recio, Eralyn S. Cavite, Ruth G. Cabigas and Chona Aurelia R. Reniedo, all of the Metropolitan Trial Court, San Juan, Metro Manila*, A.M. No. P-04-1813 (Formerly A.M. No. 04-5-119-MeTC), May 31, 2011, 649 SCRA 552, 568.

route by which justice is served. Certainly, an officer who constantly bleats about the complexity of his responsibilities resultantly neglects his duties. Such an officer does not aid in the Judiciary's goal and must then bear the appropriate penalty.

It is hereby emphasized that it is the duty of clerks of court to perform their responsibilities faithfully, so that they can fully comply with the circulars on deposits of collections. They are reminded to deposit immediately with authorized government depositaries the various funds they have collected because they are not authorized to keep those funds in their custody.[15] The fact that the collected amounts were kept in the safety vault does not reduce the degree of defiance of the rules.

Records show that SC Circular Nos. 13-92 and 5-93 were not followed by Nini. These issuances provide the guidelines for the proper administration of court funds. The former orders that all fiduciary collections "shall be deposited immediately by the Clerk of Court concerned upon receipt thereof, with an authorized government depositary bank," while the latter designates the Landbank of the Philippines, as such. Further, the irregularities found by the audit team point to Nini's ignorance of Circular No. 50-95, which mandates that all collections from bail bonds, rental deposits, and other fiduciary collections should be deposited with the Land Bank of the Philippines *(LBP)* upon receipt by the Clerk of Court within twenty-four (24) hours.

Safekeeping of funds and collections is essential to an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds.[16] Nini's unwarranted failure to fulfill these responsibilities deserves administrative sanction.

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[15] *OCA v. Atty. Mary Ann Paduganan-Peñaranda, Office of the Clerk of Court, Municipal Trial Court in Cities (MTCC) Cagayan de Oro, Misamis Oriental; and Mr. Jocelyn Meidante,* A.M. No. P-07-2355, March 19, 2010, 616 SCRA 178, 179.

[16] *OCA v. Atty. Mary Ann Paduganan-Peñaranda, Office of the Clerk of Court, Municipal Trial Court in Cities (MTCC) Cagayan de Oro, Misamis Oriental; and Ms. Jocelyn Meidante, supra* note 15 at 188.

Delay in the remittance of collection constitutes neglect of duty.[17] Further, the Court has stated that the failure to remit judiciary collections on time deprives the court of the interest that may be earned if the amounts are deposited in a bank.[18] Under the Civil Service Rules and Omnibus Rules Implementing it, simple neglect of duty is a less grave offense penalized with suspension for one month and one day to six months for the first offense, and dismissal for the second offense.[19]

It bears stressing that Clerks of Court are the chief administrative officers of their respective courts, and, with regard to the collection of legal fees, they perform a delicate function as judicial officers entrusted with the correct and effective implementation of regulations thereon. Even the undue delay in the remittances of amounts collected by them at the very least constitutes misfeasance. On the other hand, a vital administrative function of a judge is the effective management of his court and this includes control of the conduct of the court's ministerial officers. It should be brought home *to both* that the safekeeping of funds and collections is essential to the goal of an orderly administration of justice and no protestation of good faith can override the mandatory nature of the Circulars designed to promote full accountability for government funds.[20]

With this in mind, the Court agrees with the recommendation of the OCA that Presiding Judge Manreal should be reminded to exercise his administrative duty and strictly monitor the financial transactions of MTCC, Bogo City, Cebu, in strict compliance with the issuances of the Court.

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[17] *In House Financial Audit, Conducted on the Books of Accounts of Khalil B. Dipatuan, RTC-Malbang, Lanao Del Sur*, A.M. No. P-06-2121, June 26, 2008, 555 SCRA 417, 423.

[18] *Id.*

[19] *Id.*

[20] *Office of the Court Administrator v. Fortaleza*, 434 Phil. 511, 522 (2002), citing *Office of the Court Administrator v. Bawalan*, A.M. No. P-93-945, March 24, 1994, 231 SCRA 408, 411.

The Court is also in accord with the recommendation of the OCA that since the Audit Team found that Nini failed to collect the mandatory One Thousand Pesos (₱1,000.00) for the STF, Judge Manreal should be directed to designate an Acting Clerk of Court to collect the same every case filed in court pursuant to paragraph 2, Section 10 of the Administrative Circular No. 35-2004.

WHEREFORE, the Court resolves to declare Estrella Y. Nini, Clerk of Court, Municipal Trial Court in Cities, Bogo City, Cebu, **GUILTY** of Gross Neglect of Duty for which she is ordered **SUSPENDED** for six (6) months from service, **FINED** Five Thousand (5,000.00) Pesos for delayed remittances of Fiduciary Fund collections and failure to collect the required STF for Civil Cases, and **WARNED** that a repetition of the same or similar offense shall be dealt with more severely.

Presiding Judge Dante R. Manreal is hereby directed to **DESIGNATE** an Acting Clerk of Court to collect the mandatory One Thousand Pesos (₱1,000.00) for every case filed in court pursuant to paragraph 2, Section 10 of the Amended Administrative Circular No. 35-2004 and **OPEN** a new account for Sheriff's Trust Fund (STF) transactions with the Land Bank of the Philippines (LBP) under the name of the court, with the Executive/Presiding Judge and OIC/Clerk of Court as authorized signatories. Presiding Judge Manreal is also advised to **STRICTLY MONITOR** the financial transactions of MTCC, Bogo City, Cebu, in strict compliance with the issuances of the Court.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Reyes,*[*] *JJ.,* concur.

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[*] Designated as additional member of the Third Division in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1210 dated March 23, 2012.

SECOND DIVISION

[A.M. No. P-12-3028. April 11, 2012]
(Formerly OCA IPI No. 11-3649-P)

ATTYS. RICARDO D. GONZALES & ERNESTO D. ROSALES, *complainants, vs.* **ARTHUR G. CALO, Sheriff IV, Regional Trial C, Branch 5, Butuan City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; DUTIES OF A SHERIFF; ENUMERATED AND EXPLAINED. — [S]ections [10 and 14] of Rule 39 enumerate the following duties of a sheriff: **first,** to give notice of the writ and demand that the judgment obligor and all persons claiming under him vacate the property within three (3) days; **second,** to enforce the writ by removing the judgment obligor and all persons claiming under the latter; **third,** to remove the latter's personal belongings in the property as well as destroy, demolish or remove the improvements constructed thereon upon special court order; and **fourth,** to execute and make a return on the writ within 30 days from receipt of the writ and every thirty (30) days thereafter until it is satisfied in full or until its effectivity expires. These provisions leave no room for any exercise of discretion on the part of the sheriff on how to perform his or her duties in implementing the writ. A sheriff's compliance with the Rules is not merely directory but mandatory. x x x It is well settled that a sheriff's functions are purely ministerial, not discretionary. Once a writ is placed in his hand, it becomes his duty to proceed with reasonable speed to enforce the writ to the letter, ensuring at all times that the implementation of the judgment is not unjustifiably deferred, unless the execution of which is restrained by the court.

2. ID.; ID.; ID.; ID.; SHERIFF'S FAILURE TO OBSERVE THE PROCEDURES IN THE IMPLEMENTATION OF A WRIT UNDER RULES 139 AND 141 CONSTITUTES NEGLECT OF DUTY. — [H]erein respondent evidently overstepped his authority when he gave the occupants of the property a grace period of 3 months within which to vacate the premises. x x x

In addition to respondent's unauthorized act of giving the occupants of the property time to vacate the same, respondent also failed to file his sheriff's return. The Rules clearly provide that it is mandatory for sheriffs to execute and make a return on the writ of execution within 30 days from receipt of the writ and every thirty (30) days thereafter until it is satisfied in full or its effectivity expires. Even if the writs are unsatisfied or only partially satisfied, sheriffs must still file the reports so that the court, as well as the litigants, may be informed of the proceedings undertaken to implement the writ. x x x In this case, respondent was clearly remiss in the performance of his mandated duties: he unilaterally gave the occupants 3 months, instead of the three (3) days provided by the Rules, to vacate the property; when he did evict the occupants from the premises, a room containing their personal effects was padlocked, therefore delaying the demolition of the improvements introduced on the property; finally, respondent failed to make a return on the writ of possession after he implemented the same. x x x Respondent likewise disregarded Section 10, Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC dated 16 August 2004, which requires sheriffs to secure prior approval from the court of the estimated expenses and fees needed to implement court processes. x x x Thus, a sheriff is guilty of violating the Rules if he fails to observe the following: (1) prepare an estimate of expenses to be incurred in executing the writ; (2) ask for the court's approval of his estimates; (3) render an accounting; and (4) issue an official receipt for the total amount he received from the judgment debtor. In the instant case, none of these procedures were complied with by respondent sheriff.

3. ID.; ID.; ID.; ID.; CONTINUED REFUSAL TO COORDINATE WITH COMPLAINANTS IN THE IMPLEMENTATION OF THE WRIT AMOUNTS TO CONDUCT UNBECOMING OF A COURT EMPLOYEE. — We also find respondent liable for conduct unbecoming a court employee for his continued refusal to coordinate with complainants in the implementation of the writ of possession, despite numerous attempts on their part to get in touch with him. It may be recalled that complainants endeavored, no less than four (4) times, to communicate with respondent for the proper and expeditious execution of the writ, but each time, respondent rebuffed their efforts. Finally, on 25 April 2011, the day respondent finally implemented the writ, respondent refused to allow Ms. De Jesus to inform

complainants of the intended implementation and opted to be accompanied by an ordinary bank employee to witness the enforcement of the writ. To our mind, the persistent refusal of respondent to cooperate with complainants in the implementation of the writ runs afoul of the exacting standards required of those in the judiciary. Time and again, the Court has emphasized the heavy burden of responsibility which court officials and employees are mandated to perform. They are constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. This is so because the image of the court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work there. The conduct of even minor employees mirrors the image of the courts they serve; thus, they are required to preserve the judiciary's good name and standing as a true temple of justice.

4. ID.; ID.; ID.; ID.; PENALTY FOR NEGLECT OF DUTY COUPLED WITH CONDUCT UNBECOMING OF A COURT EMPLOYEE. — Considering that the violation of the procedure in the implementation of court processes committed by respondent is coupled with conduct unbecoming of a court employee, a fine of ₱20,000.00 is appropriate under the circumstances. Considering further that respondent has compulsorily retired from the service on 6 November 2011, the amount of ₱20,000.00 should be deducted from whatever retirement benefits may be due him.

D E C I S I O N

PEREZ, ***J.*:**

In a verified Complaint[1] dated 2 May 2011, complainants Atty. Ricardo D. Gonzalez and Atty. Ernesto D. Rosales, in their capacity as counsels for the Rural Bank of Cabadbaran (Agusan), Inc., charged Arthur G. Calo, Sheriff IV, Regional Trial Court (RTC), Branch 5, Butuan City, with grave abuse of authority, falsification, arrogance, grave misconduct and gross dishonesty in connection with the implementation of the writ

[1] *Rollo*, pp. 1-10.

of possession in Special Proceeding No. 4808. The writ of possession,[2] dated 12 January 2011, commanded respondent to "immediately place" the Rural Bank of Cabadbaran in possession of the property subject of the special proceeding case and eject all occupants thereof.

Complainants alleged that instead of coordinating with them, as was the usual practice of sheriffs when implementing writs, respondent never bothered to get in touch with them. Thus, to facilitate matters, complainants delivered ₱1,000.00 to respondent to answer for whatever expenses the implementation would occasion. When respondent still did not communicate with them, complainant Gonzalez wrote him a letter[3] dated 25 January 2011, asking for an estimate of the necessary expenses for the implementation of the writ. Since respondent did not reply, complainant Gonzalez reiterated the demand to implement the writ in a letter dated 14 February 2011.[4] This time, respondent was warned that should he continue to delay implementation of the writ, the Office of the Court Administrator will be informed of the matter. Another letter,[5] dated 3 March 2011, was sent to respondent reminding him that he still had not submitted an estimate of the expenses of implementation as well as a sheriff's report, as required by the Rules of Court.

On 14 March 2011, complainants learned that respondent had filed his Sheriff's Report,[6] a copy of which they obtained solely through their own initiative from respondent's office. Although dated 18 February 2011, the Report was filed only on 4 March 2011 as evidenced by the date of receipt stamped on its first page. Further, while the report stated that plaintiff and counsel were furnished a copy thereof purportedly by registered mail, the registry receipt, numbered 6673, was undated. Complainants actually received the Report only on 17 March

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2 *Id.* at 11-12, Annex "A".

3 *Id.* at 13, Annex "B".

4 *Id.* at 14, Annex "C".

5 *Id.* at 15, Annex "D".

6 *Id.* at 16-17, Annex "E".

2011 and the envelope containing the same was mailed only on 14 March 2011,[7] the same day complainants were able to secure a copy thereof.

Respondent's Report stated that the writ of possession in Special Proceeding No. 4808 was served on 24 January 2011 to the occupants of the property who, however, requested time to vacate the same. For humanitarian reasons, considering that one of the occupants was sickly, respondent gave them a period of three (3) months within which to vacate the property.

Complainants asserted that "[b]ecause it was obvious that the Sheriff was now playing judge," complainant Gonzalez filed an Omnibus Motion to Inhibit[8] respondent from implementing the writ, claiming that he and respondent could no longer work cordially, to the prejudice of the interest of his client bank. Upon being directed to comment on the motion for his inhibition, respondent denied having been remiss in his duty to implement the writ, declared that he will not inhibit and asserted that he will proceed with the implementation of the writ on 25 April 2011.[9]

True to his word, but without waiting for the resolution of the motion to inhibit him, respondent went to the Rural Bank on 25 April 2011 and announced that he will implement the writ on that day. The bank manager, Ms. Hanie De Jesus (Ms. De Jesus), told him that she will inform complainant Gonzalez of his presence but respondent refused, saying that he will never coordinate with Atty. Gonzalez. He then implemented the writ in the presence of Mr. Marvin Ravelo, an employee of the bank whom respondent asked to accompany him. Thereafter, respondent returned to the bank and demanded ₱1,000.00 as expenses incurred in the implementation, which amount Ms. De Jesus was forced to give because respondent would not leave her desk.[10]

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7 *Id.* at 18, Annexes "F" and "F-1".

8 *Id.* at 19-21, Annex "G".

9 *Id.* at 22-23, Annex "H".

10 *Id.* at 80.

Complainants further alleged that while the occupants indeed vacated the premises, a big room supposedly containing their personal effects was allowed to be padlocked. Thus, while the writ was ostensibly implemented and respondent made a return, in reality, the writ was not fully implemented because the house cannot be demolished until the things are removed. They added that respondent's act of demanding money from their bank manager violates the Rules requiring sheriffs to receive only court-approved amounts from litigants.

Pursuant to the directive of the Office of the Court Administrator (OCA), respondent submitted his Comment[11] to the allegations against him. He alleged that:

1. While admittedly he gave the occupants a period of 3 months to vacate the premises subject of the writ of possession, he did so only out of sheer compassion and for humanitarian reasons;

2. In connection with the service of his Sheriff's Report dated 18 February 2011, attached to his Comment is the affidavit[12] of Mr. Celestino Montalban, their process server, whom respondent requested to mail complainants' copy of the report. Mr. Montalban claimed in his affidavit that because of the numerous documents he mailed on that day, he failed to notice that Registry Receipt No. 6673 addressed to complainant Gonzalez bore no date;

3. The writ of possession was fully implemented on 25 April 2011 in the presence of Mr. Ravelo, the representative of the Rural Bank, and possession of the property was formally turned over to him. After implementation, the bank manager, Ms. De Jesus, handed to respondent the amount of ₱1,000.00 as reimbursement for the expenses incurred as indicated in the Liquidation of Expenses[13] dated 6 May 2011. He did not extort the said amount, contrary to the allegations of complainants. This was precisely the subject of his letter to Ms. De Jesus whom he asked to clarify and shed light on the matter. The formal reply[14] of Ms. De Jesus belies the charge of extortion.

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[11] *Id.* at 47-54.

[12] *Id.* at 66, Annex "8".

[13] *Id.* at 64, Annex "6".

[14] *Id.* at 71, Annex "10".

Complainants filed a Reply[15] dated 16 August 2011 to refute the allegations of respondent in his Comment. Attached thereto is the Affidavit[16] of bank manager Ms. De Jesus recounting what actually happened on 25 April 2011 when respondent implemented the writ of possession. According to her, after respondent implemented the writ, he came back and made her sign a Turn-Over Receipt. Respondent, however, would not leave and she "understood that he was waiting for money" so she decided to give him ₱1,000.00 so he would leave and allow her to attend to her work.

In its evaluation report[17] dated 26 October 2011, the OCA found respondent guilty of neglect of duty and grave misconduct but mitigated the penalty on account of his "more than three (3) decades of service in the judiciary, coupled with the fact [that] this is his first infraction of the rules". The OCA recommended that he be fined in the amount of ₱10,000.00 and warned that the commission of a similar act in the future will be dealt with more severely.

We agree with the conclusion of the OCA that respondent is liable for neglect of duty but differ with the recommended penalty.

From the allegations of the complaint, it is clear that respondent violated the provisions of the Rules of Court prescribing the duties of sheriffs in the implementation of court writs and processes.

Sections 10 (c) and (d), Rule 39 of the Rules of Court provide for the manner by which a writ for the delivery or restitution of real property should be enforced by a sheriff. Thus:

SEC. 10. *Execution of judgments for specific act.* –

xxx x x x xxx

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[15] *Id.* at 72-82.

[16] *Id.* at 83, Annex "A".

[17] *Id.* at 85-91.

(c) *Delivery or restitution of real property*. – The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.

(d) *Removal of improvements on property subject of execution*. – When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.

Section 14 of Rule 39, on the other hand, requires sheriffs, after implementation of the writ, to make a return thereon:

SEC. 14. *Return of writ of execution.* - The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

The afore-quoted sections of Rule 39 enumerate the following duties of a sheriff: **first,** to give notice of the writ and demand that the judgment obligor and all persons claiming under him vacate the property within three (3) days; **second,** to enforce the writ by removing the judgment obligor and all persons claiming under the latter; **third,** to remove the latter's personal belongings

in the property as well as destroy, demolish or remove the improvements constructed thereon upon special court order; and **fourth,** to execute and make a return on the writ within 30 days from receipt of the writ and every thirty (30) days thereafter until it is satisfied in full or until its effectivity expires.[18]

These provisions leave no room for any exercise of discretion on the part of the sheriff on how to perform his or her duties in implementing the writ. A sheriff's compliance with the Rules is not merely directory but mandatory.[19] Thus, herein respondent evidently overstepped his authority when he gave the occupants of the property a grace period of 3 months within which to vacate the premises. It is well settled that a sheriff's functions are purely ministerial, not discretionary.[20] Once a writ is placed in his hand, it becomes his duty to proceed with reasonable speed to enforce the writ to the letter, ensuring at all times that the implementation of the judgment is not unjustifiably deferred, unless the execution of which is restrained by the court.[21]

In addition to respondent's unauthorized act of giving the occupants of the property time to vacate the same, respondent also failed to file his sheriff's return. The Rules clearly provide that it is mandatory for sheriffs to execute and make a return on the writ of execution within 30 days from receipt of the writ and every thirty (30) days thereafter until it is satisfied in full or its effectivity expires. Even if the writs are unsatisfied or only partially satisfied, sheriffs must still file the reports so that the court, as well as the litigants, may be informed of the proceedings undertaken to implement the writ. Periodic reporting also provides the court insights on the efficiency of court processes

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[18] *Guerrero-Boylon v. Boyles,* A.M. No. P-09-2716, 11 October 2011.

[19] *Id.* citing *Office of the Court Administrator v. Efren E. Tolosa, etc.,* A.M. No. P-09-2715, 13 June 2011, 651 SCRA 696.

[20] *Erdenberger v. Aquino,* A.M. No. P-10-2739, 24 August 2011.

[21] *Dy Teban Trading Co., Inc. v. Verga,* A.M. No. P-11-2914, 16 March 2011, 645 SCRA 391, 397 citing *Dacdac v. Ramos,* A.M. No. P-052054, 553 SCRA 32, 35-36.

after promulgation of judgment. Over all, the purpose of periodic reporting is to ensure the speedy execution of decisions.[22]

In the case of *Cebu International Finance Corporation v. Cabigon*,[23] the Court applied the foregoing Section 14 of Rule 39 to discipline a sheriff who failed to file a return after service of a writ of possession. Likewise, in *Ong v. Pascasio*,[24] the Court, adopting the findings of the evaluation report of the OCA, held administratively liable under the same provision, a sheriff who, failing to implement a writ of possession, did not render the required report.

In this case, respondent was clearly remiss in the performance of his mandated duties: he unilaterally gave the occupants 3 months, instead of the three (3) days provided by the Rules, to vacate the property; when he did evict the occupants from the premises, a room containing their personal effects was padlocked, therefore delaying the demolition of the improvements introduced on the property; finally, respondent failed to make a return on the writ of possession after he implemented the same. As observed by the OCA in its Report dated 26 October 2011, "[r]espondent Sheriff Calo would have us believe that he submitted a report on 18 February 2011 and even furnished complainants a copy thereof. And yet, a perusal of the evidence reveals otherwise. In fact, as seen on its face, the court received a copy of his report only on 4 March 2011"[25] or more than 30 days from the time he was supposed to make a return.

Respondent likewise disregarded Section 10, Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC dated 16 August 2004, which requires sheriffs to secure prior approval from the court of the estimated expenses and fees needed to implement court processes. Paragraph (l) of the section explicitly provides that:

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[22] *Anico v. Pilipiña*, A.M. No. P-11-2896, 2 August 2011, 655 SCRA 42, 51 citing *Benitez v. Acosta*, 407 Phil. 687, 694 (2001).

[23] A.M. No. P-06-2107, 14 February 2007, 515 SCRA 616.

[24] A.M. No. P-09-2628, 24 April 2009, 586 SCRA 364.

[25] *Rollo*, p. 89.

With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex-officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. THE LIQUIDATION SHALL BE APPROVED BY THE COURT. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

Thus, a sheriff is guilty of violating the Rules if he fails to observe the following: (1) prepare an estimate of expenses to be incurred in executing the writ; (2) ask for the court's approval of his estimates; (3) render an accounting; and (4) issue an official receipt for the total amount he received from the judgment debtor. In the instant case, none of these procedures were complied with by respondent sheriff.[26]

The records of this case reveal that, sometime in January 2011, after the issuance of the writ of possession, respondent accepted the amount of ₱1,000.00 initially given by complainants to defray the expenses of implementation, without submitting an estimate of the expenses or seeking the court's approval therefor. An accounting of this amount was made only on 6 May 2011 or more than four (4) months after respondent received the same, when the Rules require that amounts received by a sheriff are "subject to liquidation within the same period for rendering a return on the process," which is, thirty days. Then, on the day he actually executed the writ, respondent demanded another ₱1,000.00 from Ms. De Jesus. Again, this amount was received by respondent without submitting an estimate to or obtaining prior approval from the court.

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[26] *Anico v. Pilipiña, supra* note 22 at 49-50 citing *Bercasio v. Benito*, 341 Phil. 404, 410 (1997).

It must be stressed that sheriffs are not allowed to receive any *voluntary* payments from parties in the course of the performance of their duties. Corollary, a sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps. Even assuming such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Neither will complainant's acquiescence or consent to such expenses absolve the sheriff for his failure to secure the prior approval of the court concerning such expense.[27]

In addition to violating Rules 39 and 141 of the Rules of Court, We also find respondent liable for conduct unbecoming a court employee for his continued refusal to coordinate with complainants in the implementation of the writ of possession, despite numerous attempts on their part to get in touch with him. It may be recalled that complainants endeavored, no less than four (4) times, to communicate with respondent for the proper and expeditious execution of the writ, but each time, respondent rebuffed their efforts. Finally, on 25 April 2011, the day respondent finally implemented the writ, respondent refused to allow Ms. De Jesus to inform complainants of the intended implementation and opted to be accompanied by an ordinary bank employee to witness the enforcement of the writ.

To our mind, the persistent refusal of respondent to cooperate with complainants in the implementation of the writ runs afoul of the exacting standards required of those in the judiciary. Time and again, the Court has emphasized the heavy burden of responsibility which court officials and employees are mandated to perform. They are constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. This is so because the image

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[27] *Id.* at 50 citing *Tan v. Paredes*, A.M. No. P-04-1789, 22 July 2005, 464 SCRA 47, 55 and *Balanag, Jr. v. Osita*, 437 Phil. 453, 458 (2002).

of the court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work there.[28] The conduct of even minor employees mirrors the image of the courts they serve; thus, they are required to preserve the judiciary's good name and standing as a true temple of justice.[29]

In determining the appropriate penalty to be imposed on respondent, the Court considered the following administrative cases wherein the respondent sheriffs were also found guilty of violating either Section 14 of Rule 39 or Section 10 of Rule 141:

1. *Cebu International Finance Corporation v. Cabigon*,[30] wherein respondent was found guilty of neglect of duty for violating Section 14 of Rule 39 and fined in the amount of ₱10,000.00, respondent having been previously reprimanded for neglect of duty;

2. *Villarico v. Javier*,[31] where respondent violated Section 10 of Rule 141 and the Court faulted him for "Conduct Unbecoming a Court Employee" and imposed on him a fine of ₱2,000.00;

3. *Guilas-Gamis v. Beltran*,[32] where the Court, without characterizing the similar offense of violation of Section 10, Rule 141, imposed on the therein respondent a fine of ₱2,000.00;

4. *Balanag, Jr. v. Osita*,[33] wherein respondent was found guilty of simple neglect of duty for failing to follow the procedure laid down in Section 9 (now Section 10), Rule 141 of the Rules of Court and was fined in the amount of ₱5,000.00; and

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[28] *Manaog v. Rubio*, A.M. No. P-08-2521, 13 February 2009, 579 SCRA 10, 14 citing *Reyes v. Vidor*, A.M. No. P-02-1552, 3 December 2002, 393 SCRA 257, 260.

[29] *Id.* citing *Pizzaro v. Villegas*, A.M. No. P-97-1243, 20 November 2000, 345 SCRA 42.

[30] *Supra* note 23.

[31] A.M. No. P-04-1828, 14 February 2005, 451 SCRA 218, 225, cited in *Sales v. Rubio*, A.M. No. P-08-2570, 4 September 2009, 598 SCRA 195, 199.

[32] A.M. No. P-06-2184, 27 September 2007, 534 SCRA 175, 180, cited in *Sales v. Rubio*, A.M. No. P-08-2570, 4 September 2009, 598 SCRA 195, 201.

[33] A.M. No. P-01-1454, 12 September 2002, 388 SCRA 630, 636.

5. *Tiongco v. Molina*,[34] where the Court found respondent guilty of dereliction of duty and negligence for failure to comply with the final paragraph of Section 9 (now Section 10), Rule 141, of the Rules of Court and imposed on him a fine of ₱5,000.00.

Considering that the violation of the procedure in the implementation of court processes committed by respondent is coupled with conduct unbecoming of a court employee, a fine of ₱20,000.00 is appropriate under the circumstances. Considering further that respondent has compulsorily retired from the service on 6 November 2011, the amount of ₱20,000.00 should be deducted from whatever retirement benefits may be due him.

WHEREFORE, the Court finds respondent Arthur G. Calo, Sheriff IV, RTC, Branch 5, Butuan City, **GUILTY** of neglect of duty and conduct unbecoming a court employee and is **FINED** in the amount of **TWENTY THOUSAND PESOS (₱20,000.00)** to be deducted from the benefits due him.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. P-12-3053. April 11, 2012]
(Formerly A.M. No. 06-3-88-MTCC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **MANUEL Z. ARAYA, JR., Utility Worker, MTCC, Branch 2, Ozamis City,** *respondent.*

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[34] A.M. No. P-00-1373, 4 September 2001, 364 SCRA 294, 300-301.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; FALSIFICATION OF DAILY TIME RECORDS CONSTITUTES DISHONESTY; PROPER PENALTY. — This is not the first time that the respondent has been charged of a similar offense. In an earlier complaint filed on June 16, 2003, by "Concerned Litigants," the respondent was charged with Falsification of Daily Time Records, Frequent Unauthorized Absences or Tardiness and Loafing. x x x Records of the case show that Judge Achas and Clerk of Court Zapatos allowed the respondent to use a flexi-time schedule and tolerated his non-observance of the prescribed office hours to allow him to do the cleaning of the office before and after office hours. Respondent was merely reprimanded and warned that a repetition of the same or similar offense shall be dealt with more severely. Notwithstanding the pendency of the first complaint against him, the respondent continued with his irregular office hours and persisted in not faithfully reflecting the exact time of his arrival and departure from the office. Falsification of daily time record constitutes dishonesty. Dishonesty is defined as the "disposition to *lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.*" Section 52(A), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (MC No. 19, dated September 14, 1999) classifies dishonesty as a grave offense punishable by dismissal even for first time offenses.

2. ID.; ID.; ID.; CIRCUMSTANCES CONSIDERED IN IMPOSING THE APPROPRIATE PENALTY WITH LENIENCY. — Section 53, Rule IV of the Revised Rules on Administrative Cases in the Civil Service grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. The respondent has shown humility and remorse. At the start of the investigation, he manifested his willingness to admit his culpability. He incurred his absences during the time when he had to take care of his ailing father, who was then sick of prostate cancer. He has been in the government service for about 20 years. Following judicial precedents, the respondent deserves some degree of leniency in imposing upon him the appropriate penalty.

D E C I S I O N

BRION, *J.*:

In a Report on Habitual Absenteeism (*Report*) dated September 29, 2005, the Leave Division, Office of the Administrative Services, Office of the Court Administrator (*OCA*),[1] reported that Manuel Z. Araya, Jr. (*respondent*), Utility Worker 1, Municipal Trial Court in Cities (*MTCC*), Branch 2, Ozamiz City, had incurred fifteen (15) days of unauthorized absences during the month of November 2004 and ten and one-half (10½) days of unauthorized absences during the month of December 2004. Acting on the Report, the OCA, in a 1st Indorsement dated September 29, 2005,[2] directed its Legal Office to file the appropriate administrative complaint against the respondent, resulting in the present administrative complaint.

The respondent explained in his letter dated November 2, 2005[3] (submitted as comment), that he incurred the reported absences because he had to take care of his ailing father who was suffering from prostate cancer. He had to personally attend to his father's needs until his death as his wife and children could not do this task.

It appears that prior to the submission of the Report, the respondent submitted to the Leave Division his bundy cards for the months of November and December 2004 and his applications for leave of absence. However, they were returned by the Leave Division because they were not signed by Judge Rio Concepcion Achas, MTCC, Branch 2, Ozamiz City.

Judge Achas sent back the respondent's bundy cards and leave applications without signing them. In his letter-reply dated February 16, 2005,[4] he explained that he intentionally did not

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1 *Rollo*, p. 4.

2 *Id.* at 3.

3 *Id.* at 8.

4 *Id.* at 7.

sign the respondent's bundy cards for the reason that the respondent "was not on post during the dates and times indicated in the said bundy cards."[5] He specifically mentioned that on November 4, 5 (PM), 17 (PM), 22, 24 (PM), 25 and 26 (AM), and December 1, 2 (AM), 9 (AM), 20, 21, 22, 28 and 29 (AM), the respondent punched in his bundy cards but he was not actually in the office, as reflected in the attendance monitoring logbook. He further explained that he did not sign the respondent's applications for leave of absence because the respondent took his leave without his prior knowledge and approval nor that of the branch clerk of court.

In a Resolution dated June 5, 2006,[6] the matter was referred to the Executive Judge of the MTCC, Ozamiz City, for investigation, report and recommendation.

The Executive Judge at that time, Judge Miriam Orquieza-Angot, conducted the investigation. At the initial hearing on July 24, 2006, Judge Angot asked the respondent if he wished to have a full blown investigation on his unauthorized absences. The respondent manifested that he was contemplating not to proceed anymore with the investigation because he would admit the charges against him. However, after Judge Angot reminded him that there would be consequences flowing from his admission, he changed his mind and manifested that he would secure the services of a counsel to assist him in the case. In the meantime that the respondent was looking for a lawyer, Judge Angot allowed Judge Achas and his witnesses, including Clerk of Court III Renato L. Zapatos, to produce evidence[8] which the respondent could later rebut.[9]

In the course of the proceedings, the respondent's bundy cards and applications for leave of absence were submitted.

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5 *Ibid.*

6 *Id.* at 26.

7 Missing Footnote No. 7.

8 *Id.* at 41.

9 *Id.* at 47.

The respondent's bundy card for the month of November 2004[10] showed that he had been on sick leave on November 2, 3, 18 and 19, 2004, and in the afternoon of November 17 and 26, 2004; and on vacation leave on November 8 - 12, 2004. He reported for work on November 4, 5, 22 to 25 and 30, 2004, and half-day on November 17 and 26, 2004. The respondent's bundy card for the month of December 2004[11] showed that he was on sick leave on December 6 and 23, 2004; he reported half-day on December 2, 21 and 29, 2004; and he was on "forced leave" on December 14 to 17, 2004. He reported for work on December 1, 7 - 10, 13, 20, 22 and 28, and half-day on December 2, 21 and 29, 2004.

On November 2, 2004, the respondent filed an application for leave of absence for five days of sick leave, and five days of vacation leave on November 2, 3, 8, 9, 10, 11, 12, 17 (pm), 18, 19 and 26 (pm).[12] However, the application for leave of absence was not approved by Judge Achas, on the ground that the respondent did not ask his permission beforehand and that there was a discrepancy in the number of days of sick leave in the application form. For the absences in December 2004, respondent filed an application for leave of absence on December 13, 2004. He applied for four days of "forced leave" for the period of December 14 to 17, 2004. It was denied by Judge Achas, noting therein that the respondent "neglected functions as utility worker."[13]

To monitor the respondent's attendance, Judge Achas had instructed Clerk of Court Zapatos to maintain a separate logbook for the respondent alone. The logbook showed that the respondent was present on a particular day but, in fact, he was not present in the office. During the hearing on September 28, 2006, Clerk of Court Zapatos testified that the entries in the respondent's bundy cards and in the logbook are conflicting.[14]

[10] *Id.* at 36-D.

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

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

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

[14] *Id.* at 76.

At the conclusion of the investigation, Judge Angot designated Atty. Stephen Ian T. Belacho of the Public Attorney's Office to assist the respondent in the complaint against him.[15] Atty. Belacho filed the respondent's position paper claiming that the latter's absences were never intentional nor habitual, and praying that the respondent be reprimanded only with a warning that a repetition of the same act be dealt with severely.[16]

In a report dated October 18, 2007,[17] Judge Angot confirmed Clerk of Court Zapatos' testimony regarding the conflicting entries in his bundy cards and the office logbook:

	Daily Time Record				Log Book
	In	Out	In	Out	TSN, Sept. 28, 2006, pp. 6-16)
Nov. 4	5:39	12:05	12:39	7:04	(reported in the morning; arrived at 10 am., out at 11:25; in the afternoon, he asked permission to go to the bank but did not return
5	7:49	12:18	12:29	5:34	not in the office in the afternoon
10	vacation leave				reported at 8 am to clean the office but did not come back until 12 noon; absent in the afternoon
11	vacation leave				cleaned to office but did not come back until 5 pm
22	7:18	12:22	12:28	6:24	reported at 7:18 am to clean the office but did not come back in the afternoon

[15] *Id.* at 105 and 121.

[16] *Id.* at 131-132.

[17] *Id.* at 139-147.

24	6:47 12:02 12:43 7:00	he was present in the morning but not in the afternoon
26	6:31 1:08 sick leave	not present in the afternoon
Dec. 1	6:58 12:21 12:42 5:54	not present the whole day
2	6:39 12:39 sick leave	not present the whole day (the sick leave was approved)
9	5:48 12:03 12:13 5:01	not present the whole day
13	6:38 12:42 12:48 5:04	not present the whole day
20	7:12 12:15 12:44 5:53	reported in the morning to clean the office; not present the rest of the day
21	6:54 12:32 sick leave	reported in the morning to clean the office; not present the rest of the day (the sick leave was approved)
22	7:19 12:29 12:54 5:45	not present the whole day

Although Judge Angot found the complaint meritorious, she found that the respondent cannot be considered as habitually absent:

Summing up the evidence against the respondent, it appears that he incurred 12 ½ -unauthorized absences for the month of November 2004 (Nov. 2, 3, 5 pm, 8, 9, 10, 11, 12, 17 pm, 18, 19, 22 pm, 24 pm and 26) and 8 ½ unauthorized absences for December 2004 (Dec. 1, 9, 13, 14, 15, 16, 17, 20 pm, and 22). This differs a little bit from the findings of the Office of the Administrative Services, Office of the Court Administrator since respondent was given the benefit of the doubt on those days when he cleaned the office in the morning. In

these days, he was considered to have been absent only in the afternoon.

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In A.M. No. P-05-1960 (Jan. 26, 2007) entitled *Concerned Litigants vs. Manuel Z. Araya, Jr.*, this Court reprimanded the respondent for dishonesty in not faithfully reflecting the exact time of his arrival and departure. In that case, which involved the attendance of the respondent in 2003, the respondent was able to evade the maximum penalty of dismissal from the service because this Court took into consideration the fact that respondent might have thought in good faith that his practice was legal since this was allowed by Judge Achas. Having been penalized and warned before, the defense of good faith is no longer a factor in this case.[18]

However, Judge Angot found that the respondent is guilty of falsification of daily time records to cover-up his absences and tardiness. She also found that the respondent failed to comply with the leave law in applying for a leave of absence; hence, Judge Achas was justified in disapproving the respondent's application for leave of absence. The respondent violated Section 16, Rule XVI of the Omnibus Rules Implementing Book V of Executive Order No. 292 when he filed his application for sick leave even before the time he was allegedly sick. She reported:

In Administrative Circular No. 2-99 reiterated in A.C. No. 02-2007, this Court held that absenteeism and tardiness, even if they do not qualify as "habitual" and "frequent" under the Civil Service rules and regulations shall be dealt with severely and any falsification of the daily time record to cover up such absenteeism and/or tardiness shall constitute gross dishonesty or serious misconduct. The total number of unauthorized absences incurred by respondent in the months of November and December 2004 shows the lack of dedication by respondent to his job. This was aggravated by the fact that he failed to comply with the rules for applying for leave of absence. First, in his November 2, 2004 application he applied for sick leave for November 2, 3, 17pm, 18, 19 and 26pm. This violates Section 16, Rule XVI of the Omnibus Rules Implementing Book V of Executive Order No. 292, which provides that applications for sick leave shall

[18] *Id.* at 143-145.

be filed upon the return of the employee. This could have been allowed had respondent undergone medical examination or operation or ordered to rest in view of ill health. (Section 18, Rule XVI) but respondent did not present any evidence to show that this exception applies to his case. As it turned out, respondent filed his application even before he got sick, as if anticipating that he will get sick on those days.[19]

Judge Angot recommended that the respondent be found guilty of serious misconduct and that he be imposed the penalty of suspension for six (6) months.

The Court agrees with Judge Angot that the respondent cannot be held liable for habitual absenteeism. An officer or employee in the government shall be considered habitually absent only if he incurs unauthorized absences exceeding the allowable 2/5 days monthly leave credit under the Civil Service Rules for at least three months in a semester or at least three consecutive months during the year. In the present case, only two months were involved. This actuation, however, only saves the respondent from liability for habitual absenteeism. Supreme Court Administrative Circular No. 2-99 provides that "absenteeism and tardiness even if such is not habitual or frequent shall be dealt with severely, and any falsification of daily time records to cover up for such absenteeism or tardiness shall constitute gross dishonesty or serious misconduct."[20]

This is not the first time that the respondent has been charged of a similar offense. In an earlier complaint filed on June 16, 2003, by "Concerned Litigants,"[21] the respondent was charged with Falsification of Daily Time Records, Frequent Unauthorized Absences or Tardiness and Loafing. Specifically, the complainants claimed that the respondent arrives in his post at 10:00 a.m. and goes home at 11:30 a.m.; returns to the office at 3:00 p.m. and goes home at 4:30 p.m.; does not file any

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[19] *Id.* at 143.

[20] *Office of the Court Administrator v. Breta,* A.M. No. P-05-2023, March 6, 2006, 484 SCRA 114, 116-117.

[21] A.M. No. 05-1960 entitled *Concerned Litigants v. Araya.*

application for leave of absence; does not enter his time in the logbook; and stays most of the time at his house watching television even during office hours. Records of the case show that Judge Achas and Clerk of Court Zapatos allowed the respondent to use a flexi-time schedule and tolerated his non-observance of the prescribed office hours to allow him to do the cleaning of the office before and after office hours. Respondent was merely reprimanded and warned that a repetition of the same or similar offense shall be dealt with more severely.

Notwithstanding the pendency of the first complaint against him, the respondent continued with his irregular office hours and persisted in not faithfully reflecting the exact time of his arrival and departure from the office. Falsification of daily time record constitutes dishonesty. Dishonesty is defined as the "disposition to *lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.*"[22] Section 52(A), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (MC No. 19, dated September 14, 1999) classifies dishonesty as a grave offense punishable by dismissal even for first time offenses.

In several administrative cases, we refrained from imposing the actual penalties in the presence of mitigating facts. Facts such as the employees' length of service, acknowledgment of his or her infractions and feelings of remorse for the same, advanced age, family circumstances, and other humanitarian and equitable considerations.

We also ruled that "where a penalty less punitive would suffice, whatever missteps may be committed by the employee ought not to be visited with a consequence so severe. It is not only for the law's concern for the workingman; there is, in addition,

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[22] *Re: Unauthorized Disposal of Unnecessary and Scrap Materials in the Supreme Court Baguio Compound, and the Irregularity on the Bundy Cards of Some Personnel*, A.M. No. 2007-17-SC, July 7, 2009, 592 SCRA 12, 25.

his family to consider. Unemployment brings untold hardships and sorrows on those dependent on wage earners."[23]

The compassion we extended in these cases was not without legal basis. Section 53, Rule IV of the Revised Rules on Administrative Cases in the Civil Service grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.

The respondent has shown humility and remorse. At the start of the investigation, he manifested his willingness to admit his culpability. He incurred his absences during the time when he had to take care of his ailing father, who was then sick of prostate cancer. He has been in the government service for about 20 years.

Following judicial precedents, the respondent deserves some degree of leniency in imposing upon him the appropriate penalty.

WHEREFORE, the Court hereby finds respondent Manuel Araya, Jr., Utility Worker 1, Municipal Trial Court in Cities, Branch 2, Ozamiz City, guilty of **DISHONESTY** and is hereby **SUSPENDED** for a period of six (6) months without pay, with a **LAST WARNING** that a repetition of the same or similar acts in the future shall be dealt with more severely and may merit the penalty of dismissal.

SO ORDERED.

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

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[23] *Id.* at 32.

* Additional Member vice Justice Jose P. Perez per raffle dated April 4, 2012.

FIRST DIVISION

[G.R. No. 164457. April 11, 2012]

ANNA LERIMA PATULA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; *ESTAFA*; FALSIFICATION IS NOT AN ELEMENT OF *ESTAFA; ESTAFA* THROUGH FALSIFICATION AND FALSIFICATION AS A SEPARATE OFFENSE, DISTINGUISHED. — We consider it inevitable to conclude that the information herein completely pleaded the *estafa* defined and penalized under Article 315, paragraph 1 (*b*), *Revised Penal Code* within the context of the substantive law and the rules. Verily, there was no necessity for the information to allege the acts of falsification by petitioner because falsification was not an element of the *estafa* charged. Not surprisingly, the RTC correctly dealt in its decision with petitioner's concern thuswise: x x x **It would seem that the accused is of the idea that because the crime charged in the [i]nformation is merely [*e]stafa* and not *[e]stafa* [t]hru [f]alsification of documents, the prosecution could not prove falsification. Such argumentation is not correct. Since the information charges accused only of misappropriation pursuant to Art. 315, par. (1b) of the Revised [P]enal Code, the Court holds that there is no necessity of alleging the falsification in the Information as it is not an element of the crime charged. Distinction should be made as to when the crimes of *Estafa* and Falsification will constitute as one complex crime and when they are considered as two separate offenses. The complex crime of *Estafa* Through Falsification of Documents is committed when one has to falsify certain documents to be able to obtain money or goods from another person. In other words, the falsification is a necessary means of committing *estafa*. However, if the falsification is committed to conceal the misappropriation, two separate offenses of *estafa* and falsification are committed. In the instant case, when accused collected payments from the customers, said collection which was in her possession was at her disposal. The falsified or**

erroneous entries which she made on the duplicate copies of the receipts were contrived to conceal some amount of her collection which she did not remit to the company[.]

2. REMEDIAL LAW; EVIDENCE; PROSECUTION'S DUTY TO ESTABLISH EVIDENCE IN ALL CRIMINAL PROSECUTIONS, EXPLAINED. — [I]n all criminal prosecutions, the Prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the Prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein. The Prosecution must further prove the participation of the accused in the commission of the offense. In doing all these, the Prosecution must rely on the strength of its own evidence, and not anchor its success upon the weakness of the evidence of the accused. The burden of proof placed on the Prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution has guaranteed. Conversely, as to his innocence, the accused has no burden of proof, that he must then be acquitted and set free should the Prosecution not overcome the presumption of innocence in his favor. In other words, the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the Prosecution has not discharged its burden of proof in establishing the commission of the crime charged and in identifying the accused as the malefactor responsible for it.

3. ID.; ID.; HEARSAY EVIDENCE; WHERE *ESTAFA* WAS NOT PROVEN BEYOND REASONABLE DOUBT AS THE EVIDENCE PRESENTED BEING HEARSAY, ACQUITTAL SHOULD FOLLOW. — To establish the elements of *estafa* earlier mentioned, the Prosecution presented the testimonies of Go and Guivencan, and various documents[.] x x x Go essentially described for the trial court the various duties of petitioner as Footlucker's sales representative. On her part, Guivencan conceded having no personal knowledge of the amounts actually received by petitioner from the customers or remitted by petitioner to Footlucker's. This means that persons other than Guivencan prepared Exhibits B to YY and their derivatives, inclusive, and that Guivencan based her testimony on the entries found in the receipts supposedly issued by petitioner and in the ledgers held by Footlucker's corresponding

to each customer, as well as on the unsworn statements of some of the customers. Accordingly, her being the only witness who testified on the entries effectively deprived the RTC of the reasonable opportunity to validate and test the veracity and reliability of the entries as evidence of petitioner's misappropriation or conversion through cross-examination by petitioner. The denial of that opportunity rendered the entire proof of misappropriation or conversion hearsay, and thus unreliable and untrustworthy for purposes of determining the guilt or innocence of the accused. x x x The Court has to acquit petitioner for failure of the State to establish her guilt beyond reasonable doubt. The Court reiterates that in the trial of every criminal case, a judge must rigidly test the State's evidence of guilt in order to ensure that such evidence adhered to the basic rules of admissibility before pronouncing an accused guilty of the crime charged upon such evidence. The failure of the judge to do so herein nullified the guarantee of due of process of law in favor of the accused, who had no obligation to prove her innocence. Her acquittal should follow.

4. ID.; ID.; ID.; RATIONALE BEHIND EXCLUSION OF HEARSAY EVIDENCE, ELABORATED. — Section 36 of Rule 130, *Rules of Court*, a rule that states that a witness can testify only to those facts that she knows of her personal knowledge; that is, which are derived from her own perception, except as otherwise provided in the *Rules of Court*. The personal knowledge of a witness is a substantive prerequisite for accepting testimonial evidence that establishes the truth of a disputed fact. A witness bereft of personal knowledge of the disputed fact cannot be called upon for that purpose because her testimony derives its value not from the credit accorded to her as a witness presently testifying but from the veracity and competency of the extrajudicial source of her information. In case a witness is permitted to testify based on what she has heard another person say about the facts in dispute, the person from whom the witness derived the information on the facts in dispute is not *in court* and *under oath* to be examined and cross-examined. The weight of such testimony then depends not upon the veracity of the witness but upon the veracity of the other person giving the information to the witness without oath. The information cannot be tested because the declarant is not standing in court as a witness and cannot, therefore, be cross-examined. x x x Excluding hearsay also aims to preserve the right of the opposing party

to cross-examine the *original* declarant claiming to have a direct knowledge of the transaction or occurrence. If hearsay is allowed, the right stands to be denied because the declarant is not in court. It is then to be stressed that the right to cross-examine the adverse party's witness, being the only means of testing the credibility of witnesses and their testimonies, is essential to the administration of justice. To address the problem of controlling inadmissible hearsay as evidence to establish the truth in a dispute while also safeguarding a party's right to cross-examine her adversary's witness, the *Rules of Court* offers two solutions. The first solution is to require that *all* the witnesses in a judicial trial or hearing be examined only in court *under oath or affirmation*. x x x The second solution is to require that *all* witnesses be *subject to the cross-examination by the adverse party*.

5. ID.; ID.; DOCUMENTARY EVIDENCE; NATURE OF A DOCUMENT AS EITHER PUBLIC OR PRIVATE DETERMINES HOW IT MAY BE PRESENTED IN COURT. — The nature of documents as either public or private determines how the documents may be presented as evidence in court. A public document, by virtue of its official or sovereign character, or because it has been acknowledged before a notary public (except a notarial will) or a competent public official with the formalities required by law, or because it is a public record of a private writing authorized by law, is self-authenticating and requires no further authentication in order to be presented as evidence in court. In contrast, a private document is any other writing, deed, or instrument executed by a private person without the intervention of a notary or other person legally authorized by which some disposition or agreement is proved or set forth. Lacking the official or sovereign character of a public document, or the solemnities prescribed by law, a private document requires authentication in the manner allowed by law or the *Rules of Court* before its acceptance as evidence in court.

6. ID.; ID.; ID.; ID.; INSTANCES WHERE AUTHENTICATION OF A PRIVATE DOCUMENT MAY BE EXCUSED; EXCEPTIONS NOT PRESENT IN CASE AT BAR. — The requirement of authentication of a private document is excused only in four instances, specifically: (*a*) when the document is an ancient one within the context of Section 21, Rule 132 of the *Rules of Court*; (*b*) when the genuineness and authenticity of an

actionable document have not been specifically denied under oath by the adverse party; (*c*) when the genuineness and authenticity of the document have been admitted; or (*d*) when the document is not being offered as genuine. There is no question that Exhibits B to YY and their derivatives were private documents because private individuals executed or generated them for private or business purposes or uses. Considering that none of the exhibits came under any of the four exceptions, they could not be presented and admitted as evidence against petitioner without the Prosecution dutifully seeing to their authentication in the manner provided in Section 20 of Rule 132 of the *Rules of Court*[.]

APPEARANCES OF COUNSEL

Temistocles B. Diez for petitioner.
The Solicitor General for public respondent.
Manolo Zerna for private respondent.

D E C I S I O N

BERSAMIN, *J.*:

In the trial of everycriminal case, a judge must rigidly test the State's evidence of guilt in order to ensure that such evidence adheres to the basic rules of admissibility before pronouncing an accused guilty of the crime charged upon such evidence. Nothing less is demanded of the judge; otherwise, the guarantee of due process of law is nullified. The accused need not adduce anything to rebut evidence that is discredited for failing the test. Acquittal should then follow.

Antecedents

Petitioner was charged with *estafa* under an information filed in the Regional Trial Court (RTC) in Dumaguete City that averred:

That on or about and during the period from March 16 to 20, 1997 and for sometime prior thereto, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being then a saleswoman of Footlucker's Chain of Stores, Inc.,

Dumaguete City, having collected and received the total sum of ₱131,286.97 from several customers of said company under the express obligation to account for the proceeds of the sales and deliver the collection to the said company, but far from complying with her obligation and after a reasonable period of time despite repeated demands therefore, and with intent to defraud the said company, did, then and there willfully, unlawfully and feloniously fail to deliver the said collection to the said company but instead, did, then and there willfully unlawfully and feloniously misappropriate, misapply and convert the proceeds of the sale to her own use and benefit, to the damage and prejudice of the said company in the aforesaid amount of ₱131,286.97.

Contrary to Art. 315, par 1 (b) of the Revised Penal Code.[1]

Petitioner pled *not guilty* to the offense charged in the information. At pre-trial, no stipulation of facts was had, and petitioner did not avail herself of plea bargaining. Thereafter, trial on the merits ensued.

The Prosecution's first witness was Lamberto Go, who testified that he was the branch manager of Footlucker's Chain of Stores, Inc. (Footlucker's) in Dumaguete City since October 8, 1994; that petitioner was an employee of Footlucker's, starting as a saleslady in 1996 until she became a sales representative; that as a sales representative she was authorized to take orders from wholesale customers coming from different towns (like Bacong, Zamboanguita, Valencia, Lumbangan and Mabinay in Negros Oriental, and Siquijor), and to collect payments from them; that she could issue and sign official receipts of Footlucker's for the payments, which she would then remit; that she would then submit the receipts for the payments for tallying and reconciliation; that at first her volume of sales was quite high, but later on dropped, leading him to confront her; that she responded that business was slow; that he summoned the accounting clerk to verify; that the accounting clerk discovered erasures on some collection receipts; that he decided to subject her to an audit by company auditor Karen Guivencan; that he learned from a customer of petitioner's that the customer's

[1] *Rollo,* p. 22.

outstanding balance had already been fully paid although that balance appeared unpaid in Footlucker's records; and that one night later on, petitioner and her parents went to his house to deny having misappropriated any money of Footlucker's and to plead for him not to push through with a case against her, promising to settle her account on a monthly basis; and that she did not settle after that, but stopped reporting to work.[2]

On March 7, 2002, Go's cross examination, re-direct examination and re-crossexamination were completed.

The only other witness for the Prosecution was Karen Guivencan, whom Footlucker's employed as its store auditor since November 16, 1995 until her resignation on March 31, 2001. She declared that Go had requested her to audit petitioner after some customers had told him that they had already paid their accounts but the office ledger had still reflected outstanding balances for them; that she first conducted her audit by going to the customers in places from Mabinay to Zamboanguitain Negros Oriental, and then in Siquijor; that she discovered in the course of her audit that the amounts appearing on the original copies of receipts in the possession of around 50 customers varied from the amounts written on the duplicate copies of the receipts petitioner submitted to the office; that upon completing her audit, she submitted to Go a written report denominated as "List of Customers Covered by Saleswoman LERIMA PATULA w/ Differences in Records as per Audit Duly Verified March 16-20, 1997" marked as Exhibit A; and that based on the report, petitioner had misappropriated the total amount of ₱131,286.92.[3]

During Guivencan's stint as a witness, the Prosecution marked the ledgers of petitioner's various customers allegedly with discrepancies as Exhibits B to YY and their derivatives, inclusive. Each of the ledgers had a first column that contained the dates of the entries, a second that identified the invoices by the number,

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[2] TSN, September 15, 2000; March 7 and 30, 2001.

[3] TSN, April 4, 2002; August 13, 2002; September 11, 2002; September 12, 2002; and November 20, 2002.

a third that stated the debit, a fourth that noted the credit (or the amounts paid), and a fifth that summed the balances (debit minus credit). Only 49 of the ledgers were formally offered and admitted by the RTC because the 50th ledger could no longer be found.

In the course of Guivencan's direct-examination, petitioner's counsel interposed a continuing objection on the ground that the figures entered in Exhibits B to YY and their derivatives, inclusive, were hearsay because the persons who had made the entries were not themselves presented in court.[4] With that, petitioner's counsel did not anymore cross-examine Guivencan, apparently regarding her testimony to be irrelevant because she thereby tended to prove falsification, an offense not alleged in the information.

The Prosecution then formally offered its documentary exhibits, including Exhibits B to YY and their derivatives (like the originals and duplicates of the receipts supposedly executed and issued by petitioner), inclusive, the confirmation sheets used by Guivencan in auditing the accounts served by petitioner, and Guivencan's so-called Summary (Final Report) of Discrepancies.[5]

After the Prosecution rested its case, the Defense decided not to file a demurrer to evidence although it had manifested the intention to do so, and instead rested its case. The Prosecution and Defense submitted their respective memoranda, and submitted the case for decision.[6]

On January 28, 2004, the RTC, stating that inasmuch as petitioner had opted "not to present evidence for her defense" the Prosecution's evidence remained "unrefuted and uncontroverted,"[7] rendered its decision finding petitioner guilty of *estafa*, to wit:

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4 TSN, September 11, 2002, pp. 3-7

5 *Rollo*, p. 23-27.

6 *Id*., p. 27.

7 *Id*., p. 40.

Wherefore, in the light of the foregoing facts and circumstances, the Court finds ANNA LERIMA PATULA *guilty* beyond reasonable doubt of the crime of Estafa under Art. 315 par (1b) of the Revised Penal Code and accordingly, she is hereby sentenced to suffer an INDETERMINATE PENALTY of imprisonment of 8 years and 1 day of *prision mayor* as minimum to 18 years and 4 months of *reclusion temporal* as maximum with all the accessory penalties provided by law and to indemnify private complainant the amount of ₱131,286.92 with interest at 12% per annum until fully paid and to pay the costs.

Pursuant to Sec. 2, Rule 114 of the Revised Rules of Criminal Procedure, the cash bail put up by the accused shall be effective only until the promulgation of this judgment.

SO ORDERED.[8]

Petitioner filed a motion for reconsideration, but the RTC denied the motion on May 7, 2004.[9]

Issues

Insisting that the RTC's judgment "grossly violated [her] Constitutional and statutory right to be informed of the nature and cause of the accusation against her because, while the charge against her is estafa under Art. 315, par. 1 (b) of the Revised Penal Code, the evidence presented against her and upon which her conviction was based, was falsification, an offense not alleged or included in the Information under which she was arraigned and pleaded not guilty," and that said judgment likewise "blatantly ignored and manifestly disregarded the rules on admission of evidence in that the documentary evidence admitted by the trial court were all private documents, the due execution and authenticity of which were not proved in accordance with Sec. 20 of Rule 132 of the Revised Rules on Evidence," petitioner has directly appealed to the Court *via* petition for review on *certiorari*, positing the following issues, to wit:

1. WHETHER THE ACCUSED OR ANY ACCUSED FOR THAT MATTER , CHARGED OF *ESTAFA* UNDER ART. 315, PAR. 1 (B)

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[8] *Id.*, p. 43.

[9] *Id.*, pp. 45-46.

OF THE REVISED PENAL CODE CAN BE CONVICTED UPON OR BY EVIDENCE OF FALSIFICATION WHICH IS EVEN (SIC) NOT ALLEGED IN THE INFORMATION.

2. WHETHER THE ACCUSED'S CONSTITUTIONAL AND STATUTORY RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HER WAS VIOLATED WHEN SHE WAS CONVICTED UPON OR BY EVIDENCE OF FALSIFICATION CONSIDERING THAT THE CHARGE AGAINST HER IS *ESTAFA* THROUGH MISAPPROPRIATION UNDER ART. 315, PAR. 1 (B) OF THE REVISED PENAL CODE.

3. WHETHER OR NOT THE TRIAL COURT ERRED IN ADMITTING IN EVIDENCE, EXHIBITS "B" TO "YY"-"YY-2", ALL PRIVATE DOCUMENTS, THE DUE EXECUTION AND AUTHENTICITY OF WHICH WERE NOT PROVED IN ACCORDANCE WITH SEC. 20, RULE 132 OF THE SAID REVISED RULES ON EVIDENCE ASIDE FROM THE FACT THAT SAID EXHIBITS TEND TO PROVE FALSIFICATION BY THE ACCUSED, A CRIME NEITHER CHARGED NOR ALLEGED IN THE INFORMATION.

4. WHETHER OR NOT THE TRIAL COURT ERRED IN ADMITTING THE TESTIMONY OF KAREN GUIVENCAN DESPITE THE OBJECTION THAT SAID TESTIMONY WHICH TRIED TO PROVE THAT THE ACCUSED FALSIFIED EXHIBITS "B" TO "YY"-"YY-2"INCLUSIVE VIOLATED THE ACCUSED'S CONSTITUTIONAL RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HER, FOR BEING IRRELEVANT AND IMMATERIAL SINCE THE CHARGE AGAINST THE ACCUSED IS *ESTAFA* UNDER ART. 315, PAR. 1 (B) OF THE REVISED PENAL CODE.

5. WHETHER OR NOT THE TRIAL COURT ERRED IN CONCLUDING THAT THE EVIDENCE OF THE PROSECUTION "REMAINS UNREFUTED AND UNCONTROVERTED" DESPITE ACCUSED'S OBJECTION THAT SAID EVIDENCE IS IMMATERIAL AND IRRELEVANT TO THE CRIME CHARGED.

6. WHETHER OR NOT THE DEFENSE'S NOT CROSS-EXAMINING KAREN GUIVENCAN FOR THE REASON THAT HER TESTIMONY IS IMMATERIAL AND IRRELEVANT AS IT TENDED TO PROVE AN OFFENSE NOT CHARGED IN INFORMATION RESULTED IN THE ADMISSION OF SAID TESTIMONY AS BEING "UNREFUTED AND UNCONTROVERTED", AND WHETHER OR

NOT THE DEFENSE'S OBJECTION WOULD NOT BE CONSIDERED WAIVED IF THE DEFENSE CROSS-EXAMINED SAID WITNESS.

7. WHETHER OR NOT THE TRIAL COURT ERRED IN RULING THAT EXHIBIT "A", WHICH IS THE LIST OF CUSTOMERS COVERED BY SALESWOMAN LERIMA PATULA WITH DIFFERENCE IN RECORD IS NOT HEARSAY AND SELF-SERVING.[10]

The foregoing issues are now restated as follows:

1. Whether or not the failure of the information for *estafa* to allege the falsification of the duplicate receipts issued by petitioner to her customers violated petitioner's right to be informed of the nature and cause of the accusation;

2. Whether or not the RTC gravely erred in admitting evidence of the falsification of the duplicate receipts despite the information not alleging the falsification;

3. Whether or not the ledgers and receipts (Exhibits B to YY, and their derivatives, inclusive) were admissible as evidence of petitioner's guilt for *estafa* as charged despite their not being duly authenticated; and

4. Whether or not Guivencan's testimony on the ledgers and receipts (Exhibits B to YY, and their derivatives, inclusive) to prove petitioner's misappropriation or conversion was inadmissible for being hearsay.

Ruling

The petition is meritorious.

I

Failure of information to allege falsification did not violate petitioner's right to be informed of the nature and cause of the accusation

Petitioner contends that the RTC grossly violated her Constitutional right to be informed of the nature and cause of the accusation when: (*a*) it held that the information did not have to allege her falsification of the duplicate receipts, and

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

(*b*) when it convicted her of *estafa* under Article 315, paragraph 1(b) of the *Revised Penal Code*by relying on the evidence on falsification.

The contention of petitioner cannot be sustained.

The *Bill of Rights* guarantees some rights to every person accused of a crime, among them the right to be informed of the nature and cause of the accusation, *viz*:

> Section 14. (1) **No person shall be held to answer for a criminal offense without due process of law.**
>
> (2) **In all criminal prosecutions, the accused** shall be presumed innocent until the contrary is proved, and **shall enjoy the right** to be heard by himself and counsel, **to be informed of the nature and cause of the accusation against him**, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

Rule 110 of the *Revised Rules of Court*, the rule then in effect when the information was filed in the RTC, contained the following provisions on the proper manner of alleging the nature and cause of the accusation in the information, to wit:

> Section 8.*Designation of the offense*.– Whenever possible, a complaint or information should state the designation given to the offense by the statute, besides the statement of the acts or omissions constituting the same, and if there is no such designation, reference should be made to the section or subsection of the statute punishing it. (7)
>
> Section 9.*Cause of accusation*. – The acts or omissions complained of as constituting the offense must be stated in ordinary and concise language without repetition, not necessarily in the terms of the statute defining the offense, but in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. (8)

The importance of the proper manner of alleging the nature and cause of the accusation in the informationshould never be taken for granted by the State. An accused cannot be convicted of an offense that is not clearly charged in the complaint or information. To convict him of an offense other than that charged in the complaint or information would be violative of the Constitutional right to be informed of the nature and cause of the accusation.[11] Indeed, the accused cannot be convicted of a crime, even if duly proven, unless the crime is alleged or necessarily included in the information filed against him.

The crime of *estafa* charged against petitioner was defined and penalized by Article 315, paragraph 1 (*b*), *Revised Penal Code, viz*:

Article 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

2nd. The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period if such amount is over 200 pesos but does not exceed 6,000 pesos; and

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[11] *People v. Manalili,* G. R. No. 121671, August 14, 1998, 294 SCRA 220, 252; *People v. Ortega, Jr.*, GR No. 116736, July 24, 1997, 276 SCRA 166, 187; *People v. Guevarra*, G.R. No. 66437, December 4, 1989, 179 SCRA 740, 751; *Matilde, Jr. v. Jabson*, No. L-38392, December 29, 1975, 68 SCRA 456, 261; *United States v. Campo,* No. 7321, 23 Phil. 368, 371-372 (1912).

4th. By *arresto mayor* in its maximum period, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

xxx x x x xxx

1. With unfaithfulness or abuse of confidence, namely:

xxx x x x xxx

(b) **By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property**.

xxx x x x xxx

The elements of the offense charged were as follows:

(*a*) That the offender received money, goods or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same;

(*b*) That the offender misappropriated or converted such money, goods or other personal property, or denied his part in its receipt;

(*c*) That the misappropriation or conversion or denial was to the prejudice of another; and

(*d*) That the offended party made a demand on the offender for the delivery or return of such money, goods or other personal property.[12]

According to the theory and proof of the Prosecution, petitioner misappropriated or converted the sums paid by her customers, and later falsified the duplicates of the receipts before turning such duplicates to her employer to show that the customers had paid less than the amounts actually reflected on the original

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[12] *Barrameda v. Court of Appeals*, G.R. No. 96428, September 2, 1999, 313 SCRA 477, 484.

receipts. Obviously, she committed the falsification in order to conceal her misappropriation or conversion. Considering that the falsificationwas not an offense separate and distinct from the *estafa* charged against her, the Prosecution could legitimately prove her acts of falsification as its means of establishing her misappropriation or conversion as an essential ingredient of the crime duly alleged in the information. In that manner, her right to be informed of the nature and cause of the accusation against her was not infringed or denied to her.

We consider it inevitable to conclude that the information herein completely pleaded the *estafa* defined and penalized under Article 315, paragraph 1 (*b*), *Revised Penal Code* within the context of the substantive law and the rules. Verily, there was no necessity for the information to allege the acts of falsification by petitioner because falsification was not an element of the *estafa* charged.

Not surprisingly,the RTC correctly dealt in its decision with petitioner's concern thuswise:

> In her Memorandum, it is the contention of [the] accused that [the] prosecution's evidence utterly fails to prove the crime charged. According to the defense, the essence of Karen Guivencan's testimony is that the accused falsified the receipts issued to the customers served by her by changing or altering the amounts in the duplicates of the receipts and therefore, her testimony is immaterial and irrelevant as the charge is misappropriation under Art. 315, paragraph (1b) of the Revised Penal Code and there is no allegation whatsoever of any falsification or alteration of amounts in the [i]nformation under which the accused was arraigned and pleaded NOT GUILTY. Accused, thus, maintains that the testimony of Karen Guivencan should therefore not be considered at all as it tended to prove an offense not charged or included in the [i]nformation and would violate [the] accused's constitutional and statutory right to be informed of the nature and cause of the accusation against her. The Court is not in accord with such posture of the accused.
>
> **It would seem that the accused is of the idea that because the crime charged in the [i]nformation is merely [e]stafa and not [e]stafa [t]hru [f]alsification of documents, the prosecution could not prove falsification. Such argumentation is not correct. Since the information**

charges accused only of misappropriation pursuant to Art. 315, par. (1b) of the Revised [P]enal Code, the Court holds that there is no necessity of alleging the falsification in the Information as it is not an element of the crime charged.

Distinction should be made as to when the crimes of Estafa and Falsification will constitute as one complex crime and when they are considered as two separate offenses. The complex crime of Estafa Through Falsification of Documents is committed when one has to falsify certain documents to be able to obtain money or goods from another person. In other words, the falsification is a necessary means of committing estafa. However, if the falsification is committed to conceal the misappropriation, two separate offenses of estafa and falsification are committed. In the instant case, when accused collected payments from the customers, said collection which was in her possession was at her disposal. The falsified or erroneous entries which she made on the duplicate copies of the receipts were contrived to conceal some amount of her collection which she did not remit to the company xxx.[13]

II

Testimonial and documentary evidence,being hearsay, did not prove petitioner's guilt beyond reasonable doubt

Nonetheless, in all criminal prosecutions, the Prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the Prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[14] The Prosecution must further prove the participation of the accused in the commission of the offense.[15] In doing all these, the Prosecution must rely on the strength of its own evidence, and not anchor its success upon the weakness of the evidence of the accused. The burden of proof placed on the Prosecution

[13] *Rollo*, pp. 41-42 (bold emphasis supplied).

[14] *Andaya v. People*, G.R. No. 168486, June 27, 2006, 493 SCRA 539, 556-557.

[15] *People v. Esmale*, G.R. Nos. 102981-82, April 21, 1995, 243 SCRA 578, 592.

arises from the presumption of innocence in favor of the accused that no less than the Constitution has guaranteed.[16] Conversely, as to his innocence, the accused has no burden of proof,[17] that he must then be acquitted and set free should the Prosecution not overcome the presumption of innocence in his favor. In other words, the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the Prosecution has not discharged its burden of proof in establishing the commission of the crime charged and in identifying the accused as the malefactor responsible for it.

Did the Prosecution adduce evidence that proved beyond reasonable doubt the guilt of petitioner for the *estafa* charged in the information?

To establish the elements of *estafa* earlier mentioned, the Prosecution presented the testimonies of Go and Guivencan, and various documents consisting of: (*a*) the receipts allegedly issued by petitioner to each of her customers upon their payment, (*b*) the ledgers listing the accounts pertaining to each customer with the corresponding notations of the receipt numbers for each of the payments, and (*c*) the confirmation sheets accomplished by Guivencan herself.[18] The ledgers and receipts were marked and formally offered as Exhibits B to YY, and their derivatives, inclusive.

On his part, Go essentially described for the trial court the various duties of petitioner as Footlucker's sales representative. On her part, Guivencan conceded having no personal knowledge of the amounts actually received by petitioner from the customers or remitted by petitioner to Footlucker's. This means that persons other than Guivencan prepared Exhibits B to YY and their derivatives, inclusive, and that Guivencan based her testimony on the entries found in the receipts supposedly issued by petitioner and in the ledgers held by Footlucker's corresponding

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[16] Section 14, (2), Article III (*Bill of Rights*).

[17] *People v. Arapok*, G.R. No. 134974, December 8, 2000, 347 SCRA 479, 498.

[18] *Supra,* at note 1.

to each customer, as well as on the unsworn statements of some of the customers. Accordingly, her being the only witness who testified on the entries effectively deprived the RTC of the reasonable opportunity to validate and test the veracity and reliability of the entries as evidence of petitioner's misappropriation or conversion through cross-examination by petitioner. The denial of that opportunity rendered the entire proof of misappropriation or conversion hearsay, and thus unreliable and untrustworthy for purposes of determining the guilt or innocence of the accused.

To elucidate why the Prosecution's hearsay evidence was unreliable and untrustworthy, and thus devoid of probative value, reference is made to Section 36 of Rule 130, *Rules of Court*, a rule that states that a witness can testify only to those facts that she knows of her personal knowledge; that is, which are derived from her own perception, except as otherwise provided in the *Rules of Court*. The personal knowledge of a witness is a substantive prerequisite for accepting testimonial evidence that establishes the truth of a disputed fact. A witness bereft of personal knowledge of the disputed fact cannot be called upon for that purpose because her testimony derives its value not from the credit accorded to her as a witness presently testifying but from the veracity and competency of the extrajudicial source of her information.

In case a witness is permitted to testify based on what she has heard another person say about the facts in dispute, the person from whom the witness derived the information on the facts in dispute is not *in court* and *under oath* to be examined and cross-examined. The weight of such testimony then depends not upon theveracity of the witness but upon the veracity of the other person giving the information to the witness without oath. The information cannot be tested because the declarant is not standing in court as a witness and cannot, therefore, be cross-examined.

It is apparent, too, that a person who relates a hearsay is not obliged to enter into any particular, to answer any question, to solve any difficulties, to reconcile any contradictions, to explain

any obscurities, to remove any ambiguities; and that she entrenches herself in the simple assertion that she was told so, and leaves the burden entirely upon the dead or absent author.[19] Thus, the rule against hearsay testimony rests mainly on the ground that there was no opportunity to cross-examine the declarant.[20] The testimony may have been given under oath and before a court of justice, but if it is offered against a party who is afforded no opportunity to cross-examine the witness, it is hearsay just the same.[21]

Moreover, the theory of the hearsay rule is that when a human utterance is offered as evidence of the truth of the fact asserted, the credit of the assertor becomes the basis of inference, and, therefore, the assertion can be received as evidence only when made on the witness stand, subject to the test of cross-examination. However, if an extrajudicial utterance is offered, not as an assertion to prove the matter asserted but without reference to the truth of the matter asserted, the hearsay rule does not apply. For example, in a slander case, if a prosecution witness testifies that he heard the accused say that the complainant was a thief, this testimony is admissible not to prove that the complainant was really a thief, but merely to show that the accused uttered those words.[22] This kind of utterance is hearsay in character but is not legal hearsay.[23]The distinction is, therefore, between (*a*) the fact that the statement was made, to which the hearsay rule does not apply, and (*b*) the truth of the facts asserted in the statement, to which the hearsay rule applies.[24]

Section 36, Rule 130 of the *Rules of Court* is understandably not the only rule that explains why testimony that is hearsay

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[19] 5 Moran, *Comments on the Rules of Court*, 1963 Edition, pp. 267-268; citing *Coleman v. Southwick*, 9 Johnson (N.Y.), 45, 50, 6 Am. Dec. 253.

[20] *Id*., citing *Minea v. St. Louis Corp*., 179 Mo. A., 705, 716, 162 S.W. 741.

[21] *Id*., p. 268.

[22] Wigmore, Sec. 1766; *Tracy's Handbook*, 62 Ed., pp. 220-221.

[23] *Id*.

[24] 20 Am Jur 404.

should be excluded from consideration. Excluding hearsay also aims to preserve the right of the opposing party to cross-examine the *original* declarant claiming to have a direct knowledge of the transaction or occurrence.[25]If hearsay is allowed, the right stands to be denied because the declarant is not in court.[26] It is then to be stressed that the right to cross-examine the adverse party's witness, being the only means of testing the credibility of witnesses and their testimonies, is essential to the administration of justice.

To address the problem of controlling inadmissible hearsay as evidence to establish the truth in a dispute while also safeguardinga party's right to cross-examine her adversary's witness, the *Rules of Court* offers two solutions. The first solution is to require that *all* the witnesses in a judicial trial or hearing be examined only in court*under oath or affirmation*. Section 1, Rule 132 of the *Rules of Court* formalizes this solution, *viz*:

> Section 1. *Examination to be done in open court*. - The examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally. (1a)

The second solution is to require that *all* witnesses be *subject to the cross-examination by the adverse party*. Section 6, Rule 132 of the *Rules of Court* ensures this solution thusly:

> Section 6. *Cross-examination; its purpose and extent*. – Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue. (8a)

Although the second solution traces its existence to a Constitutional precept relevant to criminal cases, *i.e*., Section 14, (2), Article

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[25] *People v. Pagkaliwagan*, 76 Phil. 457, 460 (1946).

[26] *Donnelly v. United States*, 228 US 243.

III, of the 1987 *Constitution*,which guarantees that: "*In all criminal prosecutions, the accused shall xxx enjoy the right xxx to meet the witnesses face to face xxx*," the rule requiring the cross-examination by the adverse party equally applies to non-criminal proceedings.

We thus stress that the rule excluding hearsay as evidence is based upon serious concerns about the trustworthiness and reliability of hearsay evidence due to its not being given under oath or solemn affirmation and due to its not being subjected to cross-examination by the opposing counsel to test the perception, memory, veracity and articulateness of the out-of-court declarant or actor upon whose reliability the worth of the out-of-court statement depends.[27]

Based on the foregoing considerations, Guivencan's testimony as well as Exhibits B to YY, and their derivatives, inclusive, must be entirely rejected as proof of petitioner's misappropriation or conversion.

III
Lack of their proper authentication rendered Exhibits B to YY and their derivatives inadmissible as judicial evidence

Petitioner also contends that the RTC grossly erred in admitting as evidence Exhibits B to YY, and their derivatives, inclusive, despite their being private documents that were not duly authenticated as required by Section 20, Rule 132 of the *Rules of Court*.

Section 19, Rule 132 of the *Rules of Court* distinguishes between a public document and a private document for the purpose of their presentation in evidence, *viz*:

Section 19. *Classes of documents*. – **For the purpose of their presentation in evidence, documents are either public or private.**

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[27] *Gulam v. Santos*,G.R. No. 151458, August 31, 2006, 500 SCRA 463, 473.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b) Documents acknowledged before a notary public except last wills and testaments, and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

The nature of documents as either public or private determines how the documents may be presented as evidence in court. A public document, by virtue of its official or sovereign character, or because it has been acknowledged before a notary public (except a notarial will) or a competent public official with the formalities required by law, or because it is a public record of a private writing authorized by law, is self-authenticating and requires no further authentication in order to be presented as evidence in court. In contrast, a private document is any other writing, deed, or instrument executed by a private person without the intervention of a notary or other person legally authorized by which some disposition or agreement is proved or set forth. Lacking the official or sovereign character of a public document, or the solemnities prescribed by law, a private document requires authentication in the manner allowed by law or the *Rules of Court* before its acceptance as evidence in court. The requirement of authentication of a private document is excused only in four instances, specifically: (*a*) when the document is an ancient one within the context of Section 21,[28] Rule 132 of the *Rules of Court*; (*b*) when the genuineness and authenticity of an actionable document have not been specifically denied

[28] Section 21. *When evidence of authenticity of private document not necessary*. - Where a private document is more than thirty years old, is produced from a custody in which it would naturally be found if genuine, and is unblemished by any alterations or circumstances of suspicion, no other evidence of its authenticity need be given. (22 a)

under oath by the adverse party;[29](*c*) when the genuineness and authenticity of the document have been admitted;[30] or (*d*) when the document is not being offered as genuine.[31]

There is no question that Exhibits B to YY and their derivatives were private documents because private individuals executed or generated them for private or business purposes or uses. Considering that none of the exhibits came under any of the four exceptions, they could not be presented and admitted as evidence against petitioner without the Prosecution dutifully seeing to their authentication in the manner provided in Section 20 of Rule 132 of the *Rules of Court*, *viz*:

Section 20. *Proof of private documents*. – **Before any private document** offered as authentic **is received in evidence**, its **due execution and authenticity must be proved** either:

(a) By **anyone who saw the document executed or written**; or

(b) By **evidence of the genuineness of the signature or handwriting** of the maker.

Any other private document need only be identified as that which it is claimed to be.

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[29] Section 8, Rule 8, *Rules of Court*, which states:

Section 8. *How to contest such documents*. — When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused. (8a)

[30] Section 4, Rule 129, *Rules of Court*, which provides:

Section 4. *Judicial admissions*. - An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. (2a)

[31] Section 20, Rule 132, *Rules of Court*.

The Prosecution attempted to have Go authenticate the signature of petitioner in various receipts, to wit:

ATTY. ABIERA:

Q. Now, these receipts which you mentioned which do not tally with the original receipts, do you have copies of these receipts?

A. Yes, I have a copy of these receipts, but it's not now in my possession.

Q. But when asked to present those receipts before this Honorable Court, can you assure this

(Next Page)

ATTY ABIERA (continuing):

Honorable Court that you will be able to present those receipts?

A. Yes.

Q. **You are also familiar with the signature of the accused** in this case, Anna Lerima Patula?

A. **Yes.**

Q. **Why are you familiar with the signature** of the accused in this case?

A. **I used to see her signatures in the payroll and in the receipts also.**

Q. Okay, **I have here a machine copy of a receipt** which we would present this,or offer the same as soon as the original receipts can be presented, **but for purposes only of your testimony, I'm going to point to you a certain signature over this receipt number FLDT96 20441,** a receipt from Cirila Askin, **kindly go over the signature and tell the Honorable Court whether you are familiar with the signature?**

A. **Yes, that is her signature.**

INTERPRETER:

Witness is pointing to a signature above the printed word "collector".

(Next Page)

ATTY. ABIERA:

Q. **Is this the only receipt wherein the name, the signature rather, of the accused in this case appears?**

A. **That is not the only one, there are many receipts.**

ATTY. ABIERA:

> **In order to save time,** Your Honor, **we will just be presenting the original receipts** Your Honor, because it's quite voluminous, so we will just forego with the testimony of the witness but we will just present the same **using the testimony of another witness, for purposes of identifying the signature of the accused.** We will request that this signature which has been identified to by the witness in this case be marked, Your Honor, with the reservation to present the original copy and present the same to offer as our exhibits but for the meantime, this is only for the purposes of recording, Your Honor, which we request the same, the receipt which has just been identified awhile ago be marked as our Exhibit "A" You Honor.

COURT:

> Mark the receipt as Exhibit "A".

ATTY. ABIERA:

> And the signature be bracketed and be marked as Exhibit "A-1".

(Next Page)

COURT:

> Bracket the signature & mark it as Exh. "A-1". What is the number of that receipt?

ATTY. ABIERA:

> Receipt No. 20441 dated August 4, 1996 the statement that: received from Cirila Askin.[32]

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As the excerpts indicate, Go's attempt at authentication of the signature of petitioner on the receipt with serial number FLDT96 No. 20441 (a document that was marked as Exhibit A, while the purported signature of petitioner thereon was marked as Exhibit A-1) immediately fizzled out after the Prosecution admitted that the document was a mere *machine copy*, not the original. Thereafter, as if to soften its failed attempt, the Prosecution expressly promised to produce at a later date the originals of the receipt with serial number FLDT96 No. 20441

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[32] TSN, September 15, 2000, pp. 13-16.

and other receipts. But that promise was not even true, because almost in the same breath the Prosecution offered to authenticate the signature of petitioner on the receipts through *a different witness* (though then still unnamed). As matters turned out in the end, the effort to have Go authenticate both the *machine copy* of the receiptwith serial number FLDT96 No. 20441 and the signature of petitioner on that receipt was wasteful because the machine copy was inexplicablyforgotten and was no longer even included in the Prosecution's Offer of Documentary Evidence.

It is true that the original of the receipt bearing serial number FLDT96 No. 20441was subsequentlypresented as Exhibit B through Guivencan. However, the Prosecution did not establish that the signature appearing on Exhibit B was the same signature that Go had earlier sought to identify to be the signature of petitioner (Exhibit A-1) on the machine copy (Exhibit A). This is borne out by the fact that the Prosecution abandoned Exhibit A as the marking nomenclature for the machine copy of the receipt bearing serial number FLDT96 No. 20441 for all intents and purposes of this case, and used the same nomenclature to refer instead to an entirely different document entitled "List of Customers covered by ANA LERIMA PATULA w/difference in Records as per Audit duly verified March 16-20, 1997."

In her case, Guivencan's identification of petitioner's signature on two receipts based alone on the fact that the signatures contained the legible family name of Patula was ineffectual, and exposed yet another deep flaw infecting the documentary evidence against petitioner. Apparently, Guivencan could not honestly identify petitioner's signature on the receipts either because she lacked familiarity with such signature, or because she had not seen petitioner affix her signature on the receipts, as the following excerpts from her testimony bear out:

ATTY. ZERNA to witness:

Q. There are two (2) receipts attached here in the confirmation sheet, will you go over these Miss witness?

A. This was the last payment which is fully paid by the customer. The other receipt is the one showing her payment prior to the last payment.

COURT:
Q. Where did you get those two (2) receipts?
A. From the customer.
Q. And who issued those receipts?
A. The saleswoman, Miss Patula.
ATTY. ZERNA:
We pray, Your Honor, that this receipt identified be marked as Exhibit "B-3", receipt number 20441.

(Next Page)

COURT:
Mark it.

ATTY. ZERNA:
The signature of the collector be marked as –
Q. **By the way, there is a signature above the name of the collector, are your familiar with that signature?** (shown to witness)
A. **Yes.**
Q. **Whose signature is that**?
A. **Miss Patula.**
Q. **How do you know?**
A. **It can be recognized because of the word Patula.**
Q. **Are you familiar with her signature?**
A. **Yes.**
ATTY. ZERNA:
We pray that the signature be bracketed and marked as Exhibit "B-3-a"
COURT:
Mark it.
ATTY. ZERNA:
The other receipt number 20045 be marked as Exhibit "B-4" and the signature as Exhibit "B-4-a".
COURT:
Mark it.[33]

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ATTY. ZERNA:

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[33] TSN, August 13, 2002, pp. 15-16.

Q. Ms. Witness, here is a receipt colored white, number 26603 issued to one Divina Cadilig. Will you please identify this receipt if this is the receipt of your office?

A. Yes.

Q. There is a signature over the portion for the collector. **Whose signature is this?**

A. **Ms. Patula.**

Q. **How do you know that this is her signature?**

A. **Because we can read the Patula.**[34]

We also have similar impressions of lack of proper authentication as to the ledgers the Prosecution presented to prove the discrepancies between the amounts petitioner had allegedly received from the customers and the amounts she had actually remitted to Footlucker's. Guivencan exclusively relied on the entries of the unauthenticated ledgers to support her audit report on petitioner's supposed misappropriation or conversion, revealing her lack of independent knowledge of the veracity of the entries, as the following excerpts of her testimony show:

ATTY. ZERNA to witness:

Q. **What is your basis of saying that your office records showed that this Cecilia Askin has an account of ₱10,791.75?**

ATTY. DIEZ:

The question answers itself, You Honor, what is the basis, office record.

COURT:

Let the witness answer.

WITNESS:

A. **I made the basis on our ledger in the office.** I just copied that and showed it to the customers for confirmation.

ATTY. ZERNA to witness:

Q. What about the receipts?

COURT:

Make a follow-up question and what was the result when you copied that amount in the ledger and you had it confirmed by the customers, what was the result when you had it confirmed by the customers?

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[34] TSN, September 11, 2002, p. 9.

WITNESS:
A. She has no more balance but in our office she has still a balance of ₱10,971.75.
ATTY. ZERNA to witness:
Q. Do you have a-what's the basis of saying that the balance of this customer is still ₱10,971.75

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ATTY. ZERNA (continuing):
[i]n your office?
COURT:
That was already answered pañero, the office has a ledger.
Q. Now, did you bring the ledger with you?
A. No, Ma'am.[35]

(Continuation of the Direct Examination of
Karen Guivencan on August 13, 2002)

ATTY. ZERNA to witness:
Q. Okay, You said there are discrepancies between the original and the duplicate, **will you please enlighten the Honorable Court on that discrepancy which you said**?
A. Like **in this case of Cirila Askin**, she has already fully paid. **Her ledger shows a zero balance** she has fully paid **while in the original**

(Next page)

WITNESS (continuing):
[r]eceipt she has a balance of Ten Thousand Seven hundred Ninety-one Pesos and Seventy-five Centavos (10,791.75).
COURT:
Q. What about the duplicate receipt, how much is indicated there?
A. The customer has no duplicate copy because it was already forwarded to the Manila Office.
Q. What then is your basis in the entries in the ledger showing that it has already a zero balance?
A. This is the copy of the customer while in the office, in the original receipt she has still a balance.

x x x x x x x x x

[35] TSN, April 4, 2002, pp. 20-21.

ATTY. ZERNA:

The confirmation sheet —

COURT:

The confirmation sheet was the one you referred to as the receipt in your earlier testimony? Is that what you referred to as the receipts, the original receipts?

A. **This is what I copied from the ledger**.

Q. So where was that(sic) original receipt which you said showed that that particular customer still has a balance of Ten Thousand something?

A. **The receipt is no longer here.**

Q. **You mean the entry of that receipt was already entered in the ledger**?

A. **Yes**.[36]

In the face of the palpable flaws infecting the Prosecution's evidence, it should come as no surprise that petitioner's counsel interposed timely objections. Yet, the RTC mysteriously overruled the objections and allowedthe Prosecutionto present the unauthenticated ledgers, as follows:

(Continuation of the Direct Examination of
Witness Karen Guivencan on September 11, 2002)

ATTY. ZERNA:

CONTINUATION OF DIRECT-EXAMINATION

Q – Ms. Witness, last time around you were showing us several ledgers. Where is it now?

A – It is here.

Q – Here is a ledger of one Divina Cadilig. This Divina Cadilig, how much is her account in your office?

ATTY. DIEZ:

Your Honor please **before the witness will proceed to answer the question, let me interpose our objection on the ground that this ledger has not been duly identified to by the person who made the same. This witness will be testifying on hearsay matters because the supposed ledger was not identified to by the person who made the same.**

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[36] TSN, August 13, 2002, pp. 10-14.

COURT:

Those ledgers were already presented in the last hearing. I think they were already duly identified by this witness. As a matter of fact, it was she who brought them to court

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COURT (cont.):

because these were the ledgers on file in their office.

ATTY. DIEZ

That is correct, Your Honor, but **the person who made the entries is not this witness, Your Honor. How do we know that the entries there is (sic) correct on the receipts submitted to their office.**

COURT:

Precisely, she brought along the receipts also to support that. Let the witness answer.

WITNESS:

A – **It's the office clerk in-charge.**

COURT:

The one who prepared the ledger is the office clerk.

ATTY. ZERNA:

She is an auditor, Your Honor. She has been qualified and she is the auditor of Footluckers.

COURT:

I think, I remember in the last setting also, she testified where those entries were taken. So, you answer the query of counsel.

x x x x x x x x x

ATTY. DIEZ:

Your Honor please, to avoid delay, **may I interpose a continuing objection to the questions profounded(sic) on those ledgers on the ground that, as I have said, it is hearsay.**

COURT:

Okey(sic). Let the continuing objection be noted.

Q – (To Witness) **The clerk who allegedly was the one who prepared the entries on those ledgers, is she still connected with Footluckers?**

A – She is no longer connected now, Your Honor,

COURT:
Alright proceed.

(Next Page)

ATTY. ZERNA:
Your Honor, these are entries in the normal course of business. So, exempt from the hearsay rule.
COURT:
Okey(sic), proceed.[37]

The mystery shrouding the RTC's soft treatment of the Prosecution's flawed presentation was avoidable simply by the RTC adhering to the instructions of the rules earlier quoted, as well as with Section 22 of Rule 132 of the *Rules of Court,*which contains instructions on how to prove the genuineness of a handwriting in a judicial proceeding, as follows:

Section 22. *How genuineness of handwriting proved.* – The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because **he has seen the person write**, or **has seen writing purporting to be his upon which the witness has acted or been charged,** and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by **a comparison, made by the witness or the court, with writings admitted or treated as genuine** by the party against whom the evidence is offered, **or proved to be genuine** to the satisfaction of the judge. (Emphases supplied)

If it is already clear that Go and Guivencan had not themselves seen the execution or signing of the documents,the Prosecution surely did not authenticate Exhibits B to YY and their derivatives conformably with the aforequoted rules. Hence, Exhibits B to YY, and their derivatives, inclusive, were inescapably bereft of probative value as evidence. That was the onlyfair and just result, as the Court held in *Malayan Insurance Co., Inc. v. Philippine Nails and Wires Corporation*:[38]

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[37] TSN, September 11, 2002, pp. 3-7.

[38] G.R. No. 138084, April 10, 2002, 380 SCRA 374, 378-379.

On the first issue, **petitioner Malayan Insurance Co., Inc., contends that Jeanne King's testimony was hearsay because she had no personal knowledge of the execution of the documents supporting respondent's cause of action,** such as the sales contract, invoice, packing list, bill of lading, SGS Report, and the Marine Cargo Policy. Petitioner avers that even though King was personally assigned to handle and monitor the importation of Philippine Nails and Wires Corporation, herein respondent, this cannot be equated with personal knowledge of the facts which gave rise to respondent's cause of action. Further, petitioner asserts, even though she personally prepared the summary of weight of steel billets received by respondent, she did not have personal knowledge of the weight of steel billets actually shipped and delivered.

At the outset, we must stress that respondent's cause of action is founded on breach of insurance contract covering cargo consisting of imported steel billets. To hold petitioner liable, respondent has to prove, first, its importation of 10,053.400 metric tons of steel billets valued at ₱67,156,300.00, and second, the actual steel billets delivered to and received by the importer, namely the respondent. Witness Jeanne King, who was assigned to handle respondent's importations, including their insurance coverage, has personal knowledge of the volume of steel billets being imported, and therefore competent to testify thereon. Her testimony is not hearsay, as this doctrine is defined in Section 36, Rule 130 of the Rules of Court. However, **she is not qualified to testify on the shortage in the delivery of the imported steel billets. She did not have personal knowledge of the actual steel billets received. Even though she prepared the summary of the received steel billets, she based the summary only on the receipts prepared by other persons. Her testimony on steel billets received was hearsay. It has no probative value even if not objected to at the trial.**

On the second issue, petitioner avers that King failed to properly authenticate respondent's documentary evidence. **Under Section 20, Rule 132, Rules of Court, before a private document is admitted in evidence, it must be authenticated either by the person who executed it, the person before whom its execution was acknowledged, any person who was present and saw it executed, or who after its execution, saw it and recognized the signatures, or the person to whom the parties to the instruments had previously confessed execution thereof**. In this case, **respondent admits that King was none of the aforementioned persons**. **She merely made the summary**

of the weight of steel billets based on the unauthenticated bill of lading and the SGS report. Thus, the summary of steel billets actually received had no proven real basis, and King's testimony on this point could not be taken at face value.

xxx Under the rules on evidence, documents are either public or private. Private documents are those that do not fall under any of the enumerations in Section 19, Rule 132 of the Rules of Court. Section 20 of the same law, in turn, provides that before any private document is received in evidence, its due execution and authenticity must be proved either by anyone who saw the document executed or written, or by evidence of the genuineness of the signature or handwriting of the maker. **Here, respondent's documentary exhibits are private documents. They are not among those enumerated in Section 19, thus, their due execution and authenticity need to be proved before they can be admitted in evidence.With the exception concerning the summary of the weight of the steel billets imported, respondent presented no supporting evidence concerning their authenticity. Consequently, they cannot be utilized to prove less of the insured cargo and/or the short delivery of the imported steel billets. In sum, we find no sufficient competent evidence to prove petitioner's liability.**

That the Prosecution's evidence was left uncontested because petitioner decided not to subject Guivencan to cross-examination, and did not tender her contrary evidence was inconsequential. Although the trial court had overruled the seasonable objections to Guivencan's testimony by petitioner's counsel due to the hearsay character, it could not be denied that hearsay evidence, whether objected to or not, had no probative value.[39] Verily, the flaws of the Prosecution's evidence were fundamental and substantive, not merely technical and procedural, and were defects that the adverse party's waiver of her cross-examination or failure to rebut could not set right or cure. Nor did the trial court's overruling of petitioner's objections imbue the flawed evidence with any virtue and value.

Curiously, the RTC excepted the entries in the ledgers from the application of the hearsay rule by also tersely stating that

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[39] *Id.*, citing *Eugenio v. Court of Appeals*, G.R. No. 103737, December 15, 1994, 239 SCRA 207, 220.

the ledgers "were prepared in the regular course of business."[40] Seemingly, the RTC applied Section 43, Rule 130 of the *Rules of Court,* to wit:

> Section 43. *Entries in the course of business*. – Entries made at, or near the time of the transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as *prima facie* evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty.

This was another grave error of the RTC. The terse yet sweeping mannerof justifying the application of Section 43 was unacceptable due to the need to show the concurrence of the *several* requisites before entries in the course of business could be excepted from the hearsay rule. The requisites are as follows:

> *(a)* The person who made the entry must be dead or unable to testify;
>
> *(b)* The entries were made at or near the time of the transactions to which they refer;
>
> *(c)* The entrant was in a position to know the facts stated in the entries;
>
> *(d)* The entries were made in his professional capacity or in the performance of a duty, whether legal, contractual, moral, or religious;
>
> *(e)* The entries were made in the ordinary or regular course of business or duty.[41]

The Court has to acquit petitioner for failure of the State to establish her guilt beyond reasonable doubt. The Court reiterates that in the trial of every criminal case, a judge must rigidly test the State's evidence of guilt in order to ensure that such evidence adhered to the basic rules of admissibility before pronouncing an accused guilty of the crime charged upon such evidence. The failure of the judge to do so herein nullified the guarantee

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[40] *Rollo*, p. 42.

[41] II Regalado, *Remedial Law Compendium*, Ninth Edition, p. 652.

of due of process of law in favor of the accused, who had no obligation to prove her innocence. Her acquittal should follow.

IV
No reliable evidence on damage

Conformably with finding the evidence of guilt unreliable, the Court declares that the disposition by the RTC ordering petitioner to indemnify Footlucker's in the amount of ₱131,286.92 with interest of 12% *per annum* until fully paid was not yet shown to be factually founded. Yet, she cannot now be absolved of civil liability on that basis. Her acquittal has to be declared as without prejudice to the filing of a civil action against her for the recovery of any amount that she may still owe to Footlucker's.

WHEREFORE, the Court **SETS ASIDE AND REVERSES** the decision convicting **ANNA LERIMA PATULA** of *estafa* as charged, and **ACQUITS** her for failure of the Prosecution to prove her guilt beyond reasonable doubt, without prejudice to a civil action brought against her for the recovery of any amount still owing in favor of Footlucker's Chain of Stores, Inc.

No pronouncement on costs of suit.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Del Castillo, and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 167057. April 11, 2012]

NERWIN INDUSTRIES CORPORATION, *petitioner, vs.* **PNOC-ENERGY DEVELOPMENT CORPORATION, and ESTER R. GUERZON, Chairman, Bids and Awards Committee,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PRELIMINARY INJUNCTION; REPUBLIC ACT NO. 8975 PROHIBITS ANY COURT, EXCEPT THE SUPREME COURT, FROM ISSUING RESTRAINING ORDER OR INJUNCTION RELATIVE TO CONTRACTS AND PROJECTS OF THE GOVERNMENT; APPLICATION. — The CA's decision was absolutely correct. The RTC gravely abused its discretion, firstly, when it entertained the complaint of Nerwin against respondents notwithstanding that Nerwin was thereby contravening the express provisions of Section 3 and Section 4 of Republic Act No. 8975 for its seeking to enjoin the bidding out by respondents of the O-ILAW Project; and, secondly, when it issued the TRO and the writ of preliminary prohibitory injunction. x x x The text and tenor of the provisions being clear and unambiguous, nothing was left for the RTC to do except to enforce them and to exact upon Nerwin obedience to them. The RTC could not have been unaware of the prohibition under Republic Act No. 8975 considering that the Court had itself instructed all judges and justices of the lower courts, through Administrative Circular No. 11-2000, to comply with and respect the prohibition against the issuance of TROs or writs of preliminary prohibitory or mandatory injunction involving contracts and projects of the Government.

2. ID.; ID.; NATURE AND CONCEPT, DISCUSSED. — A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or person, to refrain from a particular act or acts. It is an ancillary or preventive remedy resorted to by a litigant to protect or preserve his rights or interests during the pendency of the case. As such, it is issued only when it is

established that: (*a*) The applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; or (*b*) The commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or (*c*) A party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual. The existence of a right to be protected by the injunctive relief is indispensable. x x x Conclusive proof of the existence of the right to be protected is not demanded, however, for, as the Court has held in *Saulog v. Court of Appeals,* it is enough that: x x x for the court to act, **there must be an existing basis of facts affording a present right which is directly threatened by an act sought to be enjoined. And while a clear showing of the right claimed is necessary, its existence need not be conclusively established**.

3. ID.; ID.; EXERCISE OF SOUND DISCRETION BY THE ISSUING COURT IS REQUIRED. — [T]he *Rules of Court* grants a broad latitude to the trial courts considering that conflicting claims in an application for a provisional writ more often than not involve and require a factual determination that is not the function of the appellate courts. Nonetheless, the exercise of such discretion must be sound, *that is*, the issuance of the writ, though discretionary, should be upon the grounds and in the manner provided by law. When that is done, the exercise of sound discretion by the issuing court in injunctive matters must not be interfered with except when there is manifest abuse. Moreover, judges dealing with applications for the injunctive relief ought to be wary of improvidently or unwarrantedly issuing TROs or writs of injunction that tend to dispose of the merits without or before trial. Granting an application for the relief in disregard of that tendency is judicially impermissible, for it is never the function of a TRO or preliminary injunction to determine the merits of a case, or to decide controverted facts. It is but a preventive remedy whose only mission is to prevent threatened wrong, further injury, and irreparable harm or injustice *until the rights of the parties can be settled*. Judges should

thus look at such relief only as a means to protect the ability of their courts to render a meaningful decision. Foremost in their minds should be to guard against a change of circumstances that will hamper or prevent the granting of proper reliefs after a trial on the merits. It is well worth remembering that the writ of preliminary injunction should issue only to prevent the threatened continuous and irremediable injury to the applicant before the claim can be justly and thoroughly studied and adjudicated.

APPEARANCES OF COUNSEL

Ronald S. Tagalog for petitioner.
Medado Sinsuat and Associates for respondents.

D E C I S I O N

BERSAMIN, *J.*:

Republic Act No. 8975[1] expressly prohibits any court, except the Supreme Court, from issuing any temporary restraining order (TRO), preliminary injunction, or preliminary mandatory injunction to restrain, prohibit or compel the Government, or any of its subdivisions or officials, or any person or entity, whether public or private, acting under the Government's direction, from: (*a*) acquiring, clearing, and developing the right-of-way, site or location of any National Government project; (*b*) bidding or awarding of a contract or project of the National Government; (*c*) commencing, prosecuting, executing, implementing, or operating any such contract or project; (*d*) terminating or rescinding any such contract or project; and (*e*) undertaking or authorizing any other lawful activity necessary for such contract or project.

Accordingly, a Regional Trial Court (RTC) that ignores the statutory prohibition and issues a TRO or a writ of preliminary

[1] *An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations thereof, and for Other Purposes*.

injunction or preliminary mandatory injunction against a government contract or project acts contrary to law.

Antecedents

The following antecedents are culled from the assailed decision of the Court of Appeals (CA) promulgated on October 22, 2004,[2] *viz*:

In 1999, the National Electrification Administration ("NEA") published an invitation to pre-qualify and to bid for a contract, otherwise known as *IPB No. 80*, for the supply and delivery of about sixty thousand (60,000) pieces of woodpoles and twenty thousand (20,000) pieces of crossarms needed in the country's Rural Electrification Project. The said contract consisted of four (4) components, namely: PIA, PIB and PIC or woodpoles and P3 or crossarms, necessary for NEA's projected allocation for Luzon, Visayas and Mindanao. In response to the said invitation, bidders, such as private respondent [Nerwin], were required to submit their application for eligibility together with their technical proposals. At the same time, they were informed that only those who would pass the standard pre-qualification would be invited to submit their financial bids.

Following a thorough review of the bidders' qualifications and eligibility, only four (4) bidders, including private respondent [Nerwin], qualified to participate in the bidding for the IPB-80 contract. Thereafter, the qualified bidders submitted their financial bids where private respondent [Nerwin] emerged as the lowest bidder for all schedules/components of the contract. NEA then conducted a pre-award inspection of private respondent's [Nerwin's] manufacturing plants and facilities, including its identified supplier in Malaysia, to determine its capability to supply and deliver NEA's requirements.

In the *Recommendation of Award for Schedules PIA, PIB, PIC and P3 - IBP No. 80* [for the] *Supply and Delivery of Woodpoles and Crossarms* dated October 4, 2000, NEA administrator Conrado M. Estrella III recommended to NEA's Board of Directors the approval of award to private respondent [Nerwin] of all schedules for IBP No. 80 on account of the following:

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[2] *Rollo*, pp. 11-21; penned by Associate Justice Magdangal M. De Leon, and concurred in by Associate Justices Romeo A. Brawner (later Presiding Justice) and Associate Justice Mariano C. Del Castillo (now a Member of this Court).

a. Nerwin is the lowest complying and responsive bidder;

b. The price difference for the four (4) schedules between the bid of Nerwin Industries (lowest responsive and complying bidder) and the second lowest bidder in the amount of $1.47 million for the poles and $0.475 million for the crossarms, is deemed substantial and extremely advantageous to the government. The price difference is equivalent to 7,948 pcs. of poles and 20.967 pcs. of crossarms;

c. The price difference for the three (3) schedules between the bids of Nerwin and the Tri-State Pole and Piling, Inc. approximately in the amount of $2.36 million for the poles and $0.475 million for the crossarms are equivalent to additional 12.872 pcs. of poles and 20.967 pcs. of crossarms; and

d. The bidder and manufacturer are capable of supplying the woodpoles and specified in the bid documents and as based on the pre-award inspection conducted.

However, on December 19, 2000, NEA's Board of Directors passed *Resolution No. 32* reducing by 50% the material requirements for IBP No. 80 "*given the time limitations for the delivery of the materials, xxx, and with the loan closing date of October 2001 fast approaching*". In turn, it resolved to award the four (4) schedules of IBP No. 80 at a reduced number to private respondent [Nerwin]. Private respondent [Nerwin] protested the said 50% reduction, alleging that the same was a ploy to accommodate a losing bidder.

On the other hand, the losing bidders Tri State and Pacific Synnergy appeared to have filed a complaint, citing alleged false or falsified documents submitted during the pre-qualification stage which led to the award of the IBP-80 project to private respondent [Nerwin].

Thus, finding a way to nullify the result of the previous bidding, NEA officials sought the opinion of the Government Corporate Counsel who, among others, upheld the eligibility and qualification of private respondent [Nerwin]. Dissatisfied, the said officials attempted to seek a revision of the earlier opinion but the Government Corporate Counsel declared anew that there was no legal impediment to prevent the award of IPB-80 contract to private respondent [Nerwin]. Notwithstanding, NEA allegedly held negotiations with other bidders relative to the IPB-80 contract, prompting private respondent [Nerwin] to file a complaint for specific performance with prayer for the issuance

of an injunction, which injunctive application was granted by Branch 36 of RTC-Manila in Civil Case No. 01102000.

In the interim, PNOC-Energy Development Corporation purporting to be under the Department of Energy, issued Requisition No. FGJ 30904R1 or an invitation to pre-qualify and to bid for wooden poles needed for its Samar Rural Electrification Project ("O-ILAW project").

Upon learning of the issuance of Requisition No. FGJ 30904R1 for the O-ILAW Project, Nerwin filed a civil action in the RTC in Manila, docketed as Civil Case No. 03106921 entitled *Nerwin Industries Corporation v. PNOC-Energy Development Corporation and Ester R. Guerzon, as Chairman, Bids and Awards Committee*, alleging that Requisition No. FGJ 30904R1 was an attempt to subject a portion of the items covered by IPB No. 80 to another bidding; and praying that a TRO issue to enjoin respondents' proposed bidding for the wooden poles.

Respondents sought the dismissal of Civil Case No. 03106921, stating that the complaint averred no cause of action, violated the rule that government infrastructure projects were not to be subjected to TROs, contravened the mandatory prohibition against non-forum shopping, and the corporate president had no authority to sign and file the complaint.[3]

On June 27, 2003, after Nerwin had filed its rejoinder to respondents' reply, the RTC granted a TRO in Civil Case No. 03106921.[4]

On July 30, 2003, the RTC issued an order,[5] as follows:

> WHEREFORE, for the foregoing considerations, an order is hereby issued by this Court:
>
> 1. DENYING the motion to consolidate;
>
> 2. DENYING the urgent motion for reconsideration;

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[3] *Id.,* p. 14.

[4] *Id.,* pp. 14-15.

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

3. DISQUALIFYING Attys. Michael A. Medado, Datu Omar S. Sinsuat and Mariano H. Paps from appearing as counsel for the defendants;

4. DECLARING defendants in default;

5. GRANTING the motion for issuance of writ of preliminary injunction.

Accordingly, let a writ of preliminary injunction issue enjoining the defendant PNOC-EDC and its Chairman of Bids and Awards Committee Esther R. Guerzon from continuing the holding of the subject bidding upon the plaintiffs filing of a bond in the amount of ₱200,000.00 to answer for any damage or damages which the defendants may suffer should it be finally adjudged that petitioner is not entitled thereto, until final determination of the issue in this case by this Court.

This order shall become effective only upon the posting of a bond by the plaintiffs in the amount of ₱200,000.00.

Let a copy of this order be immediately served on the defendants and strict compliance herein is enjoined. Furnish the Office of the Government Corporate Counsel copy of this order.

SO ORDERED.

Respondents moved for the reconsideration of the order of July 30, 2003, and also to set aside the order of default and to admit their answer to the complaint.

On January 13, 2004, the RTC denied respondents' motions for reconsideration, to set aside order of default, and to admit answer.[6]

Thence, respondents commenced in the Court of Appeals (CA) a special civil action for *certiorari* (CA-GR SP No. 83144), alleging that the RTC had thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that Nerwin had been entitled to the issuance of the writ of preliminary injunction despite the express prohibition from the law and from the Supreme Court; in issuing the TRO in blatant violation of the *Rules of Court* and established jurisprudence;

[6] *Id.*, p. 16.

in declaring respondents in default; and in disqualifying respondents' counsel from representing them.[7]

On October 22, 2004, the CA promulgated its decision,[8] to wit:

> WHEREFORE, the petition is GRANTED. The assailed Orders dated July 30 and December 29, 2003 are hereby ANNULED and SET ASIDE. Accordingly, Civil Case No. 03106921, private respondent's complaint for issuance of temporary restraining order/writ of preliminary injunction before Branch 37 of the Regional Trial Court of Manila, is DISMISSED for lack of merit.
>
> SO ORDERED.

Nerwin filed a motion for reconsideration, but the CA denied the motion on February 9, 2005.[9]

Issues

Hence, Nerwin appeals, raising the following issues:

I. Whether or not the CA erred in dismissing the case on the basis of Rep. Act 8975 prohibiting the issuance of temporary restraining orders and preliminary injunctions, except if issued by the Supreme Court, on government projects.

II. Whether or not the CA erred in ordering the dismissal of the entire case on the basis of Rep. Act 8975 which prohibits the issuance only of a preliminary injunction but not injunction as a final remedy.

III. Whether or not the CA erred in dismissing the case considering that it is also one for damages.

Ruling

The petition fails.

In its decision of October 22, 2004, the CA explained why it annulled and set aside the assailed orders of the RTC issued

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[7] *Id.*, p. 60.

[8] *Supra*, note 2.

[9] *Rollo* pp. 67-69; penned by Associate Justice Magdangal De Leon, and concurred in by Associate Justice Brawner and Associate Justice Del Castillo.

on July 20, 2003 and December 29, 2003, and why it altogether dismissed Civil Case No. 03106921, as follows:

> It is beyond dispute that the crux of the instant case is the propriety of respondent Judge's issuance of a preliminary injunction, or the earlier TRO, for that matter.
>
> Respondent Judge gravely abused his discretion in entertaining an application for TRO/preliminary injunction, and worse, in issuing a preliminary injunction through the assailed order enjoining petitioners' sought bidding for its *O-ILAW Project*. The same is a palpable violation of *RA 8975* which was approved on November 7, 2000, thus, already existing at the time respondent Judge issued the assailed Orders dated July 20 and December 29, 2003.
>
> *Section 3 of RA 8975* states in no uncertain terms, thus:
>
> *Prohibition on the Issuance of temporary Restraining Order, Preliminary Injunctions and Preliminary Mandatory Injunctions.* – No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials, or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:
>
> xxx x x x xxx
>
> (b) **Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;**
>
> xxx x x x xxx
>
> This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise.
>
> xxx x x x xxx

The said proscription is not entirely new. RA 8975 merely supersedes *PD 1818* which earlier underscored the prohibition to courts from issuing restraining orders or preliminary injunctions in

cases involving infrastructure or National Resources Development projects of, and public utilities operated by, the government. This law was, in fact, earlier upheld to have such a mandatory nature by the Supreme Court in an administrative case against a Judge.

Moreover, to bolster the significance of the said prohibition, the Supreme Court had the same embodied in its *Administrative Circular No. 11-2000* which reiterates the ban on issuance of TRO or writs of Preliminary Prohibitory or Mandatory Injunction in cases involving Government Infrastructure Projects. Pertinent is the ruling in *National Housing Authority vs. Allarde* "As regards the definition of infrastructure projects, the Court stressed in *Republic of the Phil. vs. Salvador Silverio and Big Bertha Construction:* The term 'infrastructure projects' means 'construction, improvement and rehabilitation of roads, and bridges, railways, airports, seaports, communication facilities, irrigation, flood control and drainage, water supply and sewerage systems, shore protection, **power facilities**, national buildings, school buildings, hospital buildings and other related construction projects that form part of the government capital investment."

Thus, there is nothing from the law or jurisprudence, or even from the facts of the case, that would justify respondent Judge's blatant disregard of a "simple, comprehensible and unequivocal mandate (of PD 1818) prohibiting the issuance of injunctive writs relative to government infrastructure projects." Respondent Judge did not even endeavor, although expectedly, to show that the instant case falls under the single exception where the said proscription may not apply, *i.e., when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise.*

Respondent Judge could not have legally declared petitioner in default because, in the first place, he should not have given due course to private respondent's complaint for injunction. Indubitably, the assailed orders were issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

Perforce, this Court no longer sees the need to resolve the other grounds proffered by petitioners.[10]

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[10] Bold underscoring is part of original text.

The CA's decision was absolutely correct. The RTC gravely abused its discretion, firstly, when it entertained the complaint of Nerwin against respondents notwithstanding that Nerwin was thereby contravening the express provisions of Section 3 and Section 4 of Republic Act No. 8975 for its seeking to enjoin the bidding out by respondents of the O-ILAW Project; and, secondly, when it issued the TRO and the writ of preliminary prohibitory injunction.

Section 3 and Section 4 of Republic Act No. 8975 provide:

Section 3. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions*. – No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:

(a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;

(b) **Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;**

(c) Commencement, prosecution, execution, implementation, operation of any such contract or project;

(d) Termination or rescission of any such contract/project; and

(e) The undertaking or authorization of any other lawful activity necessary for such contract/project.

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws.

Section 4. *Nullity of Writs and Orders*. - **Any temporary restraining order, preliminary injunction or preliminary mandatory injunction issued in violation of Section 3 hereof is void and of no force and effect.**

The text and tenor of the provisions being clear and unambiguous, nothing was left for the RTC to do except to enforce them and to exact upon Nerwin obedience to them. The RTC could not have been unaware of the prohibition under Republic Act No. 8975 considering that the Court had itself instructed all judges and justices of the lower courts, through Administrative Circular No. 11-2000, to comply with and respect the prohibition against the issuance of TROs or writs of preliminary prohibitory or mandatory injunction involving contracts and projects of the Government.

It is of great relevance to mention at this juncture that Judge Vicente A. Hidalgo, the Presiding Judge of Branch 37 of the RTC, the branch to which Civil Case No. 03106921 had been raffled, was in fact already found administratively liable for gross misconduct and gross ignorance of the law as the result of his issuance of the assailed TRO and writ of preliminary prohibitory injunction. The Court could only fine him in the amount of ₱40,000.00 last August 6, 2008 in view of his intervening retirement from the service. That sanction was meted on him in A.M. No. RTJ-08-2133 entitled *Sinsuat v. Hidalgo*,[11] where this Court stated:

The Court finds that, indeed, respondent is liable for gross misconduct. As the CA explained in its above-stated Decision in the petition for *certiorari*, respondent failed to heed the mandatory ban imposed by P.D. No. 1818 and R.A. No. 8975 against a government infrastructure project, which the rural electrification project certainly

[11] 561 SCRA 38.

was. He thereby likewise obstinately disregarded this Court's various circulars enjoining courts from issuing TROs and injunctions against government infrastructure projects in line with the proscription under R.A. No. 8975. *Apropos* are *Gov. Garcia v. Hon. Burgos* and *National Housing Authority v. Hon. Allarde* wherein this Court stressed that P.D. No. 1818 expressly deprives courts of jurisdiction to issue injunctive writs against the implementation or execution of a government infrastructure project.

Reiterating the prohibitory mandate of P.D. No. 1818, the Court in *Atty. Caguioa v. Judge Laviña* faulted a judge for grave misconduct for issuing a TRO against a government infrastructure project thus:

> xxx It appears that respondent is either feigning a misunderstanding of the law or openly manifesting a contumacious indifference thereto. In any case, his disregard of the clear mandate of PD 1818, as well as of the Supreme Court Circulars enjoining strict compliance therewith, constitutes grave misconduct and conduct prejudicial to the proper administration of justice. His claim that the said statute is inapplicable to his January 21, 1997 Order extending the dubious TRO is but a contrived subterfuge to evade administrative liability.
>
> **In resolving matters in litigation, judges should endeavor assiduously to ascertain the facts and the applicable laws. Moreover, they should exhibit more than just a cursory acquaintance with statutes and procedural rules. Also, they are expected to keep abreast of and be conversant with the rules and the circulars which the Supreme Court has adopted and which affect the disposition of cases before them**.
>
> Although judges have in their favor the presumption of regularity and good faith in the performance of their judicial functions, **a blatant disregard of the clear and unmistakable terms of the law obviates this presumption and renders them susceptible to administrative sanctions**. (Emphasis and underscoring supplied)
>
> The pronouncements in *Caguioa* apply as well to respondent.

The questioned acts of respondent also constitute gross ignorance of the law for being patently in disregard of simple, elementary and well-known rules which judges are expected to know and apply properly.

IN FINE, respondent is guilty of **gross misconduct** *and* **gross ignorance of the law**, which are serious charges under Section 8 of Rule 140 of the Rules of Court. He having retired from the service, a fine in the amount of ₱40,000 is imposed upon him, the maximum amount fixed under Section 11 of Rule 140 as an alternative sanction to dismissal or suspension.[12]

Even as the foregoing outcome has rendered any further treatment and discussion of Nerwin's other submissions superfluous and unnecessary, the Court notes that the RTC did not properly appreciate the real nature and true purpose of the injunctive remedy. This failing of the RTC presses the Court to use this decision to reiterate the norms and parameters long standing jurisprudence has set to control the issuance of TROs and writs of injunction, and to now insist on conformity to them by all litigants and lower courts. Only thereby may the grave misconduct committed in Civil Case No. 03106921 be avoided.

A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or person, to refrain from a particular act or acts.[13] It is an ancillary or preventive remedy resorted to by a litigant to protect or preserve his rights or interests during the pendency of the case. As such, it is issued only when it is established that:

(*a*) The applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; or

(*b*) The commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(*c*) A party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act

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[12] *Sinsuat v. Hidalgo,* A.M. No. RTJ-08-2133, August 6, 2008, 561 SCRA 38, 48-50.

[13] Sec. 1, Rule 58, 1997 *Rules of Civil Procedure*.

or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.[14]

The existence of a right to be protected by the injunctive relief is indispensable. In *City Government of Butuan v. Consolidated Broadcasting System (CBS), Inc.*,[15] the Court elaborated on this requirement, *viz*:

> As with all equitable remedies, injunction must be issued only at the instance of a party who possesses sufficient interest in or title to the right or the property sought to be protected. It is proper only when the applicant appears to be entitled to the relief demanded in the complaint, which must aver the existence of the right and the violation of the right, or whose averments must in the minimum constitute a *prima facie* showing of a right to the final relief sought. Accordingly, the conditions for the issuance of the injunctive writ are: (*a*) that the right to be protected exists *prima facie*; (*b*) that the act sought to be enjoined is violative of that right; and (*c*) that there is an urgent and paramount necessity for the writ to prevent serious damage. **An injunction will not issue to protect a right not *in esse,* or a right which is merely contingent and may never arise; or to restrain an act which does not give rise to a cause of action; or to prevent the perpetration of an act prohibited by statute. Indeed, a right, to be protected by injunction, means a right clearly founded on or granted by law or is enforceable as a matter of law.**[16]

Conclusive proof of the existence of the right to be protected is not demanded, however, for, as the Court has held in *Saulog v. Court of Appeals*,[17] it is enough that:

> xxx for the court to act, **there must be an existing basis of facts affording a present right which is directly threatened by an act**

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[14] Sec. 3, Rule 58, 1997 *Rules of Civil Procedure*.

[15] G.R. No. 157315, December 1, 2010, 636 SCRA 320.

[16] *City Government of Butuan v. Consolidated Broadcasting System (BS), Inc*., G.R. No. 157315, December 1, 2010, 636 SCRA 320, 336-337 (Bold emphasis supplied).

[17] *Saulog v. Court of Appeals*, G.R. No. 119769, September 18, 1996, 262 SCRA 51.

sought to be enjoined. And while a clear showing of the right claimed is necessary, its existence need not be conclusively established. In fact, the evidence to be submitted to justify preliminary injunction at the hearing thereon need not be conclusive or complete but need only be a "sampling" intended merely to give the court an idea of the justification for the preliminary injunction pending the decision of the case on the merits. **This should really be so since our concern here involves only the propriety of the preliminary injunction and not the merits of the case still pending with the trial court.**

Thus, to be entitled to the writ of preliminary injunction, the private respondent needs only to show that it has the **ostensible right to the final relief prayed for in its complaint** xxx.[18]

In this regard, the *Rules of Court* grants a broad latitude to the trial courts considering that conflicting claims in an application for a provisional writ more often than not involve and require a factual determination that is not the function of the appellate courts.[19] Nonetheless, the exercise of such discretion must be sound, *that is*, the issuance of the writ, though discretionary, should be upon the grounds and in the manner provided by law.[20] When that is done, the exercise of sound discretion by the issuing court in injunctive matters must not be interfered with except when there is manifest abuse.[21]

Moreover, judges dealing with applications for the injunctive relief ought to be wary of improvidently or unwarrantedly issuing TROs or writs of injunction that tend to dispose of the merits without or before trial. Granting an application for the relief in disregard of that tendency is judicially impermissible,[22] for it is

[18] *Id.*, p. 60 (Bold emphasis supplied).

[19] *Urbanes, Jr. v. Court of Appeals*, G.R. No. 117964, March 28, 2001, 355 SCRA 537, 548.

[20] *Republic Telecommunications Holdings, Inc. v. Court of Appeals*, G.R. No. 135074, January 29, 1999, 302 SCRA 403, 409.

[21] *Searth Commodities Corp. v. Court of Appeals*, G.R. No. 64220, March 31, 1992, 207 SCRA 622, 628; *S & A Gaisano, Inc. v. Judge Hidalgo*; G.R. No. 80397, December 10, 1990, 192 SCRA 224, 229; *Genoblazo v. Court of Appeals*, G.R. No. 79303, June 20, 1989, 174 SCRA 124, 133.

[22] *Searth Commodities Corporation v. Court of Appeals*, G.R. No. 64220, March 31, 1992, 207 SCRA 622, 629-630; *Rivas v. Securities and Exchange*

never the function of a TRO or preliminary injunction to determine the merits of a case,[23] or to decide controverted facts.[24] It is but a preventive remedy whose only mission is to prevent threatened wrong,[25] further injury,[26] and irreparable harm[27] or injustice[28] *until the rights of the parties can be settled*. Judges should thus look at such relief only as a means to protect the ability of their courts to render a meaningful decision.[29] Foremost in their minds should be to guard against a change of circumstances that will hamper or prevent the granting of proper reliefs after a trial on the merits.[30] It is well worth remembering

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Commission, G.R. No. 53772, October 4, 1990,190 SCRA 295, 305; *Government Service Insurance System v. Florendo*, G.R. No. 48603, September 29, 1989, 178 SCRA 76, 88-89; *Ortigas v. Co. Ltd. Partnership v. Court of Appeals*, No. 79128, June 16, 1988, 162 SCRA 165, 169.

[23] 43 CJS Injunctions § 5, citing *B. W. Photo Utilities v. Republic Molding Corporation*, C. A. Cal., 280 F. 2d 806; *Duckworth v. James*, C. A. Va. 267 F. 2d 224; *Westinghouse Electric Corporation v. Free Sewing Machine Co.*, C. A. Ill, 256 F. 2d 806.

[24] 43 CJS Injunctions § 5, citing *Lonergan v. Crucible Steel Co. of America*, 229 N. E. 2d 536, 37 Ill. 2d 599; *Compton v. Paul K. Harding Realty Co.*, 285 N.E. 2d 574, 580.

[25] *Doeskin Products, Inc. v. United Paper Co.*, C. A. Ill., 195 F. 2d 356; *Benson Hotel Corp. v. Woods*, C. C. A. Minn., 168 F. 2d 694; *Spickerman v. Sproul*, 328 P. 2d 87, 138 Colo. 13; *United States v. National Plastikwear Fashions*, 368 F. 2d 845.

[26] *Career Placement of White Plains, Inc. v. Vaus*, 354 N. Y. S. 2d 764, 77 Misc. 2d 788;*Toushin v. City of Chicago*, 320 N. E. 2d 202, 23 Ill. App. 3d 797; *H. K. H. Development Corporation v. Metropolitan Sanitary District of Greater Chicago*, 196 N. E., 2d 494, 47 Ill. App. 46.

[27] *Exhibitors Poster Exchange, Inc. v. National Screen Service Corp.*, C. A. La., 441 F. 2d 560; *Marine Cooks & Stewards, AFL v. Panama S. S. Co.*, C. A. Wash., 362 U.S. 365.

[28] *City of Cleveland v. Division 268 of Amalgamated Association of St. Elec. Ry. & Motor Coach Emp. Of America*, 81. N. E. 2d 310, 84 Ohio App. 43; *Slott v. Plastic Fabricators, Inc.*, 167 A. 2d 306, 402 Pa. 433.

[29] *Meis v. Sanitas Service Corporation*, C. A. Tex., 511 F. 2d 655; *Gobel v. Laing*, 12 Ohio App. 2d 93.

[30] *United States v. Adler's Creamery*, C. C. A. N. Y., 107 F. 2d 987; *American Mercury v. Kiely*, C. C. A. N. Y., 19 F. 2d 295.

that the writ of preliminary injunction should issue only to prevent the threatened continuous and irremediable injury to the applicant before the claim can be justly and thoroughly studied and adjudicated.[31]

WHEREFORE, the Court **AFFIRMS** the decision of the Court of Appeals; and **ORDERS** petitioner to pay the costs of suit.

The Court Administrator shall disseminate this decision to the lower courts for their guidance.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Brion,[*] and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 170290. April 11, 2012]

PHILIPPINE DEPOSIT INSURANCE CORPORATION, *petitioner, vs.* **CITIBANK, N.A. and BANK OF AMERICA, S.T. & N.A.,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; BANKS AND BANKING; RELATIONSHIP BETWEEN THE PHILIPPINE BRANCH AND ITS PARENT COMPANY, ELABORATED. — This Court is of the opinion that the key to the resolution of this controversy is the relationship of the Philippine branches of Citibank and BA to their respective head offices and their other foreign branches.

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[31] *Republic v. Silerio*, G.R. No. 108869, May 6, 1997, 272 SCRA 280, 287.

[*] Vice Associate Justice Mariano C. Del Castillo who concurred with the decision of the Court of Appeals, pursuant to the raffle of April 11, 2012.

x x x [I]t is apparent that x x x *both* [Citibank and BA] *did not incorporate* a separate domestic corporation to represent its business interests in the Philippines. Their Philippine branches are, as the name implies, merely branches, without a separate legal personality from their parent company, Citibank and BA. Thus, being one and the same entity, the funds placed by the respondents in their respective branches in the Philippines should not be treated as deposits made by third parties subject to deposit insurance under the PDIC Charter. For lack of judicial precedents on this issue, the Court seeks guidance from American jurisprudence. In the leading case of *Sokoloff v. The National City Bank of New York*, where the Supreme Court of New York held: **Where a bank maintains branches, each branch becomes a separate business entity with separate books of account.** x x x **Nevertheless, when considered with relation to the parent bank they are not independent agencies; they are, what their name imports, merely branches, and are subject to the supervision and control of the parent bank,** x x x **Ultimate liability for a debt of a branch would rest upon the parent bank.** x x x Philippine banking laws also support the conclusion that the head office of a foreign bank and its branches are considered as one legal entity. Section 75 of R.A. No. 8791 (The General Banking Law of 2000) and Section 5 of R.A. No. 7221 (An Act Liberalizing the Entry of Foreign Banks) both require the head office of a foreign bank to guarantee the prompt payment of all the liabilities of its Philippine branch[.] x x x the Court agrees with the CA ruling that there is nothing in the definition of a "bank" and a "banking institution" in Section 3(b) of the PDIC Charter which explicitly states that the head office of a foreign bank and its other branches are separate and distinct from their Philippine branches. x x x While branches are treated as separate business units for commercial and financial reporting purposes, in the end, the head office remains responsible and answerable for the liabilities of its branches which are under its supervision and control.

2. ID.; ID.; ID.; FUNDS PLACED IN THE PHILIPPINE BRANCH BY PARENT COMPANY ARE NOT CONSIDERED DEPOSITS UNDER THE PHILIPPINE DEPOSIT INSURANCE COMPANY (PDIC) CHARTER, THUS, EXCLUDED FROM ASSESSMENT. — PDIC does not dispute the veracity of the internal transactions of the respondents which gave rise to the issuance

of the certificates of time deposit for the funds the subject of the present dispute. Neither does it question the findings of the RTC and the CA that the money placements were made, and were payable, outside of the Philippines, thus, making them fall under the exclusions to deposit liabilities. PDIC also fails to impugn the truth of the testimony of John David Shaffer, then a Fiscal Agent and Head of the Assessment Section of the FDIC, that inter-branch deposits were excluded from the assessment base. x x x As explained by the respondents, the transfer of funds, which resulted from the inter-branch transactions, took place in the books of account of the respective branches in their head office located in the United States. Hence, because it is payable outside of the Philippines, it is not considered a deposit pursuant to Section 3(f) of the PDIC Charter: x x x The testimony of Mr. Shaffer as to the treatment of such inter-branch deposits by the FDIC, after which PDIC was modelled, is also persuasive. Inter-branch deposits refer to funds of one branch deposited in another branch and both branches are part of the same parent company and it is the practice of the FDIC to exclude such inter-branch deposits from a bank's total deposit liabilities subject to assessment. All things considered, the Court finds that the funds in question are not deposits within the definition of the PDIC Charter and are, thus, excluded from assessment.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Agcaoili & Associates for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review under Rule 45 of the 1997 Revised Rules of Civil Procedure, assailing the October 27, 2005 Decision[1]

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[1] *Rollo*, pp. 34-46; penned by Associate Justice Aurora Santiago-Lagman and concurred in by Associate Justice Ruben T. Reyes (retired member of this Court) and Associate Justice Rebecca de Guia-Salvador of the Fourth Division.

of the Court of Appeals *(CA)* in CA-G.R. CV No. 61316, entitled "*Citibank, N.A. and Bank of America, S.T. & N.A. v. Philippine Deposit Insurance Corporation.*"

The Facts

Petitioner Philippine Deposit Insurance Corporation *(PDIC)* is a government instrumentality created by virtue of Republic Act *(R.A.)* No. 3591, as amended by R.A. No. 9302.[2]

Respondent Citibank, N.A. *(Citibank)* is a banking corporation while respondent Bank of America, S.T. & N.A. *(BA)* is a national banking association, both of which are duly organized and existing under the laws of the United States of America and duly licensed to do business in the Philippines, with offices in Makati City.[3]

In 1977, PDIC conducted an examination of the books of account of Citibank. It discovered that Citibank, in the course of its banking business, from September 30, 1974 to June 30, 1977, received from its head office and other foreign branches a total of ₱11,923,163,908.00 in dollars, covered by Certificates of Dollar Time Deposit that were interest-bearing with corresponding maturity dates.[4] These funds, which were lodged in the books of Citibank under the account "Their Account-Head Office/Branches-Foreign Currency," were not reported to PDIC as deposit liabilities that were subject to assessment for insurance.[5] As such, in a letter dated March 16, 1978, PDIC assessed Citibank for deficiency in the sum of ₱1,595,081.96.[6]

Similarly, sometime in 1979, PDIC examined the books of accounts of BA which revealed that from September 30, 1976 to June 30, 1978, BA received from its head office and its

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2 *Id.* at 13-14.

3 *Id.* at 47 and 56.

4 *Id.* at 35 and 83.

5 *Id.* at 35 and 244.

6 *Id.* at 79.

other foreign branches a total of ₱629,311,869.10 in dollars, covered by Certificates of Dollar Time Deposit that were interest-bearing with corresponding maturity dates and lodged in their books under the account "Due to Head Office/Branches."[7] Because BA also excluded these from its deposit liabilities, PDIC wrote to BA on October 9, 1979, seeking the remittance of ₱109,264.83 representing deficiency premium assessments for dollar deposits.[8]

Believing that litigation would inevitably arise from this dispute, Citibank and BA each filed a petition for declaratory relief before the Court of First Instance (now the Regional Trial Court) of Rizal on July 19, 1979 and December 11, 1979, respectively.[9] In their petitions, Citibank and BA sought a declaratory judgment stating that the money placements they received from their head office and other foreign branches were not deposits and did not give rise to insurable deposit liabilities under Sections 3 and 4 of R.A. No. 3591 *(the PDIC Charter)* and, as a consequence, the deficiency assessments made by PDIC were improper and erroneous.[10] The cases were then consolidated.[11]

On June 29, 1998, the Regional Trial Court, Branch 163, Pasig City *(RTC)* promulgated its Decision[12] in favor of Citibank and BA, ruling that the subject money placements were not deposits and did not give rise to insurable deposit liabilities, and that the deficiency assessments issued by PDIC were improper and erroneous. Therefore, Citibank and BA were not liable to pay the same. The RTC reasoned out that the money placements subject of the petitions were not assessable for insurance purposes under the PDIC Charter because said placements were deposits made outside of the Philippines and,

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[7] *Id.* at 36 and 84.

[8] *Id.* at 83-84.

[9] *Id.* at 36.

[10] *Id.* at 55 and 62.

[11] *Id.* at 36.

[12] *Id.* at 78-93; penned by Judge Aurelio C. Trampe.

under Section 3.05(b) of the PDIC Rules and Regulations,[13] such deposits are excluded from the computation of deposit liabilities. Section 3(f) of the PDIC Charter likewise excludes from the definition of the term "deposit" any obligation of a bank payable at the office of the bank located outside the Philippines. The RTC further stated that there was no depositor-depository relationship between the respondents and their head office or other branches. As a result, such deposits were not included as third-party deposits that must be insured. Rather, they were considered inter-branch deposits which were excluded from the assessment base, in accordance with the practice of the United States Federal Deposit Insurance Corporation *(FDIC)* after which PDIC was patterned.

Aggrieved, PDIC appealed to the CA which affirmed the ruling of the RTC in its October 27, 2005 Decision. In so ruling, the CA found that the money placements were received as part of the bank's internal dealings by Citibank and BA as agents of their respective head offices. This showed that the head office and the Philippine branch were considered as the same entity. Thus, no bank deposit could have arisen from the transactions between the Philippine branch and the head office because there did not exist two separate contracting parties to act as depositor and depositary.[14] Secondly, the CA called attention to the purpose for the creation of PDIC which was to protect the deposits of depositors in the Philippines and not

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[13] "Section 3.05 Exclusions from Deposit Liabilities. For assessment purposes, the following items may be excluded in computing the total deposit liabilities:

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b. Deposit liabilities of a bank which are payable at an office of the bank located outside the Philippines unless the insured bank which is incorporated under the laws of the Philippines and which maintains a branch outside the Philippines has elected to include for insurance its deposit obligations payable only at such branch in which case such deposit liabilities should be included as part of the total deposit liabilities."

[14] *Rollo*, pp. 41-42.

the deposits of the same bank through its head office or foreign branches.[15] Thirdly, because there was no law or jurisprudence on the treatment of inter-branch deposits between the Philippine branch of a foreign bank and its head office and other branches for purposes of insurance, the CA was guided by the procedure observed by the FDIC which considered inter-branch deposits as non-assessable.[16] Finally, the CA cited Section 3(f) of R.A. No. 3591, which specifically excludes obligations payable at the office of the bank located outside the Philippines from the definition of a deposit or an insured deposit. Since the subject money placements were made in the respective head offices of Citibank and BA located outside the Philippines, then such placements could not be subject to assessment under the PDIC Charter.[17]

Hence, this petition.

The Issues

PDIC raises the issue of whether or not the subject dollar deposits are assessable for insurance purposes under the PDIC Charter with the following assigned errors:

A.

The appellate court erred in ruling that the subject dollar deposits are money placements, thus, they are not subject to the provisions of Republic Act No. 6426 otherwise known as the "Foreign Currency Deposit Act of the Philippines."

B.

The appellate court erred in ruling that the subject dollar deposits are not covered by the PDIC insurance.[18]

Respondents similarly identify only one issue in this case:

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15 *Id.* at 42.

16 *Id.* at 43.

17 *Id.* at 45.

18 *Id.* at 21, 247-248.

Whether or not the money placements subject matter of these petitions are assessable for insurance purposes under the PDIC Act.[19]

The sole question to be resolved in this case is whether the funds placed in the Philippine branch by the head office and foreign branches of Citibank and BA are insurable deposits under the PDIC Charter and, as such, are subject to assessment for insurance premiums.

The Court's Ruling

The Court rules in the negative.

A branch has no separate legal personality; Purpose of the PDIC

PDIC argues that the head offices of Citibank and BA and their individual foreign branches are separate and independent entities. It insists that under American jurisprudence, a bank's head office and its branches have a principal-agent relationship only if they operate in the same jurisdiction. In the case of foreign branches, however, no such relationship exists because the head office and said foreign branches are deemed to be two distinct entities.[20] Under Philippine law, specifically, Section 3(b) of R.A. No. 3591, which defines the terms "bank" and "banking institutions," PDIC contends that the law treats a branch of a foreign bank as a separate and independent banking unit.[21]

The respondents, on the other hand, initially point out that the factual findings of the RTC and the CA, with regard to the nature of the money placements, the capacity in which the same were received by the respondents and the exclusion of inter-branch deposits from assessment, can no longer be disturbed and should be accorded great weight by this Court.[22] They

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19 *Id.* at 283.

20 *Id.* at 254-255.

21 *Id.* at 260.

22 *Id.* at 285-286.

also argue that the money placements are not deposits. They postulate that for a deposit to exist, there must be at least two parties – a depositor and a depository – each with a legal personality distinct from the other. Because the respondents' respective head offices and their branches form only a single legal entity, there is no creditor-debtor relationship and the funds placed in the Philippine branch belong to one and the same bank. A bank cannot have a deposit with itself.[23]

This Court is of the opinion that the key to the resolution of this controversy is the relationship of the Philippine branches of Citibank and BA to their respective head offices and their other foreign branches.

The Court begins by examining the manner by which a foreign corporation can establish its presence in the Philippines. It may choose to incorporate its own subsidiary as a domestic corporation, in which case such subsidiary would have its own separate and independent legal personality to conduct business in the country. In the alternative, it may create a branch in the Philippines, which would not be a legally independent unit, and simply obtain a license to do business in the Philippines.[24]

In the case of Citibank and BA, it is apparent that they *both did not incorporate* a separate domestic corporation to represent its business interests in the Philippines. Their Philippine branches are, as the name implies, merely branches, without a separate legal personality from their parent company, Citibank and BA. Thus, being one and the same entity, the funds placed by the respondents in their respective branches in the Philippines should not be treated as deposits made by third parties subject to deposit insurance under the PDIC Charter.

For lack of judicial precedents on this issue, the Court seeks guidance from American jurisprudence. In the leading case of

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[23] *Id.* at 290.

[24] Campos, Jose Jr. and Campos, Maria Clara L., *The Corporation Code: Comments, Notes and Selected Cases*, Vol. II, p. 484.

Sokoloff v. The National City Bank of New York,[25] where the Supreme Court of New York held:

> **Where a bank maintains branches, each branch becomes a separate business entity with separate books of account.** A depositor in one branch cannot issue checks or drafts upon another branch or demand payment from such other branch, and in many other respects the branches are considered separate corporate entities and as distinct from one another as any other bank. **Nevertheless, when considered with relation to the parent bank they are not independent agencies; they are, what their name imports, merely branches, and are subject to the supervision and control of the parent bank**, and are instrumentalities whereby the parent bank carries on its business, and are established for its own particular purposes, and their business conduct and policies are controlled by the parent bank and their property and assets belong to the parent bank, although nominally held in the names of the particular branches. **Ultimate liability for a debt of a branch would rest upon the parent bank.** [Emphases supplied]

This ruling was later reiterated in the more recent case of *United States v. BCCI Holdings Luxembourg*[26] where the United States Court of Appeals, District of Columbia Circuit, emphasized that "while individual bank branches may be treated as independent of one another, each branch, unless separately incorporated, must be viewed as a part of the parent bank rather than as an independent entity."

In addition, Philippine banking laws also support the conclusion that the head office of a foreign bank and its branches are considered as one legal entity. Section 75 of R.A. No. 8791 (The General Banking Law of 2000) and Section 5 of R.A. No. 7221 (An Act Liberalizing the Entry of Foreign Banks) both require the head office of a foreign bank to guarantee the prompt payment of all the liabilities of its Philippine branch, to wit:

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[25] 130 Misc. 66, 224 N.Y.S. 102 (Sup. Ct. 1927), aff'd without opinion, 223 A.D. 754, 227 N.Y.S. 907, aff'd 250 N.Y.S. 69.

[26] 48 F.3d 551, 554 (D.C.Cir.1995), aff'd 833 F.Supp. 32 (D.D.C.1993), cert. denied sub nom. *Liquidation Commission for BCCI (Overseas) Ltd., Macau v. United States*, 516 U.S. 1008, 116 S.Ct. 563, 133 L.Ed.2d 489 (1995).

Republic Act No. 8791:

Sec. 75. Head Office Guarantee. – In order to provide effective protection of the interests of the depositors and other creditors of Philippine branches of a foreign bank, the head office of such branches shall fully guarantee the prompt payment of all liabilities of its Philippine branch.

Residents and citizens of the Philippines who are creditors of a branch in the Philippines of foreign bank shall have preferential rights to the assets of such branch in accordance with the existing laws.

Republic Act No. 7721:

Sec. 5. Head Office Guarantee. – The head office of foreign bank branches shall guarantee prompt payment of all liabilities of its Philippine branches.

Moreover, PDIC must be reminded of the purpose for its creation, as espoused in Section 1 of R.A. No. 3591 (The PDIC Charter) which provides:

Section 1. There is hereby created a Philippine Deposit Insurance Corporation hereinafter referred to as the "Corporation" which shall insure, as herein provided, the deposits of all banks which are entitled to the benefits of insurance under this Act, and which shall have the powers hereinafter granted.

The Corporation shall, as a basic policy, promote and safeguard the interests of the depositing public by way of providing permanent and continuing insurance coverage on all insured deposits.

R.A. No. 9576, which amended the PDIC Charter, reaffirmed the rationale for the establishment of the PDIC:

Section 1. Statement of State Policy and Objectives. - It is hereby declared to be the policy of the State to strengthen the mandatory deposit insurance coverage system to generate, preserve, maintain faith and confidence in the country's banking system, and protect it from illegal schemes and machinations.

Towards this end, the government must extend all means and mechanisms necessary for the Philippine Deposit Insurance Corporation to effectively fulfill its vital task of promoting and safeguarding the interests of the depositing public by way of

providing permanent and continuing insurance coverage on all insured deposits, and in helping develop a sound and stable banking system at all times.

The purpose of the PDIC is to protect the depositing public in the event of a bank closure. It has already been sufficiently established by US jurisprudence and Philippine statutes that the head office shall answer for the liabilities of its branch. Now, suppose the Philippine branch of Citibank suddenly closes for some reason. Citibank N.A. would then be required to answer for the deposit liabilities of Citibank Philippines. If the Court were to adopt the posture of PDIC that the head office and the branch are two separate entities and that the funds placed by the head office and its foreign branches with the Philippine branch are considered deposits within the meaning of the PDIC Charter, it would result to the incongruous situation where Citibank, as the head office, would be placed in the ridiculous position of having to reimburse itself, as depositor, for the losses it may incur occasioned by the closure of Citibank Philippines. Surely our law makers could not have envisioned such a preposterous circumstance when they created PDIC.

Finally, the Court agrees with the CA ruling that there is nothing in the definition of a "bank" and a "banking institution" in Section 3(b) of the PDIC Charter[27] which explicitly states that the head office of a foreign bank and its other branches are separate and distinct from their Philippine branches.

There is no need to complicate the matter when it can be solved by simple logic bolstered by law and jurisprudence. Based on the foregoing, it is clear that the head office of a bank and its branches are considered as one under the eyes of the law.

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[27] The term "Bank" and "Banking Institution" shall be synonymous and interchangeable and shall include banks, commercial banks, savings banks, mortgage banks, rural banks, development banks, cooperative banks, stock savings and loan associations and branches and agencies in the Philippines of foreign banks and all other corporations authorized to perform banking functions in the Philippines (as amended by Republic Act No. 7400 and 9302).

While branches are treated as separate business units for commercial and financial reporting purposes, in the end, the head office remains responsible and answerable for the liabilities of its branches which are under its supervision and control. As such, it is unreasonable for PDIC to require the respondents, Citibank and BA, to insure the money placements made by their home office and other branches. Deposit insurance is superfluous and entirely unnecessary when, as in this case, the institution holding the funds and the one which made the placements are one and the same legal entity.

Funds not a deposit under the definition of the PDIC Charter; Excluded from assessment

PDIC avers that the funds are dollar deposits and not money placements. Citing R.A. No. 6848, it defines money placement as a deposit which is received with authority to invest. Because there is no evidence to indicate that the respondents were authorized to invest the subject dollar deposits, it argues that the same cannot be considered money placements.[28] PDIC then goes on to assert that the funds received by Citibank and BA are deposits, as contemplated by Section 3(f) of R.A. No. 3591, for the following reasons: (1) the dollar deposits were received by Citibank and BA in the course of their banking operations from their respective head office and foreign branches and were recorded in their books as "Account-Head Office/ Branches-Time Deposits" pursuant to Central Bank Circular No. 343 which implements R.A. No. 6426; (2) the dollar deposits were credited as dollar time accounts and were covered by Certificates of Dollar Time Deposit which were interest-bearing and payable upon maturity, and (3) the respondents maintain 100% foreign currency cover for their deposit liability arising from the dollar time deposits as required by Section 4 of R.A. No. 6426.[29]

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[28] *Rollo*, p. 252.

[29] *Id.* at 256-257.

To refute PDIC's allegations, the respondents explain the inter-branch transactions which necessitate the creation of the accounts or placements subject of this case. When the Philippine branch needs to procure foreign currencies, it will coordinate with a branch in another country which handles foreign currency purchases. Both branches have existing accounts with their head office and when a money placement is made in relation to the acquisition of foreign currency from the international market, the amount is credited to the account of the Philippine branch with its head office while the same is debited from the account of the branch which facilitated the purchase. This is further documented by the issuance of a certificate of time deposit with a stated interest rate and maturity date. The interest rate represents the cost of obtaining the funds while the maturity date represents the date on which the placement must be returned. On the maturity date, the amount previously credited to the account of the Philippine branch is debited, together with the cost for obtaining the funds, and credited to the account of the other branch. The respondents insist that the interest rate and maturity date are simply the basis for the debit and credit entries made by the head office in the accounts of its branches to reflect the inter-branch accommodation.[30] As regards the maintenance of currency cover over the subject money placements, the respondents point out that they maintain foreign currency cover in excess of what is required by law as a matter of prudent banking practice.[31]

PDIC attempts to define money placement in order to impugn the respondents' claim that the funds received from their head office and other branches are money placements and not deposits, as defined under the PDIC Charter. In the process, it loses sight of the important issue in this case, which is the determination of whether the funds in question are subject to assessment for deposit insurance as required by the PDIC Charter. In its struggle to find an adequate definition of "money placement,"

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[30] *Id.* at 297-300.

[31] *Id.* at 302.

PDIC desperately cites R.A. No. 6848, The Charter of the Al-Amanah Islamic Investment Bank of the Philippines. Reliance on the said law is unfounded because nowhere in the law is the term "money placement" defined. Additionally, R.A. No. 6848 refers to the establishment of an Islamic bank subject to the rulings of Islamic Shari'a to assist in the development of the Autonomous Region of Muslim Mindanao (ARMM),[32] making it utterly irrelevant to the case at bench. Since Citibank and BA are neither Islamic banks nor are they located anywhere near the ARMM, then it should be painfully obvious that R.A. No. 6848 cannot aid us in deciding this case.

Furthermore, PDIC heavily relies on the fact that the respondents documented the money placements with certificates of time deposit to simply conclude that the funds involved are deposits, as contemplated by the PDIC Charter, and are consequently subject to assessment for deposit insurance. It is this kind of reasoning that creates non-existent obscurities in the law and obstructs the prompt resolution of what is essentially a straightforward issue, thereby causing this case to drag on for more than three decades.

Noticeably, PDIC does not dispute the veracity of the internal transactions of the respondents which gave rise to the issuance of the certificates of time deposit for the funds the subject of the present dispute. Neither does it question the findings of the RTC and the CA that the money placements were made, and were payable, outside of the Philippines, thus, making them fall under the exclusions to deposit liabilities. PDIC also fails to impugn the truth of the testimony of John David Shaffer, then a Fiscal Agent and Head of the Assessment Section of the FDIC, that inter-branch deposits were excluded from the assessment base. Therefore, the determination of facts of the lower courts shall be accepted at face value by this Court, following the well-established principle that factual findings of the trial court, when adopted and confirmed by the CA, are

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[32] Republic Act No. 6848, *The Charter of the Al-Amanah Islamic Investment Bank of the Philippines* (1990), Section 3.

binding and conclusive on this Court, and will generally not be reviewed on appeal.[33]

As explained by the respondents, the transfer of funds, which resulted from the inter-branch transactions, took place in the books of account of the respective branches in their head office located in the United States. Hence, because it is payable outside of the Philippines, it is not considered a deposit pursuant to Section 3(f) of the PDIC Charter:

> Sec. 3(f) The term "deposit" means the unpaid balance of money or its equivalent received by a bank in the usual course of business and for which it has given or is obliged to give credit to a commercial, checking, savings, time or thrift account or which is evidenced by its certificate of deposit, and trust funds held by such bank whether retained or deposited in any department of said bank or deposit in another bank, together with such other obligations of a bank as the Board of Directors shall find and shall prescribe by regulations to be deposit liabilities of the Bank; **Provided, that any obligation of a bank which is payable at the office of the bank located outside of the Philippines shall not be a deposit for any of the purposes of this Act or included as part of the total deposits or of the insured deposits**; Provided further, that any insured bank which is incorporated under the laws of the Philippines may elect to include for insurance its deposit obligation payable only at such branch. [Emphasis supplied]

The testimony of Mr. Shaffer as to the treatment of such inter-branch deposits by the FDIC, after which PDIC was modelled, is also persuasive. Inter-branch deposits refer to funds of one branch deposited in another branch and both branches are part of the same parent company and it is the practice of the FDIC to exclude such inter-branch deposits from a bank's total deposit liabilities subject to assessment.[34]

All things considered, the Court finds that the funds in question are not deposits within the definition of the PDIC Charter and are, thus, excluded from assessment.

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[33] *Eterton Multi-Resources Corporation v. Filipino Pipe and Foundry Corporation*, G.R. No. 179812, July 6, 2010, 624 SCRA 148,154.

[34] *Rollo*, p. 90.

WHEREFORE, the petition is **DENIED.** The October 27, 2005 Decision of the Court of Appeals in CA-G.R. CV No. 61316 is **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Reyes,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 173320. April 11, 2012]

EDUARDO B. MANZANO, *petitioner, vs.* **ANTONIO B. LAZARO,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; THE GENERAL RULE THAT A CONTRACT IS THE LAW BETWEEN THE PARTIES, APPLIED; ALLEGATION OF BREACH OF CONTRACT CANNOT BE USED TO EVADE PAYMENT. — It is basic that a contract is the law between the parties. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. Unless the stipulations in a contract are contrary to law, morals, good customs, public order or public policy, the same are binding as between the parties. In this case, the three-month period stated in the contract had already elapsed and petitioner won as Vice-Mayor of Makati in the 1998 elections, thus, respondent is entitled not only to the full payment of his compensation but also to a bonus pay. However, respondent's compensation for the period from May 1 to 15, 1998 was not yet paid in full

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[*] Designated as Additional Member of the Third Division in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1210 dated March 23, 2012.

as there was still a balance of ₱20,000.00 as well as his bonus pay. Petitioner refuses to pay the said amounts on the allegation that respondent failed to fulfill his obligations under the contract. x x x [R]espondent's alleged breach of obligation was never brought up by petitioner during the time that the former was asking for the payment of the amounts owing to him which betrays the falsity of petitioner's allegation. Noteworthy to mention is the fact that petitioner had even paid respondent his salary for the three-month period with only a balance of ₱20,000.00, conditioned upon respondent's delivery of the inventory of campaign equipment. Such payment established that indeed respondent had performed his responsibilities under the contract. We, therefore, agree with the RTC's conclusion that petitioner's claim of breach of contract was merely used as an excuse to evade payment of the amounts due respondent.

2. ID.; ID.; MISREPRESENTATION AMOUNTING TO VITIATED CONSENT, NOT ESTABLISHED. — Petitioner's contention that respondent's misrepresentation that he had the expertise in establishing a political machinery for his campaign, was not at all true thus his consent was vitiated, is not meritorious. Again, petitioner's allegation was not supported by the evidence on record. We find apropos what the CA said on this issue, to wit: It bears emphasis that vitiated consent does not make a contract unenforceable but merely voidable. Such contract is binding on all the contracting parties until annulled and set aside by a court of law. If indeed appellant's consent was vitiated, his remedy would have been to annul the contract, considering that voidable contracts produce legal effects until they are annulled. x x x If appellant was, indeed, tricked into contracting with appellee and was unsatisfied with the latter's services, he should have taken steps in order for the latter not to expect any bonus. After all, the bonus was dependent solely on the condition of appellant's victory in the elections. Or he could have immediately instituted an action for annulment of their contract. But none of these happened. As the records show, appellant even went further by giving appellant other election related tasks. This bolsters the view that, indeed there was ratification. One cannot continue on demanding a certain task to be performed but at the same time contend that the contract cannot be enforced because of poor performance and misrepresentation. Notably, it was only when appellee already demanded the payment of the stipulated amount that appellant

raised the defense of vitiated consent. Clearly, appellant was agreeable to the contract except that appellee's expertise fell short of appellant's expectations.

3. ID.; ID.; INTEREST ON A JUDGMENT AWARD BASED ON A CONTRACT FOR PROFESSIONAL SERVICE, IMPOSED.— [P]etitioner's obligation does not constitute a loan or forbearance of money, but a contract for professional service of respondent as petitioner's campaign manager. Hence, the amount of ₱220,000.00 owing to respondent shall earn an interest of 6% *per annum* to be computed from the time the extrajudicial demand for payment was made on July 3, 1998 until the finality of this decision. As ruled in *Eastern Shipping*, after a judgment has become final and executory, the rate of legal interest, whether the obligation was in the form of a loan or forbearance of money or otherwise, shall be 12% per annum from such finality until its satisfaction. Thus, from the date the liability for the principal obligation has become final and executory, an annual interest of 12% shall be imposed until its final satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
Froilan Bacungan & Associates for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a Petition for Review on *Certiorari* of the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. CV No. 82753, dated February 28, 2006 and June 21, 2006, respectively, affirming the Decision[3] of the Regional Trial Court (RTC), Branch 97, Quezon City, in Civil Case No. Q-98-35924.

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[1] Penned by Associate Justice Magdangal M. de Leon with Associate Justices Conrado M. Vasquez, Jr. and Mariano C. del Castillo (now Associate Justice of the Supreme Court), concurring; *rollo*, pp. 40-47.

[2] *Id.* at 49-51.

[3] Per Acting Presiding Judge Hilario L. Laqui; *rollo*, pp. 88-91.

On February 16, 1998, petitioner Eduardo B. Manzano and respondent Antonio B. Lazaro entered into a Professional Services Contract[4] pertaining to the former's candidacy for the Vice-Mayoralty post in Makati City. Petitioner as the first party and respondent as the second party agreed that the contract shall take effect on February 16, 1998 until May 15, 1998. The contract provided among others:

> II.Roles and Responsibilities of Contracting Parties
>
> Responsibilities of the Second Party:
> 1. He shall head the organizational machinery of the First Party.
> 2. He shall be responsible in hiring and firing the required personnel to man the different positions of the organization.
> 3. He shall authorize the expenditures of the campaign.
> 4. He shall assist in the mobilization of resources for the campaign.
> 5. He shall set-up administrative mechanisms to safeguard the efficient and effective use of resources.
> 6. He shall take full responsibility for all the furniture and fixtures to be assigned to the designated headquarters.
> 7. He shall develop programs and projects in aid of ensuring the winnability of the candidate.
>
> Responsibilities of the First Party.
>
> 1. He shall ensure the provision of financial resources and other logistical requirements for the conduct of operations.
>
> 2. He shall compensate the second party as stipulated in the Section III for Remuneration and Manner of Payment.
>
> III. Remuneration and Manner of Payment:
>
> A. The monthly rate due for the Second Party is SEVENTY THOUSAND PESOS (₱70,000.00). This will be given in two equal tranches, on the 15th and 30th of each month, from February 16, 1998 up to May 15, 1998, or a total of three (3) months.
>
> B. A bonus pay amounting to TWO HUNDRED THOUSAND PESOS (₱200,000.00) shall be given to the second party in the event that the First Party win the Vice-Mayoralty post.[5]

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[4] *Rollo,* pp. 61-62.

[5] *Id*.

Subsequently, petitioner won as Vice-Mayor of Makati. Respondent, thereafter, learned in a transmittal letter[6] dated June 16, 1998 representing the last payroll of certain individuals, which included him, that he would be paid the amount of ₱15,000.00 only and the balance of ₱20,000.00 shall be forwarded only upon his final inventory of materials used during the campaign. Hence, respondent, in his letter[7] dated July 3, 1998 to petitioner, wrote that he had already turned over the equipment used for the campaign. Respondent then demanded the payment of ₱20,000.00 as balance of his compensation and the ₱200,0000.00 bonus pay agreed upon.

Petitioner acknowledged respondent's demand letter and the delivery of the campaign equipment and furniture in his letter[8] dated July 17, 1998, but wrote that he needed to receive the liquidation of the expenses incurred during the campaign, which task was requested shortly after the May 11, 1998 elections.

In his letter[9] dated July 30, 1998, respondent wrote that the preparation of the audited financial report of the campaign was not part of his responsibilities as he was not in charge of the management of campaign funds; that such function was assigned to Robert Gomez and Soliman Cruz (Cruz) who acted as petitioner's Director for Finance with petitioner's brother, Angie Manzano (Angie), as the auditor. He reiterated the payment of ₱220,000.00 due him.

On even date, Cruz wrote petitioner a letter[10] dated July 30, 1998, stating that he did not volunteer respondent to prepare the liquidation of expenses, as respondent had nothing to do with the campaign accounting records; and that petitioner's request for liquidation of campaign expenses was another switch in petitioner's condition prior to settling his obligation with respondent.

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6 *Id.* at 115.

7 *Id.* at 113.

8 *Id.* at 114.

9 *Id.* at 119-120.

10 *Id.* at 116-118.

As respondent's demand for petitioner to pay him remained unheeded, he filed with the RTC an action for collection of sum of money against petitioner.

In his defense, petitioner argued that he hired respondent's services because of the latter's representation of being a seasoned and an experienced campaign manager. However, during the campaign period, he discovered that respondent had no expertise or capacity for political organization and was often absent during campaign sorties and public meetings; that he failed to provide petitioner with poll watchers to safeguard his chances of winning against electoral fraud. Petitioner deemed it best to merely exclude him from the strategic planning sessions rather than confront him as he had already the knowledge of the campaign activities and supporters. Petitioner opined that he won the elections due to his popularity and the support of his family and friends; and that respondent was not entitled to a bonus pay, since respondent failed to show any significant contribution or role in his electoral victory.

On June 7, 2004, the RTC rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, Decision is hereby rendered directing the defendant Eduardo B. Manzano to pay to the plaintiff the following:
>
> 1. Two Hundred Twenty Thousand Pesos (PHP220,000.00) representing the plaintiff's professional service fee covering the May 1-15 1998 period and bonus for the defendant's electoral victory as stipulated in the Professional Service Contract, plus legal interests from 03 July 1998 until fully paid; and
>
> 2. Thirty Thousand Pesos (PHP30,000.00) as Attorney's Fees.[11]

In so ruling, the RTC said that to allege that petitioner's consent was vitiated would not justify the refusal to pay the agreed remuneration in the absence of a court ruling annulling the subject contract; and that unless said contract was annulled, the terms therein remained enforceable. As to the alleged

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[11] *Id.* at 91.

failure to comply with the responsibilities set forth in the contract, the RTC said that the power to rescind obligation is implied in reciprocal ones, but in the absence of a stipulation to the contrary, the power must be invoked judicially and cannot be exercised solely on a party's own judgment that the other has committed a breach of obligation. It also found petitioner's allegation of breach of contract inconsistent with the statement in the last payroll where petitioner acknowledged the balance due respondent, since if petitioner believed that respondent failed to perform his responsibilities, he should not have stated in the last payroll that the balance due respondent would be given upon submission of the inventory of the campaign materials. The RTC concluded that petitioner's contention was merely used as an excuse to evade payment after respondent had complied with the conditions requiring the latter to submit such inventory. The RTC awarded attorney's fees, because of petitioner's refusal to pay respondent's claim which compelled him to litigate.

Dissatisfied, petitioner filed his appeal with the CA. Respondent filed his Comment and petitioner his Reply thereto. Thereafter, the case was submitted for decision.

On February 28, 2006, the CA rendered its assailed Decision, which dismissed the appeal and affirmed the RTC decision.

Petitioner's motion for reconsideration was denied in a Resolution dated June 21, 2006.

Hence, the instant petition which raises the following errors:

I

THE COURT OF APPEALS GRAVELY ERRED IN LIMITING THE DISCUSSION OF ITS QUESTIONED DECISION ONLY TO THE SUBJECT OF THE PROFESSIONAL SERVICES CONTRACT BETWEEN PETITIONER AND RESPONDENT BEING VOIDABLE AND ITS ALLEGED RATIFICATION BY PETITIONER. THE RULING OF THE COURT OF APPEALS, DOES NOT, IN ANY WAY, TOUCH UPON THE ISSUE OF RESPONDENT'S MATERIAL BREACH OF THE CONTRACT, AND WHETHER HE IS ENTITLED TO THE BONUS OF ₱200,000.00 AS A RESULT OF SUCH BREACH.

II

THE COURT OF APPEALS GRAVELY ERRED IN FAILING TO HOLD THAT RESPONDENT COMMITTED SERIOUS BREACH BY FAILING TO PERFORM HIS DUTIES UNDER HIS PROFESSIONAL SERVICES CONTRACT WITH PETITIONER AS HEAD OF THE LATTER'S CAMPAIGN AND ORGANIZATIONAL MACHINERY.

III

THE COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT RESPONDENT COMMITTED A BREACH OF HIS PROFESSIONAL SERVICES CONTRACT WITH PETITIONER BY MISREPRESENTING THAT HE WAS AN EXPERT IN ESTABLISHING A POLITICAL CAMPAIGN MACHINERY.

IV

THE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT RESPONDENT SHOULD NOT BE PAID THE BALANCE OF HIS REMUNERATION ON THE BASIS OF EQUITY AND SUBSTANTIAL JUSTICE, AND BECAUSE HE WILL BE UNJUSTLY ENRICHED AS A RESULT OF SUCH PAYMENT.[12]

Petitioner contends that the CA decision was limited to the issue that the contract was merely voidable and its alleged ratification by petitioner but did not take into account respondent's breach of his obligations which goes into the heart of the issue of respondent's entitlement to the bonus; and that awarding him of bonus despite such breach would result to unjust enrichment. He argues that respondent was always absent or unavailable during the campaign sorties and public meetings which resulted in petitioner's having to continue his campaign with little or no assistance from respondent; that he failed to provide the required personnel to man the different positions of the organization since the personnel provided by respondent were also working for another candidate in Mandaluyong City; that there was no assistance extended in the mobilization of resources for his campaign because of the less visibility of the personnel hired to serve as his advance party to the territories covered by petitioner's campaign which constrained petitioner

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

to proceed to the areas on his own; and that during the canvassing of votes, respondent only made a brief appearance and was thereafter gone with his whereabouts unknown; and that he also failed to provide petitioner with poll watchers in the precinct level to ensure that all votes cast for him were all accounted for.

Petitioner also argues that respondent misrepresented himself to be an expert in carrying out a political campaign, thus, his consent into entering the contract with respondent was vitiated by fraud and mistake as to the latter's qualifications and credentials.

We find no merit in the petition.

The above-stated arguments by petitioner raise factual matters. As a rule, only questions of law may be appealed to the Court by a petition for review. The Court is not a trier of facts, its jurisdiction being limited to errors of law. Moreover, factual findings of the trial court, particularly when affirmed by the Court of Appeals, are generally binding on this Court.[13] In weighing the evidence of the parties, the RTC, as affirmed by the CA, found respondent's evidence to be sufficient in proving his case. We found no reason to disturb such finding as it was borne by the evidence on record.

Under the Professional Services Contract executed between petitioner and respondent on February 16, 1998, particularly under the subheading of remuneration and manner of payment, it was provided that:

A. The monthly rate due for the Second Party is SEVENTY THOUSAND PESOS (₱70,000.00). This will be given in two equal tranches, on the 15th and 30th of each month, from February 16, 1998 up to May 15, 1998, or a total of three (3) months.

B. A bonus pay amounting to TWO HUNDRED THOUSAND PESOS (₱200,000.00) shall be given to the second party in the event that the First Party wins the Vice-Mayoralty post.

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[13] *Titan Construction Corporation v. Uni-field Enterprise, Inc.*, G.R. No. 153874, March 1, 2007, 517 SCRA 180, 186.

It is basic that a contract is the law between the parties. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.[14] Unless the stipulations in a contract are contrary to law, morals, good customs, public order or public policy, the same are binding as between the parties.[15]

In this case, the three-month period stated in the contract had already elapsed and petitioner won as Vice-Mayor of Makati in the 1998 elections, thus, respondent is entitled not only to the full payment of his compensation but also to a bonus pay. However, respondent's compensation for the period from May 1 to 15, 1998 was not yet paid in full as there was still a balance of ₱20,000.00 as well as his bonus pay. Petitioner refuses to pay the said amounts on the allegation that respondent failed to fulfill his obligations under the contract.

We are not persuaded.

Petitioner's claim of breach of obligation consisted only of his uncorroborated and self-serving statement which was contradicted by the evidence on record.

In the June 1998 remittance of the last payroll, it was stated that respondent would be paid the amount of ₱15,000.00 and the balance of ₱20,000.00 shall be forwarded upon his final inventory of equipment used during the campaign. Clearly, the payment of the balance of ₱20,000.00 was conditioned upon respondent's final inventory of the equipment used in the campaign. On July 3, 1998, respondent wrote petitioner a letter informing the latter that he had already turned over the equipment by delivering the same to petitioner's doorstep on July 2, 1998; and that his final act of turning over his obligation merited petitioner's reciprocal action. Consequently, respondent demanded the payment of ₱20,000.00 as well as the ₱200,0000.00 bonus pay as petitioner won the Vice-Mayoralty race.

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[14] Civil Code, Art. 1159.

[15] Civil Code, Art. 1306; See *Liga v. Allegro Resources Corporation,* G.R. No. 175554, December 23, 2008, 575 SCRA 310, 320. (Citations omitted.)

Petitioner admitted having received the equipment in his letter reply dated July 17, 1998 to respondent as he wrote:

> x x x I appreciate your delivering the inventory at my doorstep even though it was never requested. With regards to my reciprocal action, I have yet to receive the liquidation of the expenses incurred during the campaign. Mrs. Rufino informed me about two weeks back that when we requested said liquidation from Mr. S. Cruz he volunteered that you would be the individual who will be preparing the report. We have yet to receive the breakdown from either you or Mr. Cruz considering it was requested shortly after the May 11, 1998 elections. I, more than anyone else, would like to end this chapter of my life. I hope to hear from either of you soonest.[16]

In respondent's letter reply dated July 30, 1998, he clearly indicated that the preparation of the audited financial report was not part of his responsibilities as he was not in charge of the management of campaign funds; that such function was assigned to Cruz who would write a separate letter to support his statement.

In his letter to petitioner, Cruz clarified that there was never a request for liquidation of expenses, as what Ms. Rufino requested from him was the preparation of the summary of transportation and other expenses which would form part of the petitioner's campaign expenses to be filed with the Comelec; that he did not volunteer respondent to prepare anything as he had nothing to do with the campaign's accounting records; that he only instructed his secretary to assemble the needed information and asked her to seek respondent's help for expediency. He also wrote that to ask respondent with the liquidation of campaign expenses was another switch in petitioner's condition prior to settling his obligation with respondent.

As shown by the foregoing exchange of correspondences, the first condition imposed before the payment of ₱20,000.00 balance was the inventory of campaign equipment. After respondent complied with such condition which petitioner even acknowledged, respondent asked for the payment of the balance

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[16] *Rollo,* p. 114.

as well as his bonus. However, a subsequent condition was imposed on respondent before payment would be given, *i.e.*, submission of report on the liquidation of expenses incurred during the campaign, which respondent and Cruz wrote that respondent had nothing to do with, to which petitioner failed to show evidence to the contrary.

Surprisingly, respondent's alleged breach of obligation was never brought up by petitioner during the time that the former was asking for the payment of the amounts owing to him which betrays the falsity of petitioner's allegation. Noteworthy to mention is the fact that petitioner had even paid respondent his salary for the three-month period with only a balance of ₱20,000.00, conditioned upon respondent's delivery of the inventory of campaign equipment. Such payment established that indeed respondent had performed his responsibilities under the contract. We, therefore, agree with the RTC's conclusion that petitioner's claim of breach of contract was merely used as an excuse to evade payment of the amounts due respondent.

Petitioner' s contention that respondent's misrepresentation that he had the expertise in establishing a political machinery for his campaign, was not at all true thus his consent was vitiated, is not meritorious. Again, petitioner's allegation was not supported by the evidence on record. We find apropos what the CA said on this issue, to wit:

> It bears emphasis that vitiated consent does not make a contract unenforceable but merely voidable. Such contract is binding on all the contracting parties until annulled and set aside by a court of law. If indeed appellant's consent was vitiated, his remedy would have been to annul the contract, considering that voidable contracts produce legal effects until they are annulled. This is the clear import of Article 1390 (2) of the Civil Code, which provides:
>
> > Art. 1390. - The following contracts are voidable or annullable, even though there may have been no damage to the contracting parties.
> >
> > 1. Those where one of the parties is incapable of giving consent to a contract.

2. Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification.

Pursuant to the above-quoted provision, the alleged fraud committed by appellee upon appellant made the contract for professional services a voidable contract. Being a voidable contract, it is susceptible of either ratification or annulment. If the contract is ratified, the action to annul it is extinguished and the contract is cleansed from all its defects. But if the contract is annulled, the contracting parties are restored to their respective situations before the contract and mutual restitution follows as a consequence.

As stated earlier, an annullable contract may be rendered perfectly valid by ratification, which can be express or implied. Implied ratification may take the form of accepting and retaining the benefits of a contract. This is what happened in this case. No action was taken by appellant to annul the professional service contract. Appellant also did not confront appellee regarding the latter's poor campaign services. This silence, taken together with appellant's demand for appellee to make an inventory of equipment and a liquidation of the funds used during the campaign, constitutes in itself an effective ratification of the original agreement in accordance with Article 1393 of the Civil Code, which reads:

xxx x x x xxx

If appellant was, indeed, tricked into contracting with appellee and was unsatisfied with the latter's services, he should have taken steps in order for the latter not to expect any bonus. After all, the bonus was dependent solely on the condition of appellant's victory in the elections. Or he could have immediately instituted an action for annulment of their contract. But none of these happened. As the records show, appellant even went further by giving appellant other election related tasks. This bolsters the view that, indeed there was ratification. One cannot continue on demanding a certain task to be performed but at the same time contend that the contract cannot be enforced because of poor performance and misrepresentation. Notably, it was only when appellee already demanded the payment of the stipulated amount that appellant raised the defense of vitiated

consent. Clearly, appellant was agreeable to the contract except that appellee's expertise fell short of appellant's expectations.[17]

We also affirm the award of attorney's fees, as respondent was compelled to litigate and incur expenses to protect his interest because of petitioner's unjust refusal to satisfy respondent's claim.[18]

The RTC, as affirmed by the CA, ordered petitioner to pay respondent the amount of ₱220,000.00 plus legal interest, however, the legal rate of interest was not specified. As to computation of legal interest, *Eastern Shipping Lines, Inc. v. Court of Appeals*[19] laid down the following guidelines, thus:

x x x x x x x x x

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. x x x x

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall

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[17] *Id.* at 44-46.

[18] Art. 2208 of the Civil Code states:

In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest.

[19] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[20]

In this case, petitioner's obligation does not constitute a loan or forbearance of money, but a contract for professional service of respondent as petitioner's campaign manager. Hence, the amount of ₱220,000.00 owing to respondent shall earn an interest of 6% *per annum* to be computed from the time the extrajudicial demand for payment was made on July 3, 1998 until the finality of this decision. As ruled in *Eastern Shipping,* after a judgment has become final and executory, the rate of legal interest, whether the obligation was in the form of a loan or forbearance of money or otherwise, shall be 12% per annum from such finality until its satisfaction. Thus, from the date the liability for the principal obligation has become final and executory, an annual interest of 12% shall be imposed until its final satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[21]

WHEREFORE, in view of all the foregoing, the instant petition is **DENIED**. The Decision dated February 28, 2006 and the Resolution dated June 21, 2006 of the Court of Appeals in CA-G.G. CV No. 82753, which affirmed the RTC decision ordering petitioner to pay respondent the amount of ₱220,000.00, plus ₱30,000.00 as attorney's fees, are **AFFIRMED** with the **MODIFICATION** that the award of ₱220,000.00 shall earn interest at the rate of 6% per annum from July 3, 1998 until the

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[20] *Id.* at 95-97.

[21] See *Tan v. Benolirao*, G.R. No. 153820, October 16, 2009, 604 SCRA 36, 55.

finality of this decision. After this decision becomes final and executory, petitioner is **ORDERED** to pay interest at 12% per annum on the principal obligation until full payment.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Reyes,* JJ.,* concur.

SECOND DIVISION

[G.R. No. 173844. April 11, 2012]

LIGAYA P. CRUZ, *petitioner, vs.* **HON. RAUL M. GONZALEZ, *ETC.*, DEVELOPMENT BANK OF THE PHILIPPINES, and COURT OF APPEALS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; DETERMINATION OF PROBABLE CAUSE; PRINCIPLE OF NON-INTERFERENCE WITH THE PREROGATIVE OF THE JUSTICE SECRETARY TO REVIEW RESOLUTIONS OF THE PUBLIC PROSECUTORS IN THE DETERMINATION OF PROBABLE CAUSE, APPLIED. — We affirm the CA decision in line with the principle of non-interference with the prerogative of the Secretary of Justice to review the resolutions of the public prosecutor in the determination of the existence of probable cause. For reasons of practicality, this Court, as a rule, does not interfere with the prosecutor's determination of probable cause for otherwise, courts would be swamped with petitions to review the prosecutor's findings in such investigations. In the absence of any showing that the Secretary of Justice committed manifest error, grave abuse of discretion or prejudice,

* Designated as Acting Member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1210 dated March 23, 2012.

courts will not disturb its findings. Moreover, this Court will decline to interfere when records show that the findings of probable cause is supported by evidence, law and jurisprudence.

2. ID.; ID.; ID.; WHERE THE FINDING OF PROBABLE CAUSE WAS SUPPORTED BY SUFFICIENT EVIDENCE. — In the instant case, the Secretary of Justice found sufficient evidence to indict petitioner. It was adequately established by DBP and found by the Secretary of Justice that the funds would not have been released pursuant to the subsidiary loan agreement if HSLBI had no sub-borrowers/Investment Enterprises to speak of. As it turned out, not only were the collaterals submitted inexistent, all the purported sub-borrowers/Investment Enterprises were also fictitious and inexistent. In fact, the signatures of the sub-borrowers and the supporting documents submitted to DBP by petitioner and her co-respondents were all forged. The findings of probable cause against petitioner was based on the document she issued entitled "Opinion of Counsel to the Participating Financial Institution[.] x x x It is evident therefore that petitioner's opinion was instrumental in the deceit committed against DBP. As a lawyer and in-house legal counsel of HSLBI, it is highly doubtful that she would have affixed her signature without knowing that there were defects in those documents. x x x Whether or not there was negligence on the part of DBP is of no moment. Petitioner cannot conveniently blame DBP for allegedly not double-checking the documents submitted by HSLBI because by affixing her signature on these documents and negotiating the subsidiary loan agreement on behalf of fictitious sub-borrowers/Investment Enterprises, she actively represented that these entities were indeed existing and eligible for the loan.

APPEARANCES OF COUNSEL

Reynaldo Z. Calabio for petitioner.
DBP Office of the Legal Counsel for DBP.

D E C I S I O N

PEREZ, *J.*:

Before us is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to nullify the 17 January 2006 decision of the Court of Appeals (CA) in CA-G.R. SP No. 88828. The CA decision held that petitioner failed to show grave abuse of discretion amounting to lack of or in excess of jurisdiction on the part of the Secretary of Justice in ordering the filing against the petitioner of forty (40) counts of estafa.[2]

Culled from the records are the following antecedent facts:

On 27 January 1994, Hermosa Savings and Loans Bank, Inc. (HSLBI) availed of forty (40) loans from the Development Bank of the Philippines (DBP) pursuant to a Subsidiary Loan Agreement.[3] In support of the loan agreement and applications, HSLBI, through bank officers Benjamin J. Cruz, Rodolfo C. Buenaventura, Librada Y. Dio, Nilda S. Fajardo, Lelaine V. Fernandez and Atty. Ligaya P. Cruz, herein petitioner, as its legal counsel, submitted the required documents, *i.e.* project evaluation reports, financial package approval, deeds of undertaking, certificates of registration, promissory notes, supplemental deeds of assignment and Investment Enterprise/ sub-borrowers' consent. These documents were submitted to assure DBP that the respective Investment Enterprises were actually existing and duly registered with the government; that the subsidiary loan will be exclusively used for relending to these Investment Enterprises and for the purposes stated in the applications; and that the concerned Investment Enterprises are amenable to the assignment of debt in favor of HSLBI.

On 31 March 2001, the Bangko Sentral ng Pilipinas (BSP) conducted an examination of HSLBI's loan portfolio. The BSP

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1 *Rollo*, pp. 8-40.

2 CA *rollo*, pp. 23-27.

3 *Rollo*, pp. 223-229.

found out that most of HSLBI's loan documents were either forged or inexistent. In particular, the Transfer Certificates of Title (TCTs) of properties submitted as collaterals were found to be inexistent, registered in another person's name, or already foreclosed/mortgaged to another bank. The annotations on the TCTs in favor of HSLBI were also inexistent. Likewise, the signatures of sub-borrowers/Investment Enterprises appearing on documents were all forged. Worst, the BSP discovered that the credit accounts assigned to DBP were in the names of non-existing Investment Enterprises.

Thus, on 19 December 2001, DBP filed a complaint[4] for forty (40) counts of estafa through falsification of commercial documents or for large scale fraud or violation of Articles 315, 316(4) [as amended by Presidential Decree (P.D.) No. 1689] and 318 of the Revised Penal Code (RPC) against the aforementioned officers of HSLBI and herein petitioner Atty. Ligaya P. Cruz (Atty. Cruz).

Atty. Cruz was included in the complaint for the reason that she, as in-house legal counsel of HSLBI, rendered an opinion that all the purported Investment Enterprises were duly organized, validly existing and in good standing under Philippine laws and that they have full legal rights, power and authority to carry on their present business and for notarizing two deeds of assignment utilized as supporting documents.

In a Joint Resolution[5] dated 18 November 2002, State Prosecutors Maria Regina Tordilla-Castillo and Melvin J. Abad recommended the filing of informations for forty (40) counts of estafa under Article 315, paragraph 2(a) of the RPC in relation to P.D. 1689 against the respondent bank officers and herein petitioner.

On 11 February 2003, the respondents in the complaint, including herein petitioner, filed a petition for review[6] before the Department of Justice (DOJ) assailing the Joint Resolution.

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4 *Id.* at 192-209.

5 *Id.* at 74-85.

6 *Id.* at 350-369.

In a Resolution[7] dated 30 April 2003, then Undersecretary of the DOJ, Ma. Merceditas N. Gutierrez, dismissed the petition for review.

On 15 May 2003, respondents filed a motion for reconsideration[8] of the dismissal of their petition.

On 3 November 2003, then DOJ Secretary Simeon A. Datumanong, issued a resolution[9] the dispositive portion of which reads:

> WHEREFORE, the motion for reconsideration is GRANTED IN PART and the assailed resolution is MODIFIED accordingly. The complaint against respondent Atty. Ligaya Cruz is hereby DISMISSED for want of probable cause and the Chief State Prosecutor is hereby directed to file an information for violation of Art. 315, par. 2(a), Revised Penal Code, against respondents Benjamin Cruz, Rodolfo Buenaventura, Librada Dio, Nilda Fajardo and Lelaine Fernandez and to report the action taken hereon within ten (10) days from receipt hereof.

DBP, thereafter, filed a motion for reconsideration[10] of the 3 November 2003 resolution.

By Resolution[11] dated 27 January 2004, Acting Secretary Ma. Merceditas N. Gutierrez ordered the filing of informations for Estafa/Large Scale Fraud under Article 315, par. 2(a) of the RPC, as amended, in relation to P.D. 1689 against respondents. In the same resolution, she ordered the filing of informations against Atty. Cruz. The dispositive portion of the Resolution of 27 January 2004 reads:

> WHEREFORE, the motion is hereby GRANTED. The resolution dated November 3, 2003 is hereby SET ASIDE. The Chief State

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7 *Id.* at 86-88.

8 *Id.* at 405-424.

9 *Id.* at 72-73.

10 *Id.* at 425-433.

11 *Id.* at 65-69.

Prosecutor is hereby directed to cause the reinstatement of the forty (40) Informations for estafa under Article 315, paragraph 2(a) of the Revised Penal Code, in relation to P.D. 1689 against respondents **Benjamin J. Cruz, Rodolfo C. Buenaventura, Librada Y. Dio, Nilda S. Farjardo, Lelaine V. Fernandez and Atty. Ligaya P. Cruz,** and to report to this Office the action taken within five (5) days from receipt hereof. (Emphasis in the original)[12]

Respondents and herein petitioner moved for reconsideration.[13]

In a Resolution[14] dated 4 January 2005, Secretary Raul Gonzales partially granted their motion and ordered the filing against all respondents of informations only for forty (40) counts of estafa under Article 315, par. 2(a) of the RPC and not for large scale fraud under P.D. 1689. The dispositive portion reads:

WHEREFORE, given the foregoing, the motion for reconsideration is hereby GRANTED. The Resolution dated January 27, 2004 is SET ASIDE. The Chief State Prosecutor is directed to move for the withdrawal of the forty (40) informations for violation of PD 1689, if already filed, and to file instead separate informations for violation of Art. 315, par. 2(a), RPC against respondents Cruz, *et al.* Report the action taken hereon within five (5) days from receipt hereof.[15]

Undaunted, Atty. Cruz filed a petition for *certiorari*[16] under Rule 65 of the Rules of Court before the CA seeking to nullify and set aside the 4 January 2005 resolution of the Secretary of Justice.

On 17 January 2006, the CA rendered the assailed decision[17]

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[12] *Id.* at 68.

[13] *Id.* at 441-452.

[14] *Id.* at 60-64.

[15] *Id.* at 63-64.

[16] CA *rollo*, pp. 2-22.

[17] Penned by Associate Justice Mariano C. Del Castillo (now a member of the Court) with Associate Justices Conrado M. Vasquez, Jr. and Magdangal M. De Leon, concurring. *Id.* at 480-494.

dismissing the petition. Petitioner's motion for reconsideration was denied on 19 July 2006.[18]

Hence, this appeal.

Essentially, the issue before us for resolution is whether the CA erred in sustaining the Secretary of Justice in its ruling that there is probable cause to indict petitioner Atty. Cruz.

Petitioner seeks the reversal of the resolution of the Secretary of Justice for allegedly being devoid of supporting evidence. She based her argument on the alleged conflicting resolutions of the Office of the Secretary of Justice. She argues that she should not be held liable for the offense since she only signed a pro-forma opinion prepared by the DBP and merely notarized the documents submitted by HSLBI to DBP. On their face, she found no indication of any irregularity or any taint of illegality on the documents she signed.

She also claims that HSLBI was duly accredited as a participating financial institution of DBP after complying with stringent conditions imposed by the latter. Such accreditation is allegedly reviewed and renewed annually and project visitations of the accounts of sub-borrowers of HSLBI are regularly conducted by the personnel of the DBP. Hence, if there were any questionable transactions or documents, the DBP, in the exercise of due diligence would have discovered these and taken proper actions thereon. She contends that HSLBI should not be made answerable for the failure of DBP to perform its responsibilities.

She further argues that even if she is held liable, her liability is only civil and not criminal in view of the creditor-debtor relationship between HSLBI and DBP.

The petition is bereft of merit.

Jurisprudence has established rules on the determination of probable cause. In the case of *Galario v. Office of the Ombudsman*,[19] this Court held that:

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[18] *Id.* at 529.

[19] G.R. No. 166797, 10 July 2007, 527 SCRA 190.

x x x x x x x x x

xxx. [A] finding probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. x x x. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. (Italics in the original)[20]

x x x x x x x x x

We affirm the CA decision in line with the principle of non-interference with the prerogative of the Secretary of Justice to review the resolutions of the public prosecutor in the determination of the existence of probable cause. For reasons of practicality, this Court, as a rule, does not interfere with the prosecutor's determination of probable cause for otherwise, courts would be swamped with petitions to review the prosecutor's findings in such investigations.[21] In the absence of any showing that the Secretary of Justice committed manifest error, grave abuse of discretion or prejudice, courts will not disturb its findings. Moreover, this Court will decline to interfere when records show that the findings of probable cause is supported by evidence, law and jurisprudence.

In the instant case, the Secretary of Justice found sufficient evidence to indict petitioner. It was adequately established by DBP and found by the Secretary of Justice that the funds would not have been released pursuant to the subsidiary loan agreement if HSLBI had no sub-borrowers/Investment Enterprises to speak

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[20] *Id.* at 204.

[21] *Ladlad v. Velasco*, G.R. Nos. 172070-72, 1 June 2007, 523 SCRA 318, 335.

of. As it turned out, not only were the collaterals submitted inexistent, all the purported sub-borrowers/Investment Enterprises were also fictitious and inexistent. In fact, the signatures of the sub-borrowers and the supporting documents submitted to DBP by petitioner and her co-respondents were all forged. The findings of probable cause against petitioner was based on the document she issued entitled "Opinion of Counsel to the Participating Financial Institution," to wit:

x x x x x x x x x

In connection therewith and in my capacity as such legal counsel for the PFI, I have reviewed all pertinent laws, rules and regulations of the Republic of the Philippines, and examined the originals or copies, photocopied, certified or otherwise identified to my satisfaction, of the Agreement, the promissory note executed by the PFI (the 'Note'), the Deed of Assignment, and such documents, agreements, records and matters pertaining to PFI and IE as I have considered necessary or desirable for the opinions hereinafter expressed.

Based on the foregoing, it is my opinion that:

1. PFI and IE are duly organized, validly existing and in good standing under the laws of the Philippines, and have their principal offices at the addresses indicated in the Agreement and in other documents submitted by the PFI and IE and are registered or qualified to do business in the jurisdiction where such registration or qualification is necessary.

2. PFI and IE have full legal right, power and authority to carry on their present business, to own their properties and assets, to incur the obligations provided for in the Agreement, the Note, the Deed of Assignment, and any other documents pertinent or relevant thereto and to execute and deliver the same and to perform and observe the terms and conditions thereof.

3. All appropriate and necessary corporate and legal actions have been taken by PFI and/or the IE to authorize the execution, delivery and performance of the Agreement, the Note, the Deed of Assignment, and any other documents relevant or pertinent thereto.

x x x x x x x x x

5. All consents, licenses, approvals and authorizations, and all declarations, filings and registrations necessary for the execution,

delivery, performance, validity or enforceability of the Agreement, the Note and the Deed of Assignment have been obtained by PFI and/or the IE and are in full force and effect.

6. To the best of my knowledge after due inquiry, except as disclosed by PFI in writing to DBP prior to the date of the Agreement, there is no litigation, tax claim, proceeding or dispute, pending or threatened, against or affecting the PFI or its properties, the adverse determination of which might adversely affect the PFI's financial condition or operations or impair its ability to perform its obligations under the Agreement, the Note, or the Deed of Assignment, or any other instrument or agreement required thereunder.

x x x x x x x x x

Although this opinion is dated January 28, 1999, you may rely on the correctness of the opinion expressed herein on and as of the date of the initial Availment under the Agreement.[22]

It is evident therefore that petitioner's opinion was instrumental in the deceit committed against DBP. As a lawyer and in-house legal counsel of HSLBI, it is highly doubtful that she would have affixed her signature without knowing that there were defects in those documents.

As aptly found by the Office of the Chief State Prosecutor:

x x x x x x x x x

Insofar as respondent **Atty. Ligaya P. Cruz** is concerned, her claim of innocence is difficult to sustain. Being the wife of respondent Benjamin J. Cruz and a lawyer at that, she should have refrained or inhibited from rendering an opinion that is totally in contravention of what had actually transpired. Her legal opinion that the forty (40) loan applicants are legally existing and in good standing necessarily caused damage and injury to complainant DBP. As the wife of then president of HSLBI, her having an in-depth knowledge of the operations and transactions appurtenant to the bank including, but not limited to, the inexistent investment enterprises is not remote.[23] (Emphasis and underline supplied)

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[22] *Rollo*, pp. 690-691.

[23] *Id.* at 82-83.

Whether or not there was negligence on the part of DBP is of no moment. Petitioner cannot conveniently blame DBP for allegedly not double-checking the documents submitted by HSLBI because by affixing her signature on these documents and negotiating the subsidiary loan agreement on behalf of fictitious sub-borrowers/Investment Enterprises, she actively represented that these entities were indeed existing and eligible for the loan.

Likewise, she cannot use as a defense the flip-flopping resolutions of the Secretary of Justice. The amendments in the resolutions does not mean that there was grave of discretion on the part of the Secretary of Justice. If at all, it is indicative of the fact that the Office of the Secretary of Justice carefully studied and reviewed the facts of the case in arriving at its final resolution.

WHEREFORE, the Court **DENIES** the petition for review on certiorari, and **AFFIRMS** the 17 January 2006 decision of the Court of Appeals in CA-G.R. SP No. 88828. The petitioner shall pay the costs of suit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 174118. April 11, 2012]

THE ROMAN CATHOLIC CHURCH, represented by the Archbishop of Caceres, *petitioner, vs.* **REGINO PANTE,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; CONSENT AS AN ESSENTIAL ELEMENT OF A CONTRACT, EXPLAINED; TWO REQUISITES TO VITIATE CONSENT. — Consent is an essential requisite of contracts as it pertains to the meeting of the offer and the acceptance upon the thing and the cause which constitute the contract. To create a valid contract, the meeting of the minds must be free, voluntary, willful and with a reasonable understanding of the various obligations the parties assumed for themselves. Where consent, however, is given through mistake, violence, intimidation, undue influence, or fraud, the contract is deemed voidable. However, not every mistake renders a contract voidable. x x x For mistake as to the qualification of one of the parties to vitiate consent, two requisites must concur: 1. the mistake must be either with regard to the identity or with regard to the qualification of one of the contracting parties; and 2. the identity or qualification must have been the principal consideration for the celebration of the contract.

2. ID.; ID.; ID.; ID.; WHERE NO MISREPRESENTATION COMMITTED VITIATING SELLER'S CONSENT AND INVALIDATING THE CONTRACT. — In the present case, the Church contends that its consent to sell the lot was given on the mistaken impression arising from Pante's fraudulent misrepresentation that he had been the actual occupant of the lot. Willful misrepresentation existed because of its policy to sell its lands only to their actual occupants or residents. Thus, it considers the buyer's actual occupancy or residence over the subject lot a qualification necessary to induce it to sell the lot. x x x Contrary to the Church's contention, the actual occupancy or residency of a buyer over the land does not appear to be a necessary qualification that the Church requires before it could sell its land. Had this been indeed its policy, then neither Pante nor the spouses Rubi would qualify as buyers of the 32-square meter lot, as none of them actually occupied or resided on the lot. We note in this regard that the lot was only a **2x16-meter strip of rural land** used as a passageway from Pante's house to the municipal road. We find well-taken Pante's argument that, given the size of the lot, it could serve no other purpose than as a mere passageway; it is unthinkable to consider that a 2x16-meter strip of land could be mistaken

as anyone's residence. In fact, the spouses Rubi were in possession of the *adjacent lot*, but they never asserted possession over the 2x16-meter lot when the 1994 sale was made in their favor; it was only then that they constructed the concrete fence blocking the passageway. We find it unlikely that Pante could successfully misrepresent himself as the actual occupant of the lot; this was a fact that the Church (which has a parish chapel in the same *barangay* where the lot was located) could easily verify had it conducted an ocular inspection of its own property. The surrounding circumstances actually indicate that the Church was aware that Pante was using the lot merely as a passageway. x x x The records further reveal that the sales of the Church's lots were made after a series of conferences with the occupants of the lots. The then parish priest of Canaman, Fr. Marcaida, was apparently aware that Pante was not an actual occupant, but nonetheless, he allowed the sale of the lot to Pante, subject to the approval of the Archdiocese's Oeconomous. Relying on Fr. Marcaida's recommendation and finding nothing objectionable, Fr. Ragay (the Archdiocese's Oeconomous) approved the sale to Pante. The above facts, in our view, establish that **there could not have been a deliberate, willful, or fraudulent act committed by Pante that misled the Church into giving its consent to the sale of the subject lot in his favor**. That Pante was not an actual occupant of the lot he purchased was a fact that the Church either ignored or waived as a requirement. In any case, the Church was by no means led to believe or do so by Pante's act; **there had been no vitiation of the Church's consent to the sale of the lot to Pante.**

3. ID.; SALES; DOUBLE SALE; OWNERSHIP SHALL PERTAIN TO THE PERSON WHO FIRST ACQUIRED POSSESSION OF THE LOT. — Jurisprudence has interpreted possession in Article 1544 of the Civil Code to mean both *actual physical delivery* and *constructive delivery*. Under either mode of delivery, the facts show that Pante was the first to acquire possession of the lot. Actual delivery of a thing sold occurs when it is placed under the control and possession of the vendee. Pante claimed that he had been using the lot as a passageway, with the Church's permission, since 1963. After purchasing the lot in 1992, he continued using it as a passageway until he was prevented by the spouses Rubi's concrete fence over the lot in 1994. Pante's use of the lot as a passageway after the 1992 sale in his favor was a clear assertion of his right of

ownership that preceded the spouses Rubi's claim of ownership. Pante also stated that he had placed electric connections and water pipes on the lot, even before he purchased it in 1992, and the existence of these connections and pipes was known to the spouses Rubi. Thus, any assertion of possession over the lot by the spouses Rubi (*e.g.*, the construction of a concrete fence) would be considered as made in bad faith because works had already existed on the lot indicating possession by another. "[A] buyer of real property in the possession of persons other than the seller must be wary and should investigate the rights of those in possession. Without such inquiry, the buyer can hardly be regarded as a buyer in good faith and cannot have any right over the property." Delivery of a thing sold may also be made constructively [pursuant to] Article 1498 of the Civil Code[.] x x x Under this provision, the sale in favor of Pante would have to be upheld since the contract executed between the Church and Pante was duly notarized, converting the deed into a public instrument. x x x Thus, under either mode of delivery, Pante acquired prior possession of the lot.

APPEARANCES OF COUNSEL

Padilla Law Office for petitioner.
Nestor B. Beltran for respondent.

D E C I S I O N

BRION, *J.*:

Through a petition for review on *certiorari*,[1] the petitioner Roman Catholic Church (*Church*) seeks to set aside the May 18, 2006 decision[2] and the August 11, 2006 resolution[3] of the Court of Appeals (*CA*) in CA-G.R.-CV No. 65069. The CA

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[1] Filed under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 24-36. Penned by Associate Justice Vicente Q. Roxas, with the concurrence of Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr.

[3] *Id.* at 38.

reversed the July 30, 1999 decision[4] of the Regional Trial Court (*RTC*) of Naga City, Branch 24, in Civil Case No. 94-3286.

THE FACTUAL ANTECEDENTS

The Church, represented by the Archbishop of Caceres, owned a 32-square meter lot that measured 2x16 meters located in *Barangay* Dinaga, Canaman, Camarines Sur.[5] On September 25, 1992, the Church contracted with respondent Regino Pante for the sale of the lot (thru a Contract to Sell and to Buy[6]) *on the belief* that the latter was an actual occupant of the lot. The contract between them fixed the purchase price at ₱11,200.00, with the initial ₱1,120.00 payable as down payment, and the remaining balance payable in three years or until September 25, 1995.

On June 28, 1994, the Church sold in favor of the spouses Nestor and Fidela Rubi (*spouses Rubi*) a 215-square meter lot that *included the lot previously sold to Pante*. The spouses Rubi asserted their ownership by erecting a concrete fence over the lot sold to Pante, effectively blocking Pante and his family's access from their family home to the municipal road. As no settlement could be reached between the parties, Pante instituted with the RTC an action to annul the sale between the Church and the spouses Rubi, insofar as it included the lot previously sold to him.[7]

The Church filed its answer with a counterclaim, seeking the annulment of its contract with Pante. The Church alleged that *its consent to the contract was obtained by fraud* when Pante, in bad faith, misrepresented that he had been an actual occupant of the lot sold to him, when in truth, he was merely using the 32-square meter lot as a passageway from his house to the town proper. It contended that it was its policy to sell

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[4] *Id.* at 39-46. Penned by Judge Corazon A. Tordilla.

[5] The lot was described as Lot 3, Block 2, and part of Original Certificate of Title No. 206; *id.* at 47.

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

[7] Docketed as Civil Case No. 94-3286, and filed before the RTC of Naga City, Branch 24.

its lots only to actual occupants. Since the spouses Rubi and their predecessors-in-interest have long been occupying the 215-square meter lot that included the 32-square meter lot sold to Pante, the Church claimed that the spouses Rubi were the rightful buyers.

During pre-trial, the following admissions and stipulations of facts were made:

1. The lot claimed by Pante is a strip of land measuring only 2x16 meters;

2. The lot had been sold by the Church to Pante on September 25, 1992;

3. The lot was included in the sale to the spouses Rubi by the Church; and

4. Pante expressly manifested and represented to the Church that he had been actually occupying the lot he offered to buy.[8]

In a decision dated July 30, 1999,[9] the RTC ruled in favor of the Church, finding that the Church's consent to the sale was secured through Pante's misrepresentation that he was an occupant of the 32-square meter lot. Contrary to his claim, Pante was only using the lot as a passageway; the Church's policy, however, was to sell its lots only to those who actually occupy and reside thereon. As the Church's consent was secured through its mistaken belief that Pante was a qualified "occupant," the RTC annulled the contract between the Church and Pante, pursuant to Article 1390 of the Civil Code.[10]

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[8] *Rollo*, p. 28.

[9] *Supra* note 4, at 46. The dispositive portion read:

WHEREFORE, judgment is hereby rendered annulling the contract to sell and buy and upholding the deed of absolute sale in favor of the defendants Rubi. Since the [down payment] of ₱1,120.00 had been paid to the Roman Catholic Church as early as June 8, 1992, said defendant is hereby ordered to return the said amount to the plaintiff with interest thereon of 12% per annum. Plaintiff may also withdraw his deposit of ₱10,905.00 from the Office of the Clerk of Court as soon as this decision becomes final.

[10] CIVIL CODE, Article 1390. The following contracts are voidable or annullable, even though there may have been no damage to the contracting parties:

The RTC further noted that full payment of the purchase price was made only on September 23, 1995, when Pante consigned the balance of ₱10,905.00 with the RTC, after the *Church refused to accept the tendered amount*. It considered the three-year delay in completing the payment fatal to Pante's claim over the subject lot; it ruled that if Pante had been prompt in paying the price, then the Church would have been estopped from selling the lot to the spouses Rubi. In light of Pante's delay and his admission that the subject lot had been actually occupied by the spouses Rubi's predecessors, the RTC upheld the sale in favor of the spouses Rubi.

Pante appealed the RTC's decision with the CA. In a decision dated May 18, 2006,[11] the CA granted Pante's appeal and reversed the RTC's ruling. The CA characterized the contract between Pante and the Church as a contract of sale, since the Church made no express reservation of ownership until full payment of the price is made. In fact, the contract gave the Church the right to repurchase in case Pante fails to pay the installments within the grace period provided; the CA ruled that the right to repurchase is unnecessary if ownership has not already been transferred to the buyer.

Even assuming that the contract had been a contract to sell, the CA declared that Pante fulfilled the condition precedent when he consigned the balance within the three-year period allowed under the parties' agreement; upon full payment, Pante fully complied with the terms of his contract with the Church.

After recognizing the validity of the sale to Pante and noting the subsequent sale to the spouses Rubi, the CA proceeded to apply the rules on double sales in Article 1544 of the Civil Code:

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1) Those where one of the parties is incapable of giving consent to a contract;

2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification.

[11] *Supra* note 2.

Article 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith. [Emphasis ours.]

Since neither of the two sales was registered, the CA upheld the full effectiveness of the sale in favor of Pante who first possessed the lot by using it as a passageway since 1963.

The Church filed the present petition for review on *certiorari* under Rule 45 of the Rules of Court to contest the CA's ruling.

THE PETITION

The Church contends that the sale of the lot to Pante is voidable under Article 1390 of the Civil Code, which states:

Article 1390. The following contracts are voidable or annullable, even though there may have been no damage to the contracting parties:

(1) Those where one of the parties is incapable of giving consent to a contract;

(2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification. [Emphasis ours.]

It points out that, during trial, Pante already admitted knowing that the spouses Rubi have been residing on the lot. Despite this knowledge, Pante misrepresented himself as an occupant because he knew of the Church's policy to sell lands only to occupants or residents thereof. It thus claims that Pante's misrepresentation effectively vitiated its consent to the sale; hence, the contract should be nullified.

For the Church, the presence of fraud and misrepresentation that would suffice to annul the sale is the primary issue that the tribunals below should have resolved. Instead, the CA opted to characterize the contract between the Church and Pante, considered it as a contract of sale, and, after such characterization, proceeded to resolve the case in Pante's favor. The Church objects to this approach, on the principal argument that there could not have been a contract at all considering that its consent had been vitiated.

THE COURT'S RULING

The Court resolves to **deny** the petition.

No misrepresentation existed vitiating the seller's consent and invalidating the contract

Consent is an essential requisite of contracts[12] as it pertains to the meeting of the offer and the acceptance upon the thing and the cause which constitute the contract.[13] To create a valid contract, the meeting of the minds must be free, voluntary, willful and with a reasonable understanding of the various obligations the parties assumed for themselves.[14] Where consent, however, is given through mistake, violence, intimidation, undue influence, or fraud, the contract is deemed voidable.[15] However, not every mistake renders a contract voidable. The Civil Code clarifies the nature of mistake that vitiates consent:

> Article 1331. In order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract.
>
> **Mistake as to the identity or qualifications of one of the parties will vitiate consent only when such identity or qualifications have been the principal cause of the contract.**

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[12] CIVIL CODE, Article 1318.

[13] *Id.*, Article 1319.

[14] Melencio Sta. Maria, Jr., *Obligations and Contracts: Text and Cases* (2003 ed.), p. 339.

[15] CIVIL CODE, Article 1330.

A simple mistake of account shall give rise to its correction. [Emphasis ours.]

For mistake as to the qualification of one of the parties to vitiate consent, two requisites must concur:

1. the mistake must be either with regard to the identity or with regard to the qualification of one of the contracting parties; and

2. the identity or qualification must have been the principal consideration for the celebration of the contract.[16]

In the present case, the Church contends that its consent to sell the lot was given on the mistaken impression arising from Pante's fraudulent misrepresentation that he had been the actual occupant of the lot. Willful misrepresentation existed because of its policy to sell its lands only to their actual occupants or residents. Thus, it considers the buyer's actual occupancy or residence over the subject lot a qualification necessary to induce it to sell the lot.

Whether the facts, established during trial, support this contention shall determine if the contract between the Church and Pante should be annulled. In the process of weighing the evidentiary value of these established facts, the courts should consider both the parties' objectives and the subjective aspects of the transaction, specifically, the parties' circumstances – their condition, relationship, and other attributes – and their conduct at the time of and subsequent to the contract. These considerations will show what influence the alleged error exerted on the parties and their intelligent, free, and voluntary consent to the contract.[17]

Contrary to the Church's contention, the actual occupancy or residency of a buyer over the land does not appear to be a necessary qualification that the Church requires before it could sell its land. Had this been indeed its policy, then neither Pante

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[16] Desiderio Jurado, *Comments and Jurisprudence on Obligations and Contracts* (2002 ed.), p. 426.

[17] See *Sps. Theis v. Court of Appeals*, 335 Phil. 632 (1997).

nor the spouses Rubi would qualify as buyers of the 32-square meter lot, as none of them actually occupied or resided on the lot. We note in this regard that the lot was only a **2x16-meter strip of rural land** used as a passageway from Pante's house to the municipal road.

We find well-taken Pante's argument that, given the size of the lot, it could serve no other purpose than as a mere passageway; it is unthinkable to consider that a 2x16-meter strip of land could be mistaken as anyone's residence. In fact, the spouses Rubi were in possession of the *adjacent lot*, but they never asserted possession over the 2x16-meter lot when the 1994 sale was made in their favor; it was only then that they constructed the concrete fence blocking the passageway.

We find it unlikely that Pante could successfully misrepresent himself as the actual occupant of the lot; this was a fact that the Church (which has a parish chapel in the same *barangay* where the lot was located) could easily verify had it conducted an ocular inspection of its own property. The surrounding circumstances actually indicate that the Church was aware that Pante was using the lot merely as a passageway.

The above view is supported by the sketch plan,[18] attached to the contract executed by the Church and Pante, which clearly labeled the 2x16-meter lot as a "RIGHT OF WAY"; below these words was written the name of "Mr. Regino Pante." Asked during cross-examination where the sketch plan came from, Pante answered that it was from the Archbishop's Palace; neither the Church nor the spouses Rubi contradicted this statement.[19]

The records further reveal that the sales of the Church's lots were made after a series of conferences with the occupants of the lots.[20] The then parish priest of Canaman, Fr. Marcaida, was apparently aware that Pante was not an actual occupant,

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[18] Annex B of Pante's Complaint, RTC Records, p. 11.

[19] TSN of March 24, 1995, p. 53.

[20] *Rollo*, p. 44.

but nonetheless, he allowed the sale of the lot to Pante, subject to the approval of the Archdiocese's Oeconomous. Relying on Fr. Marcaida's recommendation and finding nothing objectionable, Fr. Ragay (the Archdiocese's Oeconomous) approved the sale to Pante.

The above facts, in our view, establish that **there could not have been a deliberate, willful, or fraudulent act committed by Pante that misled the Church into giving its consent to the sale of the subject lot in his favor**. That Pante was not an actual occupant of the lot he purchased was a fact that the Church either ignored or waived as a requirement. In any case, the Church was by no means led to believe or do so by Pante's act; **there had been no vitiation of the Church's consent to the sale of the lot to Pante.**

From another perspective, any finding of bad faith, if one is to be made, should be imputed to the Church. Without securing a court ruling on the validity of its contract with Pante, the Church sold the subject property to the spouses Rubi. Article 1390 of the Civil Code declares that voidable contracts are binding, unless annulled by a proper court action. From the time the sale to Pante was made and up until it sold the subject property to the spouses Rubi, the Church made no move to reject the contract with Pante; it did not even return the down payment he paid. The Church's bad faith in selling the lot to Rubi without annulling its contract with Pante negates its claim for damages.

In the absence of any vitiation of consent, the contract between the Church and Pante stands valid and existing. Any delay by Pante in paying the full price could not nullify the contract, since (as correctly observed by the CA) it was a **contract of sale**. By its terms, the contract did not provide a stipulation that the Church retained ownership until full payment of the price.[21] The right to repurchase given to the Church in case Pante fails to pay within the grace period provided[22] would

[21] *Anama v. Court of Appeals*, 466 Phil. 64 (2004). See also *Mila A. Reyes v. Victoria T. Tuparan*, G.R. No. 188064, June 1, 2011.

[22] *Rollo*, p. 48.

have been unnecessary had ownership not already passed to Pante.

The rule on double sales

The sale of the lot to Pante and later to the spouses Rubi resulted in a double sale that called for the application of the rules in Article 1544 of the Civil Code:

> Article 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.
>
> Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.
>
> **Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession**; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith. [Emphasis ours.]

As neither Pante nor the spouses Rubi registered the sale in their favor, the question now is who, between the two, was first in possession of the property in good faith.

Jurisprudence has interpreted possession in Article 1544 of the Civil Code to mean both *actual physical delivery* and *constructive delivery*.[23] Under either mode of delivery, the facts show that Pante was the first to acquire possession of the lot.

Actual delivery of a thing sold occurs when it is placed under the control and possession of the vendee.[24] Pante claimed that he had been using the lot as a passageway, with the Church's permission, since 1963. After purchasing the lot in 1992, he continued using it as a passageway until he was prevented by

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[23] See *Catain v. Rios, et al.*, 136 Phil. 601, 603 (1969), citing *Bautista v. Sioson*, 39 Phil. 615 (1919); and *Lichauco v. Berenguer*, 39 Phil. 643 (1919).

[24] CIVIL CODE, Article 1497.

the spouses Rubi's concrete fence over the lot in 1994. Pante's use of the lot as a passageway after the 1992 sale in his favor was a clear assertion of his right of ownership that preceded the spouses Rubi's claim of ownership.

Pante also stated that he had placed electric connections and water pipes on the lot, even before he purchased it in 1992, and the existence of these connections and pipes was known to the spouses Rubi.[25] Thus, any assertion of possession over the lot by the spouses Rubi (*e.g.*, the construction of a concrete fence) would be considered as made in bad faith because works had already existed on the lot indicating possession by another. "[A] buyer of real property in the possession of persons other than the seller must be wary and should investigate the rights of those in possession. Without such inquiry, the buyer can hardly be regarded as a buyer in good faith and cannot have any right over the property."[26]

Delivery of a thing sold may also be made constructively. Article 1498 of the Civil Code states that:

> Article 1498. **When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract,** if from the deed the contrary does not appear or cannot clearly be inferred.

Under this provision, the sale in favor of Pante would have to be upheld since the contract executed between the Church and Pante was duly notarized, converting the deed into a public instrument.[27] In *Navera v. Court of Appeals*,[28] the Court ruled that:

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[25] TSN, July 2, 1996, p. 26.

[26] *Occeña v. Esponilla*, G.R. No. 156973, June 4, 2004, 431 SCRA 116, 124-125, citing *Sps. Castro v. Miat*, G.R. No. 143297, February 11, 2003, 445 SCRA 282.

[27] See *Dailisan v. Court of Appeals*, G.R. No. 176448, July 28, 2008, 560 SCRA 351, 356; and *Calma v. Santos*, G.R. No. 161027, June 22, 2009, 590 SCRA 359, 371.

[28] 263 Phil. 526, 538 (1990), citing *Quimson v. Rosete*, 87 Phil. 159 (1950); *Sanchez v. Ramos*, 40 Phil. 614 (1919); and *Florendo v. Foz*, 20 Phil. 388 (1911).

[A]fter the sale of a realty by means of a public instrument, the vendor, who resells it to another, does not transmit anything to the second vendee, and if the latter, by virtue of this second sale, takes material possession of the thing, he does it as mere detainer, and it would be unjust to protect this detention against the rights of the thing lawfully acquired by the first vendee.

Thus, under either mode of delivery, Pante acquired prior possession of the lot.

WHEREFORE, we **DENY** the petition for review on *certiorari*, and **AFFIRM** the decision of the Court of Appeals dated May 18, 2006, and its resolution dated August 11, 2006, issued in CA-G.R.-CV No. 65069. Costs against the Roman Catholic Church.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 174489. April 11, 2012]

ANTONIO B. BALTAZAR, SEBASTIAN M. BALTAZAR, ANTONIO L. MANGALINDAN, ROSIE M. MATEO, NENITA A. PACHECO, VIRGILIO REGALA, JR., and RAFAEL TITCO, *petitioners, vs.* **LORENZO LAXA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; PROBATE OF WILL; PURPOSE THEREOF, PRESENT IN CASE AT BAR. — Courts are tasked to determine nothing more than the

extrinsic validity of a Will in probate proceedings. This is expressly provided for in Rule 75, Section 1 of the Rules of Court, which states: x x x Due execution of the will or its extrinsic validity pertains to whether the testator, being of sound mind, freely executed the will in accordance with the formalities prescribed by law. These formalities are enshrined in Articles 805 and 806 of the New Civil Code. x x x Here, a careful examination of the face of the Will shows faithful compliance with the formalities laid down by law. The signatures of the testatrix, Paciencia, her instrumental witnesses and the notary public, are all present and evident on the Will. Further, the attestation clause explicitly states the critical requirement that the testatrix and her instrumental witnesses signed the Will in the presence of one another and that the witnesses attested and subscribed to the Will in the presence of the testator and of one another. In fact, even the petitioners acceded that the signature of Paciencia in the Will may be authentic although they question her state of mind when she signed the same as well as the voluntary nature of said act.

2. ID.; ID.; ID.; A TESTATOR IS PRESUMED TO BE OF SOUND MIND AT THE TIME OF THE EXECUTION OF THE WILL AND THE BURDEN TO PROVE OTHERWISE LIES ON THE OPPOSITOR; CASE AT BAR. — We agree with the position of the CA that the state of being forgetful does not necessarily make a person mentally unsound so as to render him unfit to execute a Will. Forgetfulness is not equivalent to being of unsound mind. x x x "The testimony of subscribing witnesses to a Will concerning the testator's mental condition is entitled to great weight where they are truthful and intelligent." More importantly, a testator is presumed to be of sound mind at the time of the execution of the Will and the burden to prove otherwise lies on the oppositor. Here, there was no showing that Paciencia was publicly known to be insane one month or less before the making of the Will. Clearly, thus, the burden to prove that Paciencia was of unsound mind lies upon the shoulders of petitioners. However and as earlier mentioned, no substantial evidence was presented by them to prove the same, thereby warranting the CA's finding that petitioners failed to discharge such burden. Furthermore, we are convinced that Paciencia was aware of the nature of her estate to be disposed of, the proper objects of her bounty and the character of the testamentary act.

3. ID.; ID.; ID.; THE PROBATE OF A WILL CANNOT BE DENIED BASED ONLY ON BARE ALLEGATIONS OF DURESS OR INFLUENCE OF FEAR OR THREATS, UNDUE AND IMPROPER INFLUENCE AND PRESSURE, FRAUD AND TRICKERY; CASE AT BAR. — An essential element of the validity of the Will is the willingness of the testator or testatrix to execute the document that will distribute his/her earthly possessions upon his/her death. x x x In this case, evidence shows the acknowledged fact that Paciencia's relationship with Lorenzo and his family is different from her relationship with petitioners. The very fact that she cared for and raised Lorenzo and lived with him both here and abroad, even if the latter was already married and already has children, highlights the special bond between them. This unquestioned relationship between Paciencia and the devisees tends to support the authenticity of the said document as against petitioners' allegations of duress, influence of fear or threats, undue and improper influence, pressure, fraud, and trickery which, aside from being factual in nature, are not supported by concrete, substantial and credible evidence on record. It is worth stressing that bare arguments, no matter how forceful, if not based on concrete and substantial evidence cannot suffice to move the Court to uphold said allegations. Furthermore, "a purported will is not [to be] denied legalization on dubious grounds. Otherwise, the very institution of testamentary succession will be shaken to its foundation, for even if a will has been duly executed in fact, whether x x x it will be probated would have to depend largely on the attitude of those interested in [the estate of the deceased]."

4. ID.; ID.; ID.; DUE EXECUTION; WHEN SUSTAINED; CASE AT BAR. — We thus hold that for all intents and purposes, Lorenzo was able to satisfactorily account for the incapacity and failure of the said subscribing witness and of the notary public to testify in court. Because of this the probate of Paciencia's Will may be allowed on the basis of Dra. Limpin's testimony proving her sanity and the due execution of the Will, as well as on the proof of her handwriting. It is an established rule that "[a] testament may not be disallowed just because the attesting witnesses declare against its due execution; neither does it have to be necessarily allowed just because all the attesting witnesses declare in favor of its legalization; what is decisive is that the court is convinced by evidence before it,

not necessarily from the attesting witnesses, although they must testify, that the will was or was not duly executed in the manner required by law." Moreover, it bears stressing that "[i]rrespective x x x of the posture of any of the parties as regards the authenticity and due execution of the will x x x in question, it is the mandate of the law that it is the evidence before the court and/or [evidence that] ought to be before it that is controlling." "The very existence of [the Will] is in itself *prima facie* proof that the supposed [testatrix] has willed that [her] estate be distributed in the manner therein provided, and it is incumbent upon the state that, if legally tenable, such desire be given full effect independent of the attitude of the parties affected thereby." This, coupled with Lorenzo's established relationship with Paciencia, the evidence and the testimonies of disinterested witnesses, as opposed to the total lack of evidence presented by petitioners apart from their self-serving testimonies, constrain us to tilt the balance in favor of the authenticity of the Will and its allowance for probate.

APPEARANCES OF COUNSEL

Filemon AL. Manlutac for petitioners.

Viray Rongcal Beltran Yumul & Viray Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

It is incumbent upon those who oppose the probate of a will to clearly establish that the decedent was not of sound and disposing mind at the time of the execution of said will. Otherwise, the state is duty-bound to give full effect to the wishes of the testator to distribute his estate in the manner provided in his will so long as it is legally tenable.[1]

Before us is a Petition for Review on *Certiorari*[2] of the June 15, 2006 Decision[3] of the Court of Appeals (CA) in CA-

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1 *Gonzales Vda. de Precilla v. Narciso*, 150-B Phil. 437, 473 (1972).

2 *Rollo*, pp. 9-31.

3 CA *rollo*, pp. 177-192; penned by Associate Justice Andres B. Reyes, Jr.

G.R. CV No. 80979 which reversed the September 30, 2003 Decision[4] of the Regional Trial Court (RTC), Branch 52, Guagua, Pampanga in Special Proceedings No. G-1186. The assailed CA Decision granted the petition for probate of the notarial will of Paciencia Regala (Paciencia), to wit:

WHEREFORE, premises considered, finding the appeal to be impressed with merit, the decision in SP. PROC. NO. G-1186 dated 30 September 2003, is hereby SET ASIDE and a new one entered GRANTING the petition for the probate of the will of PACIENCIA REGALA.

SO ORDERED.[5]

Also assailed herein is the August 31, 2006 CA Resolution[6] which denied the Motion for Reconsideration thereto.

Petitioners call us to reverse the CA's assailed Decision and instead affirm the Decision of the RTC which disallowed the notarial will of Paciencia.

Factual Antecedents

Paciencia was a 78 year old spinster when she made her last will and testament entitled "*Tauli Nang Bilin o Testamento Miss Paciencia Regala*"[7] (Will) in the Pampango dialect on September 13, 1981. The Will, executed in the house of retired Judge Ernestino G. Limpin (Judge Limpin), was read to Paciencia twice. After which, Paciencia expressed in the presence of the instrumental witnesses that the document is her last will and testament. She thereafter affixed her signature at the end of the said document on page 3[8] and then on the left margin of pages 1, 2 and 4 thereof.[9]

and concurred in by Associate Justices Hakim S. Abdulwahid and Vicente Q. Roxas.

4 Records, pp. 220-246; penned by Judge Jonel S. Mercado.

5 CA *rollo*, p. 192.

6 *Id.* at 212.

7 Exhibit "G", Folder of Exhibits, pp. 36-39.

8 Exhibit "G-11", *id*. at 38.

9 Exhibits "G-9", "G-10", and "G-11", *id*. at 36, 37 and 39.

The witnesses to the Will were Dra. Maria Lioba A. Limpin (Dra. Limpin), Francisco Garcia (Francisco) and Faustino R. Mercado (Faustino). The three attested to the Will's due execution by affixing their signatures below its attestation clause[10] and on the left margin of pages 1, 2 and 4 thereof,[11] in the presence of Paciencia and of one another and of Judge Limpin who acted as notary public.

Childless and without any brothers or sisters, Paciencia bequeathed all her properties to respondent Lorenzo R. Laxa (Lorenzo) and his wife Corazon F. Laxa and their children Luna Lorella Laxa and Katherine Ross Laxa, thus:

x x x x x x x x x

Fourth - In consideration of their valuable services to me since then up to the present by the spouses LORENZO LAXA and CORAZON F. LAXA, I hereby BEQUEATH, CONVEY and GIVE all my properties enumerated in parcels 1 to 5 unto the spouses LORENZO R. LAXA and CORAZON F. LAXA and their children, LUNA LORELLA LAXA and KATHERINE LAXA, and the spouses Lorenzo R. Laxa and Corazon F. Laxa both of legal age, Filipinos, presently residing at Barrio Sta. Monica, [Sasmuan], Pampanga and their children, LUNA LORELLA and KATHERINE ROSS LAXA, who are still not of legal age and living with their parents who would decide to bequeath since they are the children of the spouses;

x x x x x x x x x

[Sixth] - Should other properties of mine may be discovered aside from the properties mentioned in this last will and testament, I am also bequeathing and giving the same to the spouses Lorenzo R. Laxa and Corazon F. Laxa and their two children and I also command them to offer masses yearly for the repose of my soul and that of D[ñ]a Nicomeda Regala, Epifania Regala and their spouses and with respect to the fishpond situated at San Antonio, I likewise command to fulfill the wishes of D[ñ]a Nicomeda Regala in accordance with her testament as stated in my testament. x x x[12]

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[10] Exhibit "G-6", *id*. at 38.

[11] Exhibits "G-4", "G-5", and "G-7", *id*. at 36, 37 and 39.

[12] English Translation of the Last Will and Testament of Miss Paciencia Regala, Exhibits "H-", and "H-2", *id*. at 41-42.

The filial relationship of Lorenzo with Paciencia remains undisputed. Lorenzo is Paciencia's nephew whom she treated as her own son. Conversely, Lorenzo came to know and treated Paciencia as his own mother.[13] Paciencia lived with Lorenzo's family in Sasmuan, Pampanga and it was she who raised and cared for Lorenzo since his birth. Six days after the execution of the Will or on September 19, 1981, Paciencia left for the United States of America (USA). There, she resided with Lorenzo and his family until her death on January 4, 1996.

In the interim, the Will remained in the custody of Judge Limpin.

More than four years after the death of Paciencia or on April 27, 2000, Lorenzo filed a petition[14] with the RTC of Guagua, Pampanga for the probate of the Will of Paciencia and for the issuance of Letters of Administration in his favor, docketed as Special Proceedings No. G-1186.

There being no opposition to the petition after its due publication, the RTC issued an Order on June 13, 2000[15] allowing Lorenzo to present evidence on June 22, 2000. On said date, Dra. Limpin testified that she was one of the instrumental witnesses in the execution of the last will and testament of Paciencia on September 13, 1981.[16] The Will was executed in her father's (Judge Limpin) home office, in her presence and of two other witnesses, Francisco and Faustino.[17] Dra. Limpin positively identified the Will and her signatures on all its four pages.[18] She likewise positively identified the signature of her father appearing thereon.[19] Questioned by the prosecutor regarding Judge Limpin's present mental fitness, Dra. Limpin

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13 TSN dated April 18, 2001, pp. 2-6.

14 Records, pp. 1-3.

15 *Id.* at 13-14.

16 TSN dated June 22, 2000, p. 2.

17 *Id.* at 5.

18 *Id.* at 2-4.

19 *Id.* at 3.

testified that her father had a stroke in 1991 and had to undergo brain surgery.[20] The judge can walk but can no longer talk and remember her name. Because of this, Dra. Limpin stated that her father can no longer testify in court.[21]

The following day or on June 23, 2000, petitioner Antonio Baltazar (Antonio) filed an opposition[22] to Lorenzo's petition. Antonio averred that the properties subject of Paciencia's Will belong to Nicomeda Regala Mangalindan, his predecessor-in-interest; hence, Paciencia had no right to bequeath them to Lorenzo.[23]

Barely a month after or on July 20, 2000, Antonio, now joined by petitioners Sebastian M. Baltazar, Virgilio Regala, Jr., Nenita A. Pacheco, Felix B. Flores, Rafael Titco, Rosie M. Mateo (Rosie) and Antonio L. Mangalindan filed a Supplemental Opposition[24] contending that Paciencia's Will was null and void because ownership of the properties had not been transferred and/or titled to Paciencia before her death pursuant to Article 1049, paragraph 3 of the Civil Code.[25] Petitioners also opposed the issuance of Letters of Administration in Lorenzo's favor arguing that Lorenzo was disqualified to be appointed as such, he being a citizen and resident of the USA.[26] Petitioners prayed that Letters of Administration be instead issued in favor of Antonio.[27]

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[20] *Id.* at 2.

[21] *Id.* at 6.

[22] Motion with Leave of Court to Admit Instant Opposition to Petition of Lorenzo Laxa; records, pp. 17-18.

[23] *Id.* at 17.

[24] *Id.* at 25-28.

[25] Article 1049. Acceptance may be express or tacit.

x x x x x x x x x

Acts of mere preservation or provisional administration do not imply an acceptance of the inheritance if, through such acts, the title or capacity of an heir has not been assumed.

[26] Records, p. 26.

[27] *Id.* at 27.

Later still on September 26, 2000, petitioners filed an Amended Opposition[28] asking the RTC to deny the probate of Paciencia's Will on the following grounds: the Will was not executed and attested to in accordance with the requirements of the law; that Paciencia was mentally incapable to make a Will at the time of its execution; that she was forced to execute the Will under duress or influence of fear or threats; that the execution of the Will had been procured by undue and improper pressure and influence by Lorenzo or by some other persons for his benefit; that the signature of Paciencia on the Will was forged; that assuming the signature to be genuine, it was obtained through fraud or trickery; and, that Paciencia did not intend the document to be her Will. Simultaneously, petitioners filed an Opposition and Recommendation[29] reiterating their opposition to the appointment of Lorenzo as administrator of the properties and requesting for the appointment of Antonio in his stead.

On January 29, 2001, the RTC issued an Order[30] denying the requests of both Lorenzo and Antonio to be appointed administrator since the former is a citizen and resident of the USA while the latter's claim as a co-owner of the properties subject of the Will has not yet been established.

Meanwhile, proceedings on the petition for the probate of the Will continued. Dra. Limpin was recalled for cross-examination by the petitioners. She testified as to the age of her father at the time the latter notarized the Will of Paciencia; the living arrangements of Paciencia at the time of the execution of the Will; and the lack of photographs when the event took place. [31]

Aside from Dra. Limpin, Lorenzo and Monico Mercado (Monico) also took the witness stand. Monico, son of Faustino, testified on his father's condition. According to him his father can no longer talk and express himself due to brain damage.

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

[29] *Id.* at 44-45.

[30] *Id.* at 52.

[31] TSN dated January 18, 2001, pp. 2-4.

A medical certificate was presented to the court to support this allegation. [32]

For his part, Lorenzo testified that: from 1944 until his departure for the USA in April 1980, he lived in Sasmuan, Pampanga with his family and his aunt, Paciencia; in 1981 Paciencia went to the USA and lived with him and his family until her death in January 1996; the relationship between him and Paciencia was like that of a mother and child since Paciencia took care of him since birth and took him in as an adopted son; Paciencia was a spinster without children, and without brothers and sisters; at the time of Paciencia's death, she did not suffer from any mental disorder and was of sound mind, was not blind, deaf or mute; the Will was in the custody of Judge Limpin and was only given to him after Paciencia's death through Faustino; and he was already residing in the USA when the Will was executed.[33] Lorenzo positively identified the signature of Paciencia in three different documents and in the Will itself and stated that he was familiar with Paciencia's signature because he accompanied her in her transactions.[34] Further, Lorenzo belied and denied having used force, intimidation, violence, coercion or trickery upon Paciencia to execute the Will as he was not in the Philippines when the same was executed.[35] On cross-examination, Lorenzo clarified that Paciencia informed him about the Will shortly after her arrival in the USA but that he saw a copy of the Will only after her death.[36]

As to Francisco, he could no longer be presented in court as he already died on May 21, 2000.

For petitioners, Rosie testified that her mother and Paciencia were first cousins.[37] She claimed to have helped in the household

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[32] *Id.* at 5-6.

[33] TSN dated April 18, 2001, pp. 1-28.

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

[35] *Id.* at 16-17.

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

[37] TSN dated November 27, 2002, p. 4.

chores in the house of Paciencia thereby allowing her to stay therein from morning until evening and that during the period of her service in the said household, Lorenzo's wife and his children were staying in the same house.[38] She served in the said household from 1980 until Paciencia's departure for the USA on September 19, 1981.[39]

On September 13, 1981, Rosie claimed that she saw Faustino bring "something" for Paciencia to sign at the latter's house.[40] Rosie admitted, though, that she did not see what that "something" was as same was placed inside an envelope.[41] However, she remembered Paciencia instructing Faustino to first look for money before she signs them.[42] A few days after or on September 16, 1981, Paciencia went to the house of Antonio's mother and brought with her the said envelope.[43] Upon going home, however, the envelope was no longer with Paciencia.[44] Rosie further testified that Paciencia was referred to as "*magulyan*" or "forgetful" because she would sometimes leave her wallet in the kitchen then start looking for it moments later.[45] On cross examination, it was established that Rosie was neither a doctor nor a psychiatrist, that her conclusion that Paciencia was "*magulyan*" was based on her personal assessment,[46] and that it was Antonio who requested her to testify in court.[47]

In his direct examination, Antonio stated that Paciencia was his aunt.[48] He identified the Will and testified that he had seen

38 *Id.* at 5.

39 TSN dated December 4, 2002, p. 8.

40 *Id.* pp. 2-3.

41 *Id.* at 4.

42 *Id.*

43 *Id.* at 7.

44 *Id.* at 8.

45 *Id.* at 9.

46 *Id.* at 10.

47 *Id.* at 11.

48 TSN dated January 7, 2003, p. 3.

the said document before because Paciencia brought the same to his mother's house and showed it to him along with another document on September 16, 1981.[49] Antonio alleged that when the documents were shown to him, the same were still unsigned.[50] According to him, Paciencia thought that the documents pertained to a lease of one of her rice lands,[51] and it was he who explained that the documents were actually a special power of attorney to lease and sell her fishpond and other properties upon her departure for the USA, and a Will which would transfer her properties to Lorenzo and his family upon her death.[52] Upon hearing this, Paciencia allegedly uttered the following words: *"Why will I never [return], why will I sell all my properties?" Who is Lorenzo? Is he the only [son] of God? I have other relatives [who should] benefit from my properties. Why should I die already?"*[53] Thereafter, Antonio advised Paciencia not to sign the documents if she does not want to, to which the latter purportedly replied, *"I know nothing about those, throw them away or it is up to you. The more I will not sign them."*[54] After which, Paciencia left the documents with Antonio. Antonio kept the unsigned documents and eventually turned them over to Faustino on September 18, 1981.[55]

Ruling of the Regional Trial Court

On September 30, 2003, the RTC rendered its Decision[56] denying the petition thus:

> WHEREFORE, this court hereby (a) denies the petition dated April 24, 2000; and (b) disallows the notarized will dated September 13, 1981 of Paciencia Regala.

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49 *Id.* at 6-8.

50 *Id.* at 12.

51 *Id.* at 11.

52 *Id.* at 16.

53 *Id.* at 17.

54 *Id.*

55 *Id.* at 18-19.

56 Records, pp. 220-246.

SO ORDERED.[57]

The trial court gave considerable weight to the testimony of Rosie and concluded that at the time Paciencia signed the Will, she was no longer possessed of sufficient reason or strength of mind to have testamentary capacity.[58]

Ruling of the Court of Appeals

On appeal, the CA reversed the RTC Decision and granted the probate of the Will of Paciencia. The appellate court did not agree with the RTC's conclusion that Paciencia was of unsound mind when she executed the Will. It ratiocinated that "the state of being '*magulyan*' does not make a person mentally unsound so [as] to render [Paciencia] unfit for executing a Will."[59] Moreover, the oppositors in the probate proceedings were not able to overcome the presumption that every person is of sound mind. Further, no concrete circumstances or events were given to prove the allegation that Paciencia was tricked or forced into signing the Will.[60]

Petitioners moved for reconsideration[61] but the motion was denied by the CA in its Resolution[62] dated August 31, 2006.

Hence, this petition.

Issues

Petitioners come before this Court by way of Petition for Review on *Certiorari* ascribing upon the CA the following errors:

I.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT ALLOWED THE PROBATE OF PACIENCIA'S WILL DESPITE

57 *Id.* at 246.

58 *Id.* at 245-246.

59 CA *rollo*, p. 185.

60 *Id.* at 188.

61 *Id.* at 193-199.

62 *Id.* at 212.

RESPONDENT'S UTTER FAILURE TO COMPLY WITH SECTION 11, RULE 76 OF THE RULES OF COURT;

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN MAKING CONCLUSIONS NOT IN ACCORDANCE WITH THE EVIDENCE ON RECORD;

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT PETITIONERS FAILED TO PROVE THAT PACIENCIA WAS NOT OF SOUND MIND AT THE TIME THE WILL WAS ALLEGEDLY EXECUTED[63]

The pivotal issue is whether the authenticity and due execution of the notarial Will was sufficiently established to warrant its allowance for probate.

Our Ruling

We deny the petition.

Faithful compliance with the formalities laid down by law is apparent from the face of the Will.

Courts are tasked to determine nothing more than the extrinsic validity of a Will in probate proceedings.[64] This is expressly provided for in Rule 75, Section 1 of the Rules of Court, which states:

Rule 75

Production of Will. Allowance of Will Necessary.

Section 1. *Allowance necessary. Conclusive as to execution.* – No will shall pass either real or personal estate unless it is proved and allowed in the proper court. Subject to the right of appeal, such allowance of the will shall be conclusive as to its due execution.

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[63] *Rollo*, p. 18.

[64] *Pastor, Jr. v. Court of Appeals*, 207 Phil. 758, 766. (1983).

Due execution of the will or its extrinsic validity pertains to whether the testator, being of sound mind, freely executed the will in accordance with the formalities prescribed by law.[65] These formalities are enshrined in Articles 805 and 806 of the New Civil Code, to wit:

> Art. 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.
>
> The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page.
>
> The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.
>
> If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them.
>
> Art. 806. Every will must be acknowledged before a notary public by the testator and the witnesses. The notary public shall not be required to retain a copy of the will, or file another with the Office of the Clerk of Court.

Here, a careful examination of the face of the Will shows faithful compliance with the formalities laid down by law. The signatures of the testatrix, Paciencia, her instrumental witnesses and the notary public, are all present and evident on the Will. Further, the attestation clause explicitly states the critical requirement that the testatrix and her instrumental witnesses signed the Will in the presence of one another and that the

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[65] *Id.*

witnesses attested and subscribed to the Will in the presence of the testator and of one another. In fact, even the petitioners acceded that the signature of Paciencia in the Will may be authentic although they question her state of mind when she signed the same as well as the voluntary nature of said act.

The burden to prove that Paciencia was of unsound mind at the time of the execution of the will lies on the shoulders of the petitioners.

Petitioners, through their witness Rosie, claim that Paciencia was "*magulyan*" or forgetful so much so that it effectively stripped her of testamentary capacity. They likewise claimed in their Motion for Reconsideration[66] filed with the CA that Paciencia was not only "*magulyan*" but was actually suffering from paranoia.[67]

We are not convinced.

We agree with the position of the CA that the state of being forgetful does not necessarily make a person mentally unsound so as to render him unfit to execute a Will.[68] Forgetfulness is not equivalent to being of unsound mind. Besides, Article 799 of the New Civil Code states:

> Art. 799. To be of sound mind, it is not necessary that the testator be in full possession of all his reasoning faculties, or that his mind be wholly unbroken, unimpaired, or unshattered by disease, injury or other cause.
>
> It shall be sufficient if the testator was able at the time of making the will to know the nature of the estate to be disposed of, the proper objects of his bounty, and the character of the testamentary act.

In this case, apart from the testimony of Rosie pertaining to Paciencia's forgetfulness, there is no substantial evidence,

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[66] CA *rollo*, pp. 193-199.

[67] *Id.* at 194-195.

[68] *Torres and Lopez de Bueno v. Lopez*, 48 Phil. 772, 810 (1926); *Sancho v. Abella*, 58 Phil.728, 732-733 (1933).

medical or otherwise, that would show that Paciencia was of unsound mind at the time of the execution of the Will. On the other hand, we find more worthy of credence Dra. Limpin's testimony as to the soundness of mind of Paciencia when the latter went to Judge Limpin's house and voluntarily executed the Will. "The testimony of subscribing witnesses to a Will concerning the testator's mental condition is entitled to great weight where they are truthful and intelligent."[69] More importantly, a testator is presumed to be of sound mind at the time of the execution of the Will and the burden to prove otherwise lies on the oppositor. Article 800 of the New Civil Code states:

> Art. 800. The law presumes that every person is of sound mind, in the absence of proof to the contrary.
>
> The burden of proof that the testator was not of sound mind at the time of making his dispositions is on the person who opposes the probate of the will; but if the testator, one month, or less, before making his will was publicly known to be insane, the person who maintains the validity of the will must prove that the testator made it during a lucid interval.

Here, there was no showing that Paciencia was publicly known to be insane one month or less before the making of the Will. Clearly, thus, the burden to prove that Paciencia was of unsound mind lies upon the shoulders of petitioners. However and as earlier mentioned, no substantial evidence was presented by them to prove the same, thereby warranting the CA's finding that petitioners failed to discharge such burden.

Furthermore, we are convinced that Paciencia was aware of the nature of her estate to be disposed of, the proper objects of her bounty and the character of the testamentary act. As aptly pointed out by the CA:

> A scrutiny of the Will discloses that [Paciencia] was aware of the nature of the document she executed. She specially requested that the customs of her faith be observed upon her death. She was well aware of how she acquired the properties from her parents and the properties she is bequeathing to LORENZO, to his wife CORAZON

[69] *Id.* at 811.

and to his two (2) children. A third child was born after the execution of the will and was not included therein as devisee.[70]

Bare allegations of duress or influence of fear or threats, undue and improper influence and pressure, fraud and trickery cannot be used as basis to deny the probate of a will.

An essential element of the validity of the Will is the willingness of the testator or testatrix to execute the document that will distribute his/her earthly possessions upon his/her death. Petitioners claim that Paciencia was forced to execute the Will under duress or influence of fear or threats; that the execution of the Will had been procured by undue and improper pressure and influence by Lorenzo or by some other persons for his benefit; and that assuming Paciencia's signature to be genuine, it was obtained through fraud or trickery. These are grounded on the alleged conversation between Paciencia and Antonio on September 16, 1981 wherein the former purportedly repudiated the Will and left it unsigned.

We are not persuaded.

We take into consideration the unrebutted fact that Paciencia loved and treated Lorenzo as her own son and that love even extended to Lorenzo's wife and children. This kind of relationship is not unusual. It is in fact not unheard of in our culture for old maids or spinsters to care for and raise their nephews and nieces and treat them as their own children. Such is a prevalent and accepted cultural practice that has resulted in many family discords between those favored by the testamentary disposition of a testator and those who stand to benefit in case of intestacy.

In this case, evidence shows the acknowledged fact that Paciencia's relationship with Lorenzo and his family is different from her relationship with petitioners. The very fact that she cared for and raised Lorenzo and lived with him both here and abroad, even if the latter was already married and already has

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[70] CA *rollo*, pp. 185-186.

children, highlights the special bond between them. This unquestioned relationship between Paciencia and the devisees tends to support the authenticity of the said document as against petitioners' allegations of duress, influence of fear or threats, undue and improper influence, pressure, fraud, and trickery which, aside from being factual in nature, are not supported by concrete, substantial and credible evidence on record. It is worth stressing that bare arguments, no matter how forceful, if not based on concrete and substantial evidence cannot suffice to move the Court to uphold said allegations.[71] Furthermore, "a purported will is not [to be] denied legalization on dubious grounds. Otherwise, the very institution of testamentary succession will be shaken to its foundation, for even if a will has been duly executed in fact, whether x x x it will be probated would have to depend largely on the attitude of those interested in [the estate of the deceased]."[72]

Court should be convinced by the evidence presented before it that the Will was duly executed.

Petitioners dispute the authenticity of Paciencia's Will on the ground that Section 11 of Rule 76 of the Rules of Court was not complied with. It provides:

RULE 76

Allowance or Disallowance of Will

Section 11. *Subscribing witnesses produced or accounted for where will contested.* – If the will is contested, all the subscribing witnesses, and the notary in the case of wills executed under the Civil Code of the Philippines, if present in the Philippines and not insane, must be produced and examined, and the death, absence, or insanity of any of them must be satisfactorily shown to the court. If all or some of such witnesses are present in the Philippines but outside the province where the will has been filed, their deposition must be taken. If any or all of them testify against the due execution of the will, or do not remember having attested to it, or are otherwise

[71] *Gonzales Vda. de Precilla v. Narciso, supra* note 1 at 445.

[72] *Id.* at 474.

of doubtful credibility, the will may nevertheless, be allowed if the court is satisfied from the testimony of other witnesses and from all the evidence presented that the will was executed and attested in the manner required by law.

If a holographic will is contested, the same shall be allowed if at least three (3) witnesses who know the handwriting of the testator explicitly declare that the will and the signature are in the handwriting of the testator; in the absence of any competent witnesses, and if the court deem it necessary, expert testimony may be resorted to. (Emphasis supplied.)

They insist that all subscribing witnesses and the notary public should have been presented in court since all but one witness, Francisco, are still living.

We cannot agree with petitioners.

We note that the inability of Faustino and Judge Limpin to appear and testify before the court was satisfactorily explained during the probate proceedings. As testified to by his son, Faustino had a heart attack, was already bedridden and could no longer talk and express himself due to brain damage. To prove this, said witness presented the corresponding medical certificate. For her part, Dra. Limpin testified that her father, Judge Limpin, suffered a stroke in 1991 and had to undergo brain surgery. At that time, Judge Limpin could no longer talk and could not even remember his daughter's name so that Dra. Limpin stated that given such condition, her father could no longer testify. It is well to note that at that point, despite ample opportunity, petitioners neither interposed any objections to the testimonies of said witnesses nor challenged the same on cross examination. We thus hold that for all intents and purposes, Lorenzo was able to satisfactorily account for the incapacity and failure of the said subscribing witness and of the notary public to testify in court. Because of this the probate of Paciencia's Will may be allowed on the basis of Dra. Limpin's testimony proving her sanity and the due execution of the Will, as well as on the proof of her handwriting. It is an established rule that "[a] testament may not be disallowed just because the attesting witnesses declare against its due execution; neither does it have

to be necessarily allowed just because all the attesting witnesses declare in favor of its legalization; what is decisive is that the court is convinced by evidence before it, not necessarily from the attesting witnesses, although they must testify, that the will was or was not duly executed in the manner required by law."[73]

Moreover, it bears stressing that "[i]rrespective x x x of the posture of any of the parties as regards the authenticity and due execution of the will x x x in question, it is the mandate of the law that it is the evidence before the court and/or [evidence that] ought to be before it that is controlling."[74] "The very existence of [the Will] is in itself *prima facie* proof that the supposed [testatrix] has willed that [her] estate be distributed in the manner therein provided, and it is incumbent upon the state that, if legally tenable, such desire be given full effect independent of the attitude of the parties affected thereby."[75] This, coupled with Lorenzo's established relationship with Paciencia, the evidence and the testimonies of disinterested witnesses, as opposed to the total lack of evidence presented by petitioners apart from their self-serving testimonies, constrain us to tilt the balance in favor of the authenticity of the Will and its allowance for probate.

WHEREFORE, the petition is **DENIED.** The Decision dated June 15, 2006 and the Resolution dated August 31, 2006 of the Court of Appeals in CA-G.R. CV No. 80979 are **AFFIRMED.**

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[73] *Id.* at 452.

[74] *Id.* at 453.

[75] *Id.* at 473.

FIRST DIVISION

[G.R. No. 175303. April 11, 2012]

PACIFIC ACE FINANCE LTD. (PAFIN), *petitioner, vs.* **EIJI* YANAGISAWA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; DOCTRINE OF JUDICIAL STABILITY OR NON-INTERFERENCE; COURTS OF CONCURRENT JURISDICTION SHOULD NOT, CANNOT AND ARE NOT PERMITTED TO INTERFERE WITH THEIR RESPECTIVE CASES. — The issue of ownership and liquidation of properties acquired during the cohabitation of Eiji and Evelyn has been submitted for the resolution of the Makati RTC, and is pending appeal before the CA. The doctrine of judicial stability or non-interference dictates that the assumption by the Makati RTC over the issue operates as an "insurmountable barrier" to the subsequent assumption by the Parañaque RTC. By insisting on ruling on the same issue, the Parañaque RTC effectively interfered with the Makati RTC's resolution of the issue and created the possibility of conflicting decisions. *Cojuangco v. Villegas* states: "The various branches of the [regional trial courts] of a province or city, having as they have the same or equal authority and exercising as they do concurrent and coordinate jurisdiction, should not, cannot and are not permitted to interfere with their respective cases, much less with their orders or judgments. A contrary rule would obviously lead to confusion and seriously hamper the administration of justice."

2. ID.; PROVISIONAL REMEDIES; INJUNCTION; ALL ACTS DONE IN VIOLATION OF A STANDING INJUNCTION ORDER ARE VOIDABLE AS TO THE PARTY ENJOINED AND THIRD PARTIES WHO ARE NOT IN GOOD FAITH. — The October 2, 1996 Order, embodying Evelyn's commitment not to dispose of or encumber the property, is akin to an injunction order against the disposition or encumbrance of the property. Jurisprudence holds that all acts done in violation of a standing injunction order are voidable as to the party enjoined and third parties

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* Also spelled as Ejie in some parts of the records.

who are not in good faith. The party, in whose favor the injunction is issued, has a cause of action to seek the annulment of the offending actions.

APPEARANCES OF COUNSEL

Arboladura Marcelo Law Offices for petitioner.
Rolando B. Aquino for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

An undertaking not to dispose of a property pending litigation, made in open court and embodied in a court order, and duly annotated on the title of the said property, creates a right in favor of the person relying thereon. The latter may seek the annulment of actions that are done in violation of such undertaking.

Before us is a Petition for Review[1] of the August 1, 2006 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 78944, which held:

WHEREFORE, the Decision dated April 20, 2003 of the RTC, Branch 258, Parañaque City, is hereby **ANNULLED** and **SET ASIDE** and a new one entered annulling the Real Estate Mortgage executed on August 25, 1998 in favor of defendant Pacific Ace Finance Ltd.

SO ORDERED.[3]

Factual Antecedents

Respondent Eiji Yanagisawa (Eiji), a Japanese national, and Evelyn F. Castañeda (Evelyn), a Filipina, contracted marriage on July 12, 1989 in the City Hall of Manila.[4]

On August 23, 1995, Evelyn purchased a 152 square-meter townhouse unit located at Bo. Sto. Niño, Parañaque, Metro

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[1] *Rollo*, pp. 3-21.

[2] CA *rollo*, pp. 101-112.

[3] *Id.* at 111.

[4] Records, Vol. 2, p. 425.

Manila (Parañaque townhouse unit).[5] The Registry of Deeds for Parañaque issued Transfer Certificate of Title (TCT) No. 99791 to "Evelyn P. Castañeda, Filipino, married to Ejie Yanagisawa, Japanese citizen[,] both of legal age."[6]

In 1996, Eiji filed a complaint for the declaration of nullity of his marriage with Evelyn on the ground of bigamy (nullity of marriage case). The complaint, docketed as Civil Case No. 96-776, was raffled to Branch 149 of the Regional Trial Court of Makati (Makati RTC). During the pendency of the case, Eiji filed a Motion for the Issuance of a Restraining Order against Evelyn and an Application for a Writ of a Preliminary Injunction. He asked that Evelyn be enjoined from disposing or encumbering all of the properties registered in her name.

At the hearing on the said motion, Evelyn and her lawyer voluntarily undertook not to dispose of the properties registered in her name during the pendency of the case, thus rendering Eiji's application and motion moot. On the basis of said commitment, the Makati RTC rendered the following Order dated October 2, 1996:

O R D E R

In view of the commitment **made in open court by Atty. Lupo Leyva,** counsel for the defendant [Evelyn], **together with his client,** the defendant in this case, that the properties registered in the name of the defendant would not be disposed of, alienated or encumbered in any manner during the pendency of this petition, the Motion for the Issuance of a Restraining Order and Application for a Writ of a Preliminary Injunction scheduled today is hereby considered moot and academic.

SO ORDERED.[7] (Emphasis supplied.)

The above Order was annotated on the title of the Parañaque townhouse unit or TCT No. 99791, thus:

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[5] *Id.* at 569-573.

[6] *Id.* at 470.

[7] *Id.* at 435 and 604.

Entry No. 8729 – Order – issued by Hon. Josefina Guevara Salonga, Judge, RTC, Branch 149, Makati City, **ordering the defendant** in Civil Case No. 96-776 – entitled *Eiji Yanagisawa*, Plaintiff-*versus*-*Evelyn Castañeda Yanagisawa*, that the properties registered in the name of the defendant **would not be disposed of, alienated or encumbered in any manner during the pendency of the petition,** the Motion for the Issuance of a Restraining Order and Application for a Writ of Preliminary Injunction is hereby considered moot and academic.

Date of Instrument – October 2, 1996
Date of Inscription – March 17, 1997 – 11:21 a.m.[8] (Emphasis supplied.)

Sometime in March 1997, Evelyn obtained a loan of ₱500,000.00 from petitioner Pacific Ace Finance Ltd. (PAFIN).[9] To secure the loan, Evelyn executed on August 25, 1998 a real estate mortgage (REM)[10] in favor of PAFIN over the Parañaque townhouse unit covered by TCT No. 99791. The instrument was submitted to the Register of Deeds of Parañaque City for annotation on the same date.[11]

At the time of the mortgage, Eiji's appeal in the nullity of marriage case was pending before the CA.[12] The Makati RTC had dissolved Eiji and Evelyn's marriage,[13] and had ordered

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[8] Records, Vol. 1, p. 98.

[9] Records, Vol 2, p. 574.

[10] *Id.* at 467-469.

[11] *Id.* at 601.

[12] CA Decision, p. 9; CA *rollo*, p. 109; Respondent's Memorandum, p. 4; *rollo*, p. 115.

[13] The dispositive portion reads:

WHEREFORE, plaintiff having established his case against defendant by preponderance of evidence, the **marriage** between plaintiff and defendant contracted on July 12, 1989 is hereby declared **VOID AB INITIO**. Accordingly, the absolute community of property existing between the parties is **dissolved** and in lieu thereof a regime of complete separation of property between the parties is established in accordance with the provisions of Chapter 6 of the Family Code, without prejudice to the rights previously acquired by creditors. Thus, the parties are declared **co-owners** of the following real estate properties, to wit:

the liquidation of their registered properties, including the Parañaque townhouse unit, with its proceeds to be divided between the parties.[14] The Decision of the Makati RTC did not lift or dissolve its October 2, 1996 Order on Evelyn's commitment not to dispose of or encumber the properties registered in her name.

Eiji learned of the REM upon its annotation on TCT No. 99791. Deeming the mortgage as a violation of the Makati RTC's October 2, 1996 Order, Eiji filed a complaint for the annulment of REM (annulment of mortgage case) against Evelyn and PAFIN.[15] The complaint, docketed as Civil Case No. 98-0431, was raffled to Branch 258 of the Regional Trial Court of Parañaque City (Parañaque RTC).

For its defense, PAFIN denied prior knowledge of the October 2, 1996 Order against Evelyn. It admitted, however, that it did

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a) a parcel of land in **Paranaque, Metro Manila** covered by **TCT No. 63782**, registered on June 17, 1992;

b) a parcel of land in **Paranaque, Metro Manila** covered by **TCT No. 99791** registered on August 23, 1995; and

c) a parcel of land in **Pagbilao, Quezon** covered by **TCT No. T-295343** registered on October 20, 1994.

x x x x x x x x x

Accordingly, let a copy of this Decision be duly recorded in the proper civil and property registries.

SO ORDERED. (RTC Decision in Civil Case No. 96-776, pp. 10-11; Records, Vol. 1, pp. 108-109)

[14] The Order reads thus:

Acting on plaintiff's Motion for Reconsideration dated February 9, 1998, which was opposed by the defendant through counsel considering that there was no conjugal partnership obtained that existed between plaintiff, their property relation has been governed by the rules of co-ownership under Article 148 of the Family Code. The Court finds no cogent reason to disturb its findings except that plaintiff being a foreigner is prohibited to own real property in the Philippines and that the said parcel of land enumerated in the said decision are hereby ordered sold at public auction and the proceeds to be divided between plaintiff and defendant. (Defendant PAFIN's Comment, p. 2; Records, Vol. 2, p. 447.)

[15] Records, Vol. 1, pp. 1-7.

not conduct any verification of the title with the Registry of Deeds of Parañaque City "because x x x Evelyn was a good, friendly and trusted neighbor."[16] PAFIN maintained that Eiji has no personality to seek the annulment of the REM because a foreign national cannot own real properties located within the Philippines.[17]

Evelyn also denied having knowledge of the October 2, 1996 Order.[18] Evelyn asserted that she paid for the property with her own funds[19] and that she has exclusive ownership thereof. [20]

Parañaque Regional Trial Court Decision[21]

The Parañaque RTC determined that the only issue before it is "whether x x x [Eiji] has a cause of action against the defendants and x x x is entitled to the reliefs prayed for despite the fact that he is not the registered owner of the property being a Japanese national."[22]

The Parañaque RTC explained that Eiji, as a foreign national, cannot possibly own the mortgaged property. Without ownership, or any other law or contract binding the defendants to him, Eiji has no cause of action that may be asserted against them.[23] Thus, the Parañaque RTC dismissed Eiji's complaint:

WHEREFORE, premises considered, for failure of the plaintiff to state a cause of action against defendants, EVELYN CASTAÑEDA YANAGISAWA and Pacific Ace Finance Ltd. (PAFIN), this case is **DISMISSED**.

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16 PAFIN's Answer, p. 5; Records, Vol. 1, p. 141; Direct examination of Marietta Delos Santos, TSN dated December 1, 2000, pp. 25-27; Records, Vol. 1, pp. 966-968.

17 PAFIN'S Answer, p. 6; Records, Vol. 1, p. 142.

18 Answer of Evelyn Castaneda, p. 5; Records, Vol. 1, p. 204.

19 Direct examination of Evelyn Castaneda, TSN dated September 5, 2001, pp. 13, 17-19.

20 Answer of Evelyn Castaneda, p. 3; Records, Vol. 1, p. 202.

21 Records, Vol. 3, pp. 726-732; penned by Judge Raul E. De Leon.

22 RTC Decision, p. 5; Records, Vol. 3, p. 730.

23 *Id.* at 7; *id.* at 732.

The counterclaim and cross-claim are likewise **DISMISSED**.

SO ORDERED.[24]

Eiji appealed the trial court's decision arguing that the trial court erred in holding that his inability to own real estate property in the Philippines deprives him of all interest in the mortgaged property, which was bought with his money. He added that the Makati RTC has even recognized his contribution in the purchase of the property by its declaration that he is entitled to half of the proceeds that would be obtained from its sale.

Eiji also emphasized that Evelyn had made a commitment to him and to the Makati RTC that she would not dispose of, alienate, or encumber the properties registered in her name while the case was pending. This commitment incapacitates Evelyn from entering into the REM contract.

Court of Appeals Decision[25]

The CA found merit in Eiji's appeal.

The CA noted that the Makati RTC ruled on Eiji's and Evelyn's ownership rights over the properties that were acquired during their marriage, including the Parañaque townhouse unit. It was determined therein that the registered properties should be sold at public auction and the proceeds thereof to be divided between Eiji and Evelyn.[26]

Contrary to this ruling, the Parañaque RTC ruled that Eiji has no ownership rights over the Parañaque townhouse unit in light of the constitutional prohibition on foreign ownership of lands and that the subject property is Evelyn's exclusive property.[27]

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[24] *Id.*; *id.*

[25] CA *rollo*, pp. 101-112; penned by Associate Justice Estela M. Perlas-Bernabe (now a Member of this Court) and concurred in by Associate Justices Andres B. Reyes, Jr. and Hakim S. Abdulwahid.

[26] CA Decision, p. 6; CA *rollo*, p. 106.

[27] *Id.*; *id.*

The appellate court determined that the Parañaque RTC's Decision was improper because it violated the doctrine of non-interference. Courts of equal jurisdiction, such as regional trial courts, have no appellate jurisdiction over each other.[28] For this reason, the CA annulled and set aside the Parañaque RTC's decision to dismiss Eiji's complaint.[29]

The CA then proceeded to resolve Eiji's complaint.[30] The CA noted that Eiji anchored his complaint upon Evelyn's violation of her commitment to the Makati RTC and to Eiji that she would not dispose of, alienate, or encumber the properties registered in her name, including the Parañaque townhouse unit. This commitment created a right in favor of Eiji to rely thereon and a correlative obligation on Evelyn's part not to encumber the Parañaque townhouse unit. Since Evelyn's commitment was annotated on TCT No. 99791, all those who deal with the said property are charged with notice of the burdens on the property and its registered owner.[31]

On the basis of Evelyn's commitment and its annotation on TCT No. 99791, the CA determined that Eiji has a cause of action to annul the REM contract. Evelyn was aware of her legal impediment to encumber and dispose of the Parañaque townhouse unit. Meanwhile, PAFIN displayed a wanton disregard of ordinary prudence when it admitted not conducting any verification of the title whatsoever. The CA determined that PAFIN was a mortgagee in bad faith.[32]

Thus, the CA annulled the REM executed by Evelyn in favor of PAFIN.

The parties to the annulled mortgage filed separate motions for reconsideration on August 22, 2006,[33] which were both denied

[28] *Id.* at 8; *id.* at 108.

[29] *Id.* at 11; *id*. at 111.

[30] *Id.* at 8; *id*. at 108.

[31] *Id.* at 9; *id*. at 109.

[32] *Id.* at 10-11; *id*. at 110-111.

[33] CA *rollo*, pp. 116-122 and 123-125.

for lack of merit by the appellate court in its November 7, 2006 Resolution.[34]

PAFIN filed this petition for review.

Petitioner's Arguments

Petitioner seeks a reversal of the CA Decision, which allegedly affirmed the Makati RTC ruling that Eiji is a co-owner of the mortgaged property. PAFIN insists that the CA sustained a violation of the constitution with its declaration that an alien can have an interest in real property located in the Philippines.[35]

Petitioner also seeks the reinstatement of the Parañaque RTC's Decision dated April 20, 2003[36] and prays that this Court render a decision that Eiji cannot have ownership rights over the mortgaged property and that Evelyn enjoys exclusive ownership thereof. As the sole owner, Evelyn can validly mortgage the same to PAFIN without need of Eiji's consent. Corollarily, Eiji has no cause of action to seek the REM's annulment.[37]

Respondent's Arguments

Respondent argues that he has an interest to have the REM annulled on two grounds: First, Evelyn made a commitment in open court that she will not encumber the Parañaque townhouse unit during the pendency of the case. Second, the Makati RTC's decision declared that he is entitled to share in the proceeds of the Parañaque townhouse unit.[38]

Respondent also insists that petitioner is in bad faith for entering into the mortgage contract with Evelyn despite the annotation on TCT No. 99791 that Evelyn committed herself not to

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[34] *Id.* at 131.

[35] Petitioner's Memorandum, p. 14; *rollo*, p. 101.

[36] *Id.* at 21; *id*. at 108.

[37] *Id.* at 14-16; *id*. at 101-103.

[38] Respondent's Memorandum, pp. 6-7; *id*. at 117-118.

encumber the same.[39]

Issues

Petitioner raises the following issues:[40]

1. Whether a real property in the Philippines can be part of the community property of a Filipina and her foreigner spouse;

2. Whether a real property registered solely in the name of the Filipina wife is paraphernal or conjugal;

3. Who is entitled to the real property mentioned above when the marriage is declared void?

4. Whether the Parañaque RTC can rule on the issue of ownership, even as the same issue was already ruled upon by the Makati RTC and is pending appeal in the CA.

Our Ruling

The petition has no merit.

Contrary to petitioner's stance, the CA did not make any disposition as to who between Eiji and Evelyn owns the Parañaque townhouse unit. It simply ruled that the Makati RTC had acquired jurisdiction over the said question and should not have been interfered with by the Parañaque RTC. The CA only clarified that it was improper for the Parañaque RTC to have reviewed the ruling of a co-equal court.

The Court agrees with the CA. The issue of ownership and liquidation of properties acquired during the cohabitation of Eiji and Evelyn has been submitted for the resolution of the Makati RTC, and is pending[41] appeal before the CA. The doctrine of judicial stability or non-interference dictates that the assumption

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[39] *Id.* at 7-8; *id*. at 118-119.

[40] Petitioner's Memorandum, p. 12; *id.* at 99.

[41] Respondent claimed in his Comment (*rollo*, p. 70) and Memorandum (*rollo*, p. 118) that the Decision of the Makati RTC was affirmed by the CA. He further maintained that the Decision of the CA had already attained finality (*rollo*, pp. 70 and 118). Notably, respondent did not attach a copy of the appellate court's decision or a certification to that effect to any of his pleadings. Thus, the Court cannot consider these bare factual assertions in its resolution of the instant case.

by the Makati RTC over the issue operates as an "insurmountable barrier" to the subsequent assumption by the Parañaque RTC.[42] By insisting on ruling on the same issue, the Parañaque RTC effectively interfered with the Makati RTC's resolution of the issue and created the possibility of conflicting decisions. *Cojuangco v. Villegas*[43] states: "The various branches of the [regional trial courts] of a province or city, having as they have the same or equal authority and exercising as they do concurrent and coordinate jurisdiction, should not, cannot and are not permitted to interfere with their respective cases, much less with their orders or judgments. A contrary rule would obviously lead to confusion and seriously hamper the administration of justice." The matter is further explained thus:

> It has been held that "even in cases of concurrent jurisdiction, it is, also, axiomatic that the court first acquiring jurisdiction excludes the other courts."
>
> In addition, it is a familiar principle that when a court of competent jurisdiction acquires jurisdiction over the subject matter of a case, its authority continues, subject only to the appellate authority, until the matter is finally and completely disposed of, and that no court of co-ordinate authority is at liberty to interfere with its action. This doctrine is applicable to civil cases, to criminal prosecutions, and to courts-martial. The principle is essential to the proper and orderly administration of the laws; and while its observance might be required on the grounds of judicial comity and courtesy, it does not rest upon such considerations exclusively, but is enforced to prevent unseemly, expensive, and dangerous conflicts of jurisdiction and of the process.[44]

Petitioner maintains that it was imperative for the Parañaque RTC to rule on the ownership issue because it was essential for the determination of the validity of the REM.[45]

The Court disagrees. A review of the complaint shows that Eiji did not claim ownership of the Parañaque townhouse unit

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[42] *Panlilio v. Salonga*, G.R. No. 113087, June 27, 1994, 233 SCRA 476, 481-482.

[43] 263 Phil. 291, 297 (1990).

[44] *Lee v. Presiding Judge,* 229 Phil. 405, 414 (1986). Citations omitted.

[45] Petitioner's Memorandum, p.16; *rollo,* p. 103.

or his right to consent to the REM as his bases for seeking its annulment. Instead, Eiji invoked his right to rely on Evelyn's commitment not to dispose of or encumber the property (as confirmed in the October 2, 1996 Order of the Makati RTC), and the annotation of the said commitment on TCT No. 99791.

It was Evelyn and PAFIN that raised Eiji's incapacity to own real property as their defense to the suit. They maintained that Eiji, as an alien incapacitated to own real estate in the Philippines, need not consent to the REM contract for its validity. But this argument is beside the point and is not a proper defense to the right asserted by Eiji. This defense does not negate Eiji's right to rely on the October 2, 1996 Order of the Makati RTC and to hold third persons, who deal with the registered property, to the annotations entered on the title. Thus, the RTC erred in dismissing the complaint based on this defense.

Petitioner did not question the rest of the appellate court's ruling, which held that Evelyn and PAFIN executed the REM in complete disregard and violation of the October 2, 1996 Order of the Makati RTC and the annotation on TCT No. 99791. It did not dispute the legal effect of the October 2, 1996 Order on Evelyn's capacity to encumber the Parañaque townhouse unit nor the CA's finding that petitioner is a mortgagee in bad faith.

The October 2, 1996 Order, embodying Evelyn's commitment not to dispose of or encumber the property, is akin to an injunction order against the disposition or encumbrance of the property. Jurisprudence holds that all acts done in violation of a standing injunction order are voidable as to the party enjoined and third parties who are not in good faith.[46] The party, in whose favor the injunction is issued, has a cause of action to seek the annulment of the offending actions.[47] The following is instructive:

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[46] *Air Materiel Wing Savings and Loan Association, Inc. v. Manay,* G.R. No. 175338, October 9, 2007, 535 SCRA 356, 375-377; *Lee v. Court of Appeals,* 528 Phil. 1050, 1070 (2006).

[47] *Air Materiel Wing Savings and Loan Association, Inc. v. Manay,* G.R. No. 175338, October 9, 2007, 535 SCRA 356, 375-377.

An injunction or restraining order must be obeyed while it remains in full force and effect until the injunction or restraining order has been set aside, vacated, or modified by the court which granted it, or until the order or decree awarding it has been reversed on appeal. The injuction must be obeyed irrespective of the ultimate validity of the order, and no matter how unreasonable and unjust the injunction may be in its terms.[48]

In view of the foregoing discussion, we find no need to discuss the other issues raised by the petitioner.

WHEREFORE, premises considered, the Petition is **DENIED** for lack of merit. The August 1, 2006 Decision of the Court of Appeals in CA-G.R. CV No. 78944 is **AFFIRMED.**

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 175763. April 11, 2012]

HEIRS OF BIENVENIDO AND ARACELI TANYAG, namely: ARTURO TANYAG, AIDA T. JOCSON AND ZENAIDA T. VELOSO, *petitioners, vs.* **SALOME E. GABRIEL, NESTOR R. GABRIEL, LUZ GABRIEL-ARNEDO married to ARTURO ARNEDO, NORA GABRIEL-CALINGO married to FELIX CALINGO, PILAR M. MENDIOLA, MINERVA GABRIEL-NATIVIDAD married to EUSTAQUIO NATIVIDAD, and ERLINDA VELASQUEZ married to HERMINIO VELASQUEZ,** *respondents.*

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[48] *Id.* at 375.

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; TORRENS SYSTEM; THE REGISTERED OWNER MAY STILL BE COMPELLED TO CONVEY THE REGISTERED PROPERTY TO ITS TRUE OWNER, NOTWITHSTANDING THE INDEFEASIBILITY OF THE TORRENS TITLE; RATIONALE. — Registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. Thus, notwithstanding the indefeasibility of the Torrens title, the registered owner may still be compelled to reconvey the registered property to its true owners. The rationale for the rule is that reconveyance does not set aside or re-subject to review the findings of fact of the Bureau of Lands. In an action for reconveyance, the decree of registration is respected as incontrovertible. What is sought instead is the transfer of the property or its title which has been wrongfully or erroneously registered in another person's name, to its rightful or legal owner, or to the one with a better right.

2. REMEDIAL LAW; ACTIONS; ACTION FOR RECONVEYANCE; FOR AN ACTION FOR RECONVEYANCE BASED ON FRAUD TO PROSPER, THE PARTY SEEKING RECONVEYANCE MUST PROVE BY CLEAR AND CONVINCING EVIDENCE HIS TITLE TO THE PROPERTY AND THE FACT OF FRAUD. — An action for annulment of title or reconveyance based on fraud is imprescriptible where the plaintiff is in possession of the property subject of the acts. The totality of the evidence on record established that it was petitioners who are in actual possession of the subject property; respondents merely insinuated at occasional visits to the land. However, for an action for reconveyance based on fraud to prosper, this Court has held that the party seeking reconveyance must prove by clear and convincing evidence his title to the property and the fact of fraud.

3. ID.; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW SHALL BE RAISED THEREIN. — [The] character and length of possession of a party over a parcel of land subject of controversy is a factual

issue. Settled is the rule that questions of fact are not reviewable in petitions for review on *certiorari* under Rule 45 of the Rules of Court, as only questions of law shall be raised in such petitions. While this Court is not a trier of facts, if the inference drawn by the appellate court from the facts is manifestly mistaken, it may, in the interest of justice, review the evidence in order to arrive at the correct factual conclusions based on the record.

4. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; ACQUISITIVE PRESCRIPTION; ELEMENTS. — Acquisitive prescription is a mode of acquiring ownership by a possessor through the requisite lapse of time. In order to ripen into ownership, possession must be in the concept of an owner, public, peaceful and uninterrupted. Possession is open when it is patent, visible, apparent, notorious and not clandestine. It is continuous when uninterrupted, unbroken and not intermittent or occasional; exclusive when the adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit; and notorious when it is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood. The party who asserts ownership by adverse possession must prove the presence of the essential elements of acquisitive prescription.

5. ID.; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; OWNERSHIP; TAX RECEIPTS AND DECLARATIONS COUPLED WITH PROOF OF ACTUAL POSSESSION OF THE PROPERTY MAY BECOME THE BASIS OF A CLAIM OF OWNERSHIP. — It is settled that tax receipts and declarations are *prima facie* proofs of ownership or possession of the property for which such taxes have been paid. Coupled with proof of actual possession of the property, they may become the basis of a claim for ownership.

6. ID.; MODES OF ACQUIRING OWNERSHIP; ACQUISITIVE PRESCRIPTION; POSSESSION; CIVIL INTERRUPTION TAKES PLACE WITH THE SERVICE OF JUDICIAL SUMMONS TO THE POSSESSOR AND NOT BY FILING OF A MERE NOTICE OF ADVERSE CLAIM; CASE AT BAR. — In the case of *Heirs of Marcelina Azardon-Crisologo v. Rañon* this Court citing Article 1123 of the Civil Code held that civil interruption takes place with the service of judicial summons to the possessor and not by filing of a mere Notice of Adverse

Claim. x x x From 1969 until the filing of this complaint by the *petitioners* in March 2000, the latter have been in continuous, public and adverse possession of the subject land for **31** years. Having possessed the property for the period and in the character required by law as sufficient for extraordinary acquisitive prescription, petitioners have indeed acquired ownership over the subject property. Such right cannot be defeated by respondents' acts of declaring again the property for tax purposes in 1979 and obtaining a Torrens certificate of title in their name in 1998. This notwithstanding, we uphold petitioners' right as owner only with respect to Lot 1 consisting of 686 square meters.

7. ID.; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; OWNERSHIP; ACTION TO RECOVER OWNERSHIP OF REAL PROPERTY; REQUISITES.— Under Article 434 of the Civil Code, to successfully maintain an action to recover the ownership of a real property, the person who claims a better right to it must prove two (2) things: first, the identity of the land claimed; and second, his title thereto. In regard to the first requisite, in an *accion reinvindicatoria*, the person who claims that he has a better right to the property must first fix the identity of the land he is claiming by describing the location, area and boundaries thereof.

APPEARANCES OF COUNSEL

Rodrigo Berenguer and Guno for petitioners.

D E C I S I O N

VILLARAMA, JR., *J.*:

This is a petition for review under Rule 45 which seeks to reverse the Decision[1] dated August 18, 2006 and Resolution[2]

[1] *Rollo*, pp. 57-68. Penned by Associate Justice Myrna Dimaranan-Vidal with Associate Justices Eliezer R. De Los Santos and Fernanda Lampas Peralta concurring.

[2] *Id.* at 135. Penned by Associate Justice Myrna Dimaranan-Vidal with Associate Justices Juan Q. Enriquez, Jr. and Fernanda Lampas Peralta concurring.

dated December 8, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 81224. The CA affirmed the Decision[3] dated November 19, 2003 of the Regional Trial Court of Pasig City, Branch 267 in Civil Case No. 67846 dismissing petitioners' complaint for declaration of nullity of Original Certificate of Title (OCT) No. 1035, reconveyance and damages, as well as respondents' counterclaims for damages and attorney's fees.

Subject of controversy are two adjacent parcels of land located at Ruhale, Barangay Calzada, Municipality of Taguig (now part of Pasig City, Metro Manila). The first parcel ("Lot 1") with an area of 686 square meters was originally declared in the name of Jose Gabriel under Tax Declaration (TD) Nos. 1603 and 6425 issued for the years 1949 and 1966, while the second parcel ("Lot 2") consisting of 147 square meters was originally declared in the name of Agueda Dinguinbayan under TD Nos. 6418 and 9676 issued for the years 1966 and 1967.[4] For several years, these lands lined with bamboo plants remained undeveloped and uninhabited.

Petitioners claimed that Lot 1 was owned by Benita Gabriel, sister of Jose Gabriel, as part of her inheritance as declared by her in a 1944 notarized instrument ("Affidavit of Sale") whereby she sold the said property to spouses Gabriel Sulit and Cornelia Sanga. Said document states:

DAPAT MALAMAN NG LAHAT NG MAKABABASA

Na, akong Benita Gabriel, balo sa nasirang Calixto Lontoc, Filipina may karapatang gulang naninirahan sa nayon ng Palingon, Tagig, Rizal, x x x sa pamamaguitan nitoy

ISINASAYSAY KO AT PINAGTITIBAY

1.) *Na, sarili ko at tunay na pagaari ang isang lagay na lupang kawayanan na sapagkat itoy kabahagui ko sa aking kapatid na [J]ose Gabriel, na itoy mana ko sa aking nasirang ama Mateo Gabriel sa kami lamang dalawa ng aking kapatid na binabanguit ko na Jose Gabriel siyang mga anak at tagapagmana ng aming*

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[3] *Id.* at 69-78. Penned by Judge Florito S. Macalino.

[4] Records, pp. 204-205, 213-214.

amang nasirang Mateo Gabriel, maliban sa amin ay wala nang iba, kayat kami ay naghati sa mga ari-arian na na iwan sa amin ng nasirang ama namin na Mateo Gabriel, na ang lupang kawayanang itoy may nakatanim na walong (8) punong kawayan at na sa pook na kung pamagatan ay Ruhale nayon ng Calzada, Tagig, Rizal, at na sa loob ng mga kahanganan at sukat na sumusunod[:]

Na, ang kahangan sa Hilagaan Sapang Ruhale at Vicente Bunye, sa Amihanan Felipe Pagkalinawan, sa Timugan Juan Flores, at sa Habagatan Apolonio Ocol may sukat na 6 areas at 85 centiareas may halagan amillarada na ₱80.00) Pesos alinsunod sa Tax Blg. 20037, sa pangalan ng aking kapatid na Jose Gabriel. Na, ang lupang itoy hindi natatala sa bisa ng batas Blg. 496 ni sa susog gayon din sa Hipotecaria Española itoy may mga mojon bato ang mga panulok at walang bakod.

2.) *Na, alang-alang sa halagang SIYAMNAPO AT ANIM (₱96.00) na Pisong salaping guinagamit dito sa Filipinas na bago dumating ang mga sandaling itoy tinaggap ko at ibinayad sa akin ng boong kasiyahang loob ko ng magasawang GABRIEL SULIT AT CORNELIA SANGA, mga Filipinos may mga karapatang gulang mga naninirahan sa nayon ng Calzada, Tagig, Rizal, ngayon ay inilipat ko at ipinagbili ng bilihang tuluyan (Venta real soluta) ang isinasaysay kong lupang kawayanan sa itaas nito ng nasabi halagang SIYAMNAPO AT ANIM (₱96.00) na Piso at sa nabanguit na magasawang GABRIEL SULIT AT CORNELIA SANGA, gayon din sa lahat ng mga tagapagmana nila, ngayong mga arao na ito ay ang may hawak at namamahala ng lupang itoy ang mga nakabili sa akin na magasawang GABRIEL SULIT AT CORNELIA SANGA.*

3.) Na, ang kasulatang itoy ng bilihan ay nais na itala sa bisa ng batas Blg. 3344.

NA SA KATUNAYAN NG LAHAT NG ITOY ako ay lumagda sa kasulatang ito dito sa Tagig, Rizal, ngayong ika - 28 ng Junio 1944.

(Nilagdaan) BENITA GABRIEL[5]

Lot 1 allegedly came into the possession of Benita Gabriel's own daughter, Florencia Gabriel Sulit, when her father-in-law Gabriel Sulit gave it to her as part of inheritance of his son,

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[5] *Id.* at 9.

Eliseo Sulit who was Florencia's husband. Florencia Sulit sold the same lot to Bienvenido S. Tanyag, father of petitioners, as evidenced by a notarized deed of sale dated October 14, 1964.[6] Petitioners then took possession of the property, paid the real estate taxes due on the land and declared the same for tax purposes, as shown by TD No. 11445 issued in 1969 in the name of Bienvenido's wife, Araceli C. Tanyag; TD No. 11445 cancelled TD No. 6425 in the name of Jose Gabriel. TD Nos. 3380 and 00486 also in the name of Araceli Tanyag were issued in the years 1974 and 1979.[7]

As to Lot 2, petitioners averred that it was sold by Agueda Dinguinbayan to Araceli Tanyag under Deed of Sale executed on October 22, 1968. Thereupon, petitioners took possession of said property and declared the same for tax purposes as shown by TD Nos. 11361, 3395, 120-014-00482, 120-00-014-20-002-000, C-014-00180 and D-014-00182 issued for the years 1969, 1974, 1979, 1985, 1991 and 1994.[8] Petitioners claimed to have continuously, publicly, notoriously and adversely occupied both Lots 1 and 2 through their caretaker Juana Quinones[9]; they fenced the premises and introduced improvements on the land.[10]

Sometime in 1979, Jose Gabriel, father of respondents, secured TD No. 120-014-01013 in his name over Lot 1 indicating therein an increased area of 1,763 square meters. Said tax declaration supposedly cancelled TD No. 6425 over Lot 1 and contained the following inscription[11]:

> Note: Portions of this Property is Also Declared in the name of Araceli C. Tanyag under T.D.#120-014-00858 686 sq. m.

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6 *Id.* at 10-11.

7 *Id.* at 12-14.

8 *Id.* at 25-31.

9 Quintanes in some parts of the records.

10 Records, p. 4.

11 *Id.* at 212.

Also inscribed on TD No. 120-014-00858[12] (1979) in the name of Araceli Tanyag covering Lot 1 are the following:

> This property is also covered by T.D. #120-014-01013
> in the name of Jose P. Gabriel
> 1-8-80

which notation was carried into the 1985, 1990 and 1991 tax declarations, all in the name of Araceli Tanyag.

On March 20, 2000, petitioners instituted Civil Case No. 67846 alleging that respondents never occupied the whole 686 square meters of Lot 1 and fraudulently caused the inclusion of Lot 2 in TD No. 120-014-01013 such that Lot 1 consisting of 686 square meters originally declared in the name of Jose Gabriel was increased to 1,763 square meters. They contended that the issuance of OCT No. 1035 on October 28, 1998 over the subject land in the name of respondents heirs of Jose Gabriel was null and void from the beginning.[13]

On the other hand, respondents asserted that petitioners have no cause of action against them for they have not established their ownership over the subject property covered by a Torrens title in respondents' name. They further argued that OCT No. 1035 had become unassailable one year after its issuance and petitioners failed to establish that it was irregularly or unlawfully procured.[14]

Respondents' evidence showed that the subject land was among those properties included in the Extrajudicial Settlement of Estate of Jose P. Gabriel[15] executed on October 5, 1988, covered by TD No. B-014-00643 (1985) in the name of Jose Gabriel. Respondents declared the property in their name but the tax declarations (1989, 1991 and 1994) carried the notation that portions thereof (686 sq. ms.) are also declared in the

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[12] *Id.* at 15. Inscription was dated 1-8-80.

[13] *Id.* at 2-7.

[14] *Id.* at 39-42.

[15] *Id.* at 199-202.

name of Araceli Tanyag. On October 28, 1998, OCT No. 1035[16] was issued to respondents by the Register of Deeds of Pasig, Metro Manila under Decree No. N-219177 pursuant to the Decision dated September 20, 1996 of the Land Registration Court in LRC Case No. N-11260, covering Lot 1836 MCadm-590-D, Taguig Cadastral Mapping, Plan Ap-04-002253, with an area of 1,560 square meters.

On the other hand, respondents' TD Nos. D-014-00839 and D-014-01923 issued in 1993 and 1999 respectively, showed that respondents sold 468 square meters of Lot 1 to Jayson Sta. Barbara.[17] The segregation of said 468 square meters pertaining to Jayson Sta. Barbara was reflected in the approved survey plan of Lot 1836 prepared by respondents' surveyor on March 18, 2000.[18]

At the trial, petitioners presented their witness Arturo Tanyag, son of Bienvenido Tanyag and Araceli Tanyag who died on March 30, 1968 and October 30, 1993, respectively. He testified that according to Florencia Sulit, Benita Gabriel-Lontoc and her family were the ones in possession of Lot 1 since 1944; Benita Gabriel had executed an Affidavit of Sale declaring said property as her inheritance and conveying the same to spouses Gabriel and Cornelia Sulit. He affirmed that they had been in possession of Lot 1 from the time Bienvenido Tanyag bought the land from Florencia Sulit in 1964. Based on the boundaries indicated in the tax declaration, they fenced the property, installed Juana Quinones as their caretaker who also attended to the piggery, put up an artesian well and planted some trees. From 1964 up to 1978, nobody disturbed them in their possession or claimed ownership of the land; four years after acquiring Lot 1, they also purchased the adjacent property (Lot 2) to expand their piggery. Lot 2 was also separately declared for tax purposes after their mother purchased it from Agueda Dinguinbayan. He had personally witnessed the execution of the 1968 deed

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[16] *Id.* at 33.

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

[18] *Id.* at 203.

of sale including its notarization, and was also present during the physical turn over of Lot 2 by the seller. In fact, he was one of the instrumental witnesses to the deed of sale and identified his signature therein. He further described the place as inaccessible at that time as there were no roads yet and they had to traverse muddy tracks to reach their property.[19]

Arturo further testified that the first time they met Jose Gabriel was when the latter borrowed from their mother all the documents pertaining to their property. Jose Gabriel came looking for a piece of property which he claims as his but he had no documents to prove it and so they showed him their documents pertaining to the subject property; out of the goodness of her mother's heart, she lent those documents to her brother Jose Gabriel. During the cadastral survey conducted in 1976, they had both lots surveyed in preparation for their consolidation under one tax declaration. However, they did not succeed in registering the consolidated lots as they discovered that there was another tax declaration covering the same properties and these were applied for titling under the name of Jose Gabriel sometime in 1978 or 1980, which was after the time said Jose Gabriel borrowed the documents from their mother. No notice of the hearings for application of title filed by Jose Gabriel was received by them. They never abandoned the property and their caretaker never left the place except to report to the police when she was being harassed by the respondents. He also recalled that respondents had filed a complaint against them before the *barangay* but since no agreement was reached after several meetings, they filed the present case.[20]

The next witness for petitioners was Juana Quinones, their caretaker who testified that she had been staying on petitioners' property since 1964 or for 35 years already. She had built a nipa hut and artesian well, raised piggery and poultry and planted some root crops and vegetables on the land. At first there was only one parcel but later the petitioners bought an additional

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[19] TSN, December 7, 2000, pp. 10-12, 14-26.

[20] *Id.* at 17, 31-43.

lot; Arturo Tanyag gave her money which she used for the fencing of the property. During all the time she occupied the property there was nobody else claiming it and she also had not received any notice for petitioners concerning the property, nor the conduct of survey on the land. On cross-examination, she admitted that she was living alone and had no Voter's ID or any document evidencing that she had been a resident there since 1964. Although she was living alone, she asks for help from other persons in tending her piggery.[21]

Angelita Sulit-delos Santos, cousin of petitioners and also of respondents, testified that she came to know the subject property because according to her paternal grandfather Gabriel Sta. Ana Sulit, her maternal grandmother Benita Gabriel-Lontoc mortgaged the property to him. It was Benita Gabriel Lontoc who took care of her, her siblings and cousins; they lived with her until her death. She identified the signature of Benita Gabriel in the 1944 Affidavit of Sale in favor of Gabriel Sulit. Lot 1 consisting of 600 square meters was vacant property at that time but her family was in possession thereof when it was sold to Gabriel Sulit; it was her father Eliseo Sulit and uncle Hilario Sulit, who were incharge of their property. On cross-examination, she was asked details regarding the supposed mortgage of Lot 1 to Gabriel Sulit but she admitted she does not know anything as she was still very young then.[22]

Respondents' first witness was Roberto Gabriel Arnedo, son of Luz Gabriel-Arnedo. He testified that when he was about 5 or 6 years old (1953 or 1954), his grandfather Jose Gabriel used to bring him along to visit the subject property consisting of 1,763 square meters based on the tax declaration and OCT. They had picnics and celebrate his grandfather's birthday there. He recalled accompanying his grandfather in overseeing the planting of *gumamela* which served as the perimeter fence. Jose Gabriel had not mentioned anything about the claim of petitioners over the same land; Jose Gabriel handed the documents pertaining to the land to his eldest aunt and hence

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[21] TSN, February 13, 2001, pp. 5-15.

[22] TSN, April 26, 2001, pp. 3-21.

it now belongs to them.[23] On cross-examination, he claimed that during those years he had visited the land together with his grandfather, he did not see Florencia Sulit and her family.[24]

Virginia Villanueva, daughter of Salome Gabriel, testified that they acquired the subject property from their grandfather Jose Gabriel who had a tax declaration in his name. Her mother furnished them with documents such as tax declarations and the extrajudicial settlement of the estate of Jose Gabriel; they also have an approved survey plan prepared for Salome Gabriel. She does not know the petitioners in this case.[25] On cross-examination, she said that the subject property was inherited by Jose Gabriel from his father Mateo Gabriel; Jose Gabriel was the sole owner of the land while Benita Gabriel has separate properties in Palingon and Langkokak.[26] Though they are not actually occupying the property, they visit the place and she does not know anybody occupying it, except for the portion (486 square meters) which petitioners sold to Sta. Barbara. A nine-door apartment was built on the said portion without their permission. She had talked to both Sta. Barbara and with Arturo Tanyag they had meetings before the *barangay*; however, petitioners filed the present case in court. She insisted that there is nobody residing in the subject property; there is still the remaining 901 square meters which is owned by their mother. She admitted there were plants on the land but she does not know who actually planted them; it was her grandfather who built a wooden fence and *gumamela* in the 1960s. As to the hearings on the application for title, she had not attended the same; she does not know whether the petitioners were notified of the said hearings. She also caused the preparation of the survey plan for Salome Gabriel. On the increased area of the property indicated in the later tax declarations, she admitted the discrepancy but said there were *barangay* roads being built at the time.[27]

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[23] TSN, June 26, 2001, pp. 3-11.

[24] *Id.* at 15-19.

[25] TSN, July 17, 2001, pp. 4-13.

[26] TSN, August 30, 2001, pp. 3-9.

[27] TSN, October 16, 2001, pp. 5-42.

Esmeraldo Ramos, Municipal Assessor of Taguig, testified that he was formerly a Land Appraiser in the Office of the Municipal Assessor of Taguig and in the course of his duties had certified one of the tax declarations in the name of respondents (TD No. EL-014-10585). He identified and verified said document and the other tax declarations submitted in court by the respondents. He admitted that on January 10, 1980, they made the entry on TD No. 6425 in the name of Jose Gabriel that the same was cancelled by TD No. 120-014-01013 also in the name of Jose Gabriel who presented a supposed deed of sale in favor of Araceli Tanyag which caused the earlier cancellation of TD No. 6425 in his name. However, upon investigation they found out that the seller Florencia Sulit was not the owner because the declared owner was Jose Gabriel; even the deed of sale recognized that the property was declared in the name of Jose Gabriel. They also discovered from the cadastral survey and tax mapping of Taguig that the property is in the name of Jose Gabriel both in the Bureau of Lands and Municipal Assessor's Office. As far as he knows, it was Jose Gabriel who owned the subject property which he usually visited; he recalled that around the late 70's and 80's, he ordered the fencing of barbed wire and bamboo stalks on the land which is just 3 lots away from his own property. As to the discrepancy in the area of the property as originally declared by Jose Gabriel, he explained that the boundaries in the original tax declaration do not change but after the land is surveyed, the boundaries naturally would be different because the previous owner may have sold his property or the present owner inherits the property from his parents. He admitted that the tax declaration is just for tax purposes and not necessarily proof of ownership or possession of the property it covers.[28]

Respondents' last witness was Antonio Argel who testified that he had resided for 52 years on a land near the subject property and as far as he knows it was Jose Gabriel who owns it and planted thereon. On cross-examination, he admitted that

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[28] TSN, November 6, 2001, pp. 4-5, 8-27; TSN, November 22, 2001, pp. 4-5, 18-19.

Jose Gabriel was not in physical possession of the property. He just assumed that the present occupants of the property were allowed by Jose Gabriel to stay therein because he is the owner. There is an apartment and three small houses existing on the property, and about five families are living there. He confirmed that there is a piggery being maintained by a certain Juana who had been residing there maybe for fifteen years already.[29]

In rebuttal, petitioners presented two witnesses who are owners of properties adjoining that of the subject land. Rodante Domingo testified that it was only now did he learn that the property of Arturo Tanyag is already titled in the name of respondents. He was not aware of the titling proceeding because he never received any notice as adjoining owner. His own property is already titled in his name and he even asked Arturo Tanyag to act as a witness in his application for titling.[30] On the other hand, Dado Dollado testified that he acquired his property in 1979. He likewise affirmed that he did not receive any notice of the proceedings for application for titling filed by respondents and it was only now that he learned from Arturo Tanyag that the subject property was already titled in the names of respondents.[31]

The last rebuttal witness for petitioners was Dominador Dinguinbayan Ergueza, son of Agueda Dinguinbayan. He testified that the subject property was formerly owned by his mother and the present owner is Araceli Tanyag who bought the same from his mother in 1968. He described the boundaries of the property in relation to the adjoining owners at that time; presently, the left portion is already a street (Rujale St.) going towards the sea. He admitted that his wife, Livina Ergueza was an instrumental witness in the 1968 deed of sale in favor of Araceli Tanyag.[32]

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[29] TSN, January 31, 2002, pp. 2-14.

[30] TSN, April 4, 2002, pp. 9-15.

[31] *Id.* at 16-25.

[32] TSN, October 3, 2002, pp. 2-13.

In its decision, the trial court dismissed the complaint as well as the counterclaim, holding that petitioners failed to establish ownership of the subject property and finding the respondents to be the declared owners and legal possessors. It likewise ruled that petitioners were unable to prove by preponderance of evidence that respondents acquired title over the property through fraud and deceit.

Petitioners appealed to the CA which affirmed the trial court's ruling. The CA found that apart from the Affidavit executed by Benita Gabriel in 1944 claiming that she inherited Lot 1 from their father, Mateo Gabriel, there is no evidence that she, not Jose Gabriel, was the true owner thereof. It noted that just four years after Benita Gabriel's sale of the subject property to the Sulit spouses, Jose Gabriel declared the same under his name for tax purposes, paying the corresponding taxes. The appellate court stressed that petitioners' allegation of bad faith was not proven.

Petitioners' motion for reconsideration was likewise denied by the CA.Hence, this petition.

Petitioners assail the CA in not finding that the respondents obtained OCT No. 1035 in their names fraudulently and in bad faith. They also claim to have acquired ownership of the subject lots by virtue of acquisitive prescription.

The issues presented are: (1) whether respondents committed fraud and bad faith in registering the subject lots in their name; and (2) whether petitioners acquired the property through acquisitive prescription.

Registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein.[33] Thus, notwithstanding the indefeasibility of the Torrens title,

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[33] *Naval v. Court of Appeals*, G.R. No. 167412, February 22, 2006, 483 SCRA 102, 113, citing *Heirs of Clemente Ermac v. Heirs of Vicente Ermac*, 451 Phil. 368, 377 (2003).

the registered owner may still be compelled to reconvey the registered property to its true owners. The rationale for the rule is that reconveyance does not set aside or re-subject to review the findings of fact of the Bureau of Lands. In an action for reconveyance, the decree of registration is respected as incontrovertible. What is sought instead is the transfer of the property or its title which has been wrongfully or erroneously registered in another person's name, to its rightful or legal owner, or to the one with a better right.[34]

An action for annulment of title or reconveyance based on fraud is imprescriptible where the plaintiff is in possession of the property subject of the acts.[35] The totality of the evidence on record established that it was petitioners who are in actual possession of the subject property; respondents merely insinuated at occasional visits to the land. However, for an action for reconveyance based on fraud to prosper, this Court has held that the party seeking reconveyance must prove by clear and convincing evidence his title to the property and the fact of fraud.[36]

The CA correctly observed that the only evidence of Benita Gabriel's supposed title was the 1944 Affidavit of Sale whereby Benita Gabriel claimed sole ownership of Lot 1 as her inheritance from their father, Mateo Gabriel. The property until 1949 was still declared in the name Jose Gabriel despite the 1944 sale executed by Benita Gabriel in favor of spouses Gabriel and Cornelia Sulit. As to the alleged fraud perpetrated by Jose Gabriel and respondents in securing OCT No. 1035 in their name, this was clearly not proven as Arturo Tanyag testified merely that

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[34] *Id.*, citing *Heirs of Pomposa Saludares v. Court of Appeals*, G.R. No. 128254, January 16, 2004, 420 SCRA 51, 56.

[35] *Llemos v. Llemos*, G.R. No. 150162, January 26, 2007, 513 SCRA 128, 134, citing *Occeña v. Esponilla*, G.R. No. 156973, June 4, 2004, 431 SCRA 116, 126 and *Delfin v. Billones*, G.R. No. 146550, March 17, 2006, 485 SCRA 38, 47-48.

[36] *Antonio v. Santos*, G.R. No. 149238, November 22, 2007, 538 SCRA 1, 9, citing *Barrera v. Court of Appeals*, G.R. No. 123935, December 14, 2001, 372 SCRA 312, 316.

Jose Gabriel borrowed their documents pertaining to the property. No document or testimony was presented to show that Jose Gabriel employed deceit or committed fraudulent acts in the proceedings for titling of the property.

However, the CA did not address the issue of acquisitive prescription raised by the petitioners. In their Complaint before the lower court, petitioners alleged –

> 15. Defendants never occupied the whole area of the lot covered by Tax Declaration No. 1603 (686 sq. m.) neither were they able to set foot on the property covered by Tax Declaration No. 6542 *[sic]* for the reason that those lots had been in actual, open continuous, adverse and notorious possession of the plaintiffs against the whole world for more than thirty years which is equivalent to title.
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> x x x x x x x x x[37]

Such character and length of possession of a party over a parcel of land subject of controversy is a factual issue. Settled is the rule that questions of fact are not reviewable in petitions for review on *certiorari* under Rule 45 of the Rules of Court, as only questions of law shall be raised in such petitions. While this Court is not a trier of facts, if the inference drawn by the appellate court from the facts is manifestly mistaken, it may, in the interest of justice, review the evidence in order to arrive at the correct factual conclusions based on the record.[38]

In this case, the CA was mistaken in concluding that petitioners have not acquired any right over the subject property simply because they failed to establish Benita Gabriel's title over said property. The appellate court ignored petitioners' evidence of possession that complies with the legal requirements of acquiring ownership by prescription.

Acquisitive prescription is a mode of acquiring ownership by a possessor through the requisite lapse of time. In order to ripen into ownership, possession must be in the concept of an

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[37] Records, p. 5.

[38] *Heirs of Flores Restar v. Heirs of Dolores R. Cichon,* G.R. No. 161720, November 22, 2005, 475 SCRA 731, 739.

owner, public, peaceful and uninterrupted.[39] Possession is open when it is patent, visible, apparent, notorious and not clandestine.[40] It is continuous when uninterrupted, unbroken and not intermittent or occasional; exclusive when the adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit; and notorious when it is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood. The party who asserts ownership by adverse possession must prove the presence of the essential elements of acquisitive prescription.[41]

On the matter of prescription, the Civil Code provides:

> Art. 1117. Acquisitive prescription of dominion and other real rights may be ordinary or extraordinary.
>
> Ordinary acquisitive prescription requires possession of things in good faith and with just title for the time fixed by law.
>
> Art. 1134. Ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years.
>
> Art. 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for **thirty years, without need of title or of good faith.** (Emphasis supplied.)

Petitioners' adverse possession is reckoned from 1969 with the issuance of TD No. 1145 in the name of Araceli Tanyag, which tax declaration cancelled TD No. 6425 in the name of Jose Gabriel.[42] It is settled that tax receipts and declarations are *prima facie* proofs of ownership or possession of the property for which such taxes have been paid. Coupled with proof of

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[39] Art. 1118, Civil Code.

> Art. 1118. Possession has to be in the concept of an owner, public, peaceful and uninterrupted.

[40] *Heirs of Marcelina Azardon-Crisologo v. Rañon*, G.R. No. 171068, September 5, 2007, 532 SCRA 391, 404, citing *Director of Lands v. Intermediate Appellate Court*, G.R. No. 68946, May 22, 1992, 209 SCRA 214, 224.

[41] *Id.*

[42] See *Heirs of Flores Restar v. Heirs of Dolores Cichon*, *supra* note 38, at 741.

actual possession of the property, they may become the basis of a claim for ownership.[43] Petitioners' caretaker, Juana Quinones, has since lived in a nipa hut, planted vegetables and tended a piggery on the land. Aside from paying taxes due on the property, petitioners also exercised other acts of ownership such as selling the 468-square meter portion to Sta. Barbara who had constructed thereon a nine-door apartment building.

It was only in 1979 that respondents began to assert a claim over the property by securing a tax declaration in the name of Jose Gabriel albeit over a bigger area than that originally declared. In 1998, they finally obtained an original certificate of title covering the entire 1,763 square meters which included Lot 1. Did these acts of respondents effectively interrupt the possession of petitioners for purposes of prescription?

We answer in the negative.

In the case of *Heirs of Marcelina Azardon-Crisologo v. Rañon*[44] this Court citing Article 1123 of the Civil Code[45] held that civil interruption takes place with the service of judicial summons to the possessor and not by filing of a mere Notice of Adverse Claim. Thus:

> Article 1123 of the Civil Code is categorical. **Civil interruption is produced by judicial summons to the possessor.** Moreover, even with the presence of judicial summons, Article 1124 sets limitations as to when such summons shall not be deemed to have been issued and shall not give rise to interruption, to wit: 1) if it should be void for lack of legal solemnities; 2) if the plaintiff should desist from the complaint or should allow the proceedings to lapse; or 3) if the possessor should be absolved from the complaint.
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> Both Article 1123 and Article 1124 of the Civil Code underscore the judicial character of civil interruption. **For civil interruption to take place, the possessor must have received judicial summons.** None

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[43] *Cequeña v. Bolante,* G.R. No. 137944, April 6, 2000, 330 SCRA 216, 226-228.

[44] *Supra* note 40 at 406-407.

[45] Art. 1123. Civil interruption is produced by judicial summons to the possessor.

appears in the case at bar. The Notice of Adverse Claim which was filed by petitioners in 1977 is nothing more than a notice of claim which did not effectively interrupt respondents' possession. Such a notice could not have produced civil interruption. We agree in the conclusion of the RTC, which was affirmed by the Court of Appeals, that the execution of the Notice of Adverse Claim in 1977 did not toll or interrupt the running of the prescriptive period because there remains, as yet, a necessity for a judicial determination of its judicial validity. What existed was merely a notice. There was no compliance with Article 1123 of the Civil Code. What is striking is that **no action was, in fact, filed by petitioners against respondents. As a consequence, no judicial summons was received by respondents.** As aptly held by the Court of Appeals in its affirmance of the RTC's ruling, the Notice of Adverse Claim cannot take the place of judicial summons which produces the civil interruption provided for under the law. In the instant case, petitioners were not able to interrupt respondents' adverse possession since 1962. **The period of acquisitive prescription from 1962 continued to run in respondents' favor despite the Notice of Adverse Claim.** (Emphasis supplied.)

From 1969 until the filing of this complaint by the *petitioners* in March 2000, the latter have been in continuous, public and adverse possession of the subject land for **31** years. Having possessed the property for the period and in the character required by law as sufficient for extraordinary acquisitive prescription, petitioners have indeed acquired ownership over the subject property. Such right cannot be defeated by respondents' acts of declaring again the property for tax purposes in 1979 and obtaining a Torrens certificate of title in their name in 1998.

This notwithstanding, we uphold petitioners' right as owner only with respect to Lot 1 consisting of 686 square meters. Petitioners failed to substantiate their claim over Lot 2 by virtue of a deed of sale from the original declared owner, Agueda Dinguinbayan. Respondents asserted that the 147 square meters covered by the tax declarations of Dinguinbayan being claimed by petitioners is not the same lot included in OCT No. 1035.

Under Article 434 of the Civil Code, to successfully maintain an action to recover the ownership of a real property, the person who claims a better right to it must prove two (2) things: first, the identity of the land claimed; and second, his title thereto.

In regard to the first requisite, in an *accion reinvindicatoria*, the person who claims that he has a better right to the property must first fix the identity of the land he is claiming by describing the location, area and boundaries thereof.[46] In this case, petitioners failed to identify Lot 2 by providing evidence of the metes and bounds thereof, so that the same may be compared with the technical description contained in OCT No. 1035, which would have shown whether Lot 2 consisting of 147 square meters was erroneously included in respondents' title. The testimony of Agueda Dinguinbayan's son would not suffice because said witness merely stated the boundary owners as indicated in the 1966 and 1967 tax declarations of his mother. On his part, Arturo Tayag claimed that he had the lots surveyed in the 1970s in preparation for the consolidation of the two parcels. However, no such plan was presented in court.

WHEREFORE, the petition is **PARTLY GRANTED.** The Decision dated August 18, 2006 of the Court of Appeals in CA-G.R. CV No. 81224 is **MODIFIED** in that petitioners heirs of Bienvenido and Araceli Tanyag are hereby declared the owners of 686 square meters previously declared under Tax Declaration Nos. 11445, 120-014-00486, 120-014-0085, B-014-00501, E-014-01446, C-014-00893 and D-014-00839 all in the name of Araceli Tanyag, which lot is presently covered by OCT No. 1035 issued by the Register of Deeds of Pasig, Metro Manila in the name of respondents Salome Gabriel, Nestor R. Gabriel, Luz Gabriel-Arnedo, Nora Gabriel-Calingo, Pilar Gabriel-Mendiola, Minerva Gabriel-Natividad and Erlinda Gabriel-Velasquez. Respondents are ORDERED to RECONVEY the said 686-square meter portion to the petitioners.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Del Castillo, JJ.*, concur.

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[46] *Sampaco v. Lantud,* G.R. No. 163551, July 18, 2011, 654 SCRA 36, 50-51, citing *Spouses Hutchison v. Buscas,* 498 Phil. 257, 262 (2005).

FIRST DIVISION

[G.R. No. 177224. April 11, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JIMMY BIYALA VELASQUEZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL POSSESSION OF PROHIBITED OR REGULATED DRUGS; ELEMENTS. — Illegal possession of prohibited or regulated drugs is committed when the following elements concur: "(1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug."

2. REMEDIAL LAW; EVIDENCE; DENIAL; CONSIDERED AS A WEAK FORM OF DEFENSE, PARTICULARLY WHEN IT IS NOT SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE. — "[D]enial as a rule is a weak form of defense, particularly when it is not substantiated by clear and convincing evidence. The defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act."

3. ID.; ID.; CREDIBILITY OF WITNESSES; CREDENCE IS GIVEN TO THE PROSECUTION WITNESSES WHO ARE POLICE OFFICERS IN CASES INVOLVING VIOLATIONS OF THE DANGEROUS DRUGS ACT. — "[I]n cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary." In the absence of proof of any odious intent to falsely impute a serious crime, the self-serving defenses of denial and unsubstantiated claim of frame-up of an accused can never prevail over the positive testimonies of the prosecution witnesses.

4. ID.; ID.; ID.; NOT IMPAIRED BY INCONSISTENCIES IN THE TESTIMONIES OF WITNESSES REFERRING TO MINOR DETAILS, AND NOT IN ACTUALITY TOUCHING UPON THE

CENTRAL FACT OF THE CRIME; CASE AT BAR. — Accused-appellant has made much of what he perceived as inconsistencies in the testimonies of the prosecution witnesses, particularly, as to how the door of the house was opened and who actually witnessed the search conducted in the bedroom of the house. These alleged inconsistencies pertain to minor details and are so inconsequential that they do not in any way affect the credibility of the witnesses nor detract from the established fact of illegal possession of a brick of marijuana leaves, sachets of methamphetamine hydrochloride or *shabu*, and paraphernalia by accused-appellant, without authorization or prescription. We have previously held that "discrepancies and inconsistencies in the testimonies of witnesses referring to minor details, and not in actuality touching upon the central fact of the crime, do not impair their credibility. Testimonies of witnesses need only corroborate each other on important and relevant details concerning the principal occurrence." In fact, "such minor inconsistencies may even serve to strengthen the witnesses' credibility as they negate any suspicion that the testimonies have been rehearsed."

5. ID.; ID.; ID.; THE TRIAL COURT'S ASSESSMENT THEREON GENERALLY DESERVES GREAT WEIGHT, AND IS EVEN CONCLUSIVE AND BINDING. — In a prosecution for violation of the Dangerous Drugs Law, a case becomes "a contest of the credibility of witnesses and their testimonies. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals."

6. CRIMINAL LAW; ILLEGAL POSSESSION OF PROHIBITED OR REGULATED DRUGS; PENALTY IN CASE AT BAR. — [A]ccused-appellant was properly sentenced in Criminal Case No. 17945-R to suffer the penalty of *reclusion perpetua* for his conviction for illegal possession of a total of 826.4 grams of marijuana leaves; and in Criminal Case No. 17946-R to suffer the penalty of imprisonment of six (6) months of *arresto mayor*

to two (2) years and four (4) months of *prision correccional*, after applying the Indeterminate Sentence Law, for his conviction for illegal possession of a total of 4.12 grams of methamphetamine hydrochloride or *shabu*.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Molintas and Partners Law Office for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

On appeal before Us is the Decision[1] dated October 13, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01064 which affirmed the Decision[2] dated September 17, 2002 of the Regional Trial Court (RTC), Branch 61, of Baguio City, in Criminal Case Nos. 17945-R and 17946-R, finding accused-appellant Jimmy Biyala Velasquez guilty beyond reasonable doubt of violations of Section 8, Article II and Section 16, Article III of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended.

Accused-appellant was charged before the RTC under the following informations:

Criminal Case No. 17945-R

That on or about the 11th day of June 2000 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 have in his possession, custody, and control, one (1) brick of dried marijuana leaves having a weight of 826.4 grams wrapped with newspaper pages, knowing fully well that said leaves are marijuana leaves, a prohibited drug, in violation of the abovementioned provision of law.

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[1] *Rollo*, pp. 2-15; penned by Associate Justice Vicente Q. Roxas with Associate Justices Josefina Guevara-Salonga and Apolinario D. Bruselas, Jr., concurring.

[2] CA *rollo*, pp. 23-29; penned by Judge Antonio C. Reyes.

Criminal Case No. 17946-R

That on or about the 11th day of July 2000 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 have in his possession and control 4.12 grams of methamphetamine hydrochloride (*shabu*), contained in a heat sealed plastic bag, a regulated drug(s), without the corresponding license or prescription, in violation of the aforecited provision of law.[3]

When arraigned on September 26, 2000, accused-appellant pleaded not guilty to the charges against him.[4] After the pre-trial conference conducted on October 23, 2000, trial ensued.[5]

The following witnesses testified before the RTC for the prosecution: Forensic Analyst Emilia G. Montes,[6] the chemist who examined the dangerous drugs and related paraphernalia confiscated from accused-appellant; Senior Police Officer 1 (SPO1) Modesto Carrera (Carrera),[7] Police Officer 1 (PO1) Rolando Amangao (Amangao),[8] and SPO1 Warren Lacangan (Lacangan),[9] members of the 14th Regional Criminal Investigation and Detection Group (RCIDG) of the Philippine National Police (PNP) in Baguio City who searched accused-appellant's house and apprehended him for illegal possession of dangerous drugs and paraphernalia; and Barangay Kagawad Jaime Udani,[10] who witnessed the said search and seizure.

The collective testimonies of the prosecution witnesses painted the following version of events:

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[3] *Id.* at 23.

[4] *Id.* at 13.

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

[6] TSN, December 5, 2000.

[7] TSN, December 18, 2000 and January 8 and 9, 2001.

[8] TSN, February 28, 2001 and March 6, 2001.

[9] TSN, April 17 and 18, 2001. In the records, he is sometimes referred to as "PO1 Lacangan."

[10] TSN, March 14, 2001 and August 14, 2001.

On July 9, 2000, at about 9:00 in the morning, a certain Manuel De Vera reported to the office of the 14th Regional Criminal Investigation and Detection Group that accused-appellant Velasquez is engaged in selling *shabu* and marijuana dried leaves in his residence at No. 144 Paraan St., Victoria Village, Quezon Hill, Baguio City. De Vera allegedly came to know of the said activities of accused-appellant Velasquez when his co-driver, a certain Arnold, whom he claimed as a *shabu* user, told him about it.

On the same day, SPO1 Modesto Carrera instructed De Vera to buy *shabu* and gave him ₱600.00 to verify the truthfulness of the allegations against accused-appellant Velasquez. De Vera and Arnold were able to buy *shabu* and marijuana which they gave later to SPO1 Carrera.

Thereafter, SPO1 Carrera filed with the RTC of Baguio City, Branch 59, an application for the issuance of a search warrant against accused-appellant Velasquez, which was eventually granted.

On July 13, 2000, a team composed of P/Sr. Insp. Castil, PO1 Sawad, PO2 Cejas, PO1 Labiasto, SPO1 Carrera, SPO1 Lacangan and PO1 Amangao was formed to implement the search warrant. They sought the assistance of Barangay Kagawad Jaime Udani and Barangay Kagawad Lilian Somera of Barangay Victoria Village to witness the search. The police officers together with Udani and Somera proceeded to the residence of accused-appellant Velasquez, introduced themselves and presented the search warrant.

In the course of the search, PO1 Amangao and SPO1 Lacangan found in the bedroom of accused-appellant Velasquez a plastic bag containing a brick of dried leaves suspected to be marijuana, which was wrapped in an old newspaper. After informing accused-appellant Velasquez that they found illegal drugs inside his bedroom, SPO1 Lacangan arrested him and apprised him of his constitutional rights. When accused-appellant Velasquez was frisked, one transparent heat-sealed plastic sachet containing a white crystalline substance suspected to be *shabu* was found in his pocket. The search on accused-appellant Velasquez's residence also yielded 36 pieces of rolling papers, aluminum foil and tooter, among others.[11]

The prosecution likewise submitted object and documentary evidence to support its charges against accused-appellant, which

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[11] *Rollo*, pp. 5-6.

consisted of: (1) the Search and Seizure Warrant for dangerous drugs and paraphernalia at accused-appellant's house, issued on July 10, 2000, by Judge Abraham B. Borreta of RTC-Branch 59 of Baguio City;[12] (2) the Joint Affidavit of Search dated July 14, 2000 executed by SPO1 Carrera, [SPO1] Lacangan, and PO1 Amangao;[13] (3) the Receipt of Items Confiscated and a Certification dated July 13, 2000, executed by Baranggay Kagawads Lillian M. Somera and Jaime D. Udani, attesting to the orderly execution of the Search and Seizure Warrant;[14] (4) the Request for Laboratory Examination of the items confiscated, made by P/SINSP Rodolfo D. Castil, Jr. and dated July 13, 2000;[15] (5) one brick of marijuana fruiting tops with a weight of 826.4 grams and five plastic sachets of methamphetamine hydrochloride or *shabu* with a total weight of 4.12 grams; (6) four pieces of cut aluminum foils, one small vial, and three small used plastic sachets, all with *shabu* residues; (7) Initial Laboratory Examination Report[16] dated July 13, 2000 and Chemistry Report No. D-081-2000[17] dated July 14, 2000, issued by Forensic Analyst Montes, indicating that the brick and sachet contents tested positive for marijuana and *shabu*, respectively; and (8) Chemistry Report No. BCDT-266-2000 dated July 13, 2000 issued by Forensic Analyst Montes stating that accused-appellant's urine sample tested positive for *shabu*.[18]

Accused-appellant,[19] for his part, presented his lone testimony and submitted the defenses of denial and frame-up. Accused-appellant narrated that:

In the morning of June 11, 2000, accused-appellant Velasquez was in his house at 143 Quezon Hill when his fellow drivers, Rolando

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12 Records, pp. 22-23; Exhibit A.

13 *Id.* at 5-6; Exhibit M.

14 *Id.* at 24-25; Exhibits B and C.

15 *Id.* at 26; Exhibit D.

16 *Id.* at 27; Exhibits K and L.

17 *Id.* at 17-18.

18 *Id.* at 46; Exhibit N.

19 TSN, June 17, 2002.

and Nelson, went to see him to redeem a cell phone the latter had pawned to accused-appellant Velasquez. Then, someone repeatedly knocked at his door and when accused-appellant Velasquez asked who it was, no one answered. Suddenly, said persons who refused to identify themselves barged into the house of accused-appellant Velasquez by kicking the door open and once inside, they drew their firearms and pointed the same to the accused. The intruders turned out to be Police Officers Carrera, Lacangan, and Amangao, who were there to serve a search warrant on accused-appellant Velasquez.

Accused-appellant Velasquez was bodily searched but nothing was found on him. Nevertheless, the police operatives continued their operations inside the bedroom of accused-appellant Velasquez. When SPO1 Lacangan was inside the bedroom, he summoned accused-appellant Velasquez and presented to him something wrapped in a bag. They proceeded to the living room and accused-appellant Velasquez was shown what was found inside his room, a kilo of marijuana. SPO1 Lacangan was allegedly holding the marijuana when he entered the room of accused-appellant Velasquez.

Accused-appellant Velasquez claimed that when the conduct of the search started, *barangay* officials Udani and Somera were not yet present. They appeared only later, about 5 minutes after the search had started.[20]

Accused-appellant offered no other object or documentary evidence except for Forensic Analyst Montes's Chemistry Report No. BCDT-266-2000 dated July 13, 2000, which was previously submitted by the prosecution[21] and which accused-appellant requested to be also marked as his evidence.

The RTC rendered a Decision[22] on September 17, 2002. The RTC noted at the outset the variance in the dates stated in the informations in Criminal Case Nos. 17945-R and 17946-R. The information in Criminal Case No. 17945-R alleged that the incident happened "on or about the 11th day of **June** 2000," while the information in Criminal Case No. 17946-R alleged

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[20] *Rollo*, p. 6.

[21] TSN, January 8, 2001, p. 17.

[22] Records, pp. 169-175.

that the incident occurred "on or about the 11th day of **July** 2000." The RTC declared that the discrepancy was merely typographical as the records and the testimonies of the witnesses established that the incident occurred on or about July 11, 2000, or more precisely, on July 13, 2000 when the Search and Seizure Warrant was actually served and implemented. The RTC further ruled that after weighing the evidence presented by the parties, accused-appellant was guilty beyond reasonable doubt of the crimes charged, thus:

> WHEREFORE, judgment is rendered finding the accused Jimmy Velasquez y Biyala GUILTY beyond reasonable doubt in both cases. In Criminal Case No. 17945-R, the accused is sentenced to *Reclusion Perpetua* and to pay a fine of ₱500,000.00; in Criminal Case No. 17946-R, the accused is sentenced to a prison term of six (6) months of *arresto mayor* to two (2) years, four (4) months of *prision correccional*, and to pay the costs.[23]

Accused-appellant assailed the foregoing RTC judgment directly before us. However, pursuant to our pronouncement in *People v. Mateo*,[24] we referred accused-appellant's appeal to the Court of Appeals for appropriate action and disposition.[25]

In its Decision dated October 13, 2006, the Court of Appeals sustained the accused-appellant's convictions. The appellate court decreed thus:

> WHEREFORE, premises considered, the September 17, 2002 Decision of the Regional Trial Court of Baguio City, Branch 61, in Criminal Case Nos. 17945-R and 17946-R, is hereby AFFIRMED.
>
> Pursuant to Section 13 (c), Rule 124 of the 2000 Rules of Criminal Procedure as amended by A.M. No. 00-5-03-SC dated September 28, 2004, which became effective on October 15, 2004, this judgment of the Court of Appeals may be appealed to the Supreme Court by notice of appeal, filed with the Clerk of Court of the Court of Appeals.[26]

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[23] CA *rollo*, p. 29.

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

[25] CA *rollo*, p. 103.

[26] *Rollo*, p. 14.

Hence, the instant appeal.

Accused-appellant asserts in his appeal that:

1) There are irregularities in the performance of the duties of the officers;[27]

2) There are numerous discrepancies in testimonies of the [prosecution] witnesses;[28] and

3) The court *a quo* erred in finding accused guilty beyond reasonable doubt.[29]

Plaintiff-appellee counters that:

I

The search was conducted by the police officers in the presence of appellant and his wife as well as the two *barangay* kagawad.

II

Appellant waived whatever objection he had to the implementation of the search warrant.

III

The court *a quo* correctly convicted appellant for violation of the dangerous drugs act, as amended.[30]

The appeal is devoid of merit.

Illegal possession of prohibited or regulated drugs is committed when the following elements concur: "(1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug."[31]

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[27] CA *rollo*, p. 79.

[28] *Id.* at 83.

[29] *Id.* at 84.

[30] *Id.* at 119-120.

[31] *People v. Lagata*, 452 Phil. 846, 853 (2003).

All these elements were established beyond reasonable doubt in the cases against accused-appellant. The prosecution witnesses consistently and categorically testified that pursuant to a search warrant duly issued by a judge, they found and seized from accused-appellant's house and actual possession a brick of marijuana leaves and heat-sealed sachets of methamphetamine hydrochloride or *shabu*.

SPO1 Carrera related before the RTC how they secured a Search and Seizure Warrant for accused-appellant's house, how the Search and Seizure Warrant was implemented, who inventoried the dangerous drugs and paraphernalia confiscated from accused-appellant, and to whom said confiscated items were submitted for forensic examination.

Corroborating SPO1 Carrera's testimony was Kagawad Udani who personally witnessed the execution of the Search and Seizure Warrant at accused-appellant's house. Kagawad Udani recounted:

Q Was the door of the house open when Mody Carrera knocked at the door?
A No, sir, the door was forced open because there were three (3) persons inside the house and they do not like to open the door, sir.

x x x x x x x x x

Q And how was the door forced open?
A Mody Carrera kicked the door, sir.

Q And the door was opened?
A Yes, sir.

Q After the door was opened, what happen next?
A They frisked the 3 male persons inside the house, sir.

Q Who searched or frisked the 3 male persons inside the house?
A Mody Carrera and his companions, sir.

x x x x x x x x x

Q Was there anything found from the possession of the 3 male persons when they were frisked or bodily searched by Officer Carrera and his companions?

A Yes, sir they were able to find pieces of *shabu* a white substance in cellophane sachet with money, sir.

Q Where did Officer Carrera and his companions find the pieces of *shabu* and money?
A From the pocket, sir.

Q Whose pocket in particular?
A Pocket of Jimmy Velasquez, sir.[32]

Q After you saw the CIDG Officer found the two (2) plastic sachets from the front left pocket of the pants, what happened next?
A They went to search the room, sir.

Q And what happened during the search of the room?
A We saw the 1 brick of suspected dried marijuana leaves at the back of the door, sir.

Q You said we saw the brick of the marijuana leaves at the back of the door of Jimmy Velasquez?
A All of us, sir.

Q Including accused Jimmy Velasquez?
A Yes, he was also there, sir.

x x x x x x x x x

Q After that what happened next?
A There was another search and we were able to recover 36 white rolling paper, sir.

Q What else?
A 1 tooter under the bed, sir.

x x x x x x x x x

Q Aside from that what else?
A We found at the sala beside the dining table hang a 4 plastic bag containing white crystalline substance, sir.

Q Aside from that what else was found?
A 1 lighter at the center table, sir.

Q Aside from that what else if any?
A 3 small used plastic sachet, sir.[33]

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[32] TSN, March 14, 2001, pp. 7-9.

[33] TSN, August 14, 2001, pp. 3-4.

PO1 Amangao and SPO1 Lacangan further confirmed the testimonies of SPO1 Carrera and Kagawad Udani. They also identified the brick of marijuana leaves found in the bedroom of accused-appellant's house.

In contrast, accused-appellant only proffered the defenses of denial and frame-up, that the dangerous drugs and paraphernalia were planted by the police officers. However, other than accused-appellant's bare allegations, there is no other evidence on record to corroborate his version of the events that transpired at his house on July 13, 2000. "[D]enial as a rule is a weak form of defense, particularly when it is not substantiated by clear and convincing evidence. The defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act."[34]

Moreover, "in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary."[35] In the absence of proof of any odious intent to falsely impute a serious crime, the self-serving defenses of denial and unsubstantiated claim of frame-up of an accused can never prevail over the positive testimonies of the prosecution witnesses.[36]

Accused-appellant has made much of what he perceived as inconsistencies in the testimonies of the prosecution witnesses, particularly, as to how the door of the house was opened and who actually witnessed the search conducted in the bedroom of the house. These alleged inconsistencies pertain to minor

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[34] *People v. Johnson*, 401 Phil. 734, 750 (2000).

[35] *People v. Bongalon*, 425 Phil. 96, 114 (2002).

[36] *People v. Ambrosio*, 471 Phil. 241, 267 (2004).

details and are so inconsequential that they do not in any way affect the credibility of the witnesses nor detract from the established fact of illegal possession of a brick of marijuana leaves, sachets of methamphetamine hydrochloride or *shabu*, and paraphernalia by accused-appellant, without authorization or prescription. We have previously held that "discrepancies and inconsistencies in the testimonies of witnesses referring to minor details, and not in actuality touching upon the central fact of the crime, do not impair their credibility. Testimonies of witnesses need only corroborate each other on important and relevant details concerning the principal occurrence." In fact, "such minor inconsistencies may even serve to strengthen the witnesses' credibility as they negate any suspicion that the testimonies have been rehearsed."[37]

In a prosecution for violation of the Dangerous Drugs Law, a case becomes "a contest of the credibility of witnesses and their testimonies. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals."[38]

We find no cogent reason herein to differ from the findings and conclusion of the RTC, as affirmed by the Court of Appeals.

Sections 8 and 16, in relation to Section 20, of Republic Act No. 6425, as amended, provides:

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[37] *People v. Tuan*, G.R. No. 176066, August 11, 2010, 628 SCRA 226, 242.

[38] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 444.

SEC. 8. *Possession or Use of Prohibited Drugs*. — The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall possess or use any prohibited drug subject to the provisions of Section 20 hereof.

x x x x x x x x x

SEC. 16. *Possession or Use of Regulated Drugs*. — The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of Section 20 hereof.

x x x x x x x x x

Sec. 20. *Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime*. — The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

1. 40 grams or more of opium;

2. 40 grams or more of morphine;

3. 200 grams or more of *shabu* or methylamphetamine hydrochloride;

4. 40 grams or more of heroin;

5. 750 grams or more of Indian hemp or marijuana;

6. 50 grams or more of marijuana resin or marijuana resin oil;

7. 40 grams or more of cocaine or cocaine hydrocholoride; or

8. In the case of other dangerous drugs, the quantity of which is far beyond therapeutic requirements, as determined and promulgated by the Dangerous Drugs Board, after public consultations/hearings conducted for the purpose.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from *prision correccional* to *reclusion perpetua* depending upon the quantity.

Pursuant to the above-quoted provisions of the law, accused-appellant was properly sentenced in Criminal Case No. 17945-R to suffer the penalty of *reclusion perpetua* for his conviction for illegal possession of a total of 826.4 grams of marijuana leaves, and in Criminal, Case No. 17946-R to suffer the penalty of imprisonment of six (6) months of *arresto mayor* to two (2) years and four (4) months of *prision correccional*, after applying the Indeterminate Sentence Law, for his conviction for illegal possession of a total of 4.12 grams of methamphetamine hydrochloride or *shabu*. Similarly in order was the penalty imposed upon accused-appellant to pay the fine of five hundred thousand pesos (₱500,000.00).

WHEREFORE, the Decision dated October 13, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01064, which affirmed the Decision dated September 17, 2002, of the RTC, Branch 61, of Baguio City in Criminal case NOs. 17945-R and 17946-R is hereby **AFFIRMED**.

SO ORDERD.

Corona, C.J. (Chairperson), Bersamin, Del Castillo, and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 179936. April 11, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAMAD ABEDIN *Y* JANDAL,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS; ELEMENTS. — For the successful prosecution of offenses involving the illegal sale of drugs under Section 5,

Article II of R.A. No. 9165, the following elements must be proven: (1) the identity of the buyer and seller, object and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of the *corpus delicti*.

2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. — [I]n a prosecution for illegal possession of dangerous drugs, it must be shown that (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE FACTUAL FINDINGS OF TRIAL COURTS ARE GENERALLY ACCORDED GREAT WEIGHT. — Trial courts have the distinct advantage of observing the demeanor and conduct of witnesses during trial. Hence, their factual findings are accorded great weight, absent any showing as in this case, that certain facts of relevance and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied. More, the Court takes note that the RTC, as upheld by the CA, found that the testimonies of prosecution witnesses were unequivocal, definite and straightforward. We note moreover that the testimony of PO2 Joseph Bayot corroborated that of PO1 Bibit. Their testimonies were consistent in material respects with each other and with physical evidence.

4. ID.; ID.; ID.; CREDENCE IS GIVEN TO THE PROSECUTION WITNESSES WHO ARE POLICE OFFICERS IN CASES INVOLVING VIOLATIONS OF THE COMPREHENSIVE DANGEROUS DRUGS ACT; CASE AT BAR. — In cases involving violations of the Comprehensive Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. In this case, no such evidence was adduced showing any irregularity in any material aspect of the conduct of the buy-bust operation. Abedin failed to present clear and convincing evidence to overturn the presumption that the arresting officers regularly performed their duties. Except for his bare allegations,

there is no proof to show that he was framed-up for extortion purposes. Absent any showing that in testifying, the police officers were impelled by any ill feeling or improper motive against him, we find that the RTC and the CA committed no error in giving credence to their account over Abedin's denial.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); NONCOMPLIANCE WITH SECTION 21 THEREOF WILL NOT RENDER THE ARREST OF AN ACCUSED ILLEGAL OR THE ITEMS SEIZED FROM HIM INADMISSIBLE. — The failure of the law enforcers to comply strictly with Section 21 was not fatal. Noncompliance with Section 21 will not render the arrest of an accused illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.

6. ID.; ID.; A BUY-BUST OPERATION IS NOT INVALIDATED BY MERE NON-COORDINATION WITH THE PHILIPPINE DRUG ENFORCEMENT AGENCY. — [C]oordination with the PDEA is not an indispensable requirement before police authorities may carry out a buy-bust operation. While it is true that Section 86 of R.A. No. 9165 requires the National Bureau of Investigation, PNP and the Bureau of Customs to maintain "close coordination with the PDEA on all drug-related matters," the provision does not, by so saying, make PDEA's participation a condition *sine qua non* for every buy-bust operation. After all, a buy-bust is just a form of an *in flagrante* arrest sanctioned by Section 5, Rule 113 of the Rules of the Court which police authorities may rightfully resort to in apprehending violators of R.A. No. 9165 in support of the PDEA. A buy-bust operation is not invalidated by mere non-coordination with the PDEA.

7. ID.; ID.; PRIOR SURVEILLANCE IS NOT REQUIRED FOR A VALID BUY-BUST OPERATION. — [P]rior surveillance is not a prerequisite for the validity of an entrapment operation. This issue in the prosecution of illegal drugs cases, again, has long been settled by this Court. We have been consistent in our ruling that prior surveillance is not required for a valid buy-bust operation, especially if the buy-bust team is accompanied to the target area by their informant.

8. ID.; ID.; ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; PENALTY IN CASE AT BAR. — [T]he CA correctly imposed the penalty for illegal sale and illegal possession of dangerous drugs. Under Section 5, Article II of R.A. No. 9165, the unauthorized sale of *shabu*, regardless of its quantity and purity, carries with it the penalty of life imprisonment to death and a fine ranging from five hundred thousand pesos (₱500,000) to ten million pesos (₱10,000,000). Pursuant, however, to the enactment of R.A. No. 9346, only life imprisonment and fine shall be imposed. Meanwhile, Section 11, paragraph 2(3), Article II of R.A. No. 9165 provides for imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from three hundred thousand pesos (₱300,000) to four hundred thousand pesos (₱400,000), if the quantities of dangerous drugs are less than five grams of methamphetamine hydrochloride.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VILLARAMA, JR., *J.*:

Appellant Jamad Abedin *y* Jandal appeals the July 6, 2007 Decision[1] of the Court of Appeals in CA-G.R. CR HC No. 02244 which affirmed the Decision[2] of the Regional Trial Court, Branch 154, of Pasig City convicting him of violating Sections 5 and 11, Article II of the Comprehensive Dangerous Drugs Act of 2002.[3]

[1] CA *rollo*, pp. 95-112. Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso, concurring.

[2] Records, pp. 68-75. Penned by Judge Abraham B. Borreta.

[3] Republic Act No. 9165 entitled, "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING

Abedin was charged in Crim. Case Nos. 14108-D and 14109-D under the following Informations:

Crim. Case No. 14108-D for Violation of Section 5, Article II of R.A. 9165:

On or about May 10, 2005, in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being authorized by law to sell any dangerous drugs, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Anthony Bibit, a police poseur-buyer, one (1) pc. heat-sealed transparent plastic sachet containing seven (7) centigrams (0.07 grams) of white crystalline substance which was found positive to the test for methylamphetamine [hydrochloride], a dangerous drug, in violation of the said law.

CONTRARY TO LAW.[4]

Crim. Case No. 14109-D for Violation of Section 11, Article II of R.A. 9165:

On or about May 7, 2005, in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess or otherwise use any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control of one (1) pc. heat-sealed transparent plastic sachet containing seven (7) centigrams (0.07 grams) of white crystalline substance which was found positive to the test for methylamphetamine [hydrochloride], a dangerous drug, in violation of the said law.

CONTRARY TO LAW.[5]

Upon arraignment on June 1, 2005, Abedin pleaded not guilty to the charges against him.[6] Joint trial thereafter ensued.

The prosecution presented Police Officer 1 (PO1) Anthony A. Bibit and Police Officer 2 (PO2) Joseph Bayot as witnesses. Their testimonies established that on May 9, 2005 at around

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FUNDS THEREFOR, AND FOR OTHER PURPOSES." Approved on June 7, 2002.

[4] Records, p. 1.

[5] *Id.* at 13.

[6] *Id.* at 19.

8:30 in the evening, a confidential informant went to Parancillo Police Station to report that a certain Jam was selling illegal drugs at Nagpayong, Barangay Pinagbuhatan, Pasig City. On the basis thereof, Police Inspector (P/Insp.) Donald A. Sabio formed a team composed of PO1 Bibit, PO2 Bayot, PO1 Efren San Agustin, PO1 Clarence T. Nipales and PO2 Danilo R. Pacurib to conduct a buy-bust operation in the target location. PO1 Bibit was designated as poseur-buyer. He placed his initials "AB" on the left portion of two ₱100 bills[7] to be used as buy-bust money. The team likewise submitted a Pre-Operation Report[8] to the Philippine Drug Enforcement Agency (PDEA), which in turn, issued a Certificate of Coordination.[9] Afterwards, the team proceeded to the target area on board two tricycles. When they arrived at the place, however, Jam was nowhere to be found. So they decided to abort the operation.[10]

On the following day, May 10, 2005, at around 3:00 in the afternoon, the confidential informant returned to the police station to confirm that he had seen Jam. Immediately, P/Insp. Sabio directed the team to proceed with the operation. Upon reaching the target area, PO1 Bibit and the informant walked ahead towards Jam, who was standing near a store. The informant and Jam greeted each other. Jam said, "*Pare, may kasama ka?"* to which the informant replied, "*Pare, kustomer ito, kukuha sa yo*." Jam looked at PO1 Bibit and asked how much he wanted to buy. PO1 Bibit answered that he needed two hundred pesos worth of *shabu* as he handed the buy-bust money to Jam who placed it in his right pocket. Subsequently, Jam brought out a small plastic sachet from his left pocket and gave it to PO1 Bibit. Suspecting that the sachet contained *shabu*, PO1 Bibit gave the pre-arranged signal to the rest of the team. He then introduced himself as a police officer and grabbed Jam. When Jam was ordered to empty his pockets, he initially resisted but later took out another plastic sachet

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7 *Id.* at 46.

8 *Id.* at 47.

9 *Id.* at 9.

10 TSN, August 31, 2005, pp. 2-5; TSN, October 12, 2005, pp. 3-4.

from his left pocket. PO1 Bibit marked the sachets with "JJA AAB A1" and "JJA AAB A2." The buy-bust money was also recovered from Jam's right pocket. After that, the officers brought Jam to the headquarters. In open court, PO1 Bibit and PO2 Bayot identified the person they arrested as the accused Jamad Abedin.[11]

Pursuant to a request for laboratory examination, the two sachets recovered from Abedin were submitted to the PNP Eastern Police District Crime Laboratory for analysis.[12] In Physical Sciences Report No. D-282-05E, the crime laboratory identified the white crystalline substance as Methamphetamine Hydrochloride, a dangerous drug.[13] The forensic chemist's testimony, however, was no longer introduced as the same had been dispensed with at the pre-trial in view of the admission of the existence of the Physical Sciences Report as well as the findings contained therein.[14]

Faced with the above evidence for the prosecution, the defense presented the testimonies of Abedin and his wife, Adelaida. Abedin offered a different version of what transpired on the day of his arrest. He narrated that on May 9, 2005 at around 5:00 in the afternoon, he was at Block 2, Beer Garden Homes, Sta. Ana, Taytay, Rizal waiting for a tricycle to bring his daughter-in-law to the hospital as she was about to give birth. He was prevented from getting a tricycle when two men, who introduced themselves as policemen, approached and handcuffed him. When he inquired from them what his violation was, they told him not to ask anymore or else he might be hurt. At the Parancillo Police Station, he was able to identify the arresting officers as PO2 Bayot and PO2 Pacurib.[15]

Abedin protested that although PO1 Bibit was not the one who arrested him, he was the one who accused him of selling

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[11] *Id.* at 5-9; *id.* at 4-7.

[12] Records, p. 42.

[13] *Id.* at 45.

[14] *Id.* at 21.

[15] TSN, October 26, 2005, pp. 2-3.

illegal drugs. Abedin also alleged that PO1 Bibit demanded ₱15,000 in exchange for his freedom, but he said that he did not have that kind of money.[16]

To bolster his defense, Abedin's wife, Adelaida, testified that on May 9, 2005, she asked her husband to get a tricycle because their daughter-in-law was about to give birth. While Abedin was waiting for a tricycle, she saw him talking with two male persons wearing civilian clothes. One of them was carrying a gun, while the other was holding handcuffs. She approached them and asked why they handcuffed her husband, but she was just told to follow at Parancillo.[17]

At the police station, PO1 Bibit, whom she denied having seen during the arrest, told her that if she had ₱15,000 her husband would be released. When she said that they did not have that kind of money, PO1 Bibit threatened, "*tutuluyan ko yang asawa mo.*" She then complained to PO1 Bibit that he was not the one who arrested her husband, but the latter answered that it did not matter.[18]

On July 31, 2005, after the case had already been filed against her husband, she met PO1 Bibit at McDonald's in Parancillo. PO1 Bibit again demanded ₱15,000 so that he would not testify against Abedin, but all that Adelaida could reply was that she could not produce the required amount. On September 24, 2005, they met once more at the Capitol Compound where PO1 Bibit proposed to retract his testimony if she gives him ₱15,000. But Adelaida could only stress that they do not have said amount. To this, PO1 Bibit responded "*tutuluyan ko na talaga ang asawa mo.*" Adelaida averred that after that, she just cried and begged him for mercy.[19]

After evaluating all the documentary and testimonial evidence offered by the parties, the trial court rendered its decision finding

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[16] *Id.* at 4-5.

[17] TSN, January 25, 2006, pp. 2-4.

[18] *Id.* at 5-6.

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

Abedin guilty beyond reasonable doubt of the crimes charged. The trial court held,

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> In Crim. Case No. 14108-D, the accused **JAMAD ABEDIN *y* Jandal** is found **GUILTY** beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165 (selling of dangerous drugs) and he is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT.** He is also ordered to pay a fine of **ONE MILLION PESOS (₱1,000,000.00).**
>
> In Crim. Case No. 14109-D, the accused **JAMAD ABEDIN *y* Jandal** is found **GUILTY** beyond reasonable doubt of violation of Section 11, Article II of R.A. 9165 (possession of dangerous drugs) and he is hereby sentenced to suffer the penalty of imprisonment of **TWELVE (12) YEARS** and **ONE (1) DAY** to **THIRTEEN (13) YEARS** and **ONE (1) DAY** and to pay a fine of **THREE HUNDRED THOUSAND PESOS (₱300,000.00).**
>
> Considering the penalty imposed by the Court, the immediate commitment of the accused to the National Bilibid Prison is ordered.
>
> The illegal drugs subject of the information are hereby ordered to be delivered forthwith to the Philippine [Drug] Enforcement Agency (PDEA) for proper disposition.
>
> SO ORDERED.[20]

Abedin thereafter appealed to the CA. In his Brief, Abedin argued that there was failure on the part of the prosecution to establish beyond reasonable doubt the identity of the prohibited drug allegedly taken from him. He also claimed that the Pre-Operation Report would show that the coordination made with the PDEA was in relation to the May 9, 2005 operation. But when the operation was aborted, the PDEA was not apprised of such development. Lastly, he questioned the failure of the police operatives to conduct prior surveillance to determine the veracity of the tip.

On July 6, 2007, the CA promulgated the assailed decision, the dispositive portion of which reads as follows:

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[20] Records, p. 75.

WHEREFORE, the Decision of the Regional Trial Court of Pasig City, Branch 154 in Criminal Cases Nos. 14108-09-D, finding accused-appellant Jamad Abedin *y* Jandal, **GUILTY BEYOND REASONABLE DOUBT** of the crime of Sections 5 and 11, Article II of Republic Act No. 9165, is **AFFIRMED** with **MODIFICATION**, to wit:

(1) In Criminal Case No. 14108-D, appellant is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine of **FIVE HUNDRED THOUSAND PESOS (₱500,000.00).**

(2) In Criminal Case No. 14109-D, appellant is hereby sentenced to suffer the penalty of imprisonment of **TWELVE (12) YEARS** and **ONE (1) DAY** to **THIRTEEN (13) YEARS** and **ONE (1) DAY** and to pay a fine of **THREE HUNDRED THOUSAND PESOS (₱300,000.00).**

Costs *de oficio*.

SO ORDERED.[21]

In affirming the RTC Decision, the CA reasoned that the failure of the law enforcers to comply strictly with Section 21[22] of R.A. No. 9165 was not fatal as long as the integrity and the evidentiary value of the seized items are properly preserved. It ruled that the chain of custody was established from the crime scene up to the time when the seized items were brought to the crime laboratory for examination. Likewise,

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[21] CA *rollo*, p. 111.

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

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

x x x x x x x x x

the CA held that even without the PDEA's participation, the buy-bust operation did not violate Abedin's constitutional right to be protected from illegal arrest. Moreover, prior surveillance is not a prerequisite for the validity of an entrapment operation especially when the buy-bust team members were accompanied to the scene by the informant. The CA found the testimonies of the prosecution witnesses credible and ruled that there was no reason to disturb the factual findings of the trial court.

Undaunted, Abedin is now before this Court seeking to set aside the CA Decision.

In a Resolution[23] dated November 28, 2007, we notified the parties that they may file their respective supplemental briefs. The Office of the Solicitor General (OSG) filed a Manifestation and Motion[24] that it will no longer file a supplemental brief. Abedin likewise manifested that he is adopting his brief filed with the CA as his supplemental brief.[25] Hence, the case is now ripe for decision.

The issue presented in the present appeal is whether the prosecution was able to prove Abedin's guilt beyond reasonable doubt for violation of Sections 5 and 11, Article II of R.A. No. 9165.

For the successful prosecution of offenses involving the illegal sale of drugs under Section 5, Article II of R.A. No. 9165, the following elements must be proven: (1) the identity of the buyer and seller, object and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of the *corpus delicti*.[26]

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[23] *Rollo*, pp. 25-26.

[24] *Id.* at 27-28.

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

[26] *People v. Serrano*, G.R. No. 179038, May 6, 2010, 620 SCRA 327, 340.

On the other hand, in a prosecution for illegal possession of dangerous drugs, it must be shown that (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[27]

After a careful examination of the records of this case, we are satisfied that the prosecution's evidence established Abedin's guilt beyond reasonable doubt. The prosecution was able to prove the existence of all the essential elements of the illegal sale and illegal possession of *shabu*. We take note that Abedin was positively identified by the prosecution witnesses as the person who sold and possessed the *shabu*.

We give full faith and credit to the straightforward testimonies of the prosecution witnesses. PO1 Bibit testified as follows:

Fiscal Paz:

Q What happened after the informant told you that the person you saw at that time was *alias* Jam?

A The informant pointed to me *alias* Jam standing near a store.

Q How many persons were near the store at that time?

A He was just alone near the store but there were some people which is just a few meters away from him.

Q What did you do when the informant told you that he was *alias* Jam?

A The informant and me approached him, sir.

Q Who greeted first?

A The informant greeted Jam, sir.

Q What happened next?

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[27] *People v. Gutierrez*, G.R. No. 177777, December 4, 2009, 607 SCRA 377, 390-391, citing *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 846.

A They greeted each other and Jam told the informant, "*Pare may kasama ka*?"

Q To whom was this addressed?

A To the informant, sir.

Q What was the response of the informant?

A He said, "*Pare kustomer ito, kukuha sa yo*."

Q What was the response of Jam?

A He looked at me and asked me how much will I buy, sir.

Q And what did you tell him?

A I told him ₱200.00 pesos.

Q And what happened next?

A I got the ₱200.00 bills from my pocket and handed it to him.

Q That is the buy bust money?

A Yes, sir.

Q What was the reaction of Jam after you handed him the money?

A He placed the money on his right pocket and he brought something from his left pocket, sir.

Q What was that something he brought out?

A He brought out a small plastic sachet and handed it to me.

Q What happened after you were handed a plastic sachet?

A I examined it and when I confirmed that it was a suspected *shabu*, I gave the pre-arrange[d] signal, sir.

Q What happened next?

A When I saw my companions arriving, I grabbed the accused and introduced myself as police officer, sir.

Q What was the reaction of the accused?

A He was resisting, sir.

Q What did you do?

A I hugged him and my companions assisted me in arresting him, sir.

Q After arresting him, what happened?

A My companions held him and I ask[ed] him who he is[.]

Q What happened next?

A We ordered him to empty the contents of his pocket, sir.

Q What was his response?

A He brought out the contents of his pocket, sir.

Q What was the contents of his pocket?

A At first he resisted, sir, to empty the contents of his pockets and we ordered him to empty his pocket and then we saw from his left hand another small plastic sachet.

Q What did you do with the sachet? Mr. Witness, that was from his left pocket?

A Yes, sir.

Q How about the right pocket what was the contents of his right pocket?

A The buy bust money, sir.

COURT:

Q Where was the informant while this was happening?

A He left already, Your Honor.

Q At what point in time did the informant leave?

A After I introduced myself as police officer and arrested him.

Q How did the informant and the accused [greet] each other?

A I can not remember how they greeted each other but I can only remember how the informant introduce[d] me to *alias* Jam.

FISCAL:

Q You said that you also confiscated a plastic sachet from his left pocket, if that be shown to you, will you be able to identify it?

A Yes, sir.

Q How about the one that you were able to get from *alias* Jam, will you be able to identify it also?

A Yes, sir, because I put markings on it.

Q What was you markings?

A "JJA AAB A1" and "JJA AAB A2", sir.

Q I am handing to you two sachets, which one were you able to buy from alias Jam?

A This one, sir. (Witness pointing to a sachet with marking "JJA AAB A1").

Q How about the other sachet which you recovered from his left pocket?

A This one, sir. (Witness pointing to a sachet with markings "JJA AAB A2").

x x x x

Q If the person of the accused will be shown to you, will you be able to identify him?

A Yes, sir.

Q Will you please step down from the witness' stand and tap the shoulder of that person whose alias "Jam"?

A Yes, sir. (Witness stepping down from the witness stand and tapped the shoulder of a person when asked, answered by the name Jamad Abedin).[28]

PO1 Bibit testified that a buy-bust operation indeed took place. Being the poseur buyer, he positively identified Abedin as the person who sold him a sachet containing white crystalline substance for ₱200.00. He confiscated the sachet and marked it with the initials "JJA AAB A1." The buy-bust money was also recovered from Abedin. PO1 Bibit further testified that he recovered another sachet from Abedin which he marked as "JJA AAB A2." Chemical analysis of both specimens confirmed that the substance contained in both plastic sachets was *shabu*.

Trial courts have the distinct advantage of observing the demeanor and conduct of witnesses during trial. Hence, their factual findings are accorded great weight, absent any showing as in this case, that certain facts of relevance and substance

[28] TSN, August 31, 2005, pp. 6-8.

bearing on the elements of the crime have been overlooked, misapprehended or misapplied.[29] More, the Court takes note that the RTC, as upheld by the CA, found that the testimonies of prosecution witnesses were unequivocal, definite and straightforward. We note moreover that the testimony of PO2 Joseph Bayot corroborated that of PO1 Bibit. Their testimonies were consistent in material respects with each other and with physical evidence.

In cases involving violations of the Comprehensive Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[30] In this case, no such evidence was adduced showing any irregularity in any material aspect of the conduct of the buy-bust operation. Abedin failed to present clear and convincing evidence to overturn the presumption that the arresting officers regularly performed their duties. Except for his bare allegations, there is no proof to show that he was framed-up for extortion purposes. Absent any showing that in testifying, the police officers were impelled by any ill feeling or improper motive against him, we find that the RTC and the CA committed no error in giving credence to their account over Abedin's denial.

Now, Abedin argues that the arresting officers failed to comply strictly with Section 21 of R.A. No. 9165. Specifically, he asserts that the police officers failed to immediately conduct a physical inventory and photograph the illegal drugs in his presence. Therefore, Abedin insists that there was failure on the part of the prosecution to establish beyond reasonable doubt the identity of the prohibited drug allegedly taken from him.

We are not convinced.

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[29] *People v. Nicolas*, G.R. No. 170234, February 8, 2007, 515 SCRA 187, 204.

[30] *People v. Navarro*, G.R. No. 173790, October 11, 2007, 535 SCRA 644, 649, citing *People v. Saludes*, G.R. No. 144157, June 10, 2003, 403 SCRA 590, 595.

The failure of the law enforcers to comply strictly with Section 21 was not fatal. Noncompliance with Section 21 will not render the arrest of an accused illegal or the items seized or confiscated from him inadmissible.[31] What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[32]

In this case, the markings were done at the crime scene right after Abedin was arrested. PO1 Bibit immediately marked "JJA AAB A1" and "JJA AAB A2" on the seized items. P/Insp. Sabio signed a request for laboratory examination of the seized items, which were immediately delivered to the EPD Crime Laboratory. The request and the marked items seized were received by the EPD Crime Laboratory. Physical Sciences Report No. D-282-05E confirmed that the marked items seized from Abedin were *shabu* and the same were offered in evidence. As it is, the prosecution adequately established that there was an unbroken chain of custody over the *shabu* seized from Abedin. Evidently, the integrity and evidentiary value of the seized items have been preserved.

Next, Abedin contends that the prosecution did not coordinate the buy-bust operation with the PDEA, in violation of Section 86 of R.A. No. 9165. He argued that the Pre-Operation Report submitted to the PDEA pertained to the operation conducted on May 9, 2005, which was aborted when they could not locate Abedin. He stressed that there was no coordination made with the PDEA when the police officers conducted the operation which led to his arrest. Abedin likewise laments the fact that the police operatives failed to conduct prior surveillance to determine the veracity of the tip.

This Court, however, has already expounded on the nature and importance of a buy-bust operation and ruled that coordination

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[31] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 448; *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627, 636, citing *People v. Pringas*, *supra* note 27 at 842-843.

[32] *People v. Naquita*, *id*.

with the PDEA is not an indispensable requirement before police authorities may carry out a buy-bust operation. While it is true that Section 86 of R.A. No. 9165 requires the National Bureau of Investigation, PNP and the Bureau of Customs to maintain "close coordination with the PDEA on all drug-related matters," the provision does not, by so saying, make PDEA's participation a condition *sine qua non* for every buy-bust operation. After all, a buy-bust is just a form of an *in flagrante* arrest sanctioned by Section 5, Rule 113 of the Rules of the Court which police authorities may rightfully resort to in apprehending violators of R.A. No. 9165 in support of the PDEA. A buy-bust operation is not invalidated by mere non-coordination with the PDEA.[33]

Neither is the lack of prior surveillance fatal. It must be stressed that prior surveillance is not a prerequisite for the validity of an entrapment operation. This issue in the prosecution of illegal drugs cases, again, has long been settled by this Court. We have been consistent in our ruling that prior surveillance is not required for a valid buy-bust operation, especially if the buy-bust team is accompanied to the target area by their informant.[34]

In *People v. Eugenio*,[35] the Court held that there is no requirement that prior surveillance should be conducted before a buy-bust operation can be undertaken especially when the policemen are accompanied to the scene by their civilian informant. Prior surveillance is not a prerequisite for the validity of an entrapment or a buy-bust operation, there being no fixed or textbook method for conducting one. When time is of essence, the police may dispense with the need for prior surveillance. It is therefore clear that the buy-bust operation, albeit made without the participation of PDEA and conducted without prior surveillance, did not violate Abedin's constitutional right to be protected from illegal arrest.

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[33] *People v. Roa*, G.R. No. 186134, May 6, 2010, 620 SCRA 359, 368-370.

[34] *People v. Lacbanes*, 336 Phil. 933, 941 (1997).

[35] 443 Phil. 411, 422-423 (2003).

With respect to the penalty, the CA correctly imposed the penalty for illegal sale and illegal possession of dangerous drugs. Under Section 5, Article II of R.A. No. 9165, the unauthorized sale of *shabu*, regardless of its quantity and purity, carries with it the penalty of life imprisonment to death and a fine ranging from five hundred thousand pesos (₱500,000) to ten million pesos (₱10,000,000). Pursuant, however, to the enactment of R.A. No. 9346,[36] only life imprisonment and fine shall be imposed.

Meanwhile, Section 11, paragraph 2(3), Article II of R.A. No. 9165 provides for imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from three hundred thousand pesos (₱300,000) to four hundred thousand pesos (₱400,000), if the quantities of dangerous drugs are less than five grams of methamphetamine hydrochloride.

In sum, we find no reversible error in the decision of the appellate court holding Abedin guilty beyond reasonable doubt of the offenses charged.

WHEREFORE, premises considered, the present appeal is **DISMISSED.** The Decision dated July 6, 2007 of the Court of Appeals in CA-G.R. CR HC No. 02244 finding appellant Jamad Abedin *y* Jandal guilty beyond reasonable doubt of the crimes charged in Criminal Case Nos. 14108-D and 14109-D for violation of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, is **AFFIRMED.**

With costs against the accused-appellant.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Del Castillo, JJ.,* concur.

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[36] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

FIRST DIVISION

[G.R. No. 181544. April 11, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JULIUS TAGUILID *y* BACOLOD,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FINDINGS OF THE COURT OF APPEALS AFFIRMING THOSE OF THE TRIAL COURT ARE GENERALLY CONCLUSIVE ON THE SUPREME COURT. — [I]t is basic that findings of the CA affirming those of the RTC as the trial court are generally conclusive on the Court which is not a trier of facts. Such conclusiveness derives from the trial court's having the first-hand opportunity to observe the demeanor and manner of the victim when she testified at the trial. It also looks to the Court that both the RTC and the CA carefully sifted and considered all the attendant circumstances. With Taguilid not showing that the RTC and the CA overlooked any fact or material of consequence that could have altered the outcome if they had taken it into due consideration, the Court must fully accept the findings of the CA.

2. CRIMINAL LAW; RAPE; HYMENAL INJURY IS NOT AN ELEMENT OF RAPE. — [T]he medico-legal finding made on May 29, 2002 showing AAA's hymenal laceration as "deep-healed" and as having healed "5 to 10 days from the time of (infliction of) the injury" did not detract from the commission of the rape on May 29, 2002. For one, hymenal injury has never been an element of rape, for a female might still be raped without such injury resulting. The essence of rape is carnal knowledge of a female either *against her will* (through force or intimidation) or *without her consent* (where the female is deprived of reason or otherwise unconscious, or is under 12 years of age, or is demented). It is relevant to know that carnal knowledge is simply the act of a man having sexual bodily connections with a woman. Thus, although AAA testified on her sexual penetration by Taguilid, the fact that her hymenal injury was not fresh but already deep-healed was not incompatible with the evidence of rape by him. In this regard, her claim that he had previously

subjected her to similar sexual assaults several times before May 29, 2002, albeit not the subject of this prosecution, rendered the absence of fresh hymenal injury not improbable even as it showed how the deep-healed laceration might have been caused.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DIFFERENT PEOPLE REACT DIFFERENTLY TO A GIVEN SITUATION INVOLVING A STARTLING OCCURRENCE; CASE AT BAR. — AAA's failure to shout for help although she knew that her father was tending to the family store just downstairs was not a factor to discredit her or to diminish the credibility of her evidence on the rape. She explained her failure by stating that Taguilid had threatened to harm her should she shout. She thereby commanded credence, considering that she was not expected to easily overcome her fear of him due to her being then a minor just under 13 years of age at the time of the rape. Nor would it be reasonable to impose on her any standard form of reaction when faced with a shocking and horrifying experience like her rape at the hands of Taguilid. The Court has recognized that different people react differently to a given situation involving a startling occurrence. Indeed, the workings of the human mind placed under emotional stress are unpredictable, and people react differently - some may shout, others may faint, and still others may be shocked into insensibility even if there may be a few who may openly welcome the intrusion.

4. ID.; ID.; ID.; THE TESTIMONY OF A CHILD WHO IS A VICTIM OF RAPE IS NORMALLY GIVEN FULL WEIGHT AND CREDENCE. — [T]he testimony of a child who has been a victim in rape is normally given full weight and credence. Judicial experience has enabled the courts to accept the verity that when a minor says that she was raped, she says in effect all that is necessary to show that rape was committed against her. The credibility of such a rape victim is surely augmented where there is absolutely no evidence that suggests the possibility of her being actuated by ill-motive to falsely testify against the accused. Truly, a rape victim's testimony that is unshaken by rigid cross-examination and unflawed by inconsistencies or contradictions in its material points is entitled to full faith and credit.

5. ID.; ID.; DENIAL; CANNOT PREVAIL OVER THE POSITIVE ASSERTIONS OF BOTH THE VICTIM AND THE WITNESSESS; CASE AT BAR. — Taguilid's defense at the

trial was plain denial of the positive assertions made against him. He then declared that the charge of rape against him resulted from BBB's misunderstanding of what had really occurred in AAA's bedroom just before BBB had appeared unannounced. Yet, such denial was devoid of persuasion due to its being easily and conveniently resorted to, and due to denial being generally weaker than and not prevailing over the positive assertions of both AAA and BBB.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

For resolution is the final appeal of Julius Taguilid *y* Bacolod from his conviction for rape by the Regional Trial Court (RTC), Branch 106, in Quezon City on April 21, 2006,[1] which the Court of Appeals (CA) affirmed through its decision promulgated on August 16, 2007.[2]

Antecedents

Taguilid was charged in the RTC with rape in relation to Republic Act No. 7610 (*Special Protection of Children against Child Abuse, Exploitation and Discrimination Act*) under the following information, to wit:

That on or about the 29th day of May, 2002, in Quezon City, Philippines, the above-named accused, did then and there willfully, unlawfully and feloniously by means of force and intimidation suddenly entered the bedroom of private complainant,[3] a minor, 12

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[1] CA *Rollo*, pp. 8-11.

[2] *Rollo* pp. 2-13; penned by Associate Justice Rodrigo V. Cosico (retired), Associate Justice Arcangelita Romilla-Lontok (retired) and Associate Justice Arturo G. Tayag (retired) concurring.

[3] The real names of the victim and the members of her immediate family are withheld pursuant to Republic Act No. 7610 (*Special Protection of*

yrs of age, located at xxx Brgy. Talayan, this City, and once inside, pushed said complainant to lie down, forcibly inserted his finger to her private part, removed her panty and thereafter had sexual intercourse with said offended party, all against her will, and without her consent, which acts further debase, degrade and demean the intrinsic worth and dignity of said private complainant as a human being, to her damage and prejudice.

CONTRARY TO LAW.[4]

The evidence of the Prosecution shows that at about 4:00 pm on May 29, 2002 Taguilid suddenly entered AAA's room while she was resting; that the room was in the third floor of the house owned by her parents and located in Barangay Talayan, Quezon City; that he was a cousin of her mother who had been living with her family in that house since 2000; that upon entering her room, he pushed her down on her back, then inserted his finger in her vagina and later on inserted his penis in her vagina; that she cried and pushed him away, but to no avail; that he next turned her over and penetrated her anus with his penis while in that position; and that she did not shout for help because he threatened to kill her if she did.[5]

At the time of the rape, AAA was 12 years and ten months old, having been born on July 28, 1989.

The Prosecution further established that BBB, AAA's father, was at the time tending to the family store at the ground floor when he decided to go up to the third floor to look for and talk to AAA; that upon reaching her room, he found Taguilid standing by her bed in the act of raising the zipper of his pants, and AAA was on her bed, crying and uttering inaudible words; that BBB saw that her skirt was raised up to her waist, and her panties, though still on her, were disheveled (*wala sa ayos*);

Children Against Child Abuse, Exploitation and Discrimination Act) and Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*). Instead, fictitious names shall be used to designate them. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] *Rollo*, pp. 2-3.

[5] CA *Rollo*, p. 9.

and that it seemed to BBB that his sudden appearance in the room had taken Taguilid by surprise, causing the latter to hurriedly leave the room even before BBB could say anything to him.

BBB later on brought his daughter to the United Doctors Medical Center (UDMC) in Quezon City for a medico-legal examination before reporting the matter to the *barangay* office. He lodged a complaint for rape with the police authorities in order to seek their assistance in the arrest of Taguilid.[6]

The RTC summarized the medico-legal findings on AAA thuswise:

> **Dr. Jerico Angelito Q. Cordero**, 28 years old, physician and a medico-legal officer assigned as Deputy Chief of DNA Analysis Center conducted medical and physical examination upon the victim on May 29, 2002 at 7:50 in the evening. His findings, marked as Exhibit "E" show that under genital category, the hymen is annular with deep healed laceration at 4 and 9 o'clock positions. Under labia minora, it is light brown slightly hypertrophied (increased in size) labia minora; that the *fourchette* (part of the sex organ located just below the hymen), was **abraded**, meaning "***nagasgas* or *nalagusan***" (TSN, September 20, 2002, p. 6). He found out that AAA is in a non-virgin state physically and there are no signs of application of any form of physical trauma. He said that deep-healed laceration means that the injury has healed 5 to 10 days from the time of the injury.[7]

Taguilid denied the accusation. He testified that AAA's mother was his third cousin; that he lived with AAA's family because his means of livelihood was playing their drums at birthday parties and fiestas; that on May 28, 2002, he and AAA had an argument after she refused to follow his instruction to wash the dishes; that he whipped her with two sticks of *walis tingting*, but she retaliated by stabbing his shorts, causing his shorts to fall off; that it was while he was pulling up his shorts and zipping them when BBB suddenly appeared and found him inside her room in that pose; and that he immediately rushed down the

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[6] CA *Rollo*, p. 9.

[7] *Id*., (bold underscoring is part of the original text).

stairs, with BBB saying to him: *Hintayin mo ako sa ibaba. Pinakain na, pinatulog pa, ahas sa bahay na ito*.[8]

Ruling of the RTC

As stated, the RTC pronounced Taguilid guilty of rape, holding:

The Court finds that AAA was actually violated in her own room. The act was already consummated when her father entered her room, looking for her. The accused was putting and zipping up his pant inside the room of the victim who was crying on her bed, hair and dress disheveled, shaken and visibly afraid of the accused. Her panty was on, but "***wala sa ayos***," as explained by her father who was shocked to see his daughter on bed with the accused in the act of zipping up his pants. Whipping up a young girl with two sticks of ***walis tingting*** would perhaps make her cry but would not certainly make her lie on bed, shaking in fear and uttering words inaudibly. This condition of AAA is a manifestation that she was threatened and forced sexually. Her testimony was firm – she was abused and raped. The accused even used his finger on her vagina before he slipped his penis inside her vagina. The accused also "***pinataob***" her and did anal sex (TSN, Feb. 7, 2003, pp. 4-7). When asked how many times the accused raped her, she said outrightly, "Ten (10) times" (*Ibid*).

The testimony of AAA was honest, straightforward and clear. She answered all questions of her ordeal in clearcut language. She mentioned the word "*pinataob*" to describe the next position the accused assumed to penetrate her anus. Young as she is, her purpose was to unearth the truth – that she was raped by the accused not only on that fateful day of May 29, 2002, but several times before.

x x x

WHEREFORE, in the light of the foregoing, accused JULIUS TAGUILID *Y* BACOLOD is found GUILTY beyond reasonable doubt of the crime of RAPE and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA.

The accused is further ordered to pay the private complainant the amount of FIFTY THOUSAND PESOS (₱50,000) as civil indemnity in consonance with prevailing jurisprudence (*People v. Obejaso,* 299

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

SCRA 549; *People v. Ibay,* 233 SCRA 15); the amount of FIFTY THOUSAND PESOS (₱50,000) as moral damages; and the amount of TWENTY FIVE THOUSAND PESOS (₱25,000) as exemplary damages.

SO ORDERED.[9]

Ruling of the CA

On appeal, the CA affirmed Taguilid's conviction, decreeing:

WHEREFORE, premises considered, the decision dated April 21, 2006 of the Regional Trial Court, Branch 106 of Quezon City in Criminal Case No. 02-109810 finding accused-appellant Julius Taguilid *y* Bacolod GUILTY beyond reasonable doubt of the crime of rape is hereby AFFIRMED *in toto*.

SO ORDERED.[10]

The CA explained its affirmance in the following manner, *viz*:

In the instant case, we agree with the trial court that the testimony of private complainant should be accorded full faith and credit as it amply supports a finding of guilt on the part of accused-appellant for the commission of the said offense. Indeed, the narration of her ordeal was 'honest, straightforward and clear' and all through her entire testimony she remained firm and steadfast in identifying accused-appellant as the perpetrator of the offense.

On the other hand, accused-appellant can only set up the defense of denial. Denial, although a legitimate defense, is an inherently weak defense that crumbles in the face of positive and categorical identification of the private complainant. Denial, if unsubstantiated by clear and convincing evident, is a self-serving assertion that deserves no weight in law. As between the positive declaration of the prosecution witness and the negative statement of the accused, the former deserves more credence.

Incidentally, we cannot also help but observe that the weakness of accused-appellant's defense becomes all the more apparent in this appeal considering as to how he is now trying to change his theory as to what had transpired on May 29, 2002. For instance, during the

[9] *Id*., pp. 40-41 (bold underscoring is part of the original text).

[10] *Rollo,* p. 13.

trial of the case, accused-appellant contended that there was no rape but a serious case of misunderstanding between him and the father of the private complainant as his shorts fell as a result of private complainant's retaliation for beating her with *walis tingting.* On appeal however, a reading of the arguments of the accused-appellant shows that while he still maintains that there was no rape, he avers that the sexual congress was consensual as there was absence of physical struggle or resistance on the part of the private complainant.

Lastly, the absence of 'fresh' lacerations on private complainant's genitalia is not a factor that is conclusively relied upon to establish the non-existence of rape. Indeed, the absence of external signs of physical injuries does not cancel out the commission of rape, since proof of injuries is not an essential element of the crime. In fact, even the absence of fresh lacerations does not preclude the finding of rape.

This holds true in the instant case considering that coupled with the testimony of private complainant on the rape and her identification of the accused-appellant as the culprit therein, the medico-legal report and the medico-legal, Dr. Cordero testified that private complainant is 'in a non-virgin state'. To repeat, proof of injuries is not essential to the crime itself.

Significantly, let it also be emphasized that the *gravamen* of the offense is [*sexual intercourse without consent*].

That having been said, we find no reversible error committed by the trial court in convicting accused-appellant of the offense of rape. The records of the case show that the prosecution had satisfactorily proven his guilt *beyond reasonable doubt* and that he had carnal knowledge of the private complainant against her will through the use of *force* and *intimidation*. Such being the case, the trial court correctly imposed the penalty of *reclusion perpetua* for absent any circumstance that would qualify the rape under the instances enumerated under Sec. 11 of R.A. 7659, the proper imposable penalty is *reclusion perpetua*.[11]

Issues

Taguilid reiterates his assignment of errors in the CA, namely:

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[11] *Id*., pp. 11-12.

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE HIGHLY INCREDIBLE TESTIMONY OF THE PRIVATE COMPLAINANT AND IN NOT CONSIDERING THE ACCUSED-APPELLANT'S DEFENSE.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF RAPE DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III.

THE FINDINGS/PHYSICAL EVIDENCE AS CONTAINED IN THE MEDICO-LEGAL REPORT DOES NOT SHOW AND/OR IS NOT CONSISTENT WITH THE OFFENSE OF RAPE.[12]

Taguilid argues that AAA's testimony on how the rape had happened and how easily he had undressed her indicated that he did not use force and intimidation against her; that her fear of him had been only the product of her imagination; and that her silence during the entire event, and her failure to escape from him or to report his allegedly previous sexual assaults had revealed her having voluntarily consented to the sexual act.[13]

Taguilid submits that the State did not prove that he had any moral ascendancy over AAA; that the age gap between them did not suffice to establish his moral ascendancy over her;[14] and that the medico-legal findings of the hymenal lacerations found on her on the same date of the rape being already healed, not fresh, were inconsistent with rape.[15]

Ruling

The Court affirms the conviction.

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[12] CA *Rollo*, p. 22.

[13] *Id.*, pp. 32-33.

[14] *Id.*, p. 34.

[15] *Id.*, p. 35.

First of all, it is basic that findings of the CA affirming those of the RTC as the trial court are generally conclusive on the Court which is not a trier of facts.[16] Such conclusiveness derives from the trial court's having the first-hand opportunity to observe the demeanor and manner of the victim when she testified at the trial.[17] It also looks to the Court that both the RTC and the CA carefully sifted and considered all the attendant circumstances. With Taguilid not showing that the RTC and the CA overlooked any fact or material of consequence that could have altered the outcome if they had taken it into due consideration, the Court must fully accept the findings of the CA.

Secondly, the medico-legal finding made on May 29, 2002 showing AAA's hymenal laceration as "deep-healed" and as having healed "5 to 10 days from the time of (infliction of) the injury" did not detract from the commission of the rape on May 29, 2002. For one, hymenal injury has never been an element of rape, for a female might still be raped without such injury resulting. The essence of rape is carnal knowledge of a female either *against her will* (through force or intimidation) or *without her consent* (where the female is deprived of reason or otherwise unconscious, or is under 12 years of age, or is demented).[18] It is relevant to know that carnal knowledge is simply the act of a man having sexual bodily connections with a woman.[19] Thus, although AAA testified on her sexual penetration by Taguilid, the fact that her hymenal injury was not fresh but already deep-healed was not incompatible with the evidence of rape by him. In this regard, her claim that he had previously subjected her to similar sexual assaults several times before May 29, 2002, albeit not the subject of this prosecution, rendered the absence

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[16] *Miranda v. Besa*, G.R. No. 146513, July 30, 2004, 435 SCRA 532, 541.

[17] *People v. Brecinio*, G.R. No. 138534, March 17, 2004, 425 SCRA 616, 622; *People v. Quimzon*, G.R. No. 133541, April 14, 2004, 427 SCRA 261, 271.

[18] *People v. Butiong*, G.R. No. 168932, October 19, 2011; see also *People v. Masalihit*, G.R. No. 124329, December 14, 1998, 300 SCRA 147, 155; *People v. Flores, Jr.*, G.R. Nos.128823-24, December 27, 2002, 394 SCRA 325, 333.

[19] *Black's Law Dictionary* 193 (5th ed., 1979).

of fresh hymenal injury not improbable even as it showed how the deep-healed laceration might have been caused.

Thirdly, AAA's failure to shout for help although she knew that her father was tending to the family store just downstairs was not a factor to discredit her or to diminish the credibility of her evidence on the rape. She explained her failure by stating that Taguilid had threatened to harm her should she shout. She thereby commanded credence, considering that she was not expected to easily overcome her fear of him due to her being then a minor just under 13 years of age at the time of the rape. Nor would it be reasonable to impose on her any standard form of reaction when faced with a shocking and horrifying experience like her rape at the hands of Taguilid. The Court has recognized that different people react differently to a given situation involving a startling occurrence.[20] Indeed, the workings of the human mind placed under emotional stress are unpredictable, and people react differently - some may shout, others may faint, and still others may be shocked into insensibility even if there may be a few who may openly welcome the intrusion.[21]

There can be no question that the testimony of a child who has been a victim in rape is normally given full weight and credence. Judicial experience has enabled the courts to accept the verity that when a minor says that she was raped, she says in effect all that is necessary to show that rape was committed against her.[22] The credibility of such a rape victim is surely augmented where there is absolutely no evidence that suggests the possibility of her being actuated by ill-motive to falsely testify against the accused.[23] Truly, a rape victim's testimony that is

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[20] *People v. Gonzales*, G.R. No. 141599, June 29, 2004, 433 SCRA 102, 115.

[21] *People v. San Antonio, Jr.*, G.R. No. 176633, September 5, 2007, 532 SCRA 411, 428; citing *People v. Antonio*, G.R. No. 157269, June 3, 2004, 430 SCRA 619, 626.

[22] *People v. Lagarde*, G.R. No. 182549, January 20, 2009, 576 SCRA 809, 820.

[23] *People v. Llagas*, G.R. No. 178873, April 24, 2009, 586 SCRA 707, 717.

unshaken by rigid cross-examination and unflawed by inconsistencies or contradictions in its material points is entitled to full faith and credit.[24]

And, fourthly, Taguilid's defense at the trial was plain denial of the positive assertions made against him. He then declared that the charge of rape against him resulted from BBB's misunderstanding of what had really occurred in AAA's bedroom just before BBB had appeared unannounced. Yet, such denial was devoid of persuasion due to its being easily and conveniently resorted to, and due to denial being generally weaker than and not prevailing over the positive assertions of both AAA and BBB. Also, Taguilid's explanation of why he was then zipping his pants when BBB found him in AAA's bedroom, that AAA's stabbing had caused his pants to fall off, was implausible without him demonstrating how the pants had been unzipped from AAA's stabbing of him as to cause the pants to fall off. Besides, Taguilid's act of quickly leaving the room of AAA without at least attempting to tell BBB the reason for his presence in her room and near the bed of the sobbing AAA if he had been as innocent as he claimed exposed the shamness and insincerity of his denial.

In this connection, the Court is not surprised that Taguilid changed his defense theory on appeal, from one of denial based on the charge having resulted from a misunderstanding of the situation in AAA's bedroom on the part of BBB to one admitting the sexual congress with AAA but insisting that it was consensual between them. Such shift, which the CA unfailingly noted, revealed the unreliability of his denial, if not also its inanity.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on August 16, 2007 by the Court of Appeals.

The appellant shall pay the costs of suit.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Del Castillo, and *Villarama, Jr., JJ.,* concur.

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[24] *People v. Rapisora*, G.R. No. 147855, May 28, 2004, 430 SCRA 237, 256.

FIRST DIVISION

[G.R. No. 184282. April 11, 2012]

FRANCISCO SORIANO AND DALISAY SORIANO, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES, (Represented by the Office of the Solicitor General),** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB); 1994 DARAB RULES OF PROCEDURE; LAND VALUATION AND PRELIMINARY DETERMINATION AND PAYMENT OF JUST COMPENSATION; THE ADJUDICATOR'S DECISION ON THE LAND VALUATION ATTAINS FINALITY AFTER THE LAPSE OF THE FIFTEEN-DAY REGLEMENTARY PERIOD. — Rule XIII, Section 11 of the 1994 DARAB Rules of Procedure, which was then applicable, explicitly provides that "Section 11. *Land Valuation and Preliminary Determination and Payment of Just Compensation.* – The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts *within fifteen (15) days from receipt of the notice thereof.* Any party shall be entitled to only one motion for reconsideration." In *Phil. Veterans Bank v. Court of Appeals,* we explained that the consequence of the said rule is that the adjudicator's decision on land valuation attains finality after the lapse of the 15-day period. Considering that Agrarian Case No. 64-2001, filed with the SAC for the fixing of just compensation, was filed 29 days after petitioners' receipt of the DARAB's decision in DARAB Case No. LV-XI-0071-DN-2000 for the lot covered by TCT No. (T-8935) T-3120 and 43 days after petitioners' receipt of the DARAB's decision in DARAB Case No. LV-XI-0073-DN-2000, for the lot covered by TCT No. (T-2906) T-749, the DARAB's decisions had already attained finality. x x x [A]ny speculation as to the validity of Rule XIII, Section 11 was foreclosed by our ruling in *Philippine Veterans Bank* where we affirmed the order of dismissal of a

petition for determination of just compensation for having been filed beyond the 15-day period under said Section 11. In said case, we explained that Section 11 is not incompatible with the original and exclusive jurisdiction of the SAC. In *Land Bank of the Philippines v. Martinez*, we reaffirmed this ruling and stated for the guidance of the bench and bar that "while a petition for the fixing of just compensation with the SAC is not an appeal from the agrarian reform adjudicator's decision but an original action, the same has to be filed within the 15-day period stated in the DARAB Rules; otherwise, the adjudicator's decision will attain finality."

2. ID.; ID.; ID.; ID.; THE DETERMINATION OF THE AMOUNT OF JUST COMPENSATION BY THE DARAB IS MERELY A PRELIMINARY ADMINISTRATIVE DETERMINATION.— On the matter of whether the DARAB Rules of Procedure laid out an appeal process and the validity of the 15-day reglementary period has already been laid to rest, the Court, in *Republic v. Court of Appeals* and subsequent cases has clarified that the determination of the amount of just compensation by the DARAB is merely a preliminary administrative determination which is subject to challenge before the SACs which have original and exclusive jurisdiction over all petitions for the determination of just compensation under Section 57, R.A. No. 6657. In *Republic v. Court of Appeals*, we ruled x x x "[It] is clear from §57 that the *original* and *exclusive* jurisdiction to determine such cases is in the RTCs. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to §57 and therefore would be void."

3. ID.; ID.; ID.; ID.; THE PRESCRIBED PERIOD FOR THE FILING OF A PETITION FOR JUDICIAL DETERMINATION OF JUST COMPENSATION CANNOT BE RELAXED IN CASE AT BAR.— [W]e noted in *Land Bank of the Philippines v. Umandap* that "[s]ince the SAC statutorily exercises *original* and *exclusive* jurisdiction over all petitions for the determination of just compensation to landowners, it cannot be said that the decision of the adjudicator, if not appealed to the SAC, would be deemed final and executory, under all circumstances." In certain cases, the Court has adopted a policy of liberally allowing petitions for determination of just compensation even though the procedure under DARAB rules have not been strictly

followed, whenever circumstances so warrant. Thus, we allowed a petition refiled by LBP within 5 days from the denial of the motion for reconsideration of the order dismissing the original petition, during which time said dismissal could still be appealed to the CA x x x. Petitioners have not shown any exceptional circumstance warranting a relaxation of the prescribed period for the filing of a petition for judicial determination of just compensation. Their petition before the SAC assailing the separate valuations by the PARAD was filed 29 days (from receipt of the first decision) and 43 days (from receipt of the second decision) late, and without any justifiable reason given for the delay. Consequently, no grave abuse of discretion was committed by the CA in granting DAR's petition for *certiorari* and dismissing Agrarian Case No. 64-2001.

APPEARANCES OF COUNSEL

Edwin O. Mendoza for petitioners.
The Solicitor General for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a Rule 45 petition assailing the October 26, 2007 Decision[1] and July 29, 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 80551. The appellate court had set aside the Order[3] of the Tagum City Regional Trial Court (RTC), Branch 2, acting as Special Agrarian Court (SAC), which denied the motion to dismiss of the Department of Agrarian Reform (DAR).

The facts, as culled from the records, follow:

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[1] *Rollo*, pp. 28-40. Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Teresita Dy-Liacco Flores and Michael P. Elbinias concurring.

[2] *Id.* at 42-44. Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Michael P. Elbinias and Edgardo T. Lloren concurring.

[3] CA *rollo*, p. 22. Penned by Judge Erasto D. Salcedo.

The Spouses Francisco and Dalisay Soriano were the registered owners of two parcels of agricultural land located in Hijo, Maco, Compostela Valley Province. The first parcel had an area of 5.2723 hectares and was covered by TCT No. (T-8935) T-3120, while the second parcel had an area of 4.0887 hectares and was covered by TCT No. (T-2906) T-749.[4]

In October 1999, the two parcels of land were compulsorily acquired by the government pursuant to Republic Act (R.A.) No. 6657 or the Comprehensive Agrarian Reform Law. The Land Bank of the Philippines (LBP) made a preliminary determination of the value of the subject lands in the amount of ₱351,169.34 for the first parcel and ₱70,729.28 for the second parcel. Petitioners, however, disagreed with the valuation and brought the matter before the Department of Agrarian Reform Adjudication Board (DARAB) for a summary administrative proceeding to fix the just compensation.[5]

On September 30, 2000, the DARAB rendered its decisions[6] in DARAB Case No. LV-XI-0071-DN-2000 (for the first parcel) and DARAB Case No. LV-XI-0073-DN-2000 (for the second parcel), affirming the LBP's preliminary determination. As evidenced by the return cards,[7] notices of the two decisions were received by counsel for petitioners on March 8, 2001 and February 22, 2001, respectively. However, it was only on April 6, 2001 that petitioners filed a petition[8] before the RTC of Tagum City, acting as SAC, for the fixing of just compensation. Thus, the DAR, through the Provincial Agrarian Reform Office (PARO) of Tagum City, filed a motion[9] to dismiss the petition. The DAR argued that the petition was filed beyond the 15-day

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[4] Records, pp. 2, 6-10.

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

[6] *Id.* at 31-34.

[7] *Rollo*, pp. 132-133.

[8] Records, pp. 1-5. The petition was docketed as Agrarian Case No. 64-2001.

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

reglementary period provided in Section 11, Rule XIII of the 1994 DARAB Rules of Procedure.[10] Section 11 reads:

> Section 11. *Land Valuation and Preliminary Determination and Payment of Just Compensation.* – The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof. Any party shall be entitled to only one motion for reconsideration.

On June 27, 2001, the RTC denied the motion to dismiss Agrarian Case No. 64-2001 and declared that the "DARAB Rules of Procedure must give way to the laws on prescription of actions as mandated by the Civil Code."[11] The DAR sought reconsideration of the order, but its motion was denied on September 24, 2001.[12] Thus, the DAR lodged a petition for *certiorari* with the CA, alleging grave abuse of discretion on the part of the trial court.

On October 26, 2007, the CA granted the petition and dismissed Agrarian Case No. 64-2001. The CA held:

> Public respondent erred in denying petitioner's motion to dismiss. An action to fix just compensation for lands placed under R.A. No. 6657 is outside the purview of the ordinary rules on prescription as contained in Article 1146 of the Civil Code. The rule implementing R.A. No. 6657 is clear and unequivocal that after a preliminary determination by the board of the just compensation, a petition should be filed before the SAC within 15 days from receipt of the board's decision. Considering that the petition was filed beyond the 15-day period provided by the rules, public respondent committed grave abuse of discretion amounting to lack of jurisdiction in taking cognizance of spouses Soriano's petition. The court *a quo* did not acquire jurisdiction over the petition which was filed out of time.[13]

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[10] These rules were later superseded by the 2003 DARAB Rules of Procedure adopted on January 17, 2003.

[11] CA *rollo*, p. 22.

[12] *Id.* at 23-24.

[13] *Rollo*, pp. 38-39.

Later, the CA likewise denied petitioners' motion for reconsideration. Hence, petitioners filed the present petition alleging that the CA committed serious errors of law, as follows:

I.

THE 1994 DARAB PROCEDURAL RULES PROVIDING FOR A 15-DAY REGLEMENTARY PERIOD TO BRING THE DECISION OF THE ADJUDICATOR DIRECTLY TO THE SPECIAL AGRARIAN COURT (SAC) ARE NOT HARD AND FAST, AND ADMIT OF CERTAIN LEGALLY-RECOGNIZED EXCEPTIONS. AMONG OTHERS, STRONG COMPELLING REASONS SUCH AS SERVING THE ENDS OF JUSTICE AND PREVENTING A GRAVE MISCARRIAGE THEREOF, APART FROM STRONG CONSIDERATIONS OF SUBSTANTIAL JUSTICE, WARRANT THE SUSPENSION OF THE RULES IN THE EXERCISE BY THE COURTS OF EQUITY JURISDICTION.

II.

THE PROVISION IN THE 1994 DARAB RULES [OF PROCEDURE] PROVIDING FOR A MODE OF APPEAL AND A STRINGENT REGLEMENTARY PERIOD OF 15 DAYS TO BRING THE DECISION OF THE DARAB IN A PRELIMINARY DETERMINATION OF LAND VALUATION DIRECTLY TO THE SPECIAL AGRARIAN COURT (SAC) HAS NO STATUTORY BASIS. THUS, IT IS VOID FOR BEING *ULTRA VIRES*.[14]

Essentially, the issues for our resolution are whether the CA erred in setting aside the June 27, 2001 Order of the SAC which denied the DAR's motion to dismiss, and in finding that the trial court committed grave abuse of discretion in not dismissing Agrarian Case No. 64-2001 on the ground that it was filed late.

Petitioners admit that their petition was filed late but insist that there exist special and compelling reasons to relax the otherwise stringent application of the 15-day reglementary period to file the petition for the fixing of just compensation. They allege that the failure to file the petition in time was due to the fault or negligence of their former counsel, and that the unconscionably low valuation of the LBP, if not rectified, would

[14] *Id.* at 258.

unjustly result in the confiscatory deprivation of their lands through no fault of their own.[15] They likewise contend that there is no statutory basis for the promulgation of the DARAB procedure providing for a mode of appeal, let alone for a reglementary period to appeal.

The petition lacks merit.

The appellate court correctly granted the writ of *certiorari* and nullified the June 27, 2001 Order of the RTC acting as SAC, as the RTC gravely abused its discretion when it denied the motion to dismiss filed by the DAR. Rule XIII, Section 11 of the 1994 DARAB Rules of Procedure, which was then applicable, explicitly provides that

> Section 11. *Land Valuation and Preliminary Determination and Payment of Just Compensation.* – The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts *within fifteen (15) days from receipt of the notice thereof.* Any party shall be entitled to only one motion for reconsideration. [Emphasis supplied.]

In *Phil. Veterans Bank v. Court of Appeals*,[16] we explained that the consequence of the said rule is that the adjudicator's decision on land valuation attains finality after the lapse of the 15-day period. Considering that Agrarian Case No. 64-2001, filed with the SAC for the fixing of just compensation, was filed 29 days after petitioners' receipt of the DARAB's decision in DARAB Case No. LV-XI-0071-DN-2000 for the lot covered by TCT No. (T-8935) T-3120 and 43 days after petitioners' receipt of the DARAB's decision in DARAB Case No. LV-XI-0073-DN-2000, for the lot covered by TCT No. (T-2906) T-749, the DARAB's decisions had already attained finality.

Petitioners contend that there is no statutory basis for the promulgation of the DARAB procedure providing for a mode

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[15] *Id.* at 259-265.

[16] 379 Phil. 141, 148-149 (2000).

of appeal and a reglementary period to appeal. On the matter of whether the DARAB Rules of Procedure laid out an appeal process and the validity of the 15-day reglementary period has already been laid to rest, the Court, in *Republic v. Court of Appeals*[17] and subsequent cases[18] has clarified that the determination of the amount of just compensation by the DARAB is merely a preliminary administrative determination which is subject to challenge before the SACs which have original and exclusive jurisdiction over all petitions for the determination of just compensation under Section 57, R.A. No. 6657. In *Republic v. Court of Appeals*, we ruled

> [U]nder the law, the Land Bank of the Philippines is charged with the initial responsibility of determining the value of lands placed under land reform and the compensation to be paid for their taking. Through notice sent to the landowner pursuant to §16(a) of R.A. No. 6657, the DAR makes an offer. In case the landowner rejects the offer, a summary administrative proceeding is held and afterward the provincial (PARAD), the regional (RARAD) or the central (DARAB) adjudicator as the case may be, depending on the value of the land, fixes the price to be paid for the land. If the landowner does not agree to the price fixed, he may bring the matter to the RTC acting as Special Agrarian Court. This in essence is the procedure for the determination of compensation cases under R.A. No. 6657. In accordance with it, the private respondent's case was properly brought by it in the RTC, and it was error for the latter court to have dismissed the case. In the terminology of §57, the RTC, sitting as a Special Agrarian Court, has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." It would subvert this "original and exclusive" jurisdiction of the RTC for the DAR to vest original jurisdiction in compensation cases in administrative officials and make the RTC an appellate court for the review of administrative decisions.

Consequently, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, it is clear from §57 that the *original* and *exclusive* jurisdiction

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[17] G.R. No. 122256, October 30, 1996, 263 SCRA 758.

[18] *Land Bank of the Philippines v. Suntay*, G.R. No. 157903, October 11, 2007, 535 SCRA 605; *Land Bank of the Philippines v. Martinez*, G.R. No. 169008, July 31, 2008, 560 SCRA 776.

to determine such cases is in the RTCs. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to §57 and therefore would be void. What adjudicators are empowered to do is only to determine in a preliminary manner the reasonable compensation to be paid to landowners, leaving to the courts the ultimate power to decide this question.[19] (Emphasis supplied.)

The above ruling was reiterated in *Philippine Veterans Bank v. Court of Appeals.* In that case, petitioner landowner who was dissatisfied with the valuation made by LBP and DARAB, filed a petition for determination of just compensation in the RTC (SAC). However, the RTC dismissed the petition on the ground that it was filed beyond the 15-day reglementary period for filing appeals from the orders of the DARAB. On appeal, the CA upheld the order of dismissal. When the case was elevated to this Court, we likewise affirmed the CA and declared that

To implement the provisions of R.A. No. 6657, particularly §50 thereof, Rule XIII, §11 of the DARAB Rules of Procedure provides:

> *Land Valuation and Preliminary Determination and Payment of Just Compensation.*—The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof. Any party shall be entitled to only one motion for reconsideration.

As we held in *Republic v. Court of Appeals,* this rule is an acknowledgment by the DARAB that the power to decide just compensation cases for the taking of lands under R.A. No. 6657 is vested in the courts. It is error to think that, because of Rule XIII, §11, the original and exclusive jurisdiction given to the courts to decide petitions for determination of just compensation has thereby been transformed into an appellate jurisdiction. It only means that, in accordance with settled principles of administrative law, primary jurisdiction is vested in the DAR as an administrative agency to determine in a preliminary manner the reasonable compensation to

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[19] *Republic v. Court of Appeals*, *supra* note 17, at 764-765.

be paid for the lands taken under the Comprehensive Agrarian Reform Program, but such determination is subject to challenge in the courts.

The jurisdiction of the Regional Trial Courts is not any less "original and exclusive" because the question is first passed upon by the DAR, as the judicial proceedings are not a continuation of the administrative determination. For that matter, the law may provide that the decision of the DAR is final and unappealable. Nevertheless, resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action.

Accordingly, as the petition in the Regional Trial Court was filed beyond the 15-day period provided in Rule XIII, §11 of the Rules of Procedure of the DARAB, the trial court correctly dismissed the case and the Court of Appeals correctly affirmed the order of dismissal.[20] (Emphasis supplied.)

The Court notes that although the petition for determination of just compensation in *Republic v. Court of Appeals* was filed beyond the 15-day period, *Republic v. Court of Appeals* does not serve as authority for disregarding the 15-day period to bring an action for judicial determination of just compensation. *Republic v. Court of Appeals,* it should be noted, was decided at a time when Rule XIII, Section 11 was not yet present in the DARAB Rules. Further, said case did not discuss whether the petition filed therein for the fixing of just compensation was filed out of time or not. The Court merely decided the issue of whether cases involving just compensation should first be appealed to the DARAB before the landowner can resort to the SAC under Section 57 of R.A. No. 6657. In any event, any speculation as to the validity of Rule XIII, Section 11 was foreclosed by our ruling in *Philippine Veterans Bank* where we affirmed the order of dismissal of a petition for determination of just compensation for having been filed beyond the 15-day period under said Section 11. In said case, we explained that Section 11 is not incompatible with the original and exclusive jurisdiction of the SAC. In *Land Bank of the Philippines v. Martinez*,[21] we reaffirmed this

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[20] *Phil. Veterans Bank v. Court of Appeals*, *supra* note 16.

[21] *Supra* note 18, at 783.

ruling and stated for the guidance of the bench and bar that "while a petition for the fixing of just compensation with the SAC is not an appeal from the agrarian reform adjudicator's decision but an original action, the same has to be filed within the 15-day period stated in the DARAB Rules; otherwise, the adjudicator's decision will attain finality."

Notwithstanding the foregoing rulings, we noted in *Land Bank of the Philippines v. Umandap*[22] that "[s]ince the SAC statutorily exercises *original* and *exclusive* jurisdiction over all petitions for the determination of just compensation to landowners, it cannot be said that the decision of the adjudicator, if not appealed to the SAC, would be deemed final and executory, under all circumstances." In certain cases, the Court has adopted a policy of liberally allowing petitions for determination of just compensation even though the procedure under DARAB rules have not been strictly followed, whenever circumstances so warrant.[23] Thus, we allowed a petition refiled by LBP within 5 days from the denial of the motion for reconsideration of the order dismissing the original petition, during which time said dismissal could still be appealed to the CA:

> x x x The SAC even expressly recognized that the rules are silent as regards the period within which a complaint dismissed without prejudice may be refiled. The statutorily mandated original and exclusive jurisdiction of the SAC, as well as the above circumstances showing that LBP did not appear to have been sleeping on its rights in the allegedly belated refiling of the petition, lead us to assume a liberal construction of the pertinent rules. To be sure, LBP's intent to question the RARAD's valuation of the land became evident with the filing of the first petition for determination of just compensation within the period prescribed by the DARAB Rules. Although the first petition was dismissed without prejudice on a technicality, LBP's refiling of essentially the same petition with a proper non-forum shopping certification while the earlier dismissal order had not attained finality should have been accepted by the trial court.

In view of the foregoing, we rule that the RTC acted without jurisdiction in hastily dismissing said refiled Petition. Accordingly,

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[22] G.R. No. 166298, November 17, 2010, 635 SCRA 116.

[23] *Id.* at 132, 137.

the Petition for *Certiorari* before the Court of Appeals assailing the dismissal should be granted.[24] (Emphasis supplied.)

In the case at bar, petitioners argue that there exists compelling reason to relax the application of the rules because the offered compensation package by the LBP for the expropriated lands is unconscionably low.

We find no merit in petitioners' submission considering that in the valuation of petitioners' lands in the two cases, the PARAD applied the formula laid down in DAR AO No. 06, series of 1992 as amended by DAR AO No. 11, series of 1994 and further amended by DAR AO No. 05, series of 1998. It likewise found that petitioners' computed value of their property was unsubstantiated and hence cannot prevail over LBP's valuation which was determined pursuant to the aforesaid guidelines then in force.

Petitioners have not shown any exceptional circumstance warranting a relaxation of the prescribed period for the filing of a petition for judicial determination of just compensation. Their petition before the SAC assailing the separate valuations by the PARAD was filed 29 days (from receipt of the first decision) and 43 days (from receipt of the second decision) late, and without any justifiable reason given for the delay. Consequently, no grave abuse of discretion was committed by the CA in granting DAR's petition for *certiorari* and dismissing Agrarian Case No. 64-2001.

WHEREFORE, the petition for review on *certiorari* is **DENIED.** The Decision dated October 26, 2007, and Resolution dated July 29, 2008, of the Court of Appeals in CA-G.R. SP No. 80551 are **AFFIRMED** and **UPHELD.**

Costs against petitioners.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Del Castillo, JJ.*, concur.

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[24] *Id.* at 138-139.

FIRST DIVISION

[G.R. No. 184926. April 11, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDMUNDO VILLAFLORES *Y* OLANO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPOSITE CRIME AND COMPLEX OR COMPOUND CRIME, DISTINGUISHED. — The felony of *rape with homicide* is a composite crime. A composite crime, also known as a special complex crime, is composed of two or more crimes that the law treats as a single *indivisible* and *unique* offense for being the product of a single criminal impulse. It is a specific crime with a specific penalty provided by law, and differs from a compound or complex crime under Article 48 of the *Revised Penal Code* x x x. There are distinctions between a composite crime, on the one hand, and a complex or compound crime under Article 48, x x x on the other hand. In a composite crime, the composition of the offenses is fixed by law; in a complex or compound crime, the combination of the offenses is not specified but generalized, that is, grave and/or less grave, or one offense being the necessary means to commit the other. For a composite crime, the penalty for the specified combination of crimes is specific; for a complex or compound crime, the penalty is that corresponding to the most serious offense, to be imposed in the maximum period. A light felony that accompanies a composite crime is absorbed; a light felony that accompanies the commission of a complex or compound crime may be the subject of a separate information.

2. ID.; REPUBLIC ACT NO. 8353 (THE ANTI-RAPE LAW OF 1997); ATTEMPTED RAPE WITH HOMICIDE AND RAPE WITH HOMICIDE; THE HOMICIDE IS COMMITTED BY REASON OR ON THE OCCASION OF RAPE. — The law on rape x x x defines and sets forth the composite crimes of *attempted rape with homicide* and *rape with homicide*. In both composite crimes, the homicide is committed *by reason* or *on the occasion of rape.* x x x [E]ach of said composite crimes is punished with a single penalty, the former with *reclusion perpetua* to

death, and the latter with death. The phrases *by reason of the rape* and *on the occasion of the rape* are crucial in determining whether the crime is a composite crime or a complex or compound crime. The phrase *by reason of the rape* obviously conveys the notion that the killing is *due to* the rape, the offense the offender originally designed to commit. The victim of the rape is also the victim of the killing. The indivisibility of the homicide and the rape (attempted or consummated) is clear and admits of no doubt. In contrast, the import of the phrase *on the occasion of the rape* may not be as easy to determine. To understand what homicide may be covered by the phrase *on the occasion of the rape*, a resort to the meaning the framers of the law intended to convey thereby is helpful. Indeed, during the floor deliberations of the Senate on Republic Act No. 8353, the legislative intent on the import of the phrase *on the occasion of the rape* to refer to a killing that occurs immediately *before* or *after*, or *during* the commission itself of the attempted or consummated rape, where the victim of the homicide may be a person other than the rape victim herself *for as long as the killing is linked to the rape*, became evident x x x.

3. ID.; ID.; STATUTORY RAPE; COMMITTED WHEN THE ACCUSED HAS CARNAL KNOWLEDGE OF A FEMALE UNDER TWELVE YEARS OF AGE. — Under Article 266-A, x x x rape is always committed when the accused has carnal knowledge of a female *under* 12 years of age. The crime is commonly called statutory rape, because a female of that age is deemed incapable of giving consent to the carnal knowledge. Marita's Certificate of Live Birth (Exhibit K) disclosed that she was born on October 29, 1994, indicating her age to be only four years and eight months at the time of the commission of the crime on July 2, 1999. As such, carnal knowledge of her by Villaflores would constitute statutory rape.

4. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE; ALLOWED TO ESTABLISH THE COMMISSION OF THE CRIME OF RAPE AS WELL AS THE IDENTITY OF THE CULPRIT. — We have often conceded the difficulty of proving the commission of rape when only the victim is left to testify on the circumstances of its commission. The difficulty heightens and complicates when the crime is *rape with homicide*, because there may usually be no living witnesses if the rape victim is herself killed. Yet,

the situation is not always hopeless for the State, for the *Rules of Court* also allows circumstantial evidence to establish the commission of the crime as well as the identity of the culprit.

5. ID.; ID.; ID.; DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE, DISTINGUISHED. — Direct evidence proves a fact in issue directly without any reasoning or inferences being drawn on the part of the factfinder; in contrast, circumstantial evidence indirectly proves a fact in issue, such that the factfinder must draw an inference or reason from circumstantial evidence. To be clear, then, circumstantial evidence may be resorted to when to insist on direct testimony would ultimately lead to setting a felon free. The *Rules of Court* makes no distinction between direct evidence of a fact and evidence of circumstances from which the existence of a fact may be inferred; hence, no greater degree of certainty is required when the evidence is circumstantial than when it is direct. In either case, the trier of fact must be convinced beyond reasonable doubt of the guilt of the accused. Nor has the quantity of circumstances sufficient to convict an accused been fixed as to be reduced into some definite standard to be followed in every instance.

6. CRIMINAL LAW; REPUBLIC ACT NO. 9346 (AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES); PROVIDES THAT PERSONS WHOSE SENTENCES WILL BE REDUCED TO *RECLUSION PERPETUA* SHALL NOT BE ELIGIBLE FOR PAROLE. — The CA reduced the penalty of death prescribed by the RTC to *reclusion perpetua* in consideration of the intervening enactment on June 24, 2006 of Republic Act No. 9346. Nonetheless, we have also to specify in the judgment that Villaflores shall not be eligible for parole, considering that Section 3 of Republic Act No. 9346 expressly holds persons "whose sentences will be reduced to *reclusion perpetua* by reason of this Act" not eligible for parole under Act No. 4103 (*Indeterminate Sentence Law*), as amended.

7. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; MAY BE IMPOSED IN A CRIMINAL CASE AS PART OF THE CIVIL LIABILITY WHEN THE CRIME WAS COMMITTED WITH ONE OR MORE AGGRAVATING CIRCUMSTANCES. — [W]e add exemplary damages to take into account the fact that Marita was below seven years of age at the time of the commission of the *rape with homicide*. Article 266-B, *Revised Penal Code*

has expressly declared such tender age of the victim as an aggravating circumstance in rape x x x. Pursuant to the *Civil Code*, exemplary damages may be imposed in a criminal case as part of the civil liability "when the crime was committed with one or more aggravating circumstances." The *Civil Code* permits such award "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." Granting exemplary damages is not dependent on whether the aggravating circumstance is actually appreciated or not to increase the penalty. As such, the Court recognizes the entitlement of the heirs of Marita to exemplary damages as a way of correction for the public good. For the purpose, ₱30,000.00 is reasonable and proper as exemplary damages, for a lesser amount would not serve genuine exemplarity.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

Circumstantial evidence is admissible as proof to establish both the commission of a crime and the identity of the culprit.

Under review is the conviction of Edmundo Villaflores for *rape with homicide* by the Regional Trial Court (RTC), Branch 128, in Caloocan City based on circumstantial evidence. The Court of Appeals (CA) affirmed the conviction with modification on February 22, 2007.[1]

The victim was Marita,[2] a girl who was born on October 29,

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[1] *Rollo*, pp. 4-33; penned by Associate Justice Monina Arevalo-Zenarosa (retired), with Associate Justice Marina L. Buzon (retired) and Associate Justice Edgardo F. Sundiam (deceased) concurring.

[2] The real names of the victim and members of her immediate family are withheld pursuant to Republic Act No. 7610 (*Special Protection of*

1994 based on her certificate of live birth.[3] When her very young life was snuffed out by strangulation on July 2, 1999, she was only four years and eight months old.[4] She had been playing at the rear of their residence in Bagong Silang, Caloocan City in the morning of July 2, 1999 when Julia, her mother, first noticed her missing from home.[5] By noontime, because Marita had not turned up, Julia called her husband Manito at his workplace in Pasig City, and told him about Marita being missing.[6] Manito rushed home and arrived there at about 2 pm,[7] and immediately he and Julia went in search of their daughter until 11 pm, inquiring from house to house in the vicinity. They did not find her.[8] At 6 am of the next day, Manito reported to the police that Marita was missing.[9] In her desperation, Julia sought out a clairvoyant (*manghuhula*) in an adjacent *barangay*, and the latter hinted that Marita might be found only five houses away from their own. Following the clairvoyant's direction, they found Marita's lifeless body covered with a blue and yellow sack[10] inside the comfort room of an abandoned house about five structures away from their own house.[11] Her face was black and blue, and bloody.[12] She had been tortured and strangled till death.

Children Against Child Abuse, Exploitation and Discrimination Act) and Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*). In place of the real names, fictitious names are used. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

3 Records, p. 285 (*Certificate of Live Birth*, Exhibit K).

4 *Id*., p. 278 (*Certificate of Death*, Exhibit E).

5 TSN, August 3, 2000, p. 14.

6 TSN, December 16, 1999, p. 5.

7 *Id*., p. 6.

8 *Id*., p. 7.

9 *Id*., p. 10.

10 *Id*., p. 12.

11 *Id*., p. 11.

12 *Id*., p. 13.

The ensuing police investigation led to two witnesses, Aldrin Bautista and Jovy Solidum, who indicated that Villaflores might be the culprit who had raped and killed Marita.[13] The police thus arrested Villaflores at around 5 pm of July 3, 1999 just as he was alighting from a vehicle.[14]

On July 7, 1999, the City Prosecutor of Caloocan City filed in the RTC the information charging Villaflores with *rape with homicide* committed as follows:[15]

> That on or about the 2nd day of July, 1999 in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and by means of force, violence and intimidation employed upon the person of one Marita, a minor of five (5) years old, did then and there willfully, unlawfully and feloniously lie and have sexual intercourse with said Marita, against the latter's will and without her consent, and thereafter with deliberate intent to kill beat the minor and choked her with nylon cord which caused the latter's death.
>
> CONTRARY TO LAW.

Arraigned on August 19, 1999, Villaflores pleaded *not guilty* to the crime charged.[16]

The CA summarized the evidence of the State in its decision, *viz*:

> After pre-trial was terminated, the trial proceeded with the prosecution presenting witnesses namely, Aldrin Bautista, Jovie Solidum, Manito, Dr. Jose Arnel Marquez, SPO2 Protacio Magtajas, SPO2 Arsenio Nacis, PO3 Rodelio Ortiz, PO Harold Blanco and PO Sonny Boy Tepase.
>
> From their testimonies, it is gathered that in the afternoon of July 3, 1999, the lifeless body of a 5-year old child, Marita (hereinafter Marita) born on October 21, 1994, (see Certificate of Live Birth marked as Exhibit K) was discovered by her father, Manito (hereinafter Manito)

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[13] TSN, February 17, 2000, p. 11.

[14] *Id.*, p. 17.

[15] Records, p. 1.

[16] *Id.*, pp. 11-12.

beside a toilet bowl at an unoccupied house about 5 houses away from their residence in Phase 9, Bagong Silang, Caloocan City. The day before at about noon time his wife called him up at his work place informing him that their daughter was missing, prompting Jessie to hie home and search for the child. He went around possible places, inquiring from neighbors but no one could provide any lead until the following morning when his wife in desperation, consulted a "*manghuhula*" at a nearby *barangay*. According to the "*manghuhula*" his daughter was just at the 5th house from his house. And that was how he tracked down his daughter in exact location. She was covered with a blue sack with her face bloodied and her body soaked to the skin. He found a yellow sack under her head and a white rope around her neck about 2 and a half feet long and the diameter, about the size of his middle finger. There were onlookers around when the NBI and policemen from Sub-station 6 arrived at the scene. The SOCO Team took pictures of Marita. Jessie was investigated and his statements were marked Exhibits C, D and D-1. He incurred funeral expenses in the total amount of ₱52,000.00 marked as Exhibit L and sub-markings. (See other expenses marked as Exhibit M and sub-markings).

Two (2) witnesses, Aldrin Bautista and Jovie Solidum, came forward and narrated that at about 10:00 o'clock in the morning of July 2, 1999, they saw Edmundo Villaflores, known in the neighborhood by his Batman tag and a neighbor of the [victim's family], leading Marita by the hand ("*umakay sa bata*"). At about noon time they were at Batman's house where they used shabu for a while. Both Aldrin and Jovie are drug users. Aldrin sports a "*sputnik*" tattoo mark on his body while Jovie belongs to the T.C.G. ("through crusher gangster"). While in Batman's place, although he did not see Marita, Jovie presumed that Batman was hiding the child at the back of the house. Jovie related that about 3:00 o'clock in the afternoon of the same day, he heard cries of a child as he passed by the house of Batman ("*Narinig ko pong umiiyak ang batang babae at umuungol*"). At about 7:00 o'clock in the evening, Jovie saw again Batman carrying a yellow sack towards a vacant house. He thought that the child must have been in the sack because it appeared heavy. It was the sack that he saw earlier in the house of Batman.

Among the first to respond to the report that the dead body of a child was found was SPO2 PROTACIO MAGTAJAS, investigator at Sub-station 6 Bagong Silang, Caloocan City who was dispatched by Police Chief Inspector Alfredo Corpuz. His OIC, SPO2 Arsenio Nacis

called the SOCO Team and on different vehicles they proceeded to Bagong Silang, Phase 9 arriving there at about 2 o:clock in the afternoon of July 3, 1999. They saw the body of the child at the back portion of an abandoned house where he himself recovered pieces of evidence such as the nylon rope (Exhibit N) and the yellow sack inside the comfort room. The child appeared black and blue, (*kawawa yong bata wasak ang mukha*"). He saw blood stains on her lips and when he removed the sack covering her body, he also saw blood stains in her vagina. The yellow sack that he was referring to when brought out in court had already a greenish and fleshy color. The sack was no longer in the same condition when recovered, saying, when asked by the Court: "*medyo buo pa, hindi pa ho ganyang sira-sira.*" There was another sack, colored blue, which was used to cover the face of the child while the yellow sack was at the back of the victim. He forgot about the blue sack when SOCO Team arrived because they were the ones who brought the body to the funeral parlor. He had already interviewed some person when the SOCO Team arrived composed of Inspector Abraham Pelotin, their team leader, and 2 other members. He was the one who took the statement of the wife of Edmundo Villaflores, Erlinda, and turned over the pieces of evidence to Police Officer SPO2 Arsenio Nacis who placed a tag to mark the items. When the SOCO Team arrived, a separate investigation was conducted by Inspector Pelotin.

PO3 RODELIO ORTIZ, assigned at Station 1, Caloocan City Police Station, as a police investigator, took the sworn statement of Aldrin Bautista upon instruction of his chief, SPO2 Arsenio Nacis, asked Aldrin to read his statement after which he signed the document then gave it to investigator, SPO2 Protacio Magtajas. During the investigation, he caused the confrontation between Aldrin Bautista and Edmundo Villaflores. Aldrin went closer to the detention cell from where he identified and pointed to Villaflores as the one who abducted the child. Villaflores appeared angry.

SPO2 ARSENIO NACIS' participation was to supervise the preparation of the documents to be submitted for inquest to the fiscal. He asked the investigator to prepare the affidavit of the victim's father and the statement of the two witnesses and also asked the investigator to prepare the referral slip and other documents needed in the investigation. He ordered the evidence custodian, PO3 Alex Baruga to secure all the physical evidence recovered from the scene of the crime composed of 2 sacks. In the afternoon of July 3, the suspect, Edmundo Villaflores was arrested by PO3 Harold Blanco, SPO1 Antonio

Alfredo, NUP Antonio Chan and the members of Bantay Bayan in Bagong Silang.

PO1 HAROLD BLANCO of the Sangandaan Police Station, Caloocan City, as follow-up operative, was in the office at about 1:00 o'clock in the afternoon of July 3, 1999, together with PO3 Alfredo Antonio and Police Officer Martin Interia, when Police Inspector Corpuz, as leader formed a team for them to go to the scene of the crime. They immediately proceeded to Phase 9. Inspector Corpuz entered the premises while he stayed with his companions and guarded the place. SPO3 Magtajas was already investigating the case. They were informed that the group of Aldrin could shed light on the incident. Blanco and the other police officers returned to the crime scene and asked the people around, who kept mum and were elusively afraid to talk. When he went with SPO1 Antonio Chan accompanied by councilman Leda to the house of Batman, it was already padlocked. They went to the place of SPO1 Alfredo Antonio nearby to avoid detection and asked a child to look out for Villaflores. Soon enough, a jeep from Phase 1 arrived and a commotion ensued as people started blocking the way of Villaflores, who alighted from the said jeep. The officers took him in custody and brought him to Sub-station 6 and SPO3 Nacis instructed them to fetch his wife. He was with police officer Antonio Chan and they waited for the arrival of the wife of Villaflores from the market. When she arrived, it was already night time. They informed her that her husband was at Sub-station 6 being a suspect in the killing of a child. There was no reaction on her part. She was with her 3 minor children in the house. She went with them to the precinct. When Sgt. Nacis asked Mrs. Villaflores if she knew anything about what happened on the night of July 2, initially, she denied but in the course of the questioning she broke down and cried and said that she saw her husband place some sacks under their house. He remembered the wife saying, "*noong gabing nakita niya si* Villaflores, *may sako sa silong ng bahay nila, tapos pagdating ni* Villaflores, *inayos niya yong sako at nilapitan niya raw, nakita niya may siko, tapos tinanong niya si* Villaflores, *ano yon*? *Sabi niya, wala yon, wala yon*." The wife was crying and she said that her husband was also on drugs and even used it in front of their children. She said that she was willing to give a statement against her husband. Their house is a "*kubo*" the floor is made of wood and there is space of about 2 feet between the floor and the ground. She saw the sack filled with something but when she asked her husband, he said it was nothing. She related that before she

went outside, she again took a look at the sack and she saw a protruding elbow inside the sack. She went inside the house and went out again to check the sack and saw the child. It was Sgt. Nacis who typed the statement of Erlinda Villaflores which she signed. He identified the sworn statement marked as Exhibit X and sub-markings.

PO1 SONNY BOY TEPACE assigned at the NPD Crime Laboratory, SOCO, Caloocan City Police Station also went to the crime scene on July 3, 1999 at about 2:50 in the afternoon with Team Leader Abraham Pelotin, at the vacant lot of Block 57, Lot 12, Phase 9, Caloocan City. He cordoned the area and saw the dead child at the back of the uninhabited house. She was covered with a blue sack and a nylon cord tied around her neck. There was another yellow sack at the back of her head. He identified the nylon cord (Exhibit N) and the yellow sack. He does not know where the blue sack is, but he knew that it was in the possession of the officer on case. The blue sack appears in the picture marked as Exhibits S, T, and R, and was marked Exhibits T-3-A, S-1 and R-2-A. Thereafter they marked the initial report as Exhibit U and sub-markings. They also prepared a rough sketch dated July 3, 1999 with SOCO report 047-99 marked as Exhibit V and the second sketch dated July 3, 1999 with SOCO report 047-99 marked as Exhibit W.

DR. ARNEL MARQUEZ, Medico Legal Officer of the PNP Crime Laboratory with office at Caloocan City Police Station conducted the autopsy on the body of Marita upon request of Chief Inspector Corpus. The certificate of identification and consent for autopsy executed by the father of the victim was marked as Exhibit G. He opined that the victim was already dead for 24 hours when he conducted the examination on July 3, 1999 at about 8 o'clock in the evening. The postmortem examination disclosed the following:

POSTMORTEM FINDINGS:

> Fairly developed, fairly nourished female child cadaver in secondary stage of flaccidity with postmortem lividity at the dependent portions of the body. Conjunctivae are pale. Lips and nailbeds are cyanotic.

HEAD, NECK AND TRUNK

> 1) Hematoma, right periorbital region, measuring 4 x 3.5 cm; 3.5 cm from the anterior midline.

2) Area of multiple abrasions, right zygomatic region, measuring 4 x 2.2 cm, from the anterior midline.

3) Abrasion, right cheek, measuring 1.7 x 0.8 cm, 3 cm from the anterior midline.

4) Area of multiple abrasions, upper lip, measuring 4 x 1 cm, bisected by the anterior midline.

5) Contusion, frontal region, measuring 6 x 4 cm, 6.5 cm left of the anterior midline.

6) Punctured wound, left pre-auricular region, measuring 9.2 x 0.1 cm, 11.5 cm from the anterior midline.

7) Ligature mark, neck, measuring 24 x 0.5 cm, bisected by the anterior midline.

8) Abrasion, right scapular region, measuring 0.7 x 0.4 cm, 6 cm from the Posterior midline.

9) Abrasion, left scapular region, measuring 1.2 x 0.8 cm, 6.5 cm from the posterior midline.

There are multiple deep fresh lacerations at the hymen. The vestibule is abraded and markedly congested, while the posterior fourchette is likewise lacerated and marked congested.

The lining mucosa of the larynx, trachea and esophagus are markedly congested with scattered petecchial hemorrhages.

Stomach is ½ full of partially digested food particles mostly rice.

Cause of death is asphyxia by strangulation."

There were multiple deep laceration at the hymen and the vestibule was abraded and markedly congested while the posterior fourchette was likewise lacerated and markedly congested, too. It could have been caused by an insertion of blunt object like a human penis. The cause of death was asphyxia by strangulation, in layman's term, "*sinakal sa pamamagitan ng tali*." The external injuries could have been caused by contact with a blunt object like a piece of wood. The abrasion could have also been caused by a hard and rough surface. He prepared the Medico Legal Report No. M-250-99 of the victim, Marita _____ marked as Exhibit H and sub-markings. He issued the death certificate marked as Exhibit E. The anatomical sketch

representing the body of the victim was marked as Exhibit I and sub-markings. The sketch of the head of the victim was marked Exhibit J. The injuries on the head could have been caused by hard and blunt object while other injuries were caused by coming in contact with a hard or rough surface. There were also punctured wounds which could have been caused by a barbecue stick or anything pointed. The ligature mark was congested and depressed.

On cross-examination, among others, he explained the stages of flaccidity which is the softening of the body of a dead person. The first 3 hours after death is the primary stage of flaccidity and after the third hour, the body will be in rigor mortis and after the 24 hours, it is the secondary stage. The victim could have been dead at least 9 o'clock in the morning on July 2. As regards the multiple lacerations of the hymen, it is possible that two or more persons could have caused it.

The CA similarly summed up the evidence of Villaflores, as follows:

EDMUNDO VILLAFLORES, testifying in his behalf, denied the charge of raping and killing the child saying he did not see the child at anytime on July 2, 1999. At around 10:00 o'clock in the morning of July 2, 1999, he was at the market place at Phase 10 to get some plywood for his Aunt Maring. His Aunt called him at 8:30 in the morning and stayed there for about 5 hours and arrived home at around 5:00 in the afternoon. His Aunt was residing at Phase 10 which is about a kilometer from his place. His residence is some 5 houses away from the place of the child. He knows the child because sometimes he was asked by the wife of Manito to fix their electrical connection. He corrected himself by saying he does not know Marita but only her father, Manito. He denied carrying a sack and throwing it at the vacant lot. He was arrested on July 3, 1999 and does not know of any reason why he was charged. He has witnesses like Maring, Sherwin, Pareng Bong and Frankie to prove that he had no participation in the killing.

On cross-examination, among others, he admitted being called "Batman" in their place and that Aldrin and Jovie are his friends. They go to his house at Package 5, Phase 9, Lot 32 in Bagong Silang, Caloocan City. They are his close friends being his neighbors and they usually went to his house where they used *shabu* ("*gumagamit ng bato*"). At 42, he is older than Aldrin and Jovie. He knew Marita

who sometimes called him to his house to fix electrical wiring. He also knew his wife, but does not know their children. On the night of July 2, Aldrin and Jovie went to his house. He was arrested on July 3 in a street near the precinct while walking with his wife. They came from Bayan. His wife works in a sidewalk restaurant. Two of his children were in Phase 3, the other two were in his house and two more were left with his siblings. When he was arrested, he was carrying some food items which they brought in Bayan. They did not tell him why he was being arrested. He saw his wife once at Police Station 1 before he was brought to the city jail. Aldrin and Jovie harbored ill feelings against him because the last time they went to his house he did not allow them to use *shabu*. He admitted using *shabu* everytime his friends went to his house. He is not legally married to his wife. She visited him for the last time on July 19, 1999. He denied that the door of his house had a sack covering neither was it locked by a piece of string. He has not talked with the father or mother of the child nor did he ask his wife for help. He just waited for his mother and she told him, they will fight it out in court, "*ilalaban sa husgado*."

On re-direct he said that Aldrin and Jovie often went in and out of his house. His bathroom is in front of his house.

SHERWIN BORCILLO, an electronic technician and neighbor of Edmundo Villaflores told the court that the charges against Villaflores were not true, the truth being, that on the night of July 2, 1999 he saw Aldrin and Jovie at the back of his house holding a sack containing something which he did not know. They were talking to Batman and offering a dog contained in the sack and then they left the sack near the comfort room outside the door of the house of Batman. They came back and took the yellow sack. He followed them up to the other pathwalk and then he went home. The following day he learned that Villaflores was being charged with the killing of Marita. At first, he just kept quiet because he thought Villaflores should be taught a lesson for being a drug user, but later when he had a drinking spree with his father and uncle, he told them what he knew because he could not trust any policeman in their place. He told them what really happened and they advised him to report the matter to the *barangay*. So he went to the purok and made a statement in an affidavit form. He executed the "*Salaysay*" in the presence of their *Purok* secretary and *barangay* tanod. It was the Purok secretary who gave him the form. He saw Aldrin and Jovie about midnight of July 2, 1999. There was also another person with them, one Jose

Pitallana, who is the eldest in the group and considered their "*Amo-amo*". In his affidavit, he said: "*Ako ay lumabas ng bahay at sinundan ko siya at nakita ko si Jose na tinalian ng nylon and bata. Tapos po ay may narinig po akong kung sino man ang titistego sa akin ay papatayin ko, basta kayo ang saksi sa ginawa in Batman*." He said he was sure that the sack contained the child because he saw the head of the child, it seemed like she was staring at him and asking his help. He executed the statement after the arrest of the accused. He did not go to the police station to narrate his story. He made his statement not in the *barangay* hall but only at their purok.

On cross-examination, among others, he said that on July 2, 1999 he left the house at about 11:00 o'clock in the morning to go to school in PMI at Sta. Cruz, Manila. He did not see Batman, nor Aldrin, or Jovie about noon time of July 2. He arrived home at about 8:00 o'clock in the evening because he passed by the Susano Market in Novaliches to see his mother who was a vendor there. They closed the store at about 6:30, then they bought some food stuffs to bring home. He was not sure of the date when Batman was arrested. He admitted that Batman is his uncle being the brother of his mother. His uncle is a known drug addict in the area. He usually saw him using *shabu* in the company of Jose Pitallana, his wife, Aldrin and Jovie. After he was informed that his uncle was arrested, he did not do anything because he was busy reviewing for his exam. He did not also visit him in jail. After he made his statement, he showed it to their Purok Leader, Melencio Yambao and Purok Secretary, Reynaldo Mapa. They read his statement and recorded it in the logbook. It was not notarized. He had no occasion to talk with Aldrin and Jovie. Jose Pitallana is no longer residing in their place. He did not even know that Aldrin and Jovie testified against his uncle. He never went to the police to tell the truth about the incident.

As earlier stated, on May 27, 2004, the RTC convicted Villaflores of *rape with homicide*, holding that the circumstantial evidence led to no other conclusion but that his guilt was shown beyond reasonable doubt.[17] The RTC decreed:

Wherefore, the Court finds accused Edmundo Villaflores guilty beyond reasonable doubt of raping and killing "Marita" and hereby sentences him to the Supreme penalty of death, to indemnify the

[17] Records, pp. 345-368.

heirs of the deceased in the sum of ₱75,000.00, moral damages in the sum of ₱30,000.00 and exemplary damages in the sum of ₱20,000.00, and to pay the cost if this suit, to be paid to the heirs if the victim.

The City Jail Warden of Caloocan City is hereby ordered to bring the accused to the National Penitentiary upon receipt hereof after the promulgation of the decision.

Let the records of this case be forwarded to the Supreme Court for automatic review.

SO ORDERED.

On intermediate review, the CA affirmed the conviction,[18] disposing:

WHEREFORE, the decision of the RTC Caloocan City, Branch 128 finding the accused Edmundo Villaflores guilty beyond reasonable doubt of the crime of rape with homicide is affirmed with modification in the sense that (a) the death penalty imposed by the trial court is commuted to *reclusion perpetua* and the judgment on the civil liability is modified by ordering the appellant to pay the amount of ₱100,000.00 civil indemnity, ₱75,000.00 moral damages and ₱52,000.00 as actual damages.

SO ORDERED.

Issues

Villaflores now reiterates that the RTC and the CA gravely erred in finding him guilty beyond reasonable doubt of *rape with homicide* because the State did not discharge its burden to prove beyond reasonable doubt every fact and circumstance constituting the crime charged.

In contrast, the Office of the Solicitor General counters that the guilt of Villaflores for *rape with homicide* was established beyond reasonable doubt through circumstantial evidence.

Ruling

We sustain Villaflores' conviction.

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[18] *Supra*, note 1.

I

Nature of *rape with homicide* as a composite crime, explained

The felony of *rape with homicide* is a composite crime. A composite crime, also known as a special complex crime, is composed of two or more crimes that the law treats as a single *indivisible* and *unique* offense for being the product of a single criminal impulse. It is a specific crime with a specific penalty provided by law, and differs from a compound or complex crime under Article 48 of the *Revised Penal Code*, which states:

> Article 48. *Penalty for complex crimes*. – When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

There are distinctions between a composite crime, on the one hand, and a complex or compound crime under Article 48, *supra*, on the other hand. In a composite crime, the composition of the offenses is fixed by law; in a complex or compound crime, the combination of the offenses is not specified but generalized, that is, grave and/or less grave, or one offense being the necessary means to commit the other. For a composite crime, the penalty for the specified combination of crimes is specific; for a complex or compound crime, the penalty is that corresponding to the most serious offense, to be imposed in the maximum period. A light felony that accompanies a composite crime is absorbed; a light felony that accompanies the commission of a complex or compound crime may be the subject of a separate information.

Republic Act No. 8353 (*Anti-Rape Law of 1997*) pertinently provides:

> Article 266-A. *Rape; When and How Committed*. – Rape is committed
>
> 1) By a man who have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstance mentioned above be present.

x x x

Article 266-B. *Penalties.* – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

x x x

The law on rape quoted herein thus defines and sets forth the composite crimes of *attempted rape with homicide* and *rape with homicide*. In both composite crimes, the homicide is committed *by reason* or *on the occasion of rape*. As can be noted, each of said composite crimes is punished with a single penalty, the former with *reclusion perpetua* to death, and the latter with death.

The phrases *by reason of the rape* and *on the occasion of the rape* are crucial in determining whether the crime is a composite crime or a complex or compound crime. The phrase *by reason of the rape* obviously conveys the notion that the killing is *due to* the rape, the offense the offender originally designed to commit. The victim of the rape is also the victim of the killing. The indivisibility of the homicide and the rape (attempted or consummated) is clear and admits of no doubt. In contrast, the import of the phrase *on the occasion of the rape* may not be as easy to determine. To understand what

homicide may be covered by the phrase *on the occasion of the rape*, a resort to the meaning the framers of the law intended to convey thereby is helpful. Indeed, during the floor deliberations of the Senate on Republic Act No. 8353, the legislative intent on the import of the phrase *on the occasion of the rape* to refer to a killing that occurs immediately *before* or *after*, or *during* the commission itself of the attempted or consummated rape, where the victim of the homicide may be a person other than the rape victim herself *for as long as the killing is linked to the rape*, became evident, *viz*:

> Senator Enrile. x x x
>
> I would like to find out, first of all, Mr. President, what is the meaning of the phrase appearing in line 24, "or on the occasion"?
>
> When the rape is attempted or frustrated, and homicide is committed by reason of the rape, I would understand that. But what is the meaning of the phrase "on the occasion of rape"? How far in time must the commission of the homicide be considered a homicide "on the occasion" of the rape? Will it be, if the rapists happen to leave the place of rape, they are drunk and they killed somebody along the way, would there be a link between that homicide and the rape? Will it be "on the occasion" of the rape?
>
> Senator Shahani. x x x It will have to be linked with the rape itself, and the homicide is committed with a very short time lapse.
>
> Senator Enrile. I would like to take the first scenario, Mr. President: If the rapist enters a house, kills a maid, and rapes somebody inside the house, I would probably consider that as a rape "on the occasion of". Or if the rapists finished committing the crime of rape, and upon leaving, saw somebody, let us say, a potential witness inside the house and kills him, that is probably clear. But suppose the man happens to kill somebody, will there be a link between these? What is the intent of the phrase "on the occasion of rape"? x x x
>
> x x x
>
> Senator Shahani. Mr. President, the principal crime here, of course, is rape, and homicide is a result of the circumstances surrounding the rape.
>
> So, the instance which was brought up by the good senator from Cagayan where, let us say, the offender is fleeing the place or is

apprehended by the police and he commits homicide, I think would be examples where the phrase "on the occasion thereof" would apply. But the principal intent, Mr. President, is rape.[19]

II
The State discharged its burden of proving the *rape with homicide* beyond reasonable doubt

As with all criminal prosecutions, the State carried the burden of proving all the elements of rape *and* homicide beyond reasonable doubt in order to warrant the conviction of Villaflores for the *rape with homicide* charged in the information.[20] The State must thus prove the concurrence of the following facts, namely: (*a*) that Villaflores had carnal knowledge of Marita; (*b*) that he consummated the carnal knowledge without the consent of Marita; and (*c*) that he killed Marita by reason of the rape.

Under Article 266-A, *supra*, rape is always committed when the accused has carnal knowledge of a female *under* 12 years of age. The crime is commonly called statutory rape, because a female of that age is deemed incapable of giving consent to the carnal knowledge. Marita's Certificate of Live Birth (Exhibit K) disclosed that she was born on October 29, 1994, indicating her age to be only four years and eight months at the time of the commission of the crime on July 2, 1999. As such, carnal knowledge of her by Villaflores would constitute statutory rape.

We have often conceded the difficulty of proving the commission of rape when only the victim is left to testify on the circumstances of its commission. The difficulty heightens and complicates when the crime is *rape with homicide*, because there may usually be no living witnesses if the rape victim is herself killed. Yet, the situation is not always hopeless for the State, for the *Rules of Court* also allows circumstantial evidence

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[19] Record of the Senate (10th Congress), Individual Amendments – S. No. 950, Volume I, No. 8, August 7, 1996, pp. 254-255.

[20] See *People v. Nanas*, G.R. No. 137299, August 21, 2001, 363 SCRA 452, 464.

to establish the commission of the crime as well as the identity of the culprit.[21] Direct evidence proves a fact in issue directly without any reasoning or inferences being drawn on the part of the factfinder; in contrast, circumstantial evidence indirectly proves a fact in issue, such that the factfinder must draw an inference or reason from circumstantial evidence.[22] To be clear, then, circumstantial evidence may be resorted to when to insist on direct testimony would ultimately lead to setting a felon free.[23]

The *Rules of Court* makes no distinction between direct evidence of a fact and evidence of circumstances from which the existence of a fact may be inferred; hence, no greater degree of certainty is required when the evidence is circumstantial than when it is direct. In either case, the trier of fact must be convinced beyond a reasonable doubt of the guilt of the accused.[24] Nor has the quantity of circumstances sufficient to convict an accused been fixed as to be reduced into some definite standard to be followed in every instance. Thus, the Court said in *People v. Modesto*:[25]

> The standard postulated by this Court in the appreciation of circumstantial evidence is well set out in the following passage from *People vs. Ludday*:[26] "No general rule can be laid down as to the quantity of circumstantial evidence which in any case will suffice. All the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt."

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[21] *Id.*

[22] *People v. Ramos*, G.R. No. 104497, January 18, 1995, 240 SCRA 191, 198; citing Gardner, *Criminal Evidence, Principles, Cases and Readings*, West Publishing Co., 1978 ed., p. 124.

[23] *Amora v. People*, G.R. No. 154466, January 28, 2008, 542 SCRA 485, 491.

[24] *People v. Ramos*, *supra*, note 22; citing *Robinson v. State*, 18 Md. App. 678, 308 A2d 734 (1973).

[25] No. L-25484, September 21, 1968, 25 SCRA 36, 41.

[26] 61 Phil. 216, 221-222 (1935).

Section 4, Rule 133, of the *Rules of Court* specifies when circumstantial evidence is sufficient for conviction, *viz*:

> Section 4. *Circumstantial evidence, when sufficient*. - Circumstantial evidence is sufficient for conviction if:
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> (a) There is more than one circumstance;
>
> (b) The facts from which the inferences are derived are proven; and
>
> (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. (5)

In resolving to convict Villaflores, both the RTC and the CA considered several circumstances, which when "appreciated together and not piece by piece," according to the CA,[27] were seen as "strands which create a pattern when interwoven," and formed an unbroken chain that led to the reasonable conclusion that Villaflores, to the exclusion of all others, was guilty of *rape with homicide*.

We concur with the RTC and the CA.

The duly established circumstances we have considered are the following. Firstly, Aldrin Bautista and Jovie Solidum saw Villaflores holding Marita by the hand (*akay-akay*) at around 10:00 am on July 2, 1999,[28] leading the child through the alley going towards the direction of his house about 6 houses away from the victim's house.[29] Secondly, Marita went missing after that and remained missing until the discovery of her lifeless body on the following day.[30] Thirdly, Solidum passed by Villaflores' house at about 3:00 pm of July 2, 1999 and heard the crying and moaning (*umuungol*) of a child coming from inside.[31] Fourthly, at about 7:00 pm of July 2, 1999 Solidum saw Villaflores

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[27] *Rollo*, p. 28.

[28] TSN, October 14, 1999, p. 5; and November 4, 1999, pp. 5-6.

[29] TSN, December 3, 2001, p. 7.

[30] TSN, December 16, 1999, pp. 5-6.

[31] TSN, December 3, 2001, pp. 5, 16.

coming from his house carrying a yellow sack that appeared to be heavy and going towards the abandoned house where the child's lifeless body was later found.[32] Fifthly, Manito, the father of Marita, identified the yellow sack as the same yellow sack that covered the head of his daughter (*nakapalupot sa ulo*) at the time he discovered her body;[33] Manito also mentioned that a blue sack covered her body.[34] Sixthly, a hidden pathway existed between the abandoned house where Marita's body was found and Villaflores' house, because his house had a rear exit that enabled access to the abandoned house without having to pass any other houses.[35] This indicated Villaflores' familiarity and access to the abandoned house. Seventhly, several pieces of evidence recovered from the abandoned house, like the white rope around the victim's neck and the yellow sack, were traced to Villaflores. The white rope was the same rope tied to the door of his house,[36] and the yellow sack was a wall-covering for his toilet.[37] Eighthly, the medico-legal findings showed that Marita had died from asphyxiation by strangulation, which cause of death was consistent with the ligature marks on her neck and the multiple injuries including abrasions, hematomas, contusions and punctured wounds. Ninthly, Marita sustained multiple deep fresh hymenal lacerations, and had fresh blood from her genitalia. The vaginal and periurethral smears taken from her body tested positive for spermatozoa.[38] And, tenthly, the body of Marita was already in the second stage of flaccidity at the time of the autopsy of her cadaver at 8 pm of July 3, 1999. The medico-legal findings indicated that such stage of flaccidity confirmed that she had been dead for more than 24 hours, or at the latest by 9 pm of July 2, 1999.

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[32] TSN, November 4, 1999, pp. 8-9.

[33] TSN, May 24, 2001, p. 5.

[34] TSN, December 13, 2000, p. 20.

[35] TSN, February 17, 2000, p. 11.

[36] *Id.*, p. 21.

[37] *Id.*, p. 20.

[38] TSN, February 10, 2000, pp. 5-6.

These circumstances were links in an unbroken chain whose totality has brought to us a moral certainty of the guilt of Villaflores for *rape with homicide*. As to the rape, Marita was found to have suffered multiple deep fresh hymenal lacerations, injuries that Dr. Jose Arnel Marquez, the medico-legal officer who had conducted the autopsy of her cadaver on July 3, 1999, attributed to the insertion of a blunt object like a human penis. The fact that the vaginal and periurethral smears taken from Marita tested positive for spermatozoa confirmed that the blunt object was an adult human penis. As to the homicide, her death was shown to be caused by strangulation with a rope, and the time of death as determined by the medico-legal findings was consistent with the recollection of Solidum of seeing Villaflores going towards the abandoned house at around 7 pm of July 2, 1999 carrying the yellow sack that was later on found to cover Marita's head. Anent the identification of Villaflores as the culprit, the testimonies of Solidum and Bautista attesting to Villaflores as the person they had seen holding Marita by the hand going towards the abandoned house before the victim went missing, the hearing by Solidum of moaning and crying of a child from within Villaflores' house, and the tracing to Villaflores of the yellow sack and the white rope found at the crime scene sufficiently linked Villaflores to the crime.

We note that the RTC and the CA disbelieved the exculpating testimony of Borcillo. They justifiably did so. For one, after he stated during direct examination that Villaflores was only his neighbor,[39] it soon came to be revealed during his cross-examination that he was really a son of Villaflores' own sister.[40] Borcillo might have concealed their close blood relationship to bolster the credibility of his testimony favoring his uncle, but we cannot tolerate his blatant attempt to mislead the courts about a fact relevant to the correct adjudication of guilt or innocence. Borcillo deserved no credence as a witness. Also, Borcillo's implicating Solidum and Bautista in the crime, and exculpating his uncle were justly met with skepticism. Had

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39 TSN, September 8, 2001, p. 3.

40 *Id.*, p. 16.

Borcillo's incrimination of Solidum and Bautista been factually true, Villaflores could have easily validated his *alibi* of having run an errand for an aunt about a kilometer away from the place of the crime on that morning of July 2, 1999. Yet, the *alibi* could not stand, both because the alleged aunt did not even come forward to substantiate the *alibi*, and because the Defense did not demonstrate the physical impossibility for Villaflores to be at the place where the crime was committed at the time it was committed.

The CA reduced the penalty of death prescribed by the RTC to *reclusion perpetua* in consideration of the intervening enactment on June 24, 2006 of Republic Act No. 9346.[41] Nonetheless, we have also to specify in the judgment that Villaflores shall not be eligible for parole, considering that Section 3 of Republic Act No. 9346 expressly holds persons "whose sentences will be reduced to *reclusion perpetua* by reason of this Act" not eligible for parole under Act No. 4103 (*Indeterminate Sentence Law*), as amended.

The awards of damages allowed by the CA are proper. However, we add exemplary damages to take into account the fact that Marita was below seven years of age at the time of the commission of the *rape with homicide*. Article 266-B, *Revised Penal Code* has expressly declared such tender age of the victim as an aggravating circumstance in rape, to wit:

> Article 266-B. *Penalties.* – xxx.
>
> xxx
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> xxx
>
> 5) When the victim is a child below seven (7) years old;

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[41] *An Act Prohibiting the Imposition of Death Penalty in the Philippines, repealing Republic Act 8177 otherwise known as the Act Designating Death by Lethal Injection, Republic Act 7659 otherwise known as the Death Penalty Law and All Other Laws, Executive Orders and Decrees.*

x x x

Pursuant to the *Civil Code*, exemplary damages may be imposed in a criminal case as part of the civil liability "when the crime was committed with one or more aggravating circumstances."[42] The *Civil Code* permits such award "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages."[43] Granting exemplary damages is not dependent on whether the aggravating circumstance is actually appreciated or not to increase the penalty. As such, the Court recognizes the entitlement of the heirs of Marita to exemplary damages as a way of correction for the public good. For the purpose, ₱30,000.00 is reasonable and proper as exemplary damages,[44] for a lesser amount would not serve genuine exemplarity.

WHEREFORE, the Court **AFFIRMS** the decision promulgated by the Court of Appeals on February 22, 2007 finding and pronouncing *EDMUNDO VILLAFLORES y OLANO* guilty of *rape with homicide*, subject to the following **MODIFICATIONS,** namely: (*a*) that he shall suffer *reclusion perpetua* without eligibility for parole under Act No. 4103 (*Indeterminate Sentence Law*), as amended; (*b*) that he shall pay to the heirs of the victim the sum of ₱30,000.00 as exemplary damages, in addition to the damages awarded by the Court of Appeals; and (c) that all the awards for damages shall bear interest of 6% *per annum* reckoned from the finality of this decision.

The accused shall pay the costs of suit.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Del Castillo, and *Villarama, Jr., JJ.*, concur.

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[42] Article 2230, *Civil Code.*

[43] Article 2229, *Civil Code*.

[44] See *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 752, *People v. Del Rosario*, G.R. No. 189580, February 9, 2011, 642 SCRA 625, 637-638.

FIRST DIVISION

[G.R. No. 186141. April 11, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESUSA FIGUEROA *Y* CORONADO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); BUY-BUST OPERATIONS; NOT INVALIDATED BY THE LACK OF PRIOR COORDINATION WITH THE PHILIPPINE DRUG ENFORCEMENT AGENCY. — It is settled that Section 86 of Republic Act No. 9165 does not invalidate operations on account of the law enforcers' failure to maintain close coordination with the PDEA. Thus, in *People v. Berdadero*, the Court noted that Section 86, as well as the Internal Rules and Regulations implementing the same, is silent as to the consequences of the failure on the part of the law enforcers to seek the authority of the PDEA prior to conducting a buy-bust operation. This Court consequently held that "this silence [cannot] be interpreted as a legislative intent to make an arrest without the participation of PDEA illegal or evidence obtained pursuant to such an arrest inadmissible." The same conclusion was reached by this Court in *People v. Roa*, *People v. Mantalaba* and *People v. Sabadlab*.

2. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; TESTIMONIAL EVIDENCE; HEARSAY RULE; DOCTRINE OF INDEPENDENTLY RELEVANT STATEMENTS; THE HEARSAY RULE DOES NOT APPLY WHERE ONLY THE FACT THAT SUCH STATEMENTS WERE MADE IS RELEVANT, AND THE TRUTH AND FALSITY THEREOF IS IMMATERIAL. — Under the doctrine of independently relevant statements, we have held that the hearsay rule does not apply where only the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial. In the case at bar, the testimony of PO3 Callora as regards the conversations between the informant and accused-appellant is admissible

insofar as it established that said information led the police officers to prepare for and proceed with the buy-bust operation. The conversation between the informant and the accused-appellant was not necessary to prove the attempted sale of *shabu*, as said attempt to sell was already clear from accused-appellant's actuations on July 2, 2004, which were all within the personal knowledge of PO3 Callora and testified to by him x x x.

3. CRIMINAL LAW; ATTEMPTED FELONIES; WHEN COMMITTED. — Under the Revised Penal Code, there is an attempt to commit a crime when the offender commences its commission 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. This definition has essentially been adopted by this Court in interpreting Section 26 of Republic Act No. 9165. Thus, in *People v. Laylo*, we affirmed the conviction of the appellant therein and held that the attempt to sell *shabu* was shown by the overt act of appellant therein of showing the substance to the poseur-buyer. In said case, the sale was aborted when the police officers identified themselves and placed appellant under arrest.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT IMPAIRED BY DISCREPANCIES REFERRING TO MINOR DETAILS AND NOT IN ACTUALITY TOUCHING UPON THE CENTRAL FACT OF THE CRIME. — As for the purported inconsistencies in the testimonies of the prosecution witnesses, we agree with the pronouncement of the Court of Appeals that discrepancies "referring to minor details, and not in actuality touching upon the central fact of the crime, do not impair [the witnesses'] credibility" nor do they overcome the presumption that the arresting officers have regularly performed their official duties.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
E.G. Ferry Law Offices for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals in CA-G.R. C.R.-H.C. No. 02348 dated October 25, 2007 affirming the conviction of accused-appellant Jesusa Figueroa in Criminal Case No. 04-2433 for violation of Section 26, Article II of Republic Act No. 9165.

There were originally two Informations filed against accused-appellant:

Criminal Case No. 04-2432

That on or about the 2nd day of July 2004, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously have in her possession, direct custody and control a total weight of nine point fourty [sic] two (9.42) grams of Methylamphetamine Hydrochloride (*shabu*) which is a dangerous drug, in violation of the above-cited law.[2]

Criminal Case No. 04-2433

That on or about the 2nd day of July 2004, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously attempt to sell, give away, distribute and deliver four point sixty (4.60) grams of Methylamphetamine Hydrochloride (*shabu*) which is a dangerous drug, by then and there agreeing to sell and deliver the said dangerous drug to the proposed buyer PO3 JOSEFINO CALLORA, thereby commencing the commission of the crime of sale of dangerous drugs, but which nevertheless failed to consummate the said sale by reason of causes other than her own spontaneous

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[1] *Rollo*, pp. 2-18; penned by Associate Justice Vicente Q. Roxas with Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia, concurring.

[2] Records, p. 3.

desistance, that is she got frightened by the presence of police officers at the scene of the crime.[3]

Accused-appellant pleaded not guilty to the crimes charged. Thereafter, the Regional Trial Court (RTC), Branch 64 of Makati City proceeded with the trial of the aforementioned charges. The versions of the prosecution and the defense of what transpired on July 2, 2004, as concisely summarized by the Court of Appeals, were as follows:

Version of the Prosecution

In the evening of June 20, 2004, an informant came to the office of P/Supt. Nelson T. Yabut (P/SUPT. YABUT), Chief of the Special Operation Unit 1 of PNP Anti-Illegal Drugs Special Operations Task Force (PNP AIDSOTF) at Camp Crame, Quezon City and informed him of the drug pushing activities of a certain "Baby," later identified as accused-appellant FIGUEROA. P/SUPT. YABUT instructed PS/Insp. Pepito Garcia (PS/INSP. GARCIA), PO3 Josefino Callora (PO3 CALLORA) and PO2 Rogie Pinili (PO2 PINILI) to conduct discreet surveillance operation to verify the information.

On June 23, 2004, at about 8:00 p.m., PO3 CALLORA, together with the informant, met with accused-appellant FIGUEROA at the parking area of SM Bicutan in Taguig, Metro Manila. The informant introduced PO3 CALLORA to accused-appellant FIGUEROA as the one who was willing to regularly buy *shabu* from her should her sample be of good quality. Accused-appellant FIGUEROA, however, told them that she had no stock of *shabu* at that time, but she promised to inform PO3 CALLORA through the informant once she already has supply of good quality *shabu*.

In the morning of the following day, the Special Operation Unit 1 of the PNP AIDSOTF requested the PNP Crime Laboratory to dust with ultra-violet powder the two (2) pieces of ₱500.00 bills with serial numbers FG403794 and MY883243 to be used in the planned buy-bust operation against accused-appellant FIGUEROA.

On July 2, 2004, at about 12:00 noon, the informant called the Desk Officer of the Special Operation Unit 1 of PNP AIDSOTF, who in turn relayed to P/SUPT. YABUT that accused-appellant FIGUEROA had informed him that she already had a stock of good quality *shabu*

[3] *Id.* at 4.

and asked how much *shabu* would be bought by PO3 CALLORA. P/SUPT YABUT instructed the informant to tell accused-appellant FIGUEROA that ₱10,000.00 worth of *shabu* would be bought from her. Later on the same day, the informant made another telephone call and relayed the information that accused-appellant FIGUEROA had agreed to deliver the *shabu* worth [₱10,000.00] in front of the 7-Eleven Convenience Store at the corner of M. Almeda and M. Conception Avenues, San Joaquin, Pasig City at about 4:00 p.m. of that day.

A team, composed of P/SUPT. YABUT, PS/INSP. GARCIA, PO2 PINILI and PO3 CALLORA, was then formed to conduct the buy-bust operation, with PO3 CALLORA designated as the poseur-buyer. The buy-bust money was prepared. The genuine two (2) pieces of ₱500.00 bills were placed on top of boodle money to make them appear as ₱10,000.00.

At about 4:00 p.m. of July 2, 2004, the team proceeded to the agreed meeting place. PO3 CALLORA arrived in the vicinity of 7-Eleven on board a car driven by PS/INSP. GARCIA and met with the informant. PO3 CALLORA and the informant waited for accused-appellant FIGUEROA, who after a few minutes, arrived driving a Toyota Revo with Plate No. XPN 433. Seeing the two, accused-appellant FIGUEROA waived at them and drove towards them. Stopping near them, accused-appellant FIGUEROA rolled down the window of her car and asked where the money was. On the other hand, PO3 CALLORA asked for the *shabu*. At that juncture, accused-appellant FIGUEROA opened a Chowking plastic bag and showed a plastic sachet containing white crystalline substance. When PO3 CALLORA was about to hand over the buy-bust money to accused-appellant FIGUEROA, the latter sensed the presence of police officers in the area, so she sped away towards the direction of Kalayaan Avenue and C-5 road. The other occupants of the car were Susan Samson *y* Figueroa, sister-in-law of the accused, Margie Sampayan *y* Garbo, Fe Salceda *y* Resma and Christian Salceda *y* Resma, a nine[-]year[-]old boy.

PO3 CALLORA immediately boarded the car being driven by PS/INSP. GARCIA and gave chase. PO2 PINILI, who was driving another vehicle, joined the chase.

Accused-appellant FIGUEROA's vehicle was finally blocked at Kalayaan Avenue near the intersection of C-5 road. At that time, PS/INSP. GARCIA saw Christian Salceda *y* Resma alighted from the

backdoor of the Toyota Revo and threw the Chowking plastic bag to the pavement, which was about two steps from the backdoor. PS/INSP. GARCIA picked it up and saw a heat sealed transparent plastic sachet containing white crystalline substance inside. PO3 CALLORA and PO2 PINILI introduced themselves as police officers. The Toyota Revo was checked by PS/INSP. GARCIA and PO2 PINILI, which was witnessed by PO1 Alvarado and PO3 Basa of the Makati Police PCP No. 7, MMDA Traffic Enforcers Gonzales and Salvador and a reporter/press photographer of Manila Star named Eduardo Rosales. Retrieved under the floor matting of the Toyota Revo were two heat sealed transparent plastic sachets of undetermined quantity of white crystalline substance.

Accused-appellant FIGUEROA was informed of her violation and was apprised of her constitutional rights. She was brought to the office of Special Operation Unit 1 of PNP AIDSOTF for investigation. The items recovered from the crime scene were brought to the PNP Crime Laboratory, where they were tested positive for Methylamphetamine Hydrochloride.

Version of the Defense

Accused-appellant FIGUEROA denied that she met and transacted with PO3 CALLORA regarding the sale of *shabu*. She likewise denied knowledge of the plastic sachets of *shabu* that were recovered under the floor matting of the car she was driving as well as the plastic sachet of *shabu* inside a Chowking plastic bag found on the pavement of Kalayaan Avenue corner C-5 road.

She alleged that between 1:00 and 2:00 p.m. of July 2, 2004, she was driving a Toyota Revo with Plate No. XPN 433 on her way to the house of her elder brother at Eco Center, *Barangay* Calsada, Taguig City to get their mother's allowance. Their mother stays with her at her residence at Better Living Subdivision, Parañaque City. With her as passengers were Susan Samson *y* Figueroa, Fe Salceda *y* Resma, and the latter's nine[-]year[-]old son, Christian Salceda *y* Resma, and Margie Sampayan *y* Garbo, accused-appellant FIGUEROA's laundrywoman. They stayed at her brother's house for about twenty (20) minutes.

From her brother's house, she proceeded to Tejeron, Sta. Ana, Manila to bring Susan Samson y Figueroa to the latter's house. The other passengers remained in the car. Accused-appellant FIGUEROA then continued driving, taking the C-5-Kalayaan Avenue route. When

she was about to proceed after the traffic light turned green at the junction of Kalayaan Avenue, a navy blue car blocked her path. P/SUPT YABUT alighted from said car and was shouting that he was a police officer while approaching accused-appellant FIGUEROA. He ordered accused-appellant FIGUEROA to roll down her car window. Accused then asked, "*Bakit po mister*?" P/SUPT YABUT reiterated that he was a police officer and ordered accused-appellant FIGUEROA to get down from her car as they would be searching the same.

Accused-appellant FIGUEROA and her companions were made to stay at the sidewalk for about thirty (30) minutes. They were asked to turn their backs and were told not to do anything while the search was going on. P/SUPT. YABUT later said, "*Aantayin muna natin sila*." For another thirty minutes, they stayed at the sidewalk until other persons referred to by P/SUPT. YABUT arrived at the scene.

After the search, accused-appellant FIGUEROA and her companions were ordered to board the same Toyota Revo, which was driven to Camp Crame by one of the persons who arrived at the scene.[4]

On May 18, 2006, the RTC rendered its Decision[5] acquitting accused-appellant in Criminal Case No. 04-2432, but convicting her in Criminal Case No. 04-2433. The dispositive portion of the Decision states:

WHEREFORE, in view of the foregoing[,] judgment is rendered as follows:

1. In Criminal Case No. 04-2432[,] the accused Jesusa Figueroa *y* Coronado is ACQUITTED of the charge for violation of Sec. 11, Art. II RA No. 9165 for lack of evidence. The two plastic sachets of containing Methylamphetamine Hydrochloride or *shabu* with a combined weight of 9.42 grams are forfeited in favor of the Government. Let the custody thereof be turned over to the Philippine Drug Enforcement Agency (PDEA) for its appropriate disposition.

2. In Criminal Case No. 04-2433, the accused Jesusa Figueroa *y* Coronado *alias* "Baby" is found guilty beyond reasonable doubt of the offense of violation of Sec. 26, Art. II, RA 9165 and is sentenced to suffer life imprisonment and to pay a fine of Five Hundred Thousand (₱500,000.00).

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[4] *Rollo*, pp. 6-10.

[5] Records, pp. 183-197.

Let the one plastic bag labeled Chowking containing one (1) heat sealed plastic sachet with 4.60 grams of Methylamphetamine Hydrochloride be turned over to the PDEA for its appropriate disposition.

The period during which the accused is detained at the City Jail of Makati shall be considered in her favor pursuant to existing rules.[6]

Alleging that the foregoing decision was contrary to law and unsupported by the evidentiary records, accused-appellant sought a review of the same with this Court through a Notice of Appeal, which the RTC gave due course. However, in accordance with our ruling in *People v. Mateo*,[7] we remanded the case to the Court of Appeals for intermediate review.

On October 25, 2007, the Court of Appeals issued the assailed Decision affirming the conviction of accused-appellant. The dispositive portion of the Decision states:

WHEREFORE, premises considered, appeal is hereby DISMISSED and the assailed Decision, dated May 18, 2006, in Criminal Case Nos. 04-2432 and 04-2433, of the Regional Trial Court of Makati City, Branch 64, is hereby AFFIRMED.

Pursuant to Section 13 (c), Rule 124 of the 2000 Rules of Criminal Procedure as amended by A.M. No. 00-5-03-SC dated September 28, 2004, which became effective on October 15, 2004, this judgment of the Court of Appeals may be appealed to the Supreme Court by notice of appeal filed with the Clerk of Court of the Court of Appeals.[8]

Accused-appellant appealed to this Court anew. Accused-appellant filed a Supplemental Brief,[9] wherein she highlighted the fact that the Court of Appeals did not discuss the first error assigned in her Brief with said appellate court. In the

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

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

[8] *Rollo*, p. 17.

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

aforementioned Brief[10] with the Court of Appeals, accused-appellant submitted the following assignment of errors:

First

THE TRIAL COURT ERRED IN NOT HOLDING THAT THE ALLEGED BUY-BUST OPERATION CONDUCTED BY THE SPECIAL OPERATION UNIT 1 OF THE PHILIPPINE NATIONAL POLICE ANTI-ILLEGAL DRUGS SPECIAL OPERATIONS TASK FORCE WAS IRREGULAR BECAUSE OF LACK OF PRIOR COORDINATION WITH THE PHILIPPINE DRUG ENFORCEMENT AGENCY (PDEA).

Second

THE TRIAL COURT SERIOUSLY ERRED IN HOLDING THAT THERE WAS A PRIOR AGREEMENT BETWEEN PO3 JOSEFINO CALLORA AND ACCUSED REGARDING THE ALLEGED SALE OF *SHABU*.

Third

THE TRIAL COURT SERIOUSLY ERRED IN GIVING WEIGHT AND CREDENCE TO THE CONFLICTING AND CONTRADICTORY TESTIMONIES OF PO3 JOSEFINO CALLORA AND P/INSP. PEPITO GARCIA THAT HAVE DIRECT BEARING ON THE ELEMENTS OF THE OFFENSE CHARGED.

Fourth

THE TRIAL COURT SERIOUSLY ERRED IN FINDING ACCUSED GUILTY OF THE OFFENSE OF ATTEMPT TO SELL *SHABU* AS PROVIDED UNDER SECTION 26, ART. II OF R.A. 9165.[11]

Lack of Prior Coordination with the PDEA

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[10] CA *rollo*, p. 44.

[11] *Id.* at 48-49.

In both the Appellant's Brief with the Court of Appeals and accused-appellant's Supplemental Brief before this Court, the main defense proffered by accused-appellant was the alleged violation of Section 86[12] of Republic Act No. 9165, requiring that the Philippine National Police (PNP) maintain close coordination with the Philippine Drug Enforcement Agency (PDEA) on all drug related matters.

Accused-appellant's contention is unmeritorious. It is settled that Section 86 of Republic Act No. 9165 does not invalidate operations on account of the law enforcers' failure to maintain close coordination with the PDEA. Thus, in *People v.*

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[12] Section 86. *Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions*. — The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: *Provided*, That such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.

The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen (18) months from the effectivity of this Act: *Provided*, That personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: Provided, however, That when the investigation being conducted by the NBI, PNP or any *ad hoc* anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: *Provided, further*, **That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters**. (Emphasis supplied)

Berdadero,[13] the Court noted that Section 86, as well as the Internal Rules and Regulations implementing the same, is silent as to the consequences of the failure on the part of the law enforcers to seek the authority of the PDEA prior to conducting a buy-bust operation. This Court consequently held that "this silence [cannot] be interpreted as a legislative intent to make an arrest without the participation of PDEA illegal or evidence obtained pursuant to such an arrest inadmissible."[14] The same conclusion was reached by this Court in *People v. Roa*,[15] *People v. Mantalaba*[16] and *People v. Sabadlab*.[17]

Alleged lack of prior agreement between accused-appellant and PO3 Callora.

Accused-appellant argues that the alleged sale transaction borne out by the evidence of the prosecution was not between Police Officer 3 (PO3) Josefino Callora and accused-appellant Figueroa, but was instead between the latter and the unnamed informant. Accused-appellant concludes that the testimony of PO3 Callora regarding the alleged sale transaction is purely hearsay, and therefore inadmissible and without probative value, as it was the informant which is competent to testify on the alleged agreement to sell drugs.[18]

We disagree. Under the doctrine of independently relevant statements, we have held that the hearsay rule does not apply where only the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial.[19] In the case at bar, the testimony of PO3 Callora as regards the conversations between the informant and accused-appellant is admissible insofar

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[13] G.R. No. 179710, June 29, 2010, 622 SCRA 196.

[14] *Id.* at 207.

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

[16] G.R. No. 186227, July 20, 2011.

[17] G.R. No. 186392, January 18, 2012.

[18] CA *rollo*, p. 51.

[19] *People v. Malibiran*, G.R. No. 178301, April 24, 2009, 586 SCRA 693.

as it established that said information led the police officers to prepare for and proceed with the buy-bust operation. The conversation between the informant and the accused-appellant was not necessary to prove the attempted sale of *shabu*, as said attempt to sell was already clear from accused-appellant's actuations on July 2, 2004, which were all within the personal knowledge of PO3 Callora and testified to by him, to wit: (1) when accused-appellant arrived at the scene, she waived at the informant and PO3 Callora and approached them while driving her Toyota Revo;[20] (2) upon reaching PO3 Callora and the informant, accused-appellant asked PO3 Callora where the money was, while the latter asked for the *shabu*;[21] (3) accused-appellant showed PO3 Callora a Chowking plastic bag containing a sachet of white crystalline substance;[22] (4) when PO3 Callora was about to give her the money, accused-appellant sensed that there were police officers around the area, and drove away;[23] (5) PO3 Callora and the informant boarded the car of PS/Insp. Garcia, and they chased her to C-5 Road corner Kalayaan Avenue.[24]

Under the Revised Penal Code, there is an attempt to commit a crime when the offender commences its commission 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.[25] This definition has essentially been adopted by this Court in interpreting Section 26 of Republic Act No. 9165. Thus, in *People v. Laylo*,[26] we affirmed the conviction of the appellant therein and held that the attempt to sell *shabu* was shown by the overt act of appellant therein of showing the substance to the poseur-buyer.

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[20] TSN, March 8, 2005, pp. 25-26.

[21] *Id.* at 26.

[22] *Id.* at 26.

[23] *Id.* at 27.

[24] *Id.* at 28-29.

[25] Revised Penal Code, Article 6.

[26] G.R. No. 192235, July 6, 2011.

In said case, the sale was aborted when the police officers identified themselves and placed appellant under arrest.

The identity of the white crystalline substance was furthermore established by the testimony of PS/Insp. Garcia, who likewise testified as to the following matters based on his own personal knowledge: (1) after the chase, PS/Insp. Garcia saw a boy (later identified as Christian Salceda) alight from the vehicle and threw a Chowking plastic bag two to three meters from the vehicle;[27] (2) PS/Insp. Garcia picked up the Chowking plastic bag from the sidewalk and found a sachet of *shabu* inside the same;[28] (3) PS/Insp. Garcia later proceeded with the other police officers to their office, where they requested for a laboratory examination of the white crystalline substance;[29] PS/Insp. Garcia identified the Chowking plastic bag and the sachet containing white crystalline substance in court. He identified the mark "PEG-1" on the sachet as his initial and testified that he was the one who marked the same.[30]

The prosecution presented as its Exhibit "B" an Initial Laboratory Report. The report states that the heat-sealed transparent plastic bag with the marking "PEG-1" inside a Chowking plastic bag was found to contain 4.60 grams of white crystalline substance. The latter specimen was found positive for methylamphetamine hydrochloride.[31]

In light of the foregoing testimonial and documentary evidence, which were found credible by both the trial court and the Court of Appeals, the crime of attempt to sell a dangerous drug under Section 26 of Republic Act No. 9165 was sufficiently proven beyond reasonable doubt.

As for the purported inconsistencies in the testimonies of the prosecution witnesses, we agree with the pronouncement

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[27] TSN, January 5, 2005, pp. 20-22.

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

[29] *Id.* at 25.

[30] *Id.* at 22-25.

[31] Records, p. 147.

of the Court of Appeals that discrepancies "referring to minor details, and not in actuality touching upon the central fact of the crime, do not impair [the witnesses'] credibility"[32] nor do they overcome the presumption that the arresting officers have regularly performed their official duties.[33]

In sum, this Court finds no cogent reason to disturb the rulings of the lower courts in the instant case.

WHEREFORE, the Petition is **DENIED.** The Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02348 dated October 25, 2007 affirming the conviction of accused-appellant Jesusa Figueroa in Criminal Case No. 04-2433 for violation of Section 26, Article II of Republic Act No. 9165 is hereby **AFFIRMED.**

SO ORDERED.

Bersamin, Del Castillo, Villarama, Jr., and *Reyes,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 188322. April 11, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSEPH ASILAN *Y* TABORNAL,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE ASSESSMENT OF THE TRIAL COURT THEREON WILL

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[32] *Rollo,* p. 3.

[33] *Id.*

[*] Per Raffle dated April 11, 2012.

GENERALLY NOT BE DISTURBED ON APPEAL; EXCEPTIONS. — It is a well-settled rule that the assessment of the trial court regarding the credibility of witnesses will generally not be disturbed on appeal. The rationale for this doctrine is that the trial court is in a better position to decide the issue, as it heard the witnesses themselves and observed their deportment and manner of testifying during the trial. The only exceptions to this rule are the following: 1. When patent inconsistencies in the statements of witnesses are ignored by the trial court; or 2. When the conclusions arrived at are clearly unsupported by the evidence.

2. ID.; ID.; ID.; NOT ADVERSELY AFFECTED BY INCONSISTENCIES REFERRING TO MINOR DETAILS; CASE AT BAR. — The alleged inconsistency in Binosa's testimony does not render his testimony fictitious. The fact that he was able to provide more details of the events only during cross-examination is not unusual, and on the contrary tends to buttress, rather than weaken, his credibility, since it shows that he was neither coached nor were his answers contrived. After all, "[w]itnesses are not expected to remember every single detail of an incident with perfect or total recall." As for San Diego's testimony, it is not unnatural for him to have a detailed recollection of the incident. "Different persons have different reactions to similar situations. There is no typical reaction to a sudden occurrence." It is worthy to note that San Diego was only sixteen years old when he witnessed the stabbing of Adovas. It was his first time to witness a person being stabbed right before his very eyes. He testified that three months after that night, the events were still vividly imprinted in his mind. It is thus not improbable that he could, with certainty, identify Asilan as the man who stabbed Adovas that fateful night. Likewise, our scrutiny of the so-called inconsistencies relied upon by Asilan showed that they only referred to minor details, which did not affect the credibility of the prosecution witnesses.

3. ID.; ID.; ID.; NO STANDARD FORM OF BEHAVIOR IS EXPECTED OF AN INDIVIDUAL WHO WITNESSES A SHOCKING CRIMINAL INCIDENT. — This Court would like to reiterate that no standard form of behavior is expected of an individual who witnesses something shocking or gruesome like murder. This is especially true when the assailant is near.

It is not unusual that some people would feel reluctant in getting involved in a criminal incident.

4. ID.; ID.; ID.; ACCUSED'S FAILURE TO FLEE AND THE APPARENT NORMALCY OF BEHAVIOR AFTER THE COMMISSION OF THE CRIME DO NOT IMPLY INNOCENCE. — [I]t is also not surprising that Asilan returned to the scene of the crime after stabbing Adovas. His "failure to flee and the apparent normalcy of his behavior subsequent to the commission of the crime do not imply his innocence."

5. ID.; ID.; DENIAL; MUST BE BUTTRESSED BY OTHER PERSUASIVE EVIDENCE OF NON-CULPABILITY TO MERIT CREDIBILITY. — Denial, which is the usual refuge of offenders, is an inherently weak defense, and must be buttressed by other persuasive evidence of non-culpability to merit credibility. The defense of denial fails even more when the assailant, as in this case, was positively identified by credible witnesses, against whom no ulterior motive could be ascribed.

6. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY; WHEN PRESENT. — The prosecution was able to sufficiently establish the attendance of treachery in the case at bar. "It is basic in our penal law that treachery is present when the offender employs means, methods or forms which tend directly and especially to insure the execution of the crime, without risk to himself arising from the defense which the offended party might make."

7. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; WHEN SUFFICIENT. — This Court held that "[u]nder Section 6, the Information is sufficient if it contains the full name of the accused, the designation of the offense given by the statute, the acts or omissions constituting the offense, the name of the offended party, the approximate date, and the place of the offense." The Information herein complied with these conditions.

8. ID.; ID.; ID.; ID.; QUALIFYING CIRCUMSTANCES MUST BE PROPERLY PLEADED THEREIN. — Contrary to Asilan's contention, the qualifying circumstance of "treachery" was specifically alleged in the Information." The rule is that qualifying circumstances must be properly pleaded in the Information in order not to violate the accused's constitutional right to be

properly informed of the nature and cause of the accusation against him." Asilan never claimed that he was deprived of his right to be fully apprised of the nature of the charges against him due to the insufficiency of the Information.

9. ID.; ID.; ID.; ID.; MAY STILL SUSTAIN A CONVICTION EVEN IF IT LACKS THE ESSENTIAL ALLEGATIONS WHEN THE ACCUSED FAILS TO OBJECT TO ITS SUFFIENCY DURING THE TRIAL AND THE DEFICIENCY WAS CURED BY COMPETENT EVIDENCE PRESENTED THEREIN. — [I]t is now too late for Asilan to assail the sufficiency of the Information on the ground that there was failure to specifically allege therein how treachery was carried out. x x x [I]n *People v. Candaza*, this Court held that "[a]n Information which lacks essential allegations may still sustain a conviction when the accused fails to object to its sufficiency during the trial, and the deficiency was cured by competent evidence presented therein." In this case, Asilan not only failed to question the sufficiency of the Information at any time during the pendency of his case before the RTC, he also allowed the prosecution to present evidence, proving the elements of treachery in the commission of the offense. Asilan is thus deemed to have waived any objections against the sufficiency of the Information.

10. CIVIL LAW; DAMAGES; LOSS OF EARNING CAPACITY; HOW COMPUTED. — The following are the factors in computing the amount of damages recoverable for the loss of earning capacity of the deceased: 1) The number of years on the basis of which the damages shall be computed. This is based on the formula (2/3 x 80 – age of the deceased at the time of his death = life expectancy), which is adopted from the American Expectancy Table of Mortality; and 2) The rate at which the losses sustained by the heirs of the deceased should be fixed. Net income is arrived at by deducting the amount of the victim's living expenses from the amount of his gross income. The loss of earning capacity of Asilan is thus computed as follows: Net Earning Capacity = life expectancy x [gross annual income – living expenses] = 2/3 [80-age at time of death] x [gross annual income – 50% of gross annual income] = 2/3 [80-29] x [₱103,260.00 – ₱51,630.00] = 34 x ₱51,630.00 = ₱1,755,420.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal filed by the accused-appellant Joseph Asilan *y* Tabornal (Asilan) to challenge the February 25, 2009 **Decision**[1] of the Court of Appeals in **CA-G.R. CR.-H.C. No. 02686**, which affirmed *in toto* his Murder conviction, rendered by the Regional Trial Court (RTC), Branch 20 of the City of Manila on January 8, 2007, in **Criminal Case No. 06-243060**.

On March 31, 2006, Asilan was charged with the complex crime of Direct Assault with Murder in an Information,[2] the pertinent portion of which reads:

That on or about **March 27, 2006**, in the City of Manila, Philippines, the said accused, conspiring, and confederating with another whose true name, real identity and present whereabouts are still unknown and mutually helping each other, did then and there willfully, unlawfully, and feloniously attack, assault and use personal violence upon the person of **PO1 RANDY ADOVAS *y* PE-CAAT**, a member of the Philippine National Police assigned at Camp Bagong Diwa, Bicutan, Taguig, MM, duly qualified, appointed, and acting as such, and therefore an agent of a person in authority, which fact was known to the said accused, while **PO1 RANDY ADOVAS *y* PE-CAAT** was in the performance of his official duty, that is, while handcuffing the at-large co-conspirator for illegal possession of deadly weapon, herein accused suddenly appeared and with intent to kill, treachery and evident premeditation, attack, assault, and use personal violence upon said police officer by then and there **repeatedly stabbing the latter with a fan knife then grabbing his service firearm and**

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[1] *Rollo*, pp. 2-25; penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Rosalinda Asuncion-Vicente concurring.

[2] Records, p. 1.

shooting him, thereby inflicting upon the said **PO1 RANDY ADOVAS *y* PE-CAAT** mortal stab and gunshot wounds which were the direct and immediate cause of his death thereafter.

Asilan pleaded not guilty upon his arraignment[3] on April 10, 2006. Pre-Trial Conference followed on April 26, 2006, where the counsels agreed to stipulate that Asilan, who was at that time present in the RTC, was the same Asilan named in the Information, and that the victim, Police Officer 1 (PO1) Randy Adovas y Pe-caat (Adovas), was a police officer in active duty at the time of his death.[4] Trial on the merits ensued after the termination of the pre-trial conference.

Below is the prosecution's version, as succinctly summarized by the Office of the Solicitor General (OSG) from the testimony of Joselito Binosa (Binosa)[5:]

In the evening of March 27, 2006, around 10:00 o'clock, Joselito Binosa, a jeepney barker/carwash boy while chatting with his friends at the El Niño Bakery along Teresa Street, Sta. Mesa, Manila, heard a gunshot nearby. He then went to the place where the sound came and from where he was standing which was about three (3) to four (4) meters away, he saw a uniformed policeman, who seemed to be arresting someone and ordering the latter to lay on the ground.

The police officer pushed the man to the wall, poked the gun on him and was about to handcuff the latter when another man, herein appellant Asilan arrived, drew something from his back and stabbed the police officer on his back several times until the latter fell to the ground.

The man who was being arrested by the police officer held the latter's hand while he was being stabbed repeatedly by [Asilan]. The man who was being arrested then took the officer's gun and shot the latter with it.

The fellow barker of Joselito Binosa then threw stones at the malefactors who subsequently left the place.

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[3] *Id.* at 4.

[4] *Id.* at 13.

[5] TSN, May 31, 2006, pp. 1-30.

Joselito Binosa secretly followed [Asilan] and his companion who walked towards the railroad track taking Teresa St., Sta. Mesa, Manila. [Asilan] entered an alley and thereafter returned to the place of the incident. The other man walked on to the tracks.

At that moment, a policeman passed by and Binosa pointed [Asilan] to him. [Asilan] was arrested and the knife which was used in the stabbing was confiscated by the policeman.[6] (Citations omitted.)

The above narration of events was largely corroborated by Pol Justine San Diego (San Diego), a student, who also witnessed the events that transpired on March 27, 2006.[7]

The prosecution also submitted as evidence Medico Legal Report No. M-219-06,[8] accomplished and testified to by Dr. Vladimir V. Villaseñor. The pertinent portion of the Medico Legal Report states:

SPECIMEN SUBMITTED:

Cadaver of Randy Pe-caat Adovas, 29 y/o male, married, a policeman, 167 cm in height and a resident of 19 West Bank Road, Floodway, Rosario Pasig City.

PURPOSE OF LABORATORY EXAMINATION:

To determine the cause of death.

FINDINGS:

Body belongs to a fairly nourished, fairly developed male cadaver in rigor mortis with postmortem lividity at the dependent portions of the body. Conjunctivae, lips and nailbeds are pale. With exploratory laparotomy incision at the anterior abdominal wall, measuring 29 cm long, along the anterior midline.

Trunk & Upper Extremity:

1) Stab wound, right axillary region, measuring 6 x 4 cm, 16 cm from the anterior midline.

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[6] CA *rollo*, pp. 155-156.

[7] TSN, June 14, 2006, pp. 1-10.

[8] Folder of Exhibits, p. 25.

2) Stab wound, right hypochondriac region, measuring 2.3 x 0.7 cm, 2cm right of the anterior midline, 9 cm deep, directed posteriorwards, downwards & medialwards, lacerating the right lobe of the liver.

-over-

CONCLUSION:

Cause of death is MULTIPLE STAB WOUNDS & GUNSHOT WOUND OF THE TRUNK AND UPPER EXTREMITIES.

Meanwhile, Asilan, in his Appellants' Brief,[9] summed up his defense as follows:

On March 27, 2006, at around 10:00 o'clock p.m. **JOSEPH ASILAN** [Asilan] was on board a passenger jeepney on his way to Mandaluyong. As he had to transfer to another jeepney, [Asilan] alighted at Old Sta. Mesa and waited for a jeep bound for Pasig City. Suddenly, three (3) motorcycles stopped in front of him, the passengers of which approached and frisked him. He was thereafter brought to the police station and in a small room, he was forced to admit to the stabbing of a police officer. Thereafter, he was brought to a nearby hospital and was medically examined. Then he was again taken to the police station where he was confronted with the knife which was allegedly used in stabbing PO1 Adovas. He was mauled for refusing to confess to the stabbing of the said policeman. Afterwards, he was presented to alleged eyewitnesses. However, the supposed eyewitnesses were not the ones presented by the prosecution in court.[10]

The RTC convicted Asilan of Murder in its Decision[11] dated January 8, 2007, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds the Prosecution to have failed to establish and prove beyond reasonable doubt the offense of direct assault. Where a complex crime is charged and the evidence fails to support the charge as to one of the component, the accused can be convicted of the other (*People v. Roma*, 374 SCRA 457).

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[9] CA *rollo*, pp. 92-112.

[10] *Id.* at 97-98.

[11] Records, pp. 76-95.

WHEREFORE, his guilt having been proven beyond reasonable doubt for the crime of murder with the qualifying circumstance of treachery, judgment is hereby rendered finding accused Joseph Asilan *y* Tabornal **GUILTY** beyond reasonable doubt of the crime of murder and is hereby imposed the penalty of *reclusion perpetua*. He is hereby ordered to pay the heirs of PO1 Randy Adovas *y* Pe-Caat the sum of ₱84,224.00 as actual damages, ₱25,000.00 for moral damages and ₱50,000.00 civil indemnity.[12]

The RTC, in acquitting Asilan of Direct Assault, held that while it was confirmed that Adovas was in his police uniform at the time of his death, the prosecution failed to establish convincingly that he was in the performance of his duty when he was assaulted by Asilan. The RTC explained that there was no evidence to show that Adovas was arresting somebody at the time Asilan stabbed him.[13] The RTC added:

> What the framers of the law wanted was to know the reason of the assault upon a person in authority or his agents. The prosecution failed to show why the victim was pushing the man on the wall or why he poked his gun at the latter. That the victim was assaulted while in the performance of his duty or by reason thereof was not conclusively proven.[14]

In convicting Asilan of Murder, the RTC held that his defense of denial could not be "accorded more weight than the categorical assertions of the witnesses who positively identified him as the man who suddenly appeared from behind [Adovas] and stabbed the latter repeatedly."[15] Moreover, Asilan admitted that he was at the scene of the crime when he was arrested, that he could not give any reason for the witnesses to falsely testify against him, and that he did not know them.

Anent the aggravating circumstances, the RTC found that the killing of Adovas was proven to be attended with treachery since Adovas was attacked from behind, depriving him of the

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

[13] *Id.* at 91.

[14] *Id.* at 92.

[15] *Id.* at 93.

opportunity to defend himself.[16] However, the RTC declared that the aggravating circumstance of evident premeditation "could not be appreciated x x x absent evidence that [Asilan] planned or prepared to kill [Adovas] or of the time when the plot was conceived."[17]

As to the damages, the RTC found the prosecution's evidence, which consisted of Adovas's wife's testimony, and the receipts of the expenses she incurred in Adovas's hospitalization, wake, and burial, sufficient to award moral and actual damages.

On January 19, 2007, Asilan appealed[18] his conviction to the Court of Appeals, mainly on the ground that the prosecution failed to prove his guilt beyond reasonable doubt. He subsequently filed a Motion to Litigate as a Pauper, [19] which on February 28, 2007, was granted in an Order[20] by the RTC.

On February 25, 2009, the Court of Appeals rendered its Decision, affirming *in toto* the RTC's ruling.

> WHEREFORE, premises considered, the assailed Decision dated 08 January 2007 of the Court *a quo* in Criminal Case No. 06-243060, finding Accused-Appellant **JOSEPH ASILAN *Y* TABORNAL** guilty beyond reasonable doubt of **Murder,** is hereby **AFFIRMED *in toto.***[21]

The Court of Appeals rejected Asilan's arguments and averred that his denial and bare attempt at exculpation by trying to destroy the credibility of the candid, categorical, and trustworthy testimonies of the witnesses must fail.

Aggrieved, Asilan is now appealing[22] his case to this Court, with the same assignment of errors he posited before the Court of Appeals:

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[16] *Id.* at 92.

[17] *Id.* at 93.

[18] *Id.* at 98.

[19] *Id.* at 99-101.

[20] *Id.* at 105.

[21] *Rollo*, p. 24.

[22] *Id.* at 26-27.

ASSIGNMENT OF ERRORS

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE OFFENSE CHARGED BY RELYING ON THE INCONSISTENT AND UNNATURAL TESTIMONY OF THE ALLEGED EYEWITNESS.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.[23]

Discussion

Asilan was convicted of the crime of Murder under Article 248 of the Revised Penal Code:

Art. 248. Murder. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;
2. In consideration of a price, reward, or promise;
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;

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[23] CA *rollo*, p. 94.

5. With evident premeditation;

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Asilan claims that the testimonies of the witnesses were not only filled with inconsistencies, they were also incredible for being contrary to the common experience and observation that mankind can approve as probable under the circumstance.[24]

Asilan insists that the testimony of Binosa should not be given credence as he was selective in his recollection of the events. Asilan claimed that Binosa seemed to have recalled more details on cross-examination, thus "improving" on the version he gave during his direct examination. Asilan further claims that Binosa's suggestion that Asilan returned to the scene of the crime after he committed the alleged crime is very unlikely. Asilan avers that San Diego's testimony was likewise not credible as it was clearly only a more refined version of Binosa's account of the events. Moreover, Asilan says that San Diego's testimony is too good to be true as he is unlikely to have a detailed recollection of an event, which according to him happened within a span of two minutes.[25]

Credibility of Witnesses

It is a well-settled rule that the assessment of the trial court regarding the credibility of witnesses will generally not be disturbed on appeal. The rationale for this doctrine is that the trial court is in a better position to decide the issue, as it heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[26] The only exceptions to this rule are the following:

1. When patent inconsistencies in the statements of witnesses are ignored by the trial court; or

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[24] *Id.* at 98-105.

[25] *Id.* at 104-105.

[26] *People v. Obosa*, 429 Phil. 522, 532-533 (2002).

2. When the conclusions arrived at are clearly unsupported by the evidence.[27]

This Court sees no reason to apply the above exceptions and disturb the findings of the RTC, which were affirmed by the Court of Appeals.

Our perusal of the records showed that the RTC was vigilant in its duty to ascertain the truth. The RTC itself propounded clarificatory questions to Binosa and San Diego while they were testifying. At the end of the trial, the RTC found these witnesses credible, and believed their eyewitness accounts because they were categorical in their identification of Asilan as one of Adovas's assailants. The RTC also pointed out that it could not find any dubious reason for Binosa and San Diego to falsely implicate Asilan in a heinous crime.[28]

Alleged Inconsistencies

The alleged inconsistency in Binosa's testimony does not render his testimony fictitious. The fact that he was able to provide more details of the events only during cross-examination is not unusual, and on the contrary tends to buttress, rather than weaken, his credibility, since it shows that he was neither coached nor were his answers contrived.[29] After all, "[w]itnesses are not expected to remember every single detail of an incident with perfect or total recall."[30]

As for San Diego's testimony, it is not unnatural for him to have a detailed recollection of the incident. "Different persons have different reactions to similar situations. There is no typical reaction to a sudden occurrence."[31] It is worthy to note that San Diego was only sixteen years old when he witnessed the stabbing of Adovas. It was his first time to witness a person

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[27] *Id.* at 533.

[28] Records, p. 94.

[29] *People v. Orio*, 386 Phil. 786 (2000).

[30] *Id.* at 796.

[31] *People v. Letigio*, 335 Phil. 693, 705 (1997).

being stabbed right before his very eyes. He testified that three months after that night, the events were still vividly imprinted in his mind.[32] It is thus not improbable that he could, with certainty, identify Asilan as the man who stabbed Adovas that fateful night.

Likewise, our scrutiny of the so-called inconsistencies relied upon by Asilan showed that they only referred to minor details, which did not affect the credibility of the prosecution witnesses.[33] In *People v. Albarido*,[34] this Court said:

> It is elementary in the rule of evidence that inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect the substance of their declaration nor the veracity or weight of their testimony. In fact, these minor inconsistencies enhance the credibility of the witnesses, for they remove any suspicion that their testimonies were contrived or rehearsed. In *People vs. Maglente*, this Court ruled that inconsistencies in details which are irrelevant to the elements of the crime are not grounds for acquittal. x x x.[35]

Credibility of the evidence

Asilan further asseverates that it is perplexing how none of the witnesses, who were present during the incident, warned Adovas of the impending danger to his life. He contends that "for evidence to be believed, it must not only proceed from the mouth of a credible witness, but must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstance."[36]

This Court would like to reiterate that no standard form of behavior is expected of an individual who witnesses something shocking or gruesome like murder. This is especially true when

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[32] TSN, June 14, 2006, pp. 1-10.

[33] *People v. Albarido,* 420 Phil. 235, 244 (2001).

[34] *Id.*

[35] *Id.* at 244-245.

[36] CA *rollo,* p. 105.

the assailant is near. It is not unusual that some people would feel reluctant in getting involved in a criminal incident.[37]

In the same manner, it is also not surprising that Asilan returned to the scene of the crime after stabbing Adovas. His "failure to flee and the apparent normalcy of his behavior subsequent to the commission of the crime do not imply his innocence."[38] This Court, elucidating on this point, declared:

> Flight is indicative of guilt, but its converse is not necessarily true. Culprits behave differently and even erratically in externalizing and manifesting their guilt. Some may escape or flee — a circumstance strongly illustrative of guilt — while others may remain in the same vicinity so as to create a semblance of regularity, thereby avoiding suspicion from other members of the community.[39]

Defense of Denial

Unfortunately, Asilan's bare denial, when juxtaposed with the prosecution witnesses' positive declarations, is not worthy of credence. Denial, which is the usual refuge of offenders, is an inherently weak defense, and must be buttressed by other persuasive evidence of non-culpability to merit credibility. The defense of denial fails even more when the assailant, as in this case, was positively identified by credible witnesses, against whom no ulterior motive could be ascribed.[40]

Asilan not only admitted that he was at the scene of the crime when he was arrested by the police authorities, he also admitted that he did not know any of the prosecution witnesses prior to his trial. Moreover, he had filed no case against the police officers whom he accused of mauling him to make him admit to the stabbing of Adovas. Asilan's "self-serving statements deserve no weight in law and cannot be given greater evidentiary

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[37] *People v. Aliben*, 446 Phil. 349, 373 (2003).

[38] *People v. Agunias*, 344 Phil. 467, 481 (1997).

[39] *Id.* at 481-482.

[40] *People v. Barona*, 380 Phil. 204 (2000).

value over the testimony of the witnesses who testified on positive points."[41]

Qualifying Circumstance of Treachery

Asilan pleads that treachery cannot be appreciated in the present case as the prosecution failed to establish that he had consciously or deliberately adopted or chosen the mode of attack employed upon Adovas to deprive him of an opportunity to defend himself or retaliate. Asilan argues that mere suddenness of the attack is not enough to constitute treachery. He further posits that while it may be true that he allegedly came from behind, the "mode of attack could have occurred in a spur of the moment."[42]

The RTC correctly appreciated the qualifying circumstance of treachery in the killing of Adovas.

The prosecution was able to sufficiently establish the attendance of treachery in the case at bar. "It is basic in our penal law that treachery is present when the offender employs means, methods or forms which tend directly and especially to insure the execution of the crime, without risk to himself arising from the defense which the offended party might make."[43] In *People v. Tan*,[44] this Court expounded on the concept of treachery as follows:

> The essence of treachery is the sudden and unexpected attack, without the slightest provocation on the part of the person attacked. Treachery is present when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof, which tend directly and especially to insure its execution, without risk arising from the defense which the offended party might make. In the case at bar, the attack on Magdalino Olos was treacherous, because he was caught off guard and was therefore unable to defend himself, as testified to by the prosecution witnesses and as indicated by the wounds inflicted on him.[45]

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[41] *Id.* at 212-213.

[42] CA *rollo*, p. 107.

[43] *People v. Isleta*, 332 Phil. 410, 420 (1996).

[44] 373 Phil. 990 (1999).

[45] *Id.* at 1010.

Both eyewitnesses testified on how Asilan attacked Adovas from behind. Adovas could not have defended himself because Asilan stabbed him at his back repeatedly *sans* provocation or warning. The deciding factor is that Asilan's execution of his attack made it impossible for Adovas to defend himself or retaliate.[46]

Sufficiency of the Information

Asilan also claims that his constitutional right to be informed of the nature and cause of accusation against him was infringed when he was convicted for Murder, since the manner by which he carried out the killing with the qualifying circumstance of treachery was not alleged in the Information against him. Thus, he asserts, he was effectively only charged with Homicide.[47]

This Court does not find merit in Asilan's contention that he cannot be convicted of murder because his acts of treachery were not alleged with specificity in the Information. Section 6, Rule 110 of the Rules on Criminal Procedure states:

> **Sec. 6.** *Sufficiency of complaint or information.* – A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense; and the place wherein the offense was committed.
>
> When the offense is committed by more than one person, all of them shall be included in the complaint or information.

This Court held that "[u]nder Section 6, the Information is sufficient if it contains the full name of the accused, the designation of the offense given by the statute, the acts or omissions constituting the offense, the name of the offended party, the

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[46] *People v. Pidoy*, 453 Phil. 221, 230 (2003).

[47] CA *rollo*, p. 108.

approximate date, and the place of the offense."[48] The Information herein complied with these conditions. Contrary to Asilan's contention, the qualifying circumstance of "treachery" was specifically alleged in the Information. "The rule is that qualifying circumstances must be properly pleaded in the Information in order not to violate the accused's constitutional right to be properly informed of the nature and cause of the accusation against him."[49] Asilan never claimed that he was deprived of his right to be fully apprised of the nature of the charges against him due to the insufficiency of the Information.

This Court completely agrees with the Court of Appeals' pronouncement that "since treachery was correctly alleged in the Information and duly established by the prosecution, x x x [Asilan]'s conviction for the crime of murder is proper."[50]

In any case, it is now too late for Asilan to assail the sufficiency of the Information on the ground that there was failure to specifically allege therein how treachery was carried out. Section 9, Rule 117 of the Rules of Court provides:

> **SEC. 9.** *Failure to move to quash or to allege any ground therefor*.- The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule.

Moreover, in *People v. Candaza*,[51] this Court held that "[a]n Information which lacks essential allegations may still sustain a conviction when the accused fails to object to its sufficiency during the trial, and the deficiency was cured by competent evidence presented therein."[52] In this case, Asilan not only

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[48] *People v. Lab-Eo*, 424 Phil. 482, 497 (2002).

[49] *Id.*

[50] *Rollo*, pp. 23-24.

[51] G.R. No. 170474, June 16, 2006, 491 SCRA 280.

[52] *Id.* at 289.

failed to question the sufficiency of the Information at any time during the pendency of his case before the RTC, he also allowed the prosecution to present evidence, proving the elements of treachery in the commission of the offense. Asilan is thus deemed to have waived any objections against the sufficiency of the Information.[53]

Pursuant to prevailing jurisprudence,[54] this Court is increasing the award of civil indemnity from Fifty Thousand Pesos (50,000.00) to Seventy-Five Thousand Pesos (₱75,000.00), and the moral damages from Twenty-Five Thousand Pesos (25,000.00) to Fifty Thousand Pesos (₱50,000.00). Moreover, in view of the presence of the qualifying circumstance of treachery, an additional award of Thirty Thousand Pesos (30,000.00), as exemplary damages, in accordance with Article 2230 of the Civil Code,[55] should be awarded to the heirs of Adovas.[56]

As to actual damages, Adovas's widow, Irene Adovas, presented the receipts showing that she paid ₱25,224.00 to Our Lady of Lourdes Hospital, Inc., as hospital expenses,[57] ₱35,000.00 to Marulas Memorial Homes,[58] and ₱20,000.00 to Funeraria Saranay as funeral expenses,[59] or a total of ₱80,224.00.

Both the RTC and the Court of Appeals failed to consider that under Article 2206 of the Civil Code, Asilan is also liable for the loss of the earning capacity of Adovas, and such indemnity should be paid to his heirs[60]:

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[53] *Id.*

[54] *People v. Asis*, G.R. No. 177573, July 7, 2010, 624 SCRA 509, 530.

[55] Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[56] *People v. Asis*, *supra* note 54 at 531.

[57] Folder of Exhibits, p. 31.

[58] *Id.* at 32.

[59] *Id.* at 33.

[60] *People v. Lagat*, G.R. No. 187044, September 14, 2011.

Art. 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

Irene Adovas testified[61] on the amount her husband received as police officer and presented documentary evidence to show that Adovas, who was only 29 years old when he died, [62] earned ₱8,605.00 a month[63] at the time of his death.

The following are the factors in computing the amount of damages recoverable for the loss of earning capacity of the deceased:

1) The number of years on the basis of which the damages shall be computed. This is based on the formula (2/3 x 80 – age of the deceased at the time of his death = life expectancy), which is adopted from the American Expectancy Table of Mortality; and

2) The rate at which the losses sustained by the heirs of the deceased should be fixed.[64]

Net income is arrived at by deducting the amount of the victim's living expenses from the amount of his gross income.[65] The loss of earning capacity of Asilan is thus computed as follows:

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[61] TSN, July 10, 2006, p. 17.

[62] Folder of Exhibits, p. 20.

[63] *Id.* at 28.

[64] *People v. Lagat*, G.R. No. 187044, September 14, 2011.

[65] *Id.*

Net Earning Capacity = life expectancy x [gross annual income – living expenses][66]

= 2/3 [80-age at time of death] x [gross annual income – 50% of gross annual income]
= 2/3 [80-29] x [₱103,260.00 – ₱51,630.00]

= 34 x ₱51,630.00

= ₱1,755,420.00

WHEREFORE, the decision dated February 25, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02686 is hereby **AFFIRMED** insofar as it found accused-appellant Joseph Asilan *y* Tabornal guilty beyond reasonable doubt of *MURDER* and sentenced to suffer the penalty of ***reclusion perpetua***, with **MODIFICATION** as to the damages. Asilan is hereby ordered to indemnify the heirs of Randy Adovas *y* Pe-caat the following: (a) ₱75,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; (c) ₱30,000.00 as exemplary damages; (d) ₱80,224.00 as actual damages; (e) ₱1,755,420.00 as loss of earning capacity; and (f) interest on all damages awarded at the rate of 6% *per annum* from the date of finality of this judgment.

SO ORDERED.

Corona, C.J. (Chairperson), Bersamin, Del Castillo, and *Perez,*[*] *JJ.*, concur.

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[66] *People v. Verde*, 362 Phil. 305, 321 (1999).

[*] Per Raffle dated April 11, 2012.

SECOND DIVISION

[G.R. No. 188661. April 11, 2012]

ESTELITA VILLAMAR, *petitioner, vs.* **BALBINO MANGAOIL,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; PRINCIPLE OF AUTONOMY OF CONTRACTS; APPLIED IN CASE AT BAR. — Under Article 1306 of the NCC, the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy. While Articles 1458 and 1495 of the NCC and the doctrine enunciated in the case of *Chua* do not impose upon the petitioner the obligation to physically deliver to the respondent the certificate of title covering the subject property or cause the transfer in the latter's name of the said title, a stipulation requiring otherwise is not prohibited by law and cannot be regarded as violative of morals, good customs, public order or public policy. Item no. 3 of the agreement executed by the parties expressly states that "transfer [shall] be immediately effected so that the latter can apply for a loan from any lending institution using the corresponding certificate of title as collateral therefor." Item no. 3 is literal enough to mean that there should be physical delivery of the TCT for how else can the respondent use it as a collateral to obtain a loan if the title remains in the petitioner's possession. We agree with the RTC and the CA that the petitioner failed to prove that she delivered the TCT covering the subject property to the respondent. What the petitioner attempted to establish was that she gave the TCT to Atty. Antonio whom she alleged was commissioned to effect the transfer of the title in the respondent's name. Although Atty. Antonio's existence is certain as he was the petitioner's counsel in the proceedings before the RTC, there was no proof that the former indeed received the TCT or that he was commissioned to process the transfer of the title in the respondent's name.

2. ID.; ID.; RECIPROCAL OBLIGATIONS; THE POWER TO RESCIND OBLIGATIONS IS IMPLIED IN RECIPROCAL ONES, IN CASE ONE OF THE OBLIGORS SHOULD NOT COMPLY WITH WHAT IS INCUMBENT UPON HIM. — Article 1191 of the NCC is clear that "the power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him." The respondent cannot be deprived of his right to demand for rescission in view of the petitioner's failure to abide with item nos. 2 and 3 of the agreement. This remains true notwithstanding the absence of express stipulations in the agreement indicating the consequences of breaches which the parties may commit. To hold otherwise would render Article 1191 of the NCC as useless.

3. ID.; ID.; SALES; CONTRACT OF SALE; THE EXECUTION OF A PUBLIC INSTRUMENT AMOUNTS TO A CONSTRUCTIVE DELIVERY OF THE THING SUBJECT THEREOF; EXCEPTION. — [A]s a general rule, the execution of a public instrument amounts to a constructive delivery of the thing subject of a contract of sale. However, exceptions exist, among which is when mere presumptive and not conclusive delivery is created in cases where the buyer fails to take material possession of the subject of sale. A person who does not have actual possession of the thing sold cannot transfer constructive possession by the execution and delivery of a public instrument. In the case at bar, the RTC and the CA found that the petitioner failed to deliver to the respondent the possession of the subject property due to the continued presence and occupation of Parangan and Lacaden. We find no ample reason to reverse the said findings. Considered in the light of either the agreement entered into by the parties or the pertinent provisions of law, the petitioner failed in her undertaking to deliver the subject property to the respondent.

APPEARANCES OF COUNSEL

Roger S. Diza for petitioner.
Mariano Avecilla for respondent.

D E C I S I O N

REYES, *J.*:

The Case

Before us is a petition for review on c*ertiorari*[1] under Rule 45 of the Rules of Court filed by Estelita Villamar (Villamar) to assail the Decision[2] rendered by the Court of Appeals (CA) on February 20, 2009 in CA-G.R. CV No. 86286, the dispositive portion of which reads:

> WHEREFORE, the instant appeal is **DISMISSED**. The assailed decision is **AFFIRMED *in toto***.
>
> SO ORDERED.[3]

The resolution[4] issued by the CA on July 8, 2009 denied the petitioner's motion for reconsideration to the foregoing.

The ruling[5] of Branch 23, Regional Trial Court (RTC) of Roxas, Isabela, which was affirmed by the CA in the herein assailed decision and resolution, ordered the (1) rescission of the contract of sale of real property entered into by Villamar and Balbino Mangaoil (Mangaoil); and (2) return of the down payment made relative to the said contract.

Antecedents Facts

The CA aptly summarized as follows the facts of the case prior to the filing by Mangaoil of the complaint[6] for rescission of contract before the RTC:

> **Villamar** is the registered owner of a 3.6080 hectares parcel of land [hereinafter referred as the subject property] in San Francisco,

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[1] *Rollo*, pp. 26-77.

[2] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Edgardo P. Cruz and Ricardo R. Rosario, concurring; *id*. at 11-22.

[3] *Id.* at 22.

[4] *Id.* at 24.

[5] *Id.* at 102-107.

[6] *Id.* at 98-100.

Manuel, Isabela covered by Transfer Certificate of Title (TCT) No. T-92958-A. On **March 30, 1998**, she entered into an **Agreement** with Mangaoil for the purchase and sale of said parcel of land, under the following terms and conditions:

> "1. The price of the land is ONE HUNDRED AND EIGHTY THOUSAND (180,000.00) PESOS per hectare but only the 3.5000 hec. shall be paid and the rest shall be given free, so that the total purchase or selling price shall be [**₱]630,000.00** only;
>
> 2. **ONE HUNDRED EIGHTY FIVE THOUSAND (185,000.00) PESOS** of the total price was already received on March 27, 1998 **for payment of the loan secured by the certificate of title covering the land in favor of the Rural Bank of Cauayan**, San Manuel Branch, San Manuel, Isabela [Rural Bank of Cauayan], in order that the certificate of title thereof be withdrawn and released from the said bank, and the rest shall be **for the payment of the mortgag[e]s in favor of Romeo Lacaden and Florante Parangan;**
>
> 3. After the release of the certificate of title covering the land subject-matter of this agreement, the necessary **deed of absolute sale** in favor of the PARTY OF THE SECOND PART shall be executed and the transfer be immediately effected so that the latter can apply for a loan from any lending institution using the corresponding certificate of title as collateral therefor, and the proceeds of the loan, whatever be the amount, be given to the PARTY OF THE FIRST PART;
>
> 4. Whatever balance left from the agreed purchase price of the land subject matter hereof after deducting the proceed of the loan and the [₱]185,000.00 already received as above-mentioned, the PARTY OF THE SECOND PART shall pay unto the PARTY OF THE FIRST PART not later than **June 30, 1998** and thereafter the parties shall be released of any obligations for and against each other; xxx"

On April 1, 1998, the parties executed a **Deed of Absolute Sale** whereby Villamar (then Estelita Bernabe) transferred the subject parcel of land to Mangaoil for and in consideration of [₱]150,000.00.

In a letter dated September 18, 1998, Mangaoil informed Villamar that he was backing out from the sale agreed upon giving as one of the reasons therefor:

> "3. That the area is not yet fully cleared by incumbrances as there are tenants who are not willing to vacate the land without giving them back the amount that they mortgaged the land."

Mangaoil demanded **refund** of his [₱]185,000.00 down payment. Reiterating said demand in another letter dated April 29, 1999, the same, however, was unheeded.[7] x x x (Citations omitted)

On January 28, 2002, the respondent filed before the RTC a complaint[8] for rescission of contract against the petitioner. In the said complaint, the respondent sought the return of ₱185,000.00 which he paid to the petitioner, payment of interests thereon to be computed from March 27, 1998 until the suit's termination, and the award of damages, costs and ₱20,000.00 attorney's fees. The respondent's factual allegations were as follows:

> 5. That as could be gleaned the "Agreement" (Annex "A"), the plaintiff [Mangaoil] handed to the defendant [Villamar] the sum of [₱]185,000.00 to be applied as follows; [₱]80,000 was for the redemption of the land which was mortgaged to the Rural Bank of Cauayan, San Manuel Branch, San Manuel, Isabela, to enable the plaintiff to get hold of the title and register the sale x x x and [₱]105,000.00 was for the redemption of the said land from private mortgages to enable plaintiff to posses[s] and cultivate the same;
>
> 6. That although the defendant had already long redeemed the said land from the said bank and withdrawn TCT No. T-92958-A, she has failed and refused, despite repeated demands, to hand over the said title to the plaintiff and still refuses and fails to do so;
>
> 7. That, also, the plaintiff could not physically, actually and materially posses[s] and cultivate the said land because the private mortgage[e]s and/or present possessors refuse to vacate the same;
>
> x x x x

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

[8] *Supra* note 6.

11. That on September 18, 1998, the plaintiff sent a letter to the defendant demanding a return of the amount so advanced by him, but the latter ignored the same, x x x;

12. That, again, on April 29, 1999, the plaintiff sent to the defendant another demand letter but the latter likewise ignored the same, x x x;

13. That, finally, the plaintiff notified the defendant by a notarial act of his desire and intention to rescind the said contract of sale, xxx;

x x x x.[9] (Citations omitted)

In the respondent's answer to the complaint, she averred that she had complied with her obligations to the respondent. Specifically, she claimed having caused the release of TCT No. T-92958-A by the Rural Bank of Cauayan and its delivery to a certain "Atty. Pedro C. Antonio" (Atty. Antonio). The petitioner alleged that Atty. Antonio was commissioned to facilitate the transfer of the said title in the respondent's name. The petitioner likewise insisted that it was the respondent who unceremoniously withdrew from their agreement for reasons only the latter knew.

The Ruling of the RTC

On September 9, 2005, the RTC ordered the rescission of the agreement and the deed of absolute sale executed between the respondent and the petitioner. The petitioner was, thus directed to return to the respondent the sum of ₱185,000.00 which the latter tendered as initial payment for the purchase of the subject property. The RTC ratiocinated that:

There is no dispute that the defendant sold the LAND to the plaintiff for [₱]630,000.00 with down payment of [₱]185,000.00. There is no evidence presented if there were any other partial payments made after the perfection of the contract of sale.

Article 1458 of the Civil Code provides:

"Art. 1458. By the contract of sale[,] one of the contracting parties obligates himself to transfer the ownership of and to

[9] *Id.* at 98-99.

deliver a determinate thing, and the other to pay therefore a price certain in money or its equivalent."

As such, in a contract of sale, the obligation of the vendee to pay the price is correlative of the obligation of the vendor to deliver the thing sold. It created or established at the same time, out of the same course, and which result in mutual relations of creditor and debtor between the parties.

The claim of the plaintiff that the LAND has not been delivered to him was not refuted by the defendant. Considering that defendant failed to deliver to him the certificate of title and of the possession over the LAND to the plaintiff, the contract must be rescinded pursuant to Article 1191 of the Civil Code which, in part, provides:

"Art. 1191. The power to rescind obligations is implied in reciprocal ones in case one of the obligors should not comply with what is incumbent upon him."[10]

The petitioner filed before the CA an appeal to challenge the foregoing. She ascribed error on the part of the RTC when the latter ruled that the agreement and deed of sale executed by and between the parties can be rescinded as she failed to deliver to the respondent both the subject property and the certificate of title covering the same.

The Ruling of the CA

On February 20, 2009, the CA rendered the now assailed decision dismissing the petitioner's appeal based on the following grounds:

Burden of proof is the duty of a party to prove the truth of his claim or defense, or any fact in issue necessary to establish his claim or defense by the amount of evidence required by law. In civil cases, **the burden of proof is on the defendant if he alleges, in his answer, an affirmative defense**, which is not a denial of an essential ingredient in the plaintiff's cause of action, but is one which, if established, will be a good defense – *i.e.*, an "avoidance" of the claim, which *prima facie*, the plaintiff already has because of the defendant's own admissions in the pleadings.

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[10] *Rollo*, pp. 106-107.

Defendant-appellant Villamar's defense in this case was an **affirmative defense**. She did not deny plaintiff-appellee's allegation that she had an agreement with plaintiff-appellee for the sale of the subject parcel of land. Neither did she deny that she was obliged under the contract to deliver the certificate of title to plaintiff-appellee immediately after said title/property was redeemed from the bank. **What she rather claims is that she already complied with her obligation to deliver the title to plaintiff-appellee when she delivered the same to Atty. Antonio** as it was plaintiff-appellee himself who engaged the services of said lawyer to precisely work for the immediate transfer of said title in his name. Since, however, this affirmative defense as alleged in defendant-appellant's answer was not admitted by plaintiff-appellee, it then follows that it behooved the **defendant-appellant to prove her averments** by preponderance of evidence.

Yet, a careful perusal of the record shows that the defendant-appellant failed to sufficiently prove said affirmative defense. **She failed to prove that** in the first place, **"Atty. Antonio" existed to receive the title for and in behalf of plaintiff-appellee**. Worse, the defendant-appellant failed to prove that Atty. Antonio received said title "**as *allegedly* agreed upon**."

We likewise sustain the RTC's finding that defendant-appellant V[i]llamar **failed to deliver possession** of the subject property to plaintiff-appellee Mangaoil. As correctly observed by the RTC - "[t]he claim of the plaintiff that the land has not been delivered to him was not refuted by the defendant." Not only that. On cross-examination, the defendant-appellant gave Us insight on **why no such delivery could be made**, *viz.*:

"x x x x

Q: **So, you were not able to deliver this property to Mr. Mangaoil just after you redeem the property because of the presence of these two (2) persons, is it not?**

x x x

A: **Yes**, sir.

Q: Forcing you to file the case against them and which according to you, you have won, is it not?

A: Yes, sir.

Q: **And now at present[,] you are in actual possession of the land?**

A: **Yes, sir**. x x x"

With the foregoing **judicial admission**, the RTC could not have erred in finding that defendant-[appellant] failed to deliver the possession of the property sold, to plaintiff-appellee.

Neither can We agree with defendant-appellant in her argument that the execution of the Deed of Absolute Sale by the parties is already equivalent to a ***valid and constructive delivery*** of the property to plaintiff-appellee. Not only is it doctrinally settled that in **a contract of sale, the vendor is bound to transfer the ownership of, and to deliver the thing that is the object of the sale**, the way Article 1547 of the Civil Code is worded, *viz.*:

"Art. 1547. In a contract of sale, unless a contrary intention appears, there is:

(1) **An implied warranty on the part of the seller** that he has a right to sell the thing at the time when the ownership is to pass, and **that the buyer shall from that time have and enjoy the legal and peaceful possession of the thing**;

(2) An implied warranty that the thing shall be free from any hidden defaults or defects, or any change or encumbrance not declared or known to the buyer.

x x x."

shows that **actual**, and not mere constructive delivery is warrantied by the seller to the buyer. "**(P)eaceful possession of the thing" sold can hardly be enjoyed in a mere constructive delivery**.

The obligation of defendant-appellant Villamar to transfer ownership and deliver possession of the subject parcel of land was her *correlative* obligation to plaintiff-appellee in exchange for the latter's purchase price thereof. Thus, if she fails to comply with what is incumbent upon her, a correlative right to rescind such contract from plaintiff-appellee arises, pursuant to Article 1191 of the Civil Code.[11] x x x (Citations omitted)

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[11] *Id.* at 17-21.

The Issues

Aggrieved, the petitioner filed before us the instant petition and submits the following issues for resolution:

I.

WHETHER THE FAILURE OF PETITIONER-SELLER TO DELIVER THE CERTIFICATE OF TITLE OVER THE PROPERTY TO RESPONDENT-BUYER IS A BREACH OF OBLIGATION IN A CONTRACT OF SALE OF REAL PROPERTY THAT WOULD WARRANT RESCISSION OF THE CONTRACT;

II.

WHETHER PETITIONER IS LIABLE FOR BREACH OF OBLIGATION IN A CONTRACT OF SALE FOR FAILURE OF RESPONDENT[-]BUYER TO IMMEDIATELY TAKE ACTUAL POSSESSION OF THE PROPERTY NOTWITHSTANDING THE ABSENCE OF ANY STIPULATION IN THE CONTRACT PROVIDING FOR THE SAME;

III.

WHETHER THE EXECUTION OF A DEED OF SALE OF REAL PROPERTY IN THE PRESENT CASE IS ALREADY EQUIVALENT TO A VALID AND CONSTRUCTIVE DELIVERY OF THE PROPERTY TO THE BUYER;

IV.

WHETHER OR NOT THE CONTRACT OF SALE SUBJECT MATTER OF THIS CASE SHOULD BE RESCINDED ON SLIGHT OR CASUAL BREACH;

V.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE RTC ORDERING THE RESCISSION OF THE CONTRACT OF SALE[.][12]

The Petitioner's Arguments

The petitioner avers that the CA, in ordering the rescission of the agreement and deed of sale, which she entered into with the respondent, on the basis of her alleged failure to deliver

[12] *Id.* at 40.

the certificate of title, effectively imposed upon her an extra duty which was neither stipulated in the contract nor required by law. She argues that under Articles 1495[13] and 1496[14] of the New Civil Code (NCC), the obligation to deliver the thing sold is complied with by a seller who executes in favor of a buyer an instrument of sale in a public document. Citing *Chua v. Court of Appeals*,[15] she claims that there is a distinction between transferring a certificate of title in the buyer's name, on one hand, and transferring ownership over the property sold, on the other. The latter can be accomplished by the seller's execution of an instrument of sale in a public document. The recording of the sale with the Registry of Deeds and the transfer of the certificate of title in the buyer's name are necessary only to bind third parties to the transfer of ownership.[16]

The petitioner contends that in her case, she had already complied with her obligations under the agreement and the law when she had caused the release of TCT No. T-92958-A from the Rural Bank of Cauayan, paid individual mortgagees Romeo Lacaden (Lacaden) and Florante Parangan (Parangan), and executed an absolute deed of sale in the respondent's favor. She adds that before T-92958-A can be cancelled and a new one be issued in the respondent's favor, the latter decided to withdraw from their agreement. She also points out that in the letters seeking for an outright rescission of their agreement sent to her by the respondent, not once did he demand for the delivery of TCT.

The petitioner insists that the respondent's change of heart was due to (1) the latter's realization of the difficulty in determining

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[13] Art. 1495. The vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale.

[14] Art. 1496. The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee.

[15] 449 Phil. 25 (2003).

[16] *Id.* at 50.

the subject property's perimeter boundary; (2) his doubt that the property he purchased would yield harvests in the amount he expected; and (3) the presence of mortgagees who were not willing to give up possession without first being paid the amounts due to them. The petitioner contends that the actual reasons for the respondent's intent to rescind their agreement did not at all constitute a substantial breach of her obligations.

The petitioner stresses that under Article 1498 of the NCC, when a sale is made through a public instrument, its execution is equivalent to the delivery of the thing which is the contract's object, unless in the deed, the contrary appears or can be inferred. Further, in *Power Commercial and Industrial Corporation v. CA*,[17] it was ruled that the failure of a seller to eject lessees from the property he sold and to deliver actual and physical possession, cannot be considered a substantial breach, when such failure was not stipulated as a resolutory or suspensive condition in the contract and when the effects and consequences of the said failure were not specified as well. The execution of a deed of sale operates as a formal or symbolic delivery of the property sold and it already authorizes the buyer to use the instrument as proof of ownership.[18]

The petitioner argues that in the case at bar, the agreement and the absolute deed of sale contains no stipulation that she was obliged to actually and physically deliver the subject property to the respondent. The respondent fully knew Lacaden's and Parangan's possession of the subject property. When they agreed on the sale of the property, the respondent consciously assumed the risk of not being able to take immediate physical possession on account of Lacaden's and Parangan's presence therein.

The petitioner likewise laments that the CA allegedly misappreciated the evidence offered before it when it declared that she failed to prove the existence of Atty. Antonio. For the record, she emphasizes that the said lawyer prepared and

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17 340 Phil. 705 (1997).

18 *Id.* at 715.

notarized the agreement and deed of absolute sale which were executed between the parties. He was also the petitioner's counsel in the proceedings before the RTC. Atty. Antonio was also the one asked by the respondent to cease the transfer of the title over the subject property in the latter's name and to return the money he paid in advance.

The Respondent's Contentions

In the respondent's comment,[19] he seeks the dismissal of the instant petition. He invokes Articles 1191 and 1458 to argue that when a seller fails to transfer the ownership and possession of a property sold, the buyer is entitled to rescind the contract of sale. Further, he contends that the execution of a deed of absolute sale does not necessarily amount to a valid and constructive delivery. In *Masallo v. Cesar*,[20] it was ruled that a person who does not have actual possession of real property cannot transfer constructive possession by the execution and delivery of a public document by which the title to the land is transferred. In *Addison v. Felix and Tioco*,[21] the Court was emphatic that symbolic delivery by the execution of a public instrument is equivalent to actual delivery only when the thing sold is subject to the control of the vendor.

Our Ruling

The instant petition is bereft of merit.

There is only a single issue for resolution in the instant petition, to wit, whether or not the failure of the petitioner to deliver to the respondent both the physical possession of the subject property and the certificate of title covering the same amount to a substantial breach of the former's obligations to the latter constituting a valid cause to rescind the agreement and deed of sale entered into by the parties.

We rule in the affirmative.

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19 *Rollo*, pp. 121-123.

20 39 Phil. 134 (1918).

21 38 Phil. 404 (1918).

The RTC and the CA both found that the petitioner failed to comply with her obligations to deliver to the respondent both the possession of the subject property and the certificate of title covering the same.

Although Articles 1458, 1495 and 1498 of the NCC and case law do not generally require the seller to deliver to the buyer the physical possession of the property subject of a contract of sale and the certificate of title covering the same, the agreement entered into by the petitioner and the respondent provides otherwise. However, the terms of the agreement cannot be considered as violative of law, morals, good customs, public order, or public policy, hence, valid.

Article 1458 of the NCC obliges the seller to transfer the ownership of and to deliver a determinate thing to the buyer, who shall in turn pay therefor a price certain in money or its equivalent. In addition thereto, Article 1495 of the NCC binds the seller to warrant the thing which is the object of the sale. On the other hand, Article 1498 of the same code provides that when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed, the contrary does not appear or cannot clearly be inferred.

In the case of *Chua v. Court of Appeals*,[22] which was cited by the petitioner, it was ruled that "when the deed of absolute sale is signed by the parties and notarized, then delivery of the real property is deemed made by the seller to the buyer."[23] The transfer of the certificate of title in the name of the buyer is not necessary to confer ownership upon him.

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[22] *Supra* note 15.

[23] *Id.* at 47.

In the case now under our consideration, item nos. 2 and 3 of the agreement entered into by the petitioner and the respondent explicitly provide:

> 2. ONE HUNDRED EIGHTY FIVE THOUSAND (₱185,000.00) PESOS of the total price was already received on March 27, 1998 for payment of the loan secured by the certificate of title covering the land in favor of the Rural Bank of Cauayan, San Manuel Branch, San Manuel, Isabela, in order that the certificate of title thereof be withdrawn and released from the said bank, and the rest shall be for the payment of the mortgages in favor of Romeo Lacaden and Florante Parangan;
>
> 3. After the release of the certificate of title covering the land subject-matter of this agreement, the necessary deed of absolute sale in favor of the PARTY OF THE SECOND PART shall be executed and the transfer be immediately effected so that the latter can apply for a loan from any lending institution using the corresponding certificate of title as collateral therefor, and the proceeds of the loan, whatever be the amount, be given to the PARTY OF THE FIRST PART;[24] (underlining supplied)

As can be gleaned from the agreement of the contending parties, the respondent initially paid the petitioner ₱185,000.00 for the latter to pay the loan obtained from the Rural Bank of Cauayan and to cause the release from the said bank of the certificate of title covering the subject property. The rest of the amount shall be used to pay the mortgages over the subject property which was executed in favor of Lacaden and Parangan. After the release of the TCT, a deed of sale shall be executed and transfer shall be immediately effected so that the title covering the subject property can be used as a collateral for a loan the respondent will apply for, the proceeds of which shall be given to the petitioner.

Under Article 1306 of the NCC, the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy.

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[24] *Rollo*, p. 108.

While Articles 1458 and 1495 of the NCC and the doctrine enunciated in the case of *Chua* do not impose upon the petitioner the obligation to physically deliver to the respondent the certificate of title covering the subject property or cause the transfer in the latter's name of the said title, a stipulation requiring otherwise is not prohibited by law and cannot be regarded as violative of morals, good customs, public order or public policy. Item no. 3 of the agreement executed by the parties expressly states that "transfer [shall] be immediately effected so that the latter can apply for a loan from any lending institution using the corresponding certificate of title as collateral therefor." Item no. 3 is literal enough to mean that there should be physical delivery of the TCT for how else can the respondent use it as a collateral to obtain a loan if the title remains in the petitioner's possession. We agree with the RTC and the CA that the petitioner failed to prove that she delivered the TCT covering the subject property to the respondent. What the petitioner attempted to establish was that she gave the TCT to Atty. Antonio whom she alleged was commissioned to effect the transfer of the title in the respondent's name. Although Atty. Antonio's existence is certain as he was the petitioner's counsel in the proceedings before the RTC, there was no proof that the former indeed received the TCT or that he was commissioned to process the transfer of the title in the respondent's name.

It is likewise the petitioner's contention that pursuant to Article 1498 of the NCC, she had already complied with her obligation to deliver the subject property upon her execution of an absolute deed of sale in the respondent's favor. The petitioner avers that she did not undertake to eject the mortgagors Parangan and Lacaden, whose presence in the premises of the subject property was known to the respondent.

We are not persuaded.

In the case of *Power Commercial and Industrial Corporation*[25] cited by the petitioner, the Court ruled that the failure of the seller to eject the squatters from the property

[25] *Supra* note 17.

sold cannot be made a ground for rescission if the said ejectment was not stipulated as a condition in the contract of sale, and when in the negotiation stage, the buyer's counsel himself undertook to eject the illegal settlers.

The circumstances surrounding the case now under our consideration are different. In item no. 2 of the agreement, it is stated that part of the ₱185,000.00 initially paid to the petitioner shall be used to pay the mortgagors, Parangan and Lacaden. While the provision does not expressly impose upon the petitioner the obligation to eject the said mortgagors, the undertaking is necessarily implied. Cessation of occupancy of the subject property is logically expected from the mortgagors upon payment by the petitioner of the amounts due to them.

We note that in the demand letter[26] dated September 18, 1998, which was sent by the respondent to the petitioner, the former lamented that "the area is not yet fully cleared of incumbrances as there are tenants who are not willing to vacate the land without giving them back the amount that they mortgaged the land." Further, in the proceedings before the RTC conducted after the complaint for rescission was filed, the petitioner herself testified that she won the ejectment suit against the mortgagors "only last year".[27] The complaint was filed on September 8, 2002 or more than four years from the execution of the parties' agreement. This means that after the lapse of a considerable period of time from the agreement's execution, the mortgagors remained in possession of the subject property.

Notwithstanding the absence of stipulations in the agreement and absolute deed of sale entered into by Villamar and Mangaoil expressly indicating the consequences of the former's failure to deliver the physical possession of the subject property and the certificate of title covering the

[26] *Rollo*, p. 111.

[27] *Id.* at 19.

same, the latter is entitled to demand for the rescission of their contract pursuant to Article 1191 of the NCC.

We note that the agreement entered into by the petitioner and the respondent only contains three items specifying the parties' undertakings. In item no. 5, the parties consented "to abide with all the terms and conditions set forth in this agreement and never violate the same."[28]

Article 1191 of the NCC is clear that "the power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him." The respondent cannot be deprived of his right to demand for rescission in view of the petitioner's failure to abide with item nos. 2 and 3 of the agreement. This remains true notwithstanding the absence of express stipulations in the agreement indicating the consequences of breaches which the parties may commit. To hold otherwise would render Article 1191 of the NCC as useless.

Article 1498 of the NCC generally considers the execution of a public instrument as constructive delivery by the seller to the buyer of the property subject of a contract of sale. The case at bar, however, falls among the exceptions to the foregoing rule since a mere presumptive and not conclusive delivery is created as the respondent failed to take material possession of the subject property.

Further, even if we were to assume for argument's sake that the agreement entered into by the contending parties does not require the delivery of the physical possession of the subject property from the mortgagors to the respondent, still, the petitioner's claim that her execution of an absolute deed of

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[28] *Supra* note 24.

sale was already sufficient as it already amounted to a constructive delivery of the thing sold which Article 1498 of the NCC allows, cannot stand.

In *Philippine Suburban Development Corporation v. The Auditor General*,[29] we held:

> When the sale of real property is made in a public instrument, the execution thereof is equivalent to the delivery of the thing object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.
>
> In other words, there is symbolic delivery of the property subject of the sale by the execution of the public instrument, unless from the express terms of the instrument, or by clear inference therefrom, this was not the intention of the parties. Such would be the case, for instance, x x x where the vendor has no control over the thing sold at the moment of the sale, and, therefore, its material delivery could not have been made.[30] (Underlining supplied and citations omitted)

Stated differently, as a general rule, the execution of a public instrument amounts to a constructive delivery of the thing subject of a contract of sale. However, exceptions exist, among which is when mere presumptive and not conclusive delivery is created in cases where the buyer fails to take material possession of the subject of sale. A person who does not have actual possession of the thing sold cannot transfer constructive possession by the execution and delivery of a public instrument.

In the case at bar, the RTC and the CA found that the petitioner failed to deliver to the respondent the possession of the subject property due to the continued presence and occupation of Parangan and Lacaden. We find no ample reason to reverse the said findings. Considered in the light of either the agreement entered into by the parties or the pertinent provisions of law,

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[29] 159 Phil. 998 (1975).

[30] *Id.* at 1007-1008, also see *Addison v. Felix and Tioco*, *supra* note 19; *Masallo v. Cesar*, *supra* note 18; *Leonardo v. Maravilla*, 441 Phil. 409 (2002); *Asset Privatization Trust v. T.J. Enterprises*, G.R. No. 167195, May 8, 2009, 587 SCRA 481.

the petitioner failed in her undertaking to deliver the subject property to the respondent.

IN VIEW OF THE FOREGOING, the instant petition is **DENIED.** The February 20, 2009 Decision and July 8, 2009 Resolution of the Court of Appeals, directing the rescission of the agreement and absolute deed of sale entered into by Estelita Villamar and Balbino Mangaoil and the return of the down payment made for the purchase of the subject property, are **AFFIRMED.** However, pursuant to our ruling in *Eastern Shipping Lines, Inc. v. CA*,[31] an **interest of 12% per annum** is imposed on the sum of ₱185,000.00 to be returned to Mangaoil to be computed from the date of finality of this Decision until full satisfaction thereof.

SO ORDERED.

Carpio, Brion, Perez, and *Sereno, JJ.*, concur.

SECOND DIVISION

[G.R. No. 193509. April 11, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **IRENEO GANZAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 8353 (THE ANTI-RAPE LAW OF 1997); RAPE; ELEMENTS. — The crime of rape is defined in the Revised Penal Code as amended by the Anti-Rape Law of 1997 x x x. Pursuant to this provision, the essential elements that the prosecution must prove are, first, that a man

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[31] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

succeeded in having carnal knowledge of a woman; and, second, that the act was accomplished through force, threat or intimidation.

2. REMEDIAL LAW; EVIDENCE; ALIBI; REQUISITES. — We have ruled that alibi is a weak defense and is viewed with disfavor by the courts, because it is easy to concoct and difficult to disprove. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law. In order for alibi to prosper, appellant must prove that, first, he was somewhere else during the commission of the crime, and, second, that it was impossible for him to be anywhere within the vicinity of the crime scene. The defense fell short of meeting this burden.

3. ID.; ID.; ID.; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE WITNESS. — [A]libi cannot prevail over positive identification that is categorical, consistent and without any showing of ill motive on the part of the witness.

4. ID.; ID.; CREDIBILITY OF WITNESSES; THE COURT MAY CONVICT THE ACCUSED ON THE BASIS OF THE TESTIMONY OF THE VICTIM IF IT PASSES THE TEST OF CREDIBILITY. — We have ruled that owing to the nature of the offense, rape is usually a crime bereft of witnesses, and, in many cases, the only evidence is the testimony of the offended party herself. As long as her testimony passes the test of credibility, she says all that is necessary to show that the offense has been committed, and the court may convict the accused on that basis.

5. ID.; ID.; ID.; THE NATURAL REACTION OF VICTIMS OF CRIMINAL VIOLENCE IS TO STRIVE TO SEE THE APPEARANCE OF THEIR ASSAILANTS. — AAA's testimony is consistent with human experience. We have ruled that the natural reaction of victims of criminal violence is to strive to see the appearance of their assailants. Furthermore, victims to a crime are generally capable of remembering the identity of the criminal with a high degree of reliability because of the bestial acts that happen before their eyes. This especially finds application in the case at bar, where the victim was in possession of her faculties at the time of the incident and was not shown to be under the influence of alcohol or similar substances.

APPEARANCES OF COUNSEL

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

D E C I S I O N

SERENO, *J.*:

Before the Court is an appeal from the 24 March 2010 Decision of the Court of Appeals (CA),[1] which affirmed the 5 October 2007 Decision of the Regional Trial Court (RTC),[2] Branch 24, Cebu City, which had convicted appellant Ireneo Ganzan (Ganzan) of the crime of rape.

Ganzan was charged in an Information[3] dated 30 March 2001, as follows:

> That on 26th day of February, 2001 at 1:30 in the morning at APOCEMCO, Barangay Tinaan, Municipality of Naga, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA],[4] against her will and consent.
>
> CONTRARY TO LAW.

Upon arraignment, appellant Ganzan entered a plea of "not guilty."[5] Trial on the merits ensued, and the RTC found him

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[1] CA Decision dated 24 March 2010, penned by Associate Justice Agnes Reyes Carpio and concurred in by Associate Justices Samuel H. Gaerlan and Socorro B. Inting; *rollo*, pp. 2-18.

[2] RTC Decision dated 5 October 2007, penned by Presiding Judge Olegario R. Sarmiento, Jr., Records, pp. 159-174.

[3] Information dated 30 March 2001; Records, p. 1.

[4] The victim's real name is withheld pursuant to Section 44 of Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004.

[5] Order dated 18 June 2001; Records, p. 37.

guilty beyond reasonable doubt of the crime of rape in a Decision dated 5 October 2007, the dispositive portion of which reads:

> WHEREFORE, the prosecution having successfully discharged the burden of proving the guilt of the accused beyond reasonable doubt, this Court finds him guilty of rape punished under Article 266-A of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of *Reclusion Perpetua*. He shall likewise suffer the accessory penalty inherent in the law.
>
> Accused is further ordered to pay the victim a civil indemnity of **PhP50,000.00**, by reason of the crime and **PhP50,000.00**, as moral damages.
>
> SO ORDERED.[6]

Dissatisfied with the judgment, Ganzan appealed to the Court of Appeals.[7] After a review of the records by the appellate court, the finding of guilt by the trial court was affirmed by the former in a Decision dated 24 March 2010.[8]

Ganzan then filed this instant appeal before this Court.[9]

The Facts

The main witness for the prosecution was the victim herself. She narrated that, sometime before midnight on 25 February 2011, she was on her way home from a disco with her friend, Eleonor Sarda.[10] As they approached a small basketball court, they were accosted by a man with a gun, later identified as appellant Ganzan.[11] He was wearing a bonnet, but it did not cover his entire face, as it covered only his head and forehead.[12] He pointed a gun at them, identified himself as a member of

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[6] RTC Decision dated 5 October 2007, p. 14; Records, p. 174.

[7] Notice of Appeal dated 7 November 2007; Records, p. 175.

[8] *Supra* note 1.

[9] Notice of Appeal dated 16 April 2010; CA *rollo*, p. 116.

[10] TSN, 22 January 2002, pp. 4-7.

[11] *Id.* at 7.

[12] TSN, 3 June 2002, p. 11.

the New People's Army from Bohol, and asked them the names of their parents and if they had identification cards.[13] He told them, "Don't be afraid of me because I'm not a bad guy. You just go there to the dark side."[14] Trembling, they obeyed his order.[15]

Upon reaching the dark side, Eleonor and AAA were ordered by Ganzan at gunpoint to remove their clothes. They complied until they were only in their undergarments. Ganzan trained a flashlight all over their bodies.[16] Thereafter, he sent Eleonor to the disco place to buy banana cue and cigarettes.[17]

After Eleonor left, Ganzan aimed his flashlight all over AAA's body while he kept looking around.[18] He then dragged her towards the vicinity of the Apo Cement Corporation (APOCEMCO).[19] When they reached a grassy area, he commanded her to lie down.[20] She refused, but Ganzan threatened her with the gun, forced her to lie down, and removed her panties.[21] AAA instantly covered her genitals with her hands.[22] After repeatedly ordering her to remove her hands, to no avail, Ganzan struck her hands, and uncovered her genitals. Afterwards, he covered AAA's face with her blouse and held both her hands.[23]

When AAA's face was already covered, appellant Ganzan inserted his finger inside her vagina, causing her to cry, "Ma!"

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[13] TSN, 22 January 2002, p. 8.

[14] *Id.*

[15] *Id.* at 9.

[16] *Id.* at 9-12.

[17] *Id.* at 12.

[18] *Id.* at 13.

[19] *Id.* at 14.

[20] *Id.*

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

[22] *Id.* at 15.

[23] *Id.* at 15-16.

Afterwards, he inserted his penis into her vagina, causing her to shout loudly. He then ordered her to keep quiet and poked a knife at her neck.[24] Because of her constant resistance, the blouse covering her face came off during the assault.[25] Ganzan then inserted his finger into her vagina for about three times, and then inserted his penis again.[26] AAA could not do anything, because she was no longer feeling well due to the intense pain.[27]

When Ganzan was finished, he ordered AAA to get up and put on her clothes.[28] After she got dressed, he pointed the gun at her and said, "Don't ever reveal these things because I will kill you and your family."[29] He then told her, "You can go home now but don't tell anybody about this. Don't turn around to face me."[30] Defiantly, AAA turned around to take a good look at her rapist. Ganzan then remarked, "I told you not to turn your back," while still pointing the gun at her.[31]

AAA kept on walking until she reached home.[32] She slept on the sofa and did not inform anyone in her family about what happened, because she was afraid.[33]

Marie Cris Canicon and Reynante Cabigas narrated in their Joint Affidavit[34] that, shortly after the incident, at around 1:45 a.m., they saw appellant Ganzan coming from the area where the rape incident happened, still fixing his short pants. He was

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[24] *Id.* at 17.

[25] *Id.* at 18.

[26] TSN, 22 April 2002, pp. 5-6.

[27] *Id.* at 7.

[28] *Id.*

[29] *Id.* at 9.

[30] *Id.* at 9-10.

[31] *Id.* at 10-11.

[32] *Id.* at 11.

[33] *Id.* at 12-13.

[34] Joint Affidavit of Marie Cris Canicon and Reynante Cabigas dated 18 February 2001, Records, p. 7.

walking hurriedly while repeatedly looking from side to side. When appellant saw Marie Cris and Reynante, he asked them what they were doing in the area. He asked to see their identification cards, and when they replied that they did not have any, he asked them where they lived. He kept on pointing his flashlight at Marie Cris, until Reynante covered her eyes and told Ganzan not to do that. Marie Cris then stared at appellant for almost one minute, causing him to get angry. Afterwards, he left and told them not to go to the place he pointed to.[35]

Meanwhile, instead of following appellant's order to buy banana cue and cigarettes, Eleonor reported the incident to her cousin and to the *barangay tanods*. They went to the scene of the crime, but found nobody there.[36]

AAA woke up to the sound of her elder brother and cousin knocking very hard and kicking at their door. Apparently having heard about the incident, her brother asked her what happened.[37] She told him that somebody forcibly raped her. Her brother asked her if she knew her assailant, and she replied that she would recognize the person if she would see him again.[38] Her brother and cousin then went out looking for the man who raped her.[39]

In the morning, AAA went to the Don Vicente Sotto Memorial Hospital of Cebu City for a medical examination.[40] The examining physician, Dr. Carlos Ray B. Sanchez, concluded that, consistent with a finding of possible sexual abuse, there were fresh lacerations in her hymen. He also confirmed the presence of sperm.[41]

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[35] *Id.*

[36] Affidavit of Eleonor Sarda, Records, p. 11.

[37] TSN, 22 April 2002, p. 14.

[38] *Id.* at 15.

[39] *Id.* at 16.

[40] *Id.* at 25.

[41] Examination Notes of Dr. Carlos Ray B. Sanchez, M.D., Records, pp. 9-10.

The following day, during a police lineup, both AAA and Eleonor Sarda identified Ganzan as the man who had waylaid them and later raped AAA.[42]

Appellant Ganzan interposed the defense of denial and alibi. He stated that he did not have a firearm,[43] and that he was a mountaineer at APOCEMCO.[44] On 25 February 2001, he was on duty from 7:00 a.m. up to 3:00 p.m.[45] At about 11:00 p.m., he rested and slept at the bunkhouse[46] together with Rolando Pelandas.[47] APOCEMCO Security Guard Michael Quirol confirmed that Ganzan proceeded to the bunkhouse a little past 10:00 p.m.[48] while Rolando Pelandas stated that he saw appellant sleeping in one of the rooms of the bunkhouse at about the same time.[49] From the time Ganzan arrived at the APOCEMCO compound that night, he alleged that he never left the premises until he woke up the following morning.[50]

On 27 February 2001, Ganzan was surprised to find out that he was a suspect in a rape incident and was being invited to go to the police station.[51] At the police station, he was then identified by AAA as the one responsible for the rape.[52]

The Court's Ruling

We rule that the prosecution has fulfilled its burden of establishing appellant's guilt beyond reasonable doubt.

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[42] TSN, 23 March 2004, p. 12.

[43] Counter-Affidavit of Ireneo Ganzan, Records, p. 16.

[44] TSN, 17 October 2005, p. 2.

[45] *Id.* at 4.

[46] *Id.* at 5.

[47] *Id.* at 9.

[48] Affidavit of Michael Quirol dated 14 March 2001, Records, p. 20.

[49] Affidavit of Rolando Pelandas dated 14 March 2001, Records, p. 21.

[50] TSN, 17 October 2005, p. 9.

[51] TSN, 23 June 2005, p. 2.

[52] *Supra* note 43.

The crime of rape is defined in the Revised Penal Code as amended by the Anti-Rape Law of 1997,[53] as follows:

> 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; x x x.

Pursuant to this provision, the essential elements that the prosecution must prove are, first, that a man succeeded in having carnal knowledge of a woman; and, second, that the act was accomplished through force, threat or intimidation.

In this case, AAA positively testified to the presence of both elements. In her testimony, she recounted in detail her harrowing experience at the hands of Ganzan – how she and her friend, while on their way home from a disco, were intercepted by the appellant;[54] how they were made to undress at gunpoint;[55] how her friend was sent away so that the appellant would be left alone with her to fulfill his lewd designs;[56] and how he actually succeeded in having carnal knowledge of her against her will while poking a knife against her neck.[57]

These accusations were further buttressed by the findings of Dr. Carlos Ray Sanchez, who concluded that there was a possibility of sexual abuse after he found fresh lacerations in her hymen and confirmed the presence of sperm in her vagina.[58]

For his part, appellant Ganzan vehemently denied the allegations of the prosecution and interposed alibi as a defense.

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[53] Republic Act No. 8353, 22 October 1997.

[54] TSN, 22 January 2002, p.7.

[55] *Id.* at 9-12.

[56] *Id.* at 12.

[57] *Id.* at 17-18.

[58] *Supra* note 41.

We have ruled that alibi is a weak defense and is viewed with disfavor by the courts, because it is easy to concoct and difficult to disprove. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law. In order for alibi to prosper, appellant must prove that, first, he was somewhere else during the commission of the crime, and, second, that it was impossible for him to be anywhere within the vicinity of the crime scene.[59] The defense fell short of meeting this burden.

Appellant Ganzan alleged that he was sleeping in the APOCEMCO bunkhouse when the crime of rape occurred.[60] Michael Quirol confirmed that appellant had indeed proceeded to that place a little past 10:00 p.m.,[61] while Rolando Pelandas stated that he saw Ganzan sleeping in one of the rooms of the bunkhouse at about the same time.[62] However, the rape incident occurred at about 1:30 a.m. of the following day, at which time Ganzan's presence was unaccounted for, aside from his bare and self-serving assertion.

Moreover, even if Ganzan was in the APOCEMCO compound at or near the time when the crime was committed, it was not impossible for him to be near the crime scene when the rape occurred. He himself testified that the crime scene could be reached from the bunkhouse by walking.[63]

We quote with favor the ruling of the trial court in disposing of appellant's defense of alibi:

x x x. During the ocular inspection, the distance from the place of the incident and the bunkhouse was proven to be easily accessible (five minutes by horse riding, passing through the quarry within the

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[59] *People v. Jimenez*, G.R. No. 170235, 24 April 2009, 586 SCRA 580, citing *People v. Nieto*, G.R. No. 177756, 3 March 2008, 547 SCRA 511.

[60] Counter-Affidavit of Ireneo Ganzan dated 14 March 2001, Records, pp. 16-17.

[61] *Supra* note 48.

[62] *Supra* note 49.

[63] TSN, 17 October 2005, p. 6.

Compound of the APOCEMCO and about 300 meters passing the footpath through the barbed wire fence in shortcut to the highway). Thus, while it could be true that accused Ireneo Ganzan was sleeping at the bunk house of the Apocemco between 11:00 in the evening of February 25, 2001 until the morning of the next day, it could not be ruled out that he could have been at the place of the incident sometime in between or at about midnight or 1:30 dawn, when people are in deep slumber, to commit the bestial act against the victim herein.[64] x x x.

Furthermore, we have ruled that alibi cannot prevail over positive identification that is categorical, consistent and without any showing of ill motive on the part of the witness.[65]

In this case, AAA positively identified appellant Ganzan in open court as the perpetrator of the rape committed against her:

Q: Now, when you saw that person pointed by you, that was the face of the person who raped you?

A: Yes, sir.

Q: That was the face of the person who inserted his penis to your vagina?

A: Yes.

x x x x x x x x x

Q: Now, if that person is here in the chamber, can you point him out?

A: Yes, that one.

Court Interpreter: Witness points to the person seated inside the chamber who when asked answered his name to be Ireneo Ganzan.[66]

We have ruled that owing to the nature of the offense, rape is usually a crime bereft of witnesses, and, in many cases, the

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[64] RTC Decision dated 5 October 2007, p. 14; Records, p. 174.

[65] *People v. Alejandro*, G.R. No. 186232, 27 September 2010, 631 SCRA 332.

[66] TSN, 22 January 2002, pp. 19-20.

only evidence is the testimony of the offended party herself.[67] As long as her testimony passes the test of credibility, she says all that is necessary to show that the offense has been committed, and the court may convict the accused on that basis.[68]

Appellant argues that the victim failed to clearly and positively identify her assailant, because she could not have seen his face as the place where the incident occurred was very dark.[69]

The victim's clear and categorical statements belie the submission of the defense. On cross-examination, AAA testified that the place where they were waylaid was not very dark, as there was a lamppost about 20 meters away.[70] Moreover, she expressly stated that she saw the face of appellant two times: first, when he was sexually abusing her, as the blouse covering her face came off;[71] and, second, when she defiantly turned around to look at her assailant despite being ordered not to look back.[72]

During the clarificatory examination conducted by the Municipal Trial Court of Naga, AAA firmly asserted that she saw the face of appellant as follows:

Court: At the time when you were sexually violated, did you see the face of the accused?

A: Yes, sir.

Court: Are you sure?

A: Yes, sir.

xxx x x x xxx

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[67] *People v. Deri*, G.R. No. 166566, 23 November 2010, 635 SCRA 733.

[68] *People v. Orilla*, 467 Phil. 253 (2004).

[69] Brief for the Accused-Appellant, pp. 6-7; CA *rollo*, pp. 35-36.

[70] TSN, 22 October 2002, p. 9.

[71] TSN, 22 January 2002, p. 18.

[72] TSN, 22 April 2002, p. 10.

Court: And if the person who violated you sexually is present in the courtroom now, can you recognize him?

A: Yes, sir.

x x x x x x x x x

Court: Can you point him out?

A: Yes, sir. (Witness pointing to the person who answers by the name of Ireneo Ganzan).

Court: Are you sure he is the person who violated you?

A: Yes, sir.

Court: Why are you so sure?

A: When he lighted my face, I saw, I really saw his face.

Court: This Court have (sic) no more questions to ask do you have anything more to say?

A: I really saw his face.[73]

AAA's testimony is consistent with human experience. We have ruled that the natural reaction of victims of criminal violence is to strive to see the appearance of their assailants.[74] Furthermore, victims to a crime are generally capable of remembering the identity of the criminal with a high degree of reliability because of the bestial acts that happen before their eyes.[75] This especially finds application in the case at bar, where the victim was in possession of her faculties at the time of the incident and was not shown to be under the influence of alcohol or similar substances.

In addition to AAA's testimony, Chief Inspector Renato Malazarte testified that, during the police line-up, Ganzan was likewise positively identified by Eleanor Sarda as the man who stopped them on their way home from the disco, thus:

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[73] Transcript of the 21 March 2001 Clarificatory Examination, Records, pp. 29-30.

[74] *People v. Teehankee*, 319 Phil. 128 (1995), citing *People v. Apawan*, G.R. No. 85329, 16 August 1994, 235 SCRA 355.

[75] *Id.*, citing *People v. Campa*, G.R. No. 105391, 28 February 1994, 230 SCRA 431.

COURT

Q: The other witness who was with the complainant the night of the incident [Eleanor Sarda], was he (sic) also around when the two security guards were brought to your office?

A: Yes, Sir.

Q: And then was she requested to identify?

A: Yes, Sir.

Q: And what was the identification of the other witness?

A: It was the same. The witness, the victim herself identified the suspect that it was indeed the suspect who raped her.

Q: You mean to say, there are two now who positively identified the suspect?

A: Yes, Your Honor.[76]

Finally, two more individuals, namely Marie Cris Canicon and Reynante Cabigas, confirmed that they saw appellant Ganzan coming from the place of the incident after the crime was committed.[77]

Taking all these facts into consideration, and in light of the bare, self-serving and uncorroborated claims of the defense, we refuse to give credence to appellant's alibi, and rule that the prosecution successfully established through clear, positive and convincing evidence that the crime of rape was committed and that appellant Ganzan is guilty thereof beyond reasonable doubt.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CEB-CR.H.C. No. 00848 dated 24 March 2010 finding appellant Ireneo Ganzan guilty beyond reasonable doubt of the crime of rape is hereby **AFFIRMED.**

SO ORDERED.

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

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[76] TSN, 23 March 2004, pp. 11-12.

[77] Joint Affidavit of Marie Cris Canicon and Reynante Cabigas, Records, p. 7.

THIRD DIVISION

[A.C. No. 6903. April 16, 2012]

SUZETTE DEL MUNDO, *complainant, vs.* **ATTY. ARNEL C. CAPISTRANO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; WHEN A LAWYER TAKES A CLIENT'S CAUSE, HE COVENANTS THAT HE WILL EXERCISE DUE DILIGENCE IN PROTECTING THE LATTER'S RIGHTS. — [W]hen a lawyer takes a client's cause, he covenants that he will exercise due diligence in protecting the latter's rights. Failure to exercise that degree of vigilance and attention expected of a good father of a family makes the lawyer unworthy of the trust reposed on him by his client and makes him answerable not just to his client but also to the legal profession, the courts and society. His workload does not justify neglect in handling one's case because it is settled that a lawyer must only accept cases as much as he can efficiently handle.

2. ID.; ID.; A LAWYER IS OBLIGED TO HOLD IN TRUST MONEY OF HIS CLIENT THAT MAY COME TO HIS POSSESSION. — [A] lawyer is obliged to hold in trust money of his client that may come to his possession. As trustee of such funds, he is bound to keep them separate and apart from his own. Money entrusted to a lawyer for a specific purpose such as for the filing and processing of a case if not utilized, must be returned immediately upon demand. Failure to return gives rise to a presumption that he has misappropriated it in violation of the trust reposed on him. And the conversion of funds entrusted to him constitutes gross violation of professional ethics and betrayal of public confidence in the legal profession.

3. ID.; ID.; PRACTICE OF LAW; A PRIVILEGE GIVEN TO LAWYERS WHO MEET THE HIGH STANDARDS OF LEGAL PROFICIENCY AND MORALITY, INCLUDING HONESTY, INTEGRITY AND FAIR DEALING. — [T]he practice of law is a privilege given to lawyers who meet the high standards of legal proficiency and morality, including honesty, integrity and fair dealing. They must perform their fourfold duty to society,

the legal profession, the courts and their clients, in accordance with the values and norms of the legal profession as embodied in the Code of Professional Responsibility. Falling short of this standard, the Court will not hesitate to discipline an erring lawyer by imposing an appropriate penalty based on the exercise of sound judicial discretion in consideration of the surrounding facts.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an administrative complaint[1] for disbarment filed by complainant Suzette Del Mundo (Suzette) charging respondent Atty. Arnel C. Capistrano (Atty. Capistrano) of violating the Code of Professional Responsibility.

The Facts

On January 8, 2005, Suzette and her friend Ricky S. Tuparan (Tuparan) engaged the legal services of Atty. Capistrano to handle the judicial declaration of nullity of their respective marriages allegedly for a fee of PhP140,000.00 each. On the same date, a Special Retainer Agreement[2] was entered into by and between Suzette and Atty. Capistrano which required an acceptance fee of PhP30,000.00, appearance fee of PhP2,500.00 per hearing and another PhP2,500.00 per pleading. In addition, Atty. Capistrano allegedly advised her to prepare amounts for the following expenses:

PhP11,000.00	Filing fee
PhP5,000.00	Summons
PhP15,000.00	Fiscal
PhP30,000.00	Psychiatrist
PhP15,000.00	Commissioner

In accordance with their agreement, Suzette gave Atty. Capistrano the total amount of PhP78,500.00, to wit:

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[1] *Rollo,* pp. 1-5.

[2] *Id.* at 6.

January 8, 2005	PhP30,000.00	Acceptance fee
January 15, 2005	PhP11,000.00	Filing fee
February 3, 2005	PhP5,000.00	Filing fee
May 4, 2005	PhP2,500.00	Filing fee
June 8, 2005	PhP30,000.00	Filing fee

For every payment that Suzette made, she would inquire from Atty. Capistrano on the status of her case. In response, the latter made her believe that the two cases were already filed before the Regional Trial Court of Malabon City and awaiting notice of hearing. Sometime in July 2005, when she could hardly reach Atty. Capistrano, she verified her case from the Clerk of Court of Malabon and discovered that while the case of Tuparan had been filed on January 27, 2005, no petition has yet been filed for her.

Hence, Suzette called for a conference, which was set on July 28, 2005, where she demanded the refund of the total amount of PhP78,500.00, but Atty. Capistrano instead offered to return the amount of PhP63,000.00 on staggered basis claiming to have incurred expenses in the filing of Tuparan's case, to which she agreed. On the same occasion, Atty. Capistrano handed to her copies of her unfiled petition,[3] Tuparan's petition[4] and his Withdrawal of Appearance[5] in Tuparan's case with instructions to file them in court, as well as a list[6] containing the expenses he incurred and the schedule of payment of the amount of PhP63,000.00, as follows:

PhP20,000.00	August 15, 2005
PhP20,000.00	August 29, 2005
PhP23,000.00	September 15, 2005

However, Atty. Capistrano only returned the amount of PhP5,000.00 on August 15, 2005 and thereafter, refused to communicate with her, prompting the institution of this administrative complaint on September 7, 2005.

[3] *Id.* at 20-24.

[4] *Id.* at 13-19.

[5] *Id.* at 26.

[6] *Id.* at 25.

In his Comment/Answer[7] dated November 14, 2005, Atty. Capistrano acknowledged receipt of the amount of PhP78,500.00 from Suzette and his undertaking to return the agreed sum of PhP63,000.00. He also admitted responsibility for his failure to file Suzette's petition and cited as justification his heavy workload and busy schedule as then City Legal Officer of Manila and lack of available funds to immediately refund the money received.

In the Resolution[8] dated January 18, 2006, the Court resolved to refer the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

The Action and Recommendation of the IBP

For failure of respondent Atty. Capistrano to appear at the mandatory conference set by Commissioner Lolita A. Quisumbing of the IBP Commission on Bar Discipline (IBP-CBD), the conference was terminated without any admissions and stipulations of facts and the parties were ordered to file their respective position papers to which only Atty. Capistrano complied.

In the Report and Recommendation[9] dated April 11, 2007, the IBP-CBD, through Commissioner Quisumbing, found that Atty. Capistrano had neglected his client's interest by his failure to inform Suzette of the status of her case and to file the agreed petition for declaration of nullity of marriage. It also concluded that his inability to refund the amount he had promised Suzette showed deficiency in his moral character, honesty, probity and good demeanor. Hence, he was held guilty of violating Rule 18.03, and Rule 18.04, Canon 18 of the Code of Professional Responsibility and recommended the penalty of suspension for two years from the practice of law.

On September 19, 2007, the IBP Board of Governors adopted and approved the report and recommendation of Commissioner

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[7] *Id.* at 28-34.

[8] *Id.* at 36.

[9] *Id.* at 117-121.

Quisumbing through Resolution No. XVIII-2007-98[10] with modification ordering the return of the sum of PhP140,000.00 attorney's fees to Suzette.

However, upon Atty. Capistrano's timely motion for reconsideration, the IBP Board of Governors passed Resolution No. XIX-2011-263[11] on May 14, 2011 reducing the penalty of suspension from two years to one year, to wit:

RESOLVED to PARTIALLY GRANT Respondent's Motion for Reconsideration, and unanimously MODIFY as it is hereby MODIFIED Resolution No. XVIII-2007-98 dated 19 September 2007 and REDUCED the penalty against Atty. Arnel C. Capistrano to ***SUSPENSION*** *from the practice of law for one (1) year and Ordered to Return the amount of One Hundred Forty Thousand Pesos (₱140,000.00) to complainant with thirty (30) days from receipt of notice.*

The Issue

The sole issue before the Court is whether Atty. Arnel C. Capistrano violated the Code of Professional Responsibility.

The Ruling of the Court

After a careful perusal of the records, the Court concurs with the findings and recommendation of the IBP-CBD but takes exception to the amount of PhP140,000.00 recommended to be returned to Suzette.

Indisputably, Atty. Capistrano committed acts in violation of his sworn duty as a member of the bar. In his Manifestation and Petition for Review,[12] he himself admitted liability for his failure to act on Suzette's case as well as to account and return the funds she entrusted to him. He only pleaded for the mitigation of his penalty citing the lack of intention to breach his lawyer's oath; that this is his first offense; and that his profession is the only means of his and his family's livelihood. He also prayed

[10] *Id.* at 116.

[11] *Id.* at 115.

[12] *Id.* at 122-131.

that the adjudged amount of PhP140,000.00 be reduced to PhP73,500.00 representing the amount of PhP78,500.00 he received less his payment of the sum of PhP5,000.00. Consequently, Commissioner Quisumbing and the IBP-CBD Board of Governors correctly recommended the appropriate penalty of one year suspension from the practice of law for violating the pertinent provisions of the Canons of Professional Responsibility, thus:

CANON 16 — A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

RULE 16.01 — A lawyer shall account for all money or property collected or received for or from the client.

RULE 16.02 — A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

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CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

xxx xxx xxx

RULE 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

RULE 18.04 — A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

Indeed, when a lawyer takes a client's cause, he covenants that he will exercise due diligence in protecting the latter's rights. Failure to exercise that degree of vigilance and attention expected of a good father of a family makes the lawyer unworthy of the trust reposed on him by his client and makes him answerable not just to his client but also to the legal profession, the courts and society.[13] His workload does not justify neglect in handling

[13] *Valeriana Dalisay v. Atty. Melanio Mauricio, Jr.,* A.C. No. 5655, April 22, 2005, 456 SCRA 508, 514.

one's case because it is settled that a lawyer must only accept cases as much as he can efficiently handle.[14]

Moreover, a lawyer is obliged to hold in trust money of his client that may come to his possession. As trustee of such funds, he is bound to keep them separate and apart from his own. Money entrusted to a lawyer for a specific purpose such as for the filing and processing of a case if not utilized, must be returned immediately upon demand. Failure to return gives rise to a presumption that he has misappropriated it in violation of the trust reposed on him. And the conversion of funds entrusted to him constitutes gross violation of professional ethics and betrayal of public confidence in the legal profession.[15]

To stress, the practice of law is a privilege given to lawyers who meet the high standards of legal proficiency and morality, including honesty, integrity and fair dealing. They must perform their fourfold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms of the legal profession as embodied in the Code of Professional Responsibility.[16] Falling short of this standard, the Court will not hesitate to discipline an erring lawyer by imposing an appropriate penalty based on the exercise of sound judicial discretion in consideration of the surrounding facts.[17]

With the foregoing disquisition and Atty. Capistrano's admission of his fault and negligence, the Court finds the penalty of one year suspension from the practice of law, as recommended by the IBP-CBD, sufficient sanction for his violation. However, the Court finds proper to modify the amount to be returned to Suzette from PhP140,000.00 to PhP73,500.00.

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[14] *Dolores Pariñas v. Atty. Oscar Paguinto*, A.C. No. 6297, July 13, 2004, 434 SCRA 179.

[15] *Ruby Mae Barnachea v. Atty. Edwin T. Quiocho*, A.C. No. 5925, March 11, 2003, 399 SCRA 1, 8.

[16] *Nemesio Floran and Caridad Floran v. Atty. Roy Prule Ediza*, A.C. No. 5325, October 19, 2011.

[17] *Ruthie Lim-Santiago v. Atty. Carlos B. Sagucio*, A.C. No. 6705, March 31, 2006, 486 SCRA 10, 25.

WHEREFORE, respondent Atty. Arnel C. Capistrano, having clearly violated Canons 16 and 18 of the Code of Professional Responsibility, is **SUSPENDED** from the practice of law for one year with a stern warning that a repetition of the same or similar acts shall be dealt with more severely. He is **ORDERED** to return to Suzette Del Mundo the full amount of PhP73,500.00 within 30 days from notice hereof and **DIRECTED** to submit to the Court proof of such payment.

Let copies of this Decision be entered in the personal record of respondent as a member of the Philippine Bar and furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines and the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 173820. April 16, 2012]

PRODUCERS BANK OF THE PHILIPPINES (now FIRST PRODUCERS HOLDINGS CORPORATION), *petitioner, vs.* **EXCELSA INDUSTRIES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CONSOLIDATION; NATURE. — Consolidation is a procedural device granted to the court as an aid in deciding how cases in its docket are to be tried so that the business of the court may be dispatched expeditiously and with economy while providing justice to

the parties. It is governed by Rule 31 of the old Rules of Court x x x.

2. ID.; ID.; ID.; KINDS. — As aptly observed by the Court in *Republic of the Philippines v. Sandiganbayan, et al.*, Rule 31 is completely silent on the effect/s of consolidation on the cases consolidated; on the parties and the causes of action involved; and on the evidence presented in the consolidated cases. In the same case, the Court declared that the effect of consolidation would greatly depend on the sense in which the consolidation is made. Consolidation of cases may take place in any of the following ways: "(1) Where all except one of several actions are stayed until one is tried, in which case the judgment in the one trial is conclusive as to the others. This is not actually consolidation but is referred to as such. (*quasi-consolidation*) (2) Where several actions are combined into one, lose their separate identity, and become a single action in which a single judgment is rendered. This is illustrated by a situation where several actions are pending between the same parties stating claims which might have been set out originally in one complaint. (*actual consolidation*) (3) Where several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment. This type of consolidation does not merge the suits into a single action, or cause the parties to one action to be parties to the other. (*consolidation for trial*)"

3. ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI;* NOT A PROPER REMEDY TO ASSAIL THE ISSUANCE OF A WRIT OF POSSESSION. — A special civil action for *certiorari* could be availed of only if a tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. It has been repeatedly held in a number of cases that the remedy of a party from the trial court's order granting the issuance of a writ of possession is to file a petition to set aside the sale and cancel the writ of possession, and the aggrieved party may then appeal from the order denying or granting said petition. When a writ of possession had already been issued as in this case, the proper remedy is an appeal and not a petition for *certiorari*. To be sure, the trial court's order granting the writ of possession is final. The soundness

of the order granting the writ of possession is a matter of judgment, with respect to which the remedy of the party aggrieved is ordinary appeal. As respondent availed of the wrong remedy, the appellate court erred in not dismissing outright the petition for *certiorari*.

APPEARANCES OF COUNSEL

Britanico Sarmiento & Franco Law Offices for petitioner.
Ricardo J.M. Rivera Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Producers Bank of the Philippines against respondent Excelsa Industries, Inc. assailing the Court of Appeals (CA) Decision[1] dated April 4, 2006 and Resolution[2] dated July 19, 2006 in CA-G.R. SP No. 46514. The assailed decision reversed the Regional Trial Court (RTC)[3] Decision[4] dated December 16, 1997 in the consolidated cases docketed as LR Case No. 90-787 and Civil Case No. 1587-A, while the assailed resolution denied petitioner's motion for reconsideration for lack of merit.

The present case stemmed from the same set of facts as in G.R. No. 152071[5] entitled "*Producers Bank of the Philippines v. Excelsa Industries, Inc.*," which the Court promulgated on May 8, 2009. The relevant facts, as found by the Court in said case, are as follows:

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[1] Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Andres B. Reyes, Jr. (now Presiding Justice) and Rosmari D. Carandang, concurring; *rollo*, pp. 43-57.

[2] *Id*. at 59-61.

[3] Branch 73, Antipolo, Rizal.

[4] Penned by Presiding Judge Mauricio M. Rivera; *rollo*, pp. 86-94.

[5] G.R. No. 152071, May 8, 2009, 587 SCRA 370.

Respondent obtained a loan from petitioner in the form of a bill discounted and secured credit accommodation in the amount of ₱200,000.00, secured by a real estate mortgage over real estate properties registered in its name.[6] The mortgage secured also loans that might be extended in the future by petitioner in favor of respondent.[7] Respondent thereafter applied for a packing credit line or a credit export advance with petitioner supported by a letter of credit issued by Kwang Ju Bank, Ltd. of Seoul, Korea, through Bank of the Philippine Islands. The application was approved.[8] When respondent presented for negotiation to petitioner drafts drawn under the letter of credit and the corresponding export documents in consideration for its drawings in the amount of US$5,739.76 and US$4,585.79, petitioner purchased the drafts and export documents by paying respondent the peso equivalent of the drawings.[9] The Korean buyer, however, refused to pay the export documents prompting petitioner to demand from respondent the payment of the peso equivalent of said export documents together with its due and unpaid loans.[10] For failure of respondent to heed the demand, petitioner moved for the extrajudicial foreclosure of the real estate mortgage.[11] At the public auction, petitioner emerged as the highest bidder.[12] The corresponding certificate of sale was later issued and eventually registered. For failure of respondent to redeem the properties, the titles were consolidated in favor of petitioner and new certificates of title were issued in its name.[13]

On November 17, 1989, respondent instituted an action for the annulment of extrajudicial foreclosure with prayer for

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[6] *Producer's Bank of the Philippines v. Excelsa Industries, Inc.*, *supra*, at 372.

[7] *Id*. at 372-373.

[8] *Id*. at 372.

[9] *Id*. at 373.

[10] *Id*. at 373-374.

[11] *Id*. at 374.

[12] *Id*. at 374.

[13] *Id*.

preliminary injunction and damages against petitioner and the Register of Deeds of Marikina. The case was docketed as Civil Case No. 1587-A which was raffled to Branch 73 of the RTC of Antipolo, Rizal.[14] On April 5, 1990, petitioner filed a petition for the issuance of a writ of possession, docketed as LR Case No. 90-787 before the same court. The RTC thereafter ordered the consolidation of the two cases, Civil Case No. 1587-A and LR Case No. 90-787.

On December 18, 1997, the RTC rendered a decision upholding the validity of the extrajudicial foreclosure and ordering the issuance of a writ of possession in favor of petitioner.[15]

Aggrieved, respondent availed of two modes of appeal. Respondent appealed Civil Case No. 1587-A *via* ordinary appeal[16] to the CA which was docketed as CA-G.R. CV No. 59931 and raffled to the First Division. Respondent likewise filed a special civil action for *certiorari* under Rule 65 of the Rules of Court as to LR Case No. 90-787[17] also before the CA which was docketed as CA-G.R. SP. No. 46514 and was raffled to the Tenth Division. In both cases, respondent assailed the December 18, 1997 Decision of the RTC which is actually a joint decision on the two consolidated cases subject of the separate actions.

On May 30, 2001, the CA (First Division) rendered a decision in CA-G.R. CV No. 59931 reversing and setting aside the RTC decision thereby declaring the foreclosure of mortgage invalid and annulling the issuance of the writ of possession in favor of petitioner.[18] Petitioner elevated the case to this Court and was docketed as G.R. No. 152071.

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[14] *Id.* at 375.

[15] *Id.*

[16] *Rollo*, p. 313.

[17] *Id.*

[18] *Producer's Bank of the Philippines v. Excelsa Industries, Inc.*, *supra* note 5, at 377.

On April 4, 2006, the CA (Tenth Division) also rendered the assailed decision in CA-G.R. SP No. 46514, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. **ACCORDINGLY**, the Decision dated December 18, 1997 of the Regional Trial Court of Antipolo, Rizal, Branch 73, is hereby **REVERSED**.

SO ORDERED.[19]

While declaring that the case had become moot and academic in view of the May 30, 2001 decision of the CA (First Division), the CA (Tenth Division) decided on the merits of the case and resolved two issues, namely: (1) whether or not petitioner was the agent of respondent; and (2) whether or not the foreclosure of mortgage was valid.[20] The decision substantially echoed the ruling of the CA (First Division) in CA-G.R. CV No. 59931.

Aggrieved, petitioner comes before the Court with the following arguments:

I.

The Petition for *Certiorari* should have been immediately dismissed by the Court of Appeals on the ground of FORUM SHOPPING.

II.

The Petition for *Certiorari* should have been immediately dismissed as there was a remedy (*i.e.*, Motion for Reconsideration and Appeal) available to the Respondent.

III.

The respondent's Petition, purportedly a Petition for *Certiorari* under Rule 65 of the Rules of Court, did not allege that any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

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[19] *Rollo*, p. 56.

[20] *Id.* at 51.

IV.

Even if the respondent's Petition is decided on the issues enumerated by the Court of Appeals in its questioned Decision, the Petition for *Certiorari* must be dismissed for utter lack of merit and for not being supported by the evidence on record.[21]

The petition is meritorious.

The case stemmed from two separate cases — one for annulment of foreclosure in Civil Case No. 1587-A and another case for issuance of the writ of possession in LR Case No. 90-787. The cases were consolidated by the RTC and were eventually disposed of in one judgment embodied in the December 18, 1997 RTC decision. This notwithstanding, respondent treated the cases separately and availed of two remedies, an appeal in Civil Case No. 1587-A and a petition for *certiorari* under Rule 65 in LR Case No. 90-787. The appeal was decided by the CA (First Division) then eventually settled by the Court in G.R. No. 152071 on May 8, 2009. The petition for *certiorari*, on the other hand, was later decided by the CA (Tenth Division), which decision is now the subject of this present petition.

Respondent herein committed a procedural blunder when it filed a separate petition for *certiorari* before the CA, because when the two cases were consolidated and a joint decision was rendered, the cases lost their identities; and a petition for *certiorari* is not the proper remedy to assail a decision granting the issuance of a writ of possession.

Consolidation is a procedural device granted to the court as an aid in deciding how cases in its docket are to be tried so that the business of the court may be dispatched expeditiously and with economy while providing justice to the parties.[22] It is governed by Rule 31 of the old Rules of Court[23] which states:

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

[22] *Republic of the Philippines v. Sandiganbayan, et al*., G.R. No. 152375, December 13, 2011.

[23] The Rules applicable at the time of the consolidation of Civil Case No. 1587-A and LR Case No. 90-787.

Section 1. *Consolidation*. — When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.[24]

As aptly observed by the Court in *Republic of the Philippines v. Sandiganbayan, et al.*,[25] Rule 31 is completely silent on the effect/s of consolidation on the cases consolidated; on the parties and the causes of action involved; and on the evidence presented in the consolidated cases.[26] In the same case, the Court declared that the effect of consolidation would greatly depend on the sense in which the consolidation is made. Consolidation of cases may take place in any of the following ways:

(1) Where all except one of several actions are stayed until one is tried, in which case the judgment in the one trial is conclusive as to the others. This is not actually consolidation but is referred to as such. *(quasi-consolidation*)

(2) Where several actions are combined into one, lose their separate identity, and become a single action in which a single judgment is rendered. This is illustrated by a situation where several actions are pending between the same parties stating claims which might have been set out originally in one complaint. (*actual consolidation*)

(3) Where several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment. This type of consolidation does not merge the suits into a single action, or cause the parties to one action to be parties to the other. (*consolidation for trial*)[27]

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[24] The provision was copied verbatim in the present Rules.

[25] G.R. No. 152375, December 13, 2011.

[26] *Id*.

[27] *Id*.

In this case, there was a joint hearing and the RTC eventually rendered a Joint Decision disposing of the cases both as to the validity of the foreclosure (subject of Civil Case No. 1587-A) and the propriety of the issuance of a writ of possession (subject of LR Case No. 90-787). This being so, the two cases ceased to be separate and the parties are left with a single remedy to elevate the issues to the appellate court. This is bolstered by the fact that when the appeal in CA-G.R. CV No. 59931 was disposed of by the CA (First Division) by reversing the RTC decision, the appellate court not only declared the foreclosure of mortgage invalid but likewise annulled the issuance of the writ of possession. Again, when the Court finally settled the issues in G.R. No. 152071, it reversed and set aside the CA decision and reinstated that of the RTC thereby disposing of the said two issues.

Assuming that respondent could still treat the original cases separately and could avail of separate remedies, the petition for *certiorari* under Rule 65 was incorrectly availed of to assail the issuance of the writ of possession.

A special civil action for *certiorari* could be availed of only if a tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[28] It has been repeatedly held in a number of cases[29] that the remedy of a party from the trial court's order granting the issuance of a writ of possession is to file a petition to set aside the sale and cancel the writ of possession, and the aggrieved

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[28] *Equitable PCI Bank, Inc. v. DNG Realty and Development Corporation*, G.R. No. 168672, August 9, 2010, 627 SCRA 125, 135; *Sagarbarria v. Philippine Business Bank*, G.R. No. 178330, July 23, 2009, 593 SCRA 645, 655.

[29] *Parents-Teachers Association (PTA) of St. Mathew Christian Academy v. Metropolitan Bank and Trust Co.*, G.R. No. 176518, March 2, 2010, 614 SCRA 41; *Mallari v. Banco Filipino Savings and Mortgage Bank*, G.R. No. 157660, August 29, 2008, 563 SCRA 664.

party may then appeal from the order denying or granting said petition.[30] When a writ of possession had already been issued as in this case,[31] the proper remedy is an appeal and not a petition for *certiorari*.[32] To be sure, the trial court's order granting the writ of possession is final.[33] The soundness of the order granting the writ of possession is a matter of judgment, with respect to which the remedy of the party aggrieved is ordinary appeal.[34] As respondent availed of the wrong remedy, the appellate court erred in not dismissing outright the petition for *certiorari*.

We would like to stress at this point that when respondent received the unfavorable decision of the RTC dated December 18, 1997, it appealed the decision to the CA assailing the validity of the foreclosure. The CA (First Division) reversed and set aside the RTC decision, declared the foreclosure invalid, and annulled the issuance of the writ of possession.[35] When it rendered the assailed decision, the CA (Tenth Division) addressed the issues raised by respondent which were the very same issues raised by it in its appeal. In short, the assailed decision was a mere reiteration of the findings and conclusions of the CA (First Division). This emphasizes the error committed by the CA (Tenth Division) in rendering the assailed decision.

On May 8, 2009, in G.R. No. 152071, we reversed and set aside the CA (First Division) decision in CA-G.R. CV No. 59931 and reinstated that of the RTC. In other words, we settled

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[30] *Mallari v. Banco Filipino Savings and Mortgage Bank, supra*, at 670.

[31] Records, LR Case No. 90-787, pp. 468-469.

[32] *Parents-Teachers Association (PTA) of St. Mathew Christian Academy v. Metropolitan Bank and Trust Co., supra* note 29, at 59.

[33] *Metropolitan Bank and Trust Company v. Tan*, G.R. No. 159934, June 26, 2008, 555 SCRA 502, 512.

[34] *Sagarbarria v. Philippine Business Bank, supra* note 28, at 655.

[35] *Producers Bank of the Philippines v. Excelsa Industries, Inc., supra* note 5, at 377.

once and for all the validity of the foreclosure and the propriety of the issuance of the writ of possession. This should have put to rest the petitioner's claim over the properties subject of the foreclosure sale if not for respondent's erroneous resort to the court. The rights of the parties should, therefore, be governed by the Court's decision in G.R. No. 152071.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The Court of Appeals Decision dated April 4, 2006 and Resolution dated July 19, 2006 in CA-G.R. SP No. 46514 are **SET ASIDE**. The parties are bound by the decision of the Court in G.R. No. 152071 entitled *"Producers Bank of the Philippines v. Excelsa Industries, Inc."* promulgated on May 8, 2009.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 173951. April 16, 2012]

DANIEL M. ISON, *petitioner, vs.* **CREWSERVE, INC., ANTONIO GALVEZ, JR., and MARLOW NAVIGATION CO., LTD.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT; DISABILITY CLAIMS; WHILE IT IS THE COMPANY-DESIGNATED PHYSICIAN WHO MUST ASSESS THE DISABILITY OF THE SEAMAN DURING EMPLOYMENT, THE SEAFARER IS NOT

DEPRIVED OF HIS RIGHT TO SEEK A SECOND OPINION. — It is worthy to note that when petitioner executed an employment contract with respondents on July 21, 1999, it was the 1996 POEA-SEC, based on POEA Memorandum Circular No. 055-96, that was applied, deemed written in and appended to his employment contract. Section 20(B) thereof x x x is explicit and clear that for purposes of determining the seafarer's degree of disability, it is the company-designated physician who must proclaim that he sustained a permanent disability, whether total or partial, due to either injury or illness, during the term of his employment. This was the ruling in *Panganiban v. Tara Trading Shipmanagement, Inc.,* where it was held that there being no ambiguity in the wordings of the Standard Employment Contract that the only qualification prescribed for the physician entrusted with the task of assessing the disability is that he be "company-designated," the literal meaning of the same shall thus control. In *Seagull Maritime Corp. v. Dee,* however, a case involving an employment contract entered into in 1999 as in this case, we have held that resort to prognosis of other physicians may be allowed especially so if there are serious doubts on the evaluation made by the company-designated physician. The same ruling was applied in *Abante v. KJGS Fleet Management Manila* in that the seafarer was given an option to seek a second opinion from his preferred physician notwithstanding the fact that it was the POEA Memorandum Circular No. 05-96 which governed the parties' contract of employment. Hence, "while it is the company-designated physician who must declare that the seaman suffers a permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion, hence the Contract recognizes the prerogative of the seafarer to request a second opinion and, for this purpose, to consult a physician of his choice." The case of *Maunlad Transport, Inc. v. Manigo, Jr.* has also reiterated the prerogative of a seafarer to request for a second opinion with the qualification that the physician's report shall still be evaluated according to its inherent merit for the Court's consideration x x x.

2. ID.; ID.; ID.; ID.; THE DOCTOR WHO HAVE HAD A PERSONAL KNOWLEDGE OF THE ACTUAL MEDICAL CONDITION OF THE SEAMAN IS QUALIFIED TO ASSESS THE SEAMAN'S DISABILITY. — The company-designated physician has cleared

petitioner for employment resumption after two months of continuous treatment and after medication has successfully controlled his hypertension. As aptly held by the CA, the extensive medical attention given by the company-designated physician to petitioner enabled the former to acquire a detailed knowledge and familiarity of petitioner's medical condition. This enabled the company-designated physician to arrive at a more accurate prognosis of petitioner's disability as compared to other physicians not privy to petitioner's case from the beginning. It has been held that the doctor who have had a personal knowledge of the actual medical condition, having closely, meticulously and regularly monitored and actually treated the seaman's illness, is more qualified to assess the seaman's disability.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; QUITCLAIMS; CONSIDERED VALID AND BINDING WHERE THE PERSON MAKING THE WAIVER HAS DONE SO VOLUNTARILY, WITH FULL UNDERSTANDING THEREOF, AND THE CONSIDERATION FOR THE QUITCLAIM IS REASONABLE; CASE AT BAR. — [P]etitioner voluntarily executed a release and quitclaim in respondents' favor right after the assessment of the company-designated physician and receipt of his sickness allowance. Indeed, quitclaims executed by employees are commonly frowned upon as being contrary to public policy. But where the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as being a valid and binding undertaking. Contrary to petitioner's contention, the amount of US$1,136.67 he received is reasonable enough to cover his sickness allowance for two months of treatment under the care of respondents' physician. We, therefore, find no reason to invalidate the quitclaim.

APPEARANCES OF COUNSEL

Bantog and Andaya Law Offices for petitioner.

Brillantes Navarro Jumamil Arcilla Escolin Martinez & Vivero Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

While the provisions of the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) are liberally construed in favor of the well-being of Overseas Filipino Workers (OFW), claims for compensation which hinge on surmises must still be denied, as in this case.

By this Petition for Review on *Certiorari*,[1] petitioner Daniel M. Ison assails the Decision[2] dated February 17, 2006 and Resolution[3] dated August 1, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 89112, which reversed and set aside the Decisions dated February 26, 2004[4] and August 24, 2004[5] and the Resolution[6] dated February 28, 2005 of the National Labor Relations Commission (NLRC), and consequently dismissed petitioner's claim for disability benefits against respondents Crewserve, Inc., Antonio Galvez, Jr. (in his capacity as President of Crewserve, Inc.) and Marlow Navigation Co., Ltd.

Factual Antecedents

On July 21, 1999, a Contract of Employment[7] was entered into by and between petitioner and respondents whereby the former agreed to work as Cook A for the latter on board *M.V. Stadt Kiel* for a period of 12 months at a basic monthly salary of US$550.00. Said contract was approved by the Philippine Overseas Employment Administration (POEA).

[1] *Rollo*, pp. 26-51.

[2] CA *rollo*, pp. 238-248; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Elvi John S. Asuncion and Estela M. Perlas-Bernabe (now a member of this Court).

[3] *Id.* at 271.

[4] *Id.* at 38-44; penned by Commissioner Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.

[5] *Id.* at 45-48.

[6] *Id.* at 49-53.

[7] *Id.* at 85.

After his pre-employment medical examination, petitioner boarded the vessel in November 1999. During the course of his employment, however, petitioner experienced chest pains and leg cramps. Thus, when the vessel reached Miami, Florida, he was sent to Sunshine Medical Center for a medical check-up, electrocardiogram (ECG) and chest x-ray. The tests revealed abnormal findings with the corresponding recommendation that petitioner consult a cardiologist.[8] Petitioner was thereafter medically repatriated on June 24, 2000.

Upon repatriation, petitioner was referred to respondents' physician at El Roi Diagnostic Center for a medical examination and was diagnosed to be suffering from enlargement of the heart and hypertension. For two months, he underwent a series of treatment at respondents' expense. On August 25, 2000, petitioner was declared fit to return to work since the diagnosis of the company-designated physician already showed controlled hypertension with the concomitant advice, however, of continuous medication for life.[9] Petitioner thereafter executed on September 8, 2000, a release and quitclaim[10] in favor of respondents wherein he acknowledged receipt of US$1,136.67 corresponding to his sickness allowance, thereby releasing his employer from future claims and actions.

Proceedings before the Labor Arbiter

Despite the execution of the aforesaid release and quitclaim, petitioner, on November 7, 2001, filed a complaint[11] against respondents before the Arbitration Branch of the NLRC to claim full disability benefits amounting to US$60,000.00 pursuant to the POEA-SEC; moral and exemplary damages for ₱1,000,000.00 and ₱200,000.00, respectively; and, 25% attorney's fees. Petitioner claimed that his illness continued to worsen despite the fit to work assessment of the company-designated physician, rendering him unfit for sea service and entitling him

[8] See Work Status Report dated June 8, 2000, *id*. at 86.

[9] *Id.* at 57.

[10] See Discharge Receipt and Release of Claims dated September 8, 2000, *id*. at 109.

[11] Docketed as NLRC-NCR Case No. OFW-01-11-2316-00.

to total and permanent disability compensation. To support this, petitioner presented: 1) a medical certificate[12] dated January 11, 2001 issued by Dr. Efren R. Vicaldo (Dr. Vicaldo), whose evaluation revealed that petitioner was suffering from hypertensive cardiovascular disease, concentric left ventricular hypertrophy, lateral wall ischemic and who suggested a Grade V impediment rating; and 2) a medical certificate[13] dated June 16, 2001 issued by Dr. Jocelyn Myra R. Caja (Dr. Caja), who recommended close monitoring of petitioner's medical condition and limitation of his daily activities. Dr. Caja, in the same certification, also gave petitioner a disability rating of Grade 3 and declared him unfit to work.

Respondents, on the other hand, argued that petitioner is not entitled to any disability compensation as he was declared fit to return to work as a seaman on August 25, 2000 after undergoing two months of medical treatment at respondents' expense. Respondents further claimed to have settled its obligation to petitioner when the latter received the amount of $1,136.67 as full settlement of his claims including sickness allowance, as evidenced by a release and quitclaim duly executed and signed by him.

In a Decision[14] dated January 21, 2003, the Labor Arbiter dismissed the complaint of petitioner considering that the certifications he presented do not outweigh the company-designated physician's fit to work assessment. According to the Labor Arbiter, the certifications of disability issued by petitioner's physicians were made long after he was declared fit to work and were based only on petitioner's single consultation with each of them. In contrast, respondents dutifully complied with their obligations under the employment contract by providing petitioner with medical assistance at the foreign port, repatriating him at their expense, providing him with medical examination and treatment, paying his sickness allowance, and assessing him to be fit to return to work. The claims for damages and attorney's fees were also denied.

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[12] CA *rollo*, p. 108.

[13] *Id.* at 107.

[14] *Id.* at 88-94; penned by Labor Arbiter Veneranda C. Guerrero.

Proceedings before the National Labor Relations Commission

On appeal by petitioner, the NLRC through a Decision[15] dated February 26, 2004 reversed and set aside the Labor Arbiter's ruling. The NLRC disregarded the certification of fitness to work issued by the company-designated physician since it found petitioner's subsequent consultations with Drs. Vicaldo and Caja as proof of the severity of petitioner's illness. The NLRC went on to declare that petitioner's poor health condition, which required close monitoring and continuous medication, resulted to the impairment of his earning capacity thereby entitling him to disability benefits. The dispositive portion of the Decision reads:

> WHEREFORE, finding merit in the appeal, the Decision dated 21 January 2003 is hereby reversed and set aside. Complainant is entitled to minimum disability benefits corresponding to his illness of hypertensive cardiovascular disease, ischemic heart disease in the amount of US$3,360.00.
>
> SO ORDERED.[16]

Not satisfied with the amount of the award, petitioner sought reconsideration averring that he is entitled to a total and permanent disability compensation in the amount of US$60,000.00 or at least US$39,180.00, which is equivalent to the disability grading of 3 as certified by Dr. Caja. He also reiterated his prayer for damages and attorney's fees.

On August 24, 2004, the NLRC issued another Decision[17] wherein it modified its earlier ruling by granting petitioner the amount corresponding to Grade 3 disability rating based on the certification issued by Dr. Caja. He was likewise awarded 5% attorney's fees but not damages since bad faith is lacking on the part of respondents, thus:

> WHEREFORE, premises considered, Our Decision dated 26 February 2004 is hereby MODIFIED in that complainant is declared entitled to $39,180.00 disability benefits, with five (5%) percent attorney's fees.

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[15] *Supra* note 4.

[16] CA *rollo*, p. 43.

[17] *Supra* note 5.

SO ORDERED.[18]

This time, it was respondents' turn to move for reconsideration but same was denied by the NLRC for lack of merit in its Resolution[19] dated February 28, 2005.

Proceedings before the Court of Appeals

In their Petition for *Certiorari* and Prohibition with Prayer for Temporary Restraining Order (TRO) and/or Preliminary Injunction[20] before the CA, respondents averred that the NLRC committed grave abuse of discretion in granting petitioner disability benefits. They argued that the NLRC should not have relied on the certification of Dr. Caja as her evaluation was based solely on hearsay, it being unsupported by any examination done on petitioner. Also, since all medical tests and examinations were done by the company-designated physician, petitioner's physicians were not privies to his case from the beginning. Thus, both Drs. Vicaldo and Caja's findings were not adequate evidence of petitioner's loss of earning capacity due to ailment contracted during employment.

In a Resolution[21] dated July 4, 2005, the CA issued a TRO enjoining the NLRC from enforcing the following issuances: a) NLRC Decision dated February 26, 2004; b) NLRC Decision dated August 24, 2004; c) NLRC Resolution dated February 28, 2005; and d) Writ of Execution issued by the Labor Arbiter on May 31, 2005 in NLRC NCR OFW 01-11-2316-00. Thereafter, on September 28, 2005, a Writ of Preliminary Injunction was issued upon respondents' posting of a bond in the amount of ₱500,000.00.

The CA then rendered its Decision[22] on February 17, 2006. It found merit in the petition and ruled that the NLRC gravely

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[18] *CA rollo*, p. 48.

[19] *Supra* note 6.

[20] CA *rollo*, pp. 2-37.

[21] *Id.* at 124-126.

[22] *Supra* note 2.

abused its discretion in relying on the certification issued by Dr. Caja instead of the fit to work declaration of the company-designated physician who, under the POEA-SEC, is the one tasked to assess petitioner's medical condition for purposes of claiming disability compensation. Besides, the medical certificate of Dr. Caja cannot be considered as an accurate assessment of the illness contracted by petitioner during the course of his employment with respondents. It was based merely on the statements given to Dr. Caja by petitioner and same did not even provide for any justification for the rating given. Also, the certification was made 10 months from the date petitioner was declared fit to work and almost one year from the date of his repatriation. And the most notable of all, petitioner consulted Dr. Caja only once. With regard to the release and quitclaim, the CA upheld the same considering that it was voluntarily executed by petitioner and that the consideration for its issuance was not unconscionable and unreasonable. It ruled that respondents were already released from liability when petitioner was declared fit to return to work and after they paid him sickness allowance for which he even executed a quitclaim. Thus, the dispositive portion of the CA Decision states:

> **WHEREFORE**, the assailed Decisions dated February 26, 2004, and August 24, 2004, and the Resolution dated February 28, 2005 issued by the NLRC in NCR CA No. 034945-03 are **REVERSED AND SET ASIDE.** The Decision of the Labor Arbiter, dated January 21, 2003, dismissing private respondents' complaint is **REINSTATED.**
>
> **SO ORDERED.**[23]

Petitioner filed his Motion for Reconsideration[24] but same was denied by the CA in a Resolution[25] dated August 1, 2006.

Hence, this present petition.

Issues

Petitioner anchors his petition on the following assignment of errors:

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[23] CA *rollo*, p. 248.

[24] *Id.* at 249-256.

[25] *Supra* note 3.

THE FINDINGS OF FACT OF THE HONORABLE COURT OF APPEALS DO NOT CONFORM TO THE EVIDENCE ON RECORD. MOREOVER, THERE WAS A MISAPPRECIATION AND/OR MISAPPREHENSION OF FACTS AND THE HONORABLE COURT FAILED TO NOTICE CERTAIN RELEVANT POINTS WHICH IF CONSIDERED WOULD JUSTIFY A DIFFERENT CONCLUSION.

A. THE EVIDENCE ON RECORD SHOWS THAT MR. ISON IS ENTITLED TO AT LEAST A GRADE 3 DISABILITY OR US$39,180.00

B. THE COURT *A QUO* FAILED TO APPRECIATE THE EVIDENCE ON RECORD *VIS-À-VIS* SUPREME COURT DECISIONS THAT THE PETITIONER IS PERMANENTLY DISABLED (PTC DOCTRINE, CRYSTAL SHIPPING DOCTRINE).

THE CONCLUSION OF THE COURT OF APPEALS IS A FINDING BASED ON SPECULATION AND/OR SURMISE AND THE INFERENCES MADE WERE MANIFESTLY MISTAKEN. IT IS NOT BASED ON THE POEA CONTRACT (sic) *VIS-À-VIS* DECISIONS OF THE SUPREME COURT.[26]

Petitioner asserts that the CA erred in failing to give evidentiary value to the medical report of his physician, Dr. Caja, arguing that the provisions of the POEA-SEC and the numerous rulings of this Court have established that the determination of the disability of a seaman is not limited to the company-designated physician.

Petitioner also avers that the quitclaim signed by him refers merely to his acceptance of the sickness allowance and minor benefits and does not effectively bar him from filing a complaint to recover disability benefits.

Our Ruling

The petition has no merit.

The medical reports of petitioner's physicians do not deserve any

[26] *Rollo,* p. 34.

credence as against the fit to work assessment of the company-designated physician

Citing several jurisprudence, petitioner argues that the determination of disability rating is not left to the sole discretion of the company-designated physician. Hence, according to him, the two medical reports issued by his physicians may be admitted as proof that he is still suffering from the illness that brought about his repatriation and that same should be made the basis for his claim for total and permanent disability in the amount of $60,000.00 or at least $39,180.00, corresponding to Grade 3 disability rate in accordance with the POEA-SEC.

It is worthy to note that when petitioner executed an employment contract with respondents on July 21, 1999, it was the 1996 POEA-SEC, based on POEA Memorandum Circular No. 055-96,[27] that was applied, deemed written in and appended to his employment contract. Section 20(B) thereof states:

> The liabilities of the employer when the seafarer suffers injury or illness during the term of his contract are as follows:
>
> x x x x x x x x x
>
> 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

[27] *Revised Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-going Vessels* (which provides for the minimum requirements for Filipino seafarer's overseas employment).

> 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.

xxx xxx xxx

From the foregoing provision, it is explicit and clear that for purposes of determining the seafarer's degree of disability, it is the company-designated physician who must proclaim that he sustained a permanent disability, whether total or partial, due to either injury or illness, during the term of his employment. This was the ruling in *Panganiban v. Tara Trading Shipmanagement, Inc.*,[28] where it was held that there being no ambiguity in the wordings of the Standard Employment Contract that the only qualification prescribed for the physician entrusted with the task of assessing the disability is that he be "company-designated," the literal meaning of the same shall thus control.

In *Seagull Maritime Corp. v. Dee*,[29] however, a case involving an employment contract entered into in 1999 as in this case, we have held that resort to prognosis of other physicians may be allowed especially so if there are serious doubts on the evaluation made by the company-designated physician. The same ruling was applied in *Abante v. KJGS Fleet Management Manila*[30] in that the seafarer was given an option to seek a

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[28] G.R. No. 187032, October 18, 2010, 633 SCRA 353, 367-368, citing *German Marine Agencies, Inc. v. National Labor Relations Commission*, 403 Phil. 572, 588 (2001).

[29] G.R. No. 165156, April 2, 2007, 520 SCRA 109, 120.

[30] G.R. No. 182430, December 4, 2009, 607 SCRA 734, 738-740.

second opinion from his preferred physician notwithstanding the fact that it was the POEA Memorandum Circular No. 05-96 which governed the parties' contract of employment. Hence, "while it is the company-designated physician who must declare that the seaman suffers a permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion, hence the Contract recognizes the prerogative of the seafarer to request a second opinion and, for this purpose, to consult a physician of his choice."[31]

The case of *Maunlad Transport, Inc. v. Manigo, Jr.*[32] has also reiterated the prerogative of a seafarer to request for a second opinion with the qualification that the physician's report shall still be evaluated according to its inherent merit for the Court's consideration, *viz*:

> All told, **the rule is that under Section 20-B(3) of the 1996 POEA-SEC, it is mandatory for a claimant to be examined by a company-designated physician within three days from his repatriation. The unexplained omission of this requirement will bar the filing of a claim for disability benefits. However, in submitting himself to examination by the company-designated physician, a claimant does not automatically bind himself to the medical report issued by the company-designated physician; neither are the labor tribunals and the courts bound by said medical report. Its inherent merit will be weighed and duly considered. Moreover, the claimant may dispute the medical report issued by the company-designated physician by seasonably consulting another physician. The medical report issued by said physician will also be evaluated by the labor tribunal and the court based on its inherent merits**. (Emphasis in the original.)

These being said, the Court shall thus evaluate the findings of petitioner's physicians *vis-a-vis* the findings of the company-designated physician.

As can be recalled, after two months of treatment from date of repatriation, petitioner was declared fit to return to work on August 25, 2000 by the company-designated physician. Said

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[31] *NYK-Fil Ship Management, Inc. v. Talavera,* G.R. No. 175894, November 14, 2008, 571 SCRA 183, 193.

[32] G.R. No. 161416, June 13, 2008, 554 SCRA 446, 459.

physician certified that with proper medication, petitioner's hypertension appears to be "controlled" and that discontinuance of such medication may cause his blood pressure to again shoot up. As such, she recommended for petitioner to continue taking his medicines and to observe a low fat, low salt diet. However, after about five months or on January 11, 2001, petitioner consulted Dr. Vicaldo, a private physician at the Philippine Heart Center, who made the following findings: Hypertensive cardiovascular disease, concentric left ventricular hypertrophy, lateral wall ischemic and impediment Grade V (58-96%). Another five months have passed or on June 16, 2001, petitioner again sought the medical advice of another private physician, Dr. Caja, who issued a medical report which reads:

June 16, 2001

To whom it may concern,

This is regarding Mr. Daniel M. Ison, 57y/o, seaman from Cainta, Rizal. June 2000 when patient started to experience chest pain while on board the ship. He was then done ECG and chest x-ray which revealed S-t segment depression and t wave inversion. He was then repatriated where further work-up was done. 2D ECHO done showed mild aortic regurgitation and mitral regurgitation. He was then prescribed Isopten, Adalat, and Cardinel. He was then diagnosed to have hypertensive cardiovascular disease, ischemic heart disease, concentric left ventricular hypertrophy. His BP then fluctuates from systolic of 140-150. He claims that if his BP went down to less than 130, he feels bad. Recently, he complains of occasional chest heaviness with easy fatigability and dyspnea on exertion. He has been having poor compliance with his medications. His recent BP is 190/110 and so continuation of his previous medications was advised. Addition of Neobloc 50mg TID and Approvel 150mg OD was given. Precaution on correct diet and proper lifestyle was recommended.

The patient's clinical condition needs close monitoring and limitation to the daily activities. Thus, rendering him unfit for work.

DISABILITY RATING: GRADE 3

Respectfully yours,

(Signed)
Jocelyn Myra R. Caja, MD

Medical Specialist
Lic. no.: 076484[33]

Based on the said medical reports of petitioner's physicians, the NLRC reversed the Labor Arbiter's ruling and granted petitioner disability compensation. However, on appeal, the CA disregarded said physicians' medical findings and instead upheld the one made by the company-designated physician.

We hold that the CA is correct in ruling thus. The company-designated physician has cleared petitioner for employment resumption after two months of continuous treatment and after medication has successfully controlled his hypertension. As aptly held by the CA, the extensive medical attention given by the company-designated physician to petitioner enabled the former to acquire a detailed knowledge and familiarity of petitioner's medical condition. This enabled the company-designated physician to arrive at a more accurate prognosis of petitioner's disability as compared to other physicians not privy to petitioner's case from the beginning. It has been held that the doctor who have had a personal knowledge of the actual medical condition, having closely, meticulously and regularly monitored and actually treated the seaman's illness, is more qualified to assess the seaman's disability.[34]

On the other hand, the medical reports of Dr. Vicaldo and Dr. Caja were issued after petitioner consulted each of them only once. Clearly, said physicians did not have the chance to closely monitor petitioner's illness. Moreover, Dr. Vicaldo's evaluation of petitioner's illness was unsupported by any proof or basis. While he diagnosed petitioner to be suffering from "Hypertensive Cardiovascular Disease, Concentric Left Ventricular Hypertrophy, Lateral Wall Ischemic" and suggested an "Impediment Grade V (58-96%)," no justification for such

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[33] *Supra* note 13.

[34] *Montoya v. Transmed Manila Corporation,* G.R. No. 183329, August 27, 2009, 597 SCRA 334, 347-348; *Magsaysay Maritime Corp. v. Velasquez,* G.R. No. 179802, November 14, 2008, 571 SCRA 239, 251; *Sarocam v. Interorient Maritime Ent., Inc.,* G.R. No. 167813, June 27, 2006, 493 SCRA 502, 513.

assessment was provided for in the medical certificate he issued. Similarly, Dr. Caja's medical report contained no supporting proof but was rather based on the findings of past examinations done by the company-designated physician, as well as on the statements supplied to her by the petitioner. In *Coastal Safety Marine Services Inc. v. Esguerra*,[35] this Court brushed aside the medical certifications upon which the seaman therein anchored his claim for disability benefits for being unsupported by diagnostic tests and procedures as would effectively dispute the results of the medical examination earlier made upon him in a foreign clinic referred by his employer.

Likewise significant is the fact that it took petitioner more than a year before disputing the declaration of fitness to work by the company-designated physician. Petitioner filed a claim for disability benefit on the basis of Dr. Vicaldo and Dr. Caja's medical certifications which were issued after five and 10 months, respectively, from the company-designated physician's declaration of fit to work. Unfortunately, apart from the reasons already stated, these certifications could not be given any credence as petitioner's health condition could have changed during the interim period due to different factors such as petitioner's poor compliance with his medications as in fact mentioned by Dr. Caja in the medical certificate she issued. As such, the said medical certifications cannot effectively controvert the fit to work assessment earlier made. The Court has previously rejected a medical report by a physician on this ground in *Cadornigara v. National Labor Relations Commission*,[36] wherein it was ruled that:

> x x x. It is noted that petitioner took six months before disputing the finding of Dr. Cruz by filing a complaint for disability benefits. Worse, in his complaint, petitioner averred that he continued to undergo therapy and medication even after Dr. Cruz certified him fit to work. Yet, petitioner did not secure from the doctors who administered such therapy and medication a certification that would contradict that of Dr. Cruz. Rather, he waited another month to manifest

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[35] G.R. No. 185352, August 10, 2011.

[36] G.R. No. 158073, November 23, 2007, 538 SCRA 363, 374.

to the LA that he be examined by a government doctor. Such request is not reasonable. As we observed in *Sarocam v. Interorient Maritime Ent. Inc.*, it makes no sense to compare the certification of a company-designated physician with that of an employee-appointed physician if the former is dated seven to eight months earlier than the latter — there would be no basis for comparison at all.

Furthermore, petitioner voluntarily executed a release and quitclaim in respondents' favor right after the assessment of the company-designated physician and receipt of his sickness allowance. Indeed, quitclaims executed by employees are commonly frowned upon as being contrary to public policy. But where the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as being a valid and binding undertaking.[37] Contrary to petitioner's contention, the amount of US$1,136.67 he received is reasonable enough to cover his sickness allowance for two months of treatment under the care of respondents' physician. We, therefore, find no reason to invalidate the quitclaim.

In sum, we hold that the CA did not err in denying petitioner's claim for disability compensation as no adequate and credible evidence was submitted to show entitlement to the same. As we have consistently held, awards for compensation cannot be made to rest on mere speculations and presumptions.[38]

WHEREFORE, the petition is **DENIED**. The assailed Decision dated February 17, 2006 and Resolution dated August 1, 2006 of the Court of Appeals in CA-G.R. SP No. 89112 are **AFFIRMED**.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[37] *Kimberly-Clark Philippines, Inc. v. Dimayuga,* G.R. No. 177705, September 18, 2009, 600 SCRA 648, 656.

[38] *Cootauco v. MMS Phil. Maritime Services, Inc.,* G.R. No. 184722, March 15, 2010, 615 SCRA 529, 546.

SECOND DIVISION

[G.R. No. 193443. April 16, 2012]

JEAN TAN, ROSELLER C. ANACITO, CARLO LOILO ESPINEDA and DAISY ALIADO MANAOIS, represented in this act by their Attorney-in-Fact, MA. WILHELMINA E. TOBIAS, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT); GOVERNS THE CLASSIFICATION AND DISPOSITION OF LANDS FORMING PART OF THE PUBLIC DOMAIN. — Commonwealth Act No. 141, otherwise known as the "Public Land Act" governs the classification and disposition of lands forming part of the public domain. Section 11 thereof provides that one of the modes of disposing public lands suitable for agricultural purposes is by "confirmation of imperfect or incomplete titles." Section 48 thereof enumerates those who are considered to have acquired an imperfect or incomplete title over an alienable and disposable public land.

2. ID.; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); SPECIFIES THOSE WHO ARE QUALIFIED TO REGISTER THEIR INCOMPLETE TITLE OVER AN ALIENABLE AND DISPOSABLE PUBLIC LAND UNDER THE TORRENS SYSTEM. — Presidential Decree No. 1529 (P.D. No. 1529), otherwise known as the "Property Registration Decree," is a codification of all the laws relative to the registration of property and Section 14 thereof specifies those who are qualified to register their incomplete title over an alienable and disposable public land under the Torrens system. Particularly: "**Section 14**. *Who may apply*. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their authorized representatives: (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable

and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier. (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws. x x x" As this Court clarified in *Heirs of Malabanan v. Republic of the Philippines*, and *Republic of the Philippines v. East Silverlane Realty Development Corporation*, Section 14(1) covers "alienable and disposable lands" while Section 14(2) covers "private property." Thus, for one's possession and occupation of an alienable and disposable public land to give rise to an imperfect title, the same should have commenced on June 12, 1945 or earlier. On the other, for one to claim that his possession and occupation of private property has ripened to imperfect title, the same should have been for the prescriptive period provided under the Civil Code. Without need for an extensive extrapolation, the private property contemplated in Section 14(2) is patrimonial property as defined in Article 421 in relation to Articles 420 and 422 of the Civil Code.

3. ID.; ID.; ID.; POSSESSION AND OCCUPATION OF AN ALIENABLE AND DISPOSABLE PUBLIC LAND FOR THE PERIODS PROVIDED UNDER THE CIVIL CODE WILL NOT CONVERT IT TO PATRIMONIAL PROPERTY. — [I]t was explained in *Heirs of Malabanan* and *East Silverlane*, that possession and occupation of an alienable and disposable public land for the periods provided under the Civil Code will not convert it to patrimonial or private property. There must be an express declaration that the property is no longer intended for public service or the development of national wealth. In the absence thereof, the property remains to be alienable and disposable and may not be acquired by prescription under Section 14(2) of P.D. No. 1529.

4. ID.; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; OWNERSHIP; A CLAIM OF OWNERSHIP WILL NOT PROSPER ON THE BASIS OF TAX DECLARATIONS IF UNACCOMPANIED BY PROOF OF ACTUAL POSSESSION. — Tax declarations *per se* do not qualify as competent evidence of actual possession for purposes of prescription. More so, if the payment of the taxes due on the property is episodic, irregular and random such as in this case. Indeed, how can the petitioners' claim of possession for the entire prescriptive period be ascribed any ounce of credibility

> when taxes were paid only on eleven (11) occasions within the 40-year period from 1961 to 2001? x x x In *East Silverlane*, it was emphasized that adverse, continuous, open, public possession in the concept of an owner is a conclusion of law and the burden to prove it by clear, positive and convincing evidence is on the applicant. A claim of ownership will not prosper on the basis of tax declarations if unaccompanied by proof of actual possession.

APPEARANCES OF COUNSEL

Kapunan Tamano Javier & Associates for petitioners.
The Solicitor General for respondent.

R E S O L U T I O N

REYES, *J.*:

This is a petition for review under Rule 45 of the Decision[1] dated July 6, 2009 and Resolution[2] dated August 12, 2010 Resolution of the Court of Appeals (CA) in CA-G.R. CV No. 88995. The facts leading to its filing are as follows:

On June 14, 2001, the petitioners filed with the Regional Trial Court (RTC) of Naic, Cavite, an application for land registration covering a parcel of land identified as Lot 9972, Cad-459-D of Indang Cadastre, situated in *Barangay* Bancod, Indang, Cavite and with an area of 6,920 square meters.[3] The petitioners alleged that they acquired the subject property from Gregonio Gatdula pursuant to a Deed of Absolute Sale dated April 25, 1996; and they and their predecessors-in-interest have

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[1] Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Priscilla J. Baltazar-Padilla, concurring; *rollo*, pp. 52-65.

[2] Penned by Priscilla J. Baltazar-Padilla, with Associate Justices Magdangal M. De Leon and Michael P. Elbinias, concurring; *id.* at 66-68.

[3] LRC Case No. NC-2001-1205.

been in open, continuous and exclusive possession of the subject property in the concept of an owner for more than 30 years.[4]

After trial and hearing, the RTC issued a Decision on July 29, 2006, granting the petitioners' application, thus:

"**WHEREFORE**, in view of the foregoing, this Court confirming its previous Order of general default, decrees and adjudges Lot No. 9972 consisting of 6,920 square meters, Cad. 459-D, Indang Cadastre and its technical description as herein above-described situated in Brgy. Bancod, Indang, Cavite, pursuant to the provisions of Act 496 as amended by P.D. 1529, as it is hereby decreed and adjudged to be confirmed and registered in the names of Jean Tan, of legal age, Filipino, single, with postal address at Room 54 T. Pinpin St., Binondo, Manila; Roseller C. Anaci[n]to, of legal age, Filipino, single, with postal address at Moncario Villag[e], Ampid-1, San Mateo, Rizal; Carlo Loilo Espineda, of legal age, Filipino, with postal address at Cluster F. Cogeo, Antipolo, Rizal and Daisy Aliado Manaois, of legal age, Filipino and resident of Panghulo Road, Malabon, Metro Manila.

Once this decision becomes final, let the corresponding decree of registration be issued by the Administrator, Land Registration Authority.

SO ORDERED."[5]

The CA gave due course to the appeal filed by the Republic of the Philippines. By way of the assailed Decision, the CA ruled that the petitioners failed to prove that they and their predecessors-in-interest have been in possession of the subject property for the requisite period of 30 years. The CA posit:

We now determine if appellees have the right to register their title on such land despite the fact that their possession commenced only after 12 June 1945. Records show that the appellees' possession over the subject property can be reckoned only from 21 June 1983, the date when according to evidence, the subject property became alienable and disposable. From said date up to the filing of the

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[4] *Rollo*, p. 53.

[5] *Id.* at 57.

application for registration of title over the subject property on 14 June 2001, only eighteen (18) years had lapsed. Thus, appellees' possession of the subject property fell short of the requirement of open, continuous and exclusive possession of at least 30 years.

Moreover, there was no adequate evidence which would show that appellees and their predecessors-in-interest exercised acts of dominion over the subject land as to indicate possession in the concept of owner. The testimonies of appellees' witnesses regarding actual possession are belied by the absence of evidence on actual use of or improvements on the subject property. Appellees presented only various tax declarations to prove possession. However, except for the Certification, showing payment of tax due on tax declaration for the year 2003, there are no other evidence showing that all the taxes due corresponding to the rest of the tax declarations were in fact paid by appellees or their predecessors-in-interest.

In sum, appellees were unable to prove that they or their predecessors-in-interest have been in possession of the subject property for more than 30 years, which possession is characterized as open, continuous, exclusive, and notorious, in the concept of an owner. Appellees failed to discharge their duty of substantiating possession and title to the subject land.

WHEREFORE, the appeal is hereby **GRANTED** and the Decision dated 29 July 2006 of the Regional Trial Court (RTC) of Naic, Cavite, Branch 15 is **REVERSED** and **SET ASIDE**.

SO ORDERED.[6] (citation omitted)

The petitioners moved for reconsideration but this was denied by the CA in its August 12, 2010 Resolution.[7]

The petitioners question the conclusion arrived at by the CA, alleging that the evidence they presented prove that they and their predecessors-in-interest have been in possession and occupation of the subject property for more than 30 years. The petitioners claim that the following sufficed to demonstrate that they acquired title over the subject property by prescription:

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[6] *Id.* at 63-64.

[7] *Supra* note 2.

a. the testimony of their attorney-in-fact, Ma. Wilhelmina Tobias, stating that:

   i. the petitioners have been in actual, notorious and open possession of the subject property since the time they purchased the same in 1996;

   ii. the petitioners have regularly paid the taxes due on the subject property;

   iii. the petitioners' predecessors-in-interest, Victorio Garcia, Felipe Gatdula and Gregonio Gatdula, had been in possession of the subject property for more than 30 years and had religiously paid the taxes due thereon; and

   iv. the subject property is agricultural, alienable and disposable;

b. the testimony of the caretaker of the subject property, Margarito Pena, stating that:

   i. he resides near the subject property;

   ii. he witnessed the execution of the deed of sale that petitioners entered into with Gregonio Gatdula; and

   iii. the petitioners and predecessors-in-interest have been in possession of the subject property for more than 30 years;

c. the testimony of Ferdinand Encarnacion, a clerk in the Docket Division of the Land Registration Authority (LRA), stating that:

   i. no opposition to the petitioners' application was filed before the LRA;

   ii. an examiner of the LRA found nothing wrong with the petitioners' application; and

   iii. no title covering the subject property was previously issued;

d. Tax Declaration Nos. 2935, 2405 and 1823 for the years 1961, 1967 and 1974 in the name of Victorio Garcia;[8]

[8] *Id.* at 20.

e. Tax Declaration Nos. 1534 and 3850 for the years 1980 and 1985 in the name of Felipe Gatdula;[9]

f. Tax Declaration Nos. 22453-A and 2925 for the years 1991 and 1994 in the name of Gregonio Gatdula;[10]

g. Tax Declaration Nos. 21956-A, 22096-A, 22097-A and 97-05078 in the name of the petitioners;[11]

h. Resolution No. 69, Series of 1998, of the Sangguniang Bayan of Indang, Cavite, which approved the reclassification of several lots, including the subject property, from agricultural to residential/commercial;[12]

i. DARCO Conversion Order No. 040210005-(340)-99, Series of 2000, issued by the Department of Agrarian Reform on July 13, 2000, which converted several parcels of land, including the subject property, from agricultural to residential/commercial;[13]

j. Certification issued by the Department of Environment and Natural Resources (DENR) – CALABARZON dated October 29, 2002, stating that "the subject area falls within the Alienable and Disposable Land Project No. 13-A of Indang, Cavite per LC Map 3091 certified on June 21, 1983."[14]

Issue

This Court is faced with the lone issue of whether the petitioners have proven themselves qualified to the benefits under the relevant laws on the confirmation of imperfect or incomplete titles.

Our Ruling

Commonwealth Act No. 141, otherwise known as the "Public Land Act" governs the classification and disposition of lands

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[9] *Id.*

[10] *Id.*

[11] *Id.* at 21.

[12] *Id.*

[13] *Id.* at 22.

[14] *Id.* at 60.

forming part of the public domain. Section 11 thereof provides that one of the modes of disposing public lands suitable for agricultural purposes is by "confirmation of imperfect or incomplete titles." Section 48 thereof enumerates those who are considered to have acquired an imperfect or incomplete title over an alienable and disposable public land.

Presidential Decree No. 1529 (P.D. No. 1529), otherwise known as the "Property Registration Decree," is a codification of all the laws relative to the registration of property and Section 14 thereof specifies those who are qualified to register their incomplete title over an alienable and disposable public land under the Torrens system. Particularly:

> **Section 14**. *Who may apply*. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their authorized representatives:
>
> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.
>
> (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.
>
> (3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.
>
> (4) Those who have acquired ownership of land in any other manner provided for by law.

As this Court clarified in *Heirs of Malabanan v. Republic of the Philippines*,[15] and *Republic of the Philippines v. East Silverlane Realty Development Corporation*,[16] Section 14(1) covers "alienable and disposable lands" while Section 14(2)

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[15] G.R. No. 179987, April 29, 2009, 587 SCRA 172.

[16] G.R. No. 186961, February 20, 2012.

covers "private property." Thus, for one's possession and occupation of an alienable and disposable public land to give rise to an imperfect title, the same should have commenced on June 12, 1945 or earlier. On the other, for one to claim that his possession and occupation of private property has ripened to imperfect title, the same should have been for the prescriptive period provided under the Civil Code. Without need for an extensive extrapolation, the private property contemplated in Section 14(2) is patrimonial property as defined in Article 421 in relation to Articles 420 and 422 of the Civil Code.

Going further, it was explained in *Heirs of Malabanan* and *East Silverlane*, that possession and occupation of an alienable and disposable public land for the periods provided under the Civil Code will not convert it to patrimonial or private property. There must be an express declaration that the property is no longer intended for public service or the development of national wealth. In the absence thereof, the property remains to be alienable and disposable and may not be acquired by prescription under Section 14(2) of P.D. No. 1529. Thus:

> In *Heirs of Malabanan,* this Court ruled that possession and occupation of an alienable and disposable public land for the periods provided under the Civil Code do not automatically convert said property into private property or release it from the public domain. There must be an express declaration that the property is no longer intended for public service or development of national wealth. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the State, and thus, may not be acquired by prescription.
>
> Nonetheless, Article 422 of the Civil Code states that "[p]roperty of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State." It is this provision that controls how public dominion property may be converted into patrimonial property susceptible to acquisition by prescription. After all, Article 420 (2) makes clear that those property "which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth" are public dominion property. **For as long as the property belongs to the State, although already classified**

> **as alienable or disposable, it remains property of the public dominion if when it is "intended for some public service or for the development of the national wealth."** (emphasis supplied)
>
> **Accordingly, there must be an express declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the public dominion, pursuant to Article 420(2), and thus incapable of acquisition by prescription. It is only when such alienable and disposable lands are expressly declared by the State to be no longer intended for public service or for the development of the national wealth that the period of acquisitive prescription can begin to run. Such declaration shall be in the form of a law duly enacted by Congress or a Presidential Proclamation in cases where the President is duly authorized by law.**

In other words, for one to invoke the provisions of Section 14(2) and set up acquisitive prescription against the State, it is primordial that the status of the property as patrimonial be first established. Furthermore, the period of possession preceding the classification of the property as patrimonial cannot be considered in determining the completion of the prescriptive period.[17]

The petitioners' application is obviously anchored on Section 14(2) of P.D. No. 1529 as they do not claim to have possessed, by themselves or their predecessors-in-interest, the subject property since June 12, 1945 or earlier. That it was thru prescription that they had acquired an imperfect title over the subject property is the foundation upon which the petitioners rest their application.

Unfortunately, this Court finds the evidence presented by the petitioners to be wanting. The petitioners failed to demonstrate that they and their predecessors-in-interest possessed the property in the requisite manner, which this Court explained as follows:

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[17] *Supra* note at 16.

It is concerned with lapse of time in the manner and under conditions laid down by law, namely, that the possession should be in the concept of an owner, public, peaceful, uninterrupted and adverse. Possession is open when it is patent, visible, apparent, notorious and not clandestine. It is continuous when uninterrupted, unbroken and not intermittent or occasional; exclusive when the adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit; and notorious when it is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood. The party who asserts ownership by adverse possession must prove the presence of the essential elements of acquisitive prescription.[18]

Tax declarations *per se* do not qualify as competent evidence of actual possession for purposes of prescription. More so, if the payment of the taxes due on the property is episodic, irregular and random such as in this case. Indeed, how can the petitioners' claim of possession for the entire prescriptive period be ascribed any ounce of credibility when taxes were paid only on eleven (11) occasions within the 40-year period from 1961 to 2001? In *Wee v. Republic of the Philippines*,[19] this Court stated that:

> It bears stressing that petitioner presented only five tax declarations (for the years 1957, 1961, 1967, 1980 and 1985) for a claimed possession and occupation of more than 45 years (1945-1993). **This type of intermittent and sporadic assertion of alleged ownership does not prove open, continuous, exclusive and notorious possession and occupation.** In any event, in the absence of other competent evidence, tax declarations do not conclusively establish either possession or declarant's right to registration of title.[20] (emphasis supplied and citation omitted)

In *East Silverlane*, it was emphasized that adverse, continuous, open, public possession in the concept of an owner is a conclusion of law and the burden to prove it by clear, positive and convincing

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[18] *Heirs of Marcelina Arzadon-Crisologo v. Rañon*, G.R. No. 171068, September 5, 2007, 391 SCRA 411, 404.

[19] G.R. No. 177384, December 8, 2009, 608 SCRA 72.

[20] *Id.* at 83.

evidence is on the applicant. A claim of ownership will not prosper on the basis of tax declarations if unaccompanied by proof of actual possession.[21]

While there was an attempt to supplement the tax declaration by testimonial evidence, the same is futile and frivolous. The testimonies of Margarito Pena and Ma. Wilhelmina Tobias do not merit consideration and do not make up for the inherent inadequacy of the eleven (11) tax declarations submitted by the petitioners. Such witnesses did not state what specific acts of ownership or dominion were performed by the petitioners and predecessors-in-interest and simply made that general assertion that the latter possessed and occupied the subject property for more than thirty (30) years, which, by all means, is a mere conclusion of law. The RTC should have tackled evidence of such nature with a disposition to incredulity, if not with an outright rejection.

Furthermore, the petitioners' application was filed after only (1) year from the time the subject property may be considered patrimonial. DARCO Conversion Order No. 040210005-(340)-99, Series of 2000, was issued by the DAR only on July 13, 2000, which means that the counting of the thirty (30)-year prescriptive period for purposes of acquiring ownership of a public land under Section 14(2) can only start from such date. Before the property was declared patrimonial by virtue of such conversion order, it cannot be acquired by prescription. This is clear from the pronouncements of this Court in *Heirs of Malabanan* quoted above and in *Republic of the Philippines v. Rizalvo*,[22] which states:

> On this basis, respondent would have been eligible for application for registration because his claim of ownership and possession over the subject property even exceeds thirty (30) years. However, it is jurisprudentially clear that the thirty (30)-year period of prescription for purposes of acquiring ownership and registration of public land under Section 14 (2) of P.D. No. 1529 only begins from the moment

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[21] *Supra* note at 16.

[22] G.R. No. 172011, March 7, 2011.

the State expressly declares that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial.[23]

WHEREFORE, premises considered, the instant petition is **DENIED** for lack of merit. The July 6, 2009 Decision and August 12, 2010 Resolution of the Court of Appeals are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 197807. April 16, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CECILIA LAGMAN *y* PIRING,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS. — The elements of murder that the prosecution must establish are (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by **any** of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) that the killing is not parricide or infanticide.

2. ID.; ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; WHEN PRESENT; ELEMENTS. — Paragraph 16, Art. 14 of the RPC defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons

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[23] *Id.* at 526.

which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. x x x In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.

3. ID.; ID.; LESS SERIOUS PHYSICAL INJURIES; NOT APPRECIATED WHEN NOTHING IN THE RECORDS SUPPORTS THE FINDING THAT THE VICTIM WAS INCAPACITATED FOR LABOR OR THAT HE REQUIRED MEDICAL ATTENTION FOR TEN (10) DAYS OR MORE; CASE AT BAR. — Art. 265 of the RPC provides, "Any person who shall inflict upon another physical injuries not described [as serious physical injuries] but which shall incapacitate the offended party for labor for ten (10) days or more, or shall require medical attendance for the same period, shall be guilty of less serious physical injuries and shall suffer the penalty of *arresto mayor*." Nothing in the records, however, supports the finding that Sicor was incapacitated for labor for ten (10) days or more or that she required medical attention for the same period. After the wound on her buttocks was treated, Sicor was released two hours after she was admitted to the hospital. She later returned to the hospital for the removal of the suture on her wound, according to the RTC, "after a certain period of time." The Medico-Legal Report on Sicor (Exhibit "H") does not indicate how many days of medical treatment her injury would need. Sicor, however, testified that she lost two (2) days of work on account of the injury she sustained. The testimony of her attending physician, Dr. Christian Dennis Cendeno, on the other hand, was dispensed with following a stipulation by the parties on his testimony. The prosecution was, therefore, unable to establish that the injury sustained by Sicor falls under less serious physical injuries absent the requirement that her injury required medical attention for 10 days or incapacitated her for the same period.

4. ID.; ID.; SLIGHT PHYSICAL INJURIES; WHEN PRESENT; IMPOSABLE PENALTY. — Under par. 1, Art. 266 of the RPC, the penalty for slight physical injuries is *arresto menor* "when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days, or shall require medical attendance during the same period." There being no modifying circumstances to be appreciated, and in accordance with par. 1 of Art. 64, accused-appellant should be meted a penalty of imprisonment of *arresto menor* in its medium period, which has a duration of eleven (11) to twenty (20) days under Art. 76 of the RPC.

5. ID.; ID.; CIVIL INDEMNITY AND DAMAGES; WHEN MAY BE AWARDED; RULE APPLIED. — *People v. Combate* reiterated the rule on civil indemnity and damages: When death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. In *People v. Tubongbanua*, interest at the rate of six percent (6%) was ordered to be applied on the award of damages. This rule would be subsequently applied by the Court in several cases such as *Mendoza v. People, People v. Buban, People v. Guevarra*, and *People v. Regalario*. Thus, we likewise adopt this rule in the instant case. Interest of six percent (6%) per annum should be imposed on the award of civil indemnity and all damages, *i.e.*, actual or compensatory damages, moral damages and exemplary damages, from the date of finality of judgment until fully paid. In accordance with the rules cited above, We modify the award of damages. In line with prevailing jurisprudence, the award of civil indemnity *ex delicto* of PhP 50,000 in favor of the heirs of Santiago is in order. Moral damages of PhP 50,000 and PhP 30,000 in exemplary damages, with an interest of six percent (6%) per annum, are also proper. We delete the award of PhP 25,000 in temperate damages to Sicor, since only slight physical injuries were committed and no proof of medical expenses was presented during trial.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF FACT BY THE TRIAL COURT; GENERALLY GIVEN CONCLUSIVE EFFECT; RATIONALE. — It has been long settled that when the issues raised concern the credibility

of a witness, the trial court's findings of fact, its calibration of testimonies, and its assessment of the testimonies' probative weight, including its conclusions based on said findings, are generally given conclusive effect. It is acknowledged that the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth. x x x That the trial judge who rendered judgment was not the one who had the occasion to observe the demeanor of the witnesses during trial but merely relied on the records of the case does not render the judgment erroneous, especially where the evidence on record is sufficient to support its conclusion.

7. ID.; ID.; ID.; ALIBI, AS A DEFENSE; CANNOT BE SUSTAINED; CASE AT BAR. — The defense of alibi is likewise unconvincing. Accused-appellant was positively identified by eyewitnesses. She herself admitted that she confronted one of the eyewitnesses, Maniego, moments before she was seen attacking Maniego, Santiago and Sicor. It is well-settled that alibi cannot be sustained where it is not only without credible corroboration but also does not, on its face, demonstrate the physical impossibility of the presence of the accused at the place of the crime or in its immediate vicinity at the time of its commission. In accused-appellant's case, there is no corroborative evidence of her alibi or proof of physical impossibility of her being at the scene of the incident to shore up her defense.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the May 14, 2010 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03289, which affirmed the January 18, 2008 Decision[2] of the Regional Trial Court (RTC), Branch 18 in Manila, in Criminal Case No. 02-200106 for Murder and Criminal Case No. 02-200107 for Frustrated Murder.

The Facts

Two Informations[3] charged accused Cecilia Lagman as follows:

Criminal Case No. 02-200106

That on or about February 24, 2002, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously with intent to kill, with treachery and evident premeditation, attack, assault and use personal violence upon the person of Jondel Mari Davantes Santiago, by then and there stabbing him with a knife with an approximate length of 6 ½ inches (blade and handle) hitting his neck and trunk, thereby inflicting upon said Jondel Mari Davantes Santiago stab wounds which are necessarily fatal and mortal, which were the direct cause of his death immediately thereafter.

Criminal Case No. 02-200107

That on or about February 24, 2001, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon the person of Violeta Sicor *y* Sapitula, by then and there stabbing her hitting her buttocks, thereby inflicting upon the said Violeta Sicor *y* Sapitula mortal wounds which were necessarily

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[1] *Rollo*, pp. 2-17. Penned by Associate Justice Ruben C. Ayson and concurred in by Associate Justices Amelita G. Tolentino and Normandie B. Pizarro.

[2] CA *rollo*, pp. 20-36. Penned by Judge Myra V. Garcia-Fernandez.

[3] *Id.* at 20.

fatal, thus, performing all the acts of execution which would produce the crime of Homicide as a consequence, but nevertheless, did not produce it by reason of causes independent of her will, that is, by the timely and able medical assistance rendered to said Violeta Sicor *y* Sapitula which prevented her death.

During her arraignment, the accused gave a negative plea to both charges.

At the trial, the prosecution presented the following witnesses: Donna Maniego (Maniego), Violeta Sicor (Sicor), Police Officer 3 Ricardo M. Alateit (PO3 Alateit), and PO3 Ronaldo Samson (PO3 Samson).

On February 24, 2002, at about 1:30 p.m, Maniego was in front of her banana cue store on Lakandula Street, Tondo, Manila. She was seated alongside her mother, Sicor, inside the sidecar of a motorcycle. Without warning, the accused approached her and punched her face several times. The accused turned on Sicor, grabbed her and stabbed her in the middle of her buttocks with a small knife. Maniego got out of the sidecar and ran to the *barangay* hall for help. Upon finding that the *barangay* chairman was not around, Maniego went to check on her common-law spouse, Jondel Santiago (Santiago), at the house of Santiago's mother.[4] On her way there, she saw the accused stab Santiago four (4) times from a distance of five (5) to six (6) meters. The distance between where Maniego was punched and where Santiago was stabbed was about nine (9) meters.[5] Maniego then saw the accused flee the scene of the crime carrying a knife and heading towards Juan Luna Street. Seeing that Santiago was mortally hurt, Maniego rushed Santiago to Gat Andres Bonifacio Hospital but he later expired. While Maniego was at the hospital, she saw the accused, who was being treated after an angry crowd mauled her. Maniego informed the policeman who was escorting the accused that it was the latter who had stabbed and killed Santiago.[6]

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[4] Records, pp. 5-6.

[5] *Id*. at 13.

[6] CA *rollo*, p. 24.

After receiving the information from Maniego, the accused was arrested and brought to police headquarters.[7]

On cross-examination, Maniego testified that she had known the accused for almost ten years and had a close relationship with her. She stated that the accused got angry with her when she eloped with Santiago.[8]

Sicor, Maniego's mother, corroborated Maniego's testimony. She saw the accused punch Maniego several times while they were inside the sidecar on February 24, 2002. The accused then grabbed her and stabbed her in her buttocks with a small knife. She said that after she was stabbed, two sidecar boys came to her aid and brought her to the hospital. She added that she was released from the hospital two hours after receiving treatment.[9]

PO3 Alateit testified that on the day of the incident, he was riding his motorcycle on his way home. While he was on the corner of Juan Luna and Moriones Streets, it was reported to him that a stabbing incident had taken place. He headed towards an area where a crowd was causing a commotion. He then saw a woman who looked like a lesbian running towards him. Her head was bloodied. He handcuffed the injured woman after he was informed that she had stabbed someone. At the time of her arrest, a sharp object fell from the woman's waist. He confiscated the item and brought the woman to the police station and to Gat Andres Bonifacio Hospital. He identified the woman as the accused.[10]

Both the prosecution and the defense stipulated that Senior Police Officer 2 Edison Bertoldo was the police investigator in the case against the accused and that he prepared the following:

(1) Sworn Statement of Maniego, Exhibit "A";

(2) Affidavit of Apprehension of PO3 Alateit, Exhibit "C";

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[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

(3) Booking Sheet and Arrest Report, Exhibit "E";

(4) Crime Report dated February 25, 2002, Exhibits "F", "F-1" and "F-2"; and

(5) Request for Laboratory Examination dated February 27, 2002, Exhibit "F-3".[11]

The last witness for the prosecution, PO3 Samson, testified that on the date of the incident, he was assigned at the Western Police District Crime Laboratory Division. He presented before the court the sharp object used in stabbing the victim (Exhibit "M") and the Request for Laboratory Examination (Exhibit "M-1").[12]

For their part, the defense offered the testimonies of the accused and Dr. Mario Lato.

Chiefly relying on denial as her defense, the accused claimed that on the date of the stabbing incident, she confronted Maniego and asked her if it was true that she had been spreading the rumor that the accused was insane. Maniego answered in the affirmative. Angered, the accused slapped Maniego and left, leaving Santiago, Sicor, and Maniego in pursuit. Santiago then hit her with a lead pipe. Since she needed medical treatment after the attack, she was brought to Gat Andres Bonifacio Medical Hospital by her mother and a *barangay kagawad*.[13]

At the police station, the accused denied killing Santiago. She averred that nothing was found on her body when she was frisked. She said that the knife recovered by PO3 Alateit was not hers and that there were other people in the area where it was found. She added that she had an argument only with Maniego, not with Sicor or Santiago.[14]

Dr. Mario Lato testified that on February 24, 2002, he treated the accused, who had a laceration on the head which was possibly

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[11] *Id.* at 27.

[12] *Id.* at 28.

[13] *Id.* at 29.

[14] *Id.* at 30.

caused by a hard object such as a pipe. He said that the accused sustained a two-centimeter laceration in her mid-pectoral area.[15]

Ruling of the Trial Court

On January 18, 2008, the RTC convicted the accused of Murder in Crim. Case No. 02-200106 and Less Serious Physical Injuries in Crim. Case No. 02-200107. The dispositive portion of the RTC Decision reads:

> WHEREFORE, this court finds accused Cecilia Lagman *y* Piring guilty of Murder in Crim. Case No. 02-200106. She is sentenced to suffer *reclusion perpetua* and to pay the heirs of the victim Jondel Lari Santiago, the amount of ₱50,000 as civil indemnity. In Crim. Case No. 02-200107, this court finds same accused guilty of Less Serious Physical Injuries. She is sentenced to suffer six (6) months of *arresto mayor* and to pay Violeta Sicor the amount of ₱25,000 as temperate damages.
>
> SO ORDERED.[16]

Ruling of the Appellate Court

On appeal, accused-appellant faulted the trial court for not considering the inconsistencies and contradictions in the testimony of prosecution witness Maniego. She also averred that the same witness' credibility was improperly appreciated, as the judge who heard the case was different from the one who rendered the decision.

The CA affirmed the findings of the RTC. The appellate court ruled that the totality of the prosecution's evidence showed that accused-appellant's guilt was proved beyond reasonable doubt. It added that accused-appellant failed to show any ill motive on the part of the prosecution witnesses to falsely testify against her. The dispositive portion of the May 14, 2010 CA Decision reads:

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

[16] *Id.* at 36. The Information refers to Santiago as "Jondel Mari Santiago."

WHEREFORE, premises considered, the Decision dated January 18, 2008 of the Regional Trial Court of Manila, Branch 18 in Criminal Case Nos. 02-200106 and 02200107 is AFFIRMED.[17]

Hence, We have this appeal.

The Issues

I

Whether the CA erred in finding accused-appellant guilty beyond reasonable doubt

II

Whether the CA erred in giving credence to the testimony of the prosecution's witness despite patent inconsistencies

III

Whether the CA erred in finding that the killing of the victim was attended by treachery

The defense reiterates previous arguments calling for an acquittal of accused-appellant. It casts doubt on Maniego's testimony, claiming that it has irreconcilable inconsistencies which affected her credibility.

The defense also calls attention to the fact that Maniego testified before Judge Romulo A. Lopez, while the Decision was penned by Judge Myra Garcia-Fernandez.[18] It is further contended that Maniego did not actually witness Santiago being stabbed, because she admitted in court that she found out that Santiago had been stabbed when she was already at the hospital attending to her injured mother.

Moreover, it is pointed out by the defense that the victim was 5'8" in height and of average built while accused-appellant is only 4'11". It is, thus, incredible that she could have inflicted fatal wounds on the victim.

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[17] *Id.* at 16.

[18] *Id.* at 20-36.

Lastly, the defense argues that the prosecution was unable to prove that the killing of Santiago was accompanied by treachery. Assuming that accused-appellant did stab the victim, the defense claims that it was not proved that she deliberately and consciously adopted her mode of attack. The encounter was even preceded by a confrontation between accused-appellant and Maniego, and it was Sicor and Santiago who followed accused-appellant after the confrontation. The stabbing incident should have been considered as having occurred in the spur of the moment.

Our Ruling

We deny the appeal, but modify the CA Decision.

Elements of Murder Established

The elements of murder that the prosecution must establish are (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by **any** of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) that the killing is not parricide or infanticide.[19]

The prosecution was able to clearly establish that Santiago was killed and that it was accused-appellant who killed him as there was an eyewitness to the crime. Santiago's killing was attended by the qualifying circumstance of treachery as testified to by the prosecution eyewitness, Maniego. Paragraph 16, Art. 14 of the RPC defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.

Maniego's testimony proved the presence of treachery in this case, as follows:

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[19] *People v. Gabrino*, G.R. No. 189981, March 9, 2011; citing *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 746.

Q What did you do after Cecilia Lagman punched you in your face?

A I went outside of the side car x x x, and I went to the *barangay* hall to ask help x x x.

Q And what happened after that?

x x x x x x x x x

A '*Papauwi na po ako sa bahay ng biyenan ko sakto po ng pagpunta ko ho doon nasalubong po ni Cecilia Lagman si Jondel Mari wala hong sabi sabi inundayan po niya ng saksak si Jondel Mari*.' (When I went home to the house of my mother-in-law because the *barangay* chairman was not in the *barangay* hall Jondel Mari meet [sic] Cecilia Lagman and without any word Cecilia Lagman stabbed Jondel Mari.)

Q And in what place was that where Cecilia Lagman suddenly stabbed Jondel Mari Santiago?

A At Asuncion, Lakandula [in Tondo Manila] x x x.

Q When you saw Cecilia Lagman stabbed Jondel Santiago how far were you?

A (Witness demonstrating 5 to 6 meters away).

x x x x x x x x x

Q What was Jondel Santiago doing when he was stabbed by Cecilia Lagman?

A He was lighting a cigarette x x x.

Q And what was the reaction of Jondel Santiago when he was stabbed by Cecilia Lagman?

A '*Nabigla po kasi hindi naman niya alam na sasaksakin siya eh.*' [He was shocked because he did not know he was going to be stabbed.]

Q What part of the body of Jondel Santiago was hit when he was stabbed?

A One at the chest and two at the back and one at the neck. x x x

Q x x x [I]f the person who boxed you on the face is in court, will you be able to identify her?

A Yes x x x.

x x x x x x x x x

x x x [Witness pointing to a woman, Cecilia Lagman]

Q x x x [I]f the person whom you saw stabbed Jondel Santiago four times is in court will you be able to identify him or her?

A '*Siya rin po*." [She is the same person.][20]

In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.[21] The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.[22] These elements were present when accused-appellant stabbed Santiago. We quote with approval the appellate court's finding on the presence of treachery:

In the case at bar, the victim was caught off guard when appellant, without warning, stabbed him four times successively leaving the latter no chance at all to evade the knife thrusts and defend himself from appellant's onslaught. Thus, there is no denying that appellant's act of suddenly stabbing the victim leaving the latter no room for defense is a clear case of treachery.[23] x x x

Regardless of the alleged disparity in height between accused-appellant and the victim, We affirm the finding of the trial court,

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[20] TSN, August 27, 2002, pp. 4-10.

[21] *People v. Manulit*, G.R. No. 192581, November 17, 2010, 635 SCRA 426, 438; citing *People v. Reyes*, G.R. No. 118649, March 9, 1998, 287 SCRA 229, 238.

[22] *People v. Barangay Capt. Tomas, Sr.*, G.R. No. 192251, February 16, 2011; citing *People v. Rosas*, G.R. No. 177805, October 24, 2008, 570 SCRA 117, 133.

[23] *Rollo*, pp. 15-16.

as affirmed by the CA, that accused-appellant's method of inflicting harm ensured that she would fatally wound Santiago without risk to herself. The perceived advantage of the victim in terms of height was of no use to him as accused-appellant employed treachery in attacking him. He was not afforded a means to defend himself as accused-appellant suddenly started stabbing him repeatedly with an improvised knife.

Finally, the killing of Santiago was neither parricide nor homicide.

Credibility of Prosecution Witnesses

We see no reason to overturn the findings on the credibility of the prosecution witnesses. It has been long settled that when the issues raised concern the credibility of a witness, the trial court's findings of fact, its calibration of testimonies, and its assessment of the testimonies' probative weight, including its conclusions based on said findings, are generally given conclusive effect. It is acknowledged that the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth.[24] Furthermore, accused-appellant failed to show why Maniego and her mother would falsely accuse her of committing a terrible crime. Maniego was the common-law spouse of the victim and she would naturally want to seek justice for his death as well as the injury sustained by her mother.

An examination of the records shows that there is no truth to the allegation of accused-appellant that Maniego did not witness the stabbing of Santiago. She clearly testified that accused-appellant first stabbed Santiago on the chest, then on the side of his neck, then twice on his back.[25]

On the other allegation of accused-appellant, We have earlier held that the fact that the judge who rendered judgment was not

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[24] *People v. Barde*, G.R. No. 183094, September 22, 2010, 631 SCRA 187, 208-209; citing *People v. Lalongisip*, G.R. No. 188331, June 16, 2010, 621 SCRA 169.

[25] *Rollo*, p. 69.

the one who heard the witnesses does not adversely affect the validity of conviction.[26] That the trial judge who rendered judgment was not the one who had the occasion to observe the demeanor of the witnesses during trial but merely relied on the records of the case does not render the judgment erroneous, especially where the evidence on record is sufficient to support its conclusion.[27]

Alibi as a Defense

The defense of alibi is likewise unconvincing. Accused-appellant was positively identified by eyewitnesses. She herself admitted that she confronted one of the eyewitnesses, Maniego, moments before she was seen attacking Maniego, Santiago and Sicor. It is well-settled that alibi cannot be sustained where it is not only without credible corroboration but also does not, on its face, demonstrate the physical impossibility of the presence of the accused at the place of the crime or in its immediate vicinity at the time of its commission.[28] In accused-appellant's case, there is no corroborative evidence of her alibi or proof of physical impossibility of her being at the scene of the incident to shore up her defense.

Elements of Less Serious Physical Injuries Not Established

We modify the conviction of accused-appellant with regard to Criminal Case No. 02-200107. Originally charged with frustrated murder, accused-appellant was convicted of less serious physical injuries in Criminal Case No. 02-200107. The RTC reasoned that the stabbing injury sustained by Sicor was not on a vital part of the body and she was able to leave the hospital two hours after receiving medical treatment. The RTC properly ruled that the crime committed was not frustrated murder as it

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[26] *People v. Paling*, G.R. No. 185390, March 16, 2011.

[27] *Id.*; citing *People v. Hatani*, G.R. Nos. 78813-14, November 8, 1993, 227 SCRA 497, 508.

[28] *People v. Sally*, G.R. No. 191254**,** October 13, 2010, 633 SCRA 293, 304; citing *People v. Sobusa*, G.R. No. 181053, January 21, 2010, 610 SCRA 538, 558.

was not shown that there was intent to kill.[29] However, while the RTC correctly ruled that the accused-appellant is not guilty of frustrated murder in Criminal Case No. 02-200107, the records do not support a conviction for less serious physical injuries.

Art. 265 of the RPC provides, "Any person who shall inflict upon another physical injuries not described [as serious physical injuries] but which shall incapacitate the offended party for labor for ten (10) days or more, or shall require medical attendance for the same period, shall be guilty of less serious physical injuries and shall suffer the penalty of *arresto mayor*." Nothing in the records, however, supports the finding that Sicor was incapacitated for labor for ten (10) days or more or that she required medical attention for the same period. After the wound on her buttocks was treated, Sicor was released two hours after she was admitted to the hospital.[30] She later returned to the hospital for the removal of the suture on her wound, according to the RTC, "after a certain period of time."[31] The Medico-Legal Report on Sicor (Exhibit "H") does not indicate how many days of medical treatment her injury would need.[32] Sicor, however, testified that she lost two (2) days of work on account of the injury she sustained.[33] The testimony of her attending physician, Dr. Christian Dennis Cendeno, on the other hand, was dispensed with following a stipulation by the parties on his testimony.[34] The prosecution was, therefore, unable to establish that the injury sustained by Sicor falls under less serious physical injuries absent the requirement that her injury required medical attention for 10 days or incapacitated her for the same period.

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[29] See *People v. Aviles*, G.R. No. 172967, December 19, 2007, 541 SCRA 265, 276.

[30] Records, p. 13.

[31] CA *rollo*, p. 35.

[32] Records, p. 36.

[33] *Id.* at 14.

[34] *Id.* at 5-6.

The Court can, thus, only convict accused-appellant of slight physical injuries. Under par. 1, Art. 266 of the RPC, the penalty for slight physical injuries is *arresto menor* "when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days, or shall require medical attendance during the same period." There being no modifying circumstances to be appreciated, and in accordance with par. 1 of Art. 64,[35] accused-appellant should be meted a penalty of imprisonment of *arresto menor* in its medium period, which has a duration of eleven (11) to twenty (20) days under Art. 76 of the RPC.

Pecuniary Liability

The CA affirmed the award of PhP 50,000 as civil indemnity in Criminal Case No. 02-200106 and PhP 25,000 as temperate damages in Criminal Case No. 02-200106.

People v. Combate[36] reiterated the rule on civil indemnity and damages:

> When death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. In *People v. Tubongbanua*, interest at the rate of six percent (6%) was ordered to be applied on the award of damages. This rule would be subsequently applied by the Court in several cases such as *Mendoza v. People*, *People v. Buban*, *People v. Guevarra*, and *People v. Regalario*. Thus, we likewise adopt this rule in the instant case. Interest of six percent (6%) per annum should be imposed on the award of civil indemnity and all damages, *i.e.*, actual or compensatory damages, moral damages and exemplary damages, from the date of finality of judgment until fully paid.

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[35] Paragraph 1 of Art. 64 states that "When there are neither aggravating nor mitigating circumstances, [courts] shall impose the penalty prescribed by law in its medium period."

[36] G.R. No. 189301, December 15, 2010, 638 SCRA 797.

In accordance with the rules cited above, We modify the award of damages. In line with prevailing jurisprudence,[37] the award of civil indemnity *ex delicto* of PhP 50,000 in favor of the heirs of Santiago is in order. Moral damages of PhP 50,000 and PhP 30,000 in exemplary damages, with an interest of six percent (6%) per annum, are also proper.[38]

We delete the award of PhP 25,000 in temperate damages to Sicor, since only slight physical injuries were committed and no proof of medical expenses was presented during trial.

WHEREFORE, the appeal is **DENIED**. The CA Decision in CA-G.R. CR-H.C. No. 03289 finding accused-appellant guilty of Murder in Criminal Case No. 02-200106 is **AFFIRMED** with **MODIFICATIONS**. Accused-appellant is ordered to indemnify the heirs of the late Jondel Mari Davantes Santiago the sum of PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, PhP 30,000 as exemplary damages, and interest on all damages at the rate of six percent (6%) per annum from the finality of judgment until fully paid. With respect to Criminal Case No. 02-200107, accused-appellant is convicted of **SLIGHT PHYSICAL INJURIES** and is sentenced to twenty (20) days of *arresto menor*. The award of temperate damages is **DELETED**.

SO ORDERED.

Peralta, Abad, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

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[37] *People v. Barangay Capt. Tomas, Sr., supra* note 22; citing *People v. Dela Cruz,* G.R. No. 188353, February 16, 2010, 612 SCRA 738, 751-752.

[38] *People v. Gabrino,* G.R. No. 189981, March 9, 2011; citing *People v. Combate, supra* note 36.

EN BANC

[A.C. No. 6332. April 17, 2012]

IN RE: SUPREME COURT RESOLUTION DATED 28 APRIL 2003 IN G.R. NOS. 145817 AND 145822

SYLLABUS

1. LEGAL ETHICS; LAWYERS; DUTY TO OBSERVE AND MAINTAIN RESPECT DUE TO THE COURTS AND JUDICIAL OFFICERS; VIOLATED BY RESPONDENT LAWYER FOR MAKING GRATUITOUS IMPUTATIONS OF BRIBERY AND WRONGDOING AGAINST A MEMBER OF THE COURT. — Respondent Peña is administratively liable for making gratuitous imputations of bribery and wrongdoing against a member of the Court, as seen in the text of the subject Motion to Inhibit, his statements during the 03 March 2003 Executive Session, and his unrelenting obstinacy in hurling effectively the same imputations in his subsequent pleadings. x x x As officers of the court, lawyers are duty-bound to observe and maintain the respect due to the courts and judicial officers. They are to abstain from offensive or menacing language or behavior before the court and must refrain from attributing to a judge motives that are not supported by the record or have no materiality to the case.

2. ID.; ID.; MOTION TO INHIBIT JUSTICE; MERE ADVERSE RULING IS NOT ADEQUATE TO JUSTIFY IMPUTATIONS OF BIAS OR SUSPICIONS OF BRIBERY. — A mere adverse ruling of the court is not adequate to immediately justify the imputation of such bias or prejudice as to warrant inhibition of a Member of this Court, absent any verifiable proof of specific misconduct. Suspicions or insinuations of bribery involving a member of this Court, in exchange for a favorable resolution, are grave accusations. They cannot be treated lightly or be "jokingly" alleged by parties, much less by counsel in pleadings or motions. These suspicions or insinuations strike not only at the stature or reputation of the individual members of the Court, but at the integrity of its decisions as well.

3. ID.; ID.; ALLEGATION WITHOUT PROOF OF ILL MOTIVE AND BRIBERY COMMITTED BY MEMBERS OF THE COURT MERITS DISCIPLINARY MEASURES. — [R]espondent Peña insinuates ill motives on the part of Members of the Court imputing the failure of a private party to give him due notice to be, in effect, a failure of the Court. This merits the exercise of the Court's disciplinary powers over him as a member of the Bar. To allege that bribery has been committed by members of the judiciary, a complainant — especially, a lawyer — must go beyond mere suspicions, speculations, insinuations or even the plain silence of an opposing counsel.

4. ID.; ID.; ID.; INDEFINITE SUSPENSION FROM THE PRACTICE OF LAW MADE PROPER AS RESPONDENT LAWYER HAS REPEATEDLY IMPUTED UNFOUNDED MOTIVES AND PARTIALITY AGAINST MEMBERS OF THE COURT. — Respondent Peña has blatantly and consistently cast unfounded aspersions against judicial officers in utter disregard of his duties and responsibilities to the Court. x x x Thus, the Court orders respondent Peña be **indefinitely suspended** from the practice of law for his apparently irredeemable habit of repeatedly imputing unfounded motives and partiality against members of the Court.

5. ID.; ID.; DISHONESTY; COMMITTED WHEN RESPONDENT LAWYER SUBMITTED A FALSIFIED INTERNAL COURT DOCUMENT. — Respondent Peña submitted a falsified internal court document, Annex "B", had illegal access to confidential court documents, and made improper use of them in the proceedings before this Court. x x x [These are] act[s] of dishonesty that puts into doubt the ability of respondent to uphold his duty as a disciple of tuth.

6. ID.; ID.; ID.; USE OF FALSIFIED DOCUMENTS; DETERMINATION HERE PROPER NOT FOR CRIMINAL LIABILITY BUT ADMINISTRATIVE LIABILITY. — The subject matter of administrative proceedings is confined to whether there is administrative liability for the submission of a falsified document – x x x The issue, then, is whether he transgressed the ethical standards demanded of lawyers, by which they should be truthful in their dealings with and submissions to the Court. The investigation clearly does not include the determination of criminal liability, which demands

a different modicum of proof with respect to the use of falsified documents.

7. ID.; ID.; ID.; THAT RESPONDENT LAWYER OBTAINED INTERNAL AND CONFIDENTIAL DOCUMENTS THROUGH ORDINARY MAIL IS DUBIOUS. — [T]he Court notes that **respondent Peña has not explained, to the Court's satisfaction, how he managed to obtain internal and confidential documents**. Respondent Peña would have the Court believe that he happened to obtain the two copies of the Agenda (Annexes "B" and "C") and the internal Resolution (Annex "D") in two separate envelopes anonymously sent via ordinary mail. x x x For respondent Peña to have been able to secure originals or photocopies of the Court's Agenda is disturbing because that ability implies a breach of the rules of strict confidentiality in the Court. x x x Regardless of the means employed by respondent, his acquisition of the OBC Report from the Court's own records already speaks of an appalling pattern of unethical behavior that the Court will no longer ignore.

8. ID.; ID.; ID.; ID.; TRANSFER OF SUBJECT CASE FROM THIRD DIVISION TO FIRST DIVISION BASED ON THE INTERNAL RESOLUTION OF THE COURT, ALLEGEDLY A MAJOR ANOMALY, IS ACTUALLY COMPLIANCE WITH THE ESTABLISHED INTERNAL PROCEDURES OF THE COURT. — [I]n the subject Motion to Inhibit, respondent Peña even tried to bolster his claim that the then *ponente* of the case had a special interest in the case by attaching an **internal resolution** of the Court. In the said Internal Resolution x x x the two consolidated petitions (G.R. Nos. 145817 and 145822) were transferred from the Third Division to the First Division, where Justice Carpio was subsequently assigned. x x x [But this] was simple compliance with the established internal procedures of the Court, and not attributable to any undue interest or malicious intention on the part of the then *ponente* to retain the case for himself. Respondent had raised "irresponsible suspicions" against the integrity of the *ponente* without any understanding of the Supreme Court's processes in the transfer of cases.

9. ID.; ID.; ID.; KNOWINGLY USING SUSPICIOUSLY OBTAINED CONFIDENTIAL AND INTERNAL COURT RECORDS AND DOCUMENTS MERITS THE PENALTY OF DISBARMENT. —

Respondent Peña is sanctioned for knowingly using confidential and internal court records and documents, which he suspiciously obtained in bolstering his case. His unbridled access to internal court documents has not been properly explained. x x x Respondent's actions clearly merit no other penalty than disbarment.

10. ID.; ID.; MOTION FOR INHIBITION; ABUSE THEREOF USING GROUNDLESS AND UNFOUNDED ACCUSATIONS, ABHORRED. — The Court cannot countenance the ease with which lawyers, in the hopes of strengthening their cause in a motion for inhibition, make grave and unfounded accusations of unethical conduct or even wrongdoing against other members of the legal profession. x x x It has not escaped the Court's attention that respondent Peña has manifested a troubling history of praying for the inhibition of several members of this Court or for the re-raffle of the case to another Division, on the basis of groundless and unfounded accusations of partiality. x x x [T]he Court cannot just make short shift of his inclination x x x since he has not shown remorse or contrition for his ways.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas for Eric Lee.

Baterina Baterina Casals Lozada & Tiblani for Urban Bank Inc.

Fortun Narvasa & Salazar for Barlongan Bejasa & Manuel.

Angara Abello Concepcion Regala & Cruz for Gonzalez, Jr., de Leon and Lee.

D E C I S I O N

***PER CURIAM*:**

Factual Background

This administrative case originated when respondent Atty. Magdaleno M. Peña filed an Urgent Motion to Inhibit and to Resolve Respondent's Urgent Omnibus Motion dated 30 January

2003[1] (the subject Motion to Inhibit) in two consolidated petitions involving respondent that were pending before the Court.[2] This motion is directed against the then *ponente* of the consolidated petitions, Justice Antonio T. Carpio, and reads in part:

PRIVATE RESPONDENT MAGDALENO M. PEÑA, *pro se*, respectfully states:

1. Despite all the obstacles respondent has had to hurdle in his quest for justice against Urban Bank and its officials, he has remained steadfast in his belief that ultimately, he will be vindicated and the wrongdoers will get their just deserts [sic]. **What respondent is about to relate however has, with all due respect, shaken his faith in the highest Court of the land. If an anomaly as atrocious as this can happen even in the august halls of the Supreme Court, one can only wonder if there is still any hope for our justice system.**

2. Private respondent wishes to make clear that he is not making a sweeping accusation against all the members of this Honorable Court. He cannot however remain tight-lipped in the face of the overwhelming evidence that has come to his knowledge regarding the actuation of the *ponente* of this Honorable Division.

3. In the evening of 19 November 2002, private respondent received a call from the counsel for petitioners, Atty. Manuel R. Singson (through his cell phone number 09189137383) who very excitedly bragged that they had been able to secure an order from this Honorable Court suspending the redemption period and the consolidation of ownership over the Urban Bank properties sold during the execution sale. Private respondent was aghast because by them, more than two weeks had lapsed since the redemption period on the various properties had expired. At that juncture in fact, Certificates

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[1] *Rollo* (Vol. 1), pp. 16-24.

[2] *Urban Bank, Inc. v. Magdaleno M. Peña*, G.R. No. 145817 and *Delfin C. Gonzales, Jr., et al. v. Magdaleno M. Peña*, G.R. No. 145822. A separate petition entitled *Magdaleno M. Peña v. Urban Bank, Inc., Teodoro Borlongan, Delfin C. Gonzalez, Jr., Benjamin L. de Leon, P. Siervo H. Dizon, Eric L. Lee, Ben T. Lim, Jr., Corazon Bejasa, and Arturo Manuel, Jr.*, and docketed as G.R. No. 162562, was later filed and consolidated with the two earlier petitions. (See *Urban Bank v. Peña*, G.R. Nos. 145817, 145822, 162562, 19 October 2011)

of Final Sale had already been issued to the purchasers of the properties. The only step that had to be accomplished was the ministerial act of issuance of new titles in favor of the purchasers.

4. Private respondent composed himself and tried to recall if there was any pending incident with this Honorable Court regarding the suspension of the redemption period but he could not remember any. **In an effort to hide his discomfort, respondent teased Atty. Singson about bribing the *ponente* to get such an order**. Much to his surprise, Atty. Singson did not even bother to deny and in fact explained that they obviously had to exert extra effort because they could not afford to lose the properties involved (consisting mainly of almost all the units in the Urban Bank Plaza in Makati City) as it might again cause the bank (now Export Industry Bank) to close down.

5. Since private respondent himself had not received a copy of the order that Atty. Singson was talking about, he asked Atty. Singson to fax him the "advance" copy that they had received. The faxed "advance" copy that Atty. Singson provided him bore the fax number and name of Atty. Singson's law office. A copy thereof is hereto attached as Annex "A".

6. Private respondent could not believe what he read. It appeared that a supposed Motion for Clarification was filed by petitioners through Atty. Singson dated 6 August 2002, but he was never furnished a copy thereof. He asked a messenger to immediately secure a copy of the motion and thereafter confirmed that he was not furnished a copy. His supposed copy as indicated in the last page of the motion was sent to the Abello Concepcion Regala and Cruz (ACCRA) Law Offices. ACCRA, however, was never respondent's counsel and was in fact the counsel of some of the petitioners. Respondent's copy, in other words, was sent to his opponents.

7. The Motion for Clarification was thus resolved without even giving respondent an opportunity to comment on the same. In contrast, respondent's Motion for Reconsideration of the Resolution dated 19 November 2001 had been pending for almost a year and yet petitioners' motions for extension to file comment thereon [were] being granted left and right.

8. In view of these circumstances, private respondent filed on 10 December 2002, an Urgent Omnibus Motion (to Expunge Motion

for Clarification and Recall of the 13 November 2002 Resolution). He filed a Supplement to the said motion on 20 December 2002.

9. While private respondent was waiting for petitioners to respond to his motion, he received sometime last week two documents that confirmed his worst fears. The two documents indicate that this Honorable Court has not actually granted petitioners' Motion for Clarification. They indicate that **the supposed 13 November 2002 Resolution of this Honorable Court which Atty. Singson had bragged about WAS A FALSIFIED DOCUMENT!**

10. What private respondent anonymously received were **two copies of the official Agenda of the First Division of this Honorable Court for 13 November 2002**, the date when the questioned Resolution was supposedly issued. In both copies (apparently secured from the office of two different members of the Division, one of which is the copy of the *ponente* himself), **it is clearly indicated that the members of the Division had agreed that petitioners' Motion for Clarification and Urgent Motion to Resolve were merely NOTED and NOT GRANTED contrary to what was stated in the 13 November 2002 Resolution**. This makes the 13 November 2002 Resolution (at least the version that was released to the parties) a **falsified document** because it makes it appear that **a Resolution was issued by the First Division granting petitioners' Motion for Clarification when in fact no such Resolution exists**. **The real Resolution arrived at by the First Division which can be gleaned from the Agenda merely NOTED said motion**. Copies of the two Agenda are hereto attached as Annexes "B" and "C".

11. At this point, private respondent could not help but conclude that this anomaly was confirmatory of what Atty. Singson was bragging to him about. The clear and undeniable fact is **the Honorable members of this Division agreed that petitioners' Motion for Clarification would only be NOTED but the *ponente* responsible for the 13 November 2002 Resolution misrepresented that the same was GRANTED.**

12. Respondent is not just speculating here. **He is CERTAIN that the *ponente* has a special interest in this case**. Recently, he also found out that the *ponente* made a special request to bring this case along with him when he transferred from the Third Division to the First Division. Respondent has a copy of the Resolution of this Honorable Court granting such request (hereto attached as Annex "D"). Indeed, this circumstance, considered with all the foregoing

circumstance, ineluctably demonstrates that a major anomaly has occurred here.

13. In view of these, private respondent is compelled to move for the inhibition of the ponente from this case. This matter should be thoroughly investigated and respondent is now carefully considering his legal options for redress. It has taken him seven years to seek vindication of his rights against petitioners, he is not about to relent at this point. In the meantime, he can longer expect a fair and impartial resolution of this case if the ponente does not inhibit himself.

14. This Honorable Court has time and again emphasized the importance of impartiality and the appearance of impartiality on the part of judges and justices. The ponente will do well to heed such pronouncements.

15. Finally, it is has now become incumbent upon this Honorable Court to clarify its real position on the 19 November 2001 Resolution. It is most respectfully submitted that in order to obviate any further confusion on the matter, respondent's Urgent Omnibus Motion dated 09 December 2002 (as well as the Supplement dated 19 November 2002) should be resolved and this Honorable Court should confirm that the stay order contained in the 19 November 2001 Resolution does not cover properties already sold on execution. xxx (Emphasis supplied; citations omitted.)

In support of his claims to inhibit the *ponente*, Atty. Peña attached to the subject Motion to Inhibit **two copies of the official Agenda for 13 November 2002 of the First Division of this Court**, which he claimed to have anonymously received through the mail.[3] He also attached a copy of the Court's **internal Resolution** regarding the transfer of the case from the Third Division to the First Division, upon the request of Justice Carpio, to establish the latter's alleged special interest in the case.[4]

In response, the Court issued a resolution on 17 February 2003 to require Atty. Peña and Atty. Manuel R. Singson, counsel

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[3] Annexes "A", "B" and "C", of the Motion; *rollo* (Vol. 1), pp. 25-32.

[4] Annex "D", of the Motion; *id*. at 33.

of Urban Bank in the consolidated petitions, to appear before the Court on 03 March 2003 for an Executive Session.[5]

The reason for the required appearance of the two lawyers in the Executive Session is explained in the Court's Resolution dated 03 March 2003.[6] It states:

> The executive session started at 10:20 a.m. Chief Justice Hilario G. Davide, Jr. formally opened the executive session and then requested Associate Justice Jose C. Vitug to act as chair. Justice Vitug stated that **the executive session was called because the Court is perturbed by some statements made by respondent Atty. Magdaleno Peña involving strictly confidential matters which are purely internal to the Court and which the latter cites as grounds in his "Urgent Motion to Inhibit and to Resolve Respondent's Urgent Omnibus Motion."**
>
> Respondent/movant Atty. Magdaleno Peña and counsel for petitioner Atty. Manuel R. Singson attended the session.
>
> **The matters under inquiry were how respondent was able to obtain copies of the documents he used as annexes in his motion to inhibit, and whether the annexes are authentic.**
>
> The court also clarified that these matters were to be taken as entirely different and apart from the merits of the main case.
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> Justice Vitug called the attention of respondent to the three (3) annexes attached to the motion to inhibit, Annexes "B", "C" and

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[5] "The manifestation of the Office of the Chief Legal counsel of PDIC with motion with leave of court praying that the Export and Industry Bank with office address at 36th Floor, Export and Industry Bank Plaza, Chino Roces Avenue corner Gil Puyat Avenue, Makati City be furnished with all the pleadings and other court processes vice the PDIC for reasons mentioned therein is NOTED and GRANTED.

Before acting on respondent Magdalena Pena's 'Urgent Motion to Inhibit and to Resolve Respondent's Urgent Omnibus Motion' dated January 30, 2003, the Court Resolves to direct Atty. Magdaleno M. Peña and Atty. Manuel R. Singson to APPEAR before this Court on Monday, March 3, 2003, at 10:00 a.m.

Let this resolution be served personally on aforesaid lawyers, if feasible." (SC Resolution dated 17 February 2003; *rollo* [Vol. 1], pp. 34-35)

[6] SC Resolution dated 03 March 2003; *id.,* pp. 38-43.

"D", **questioned how the latter was able to secure copies of such documents which are confidential to the Court** and for the sole use of the Office of the Clerk of Court, First Division and the Justices concerned.

Annex "B" is alleged to be a photocopy of the supplemental agenda of the First Division for November 13, 2002 (pages 61-62), with an entry in handwriting reading "10 AC" on the left side and what appear to be marginal notes on the right side of both pages. Annex "C" is alleged to be a photocopy of the same supplemental agenda of the First Division for November 13, 2002, with marginal notes on the right side of pages 61-62. Annex "D" appears to be a photocopy of the resolution dated September 4, 2002 of the Third Division transferring the instant case to the First Division (an internal resolution).

Atty. Peña was made to understand that all his statements taken during this executive session were deemed under oath. Atty. Peña acceded thereto.

Atty. Peña was asked whether he knows any personnel of the Court who could possibly be the source. Atty. Peña replied in the negative and added that he obtained those documents contained in the annexes through ordinary mail addressed at his residence in Pulupandan, Negros Occidental, sometime in the second or third week of January 2003; but failed to give the exact date of his receipt. He said Annexes "B" and "C" were contained in one envelope while Annex "D" was mailed in a separate envelope. He did not bring the envelopes but promised the Court he would do his best to locate them. On questions by the Chief Justice, Atty. Peña admitted that the envelopes may no longer be found. He was unable to respond to the observation of the Chief Justice that the Court would be in no position to know whether the envelopes he would later produce would be the same envelopes he allegedly received. Atty. Peña further admitted that his office did not stamp "Received" on the envelopes and the contents thereof; neither did he have them recorded in a log book.

When asked by the Chief Justice why he relied on those annexes as grounds for his motion to inhibit when the same were coursed only through ordinary mail under unusual circumstances and that respondent did not even bother to take note of the postal marks nor

record the same in a log book, **Atty. Peña answered that he was 100% certain that those documents are authentic and he assumed that they came from Manila because the Supreme Court is in Manila**.

At this juncture, Atty. Peña was reminded that since he assured the authenticity of Annexes "B", "C" and "D", he should be willing to accept all the consequences if it turns out that there are no such copies in the Supreme Court or if said annexes turn out to be forged. **Atty. Peña manifested that he was willing to accept the consequences**.

When further asked by the Court whether he had seen the original that made him conclude that those photocopies are authentic, he replied in the negative, but **he believed that they are official documents of the Court inasmuch as he also received a copy of another resolution issued by the Court when the same was faxed to him by Atty. Singson, counsel for petitioner**.

Atty. Peña expressed his disappointment upon receiving the resolution because he was not even furnished with a copy of petitioner's motion for clarification, which was resolved. He found out that his copy was addressed to Abello Concepcion Regala and Cruz Law Offices, which was never respondent's counsel and was in fact the counsel of some of the petitioners.

He also expressed misgivings on the fact that the motion for clarification was acted upon even without comment from him, and **he admitted that under said circumstances, he made imputation of bribery as a joke.**

As to the statement of the Chief Justice making it of record that Justice Carpio and Justice Azcuna denied that Annex "B" is their copy of pp. 61 and 62 of the agenda, Justice Carpio also said that per verification, Annex "B" is not Justice Santiago's copy. Thus, Justice Carpio added that Annex "B" does not belong to any of the Justices of the First Division. **It was also pointed out that each of the Justices have their respective copies of the agenda and make their own notations thereon. The official actions of the Court are contained in the duly approved minutes and resolutions of the Court**.

Meanwhile, Justice Vitug called the attention of both Atty. Peña and Atty. Singson to paragraphs 3 and 4 of respondent's "Urgent Motion to Inhibit and to Resolve Respondent's Urgent Omnibus

Motion, which contain the following allegations: "(Atty. Singson) very excitedly bragged that they had been able to secure an order from this Honorable Court suspending the redemption period and the consolidation of ownership over the Urban Bank properties sold during the execution sale. Private respondent was aghast because by then, more than two weeks had lapsed since the redemption period on the various properties had expired. In an effort to hide his discomfort, respondent (Atty. Peña) teased Atty. Singson about bribing the *ponente* to get such an order. Much to his surprise, Atty. Singson did not even bother to deny and in fact explained that they obviously had to exert extra effort because they could not afford to lose the properties involved."

For his part, Atty. Singson admitted that he faxed a copy of the resolution dated November 13, 2002 to Atty. Peña and expressed his belief that there was nothing wrong with it, as the resolution was officially released and received by his office. He explained that his staff merely copied the parties in the resolution of February 13, 2002 when the motion for clarification was prepared. Hence, the respondent was inadvertently not sent a copy.

Atty. Singson further denied the allegations made in paragraphs 3 and 4 of the motion to inhibit, reasoning that all he said was about the suspension of the redemption period which was the subject of the motion for clarification. Atty. Singson branded as false the allegation of Atty. Peña that he, Atty. Singson, resorted to bribery in order that the suspension of the redemption period would be granted.

On questions by the Chief Justice, Atty. Peña admitted that he was only joking to Atty. Singson when on the cellular phone he intimated that Justice Carpio could have been bribed because he has a new Mercedes Benz. When pressed many times to answer categorically whether Atty. Singson told him that Justice Carpio was bribed, Atty. Peña could not make any candid or forthright answer. He was evasive.

After further deliberation whereby Atty. Peña consistently replied that his only source of the documents in the annexes is the regular mail, the Court Resolved to require Atty. Magdaleno Peña within fifteen (15) days from today to ***SHOW CAUSE*** **why he should not be held in contempt and be subjected to disciplinary action as**

a lawyer if he will not be able to satisfactorily explain to Court why he made gratuitous allegations and imputations against the Court and some of its members that tend to cast doubt or aspersion on their integrity.

Atty. Manuel Singson was also required to submit within fifteen (15) days from today his response to the allegations of Atty. Peña, particularly those in paragraphs 3, 4 and 6 of respondent's motion to inhibit.

The Court excused Attys. Peña and Singson from the executive session at 11:35 a.m. and resumed its regular session on the agenda.

In connection with the pleadings filed in these cases, the Court Resolves to ***GRANT*** the motion by counsel for petitioner praying that intervenor-movant Unimega Properties' Holdings Corp. be directed to furnish aforesaid counsel with a copy of the motion for reconsideration and intervention and that they be granted an additional period of ten (10) days within which to file comment thereon and require said intervenor-movant to ***SUBMIT*** proof of such service within five (5) days from notice.

The manifestation and comment of petitioners in G.R. No. 145882, Benjamin de Leon, *et al.*, on the motion for reconsideration with intervention by Unimega Property Holdings Corp. is ***NOTED***. (Emphasis supplied)

Atty. Peña duly submitted his Compliance with the Court's Order, where he stated that:[7]

PRIVATE RESPONDENT MAGDALENO M. PEÑA, *pro se*, respectfully submits the following explanation in compliance with the Resolution of this Honorable Court dated 3 March 2003:

1. This Honorable Court in its 3 March 2003 Resolution required respondent to show cause why he should not be held in contempt and be subjected to disciplinary action as a result of the allegations he made in his "Urgent Motion to Inhibit and to Resolve Respondent's Urgent Omnibus Motion" dated 30 January 2003. As this Honorable Court stated during the 3 March 2003 hearing, the members of the Court were "perturbed" by some statements respondent made in the motion.

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[7] Respondent Peña's Compliance dated 03 April 2003; *rollo* (G.R. No. 145817), Vol. 2, pp. 1333-1340.

2. At the outset, respondent wishes to apologize for the distress his statements may have caused the members of this Honorable Court. While such distress may have been the unavoidable consequence of his motion to inhibit the ponente, it was certainly not his intended result.

3. In the course of the discussion during the 3 March 2003 hearing, it appeared that this Honorable Court was most concerned with how respondent was able to secure Annexes "B" and "C" of his motion (referring to the two copies of the Supplemental Agenda of the First Division for 13 November 2002) and why respondent used those documents as basis for his Urgent Motion to Inhibit.

4. Respondent had explained that he received the two annexes by ordinary mail at his residence in Brgy. Ubay, Pulupandan, Negros Occidental sometime during the second week of January. The sender of the document was unknown to respondent because there was no return address. Despite efforts to locate the envelope in which these documents came, he was unable to do so.

5. Respondent has no record keeper or secretary at his residence. Since he is often in Manila on business, it is usually the househelp who gets to receive the mail. While he had given instructions to be very careful in the handling of documents which arrive by registered mail, **the envelopes for Annexes "A" and "B" may have been misplaced or disposed by the househelp because it did not bear the stamp "registered mail."**

6. When respondent read the documents, he had absolutely no reason to doubt their authenticity. For why would anyone bother or go to the extent of manufacturing documents for the benefit of someone who does not even know him? The documents contained a detailed list of the incidents deliberated by this Honorable Court on 13 November 2002. Definitely, **not just anyone could have access to such information**. Moreover, respondent subsequently received another mail from apparently the same sender, this time containing a pink copy of this Honorable Court's 4 September 2002 Resolution (Annex "D", Urgent Motion to Inhibit) transferring this case from the Third Division to the First Division. **The receipt of this last document somehow confirmed to respondent that whoever sent him the copies of the Supplemental Agenda really had access to the records of this Honorable Court**.

7. Respondent wishes to reiterate that the main basis of his motion to inhibit was the information relayed to him by Atty. Singson during their telephone conversation on 19 November 2002. As stated in respondent's Urgent Motion to Inhibit, while Atty. Singson did not categorically claim that they had bribed the ponente to secure the 13 November 2002 resolution, **however, he made no denial when respondent, in order to obtain information, half-seriously remarked that this was the reason why the *ponente* had a brand new car**. Atty. Singson retorted that obviously, they had to take extra-ordinary measures to prevent the consolidation of ownership of the properties sold as the bank may again close down. Indeed, one would normally be indignant upon being accused of bribery but Atty. Singson even chuckled and instead justified their "extra-ordinary" efforts.

8. Respondent very well knew that mere suspicion was not enough. An implied admission of bribery on the part of Atty. Singson, sans evidence, may not have been sufficient basis for a motion to inhibit. However, respondent did not have to look far for evidence. Atty. Singson in not denying the allegation of bribery is considered an admission by silence, under Section 32 of Rule 130 of the Rules of Court. Further, Atty. Singson faxed to him the "advance copy" of the 13 November 2002 Resolution. To respondent, that was solid evidence and in fact to this day, Atty. Singson fails to explain exactly when, from whom, and how he was able to secure said advance copy. The records of this Honorable Court disclosed that Atty. Singson's official copy of the 13 November 2002 Resolution was sent to him by registered mail only on 20 November 2002 (a copy of the daily mailing report is hereto attached as Annex "A"). Why then was he able to fax a copy to respondent on 19 November 2002 or a day before the resolution was released for mailing?

9. Despite all these, respondent hesitated to file a motion to inhibit. He only finally decided to proceed when he received the copies of the Supplemental Agenda. To emphasize, the Supplemental Agenda merely confirmed what Atty. Singson had earlier told him. Contrary to the apparent impression of this Honorable Court, respondent's motion is not primarily anchored on anonymously received documents but on the word of petitioner's counsel himself. The copies of the Supplemental Agenda are merely corroborative (albeit extremely convincing) evidence.

10. Indeed, any conscientious lawyer who comes into possession of the information relayed by Atty. Singson and the copies of the Supplemental Agenda would bring them to the attention of this Honorable Court. In doing so, respondent was compelled by a sense of duty to inform this Honorable Court of any apparent irregularity that has come to his knowledge. **It was not done out of spite but a deep sense of respect.**

11. In all honesty, respondent had been advised by well-meaning friends to publicize the incident and take legal action against the parties involved. Instead, respondent decided that a motion to inhibit before this Honorable Court was the most appropriate channel to ventilate his concerns. Respondent is not out to cast aspersions on anybody, most especially members of this Honorable Court. He had to file the Urgent Motion to Inhibit because he sincerely believed, and still firmly believes, that he could not get impartial justice if the *ponente* did not recuse himself.

12. Respondent sincerely regrets that documents considered confidential by this Honorable Court leaked out and assures this Honorable Court that he had absolutely no hand in securing them. Respondent just found himself in a position where he had to come out with those documents because his opponent was crude enough to brag that their "extra-ordinary" efforts to secure a stay order from a certain ponente had bore fruit. Respondent has devoted at least seven years of his life to this cause. He almost lost his life and was nearly driven to penury fighting this battle. Certainly, he cannot be expected to simply raise his hands in surrender.

13. At this point, respondent is just relieved that it was confirmed during the 3 March 2003 hearing that Annex "C" of his Urgent Motion to Inhibit is a faithful reproduction/"replica" of the relevant portions of the Supplemental Agenda (TSN dated 3 March 2003, pp. 72-73 and 81) on record with the First Division. With this, respondent rests his case.[8] (Emphasis supplied)

On the other hand, Atty. Singson, as part of his Compliance and Affidavit dated 28 July 2003,[9] categorically denied having

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[8] *Id.* at 1333-1338.

[9] *Rollo* (Vol. 1), pp. 74-84.

bragged to Atty. Peña and that he did not employ "extra efforts" to obtain a favorable suspension order from the Court.[10]

After considering and evaluating the submissions made by the two lawyers, the Court ordered that a formal investigation be undertaken by the Office of the Bar Confidant (OBC) on the actions of Atty. Peña.[11] The Court's Resolution dated 28 April 2003 in the consolidated petitions, which is the subject matter of this separate administrative case, reads:

> On January 30, 2003, respondent Magdaleno M. Peña filed an Urgent Motion to Inhibit the *ponente* of the instant case. Respondent Peña attached to his Urgent Motion Annex "B", a copy of pp. 61-62 of the First Division's Agenda of 13 November 2002. Respondent Peña claimed that Annex "B" bears the recommended actions, in handwritten notations, of a member of the Court (First Division) on Item No. 175 of the Agenda. Item No. 175(f) refers to the Urgent Motion for Clarification filed by petitioner on 7 August 2002. The purported handwritten notation on Annex "B" for Item No. 175 (f) is "N", or to simply note the motion. However, the Court issued a Resolution on 13 November 2002 granting the Urgent Motion for Clarification. In his Urgent Motion to Inhibit, **respondent Peña claimed that the Resolution of 13 November 2002 was forged because the recommended and approved action of the Court was to simply note, and not to approve, the Urgent Motion for Clarification**.
>
> Thus, respondent Peña stated in his Urgent motion to Inhibit:
>
> > "9. While private respondent was waiting for petitioners to respond to his motion, he received sometime last week two documents that confirmed his worst fears. The two documents indicate that this Honorable Court had not actually granted petitioners' Motion for Clarification. They indicate that the supposed 13 November 2002 Resolution of this Honorable Court which Atty. Singson had bragged about WAS A FALSIFIED DOCUMENT!

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[10] Petitioner Urban Bank's Opposition (to Urgent Motion to Inhibit and to Resolve Respondent's Urgent Omnibus Motion) dated 28 February 2003; *rollo* (Vol. 1), pp. 119-131.

[11] SC Resolution dated 28 April 2003, at 4; *rollo* (Vol. 1), p. 54.

10. What private respondent anonymously received were two copies of the official Agenda of the First Division of this Honorable Court for 13 November 2002, the date when the questioned Resolution was supposedly issued. In both copies (apparently secured from the office of two different members of the Division, one of which is the copy of the ponente himself), it is clearly indicated that the members of the Division had agreed that petitioners' Motion for Clarification and Urgent Motion to Resolve were merely ***NOTED*** and ***NOT GRANTED*** contrary to what was stated in the 13 November 2002 Resolution. This makes the 13 November 2002 Resolution (at least the version that was released to the parties) a falsified document because it makes it appear that a Resolution was issued by the First Division granting petitioners' Motion for Clarification when in fact no such Resolution exists. The real Resolution arrived at by the First Division which can be gleaned from the Agenda merely ***NOTED*** said motion. Copies of the two Agenda are hereto attached as Annexes "B" and "C".

11. At this point, private respondent could not help but conclude that this anomaly was confirmatory of what Atty. Singson was bragging about. The clear and undeniable fact is the Honorable members of this Division agreed that petitioner's Motion for Clarification would only be ***NOTED*** but the ponente responsible for the 13 November 2002 Resolution misrepresented that the same was ***GRANTED***."

On 3 March 2003, the Court called respondent Peña and Atty. Manuel Singson, counsel for petitioner Urban Bank, to a hearing to determine, among others, the authenticity of the annexes to respondent Peña's Urgent Motion to Inhibit, including Annex "B". In the hearing, respondent Peña affirmed the authenticity of the annexes and even manifested that he was willing to accept the consequences if the annexes, including Annex "B", turned out to be forgeries.

In the same hearing, the members of the Court (First Division) informed respondent Peña that the handwritten notations on Annex "B" did not belong to any of them. In particular, Justice Carpio, to whom the case was assigned and the apparent object of respondent Peña's Urgent Motion to Inhibit as the "ponente responsible for the

13 November 2002 Resolution," stated that his recommended action on Item No. 175(f) was "a & f, see RES," meaning on Items 175(a) and (f), see proposed resolution. **In short, the handwritten notations on Annex "B", purportedly belonging to a member of the Court, were forgeries**. For ready reference, attached as Annexes "1" and "2" to this Resolution are a copy of pp. 61-62 of Justice Carpio's 13 November 2002 Agenda, and a copy of Justice Carpio's recommended actions for the entire 13 November 2002 Agenda, respectively.

In the same hearing, the Court directed respondent Peña to show cause why he should not be held in contempt and subjected to disciplinary action for submitting the annexes to his Motion to Inhibit. **In his Compliance dated 3 April 2003, respondent Peña did not give any explanation as to why he attached "B" to his Urgent Motion to Inhibit**. In fact, in his Compliance, respondent Peña did not mention at all Annex "B". Respondent Peña, however, stated that he "just found himself in a position where he had to come out with those documents because his opponent was crude enough to brag that their 'extra-ordinary' efforts to secure a stay order from a certain ponente had bore fruit." In petitioner's Opposition to the Urgent Motion to Inhibit, Atty. Singson stated that he "categorically denied that he had bragged to PEÑA about the Resolution of this Honorable Court dated November 13, 2002 and that extra efforts have been exerted to obtain the same."

IN VIEW OF THE FOREGOING, the Court hereby **DIRECTS** the Office of the Bar Confidant **to conduct a formal investigation of respondent Atty. Magdaleno M. Peña for submitting to the Court a falsified document, Annex "B", allegedly forming part of the confidential records of a member of the Court, in support of his Motion to Inhibit that same member of the Court**. The Office of the Bar Confidant is directed to submit its findings, report and recommendation within 90 days from receipt of this Resolution.[12] (Emphasis supplied.)

During the proceedings with the OBC, Attys. Peña[13] and Singson[14] duly submitted their respective Affidavits.

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[12] *Rollo* (Vol. 1), at 51-55.

[13] Respondent Peña's Affidavit dated 27 June 2003; *id*., pp. 68-71.

[14] Atty. Singson's Affidavit dated 28 July 2003; *id*., pp. 75-84.

While the administrative case was still pending, some of the other parties in the consolidated petitions – specifically, Benjamin L. de Leon, Delfin Gonzalez, Jr., and Eric L. Lee, (the De Leon Group), the petitioners in G.R. No. 145822 – manifested before the Court other malicious imputations allegedly made by Atty. Peña during the course of the proceedings in the said petitions. They moved that these be considered as sufficient and additional basis to cite him for contempt of court.[15] The Court likewise referred this matter to the OBC.[16]

In reply to the accusations leveled against him by the De Leon Group, respondent Peña denied having used abrasive, insulting and intemperate language in his pleadings; and argued that his statements therein were privileged and could not be used as a basis for liability.[17] He also accused Urban Bank and its directors and officers of violating the rule against forum shopping by dividing themselves into separate groups and filing three Petitions (G.R. Nos. 145817, 145818 and 145822) against the same Decision of the Court of Appeals with the same causes of actions and prayers for relief.[18]

The OBC thereafter conducted a hearing, wherein respondent Peña and Atty. Singson appeared and testified on matters that were the subject of the administrative cases.[19] Several hearings were also held with respect to the additional contempt charges raised by the De Leon Group. Thereafter, respondent Peña filed his Memorandum.[20]

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[15] Petitioner De Leon Group's Manifestation and Motion dated 14 May 2003; *id.*, pp. 174-182.

[16] SC Resolution dated 09 June 2003; *id.*, pp. 183-184; *see also* SC Resolution dated 19 January 2005, which allowed the OBC to proceed with the investigation of the contempt charge against respondent Peña; *id.*, pp. 325-326.

[17] Respondent Peña's Comment dated 22 August 2003; *id.*, pp. 196-220.

[18] *Id.*

[19] Office of the Bar Confidant TSN dated 10 August 2006; *rollo* (Vol. 3), pp. 714-774.

[20] Respondent Peña's Memorandum for the Respondent dated 03 November 2006; *rollo* (Vol. 2), pp. 363-379.

The OBC submitted to the Court its Report on the instant administrative case and made recommendations on the matter (the OBC Report). As a matter of policy, this Court does not quote at length, nor even disclose the dispositive recommendation of the OBC in administrative investigations of members of the bar. However, **Atty. Peña, despite the fact that the OBC Report is confidential and internal, has obtained, without authority, a copy thereof** and has formally claimed that this Court should apply to him the non-penalty of an admonition against him, as recommended by the OBC.[21]

Furthermore, he has already voiced suspicion that the present *ponente* of the consolidated petitions[22] from which this separate administrative case arose, Justice Maria Lourdes P. A. Sereno, would exclude or suppress material evidence found in the OBC report from her *ponencia* in the parent case in alleged gratitude to the alleged help that Justice Carpio had given her by allegedly recommending her to the Supreme Court.[23] The specific allegation on the supposed loyalty by one Member of the Court to another, without any extrinsic factual basis to support it, is too undignified to warrant a response in this Decision. To allay his fears that Justice Sereno would participate in any undue attempt to suppress material evidence, the Court shall summarize and quote from the OBC Report the four charges of professional misconduct in connection with the instant administrative case.

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[21] Respondent Peña's Motion to Vacate/Recall dated 20 February 2010; *rollo* (G. R. No. 145822), Vol. 2, pp. 3286-3293.

[22] The three consolidated petitions in the main case include: (1) *Urban Bank, Inc. v. Magdaleno M. Peña*, G.R. No. 145817; (2) *Delfin C. Gonzales, Jr., et al. v. Magdaleno M. Peña*, G.R. No. 145822; and (3) *Magdaleno M. Peña v. Urban Bank, Inc., et al.*, G.R. No. 162562.

[23] "… In fact, with all due respect, I believe the Honorable Justice Sereno will attempt to protect the Honorable Justice Carpio by perhaps separating the Admin Case No. 6332, thus separating the findings of the OBC regarding the Agendas, and thus protecting the Honorable Justice Carpio."(Respondent Peña's Letter dated 16 September 2011, p. 6, which is Annex "A" of his *Supplement to the Very Urgent Motion for Re-Raffle* dated 20 September 2011)

On the **first charge** of gratuitous imputations against members of the Court, the OBC found that respondent Peña gave the impression that some anomaly or irregularity was committed by the Court's First Division in issuing the questioned 13 November 2002 Resolution. According to respondent, Justice Carpio, the then *ponente* of the consolidated petitions, purportedly changed the action of the First Division from simply "NOTING" the motion for clarification filed by Urban Bank to "GRANTING" it altogether. The OBC opines that although respondent Peña may appear to have been passionate in the subject Motion to Inhibit, the language he used is not to be considered as malicious imputations but mere expressions of concern based on what he discovered from the internal documents of the Court that he had secured.[24] Moreover, the OBC ruled that respondent did not make a direct accusation of bribery against Justice Carpio, and the former's remark about the latter having received a new Mercedes Benz was not made in the presence of the court, but was uttered in a private mobile phone conversation between him and Atty. Singson.[25] Respondent's profound apologies to the Court were also taken cognizance by the OBC, which suggests

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[24] "While respondent may appear to have been passionate and agitated in his language in his motion, the same may not be considered as malicious imputations as he is merely expressing concern of what he has discovered based on the documents he has obtained apparently from an anonymous sender and based on his own discoveries." (OBC Report dated11 December 2007, p. 50; *rollo* [Vol. 4], p. 1706)

[25] "Nevertheless, it is worthy [to note] that in respondent's motion to inhibit, *etc*., the latter did not make a direct accusation of bribery against the *ponente* but merely narrated events, which in respondent's view, warranted the inhibition of the said ponente. The statements made by respondent in his conversation with Atty. Singson, particularly his remark about Justice Carpio having a new Mercedez Benz was not made in the presence of or so near a court nor in any public place or in a published material as to create any impression in the mind of the public or malign the integrity of any member of the Court. **Rather it was part of a private conversation between respondent and Atty. Singson only**." (OBC Report dated 11 December 2007, p. 51; *rollo* [Vol. 4], p. 1707)

the imposition of a simple warning against any such future conduct.[26]

Further, the OBC recommended the dismissal of the **second charge** that respondent supposedly submitted falsified documents to this Court as annexes in the subject Motion to Inhibit, specifically Annex "B" which appears to be a photocopy of the agenda of the First Division on 13 November 2002 with some handwritten notes.[27] It reasoned that the submission of falsified documents partakes of the nature of a criminal act, where the required proof is guilt beyond reasonable doubt, but respondent Peña is not being charged with a criminal offense in the instant case. The OBC noted the statement of the Clerk of Court during the 03 March 2003 Executive Session that Annex "B" does not exist in the records.[28]

On the **third charge** for contempt against respondent filed by the De Leon Group and Atty. Rogelio Vinluan, their counsel, the OBC likewise suggests the dismissal of the same. To recall, respondent submitted pleadings in the consolidated petitions where he allegedly charged Atty. Vinluan of having used his influence over Justice Arturo B. Buena to gain a favorable resolution to

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[26] "In the highest interest of justice, let the apology and the begging of herein respondent touches the Court's indulgence and compassion and accord respondent the benefit of the doubt on his sincerity. However, let this benevolence of the Court serve, as his first warning, being an officer of the court, to be more cautious, restraint and circumspect with his dealing in the future with the Members of the Court and the Supreme Court." (OBC Report dated 11 December 2007, p. 52; *rollo* [Vol. 4], p. 1708)

[27] OBC Report dated 11 December 2007, p. 53; *rollo* (Vol. 4), p. 1709.

[28] "During the Executive Session on 3 March 2003, Hon. Justice Antonio T. Carpio categorically denied that Annex 'B' belong to him or any of the Members of the First Division. On the other hand, Hon. Justice Jose C. Vitug admitted that Annex 'C' might be his copy and the same is on the record of the case as confirmed by the Division Clerk of Court. **The Clerk of Court, however, averted that there is no such Annex 'B' in the records and the notation '10 AC' as appearing in Annex 'B' is not present in Annex 'C'**." (OBC Report dated 11 December 2007, p. 53; *id*., p. 1709)

the benefit of his clients.[29] The OBC suggests that respondent be acquitted of the charge of using abrasive and disrespectful language against Members of the Court and his fellow lawyers, but nevertheless recommends that respondent be advised to refrain from using unnecessary words or statements in the future.[30]

Finally, the OBC desisted from making a finding on the **fourth charge** of forum-shopping leveled by respondent Peña against Urban Bank and the individual bank directors. In his counter-suit, respondent accused the bank and its directors and officers of having violated the rule against forum-shopping by splitting into three distinct groups and filing three separate petitions to question the unfavorable decision of the Court of Appeals.[31] However, since not all the parties to the consolidated petitions participated in the hearings in the instant case, the OBC recommends that separate proceedings be conducted with respect to this counter-suit in order to afford Urban Bank and all of the concerned directors and officers, including their respective

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[29] "During the investigation Atty. Vinluan appears. He identifies the affidavit he executed on 16 May 2003, in support of the manifestation and motion of private petitioners. He enumerates several pleadings of respondent in related cases imputing that the uses his influence over Justice Buena to gain favorable resolution of the case. He vehemently denies that imputations. According to him this unfounded accusation tends to discredit his long-standing name and hard-earned reputation before the Supreme Court and the legal profession." (OBC Report dated 11 December 2007, p. 58; *id*., p. 1714)

[30] "The statements may not appear to be abrasive and disrespectful but it contains words that may offend the ego of the complainant, but prudence dictates that respondent as a lawyer, he must refrain from using unnecessary words and statements which may not be necessary in the resolution of the incidents raised therein." (OBC Report dated 11 December 2007, p. 59; *id.,* p. 1715)

[31] "Atty. Peña argues that petitioners and their counsel violated the rule against forum-shopping when they filed three separate petitions for certiorari questioning the decision of the Court of Appeals raising the same issues and reliefs before this Court." (OBC Report dated 11 December 2007, p. 60; *id*., p. 1716)

counsel, to defend themselves and present witnesses and/or evidence in support of their cause.[32]

Taking the foregoing in consideration, the OBC submitted the following recommendations for approval of this Court:

RECOMMENDATIONS:

WHEREFORE**,** in light of the foregoing premises, it is respectfully recommended the following:

A. On the charge of gratuitous allegations:

1. To DISMISS the charge on the ground that the statements in his Motion to Inhibit, *etc*., do not constitute malicious imputations as he was merely expressing his concern of what he has discovered based on the documents he has obtained. However, let this case serve as his FIRST WARNING, being an officer of the court, to be more cautious, restraint and circumspect with his dealings in the future with the Court and its Member.

2. To ADMONISH respondent for making such non-sense and unfounded joke against Honorable Justice Antonio T. Carpio the latter deserves due respect and courtesy from no less than the member of the bar. Likewise, Atty. Singson should also be ADVISED to be more cautious in his dealing with his opposing counsel to avoid misconception of facts.

B. On the charge of falsification:

1. To DISMISS the charge of submitting falsified documents on ground of lack of legal basis. A charge of submitting falsified documents partakes of the nature of criminal act under Art. 172 of the Revised penal Code, and the quantum of proof required to hold respondent guilty thereof is proof beyond reasonable doubt. This is to avoid conflicting findings in the criminal case. The administrative proceedings of the same act must await of the outcome in the criminal case of falsification of document.

C. On the contempt of court filed by private complainant:

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[32] "Petitioners and their counsel should be given an opportunity to aptly defend himself to produce witness/es and/or evidence relative thereto and to be heard by himself or by counsel." (OBC Report dated 11 December 2007, p. 61; *id*., p. 1717)

1. To DISMISS the charge considering that the statements cited by Atty. Peña in his pleadings previously filed in related cases, while it may appear to be offending on the part of the complainant, but the same do not categorically contain disrespectful, abusive and abrasive language or intemperate words that may tend to discredit the name of the complainant. Respondent merely narrated the facts based of his own knowledge and discoveries which, to him, warranted to be brought to the attention of the court for its information and consideration. He must be ADVISED however, to refrain from using unnecessary words and statements which may not be material in the resolution of the issued raised therein.

D. On the counter-charge of forum-shopping

1. To RE-DOCKET the counter-charge of forum shopping, as embodied in the Comment dated 22 August 2003 of Atty. Peña, as a separate administrative case against the petitioners and counsels in G.R. 145817, G.R. No. 145818 and G.R. No. 145822;

2. To FURNISH the petitioners and their counsel a copy of the said comment dated 22 August 2003 for their information.

3. To REQUIRE the petitioners and their counsel, SINGSON VALDEZ & ASSOCIATES, represented by ATTY. MANUEL R. SINGSON, ANGARA ABELLO CONCEPCION REALA & CRUZ represented by ATTY. ROGELIO A. VINLUAN, ATTY. STEPHEN GEORGE S. D. AQUINO and ATTY. HAZEL ROSE B. SEE to comment thereon within ten (10) days from receipt thereof.[33] (Emphasis supplied)

ISSUES

In these administrative matters, the salient issues for the Court's consideration are limited to the following:

(a) whether respondent Peña made gratuitous allegations and imputations against members of the Court;

(b) whether he can be held administratively liable for submitting allegedly "falsified documents" consisting of internal documents of the court;

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[33] OBC Report dated 11 December 2007, pp. 47-62; *id*., pp. 1703-1718.

(c) whether he can likewise be held administratively liable for the contempt charges leveled against him in the Manifestation and Motion filed by the De Leon Group; and

(d) whether Urban Bank and the individual bank directors and officers are guilty of forum shopping.

OUR RULING

A. First Charge: Malicious and Groundless Imputation of Bribery and Wrongdoing against a Member of the Court.

We do not adopt the recommendation of the OBC on this charge.

Respondent Peña is administratively liable for making gratuitous imputations of bribery and wrongdoing against a member of the Court, as seen in the text of the subject Motion to Inhibit, his statements during the 03 March 2003 Executive Session, and his unrelenting obstinacy in hurling effectively the same imputations in his subsequent pleadings. In moving for the inhibition of a Member of the Court in the manner he adopted, respondent Peña, as a lawyer, contravened the ethical standards of the legal profession.

As officers of the court, lawyers are duty-bound to observe and maintain the respect due to the courts and judicial officers.[34] They are to abstain from offensive or menacing language or behavior before the court[35] and must refrain from attributing to a judge motives that are not supported by the record or have no materiality to the case.[36]

While lawyers are entitled to present their case with vigor and courage, such enthusiasm does not justify the use of foul

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[34] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 11.

[35] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 11, Rule 11.03.

[36] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 11, Rule 11.04.

and abusive language.[37] Language abounds with countless possibilities for one to be emphatic but respectful, convincing but not derogatory, illuminating but not offensive.[38] A lawyer's language should be forceful but dignified, emphatic but respectful as befitting an advocate and in keeping with the dignity of the legal profession.[39]

In the subject Motion for Inhibition, respondent Peña insinuated that the then *ponente* of the case had been "bribed" by Atty. Singson, counsel of Urban Bank in the consolidated petitions, in light of the questioned 13 November 2002 Resolution, suspending the period of redemption of the levied properties pending appeal. The subject Motion to Inhibit reads in part:

> 4. Private respondent [Peña] composed himself and tried to recall if there was any pending incident with this Honorable Court regarding the suspension of the redemption period but he could not remember any. **In an effort to hide his discomfort, respondent teased Atty. Singson about bribing the ponente to get such an order.** Much to his surprise, Atty. Singson did not even bother to deny and in fact explained that they obviously had to exert extra effort because they could not afford to lose the properties involved (consisting mainly of almost all the units in the Urban Bank Plaza in Makati City) as it might cause the bank (now Export Industry Bank) to close down.[40] (Emphasis supplied.)

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[37] *Saberon v. Larong*, A.C. No. 6567, 16 April 2008, 551 SCRA 359, citing *Rubio v. Court of Appeals*, G.R. No. 84032, 29 August 1989, 177 SCRA 60, 63.

[38] *Id.*, citing *Torres v. Javier*, A.C. No. 5910, 21 September 2005, 470 SCRA 408, 421; *Nuñez v. Astorga*, A.C. No. 6131, 28 February 2005, 452 SCRA 353, 364, citing *Hueysuwan-Florido v. Florido*, 465 Phil. 1, 7 (2004); *Cruz v. Cabrera*, A.C. No. 5737, October 25, 2004, 441 SCRA 211, 219.

[39] *Ng v. Alar*, A.C. No. 7252, 22 November 2006, 507 SCRA 465, citing *Hueysuwan-Florido v. Florido*, A.C. No. 5624, 20 January 2004, 420 SCRA 132, 136-137.

[40] Respondent Peña's Urgent Motion to Inhibit and to Resolve Respondent's Urgent Omnibus Motion dated 30 January 2006, at 2-3; *rollo* (Vol. 1), pp. 17-18.

During the 03 March 2003 Executive Session by the First Division of this Court, respondent Peña explained that his reference to the bribe was merely a "joke" in the course of a telephone conversation between lawyers:

CHIEF JUSTICE DAVIDE:

Regarding that allegation made by Atty. Peña on [sic] when you made mention earlier of him saying about Justice Carpio?

ATTY. SINGSON:

Yes, Your Honor, he said "***kaya pala may bagong Mercedez*** [sic] ***si Carpio, eh***."

CHIEF JUSTICE:

He said to you that?

ATTY. SINGSON:

Yes, that was what he was referring to when he said about bribery.

xxx xxx xxx

ATTY. PEÑA:

First of all I would like to … everything that he said, he told me that he got, they got a stay order, **it is a stay order from the Supreme Court through Justice Carpio and then I gave that joke. That was just a joke really.** He got a new Me[r]cedez [sic] Benz, you see, he was the one who told me they got a stay order from the Supreme Court through Justice Carpio, that was what happened …

CHIEF JUSTICE:

You mean you made a joke?

ATTY. PEÑA:

You Honor?

CHIEF JUSTICE;

You made a joke after he told you supposedly that he got (interrupted)

ATTY. PEÑA:

He got a stay order from Justice Carpio.

CHIEF JUSTICE:

And you say that is the reason why he got a new Mercedez [sic] Benz, you made it as a joke?

ATTY. PEÑA:

Your Honor, that is a joke between lawyers.

CHIEF JUSTICE;

That is correct, you are making it as a joke?

ATTY. PEÑA:

Your Honor, I think, because how they got (interrupted)

CHIEF JUSTICE:

If it were a joke why did you allege in your motion that it was Atty. Singson who said that Justice Carpio was bribed or the ponente was bribed, is that also another joke?[41] (Emphasis supplied.)

Respondent Peña insinuated ill motives to the then *ponente* of the consolidated petitions with respect to the issuance of the 13 November 2003 Resolution. To respondent's mind and based on his interpretation of the two copies of the Agenda which he anonymously received, the First Division agreed only to simply note Urban Bank's Motion for Clarification. Nevertheless, the questioned Resolution, which Atty. Singson sent to him by facsimile, had instead granted the Motion. Hence, respondent Peña attributed the modification of the action of the First Division to simply "note" the Motion, one apparently unfavorable to respondent Peña, to Justice Carpio, who had supposedly received a Mercedes Benz for the supposedly altered resolution.

However, as pointed out by the Court in the Resolution dated 03 March 2003, each Justice has his own respective copy of

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[41] SC TSN dated 03 March 2002, at 55-58; *rollo* (Vol. 3), pp. 1052-1055.

the Agenda, where he can make his own handwritten notations on the action for each item and case, but "[t]he official actions of the Court are contained in the duly approved minutes and resolutions of the Court."[42] Hence, contrary to the insinuations made by respondent Peña, Justice Carpio had **not** altered the action of the First Division in granting Urban Bank's Motion for Clarification in the consolidated petitions, as in fact, this was the approved resolution agreed upon by the Justices then present. The *ponente* of the case had **not** recommended that the Motion for Clarification be simply noted, but in fact, had referred to a separate resolution, *i.e.*, "a) & f) – See RES.," disposing of the said item (F) including item (A), which is the Motion to Inhibit Associate Justice Artemio Panganiban. In addition to the official minutes of the 13 November 2002 Session,[43] Justice Carpio submitted for the record his written recommendation on the agenda item involving the consolidated petitions, to prove that this was his recommendation, and the minutes confirm the approval of this recommendation.[44]

The Court, through a unanimous action of the then Members of the First Division, had indeed adopted the recommended and proposed resolution of Justice Carpio, as the then *ponente*, and granted the Motion for Clarification filed by Urban Bank. It is completely wrong for respondent Peña to claim that the action had been issued without any sufficient basis or evidence on record, and hence was done so with partiality. A mere adverse ruling of the court is not adequate to immediately justify the imputation of such bias or prejudice as to warrant inhibition of a Member of this Court, absent any verifiable proof of specific misconduct. Suspicions or insinuations of bribery involving a member of this Court, in exchange for a favorable resolution, are grave accusations. They cannot be treated lightly or be "jokingly" alleged by parties, much less by counsel in pleadings or motions. These suspicions or insinuations strike

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[42] SC Resolution dated 03 March 2003, p. 3; *rollo* (Vol. 1), p. 40.

[43] Annex "1" of the SC Resolution dated 28 April 2003; id., pp. 8-9.

[44] Annex "2" of the SC Resolution dated 28 April 2003; id., pp. 10-15.

not only at the stature or reputation of the individual members of the Court, but at the integrity of its decisions as well.[45]

Respondent Peña attempts to draw a connection and direct correlation between Urban Bank's failure to furnish him a copy of its Motion for Clarification, purportedly denying him an opportunity to refute the allegations therein, **and** the supposedly corrupt means by which the unfavorable Resolution was thereby obtained. This is completely untenable and irresponsible. Had he simply confined the issue to an alleged deprivation of due process, then there would hardly be any controversy regarding his conduct as a lawyer and an officer of the Court. The purported lack of notice of the Motion for Clarification filed the bank in the consolidated petitions could have been raised as a valid concern for judicial resolution. Instead, respondent Peña insinuates ill motives on the part of Members of the Court imputing the failure of a private party to give him due notice to be, in effect, a failure of the Court. This merits the exercise of the Court's disciplinary powers over him as a member of the Bar. To allege that bribery has been committed by members of the judiciary, a complainant — especially, a lawyer — must go beyond mere suspicions, speculations, insinuations or even the plain silence of an opposing counsel.

Based on the two lawyers' disclosures during the 03 March 2003 Executive Session, respondent Peña appears to have been caught by surprise by his telephone conversation with Atty. Singson, who informed him of the suspension of the redemption period by the Court and its issuance of a Stay Order over the execution pending appeal. The astonishment of respondent would seem natural, since he was caught unawares of Urban Bank's Motion for Clarification, which was the subject matter of the 13 November 2002 Resolution. His supposed joke, which he

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[45] "Mere suspicion that a judge is partial is not enough. There should be clear and convincing evidence to prove the charge of bias and partiality. Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to the palpable error that may be inferred from the decision or order itself." (*Sinnott v. Barte*, A. M. No. RTJ-99-1453, 14 December 2001, 423 Phil. 522)

himself initiated and made without provocation, was disdainful all the same, as it suggested that the bank had obtained the Order from this Court in exchange for an expensive luxury automobile.

Atty. Peña cannot be excused for uttering snide and accusatory remarks at the expense of the reputation and integrity of members of this Court, and for using those unsubstantiated claims as basis for the subject Motion for Inhibition. Instead of investigating the veracity of Atty. Singson's revelations, respondent read too much into the declarations and the purported silence of opposing counsel towards his joke. Respondent made unfounded imputations of impropriety to a specific Member of the Court. Such conduct does not befit a member of the legal profession and falls utterly short of giving respect to the Court and upholding its dignity.

Respondent Peña's defense that the allegation of bribery and collusion between Justice Carpio, Atty. Singson and the petitioners was a "joke" fails to convince, as in fact, he was deadly serious about the charges he raised. Respondent insisted that his alleged insinuation of ill motives was just a "joke" between two lawyers engaged in a private telephone conversation regarding the case. Although the courts and judicial officers are entitled to due respect, they are not immune to criticisms nor are they beyond the subject matter of free speech, especially in the context of a private conversation between two individuals. In this case, though, respondent himself was responsible for moving the private matter into the realm of public knowledge by citing that same "joke" in his own Motion for Inhibition filed before this Court. In general, courts will not act as overly sensitive censors of all private conversations of lawyers at all times, just to ensure obedience to the duty to afford proper respect and deference to the former. Nevertheless, this Court will not shy away from exercising its disciplinary powers whenever persons who impute bribery to judicial officers and bring such imputations themselves to the court's attention through their own pleadings or motions.

Contrary to his assertion that the accusation of bribery was only made in jest, respondent has never backed down since he first made the accusation in January 2003 and continually raises as an issue in the consolidated petitions how Justice Carpio purportedly changed the agreed action of the First Division when he issued the questioned 13 November 2002 Resolution, even after the Court in the 03 March 2003 Executive Session had precisely explained to him that no impropriety had attended the issuance of the said Resolution. In the Motions to Inhibit dated 21 January 2010[46] and 22 August 2011,[47] he repeatedly insists on the "anomalous/unusual circumstances" surrounding the issuance by Justice Carpio of the same questioned Resolution, which was allegedly contrary to the handwritten notes made in the copies of the Agenda that he received. Respondent Peña most recently capitalized on the purported alteration or falsification supposedly committed by Justice Carpio by filing an ethics complaint against the latter, where he alleged that:

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[46] "2. With all due respect, it is important to note that one of the matters taken up or issues in A.C. No. 6332 was the issuance, by Justice Antonio T. Carpio, of a Resolution dated 13 November 2002 and the anomalous/unusual circumstances regarding the same for it being contrary to the Agenda of November 2002 of the First Division of this Honorable Court. Further, this incident was the subject of an executive hearing wherein the First Division interrogated respondent/petitioner Peña as to who in the Supreme Court supplied the questioned Agenda to him. During this executive hearing, the Honorable Justice Carpio was confrontational and hostile to respondent/petitioner Peña for exposing the questioned Agenda and raising issues therein." (Respondent Peña's Motion to Inhibit dated 20 January 2010, p. 2)

[47] "3. One of the matters taken up and/or issues in A.C. No. 6332 was the issuance, by Justice Antonio T. Carpio, of a Resolution dated 13 November 2002 and the anomalous/unusual circumstances regarding the same for it being contrary to the Agenda of November 2002 of the First Division of this Honorable Court. Further, this incident was the subject of an executive hearing wherein the First Division interrogated me as to who in the Supreme Court supplied me the questioned Agenda. During this executive hearing, the Honorable Justice Carpio was confrontational and hostile to me for exposing the questioned Agenda and raising issues therein." (Respondent Peña's Motion to Inhibit dated 22 August 2011, p. 2)

Sometime thereafter, respondent Peña received a copy of the Suppl [sic] Agenda — 1st Division of this Honorable Court with a notation in handwriting "10AC" on the left side and marginal notes on the right side. A perusal thereof, reveals that when this Honorable Court took up the matter of the Motion for Clarification of petitioner Urban Bank, this Honorable Court merely "N" or "Noted" the Motion for Clarification of petitioner Urban Bank and did not grant the same.

x x x x x x x x x

Considering the foregoing (I was not furnished a copy of the Motion for Clarification, or required to comment by the Honorable Justice Carpio and opposing counsel, Atty. Singson, being able to secure an advance copy of the assailed 13 November 2002 Resolution), the matter brought out in the Executive Session and the admission made by Atty. Enriqueta Vidal and the Honorable Hilario Davide and the Honorable Justice Vitug with regard to his copy of the Suppl [sic] Agenda — 1st Division of this Honorable Court which was sent to respondent Peña was correct and that the Motion for Clarification was merely "N" or "NOTED." However, the Honorable Justice Carpio issued a Resolution "Granting" the Motion for Clarification.

Therefore, **the Honorable Justice Carpio issued the 13 November 2002 Resolution in an anomalous/falsified manner and in clear contravention of this Honorable Court's Decision to merely "Note" the same**. A clear judicial administrative violation.[48] (Emphasis supplied.)

Clearly, the bribery "joke" which respondent himself initiated has gotten the better of him. Respondent has convinced himself of the veracity of his own malicious insinuations by his own repetitious allegations in his subsequent pleadings.

The Court in the past refrained from imposing actual penalties in administrative cases in the presence of mitigating factors, such as the acknowledgment of the infraction and the feeling of remorse.[49] In this case, the "profound" apologies[50] offered

[48] Respondent Peña's Letter dated 16 September 2011, pp. 2-4, which is Annex "A" of his *Supplement to the Very Urgent Motion for Re-Raffle* dated 20 September 2011.

[49] *In Re: Raquel D. J. Razon, et al.*, A. M. No. P-06-2243, 26 September 2006, 503 SCRA 52.

[50] "3. Once again, I wish to express my sincerest apologies to the members of the Honorable Court whom I may have offended by the use

by respondent Peña for his insinuations against Justice Carpio are insincere and hypocritical, as seen by his later actions. Although he expressed remorse for having caused the Court distress because of his statements,[51] he refuses to acknowledge any unethical conduct on his part for his unfounded accusations against the actions of Justice Carpio with respect to the questioned 13 November 2002 Resolution. Worse, he has persisted in attributing ill-motives against Justice Carpio, even after the latter had recused himself from the case since 2003.

This is not the first time that respondent resorted to initiating unfounded and vicious attacks against the integrity and impartiality of Members of this Court. Earlier in the proceedings of the consolidated petitions, respondent **assailed** how **retired Justice Arturo B. Buena** showed bias in favor of the De Leon Group, when the latter's petition in G.R. No. 145822 was reinstated on a second motion for reconsideration:[52]

> It has come to the attention and knowledge of herein respondent that petitioner's counsel has been making statement to the effect that **they could get a favorable resolution from the Supreme Court, on their second motion for reconsideration**. In short, petitioners' counsel is practically saying that they are sure to get the Supreme Court to entertain the second motion for reconsideration even if it violates the rules.[53]

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of the two copies of the Supplemental Agenda in my motion. It was never my intention to undermine the integrity of the Honorable Court or any of its members. If I had made remarks which gave the impression, I am certainly very sorry. My aim was only to get to the truth." (Respondent Peña's Affidavit dated 27 June 2003, p. 1; *rollo* [Vol. 1], p. 68)

[51] "2. At the outset, respondent wishes to apologize for the distress his statements may have caused the members of this Honorable Court. While such distress may have been the unavoidable consequence of his motion to inhibit the ponente, it was certainly not his intended result." (Respondent Peña's Compliance dated 03 April 2003; *rollo* [G.R. No. 145817], Vol. 2, pp. 1333-1340).

[52] Respondent Peña's Reply (to Petitioners' Opposition to Motion to Urgent Motion to Inhibit) dated 31 October 2001; *rollo* (Vol. 1), pp. 85-108.

[53] Respondent Peña's Opposition (to Urgent Motion for Leave to Admit Urgent Motion for Reconsideration of the Resolution dated 14 February

1. The motion for voluntary inhibition is directed at Justice Buena because it was he who penned the challenged Resolution, which granted the second motion for reconsideration in violation of the Rules. It was he who crafted, drafted and finalized the said Resolution. It was he who tried to justify the violation of the Rules. **It was from Justice Buena's office that contents of the challenged Resolution was apparently "leaked" to the petitioners' counsel long before its promulgation**.[54]

What miracle did Atty. Vinluan perform and what phenomenon transpired? **Why are herein petitioners "very special" in the eyes of Justice Buena?**[55]

It is quite obvious that the partiality of **Justice Buena has been affected by his relationship with Atty. Vinluan**, as evidenced by the above-described facts and circumstances.[56]

Surprisingly, Justice Arturo B. Buena, the assigned ponente, reinstated the petition without any explanation whatsoever, and in gross violation of Sec. 4, Rule 56 of the 1997 Rules of Civil Procedure. This was highly irregular by itself. But what made reinstatement more suspicious was the fact that even before the release of the Resolution reinstating the petition in G. R. No. 145822, the counsel for petitioners, Atty. Rogelio Vinluan, was already boasting that he would be able to reinstate their petition. Obviously, even before the release of the Resolution in question, Atty. Vinluan already knew what Justice Buena's resolution would be.[57] (Emphasis supplied.)

In no less than six motions,[58] he similarly accused **former Chief Justice Artemio V. Panganiban** of prejudice based on

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2001 and 13 December 2000) dated 23 April 2001, at 4-5, *rollo* (Vol. 3), pp. 1116-1117.

[54] Respondent Peña's Reply (to Petitioners' Opposition to Motion to Urgent Motion to Inhibit) dated 31 October 2001, at 1; *id.*, p. 1128.

[55] *Id.*, at 14; *id.*, p. 1141.

[56] *Id.*

[57] Respondent Peña's Motion to Inhibit dated 18 February 2002, at 5; *id.*, p. 1156.

[58] 1. Peña's *Motion to Inhibit* (Re: Justice Artemio V. Panganiban) dated 12 January 2001; 2. *Motion to Inhibit* (Re: Justice Panganiban) dated

his affiliation with the Rotary Club, wherein some of the directors and officers of Urban Bank were also members. He even claimed that Justice Panganiban went to Urban Bank to meet with some of the directors and officers, who consulted him on the legal issues arising from criminal suits in relation to the facts of the main petitions, citing only an unnamed "reliable source":

> The friendship and close relationship of the three (Justice Panganiban and Urban Bank's Arsenio 'Archit' Bartolome and Teodoro 'Ted' Borlongan) went beyond their being Rotarians. As a matter of fact, Justice Panganiban was seen a couple of times going to Urban Bank to see Archit and/or Ted, before the bank's closure. **Respondent has also discovered, through a reliable source, that Justice Panganiban was known to have been consulted, and his legal advice sought, by Borlongan and Bartolome, in connection with the above-entitled cases**, while the same was still pending with the Court of Appeals and in connection with the four (4) criminal cases filed the with the MTC [Municipal Trial Court] at Bago City by herein respondent against Borlongan, *et al*., for "introducing falsified documents in a judicial proceeding." In the latter cases, **it was even Justice Panganiban who furnished a copy of the SC Decision in *Doris Ho vs. People* (his own *ponencia*) to Bartolome and Borlongan, for the purpose of giving his friends a legal basis in questioning the issuance of the warrants of arrest against Borlongan and the rest of his co-accused** in Criminal Case Nos. 6683 to 6686, MTC Bago City (*now appealed to Supreme Court; see Footnote No. 1 below)*.[59] (Emphasis supplied.)

Lastly, respondent Peña raised the issue of "unmitigated partiality" against **retired Justice Antonio Eduardo B. Nachura** on the ground that the latter resolved a separate case involving related issues to the main petitions in favor of the opposing parties:

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18 February 2002; 3. *Reply* (Re: Justice Panganiban) dated 15 March 2001; 4. *Motion to Inhibit* (Re: Justice Panganiban) dated 28 December 2004; 5. *Motion for Inhibition* (Re: Justice Panganiban) dated 28 December 2004; and 6. *Reiteratory Motion to Recuse* dated 03 March 2006 (Re: Justice Panganiban).

[59] Respondent Peña's Motion to Inhibit dated 18 February 2002, pp. 2-3; *rollo* (G.R. No. 145817), Vol. 1, pp. 901-902.

3. The Petitioners in G. R. No. 143591, entitled "*Teodoro C. Borlongan, et al. v. Magdaleno M. Peña, et al,"* are also the same petitioners in the above-entitled consolidated cases G. R. Nos. 145817 and 145822; and the respondents in the above-entitled consolidated case G. R. No. 162562. **Under the circumstances, herein private respondent is ABSOLUTELY CERTAIN that the extreme bias and prejudice of Justice Nachura against him in G. R. No. 143591 would certainly be carried over to the above-entitled consolidated cases**.[60] (Emphasis supplied.)

Not only has respondent Peña failed to show sincere remorse for his malicious insinuations of bribery and wrongdoing against Justice Carpio, he in fact continually availed of such unethical tactics in moving for the inhibition of eleven Justices of the Court.[61] Indeed, his pattern of behavior can no longer be seen as isolated incidents that the Court can pardon given certain mitigating circumstances. Respondent Peña has blatantly and consistently cast unfounded aspersions against judicial officers in utter disregard of his duties and responsibilities to the Court.

In *Estrada v. Sandiganbayan*,[62] the Court chose to indefinitely suspend Atty. Alan Paguia, when the latter imputed devious motives and questioned the impartiality of members of the Court, despite its earlier warnings:

The Supreme Court does not claim infallibility; it will not denounce criticism made by anyone against the Court for, if well-founded,

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[60] Respondent Peña's Motion to Inhibit dated 07 January 2008, p. 3; *rollo* (G.R. No. 145817), Vol. 3, p. 1953.

[61] "The Court is concerned with the repeated attempts of Atty. Peña throughout the entire course of these proceedings (whether through a direct motion to inhibit, administrative ethics complaint, or, indirectly, through a motion for re-raffle) to cause the inhibition of memebers of this Court. Eleven (11) Justices so far have all been asked by Atty. Peña to inhibit themselves. Atty. Peña's inclination to disqualify members of the Court, whom he preceives to be potentially adversarial to his cause, has certainly caused unwarranted and unnecessary delay in the resolution of the case." (SC Resolution dated 17 October 2011 in the consolidated petitions docketed as G.R. Nos. 145817, 148522 and 162562)

[62] G.R. Nos. 159486-88, 25 November 2003, 416 SCRA 465.

can truly have constructive effects in the task of the Court, but it will not countenance any wrongdoing nor allow the erosion of our people's faith in the judicial system, let alone, by those who have been privileged by it to practice law in the Philippines.

Canon 11 of the Code of Professional Responsibility mandates that the lawyer should observe and maintain the respect due to the courts and judicial officers and, indeed, should insist on similar conduct by others. In liberally imputing sinister and devious motives and questioning the impartiality, integrity, and authority of the members of the Court, Atty. Paguia has only succeeded in seeking to impede, obstruct and pervert the dispensation of justice.

Respondent Peña's actions betray a similar disrespectful attitude towards the Court that cannot be countenanced especially for those privileged enough to practice law in the country. To be sure, Atty. Paguia has just been recently reinstated to the practice of law after showing sincere remorse and having renewed his belief and respect for the Court, almost eight years from the time the penalty was imposed. Thus, the Court orders respondent Peña be **indefinitely suspended** from the practice of law for his apparently irredeemable habit of repeatedly imputing unfounded motives and partiality against members of the Court.

B. Second Charge: Submission of Falsified Internal Court Documents.

We likewise reject the recommendation of the OBC with respect to the second charge.

It must be noted that the Court, in its Resolutions dated 03 March 2003 and 28 April 2003, expressed administrative concern over Atty. Peña's behavior on three points: (1) his submission of a falsified court document, (2) his access to Supreme Court documents that are highly restricted and confidential, and (3) his use of court documents (genuine or false) in his pleadings.

Respondent Peña submitted a falsified internal court document, Annex "B," had illegal access to confidential court documents, and made improper use of them in the proceedings before this

Court. The Court directed the initial investigation by the OBC based on the charge that respondent Peña had submitted a falsified document to this Court.[63] The charge of falsification stems from his submission of an alleged copy of the Court's Agenda[64] (Annex "B") purportedly belonging to a member of the Division handling the case. The pertinent portion of the subject Motion to Inhibit reads:

> 10. What private respondent anonymously received were two copies of the Official Agenda of the First Division of this Honorable Court for 13 November 2002, the date when the questioned Resolution was supposedly issued. **In both copies (apparently secured from the office of two different members of the Division, one of which is the copy of the ponente himself**), it is clearly indicated that the members of the Division had allegedly agreed that petitioners' Motion for Clarification and Urgent Motion to Resolve were merely NOTED and NOT GRANTED contrary to what was stated in the 13 November 2002 Resolution (at least the version that was released to the parties) a falsified document because it makes it appear that a Resolution was issued by the First Division granting petitioners' Motion for Clarification when in fact no such Resolution exists. The real Resolution arrived at by the First Division which can be gleaned from the Agenda merely NOTED said motion. Copies of the two Agenda are hereto attached as Annexes "B" and "C".[65] (Emphasis supplied.)

During the 03 March 2003 Executive Session, respondent Peña expressed his absolute conviction that the document attached as Annex "B" was an exact copy of the Agenda of the then

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[63] Resolution dated 28 April 2003, at 4; *rollo* (Vol. 1), p. 6.

[64] "The Clerk of Court and the Division Clerks of Court shall ensure that all pleadings, communications, documents, and other papers duly filed in a case shall be reported in the Agenda for the consideration by the Court *en banc* or the Division. The Agenda items for each case shall adequately aprise the Court of relevant matters for its consideration." (Internal Rules of the Supreme Court [A. M. No. 10-4-20-SC, as amended], Rule 11, Sec. 1)

[65] Respondent Peña's Urgent Motion to Inhibit and to Resolve Respondent's Urgent Omnibus Motion dated 30 January 2003, at 4-5; *rollo* (Vol. 1), pp. 19-20.

ponente of the case.[66] It was later discovered, however, that no such copy existed, either in the latter's records or in those of any other member of the Division concerned:

CHIEF JUSTICE:

We make of record again that insofar as Annex B is concerned it was confirmed by the Office of the Clerk of Court of this Division that the original of that does not appear in the record, is not in the record and that nobody, none of the members of the division has a copy of, that copy of Annex B of your pleading does not come from anyone of the members of the division. That is the position of the Court now as explained earlier. Specifically Mr. Justice Carpio said that Annex B, specifically with that capital A. capital C preceded by 10 did not come from his office, was not based on the document in his office and that is also true to each of the members of this Division.[67] (Emphasis supplied.)

The falsification, subject of the instant administrative case, lies in the fact that respondent Peña submitted to the Court a document he was absolutely certain, at the time of such submission, was a copy of the Agenda of the then *ponente*. In supporting the subject Motion to Inhibit, respondent misled the Court by presenting a document that was not what he claimed it to be. Contrary to the assurances made in the same motion[68] he made allegations that were false and submitted documents that were not borne out by the records of this case. Instead of verifying the contents of Annex "B", which came to him through dubious means, he unquestioningly accepted their genuineness and veracity. Despite the Court's own explanation that Annex "B" does not exist, he continues to insist on its existence.

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[66] TSN dated 03 March 2002, pp. 38-44; *rollo* (Vol. 3), pp. 1036-1042.

[67] TSN dated 03 March 2002, pp. 98-99; *id.*, pp. 1094-1095.

[68] In the verification portion of his Motion to Inhibit, respondent Peña under oath swore and stated that he had caused the preparation of the motion, and that all the allegations therein were true and correct, based on his knowledge as well as the records of the case. (Respondent Peña's Urgent Motion to Inhibit and to Resolve Respondent's Urgent Omnibus Motion dated 30 January 2003, at 7-8; *rollo* [Vol. I], pp. 22-23)

Candor and truthfulness are some of the qualities exacted and expected from members of the legal profession.[69] Thus, lawyers shall commit no falsehood, nor shall they mislead or allow the court to be misled by any artifice.[70] As disciples of truth, their lofty vocation is to correctly inform the court of the law and the facts of the case and to aid it in doing justice and arriving at correct conclusions.[71] Courts are entitled to expect only complete honesty from lawyers appearing and pleading before them.[72] In the instant case, the submission of a document purporting to be a copy of the Agenda of a member of this Court is an act of dishonesty that puts into doubt the ability of respondent to uphold his duty as a disciple of truth.

Respondent Peña would argue, however, that falsification — as a criminal act under the Revised Penal Code — was not judicially established during the proceedings of the OBC investigation and, thus, he cannot be held liable for falsification. The comparison of the present administrative and disciplinary proceedings with a criminal charge of falsification is misplaced.

The subject matter of administrative proceedings is confined to whether there is administrative liability for the submission of a falsified document — namely Annex "B", which respondent Peña claims (albeit mistakenly) to be a genuine copy of the Agenda of the *ponente*. The issue, then, is whether he transgressed the ethical standards demanded of lawyers, by which they should be truthful in their dealings with and submissions to the Court. The investigation clearly does not include the determination of criminal liability, which demands a different modicum of proof with respect to the use of falsified documents. At this time, the Court makes no definitive pronouncement as to the guilt of respondent over his violation of the provisions of the Revised Penal Code regarding the use of falsified documents.

[69] A lawyer owes candor, fairness and good faith to the Court." (CODE OF PROFESSIONAL RESPONSIBILITY, Canon 10).

[70] CODE OF PROFESSIONAL RESPONSIBILITY, Rule 10.01.

[71] *Samala v. Valencia*, A. C. No. 5439, 22 January 2007, 512 SCRA 1, citing *Young v. Batuegas*, 451 Phil. 155 (2003).

[72] *Id.*

In brief, respondent led this Court to believe that what he submitted was a faithful reproduction of the *ponente*'s Agenda, just to support the subject Motion to Inhibit. The original of the purported copy was later found to have been inexistent in the court's records. Regardless of whether or not Annex "B" was criminally falsified or forged is immaterial to the present disposition. What is now crucial is whether respondent was candid and truthful in claiming absolute certainty with respect to the genuineness and authenticity of his submissions.

The assertion of respondent Peña that the typewritten contents of Annexes "B" and "C" appear to be genuine and accurate is unconvincing and cannot exonerate him from liability. Although Annex "C" was determined to be in the Court's records,[73] the bare similarity of its typewritten contents with those of Annex "B" will not shield him from disciplinary action. Although the typewritten contents of the two Agendas appear identical, **the handwritten notes located at the right-hand side are different**. Respondent, in fact, claims that the handwritten notes come from two different members of the Division, one of them the then *ponente* of the case.

The subject Motion to Inhibit is anchored on the veracity of the handwritten remarks — not on the printed contents — which are allegedly contrary to the substance of the Court's 13 November 2002 Resolution faxed to him by Atty. Singson. Respondent Peña cannot claim the genuineness of Annex "B" (which is not in the records), based on the apparent identity of its printed contents with those of Annex "C" (which is in the records). The handwritten notes are markedly different and, according to him, made by two different members of the Court. In his Motion to Inhibit, respondent failed to substantiate his assertion that Annex "B" and the notes made therein belonged to any member of this Court.

More importantly, the Court notes that **respondent Peña has not explained, to the Court's satisfaction, how he managed to obtain internal and confidential documents**.

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[73] TSN dated 03 March 2002, at 73; *rollo* (Vol. 3), pp. 1070.

Respondent Peña would have the Court believe that he happened to obtain the two copies of the Agenda (Annexes "B" and "C") and the internal Resolution (Annex "D") in two separate envelopes anonymously sent via ordinary mail. He supposedly received them sometime during the second or the third week of January 2002 in his home-cum-office in Pulupandan, Negros Occidental.[74] He, however, failed to present the envelopes containing the documents, but explained that these may have already been thrown away, since he had no system of recording incoming communications in his home/office in the province. The Court is not persuaded by his account of the receipt of these restricted court documents.

The Agenda, the Court's action thereon, as well as the Resolution (Annex "D"), are internal documents that are accessible only to court officers,[75] who are bound by **strict confidentiality**. For respondent Peña to have been able to secure originals or photocopies of the Court's Agenda is disturbing because that ability implies a breach of the rules of strict confidentiality in the Court. Notably, the Agenda purportedly sent to him did not contain all the items for deliberation by the Court's First Division for that day; the copies sent were limited to the incidents pertaining to his pending case. This circumstance

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[74] Respondent Peña's Urgent Motion to Inhibit and to Resolve Respondent's Urgent Omnibus Motion dated 30 January 2003, at 4-5; *rollo* (Vol. 1), pp. 19-20.

[75] "Court personnel shall not disclose to any unauthorized person any confidential information acquired by them while employed in the judiciary, whether such information came from authorized or unauthorized sources.

"Confidential information means information not yet made a matter of public record relating to pending cases, as well as information not yet made public concerning the work of any justice or judge relating to pending cases, including notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations and similar papers.

"The notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations and similar papers that a justice or judge uses in preparing a decision, resolution or order shall remain confidential even after the decision, resolution or order is made public." (Code of Conduct for Court Personnel, AM No. 03-06-13-SC, Canon II, Sec. 1)

can hardly be considered as random, since the exact item (Item No. 175) of concern for him — specifically, the Court's action on Urban Bank's Motion for Clarification — was what had been sent directly to his provincial home/office, and what he conveniently acquired thereby.

The Court finds it hard to believe that confidential court records just coincidentally and anonymously appeared in the provincial home/office of respondent Peña through ordinary mail. Also incredible is his explanation that the envelopes that contained the documents, and that could have led to the identification of their source were opportunely misplaced or thrown away, despite the grave importance he had ascribed to them. It is highly improbable that a personnel of the Court would breach the rules of strict confidentiality[76] to send to litigants or their counsel the Court's Agenda, together with handwritten notes and the internal resolutions of the Court, without any prodding or consideration, and even at the risk of incurring grave criminal and administrative penalties.[77] Respondent Peña's account of having lost the envelopes appears too convenient an excuse to assuage the Court's skepticism towards this breach of confidentiality within its own halls.

Worse, respondent Peña flaunted his continued access — as recent as 2010 — to **other internal and confidential records** in the proceedings of this case. Despite the administrative proceedings leveled against him for having "illicitly" obtained the confidential Agenda of the Court's First Division, he brazenly

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[76] "The Offices of the Clerk of Court and of the Division Clerks of Court are bound by strict confidentiality on the action or actions taken by the Court prior to the approval of the draft of the minutes of the court session release of the resolutions embodying the Court action or actions." (Internal Rules of the Supreme Court, as amended, Rule 11, Sec. 5, par. 1)

[77] "11. I had no reason to doubt the documents' authenticity simply because there was no reason for anyone to bother or go to the extent of manufacturing documents for the benefit of someone who does not even know him. The documents contained a detailed list of the incidents deliberated by this Honorable Court on 13 November 2002. Definitely, not just anyone could have access to such information." (Respondent Peña's Affidavit dated 27 June 2003, at 3; *rollo* [Vol. 1], p. 70)

resorted again to such unethical behavior by surreptiously acquiring no less than the confidential and still unreleased OBC Report on the very administrative case of which he himself is the subject.

In his Motion to Vacate/Recall dated 20 February 2010,[78] respondent Peña prayed that the questioned 13 November 2002 Resolution be recalled on the ground that there was a mistake in its issuance based on the copies of the Agenda he had mysteriously received. In support of this motion, he casually cited and attached a **photocopy of the confidential OBC Report**.[79] This OBC Report has not been released to any party, and was then in fact still under deliberation by this Court. Curiously, the attached photocopy bears marks corresponding to the unreleased copy of the signed OBC Report, **as it actually appears in the *rollo* of the administrative case**.[80] Unfortunately, respondent did not explain in the said motion how he was able to obtain a copy thereof.

Regardless of the means employed by respondent, his acquisition of the OBC Report from the Court's own records already speaks of an appalling pattern of unethical behavior that the Court will no longer ignore. Even as he was the subject of an administrative case for obtaining confidential court records, he continued to have access to other internal documents of the Court. His actions have established that he is incorrigible and not likely to change. His continued obstinacy in disregarding ethical standards and ignoring the rule of confidentiality of court records deserves nothing less than the ultimate penalty of disbarment from the profession.

Moreover, in the subject Motion to Inhibit, respondent Peña even tried to bolster his claim that the then *ponente* of the case

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[78] Respondent Peña's Motion to Vacate/Recall dated 20 February 2010; *rollo* (G. R. No. 145822), Vol. 2, pp. 3286-3293.

[79] Annex "5" of respondent Peña's Motion to Vacate/Recall dated 20 February 2010; *rollo* (G. R. No. 145822), Vol. 2, pp. 3305-3366.

[80] OBC Report dated 11 December 2007; *rollo* (Vol. 4), pp. 1657-1718.

had a special interest in the case by attaching an **internal resolution** of the Court.[81] In the said Internal Resolution dated 04 September 2002, the two consolidated petitions (G.R. Nos. 145817 and 145822) were transferred from the Third Division to the First Division, where Justice Carpio was subsequently assigned.[82] How respondent Peña was again able to secure this internal document is another disturbing mystery in this case, especially since the resolution was sent by the Third Division Clerk of Court to the First Division Clerk of Court, the Raffle Committee and the Judicial Records Office only, and not to any of the parties. Similar to the copies of the Agenda of the First Division, respondent Peña again purportedly received this Internal Resolution by mail.[83] What is more alarming in this instance is that he received not just any photocopy of the Court's Resolution, but a **pink copy** itself, the very same material used for such internal resolutions in the Court's records. As he himself admitted, respondent Peña could not have gotten hold of the said internal Resolution, which was on its face declared an **internal matter**, without the assistance of a person who had access to the records of his case in the Court.

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[81] "12. Respondent is not just speculating here. He is CERTAIN that the *ponente* has a special interest in this case. Recently, he also found out that the ponente made a special request to bring this case along with him when he transferred from the Third Division to the First Division. Respondent has a copy of the Resolution of this Honorable Court granting such request (hereto attached as Annex 'D'). Indeed this circumstance, considered with all the foregoing circumstances, ineluctably demonstrate that a major anomaly occurred here." (Peña's Urgent Motion to Inhibit and to Resolve Respondent's Urgent Omnibus Motion dated 30 January 2003, pp. 5-6; *rollo* [Vol. 1], pp. 20-21)

[82] "Let this case be TRANSFERRED to the First Division, the same being assigned to a Member thereof. [Internal Matter]" (*Rollo* [Vol. 1], p. 33)

[83] "12. Moreover, I subsequently received another mail from apparently the same sender, this time containing a pink copy of this Honorable Court's 4 September 2002 Resolution (Annex 'D', Urgent Motion to Inhibit) transferring this case from the Third Division to the First Division. **The receipt of this last document somehow confirmed to me that whoever sent the copies of the Supplemental Agenda really had access to the records of this Honorable Court**." (Peña's Affidavit dated 27 June 2003, p. 3; *rollo* [Vol. 1], p. 70)

This claimed "major anomaly" of the transfer of the case, which is being decried by respondent in the subject Motion to Inhibit, stems from his gross misunderstanding of the internal rules of the Court.

Upon the reorganization of the members of various Divisions due to the retirement of other Justices, the cases already assigned to a Member-in-Charge are required to be transferred to the Division to which the Member-in-Charge moves.[84] Hence, in this case, Justice Carpio, similar to other members of the Court at that time, did not lose his case assignments but brought them with him when he transferred to the First Division. In fact, the transfers of the assigned cases to the new Division are made by request from the Member-in-Charge, because otherwise the *rollo* of the cases of which he is Member-in-Charge will be retained by a Division in which he is no longer a member. Thus, the transfer of the two consolidated petitions to the First Division that is being heavily criticized by respondent Peña was simple compliance with the established internal procedures of the Court, and not attributable to any undue interest or malicious intention on the part of the then *ponente* to retain the case for himself. Respondent had raised "irresponsible suspicions"[85] against the integrity of the *ponente* without any understanding of the Supreme Court's processes in the transfer of cases.

Respondent Peña had, in fact, previously used this deplorable tactic of obtaining internal court records to call for the inhibition of Justices of the Court. In previously moving for the inhibition

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[84] "*Effect of reorganization of Divisions on assigned cases.* — In the reorganization of the membership of Divisions, cases already assigned to a Member-in-Charge shall be transferred to the Division to which the Member-in-Charge moves, subject to the rule on the resolution of motions for reconsideration under Section 7 of this Rule. The Member-in-Charge is the Member given the responsibility of overseeing the progress and disposition of a case assigned by raffle." (Internal Rules of the Supreme Court [A. M. No. 10-4-20-SC, as amended], Rule 2, Sec. 9)

[85] "In this regard, respondent made an irresponsible suspicion. As an internal policy of the Court, the case will automatically be transferred to the Division to which the ponente of the case is a Member thereof." (OBC Report dated 11 December 2007, p. 50; *rollo* [Vol. 4], p. 1706)

of Justice Buena, he assailed how supposedly the retired Justice violated the rules with respect to a second motion for reconsideration when the latter reinstated the Petition of the De Leon Group in G.R. No. 145822. Respondent attributed the special treatment extended by Justice Buena to his supposed association with the De Leon Group's counsel, Atty. Rogelio Vinluan of the ACCRA Law Office. To establish this special treatment, he attached a complete copy of the Minutes of the Division[86] composed of 58 pages and showing 77 cases dismissed by the Court due to failure to pay the required fees, which Justice Buena allegedly did not reinstate:

> 10. A review of the records of the Supreme Court will show that for the past several months alone, seventy-seven petitions were dismissed by the Supreme Court, mainly for failure to pay the required fees. Out of that number, NONE WERE REINSTATED upon the filing of a SECOND MOTION FOR RECONSIDERATION. If Justice Buena willingly disregarded the Rules by reinstating petitioners' petition (De Leon Group Petition in G. R. No. 145822) upon the filing of a second motion for reconsideration, then he should have reinstated also the aforesaid 77 cases in order to be fair. At the very least, he should now reinstate all of said 77 cases if only to show that he is not biased in favor of herein petitioners. He could not and will not do so, however, because those cases are not favored ones. Photocopies of the case titles and numbers, as well as the resolutions dismissing the aforesaid seventy-seven cases, consisting of 58 pages, are attached hereto collectively as Annex "A".[87]

Respondent Peña was able to attach to this motion for inhibition the portions of the Court's Minutes on 12 April 2000, 07 February 2001, 12 February 2001, 14 February 2001, 26 February 2001, 28 March 2001, 14 April 2001, 18 April 2001, 26 April 2001, 16 May 2001, 11 July 2001, 08 August 2001, 13 August 2001, 20 August 2001, 29 August 2001, 05 September 2001, 24

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[86] Annex "A" of Peña's Reply (to Petitioners' Opposition to Motion to Urgent Motion to Inhibit) dated 31 October 2001; *rollo* (G. R. No. 145822), Vol. 2, pp. 2776-2834.

[87] Peña's Reply (to Petitioners' Opposition to Motion to Urgent Motion to Inhibit) dated 31 October 2001, p. 6; *rollo* (Vol. 1), at 90.

September 2001, 08 October 2001 and others which were undated. The attached Minutes pointed to specific cases which were dismissed for failure to pay the necessary fees, among others. It was unclear if the cases were specifically assigned to Justice Buena or if respondent Peña represented any of the parties therein.

Nevertheless, what stands out is that he obtained confidential Minutes of the Court pertaining to other cases, which specifically dismissed or denied petitions on the failure of the parties to pay necessary fees. This could not have just been mere coincidence again since it required some legal understanding and familiarity with the cases in order to be able to sift through and identify the kinds of cases, which were dismissed or denied on such grounds. Although the parties to these cases were notified and given copies of the Court's resolutions, what respondent Peña obtained were the actual copies of the Minutes that included other items in the Court's Agenda and that were not released to the public. Under the Court's own Internal Rules, only the Minutes pertinent to the parties are those that are distributed to the parties concerned.[88] Yet, respondent was able to attach wholesale Minutes of dozens of cases to his pleading.

Although the above confidential documents that were accessed by respondent — totaling 58 pages in all — are not the subject of the investigation of the administrative case, his previous receipt or acquisition of the minutes of the Court as early as 2000 confirm in no uncertain terms his access to internal records of the Court, not just of his case, but of other pending cases and that this access has continued as late as 2010. It seems rather ironic that respondent Peña would accuse his fellow lawyers of allegedly having an "inside track" to members of the Court, when he in turn, on record, had mysteriously easy access to

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[88] "x x x Excerpts of the minutes pertaining to a particular case quoted in a letter of the Clerk of Court or the Division Clerk of Court to the parties, and extended resolutions showing the actions of the court on the cases on the agenda shall be released to the parties only after the Chief Justice or the Division Chairperson has approved the minutes in writing. x x x" (Internal Rules of the Supreme Court, as amended, Rule 11, Sec. 4)

confidential court documents. That internal documents of the Court (whether voluminous or in relation to his case or otherwise) would suddenly find themselves in the hands of respondent Peña through registered mail is too incredible for this Court to attribute any good faith on his part.

Even if the Court were to give some modicum of credence to the unlikely story of how respondent Peña came upon these internal documents, it looks with disapproval upon his actions with respect to those documents, which were supposedly sent to him anonymously. If indeed lawyers were sent official judicial records that are confidential in nature and not easily accessible, the ethical recourse for them would be to make a candid and immediate disclosure of the matter to the court concerned **for proper investigation**, and not as proof to further the merits of their case. In fact, respondent himself acknowledged that reporting the "leaked out" documents was a duty he owed to the Court[89] — more so in this case, since the documents were sent anonymously and through dubious circumstances.

No issue would have arisen with respect to his continuing fitness to be a member of the legal profession, if he had simply reported his receipt of the "leaked" court documents, and nothing more. Yet, he not only failed to immediately disclose the suspicious circumstances of his having obtained confidential court records; he even had the tenacity to use the documents sent through suspicious means to support his request for inhibition. As a lawyer, he should have known better than to hinge his motions and pleadings on documents of questionable origins, without even verifying the authenticity of the contents by comparing them with sources of greater reliability and credibility.

If respondent Peña entertained doubts as to the veracity of the Division's actions with respect to the pending incidents in

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[89] "13. I sincerely regret that the documents considered confidential by the Honorable Supreme Court had leaked out but there was nothing I could do about it. Once these documents were sent to me, my duty was to bring them to [the] attention of the Court which, in its wisdom, would know best what to do with them." (Respondent Peña's Affidavit dated 27 June 2003, at 3; *rollo* [Vol. 1], p. 70)

his case, as allegedly embodied in the anonymous Agendas sent to him, then he should have simply checked the records to verify the genuineness of the questioned 13 November 2002 Resolution faxed to him by Atty. Singson. It is through officially released resolutions and decisions that parties and their counsel are informed of and guided by the Court's actions on pending incidents, and not by the confidential and handwritten notes of the individual members of the Court. Respondent's wholesale reliance on copies of the Agenda purported to be those of individual members of the Court and anonymously sent to him is grossly misplaced.

The Court has already explained that there was in fact no discrepancy between the agreed upon action of the Division and the questioned 13 November 2002 Resolution, contrary to the assertions of respondent Peña. He grounded the subject Motion to Inhibit on the fact that the anonymously sent copies of the Agenda indicate that the Motion for Clarification filed by Urban Bank should simply be **noted**,[90] but it was instead **granted** by the Court. The Court, however, made clear during the 03 March 2003 Executive Session, that there was nothing irregular about annotating the first item with "SEE RES" (See Resolution) and marking the rest of the incidents with "N" (Noted). In fact, these annotations conform with the recommended actions submitted by the *ponente* for that particular item.[91] The Resolution identified in the first item governs and contains the actual disposition of two of the incidents in the pending case.[92] To be sure, what governs as the final action of the Court *en banc* or

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[90] "The term 'noted' means that the Court has merely taken cognizance of the existence of an act or declaration, without exercising a judicious deliberation or rendering a decision on the matter — it does not imply agreement or approval." (*Sebastian v. Bajar*, A. C. No. 3731, 07 September 2007, 532 SCRA 435, citing *Cojuangco, Jr. v. Palma*, A.C. No. 2474, 30 June 2005, 462 SCRA 310, 321)

[91] Justice Carpio's Agenda for 13 November 2002, Item 175 (a) & (f) as "See RES."; *rollo* (Vol. 1), pp. 10-15.

[92] TSN dated 03 March 2002, at 77-83; *rollo* (Vol. 3), pp. 1073-1079.

in Division is the **minutes of the proceedings**,[93] which lists the dispositions of the items taken up during the session, reviewed by the members, and finally approved by the Chief Justice or the Division chairperson. Contrary to respondent's suspicions, the action taken by the Division in its 13 November 2002 Session was accurately reflected in the questioned Resolution released by the Court.

Respondent Peña has no one else to blame but himself, since he "allegedly," blindly and mistakenly relied on "anonymously sent" unverified photocopies of the Court's Agenda, in order to support his call for the inhibition of a member of the Court. Neither can he rely on the alleged "bragging" of Atty. Singson — which the latter denies — to impute ill motive to judicial officers. Whether Atty. Singson actually exerted "extraordinary efforts" to secure the suspension Order or freely divulged it in their telephone conversation, respondent should have been more circumspect in making grave accusations of bribery (jokingly or not) without any extrinsic evidence or proof to back up his claim.

Respondent Peña is sanctioned for knowingly using confidential and internal court records and documents, which he suspiciously obtained in bolstering his case. His unbridled access to internal court documents has not been properly explained. The cavalier explanation of respondent Peña that this Court's confidential documents would simply find themselves conveniently falling into respondent's lap through registered mail and that the envelopes containing them could no longer be traced is unworthy

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[93] The Chief Justice or the Chairperson of the Division shall provide the Clerk of Court or the Division Clerk of Court the latter notes on the actions taken by the Court. The copy of the Agenda containing the handwritten notes of the Chief Justice or Division Chairperson shall serve as the basis for the preparation of the minutes of the session by the Office of the Clerk of Court or the Division Clerk of Court. Within three working days from the time the copy of the Agenda containing the handwritten actions of the Court is transmitted, the Clerk of Court or the Division Clerk of Court shall submit the draft of the minutes of the session for the approval by the Chief Justice or the Division Chairperson. (Internal Rules of the Court, as amended, Rule 11, Sec. 3 and 4)

of belief. This gives the Court reason to infer that laws and its own internal rules have been violated over and over again by some court personnel, whom respondent Peña now aids and abets by feigning ignorance of how the internal documents could have reached him. It is not unreasonable to even conclude that criminal liabilities have been incurred in relation to the Revised Penal Code[94] and the Anti-Graft and Corrupt Practices Act, with Atty. Peña benefitting from the same.[95] Respondent's actions clearly merit no other penalty than disbarment.

This second penalty of disbarment is all the more justified by the earlier imposition of an indefinite suspension. If taken together, these two violations already speak of respondent Peña's inherent unworthiness to become a member of the Bar. Although an indefinite suspension opens up the possibility of future reinstatement after a clear showing of remorse and a change of ways (as in the case of Atty. Paguia), respondent has shown to be incorrigible and no longer deserves the compassion of the Court. Not only has respondent thumbed his nose on the integrity of the persons occupying the Bench by casting grave aspersions of bribery and wrongdoing, he has also showed disdain for the sanctity of court procedures and records by his haughty display of illegal access to internal Supreme Court documents.

C. Third Charge: Respondent Peña's insinuations of wrongdoing and collusion between members of the Court and another counsel.

Aside from attributing bribery to the *ponente*, respondent Pena's allegations of collusion between previous members of the Court and the counsel for the De Leon Group are unfounded and contravene the ethical duties of respondent to the Court

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[94] REVISED PENAL CODE, Art. 229 (Revelation of Secrets).

[95] "Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date, x x x."(Republic Act No. 3019, Sec. 3 [k])

and his fellow lawyers. His actions reveal a pattern of behavior that is disconcerting and administratively punishable.

However, considering the ultimate penalty of disbarment earlier imposed on respondent Peña, the Court no longer finds the need to squarely rule on the third charge, as any possible administrative liability on this matter would be a mere superfluity.

D. Fourth Charge: The charge of forum shopping is not the proper subject of the present allegations of administrative misconduct.

The counter-charge of forum shopping has been made by respondent Peña against petitioners and their respective counsel in his defense.[96] However, this is already beyond the scope of the subject matter of this administrative case. It will be recalled that he assailed the fact that Urban Bank, the De Leon Group, and the other group of bank officers filed three separate Petitions (G.R. Nos. 145817, 145818 and 145822, respectively) before the Court. They all questioned therein the rulings of the appellate court affirming the grant of execution pending appeal.

Considering that this claim is the subject of administrative penalties, and that other interested parties did not participate in the investigation conducted by the OBC herein, prudence and equity dictate that the Court reserve judgment for the meantime until the subject is fully ventilated and all parties are given an opportunity to argue their cases.

The charges of forum shopping are hereby dismissed without prejudice to the filing and/or hearing of separate administrative complaints[97] against petitioners Urban Bank, Corazon M. Bejasa, Arturo E. Manuel, Jr., P. Siervo H. Dizon, Delfin C. Gonzales, Jr., Benjamin L. de Leon and Eric L. Lee, and their respective counsel of record. Considering their deaths, petitioners Teodoro

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[96] Respondent Peña's Comment (with Motions to Explain and for Full Investigation) dated 22 August 2003; *rollo* (Vol. 1), pp. 196-220.

[97] RULES OF COURT, Rule 7, Sec. 5.

C. Borlongan and Ben T. Lim, Sr., can no longer be included in any future administrative action in relation to these matters. On the other hand, Ben Y. Lim, Jr., was mistakenly impleaded by respondent Peña and therefore, is not a real and direct party to the case.

EPILOGUE

As parting words, the Court herein highlights the disorder caused by respondent Peña's actions in the administration of justice. In order to foreclose resort to such abhorrent practice or strategy in the future, the Court finds the need to educate the public and the Bar.

Lawyers shall conduct themselves with courtesy, fairness and candor towards their professional colleagues.[98] They shall not, in their professional dealings, use language that is abusive, offensive or otherwise improper.[99] Lawyers shall use dignified language in their pleadings despite the adversarial nature of our legal system.[100] The use of intemperate language and unkind ascriptions has no place in the dignity of a judicial forum.[101]

The Court cannot countenance the ease with which lawyers, in the hopes of strengthening their cause in a motion for inhibition, make grave and unfounded accusations of unethical conduct or even wrongdoing against other members of the legal profession. It is the duty of members of the Bar to abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justness of the cause with which they are charged.[102]

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[98] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 8.

[99] CODE OF PROFESSIONAL RESPONSIBILITY, Rule 8.01.

[100] *Barandon v. Ferrer*, A. C. No. 5768, 26 March 2010, 616 SCRA 529, citing *Saberon v. Larong*, A.C. No. 6567, 16 April 2008, 551 SCRA 359, 368.

[101] *Id.*, citing *De la Rosa v. Court of Appeals Justices*, 454 Phil. 718, 727 (2003).

[102] *Uy v. Depasucat, id.*, citing *Surigao Mineral Reservation Board v. Cloribel*, G.R. No. L-27072, 09 January 1970, 31 SCRA 1.

It has not escaped the Court's attention that respondent Peña has manifested a troubling history of praying for the inhibition of several members of this Court or for the re-raffle of the case to another Division, on the basis of groundless and unfounded accusations of partiality. A sampling of his predilection for seeking the inhibition of, so far, eleven Justices of this Court, in an apparent bid to shop for a sympathetic ear, includes the following:

1. Peña's *Motion to Inhibit* (Re: Justice Artemio V. Panganiban) dated 12 January 2001;
2. *Urgent Motion to Inhibit* (Re: Justice Arturo Buena) dated 20 August 2001;
3. *Letter Complaint* (Re: Justice Buena) dated 28 October 2001;
4. *Motion to Inhibit* (Re: Justice Panganiban) dated 18 February 2002;
5. *Reply* (Re: Justice Panganiban) dated 15 March 2001;
6. *Urgent Motion to Inhibit (re: ponente) dated 30 January 2003;*
7. *Motion to Inhibit* (Re: Justice Leonardo A. Quisumbing) dated 08 July 2004;
8. *Motion to Inhibit* (Re: Justice Panganiban) dated 28 December 2004;
9. *Motion to Inhibit* (Re: Justice Eduardo Antonio B. Nachura) dated 17 December 2007;
10. *Motion for Inhibition* (Re: Justice Panganiban) dated 28 December 2004;
11. *Reiteratory Motion to Recuse* dated 03 March 2006 (Re: Justice Panganiban);
12. *Motion to Inhibit* (Re: Justice Nachura) dated 07 January 2008;
13. *Urgent Consolidated Motion to Reiterate Request for Inhibition* (Re: Justice Antonio T. Carpio) dated 02 June 2008;
14. *Urgent Motion for Re-Raffle* (Re: Justice Presbitero J. Velasco) dated 10 July 2008;

15. *Supplement to the Urgent Motion for Re-Raffle* (Re: Justices Conchita Carpio Morales and Dante O. Tinga) dated 04 August 2008;

16. *Urgent Consolidated Motion for Re-Raffle* (Re: Justices Carpio Morales, Tinga and Velasco) dated 14 August 2008;

17. *Urgent Consolidated Motion for Re-Raffle* (Re: Justices Arturo D. Brion, Leonardo A. Quisumbing, Carpio Morales, Tinga, Velasco, Quisumbing) dated 28 August 2008;

18. *Motion to Inhibit* (Re: Justice Carpio) dated 21 January 2010;

19. *Very Urgent Motion to Inhibit* (Re: Justices Carpio Morales and Ma. Lourdes P. A. Sereno) dated 30 March 2011;

20. *Very Urgent Motion to Inhibit* dated 22 August 2011 (Re: Justice Sereno); and

21. *Very Urgent Motion to Re-Raffle* dated 01 September 2011 (Re: Justices Carpio, Jose Perez and Sereno).

The grounds for inhibition of the Justices in these motions of respondent ranged from flimsy and sparse relations between the parties and the members of the Court to wild accusations of partiality on mere conjectures and surmises. For example, respondent accused former Chief Justice Panganiban of bias based on his affiliation with the Rotary Club, in which the late Teodoro Borlongan, then President of Urban Bank, was likewise an officer.[103] He moved for the inhibition of Justice Sereno on the ground that she was "a close judicial ally" of Justice Carpio, and in turn, the latter, according to respondent, was antagonistic toward him during the Court's 03 March 2003 Executive Session in this administrative case.[104]

Meanwhile, respondent recently sought to have the case re-raffled from the Court's Third Division because Justice

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[103] Peña's Motion to Inhibit dated 18 February 2002; *rollo* (G.R. No. 145822), Vol. 2, pp. 2936-2945.

[104] Peña's Very Urgent Motion to Inhibit dated 30 March 2011; *rollo* (G.R. No. 145822), Vol. 3, pp. 3964-3971.

Jose Portugal Perez, a member thereof, was allegedly appointed to the Court through the endorsement of former Executive Secretary Eduardo Ermita, who was a close ally of the then Chairman Emeritus of Urban Bank, former President Fidel V. Ramos.[105] He similarly sought the inhibition of Justice Dante O. Tinga for his close professional and political ties with former President Ramos.[106] He likewise assailed the partiality of Justice Arturo D. Brion, considering he is a law school classmate and fraternity brother of Chief Justice Renato C. Corona, who was then Presidential Legal Counsel of former President Ramos. Thus, according to respondent Peña, "President Ramos, through Justice Corona, will most likely exercise his influence over the Honorable Justice Brion."[107]

Curiously, in asking for the inhibition of Justice Nachura for his alleged partiality in favor of Urban Bank because of his decision in a related case[108] and his prior appointment as Undersecretary of Education during the Ramos presidency, respondent Peña impliedly prayed that his case be specifically retained in the Court's Third Division.[109] Respondent's peculiar request, which was not included in his other motions, gives the impression that in his quest to have Justice Nachura inhibit himself, respondent nonetheless did not want his case to be raffled out of the Third Division. If his only intention was to

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[105] Peña's Very Urgent Motion for Re-raffle dated 01 September 2011; *id*., pp. 3972-3980.

[106] Peña's Supplement to the Urgent Motion for Re-raffle dated 04 August 2008; *rollo* (G.R. No. 162562), Vol. 2, pp. 1339-1344.

[107] Peña's Urgent Consolidated Motion for Re-Raffle dated 28 August 2008; *id.*, pp. 1355-1362.

[108] *Borlongan vs. Peña*, G.R. No. 143591, 23 November 2007, 538 SCRA 221.

[109] "However, herein private respondent-movant (Peña) would like to make it clear that he has full trust and confidence in the other members of the Third Division, Considering that only Associate Justice Nachura has exhibited extreme bias and prejudice against private respondent." (Peña's Motion to Inhibit dated 07 January 2008, p. 6; *rollo* [G.R. No. 162562], Vol. 2, p. 1278)

raise the possibility of bias against Justice Nachura alone, then it would not matter whether his case remained with the Third Division, with another member being designated to replace Justice Nachura, or raffled to another Division altogether. Respondent Peña's odd prayer in his motion for inhibition bore signs of an intent to shop for a forum that he perceived to be friendly to him, except for one member.

In *Chin v. Court of Appeals*,[110] the Court warned against litigants' contumacious practice in successively asking for the inhibition of judges, in order to shop for one who is more friendly and sympathetic to their cause:

> We agree that judges have the duty of protecting the integrity of the judiciary as an institution worthy of public trust and confidence. But under the circumstances here, we also agree that unnecessary inhibition of judges in a case would open the floodgates to forum-shopping. More so, considering that Judge Magpale was not the first judge that TAN had asked to be inhibited on the same allegation of prejudgment. **To allow successive inhibitions would justify petitioners' apprehension about the practice of certain litigants shopping for a judge more friendly and sympathetic to their cause than previous ones.**
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> As held in *Mateo, Jr. v. Hon. Villaluz*, the invitation for judges to disqualify themselves need not always be heeded. It is not always desirable that they should do so. It might amount in certain cases to their being recreant about their duties. It could also be an instrument whereby a party could inhibit a judge in the hope of getting another more amenable to his persuasion. (Emphasis supplied.)

The Court's warning in *Chin* applies squarely to the multiple and successive requests for inhibition and re-raffle filed by respondent Peña. Lest other litigants follow his lead, the Court condemns in no uncertain terms the practice of shopping for a justice, most especially in the highest tribunal of the land. This abhorrent practice is indeed one of the reasons why this administrative case has dragged on for years. Not only does it

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[110] G. R. No. 144618, 15 August 2003, 456 Phil. 440.

impute ill motive and disrepute to the members of the Court, but it likewise delays the administration of justice.

Oddly enough, respondent Peña has been less concerned about the inordinate delay in resolving the case than about making sure that the "wrong" or "unfriendly" Justices — in his perception — do not sit and rule on the issues. He has thrived on the protracted interruptions caused by his numerous motions for inhibition and re-raffle, resulting in the case languishing in this Court for years and clogging its dockets. Respondent stands out for this disorderly behavior and must be made an example so that litigants be reminded that they cannot bend or toy with the rules of procedure to favor their causes. Worse, respondent has thrown no less than the rules of basic courtesy in imputing sinister motives against members of the Court.

Based on the foregoing, the Court finds that respondent Peña has violated several canons of professional and ethical conduct expected from him as a lawyer and an officer of the court. His conduct, demeanor and language with respect to his cause of action — in this Court, no less — tend to undermine the integrity and reputation of the judiciary, as well as inflict unfounded accusations against fellow lawyers. Most disconcerting for this Court is his uncanny ability to obtain confidential and internal court records and to use them shamelessly in his pleadings in furtherance of his cause.

In addition, the Court cannot just make short shrift of his inclination towards casually moving for the inhibition of Justices of the Court based on unfounded claims, since he has not shown remorse or contrition for his ways. Atty. Peña has shown and displayed in these proceedings that he has fallen short of the ethical standards of the noble profession and must be sanctioned accordingly.

PREMISES CONSIDERED, for violating Canons 8, 10 and 11 of the Code of Professional Responsibility and for failing to give due respect to the Courts and his fellow lawyers, respondent Atty. Magdaleno M. Peña is hereby **DISBARRED** from the

practice of law, effective upon his receipt of this Decision, and his name is **ORDERED STRICKEN** from the Roll of Attorneys.

Let a copy of this Decision be attached to respondent Peña's personal record in the Office of the Bar Confidant and other copies thereof be furnished the Integrated Bar of the Philippines.

The En Banc Clerk of Court is directed to **INVESTIGATE** how respondent was able to secure copies of the following: (a) copies of the Agenda dated 13 November 2002 of the Court's First Division, attached as Annexes "B" and "C" of respondent Peña's Urgent Motion to Inhibit and to Resolve Respondent's Urgent Omnibus Motion dated 30 January 2003; (b) the Internal Resolution dated 04 September 2002, attached as Annex "D" of the same motion; (c) the Report and Recommendation dated 11 December 2007, issued by the Office of the Bar Confidant, attached as Annex "5" of respondent Peña's Motion to Vacate/ Recall dated 20 February 2010; and (d) the Minutes of the Court, consisting of 58-pages, attached as Annex "A" of the Reply (to Petitioners' Opposition to Motion to Urgent Motion to Inhibit) dated 31 October 2001 filed by respondent Peña. She is further required to **SUBMIT** such an investigation report with recommendations on the administrative and disciplinary liabilities, if any, of all court personnel possibly involved therein, as well as suggestions for protecting confidential and internal court documents of pending cases within **NINETY (90) DAYS** from receipt of this Resolution.

SO ORDERED.

Leonardo-de Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, Sereno, and *Reyes, JJ.,* concur.

Corona, C.J., Velasco, Jr., del Castillo, and *Perlas-Bernabe, JJ.,* no part.

Carpio, J., no part. Prior inhibition, his recommended action is subject of this case.

EN BANC

[A.M. No. P-09-2720. April 17, 2012]
(Formerly OCA I.P.I. No. 09-3259-P)

JUDGE SALVADOR R. SANTOS, JR., Presiding Judge, Municipal Trial Court, Angat, Bulacan, *complainant, vs.* **EDITHA R. MANGAHAS, Court Stenographer of the same court,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES AND OFFICIALS; REQUIRED DECORUM. — Time and time again, we have 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 responsibility. Their conduct must be guided by strict propriety and decorum at all times in order to merit and maintain the public's respect for and trust in the judiciary. Needless to say, all court personnel must conduct themselves in a manner exemplifying integrity, honesty and uprightness.

2. ID.; ID.; ID.; ID.; SHOUTING AT COMPLAINANT JUDGE WITHIN THE COURT PREMISES AND REPORTING HIM TO THE POLICE AFTER BEING REPRIMANDED FOR SOLICITATION ARE ACTS OF DISCOURTESY AND DISRESPECT, SANCTIONED UNDER RA 6713. — [R]espondent's shouting at complainant [Judge] within the court premises, reporting complainant to the police after she was reprimanded for her solicitation, and refusing to talk with complainant judge are not only acts of discourtesy and disrespect but likewise an unethical conduct sanctioned by Republic Act No. 6713, otherwise known as *The Code of Conduct and Ethical Standards for Public Officials and Employees*. High-strung and belligerent behavior has no place in government service where the personnel are enjoined to act with self-restraint and civility at all times even when confronted with rudeness and insolence. Such conduct is exacted from them so that they will earn and keep the public's respect for and confidence in the judicial service. This standard is applied with respect to a court employee's dealings not only with the public but also

with his or her co-workers in the service. Conduct violative of this standard quickly and surely erodes respect for the courts.

3. ID.; ID.; CODE OF CONDUCT FOR COURT PERSONNEL; SOLICITATION PROHIBITED THEREIN. — We are appalled that respondent apparently sees nothing wrong with asking or soliciting money from politicians. We have constantly reminded court employees that such act is highly improper conduct as all forms of solicitations and receipt of contributions, directly or indirectly, are prohibited. That is why, the Court provides the rule against any form of solicitations of gift or other pecuniary or material benefits or receipts of contributions for himself/herself from any person, whether or not a litigant or lawyer, to avoid any suspicion that the major purpose of the donor is to influence the court personnel in performing official duties. Soliciting is prohibited under The Code of Conduct for Court Personnel. Section 2, Canon I thereof provides that "[c]ourt personnel shall not solicit or accept any gift, favor or benefit based on any explicit or implicit understanding that such gift, favor or benefit shall influence their official actions," while Section 2 (e), Canon III states that "Court personnel shall not x x x solicit or accept any gift, loan, gratuity, discount, favor, hospitality or service under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court personnel in performing official duties."

4. ID.; ID.; COURT EMPLOYEES; MISCONDUCT; GRAVE MISCONDUCT PRESENT CONSIDERING EMPLOYEE'S DISRESPECTFUL CONDUCT, SOLICITATION AND INFLUENCE IN PEDDLING OF BAIL BONDS. — Misconduct is a transgression of some established and definite rule of action, more particularly unlawful behavior or gross negligence by a public officer; and the misconduct is grave if it involves any of the additional elements of corruption, such as willful intent to violate the law or to disregard established rules. Thus, considering respondent's transgressions, *i.e.*, disrespectful conduct, solicitation, and influence peddling of bail bonds, there is no question that respondent is guilty of grave misconduct.

5. ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; GRAVE MISCONDUCT; RESIGNATION FROM OFFICE WILL NOT THWART

THE IMPOSITION OF CORRESPONDING DISCIPLINARY MEASURES AND SANCTIONS. — As noted by the Court Administrator, this Court could no longer impose the penalty of dismissal from the service, because respondent has already resigned. We likewise agree that her resignation does not render the complaint against her moot. Resignation is not, and should not, be a convenient way or strategy to evade administrative liability when a court employee is facing administrative sanction. Under Section 52 (A) (2) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, grave misconduct is classified as a grave offense meriting the penalty of dismissal from service. Thus, in the instant case, despite respondent's resignation, the Court deemed it proper to impose the corresponding disciplinary measures and sanctions, to wit: forfeiture of all retirement benefits, except accrued leave credits, if there are still any, with prejudice to reemployment in any branch or instrumentality of government, including government-owned and controlled corporations.

D E C I S I O N

***PER CURIAM*:**

Before this Court is an administrative complaint filed by Judge Salvador R. Santos, Jr. (Judge Santos), Presiding Judge, Municipal Trial Court (MTC), Angat, Bulacan, against respondent Editha R. Mangahas (Mangahas), of the same court for Conduct Unbecoming an Officer of the Court and Influence Peddling Activities.

The antecedent facts of the case, as culled from the records, are as follows:

On May 30, 2007, Judge Santos received a letter from respondent Mangahas, requesting that she be detailed back to Regional Trial Court (RTC), Branch 77, Malolos City, Bulacan, since she was allegedly suffering from high blood pressure and was advised by her physician to have an easy access to a hospital in case an attack occurs.[1] Respondent alleged that being detailed

[1] *Rollo*, p. 12.

in Malolos City will allow her to immediately seek medical assistance at the Bulacan Provincial Hospital which is only a few minutes away from the court.

Considering that it was already respondent's second time to request for detail to another court, complainant sought advise from the Office of the Court Administrator (OCA). Complainant alleged that respondent's request was based purely on personal reasons. He also pointed out that the first time respondent was approved to be detailed was also based on personal reasons, that is, she needed to give moral support to her daughter.

Complainant alleged that the true reason for respondent's request for detail to the RTC, Malolos City, was her disappointment that she is no longer the "favored" employee of the MTC, Angat, Bulacan; a status which she previously enjoyed before the appointment of complainant as Presiding Judge of the same court.

Complainant further mentioned several incidents which could have triggered respondent's resentment, to wit:

1. Complainant required several court personnel, including respondent, to explain the missing records of certain docketed criminal cases. However, when complainant inquired from respondent about it since she was said to be the one "in-charge," the latter rudely replied that complainant should ask the former judge instead;

2. Complainant likewise inquired about the solicitation which respondent made for her trip to Boracay for the stenographers' convention, to which respondent turned almost hysterical;

3. Without prior permission from complainant or the clerk of court, respondent hosted a party for her return to the MTC, Angat, Bulacan and utilized the court as her party venue;

4. Again, without complainant's permission, after respondent's return to the MTC, Angat, Bulacan, she hauled her new table, personal computer and installed and tapped her personal telephone unit with the official landline phone of the

court. She even positioned her table at the entrance of the court area, outside of the staff area and accessible to all litigants. Respondent was, thereafter, requested to remove and transfer her table as it was complainant's policy to course all follow-up of cases through the clerk of court;

5. During one staff meeting, complainant alleged that respondent blatantly refused to talk to him because according to her "*masama ang loob niya baka may masabi pa siyang masama*." Later, complainant learned that respondent confessed to her co-staff that she was jealous in not getting his attention. Respondent even went to the Office of the Mayor and complained complainant judge and told the Mayor to have him removed from Angat or transfer him elsewhere.

Complainant asserted that respondent's actuations were meant to show him that she is influential in Angat, Bulacan. Complainant attempted to settle their differences, but to no avail. Respondent even filed several sick leaves and vacation leaves without any supporting documents until her eventual resignation.

Moreover, complainant narrated that, coincidentally, after respondent's return, his family received a letter containing death threats with two live bullets of M-16 baby armalite. It was followed by telephone calls to his family's respective cellphones, followed by a text message that reads, "*alam namin na natanggap ninyo ang ipinadala naming mensahe paglalamayan na ninyo si Judge Santos.*"[2]

Thus, the instant complaint.

On August 2, 2007, the OCA directed respondent Mangahas to submit her comment on the charges against her.[3]

On September 11, 2007, in her Comment,[4] respondent rebutted the accusations against her.

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[2] *Id*. at 21.

[3] *Id*. at 17.

[4] *Id*. at 15-16.

With regard to the allegation of soliciting financial assistance for the stenographers' association's convention in Boracay, respondent claimed that the ₱1,000.00 which Mayor Domingo gave her was charged against the local funds. She reasoned, "*It was even charged against the local funds. And what is ₱1,000 to cover the expenses?*"[5] Respondent claimed that she was already decided not to attend the anniversary, but after Mayor De Leon, a relative of her husband, learned about her hesitance, he ordered the preparation of the voucher in the amount of ₱6,000.00, which was again charged against the local funds. She also claimed that the airplane tickets were paid by Judge Rolando Bulan. The rest of the expenses, respondent averred she paid with her own money.[6]

As to the allegation that she committed acts unbecoming of an officer of the court, respondent denied doing anything to be guilty of such. She averred that if it was related to the welcome party thrown for her by fellow officemates upon her return from her detail in Malolos, respondent pointed out that complainant likewise participated in the welcome party. Respondent averred that there were photos of them together during the party and complainant even bought a gallon of ice cream for the occasion.

Respondent submitted certifications from different *barangay* captains in the Municipality of Angat to prove that her character is beyond reproach.

Finally, respondent claimed that the instant complaint was intended to harass her as complainant was jealous of Judge Bulan.

In his Reply[7] dated September 19, 2007, complainant pointed out that respondent appeared to have no qualms in soliciting money from anybody, even from counsels of litigants for official seminars. In fact, respondent, after being reprimanded for her solicitation of money, even went to the police station to have him blottered after their altercation.

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[5] *Id*. at 15.

[6] *Id*.

[7] *Id*. at 60-63.

Complainant further added other incidents of respondent's misconduct, which included: (1) brokering bail applications;[8] (2) accepting money from litigants and counsels;[9] and (3) making unauthorized security arrangements for complainant and virtually mocking every actuation of complainant.[10]

Due to the conflicting versions of the parties, the OCA, in a Memorandum dated September 25, 2009, recommended that the instant matter be referred to the Executive Judge of the RTC, Malolos City, Bulacan for investigation, report and recommendation.

On November 23, 2009, the Court resolved to re-docket the instant administrative complaint as a regular administrative matter, and referred the same to the Executive Judge of the RTC, Malolos City, Bulacan, for investigation, report and recommendation.[11]

On April 14, 2010, in her Report, Executive Judge Herminia V. Pasamba, Malolos City, found respondent to be guilty of assisting litigants in posting of bail bond for a fee.[12] It was also revealed that respondent indeed solicited funds for her trip to Boracay to attend the stenographer's convention.

Another subject of investigation of the Executive Judge is the death threat received by complainant judge and his family. There was no proof that respondent instigated the death threat. However, it was established that there was indeed a death threat against complainant and it coincidentally happened right after respondent reported back from her detail, and her and complainant judge's unsettled differences.

Likewise, during the investigation, Melody M. Tolentino, Clerk of Court III, MTC, Angat, Bulacan, corroborated the

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[8] *Id*. at 60-61.

[9] *Id*. at 62.

[10] *Id*.

[11] *Id*. at 64.

[12] *Id*. at 95.

allegations against respondent, to wit: (a) that upon the return of respondent to her official station in MTC, Angat, Bulacan, a welcome party was held in the court, which took them by surprise; and, (b) the heated discussion during the staff meeting dated May 9, 2007, regarding the solicitation being made for the stenographer's convention where respondent raised her voice against complainant judge. The witness attempted to pacify respondent but, the latter even told her to stop and not to meddle; (c) the argument between complainant judge and respondent, which was reported by the latter to the police authorities was untrue and, in fact, during the staff meeting, respondent was the one who was rude and arrogant; (d) the witness also confirmed that respondent was working for the approval of the bail bonds of some litigants in the court; and (e) witness was also aware of the death threats on complainant judge.

Furthermore, as per investigation, it was found that respondent had indeed displayed arrogance in interacting with complainant judge as respondent even raised her voice towards the latter and acted as if she was the judge.

It was also noted that respondent exhausted all her leave credits and resigned from the government service effective October 1, 2007.

In a Memorandum dated September 22, 2010, the OCA recommended that respondent be meted with penalties of (1) cancellation of eligibility; (2) forfeiture of retirement benefits; and (3) the perpetual disqualification for re-employment in the government service.

We adopt the recommendation of the OCA.

Time and time again, we have 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 responsibility. Their conduct must be guided by strict propriety and decorum at all times in order to merit and maintain the public's respect for and trust in the judiciary. Needless to say, all court personnel must conduct themselves in a manner exemplifying integrity, honesty and uprightness.

In the instant case, records reveal that the conduct of respondent fell short of this standard. The acts described in the complaint, the testimony of complainant and the witness, and the Executive Judge's report clearly established that respondent is guilty of (a) discourtesy and disrespect to superiors; (b) solicitation of gifts; and (c) influence peddling in the litigants' applications for bail bond. Respondent's acts constitute misconduct, which the Court will not tolerate.

Clearly, respondent's shouting at complainant within the court premises, reporting complainant to the police after she was reprimanded for her solicitation, and refusing to talk with complainant judge are not only acts of discourtesy and disrespect but likewise an unethical conduct sanctioned by Republic Act No. 6713, otherwise known as *The Code of Conduct and Ethical Standards for Public Officials and Employees.*

High-strung and belligerent behavior has no place in government service where the personnel are enjoined to act with self-restraint and civility at all times even when confronted with rudeness and insolence. Such conduct is exacted from them so that they will earn and keep the public's respect for and confidence in the judicial service. This standard is applied with respect to a court employee's dealings not only with the public but also with his or her co-workers in the service. Conduct violative of this standard quickly and surely erodes respect for the courts.[13]

We are appalled that respondent apparently sees nothing wrong with asking or soliciting money from politicians. We have constantly reminded court employees that such act is highly improper conduct as all forms of solicitations and receipt of contributions, directly or indirectly, are prohibited. That is why, the Court provides the rule against any form of solicitations of gift or other pecuniary or material benefits or receipts of contributions for himself/herself from any person, whether or not a litigant or lawyer, to avoid any suspicion that the major

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[13] *Fernandez v. Rubillos*, A.M. No. P-08-2451, October 17, 2008, 569 SCRA 283, 292.

purpose of the donor is to influence the court personnel in performing official duties.[14]

Soliciting is prohibited under The Code of Conduct for Court Personnel. Section 2, Canon I thereof provides that "[c]ourt personnel shall not solicit or accept any gift, favor or benefit based on any explicit or implicit understanding that such gift, favor or benefit shall influence their official actions," while Section 2 (e), Canon III states that "Court personnel shall not x x x solicit or accept any gift, loan, gratuity, discount, favor, hospitality or service under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court personnel in performing official duties."[15]

Misconduct is a transgression of some established and definite rule of action, more particularly unlawful behavior or gross negligence by a public officer; and the misconduct is grave if it involves any of the additional elements of corruption, such as willful intent to violate the law or to disregard established rules. Thus, considering respondent's transgressions, *i.e.*, disrespectful conduct, solicitation, and influence peddling of bail bonds, there is no question that respondent is guilty of grave misconduct.

As noted by the Court Administrator, this Court could no longer impose the penalty of dismissal from the service, because respondent has already resigned. We likewise agree that her resignation does not render the complaint against her moot. Resignation is not, and should not, be a convenient way or strategy to evade administrative liability when a court employee is facing administrative sanction.[16]

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[14] *In Re: Improper Solicitation of Court Employees – Rolando H. Hernandez, Executive Assistant I, Legal Office, OCA*, A.M. Nos. 2008-12-SC and P-08-2510, April 24, 2009, 586 SCRA 325, 330.

[15] *Id.* at 332-333.

[16] *Re: Administrative Case for Falsification of Official Documents and Dishonesty against Randy S. Villanueva*, A.M. No. 2005-24-SC, August 10, 2007, 529 SCRA 679, 685.

Under Section 52 (A) (2) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, grave misconduct is classified as a grave offense meriting the penalty of dismissal from service. Thus, in the instant case, despite respondent's resignation, the Court deemed it proper to impose the corresponding disciplinary measures and sanctions, to wit: forfeiture of all retirement benefits, except accrued leave credits, if there are still any, with prejudice to reemployment in any branch or instrumentality of government, including government-owned and controlled corporations.

WHEREFORE, the Court finds respondent **EDITHA R. MANGAHAS, GUILTY of GRAVE MISCONDUCT.** Accordingly, her retirement benefits, except accrued leave credits, are **FORFEITED**. She is **PERPETUALLY DISQUALIFIED** for reemployment in any branch of the government or any of its agencies or instrumentalities, including government-owned and controlled corporations. This decision is immediately executory.

SO ORDERED.

Corona, C.J., Carpio, Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

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

Perez, J., no part. He acted on the matter as Court Adm.

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— May be imposed in criminal cases as part of the civil liability when an aggravating circumstance, whether ordinary or qualifying, attended the commission of the crime. (People of the Phils. *vs*. Villaflores *y* Olano, G.R. No. 184926, April 11, 2012) p. 595

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— Considered as a weak form of defense, particularly when it is not substantiated by clear and convincing evidence. (People of the Phils. *vs*. Jimmy Biyala Velasquez, G.R. No. 177224, April 11, 2012) p. 538

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Preliminary injunction — A writ of preliminary injunction will issue if the following requisites are present: (1) The applicant must have a clear and unmistakable right to be protected, that is, a right in *esse*; (2) There is a material and substantial invasion of such right; (3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury. (Incorporators of Mindanao Institute Inc. *vs*. United Church of Christian in the Phils., G.R. No. 171765, March 21, 2012) p. 21

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— The existence of unlawful aggression is the basic requirement in a plea of self-defense; no self-defense can exist without unlawful aggression since there is no attack that the accused will have to prevent or repel. *(Id.)*

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