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OF THE

PHILIPPINES

FROM

OCTOBER 24, 2012 TO NOVEMBER 14, 2012

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MANILA
2015

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PHILIPPINE REPORTS
CONTENTS

I. CASES REPORTED xiii

II. TEXT OF DECISIONS 1

III. SUBJECT INDEX 857

IV. CITATIONS 895

PHILIPPINE REPORTS

Page

Agemar Manning Agency, Inc., and/or Sonnet Shipping Ltd./Malta – Ruben D. Andrada *vs.* 170
Aldersgate College, Inc., et al. *vs.* Junifen F. Gauuan, et al. 821
Allied Domecq Spirits and Wines, represented by Allied Domecq Phils., Inc., - Rolex Rodriguez *y* Olayres *vs.* 165
ALS Management and Development Corporation, et al. – P.L. Uy Realty Corporation *vs.* 47
Andrada, Ruben D. *vs.* Agemar Manning Agency, Inc., and/or Sonnet Shipping Ltd./Malta 170
Arcinue, Spouses Robert LL. Arcinue and Arabela – Natividad Lim *vs.* 670
Arroyo, Jack *vs.* Bocago Inland Development Corporation (BIDECO), represented by Carlito Bocago and/or the Heirs of the Deceased Ramon Bocago, etc., et al. 626
Artajo *y* Alimangohan, Joel – People of the Philippines *vs.* 826
Asian Recruitment Council Philippine Chapter, Inc. (ARCOPHIL), for itself and in behalf of its members, et al. – Hon. Patricia A. Sto. Tomas, in her capacity as Secretary of Department of Labor and Employment (DOLE), et al. *vs.* 454
Baring, et al., Mirasol – Antonio Perla *vs.* 323
Bautista, et al., Lito *vs.* Sharon G. Cuneta-Pangilinan 110
Becmen Service Exporter and Promotion, Inc. *vs.* Spouses Simplicio and Mila Cuaresma (for and in behalf of daughter, Jasmin G. Cuaresma), et al. 454
Belbis, Jr. *y* Competente, et al., Rodolfo *vs.* People of the Philippines 706
Bocago Inland Development Corporation (BIDECO), represented by Carlito Bocago and/or the Heirs of the Deceased Ramon Bocago, etc., et al. – Jack Arroyo *vs.* 626
Bona, Spouses Rokaya and Sulaiman – Land Bank of the Philippines *vs.* 372
Borjal, Pedro C. – Isabelita P. Gravides *vs.* 581
Cagayan Electric Power and Light Co., Inc. *vs.* City of Cagayan de Oro 788
City of Cagayan de Oro – Cagayan Electric Power and Light Co., Inc. *vs.* 788

Page

Colorado, Neil B. – People of the Philippines *vs.* 833
Commission on Elections, et al. – Casimira S. Dela Cruz *vs.* 548
– Isabelita P. Gravides *vs.* 581
– Joel P. Quiño, et al. *vs.* 570
Commissioner of Internal Revenue –
Diageo Philippines, Inc. *vs.* 385
Communities Cagayan, Inc. *vs.* Spouses Arsenio
(Deceased) and Angeles Nanol, et al. 648
Court of Appeals (Ninth Division), et al. –
Republic of the Philippines *vs.* 257
Cuaresma (for and in behalf of daughter,
Jasmin G. Cuaresma), et al., Spouses Simplicio
and Mila – Becmen Service Exporter and
Promotion, Inc. *vs.* 454
Cuaresma (for and in behalf of deceased daughter,
Jasmin G. Cuaresma), Spouses Simplicio and Mila *vs.*
White Falcon Services, Inc., et al. 454
Cuneta-Pangilinan, Sharon G. – Lito Bautista, et al. *vs.* 110
De Quintos, Jr., Eduardo C. – Republic
of the Philippines *vs.* 257
Dela Cruz, Casimira S. *vs.* Commission on Elections, et al. 548
Dela Cruz, Casimira S. *vs.* John Lloyd M. Pacete 548
Dela Rosa-Ramos, et al., Myrna – Westmont Bank,
formerly Associated Bank now United Overseas
Bank Philippines *vs.* 23
Dela Torre-Yadao, in her capacity as Presiding Judge,
Branch 81, Regional Trial Court of Quezon City, et al.,
Hon. Ma. Theresa L. – People of the Philippines *vs.* 471
Delos Santos, Spouses Humberto P. Delos Santos
and Carmencita M. *vs.* Metropolitan Bank and
Trust Company 1
Diageo Philippines, Inc. *vs.* Commissioner
of Internal Revenue 385
Dy, et al., Arturo – Philippine Banking Corporation *vs.* 750
Ending *y* Onyong, Enerio – People of the Philippines *vs.* 396
Estate of Hans Menzi (through its Executor, Manuel G.
Montecillo, et al. – Republic of the Philippines *vs.* 495
Garcia II, etc., Judge Matias M. – Ernesto Hebron *vs.* 615

Page

Gauuan, et al., Junifen F. – Aldersgate
College, Inc., et al. *vs.* 821
Go, et al., Benito Fernandez – Lily Sy *vs.* 637
Gonzales-Alzate, Atty. Saniata Liwliwa V. –
Robert Victor G. Seares, Jr. *vs.* 596
Gravides, Isabelita P. *vs.* Pedro C. Borjal 581
Gravides, Isabelita P. *vs.* Commission on Elections, et al. 581
Gua-an, et al., Aurelia *vs.* Gertrudes Quirino,
represented by Elmer Quirino 446
Guru *y* Kazan, Meriam – People of the Philippines *vs.* 131
Gutierrez, et al., Hon. Secretary of Justice
Ma. Merceditas N. – Lily Sy *vs.* 637
Hebron, Ernesto *vs.* Judge Matias M. Garcia II, etc. 615
Honeycomb Farms Corporation –
Land Bank of the Philippines *vs.* 298
In the Matter of the Petition for the Issuance of a
Writ of Amparo in Favor of Lilibeth O. Ladaga 525
In the Matter of the Petition for the Issuance of a
Writ of Amparo in Favor of Angela A. Librado-Trinidad 525
In the Matter of the Petition for the Issuance of a
Writ of Amparo in Favor of Carlos Isagani T. Zarate 525
In the Matter of the Petition for the Probate of the
Last Will and Testament of Enrique S. Lopez 423
Jamora, et al., Former Clerk of Court Angelita A. –
Office of the Court Administrator *vs.* 610
Jaralve substituted by Alan Jess Jaralve Documento, Jr.,
et al., Gloria – Republic of the Philippines *vs.* 86
Kerr, Salvador E. – Dennis Q. Mortel *vs.* 228
Ladaga, Lilibeth O. *vs.* Maj. Gen. Reynaldo
Mapagu, etc., et al. 525
Ladano, Luciano *vs.* Felino Neri, et al. 354
Land Bank of the Philippines *vs.* Spouses Rokaya
and Sulaiman Bona 372
Honeycomb Farms Corporation 298
Crispin D. Ramos, et al. 725
Lansangan, Victor – People of the Philippines *vs.* 847
Laurino, Noel T. – People of the Philippines *vs.* 195
Laviña, Nelson D. – Nestor Padalhin, et al. *vs.* 734

Page

Librado-Trinidad, Angela A. *vs.* Maj. Gen.
Reynaldo Mapagu, etc., et al. 525
Lim, Natividad *vs.* Spouses Robert LL. Arcinue
and Arabela Arcinue 670
Lim, Natividad *vs.* National Power Corporation, et al. 670
Lopez, et al., Diana Jeanne – Richard B. Lopez *vs.* 423
Lopez, Richard B. *vs.* Diana Jeanne Lopez, et al. 423
Malicdem *y* Molina, Marcial –
People of the Philippines *vs.* 408
Mangune *y* Del Rosario, William –
People of the Philippines *vs.* 759
Mapagu, etc., et al., Maj. Gen. Reynaldo –
Lilibeth O. Ladaga *vs.* 525
– Angela A. Librado-Trinidad *vs.* 525
– Carlos Isagani T. Zarate *vs.* 525
Mariano *y* Feliciano, et al., Godofredo –
People of the Philippines *vs.* 772
Martos, et al., Felix *vs.* New San Jose Builders, Inc. 147
Mendoza, Arabelle J. *vs.* Republic
of the Philippines, et al. 241
Metropolitan Bank and Trust Company –
Spouses Humberto P. Delos Santos and
Carmencita M. Delos Santos *vs.* 1
Millan, Benjamin C. *vs.* Wallem Maritime
Services, Inc., et al. 437
Mortel, Dennis Q. *vs.* Salvador E. Kerr 228
Municipality of Parañaque, et al. –
V.C. Ponce Company, Inc. *vs.* 338
Musa *y* Pinasilo, et al., Aisa –
People of the Philippines *vs.* 204
Nanol, et al., Spouses Arsenio (Deceased) and
Angeles – Communities Cagayan, Inc. *vs.* 648
National Power Corporation, et al. – Natividad Lim *vs.* 670
Nazareno, Chito – People of the Philippines *vs.* 187
Neri, et al., Felino – Luciano Ladano *vs.* 354
New San Jose Builders, Inc. – Felix Martos, et al. *vs.* 147
Office of the Court Administrator *vs.* Former Clerk
of Court Angelita A. Jamora, et al. 610

Page

P.L. Uy Realty Corporation *vs.* ALS Management and Development Corporation, et al. 47
Pacete, John Lloyd M. – Casimira S. Dela Cruz *vs.* 548
Padalhin, et al., Nestor *vs.* Nelson D. Laviña 734
Paneda, in his capacity as the Presiding Judge of Branch 220, Quezon City, et al., Hon. Jose G. – Hon. Patricia A. Sto. Tomas, in her capacity as Secretary of Department of Labor and Employment (DOLE), et al., *vs.* 454
People of the Philippines – Rodolfo Belbis, Jr. *y* Competente, et al. *vs.* 706
People of the Philippines – Arnold James M. Ysidoro *vs.* 813
People of the Philippines *vs.* Joel Artajo *y* Alimangohan 826
Neil B. Colorado 833
Hon. Ma. Theresa L. Dela Torre-Yadao, in her capacity as Presiding Judge, Branch 81, Regional Trial Court of Quezon City, et al. 471
Enerio Ending *y* Onyong 396
Meriam Guru *y* Kazan 131
Victor Lansangan 847
Noel T. Laurino 195
Marcial Malicdem *y* Molina 408
William Mangune *y* Del Rosario 759
Godofredo Mariano *y* Feliciano, et al. 772
Aisa Musa *y* Pinasilo, et al. 204
Chito Nazareno 187
Benjamin Soria *y* Gomez 676
People of the Philippines, et al. – Rolex Rodriguez *y* Olayres *vs.* 165
Perla, Antonio *vs.* Mirasol Baring, et al. 323
Philippine Association of Service Exporters, Inc. (PASEI) – Republic of the Philippines, represented by the Honorable Executive Secretary, et al. *vs.* 454
Philippine Banking Corporation *vs.* Arturo Dy, et al. 750
Quiño, et al., Joel P. *vs.* Commission on Elections, et al. 570
Quiño, et al., Joel P. *vs.* Ritchie R. Wagas 570
Quirino, represented by Elmer Quirino, Gertrudes – Aurelia Gua-an, et al. *vs.* 446

Page

Ramos, et al., Crispin D. – Land Bank
of the Philippines *vs.* 725
Republic of the Philippines *vs.* Court of Appeals
(Ninth Division), et al. 257
Eduardo C. De Quintos, Jr. 257
Estate of Hans Menzi (through its Executor,
Manuel G. Montecillo, et al. 495
Gloria Jaralve substituted by Alan Jess
Jaralve Documento, Jr., et al. 86
Arcadio Ivan A. Santos III, et al. 275
Republic of the Philippines, et al. –
Arabelle J. Mendoza *vs.* 241
Republic of the Philippines, represented by the
Honorable Executive Secretary, et al. *vs.* Philippine
Association of Service Exporters, Inc. (PASEI) 454
Republic of the Philippines, represented by the
Regional Executive Director of the Department
of Environment and Natural Resources, Regional
Office No. 3 *vs.* Roman Catholic Archbishop of Manila 429
Rodriguez *y* Olayres, Rolex *vs.* Allied Domecq Spirits
and Wines, represented by Allied Domecq Phils., Inc. 165
Rodriguez *y* Olayres, Rolex *vs.* People of the
Philippines, et al. 165
Roman Catholic Archbishop of Manila – Republic
of the Philippines, represented by the Regional
Executive Director of the Department of Environment
and Natural Resources, Regional Office No. 3 429
Roman Catholic Archbishop of Manila –
Samahang Kabuhayan ng San Lorenzo KKK, Inc.,
represented by its Vice President Zenaida Turla *vs.* 429
Salac, et al., Rey – Hon. Patricia A. Sto. Tomas, et al. *vs.* 454
Samahang Kabuhayan ng San Lorenzo KKK, Inc.,
represented by its Vice President Zenaida Turla *vs.*
Roman Catholic Archbishop of Manila 429
Sampaguita Hills Homeowners Association, Inc. –
V.C. Ponce Company, Inc. *vs* 338
Santos III, et al., Arcadio Ivan A. –
Republic of the Philippines *vs.* 275

Page

Seares, Jr., Robert Victor G. *vs.* Atty. Saniata Liwliwa V. Gonzales-Alzate 596
Soria *y* Gomez, Benjamin – People of the Philippines *vs.* 676
Sto. Tomas, et al., Hon. Patricia A. *vs.* Rey Salac, et al. 454
Sto. Tomas, in her capacity as Secretary of Department of Labor and Employment (DOLE), et al., Hon. Patricia A. *vs.* Asian Recruitment Council Philippine Chapter, Inc. (ARCOPHIL), for itself and in behalf of its members, et al. 454
Sto. Tomas, in her capacity as Secretary of Department of Labor and Employment (DOLE), et al., Hon. Patricia A. *vs.* Hon. Jose G. Paneda, in his capacity as the Presiding Judge of Branch 220, Quezon City, et al. 454
Sy, Lily *vs.* Benito Fernandez Go, et al. 637
Sy, Lily *vs.* Hon. Secretary of Justice Ma. Merceditas N. Gutierrez, et al. 637
Tan, et al., Tom *vs.* Heirs of Antonio F. Yamson 35
Uniwide Sales, Inc., et al. – VSD Realty & Development Corporation *vs.* 62
V.C. Ponce Company, Inc. *vs.* Municipality of Parañaque, et al. 338
V.C. Ponce Company, Inc. *vs.* Sampaguita Hills Homeowners Association, Inc. 338
VSD Realty & Development Corporation *vs.* Uniwide Sales, Inc., et al. 62
Wagas, Ritchie R. – Joel P. Quiño, et al. *vs.* 570
Wallem Maritime Services, Inc., et al. – Benjamin C. Millan *vs.* 437
Westmont Bank, formerly Associated Bank now United Overseas Bank Philippines *vs.* Myrna Dela Rosa-Ramos, et al. 23
White Falcon Service, Inc., et al. – Spouses Simplicio and Mila Cuaresma (for and in behalf of deceased daughter, Jasmin G. Cuaresma) *vs.* 454
Yamson, Heirs of Antonio F. – Tom Tan, et al. *vs.* 35
Ysidoro, Arnold James M. *vs.* People of the Philippines 813
Zarate, Carlos Isagani T. *vs.* Maj. Gen. Reynaldo Mapagu, etc., et al. 525

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 153852. October 24, 2012]

SPOUSES HUMBERTO P. DELOS SANTOS and CARMENCITA M. DELOS SANTOS, *petitioners, vs.* **METROPOLITAN BANK AND TRUST COMPANY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; CONCEPT THEREOF, EXPOUNDED.— [T]he petitioners' resort to the special civil action of *certiorari* to assail the May 19, 2000 order of the RTC (reconsidering and setting aside its order dated May 2, 2000 issuing the temporary restraining order against Metrobank to stop the foreclosure sale) was improper. They thereby apparently misapprehended the true nature and function of a writ of *certiorari*. It is clear to us, therefore, that the CA justly and properly dismissed their petition for the writ of *certiorari*. We remind that the writ of *certiorari* – being a remedy narrow in scope and inflexible in character, whose purpose is to keep an inferior court within the bounds of its jurisdiction, or to prevent an inferior court from committing such grave abuse of discretion amounting to excess of jurisdiction, or to relieve parties from arbitrary acts of courts (*i.e.*, acts that courts have no power or authority in law to perform) – is not a general utility tool in the legal workshop, and cannot be issued to correct every error

committed by a lower court. The concept of the remedy of *certiorari* in our judicial system remains much the same as it has been in the common law. In this jurisdiction, however, the exercise of the power to issue the writ of *certiorari* is largely regulated by laying down the instances or situations in the *Rules of Court* in which a superior court may issue the writ of *certiorari* to an inferior court or officer. Section 1, Rule 65 of the *Rules of Court* compellingly provides the requirements for that purpose x x x. Pursuant to Section 1, *supra*, the petitioner must show that, *one*, the tribunal, board or officer exercising judicial or quasi-judicial functions acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, and, *two*, there is neither an appeal nor any plain, speedy and adequate remedy in the ordinary course of law for the purpose of amending or nullifying the proceeding. Considering that the requisites must concurrently be attendant, the herein petitioners' stance that a writ of *certiorari* should have been issued even if the CA found no showing of grave abuse of discretion is absurd. The commission of grave abuse of discretion was a fundamental requisite for the writ of *certiorari* to issue against the RTC. Without their strong showing either of the RTC's lack or excess of jurisdiction, or of grave abuse of discretion by the RTC amounting to lack or excess of jurisdiction, the writ of *certiorari* would not issue for being bereft of legal and factual bases. We need to emphasize, too, that with *certiorari* being an extraordinary remedy, they must strictly observe the rules laid down by law for granting the relief sought.

2. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION, EXPLAINED. — The sole office of the writ of *certiorari* is the correction of errors of jurisdiction, which includes the commission of grave abuse of discretion amounting to lack of jurisdiction. In this regard, mere abuse of discretion is not enough to warrant the issuance of the writ. The abuse of discretion must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.

3. ID.; PROVISIONAL REMEDIES; INJUNCTION; AN INJUNCTION WILL NOT ISSUE TO ENJOIN THE EXTRAJUDICIAL FORECLOSURE OF A MORTGAGE WHERE THE PARTIES HAVE STIPULATED IN THEIR CONTRACT THAT THE MORTGAGEE IS AUTHORIZED TO FORECLOSE THE MORTGAGE UPON THE MORTGAGOR'S DEFAULT.— [T]he Court must find that the petitioners were not entitled to enjoin or prevent the extrajudicial foreclosure of their mortgage by Metrobank. They were undeniably already in default of their obligations the performance of which the mortgage had precisely secured. Hence, Metrobank had the unassailable right to the foreclosure. In contrast, their right to prevent the foreclosure did not exist. Hence, they could not be validly granted the injunction they sought. The foreclosure of a mortgage is but a necessary consequence of the non-payment of an obligation secured by the mortgage. Where the parties have stipulated in their agreement, mortgage contract and promissory note that the mortgagee is authorized to foreclose the mortgage upon the mortgagor's default, the mortgagee has a clear right to the foreclosure in case of the mortgagor's default. Thereby, the issuance of a writ of preliminary injunction upon the application of the mortgagor will be improper. Mindful that an injunction would be a limitation upon the freedom of action of Metrobank, the RTC justifiably refused to grant the petitioners' application for the writ of preliminary injunction. We underscore that the writ could be granted only if the RTC was fully satisfied that the law permitted it and the emergency demanded it. That, needless to state, was not true herein.

4. ID.; ID.; ID.; NATURE AND CONCEPT OF A WRIT OF PRELIMINARY INJUNCTION.— In *City Government of Butuan v. Consolidated Broadcasting System (CBS), Inc*., the Court restated the nature and concept of a writ of preliminary injunction in the following manner, to wit x x x. **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.**

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; MORTGAGE CONTRACT; ESCALATION CLAUSES ARE NOT *VOID PER SE* AND AN INCREASE IN THE INTEREST RATE PURSUANT TO SUCH CLAUSES ARE NOT NECESSARILY VOID; ANY INCREASE IN THE INTEREST RATE MADE PURSUANT TO AN ESCALATION CLAUSE MUST BE THE RESULT OF AN AGREEMENT BETWEEN THE PARTIES.— We consider to be unsubstantiated the petitioners' claim of their lack of consent to the escalation clauses. They did not adduce evidence to show that they did not assent to the increases in the interest rates. The records reveal instead that they requested only the reduction of the interest rate or the restructuring of their loans. Moreover, the mere averment that the excess payments were sufficient to cover their accrued obligation computed on the basis of the stipulated interest rate cannot be readily accepted. Their computation, as their memorandum submitted to the RTC would explain, was too simplistic, for it factored only the principal due but not the accrued interests and penalty charges that were also stipulated in the loan agreements. It is relevant to observe in this connection that escalation clauses like those affecting the petitioners were not void *per se*, and that an increase in the interest rate pursuant to such clauses were not necessarily void. In *Philippine National Bank v. Rocamora*, the Court has said x x x. The validity of escalation clauses notwithstanding, we cautioned that these clauses do not give creditors the unbridled right to adjust interest rates unilaterally. As we said in the same *Banco Filipino* case, **any increase in the rate of interest**

made pursuant to an escalation clause must be the result of an agreement between the parties. The minds of all the parties must meet on the proposed modification as this modification affects an important aspect of the agreement. There can be no contract in the true sense in the absence of the element of an agreement, *i.e.*, the parties' mutual consent. Thus, **any change must be mutually agreed upon, otherwise, the change carries no binding effect**. A stipulation on the validity or compliance with the contract that is left solely to the will of one of the parties is void; the stipulation goes against the principle of mutuality of contract under Article 1308 of the Civil Code.

6. REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; WILL NOT BE ISSUED TO PROTECT A RIGHT NOT *IN ESSE* AND WHICH MAY NEVER ARISE, OR TO RESTRAIN AN ACT WHICH DOES NOT GIVE RISE TO A CAUSE OF ACTION.— We reiterate that injunction will not protect contingent, abstract or future rights whose existence is doubtful or disputed. Indeed, there must exist an actual right, because injunction will not be issued to protect a right not *in esse* and which may never arise, or to restrain an act which does not give rise to a cause of action. At any rate, an application for injunctive relief is strictly construed against the pleader. Nor do we discern any substantial controversy that had any real bearing on Metrobank's right to foreclose the mortgage. The mere possibility that the RTC would rule in the end in the petitioners' favor by lowering the interest rates and directing the application of the excess payments to the accrued principal and interest did not diminish the fact that when Metrobank filed its application for extrajudicial foreclosure they were already in default as to their obligations and that their short-term loan of ₱4,400,000.00 had already matured. Under such circumstances, their application for the writ of preliminary injunction could not but be viewed as a futile attempt to deter or delay the forced sale of their property.

7. ID.; ID.; ID.; NO WRIT OF PRELIMINARY INJUNCTION TO ENJOIN AN IMPENDING EXTRAJUDICIAL FORECLOSURE SALE SHOULD ISSUE EXCEPT UPON A CLEAR SHOWING OF A VIOLATION OF THE MORTGAGORS' UNMISTAKABLE RIGHT TO THE

INJUNCTION.— The petitioners' reliance on the ruling in *Almeda v. Court of Appeals* was misplaced. x x x. *Almeda v. Court of Appeals* involved circumstances that were far from identical with those obtaining herein. x x x. The petitioners in *Almeda v. Court of Appeals* had the existing right to a writ of preliminary injunction pending the resolution of the main case, but the herein petitioners did not. Stated otherwise, no writ of preliminary injunction to enjoin an impending extrajudicial foreclosure sale should issue except upon a clear showing of a violation of the mortgagors' unmistakable right to the injunction.

APPEARANCES OF COUNSEL

Into Pantojan & Gonzales Law Offices for petitioners.
Liza Galicia Galicia and Associates for respondent.

D E C I S I O N

BERSAMIN, *J.*:

A writ of preliminary injunction to enjoin an impending extrajudicial foreclosure sale is issued only upon a clear showing of a violation of the mortgagor's unmistakable right.[1]

This appeal is taken by the petitioners to review and reverse the decision promulgated on February 19, 2002,[2] whereby the Court of Appeals (CA) dismissed their petition for *certiorari* that assailed the denial by the Regional Trial Court in Davao City (RTC) of their application for the issuance of a writ of preliminary injunction to prevent the extrajudicial foreclosure sale of their mortgaged asset initiated by their mortgagee, respondent Metropolitan Bank and Trust Company (Metrobank).

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[1] *Selegna Management and Development Corporation v. United Coconut Planters Bank*, G.R. No. 165662, May 3, 2006, 489 SCRA 125, 127.

[2] *Rollo*, pp. 43-48; penned by Associate Justice Eugenio S. Labitoria (retired), with Associate Justice Teodoro P. Regino (retired) and Associate Justice Rebecca de Guia-Salvador concurring.

Antecedents

From December 9, 1996 until March 20, 1998, the petitioners took out several loans totaling ₱12,000,000.00 from Metrobank, Davao City Branch, the proceeds of which they would use in constructing a hotel on their 305-square-meter parcel of land located in Davao City and covered by Transfer Certificate of Title No. I-218079 of the Registry of Deeds of Davao City. They executed various promissory notes covering the loans, and constituted a mortgage over their parcel of land to secure the performance of their obligation. The stipulated interest rates were 15.75% *per annum* for the long term loans (maturing on December 9, 2006) and 22.204% *per annum* for a short term loan of ₱4,400,000.00 (maturing on March 12, 1999).[3] The interest rates were fixed for the first year, subject to escalation or de-escalation in certain events without advance notice to them. The loan agreements further stipulated that the entire amount of the loans would become due and demandable upon default in the payment of any installment, interest or other charges.[4]

On December 27, 1999, Metrobank sought the extrajudicial foreclosure of the real estate mortgage[5] after the petitioners defaulted in their installment payments. The petitioners were notified of the foreclosure and of the forced sale being scheduled on March 7, 2000. The notice of the sale stated that the total amount of the obligation was ₱16,414,801.36 as of October 26, 1999.[6]

On April 4, 2000, prior to the scheduled foreclosure sale (*i.e.*, the original date of March 7, 2000 having been meanwhile reset to April 6, 2000), the petitioners filed in the RTC a complaint (later amended) for damages, fixing of interest rate, and application of excess payments (with prayer for a writ of

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[3] *Rollo,* p. 100.

[4] Records, pp. 33-54

[5] *Rollo,* pp. 146-148.

[6] Records, p. 119.

preliminary injunction). They alleged therein that Metrobank had no right to foreclose the mortgage because they were not in default of their obligations; that Metrobank had imposed interest rates (*i.e.*, 15.75% *per annum* for two long-term loans and 22.204% *per annum* for the short term loan) on three of their loans that were different from the rate of 14.75% *per annum* agreed upon; that Metrobank had increased the interest rates on some of their loans without any basis by invoking the escalation clause written in the loan agreement; that they had paid ₱2,561,557.87 instead of only ₱1,802,867.00 based on the stipulated interest rates, resulting in their excess payment of ₱758,690.87 as interest, which should then be applied to their accrued obligation; that they had requested the reduction of the escalated interest rates on several occasions because of its damaging effect on their hotel business, but Metrobank had denied their request; and that they were not yet in default because the long-term loans would become due and demandable on December 9, 2006 yet and they had been paying interest on the short-term loan in advance.

The complaint prayed that a writ of preliminary injunction to enjoin the scheduled foreclosure sale be issued. They further prayed for a judgment making the injunction permanent, and directing Metrobank, namely: (*a*) to apply the excess payment of ₱758,690.87 to the accrued interest; (*b*) to pay ₱150,000.00 for the losses suffered in their hotel business; (*c*) to fix the interest rates of the loans; and (*d*) to pay moral and exemplary damages plus attorney's fees.[7]

In its answer, Metrobank stated that the increase in the interest rates had been made pursuant to the escalation clause stipulated in the loan agreements; and that not all of the payments by the petitioners had been applied to the loans covered by the real estate mortgage, because some had been applied to another loan of theirs amounting to ₱500,000.00 that had not been secured by the mortgage.

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[7] *Rollo,* pp. 97-108.

In the meantime, the RTC issued a temporary restraining order to enjoin the foreclosure sale.[8] After hearing on notice, the RTC issued its order dated May 2, 2000,[9] granting the petitioners' application for a writ of preliminary injunction.

Metrobank moved for reconsideration.[10] The petitioners did not file any opposition to Metrobank's motion for reconsideration; also, they did not attend the scheduled hearing of the motion for reconsideration.

On May 19, 2000, the RTC granted Metrobank's motion for reconsideration, holding in part,[11] as follows:

xxx [I]n the motion at bench as well as at the hearing this morning defendant Metro Bank pointed out that in all the promissory notes executed by the plaintiffs there is typewritten inside a box immediately following the first paragraph the following:

> "At the effective rate of 15.75% for the first year subject to upward/downward adjustments for the next year thereafter."

Moreover, in the form of the same promissory notes, there is the additional stipulation which reads:

> *"The rate of interest and/or bank charges herein-stipulated, during the term of this Promissory Note, its extension, renewals or other modifications, may be increased, decreased, or otherwise changed from time to time by the bank without advance notice to me/us in the event of changes in the interest rates prescribed by law of the Monetary Board of the Central Bank of the Philippines, in the rediscount rate of member banks with the Central Bank of the Philippines, in the interest rates on savings and time deposits, in the interest rates on the Bank's borrowings, in the reserve requirements, or in the overall costs of funding or money;"*

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[8] Records, p. 125.

[9] *Rollo,* p. 110.

[10] *Id.* at 111-114.

[11] *Id.* at 121-122.

There being no opposition to the motion despite receipt of a copy thereof by the plaintiffs through counsel and finding merit to the motion for reconsideration, this Court resolves to reconsider and set aside the Order of this Court dated May 2, 2000.

x x x x x x x x x

SO ORDERED.

The petitioners sought the reconsideration of the order, for which the RTC required the parties to submit their respective memoranda. In their memorandum, the petitioners insisted that they had an excess payment sufficient to cover the amounts due on the principal.

Nonetheless, on June 8, 2001, the RTC denied the petitioners' motion for reconsideration,[12] to wit:

The record does not show that plaintiffs have updated their installment payments by depositing the same with this Court, with the interest thereon at the rate they contend to be the true and correct rate agreed upon by the parties.

Hence, even if their contention with respect to the rates of interest is true and correct, they are in default just the same in the payment of their principal obligation.

WHEREFORE, the MOTION FOR RECONSIDERATION is denied.

Ruling of the CA

Aggrieved, the petitioners commenced a special civil action for *certiorari* in the CA, ascribing grave abuse of discretion to the RTC when it issued the orders dated May 19, 2000 and June 8, 2001.

On February 19, 2002, the CA rendered the assailed decision dismissing the petition for *certiorari* for lack of merit, and affirming the assailed orders,[13] stating:

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[12] *Id.* at 93.

[13] *Id.* at 43-48.

Petitioners aver that the respondent Court gravely abused its discretion in finding that petitioners are in default in the payment of their obligation to the private respondent.

We disagree.

The Court below did not excessively exercise its judicial authority not only in setting aside the May 2, 2000 Order, but also in denying petitioners' motion for reconsideration due to the faults attributable to them.

When private respondent Metrobank moved for the reconsideration of the Order of May 2, 2000 which granted the issuance of the writ of preliminary injunction, petitioners failed to oppose the same despite receipt of said motion for reconsideration. The public respondent Court said –

> "For resolution is the Motion for Reconsideration filed by the defendant Metropolitan Bank and Trust Company, dated May 12, 2000, a copy of which was received by Atty. Philip Pantojan for the plaintiffs on May 16, 2000. There is no opposition nor appearance for the plaintiffs this morning at the scheduled hearing of said motion x x x".

Corollarily, the issuance of the Order of June 8, 2001 was xxx based on petitioners' [being] remiss in their obligation to update their installment payments.

The Supreme Court ruled in this wise:

> To justify the issuance of the writ of *certiorari*, the abuse of discretion on the part of the tribunal or officer must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility.

Petitioners likewise discussed at length the issue of whether or not the private respondent has collected the right interest rate on the loans they obtained from the private respondent, as well as the propriety of the application of escalated interest rate which was applied to their loans by the latter. In the instant petition, questions of fact are not generally permitted, the inquiry being limited essentially to whether the public respondent acted without or in excess of its jurisdiction or with grave abuse of discretion in issuing the questioned Orders, neither is the instant petition available to correct mistakes in the judge's findings and conclusions, nor to cure erroneous conclusions of law and fact, if there be any.

> *Certiorari* will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court.

A review of facts and evidence is not the province of the extraordinary remedy of *certiorari*.

WHEREFORE, the petition is **DENIED** for lack of merit. The assailed Orders of the respondent Court are **AFFIRMED.**

SO ORDERED.

The petitioners moved for reconsideration of the decision, but the CA denied the motion for lack of merit on May 7, 2002.[14]

Hence, this appeal.

Issues

The petitioners pose the following issues, namely:

1. Whether or not the Presiding Judge in issuing the 08 June 2001 Order, finding the petitioners in default of their obligation with the Bank, has committed grave abuse of discretion amounting to excess or lack of jurisdiction as the same run counter against the legal principle enunciated in the Almeda Case;
2. Assuming that the Presiding Judge did not excessively exercise [his] judicial authority in the issuance of the assailed orders, notwithstanding [their] consistency with the legal principle enunciated in the Almeda Case, whether or not the petitioners can avail of the remedy under Rule 65, taking into consideration the sense of urgency involved in the resolution of the issue raised;
3. Whether or not the Petition lodged before the Court of Appeals presented a question of fact, and hence not within the province of the extraordinary remedy of *certiorari*.[15]

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[14] *Id.* at 68-69.

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

The petitioners argue that the foreclosure of their mortgage was premature; that they could not yet be considered in default under the ruling in *Almeda v. Court of Appeals*,[16] because the trial court was still to determine with certainty the exact amount of their obligation to Metrobank; that they would likely prevail in their action because Metrobank had altered the terms of the loan agreement by increasing the interest rates without their prior assent; and that unless the foreclosure sale was restrained their action would be rendered moot. They urge that despite finding no grave abuse of discretion on the part of the RTC in denying their application for preliminary injunction, the CA should have nonetheless issued a writ of *certiorari* considering that they had no other plain and speedy remedy.

Metrobank counters that *Almeda v. Court of Appeals* was not applicable because that ruling presupposed the existence of the following conditions, to wit: (*a*) the escalation and de-escalation of the interest rate were subject to the agreement of the parties; (*b*) the petitioners as obligors must have protested the highly escalated interest rates prior to the application for foreclosure; (*c*) they must not be in default in their obligations; (*d*) they must have tendered payment to Metrobank equivalent to the principal and accrued interest calculated at the originally stipulated rate; and (*e*) upon refusal of Metrobank to receive payment, they should have consigned the tendered amount in court.[17] It asserts that the petitioners' loans, unlike the obligation involved in *Almeda v. Court of Appeals*, had already matured prior to the filing of the case, and that they had not tendered or consigned in court the amount of the principal and the accrued interest at the rate they claimed to be the correct one.[18]

Based on the foregoing, the issues to be settled are, *firstly*, whether the petitioners had a cause of action for the grant of the extraordinary writ of *certiorari*; and, *secondly*, whether

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[16] G.R. No. 113412, April 17, 1996, 256 SCRA 292.

[17] *Rollo,* pp. 174-175.

[18] *Id.* at 174-175.

the petitioners were entitled to the writ of preliminary injunction in light of the ruling in *Almeda v. Court of Appeals*.

Ruling

The appeal has no merit.

To begin with, the petitioners' resort to the special civil action of *certiorari* to assail the May 19, 2000 order of the RTC (reconsidering and setting aside its order dated May 2, 2000 issuing the temporary restraining order against Metrobank to stop the foreclosure sale) was improper. They thereby apparently misapprehended the true nature and function of a writ of *certiorari*. It is clear to us, therefore, that the CA justly and properly dismissed their petition for the writ of *certiorari*.

We remind that the writ of *certiorari* – being a remedy narrow in scope and inflexible in character, whose purpose is to keep an inferior court within the bounds of its jurisdiction, or to prevent an inferior court from committing such grave abuse of discretion amounting to excess of jurisdiction, or to relieve parties from arbitrary acts of courts (*i.e.*, acts that courts have no power or authority in law to perform) – is not a general utility tool in the legal workshop,[19] and cannot be issued to correct every error committed by a lower court.

In the common law, from which the remedy of *certiorari* evolved, the writ of *certiorari* was issued out of Chancery, or the King's Bench, commanding agents or officers of the inferior courts to return the record of a cause pending before them, so as to give the party more sure and speedy justice, for the writ would enable the superior court to determine from an inspection of the record whether the inferior court's judgment was rendered without authority.[20] The errors were of such a nature that, if

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[19] *Estares v. Court of Appeals*, G.R. No. 144755, June 8, 2005, 459 SCRA 604, 620-621.

[20] *Cushman v. Commissioners' Court of Blount County*, 49 So. 311, 312, 160 Ala. 227 (1909); *Ex parte Hennies*, 34 So.2d 22, 23, 33 Ala. App. 377 (1948); *Schwander v. Feeney's Del. Super.*, 29 A.2d 369, 371 (1942).

allowed to stand, they would result in a substantial injury to the petitioner to whom no other remedy was available.[21] If the inferior court acted without authority, the record was then revised and corrected in matters of law.[22] The writ of *certiorari* was limited to cases in which the inferior court was said to be exceeding its jurisdiction or was not proceeding according to essential requirements of law and would lie only to review judicial or quasi-judicial acts.[23]

The concept of the remedy of *certiorari* in our judicial system remains much the same as it has been in the common law. In this jurisdiction, however, the exercise of the power to issue the writ of *certiorari* is largely regulated by laying down the instances or situations in the *Rules of Court* in which a superior court may issue the writ of *certiorari* to an inferior court or officer. Section 1, Rule 65 of the *Rules of Court* compellingly provides the requirements for that purpose, *viz*:

> Section 1. *Petition for certiorari.* — When any 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 there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
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> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (1a)

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[21] *Worcester Gas Light Co. v. Commissioners of Woodland Water Dist. in Town of Auburn*, 49 N.E.2d 447, 448, 314 Mass. 60 (1943).

[22] *Toulouse v. Board of Zoning Adjustment*, 87 A.2d 670, 673, 147 Me. 387 (1952).

[23] *Greater Miami Development Corp. v. Pender*, 194 So. 867, 868, 142 Fla. 390 (1940).

Pursuant to Section 1, *supra*, the petitioner must show that, *one*, the tribunal, board or officer exercising judicial or quasi-judicial functions acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, and, *two*, there is neither an appeal nor any plain, speedy and adequate remedy in the ordinary course of law for the purpose of amending or nullifying the proceeding.

Considering that the requisites must concurrently be attendant, the herein petitioners' stance that a writ of *certiorari* should have been issued even if the CA found no showing of grave abuse of discretion is absurd. The commission of grave abuse of discretion was a fundamental requisite for the writ of *certiorari* to issue against the RTC. Without their strong showing either of the RTC's lack or excess of jurisdiction, or of grave abuse of discretion by the RTC amounting to lack or excess of jurisdiction, the writ of *certiorari* would not issue for being bereft of legal and factual bases. We need to emphasize, too, that with *certiorari* being an extraordinary remedy, they must strictly observe the rules laid down by law for granting the relief sought.[24]

The sole office of the writ of *certiorari* is the correction of errors of jurisdiction, which includes the commission of grave abuse of discretion amounting to lack of jurisdiction. In this regard, mere abuse of discretion is not enough to warrant the issuance of the writ. The abuse of discretion must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.

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[24] *Serrano v. Galant Maritime Services, Inc.*, G.R. No. 151833, August 7, 2003, 408 SCRA 523, 526; *Manila Midtown Hotels & Land Corp. v. NLRC*, G. R. No. 118397, March 27, 1998, 288 SCRA 259, 265.

Secondly, the Court must find that the petitioners were not entitled to enjoin or prevent the extrajudicial foreclosure of their mortgage by Metrobank. They were undeniably already in default of their obligations the performance of which the mortgage had precisely secured. Hence, Metrobank had the unassailable right to the foreclosure. In contrast, their right to prevent the foreclosure did not exist. Hence, they could not be validly granted the injunction they sought.

The foreclosure of a mortgage is but a necessary consequence of the non-payment of an obligation secured by the mortgage. Where the parties have stipulated in their agreement, mortgage contract and promissory note that the mortgagee is authorized to foreclose the mortgage upon the mortgagor's default, the mortgagee has a clear right to the foreclosure in case of the mortgagor's default. Thereby, the issuance of a writ of preliminary injunction upon the application of the mortgagor will be improper.[25] Mindful that an injunction would be a limitation upon the freedom of action of Metrobank, the RTC justifiably refused to grant the petitioners' application for the writ of preliminary injunction. We underscore that the writ could be granted only if the RTC was fully satisfied that the law permitted it and the emergency demanded it.[26] That, needless to state, was not true herein.

In *City Government of Butuan v. Consolidated Broadcasting System (CBS), Inc.*,[27] the Court restated the nature and concept of a writ of preliminary injunction in the following manner, to wit:

> 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, an agency, or a person to refrain from a particular act or acts. It may also require the performance of a particular act

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[25] *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.*, G.R. No. 165950, August 11, 2010, 628 SCRA 79, 91-92.

[26] *China Banking Corporation v. Ciriaco*, G.R. No. 170038, July 11, 2012.

[27] G.R. No. 157315, December 1, 2010, 636 SCRA 320, 336-337.

or acts, in which case it is known as a preliminary mandatory injunction. Thus, a prohibitory injunction is one that commands a party to refrain from doing a particular act, while a mandatory injunction commands the performance of some positive act to correct a wrong in the past.

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. (Bold emphasis supplied)

Thirdly, the petitioners allege that: (*a*) Metrobank had increased the interest rates without their assent and without any basis; and (*b*) they had an excess payment sufficient to cover the amounts due. In support of their allegation, they submitted a table of the interest payments, wherein they projected what they had actually paid to Metrobank and contrasted the payments to what they claimed to have been the correct amounts of interest, resulting in an excess payment of ₱605,557.81.

The petitioners fail to convince.

We consider to be unsubstantiated the petitioners' claim of their lack of consent to the escalation clauses. They did not adduce evidence to show that they did not assent to the increases in the interest rates. The records reveal instead that they requested only the reduction of the interest rate or the restructuring of

their loans.[28] Moreover, the mere averment that the excess payments were sufficient to cover their accrued obligation computed on the basis of the stipulated interest rate cannot be readily accepted. Their computation, as their memorandum submitted to the RTC would explain,[29] was too simplistic, for it factored only the principal due but not the accrued interests and penalty charges that were also stipulated in the loan agreements.

It is relevant to observe in this connection that escalation clauses like those affecting the petitioners were not void *per se*, and that an increase in the interest rate pursuant to such clauses were not necessarily void. In *Philippine National Bank v. Rocamora*,[30] the Court has said:

> Escalation clauses are valid and do not contravene public policy. These clauses are common in credit agreements as means of maintaining fiscal stability and retaining the value of money on long-term contracts. To avoid any resulting one-sided situation that escalation clauses may bring, we required in *Banco Filipino* the inclusion in the parties' agreement of a de-escalation clause that would authorize a reduction in the interest rates corresponding to downward changes made by law or by the Monetary Board.
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> The validity of escalation clauses notwithstanding, we cautioned that these clauses do not give creditors the unbridled right to adjust interest rates unilaterally. As we said in the same *Banco Filipino* case, **any increase in the rate of interest made pursuant to an escalation clause must be the result of an agreement between the parties.** The minds of all the parties must meet on the proposed modification as this modification affects an important aspect of the agreement. There can be no contract in the true sense in the absence of the element of an agreement, *i.e.*, the parties' mutual consent. Thus, **any change must be mutually agreed upon, otherwise, the change carries no binding effect**. A stipulation on the validity or compliance with the contract that is left solely to

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[28] Records, pp. 111-112 and 361.

[29] *Id.* at 351-357.

[30] G.R. No. 164549, September 18, 2009, 600 SCRA 395, 406-407.

the will of one of the parties is void; the stipulation goes against the principle of mutuality of contract under Article 1308 of the Civil Code.

We reiterate that injunction will not protect contingent, abstract or future rights whose existence is doubtful or disputed.[31] Indeed, there must exist an actual right,[32] because injunction will not be issued to protect a right not *in esse* and which may never arise, or to restrain an act which does not give rise to a cause of action. At any rate, an application for injunctive relief is strictly construed against the pleader.[33]

Nor do we discern any substantial controversy that had any real bearing on Metrobank's right to foreclose the mortgage. The mere possibility that the RTC would rule in the end in the petitioners' favor by lowering the interest rates and directing the application of the excess payments to the accrued principal and interest did not diminish the fact that when Metrobank filed its application for extrajudicial foreclosure they were already in default as to their obligations and that their short-term loan of ₱4,400,000.00 had already matured. Under such circumstances, their application for the writ of preliminary injunction could not but be viewed as a futile attempt to deter or delay the forced sale of their property.

Lastly, citing the ruling in *Almeda v. Court of Appeals*, to the effect that the issuance of a preliminary injunction pending the resolution of the issue on the correct interest rate would be justified, the petitioners submit that they could be rightly considered in default only after they had failed to settle the exact amount of their obligation as determined by the trial court in the main case.

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[31] *Boncodin v. National Power Corporation Employees Consolidated Union (NECU),* G.R. No. 162716, September 27, 2006, 503 SCRA 611, 623.

[32] *Duvaz Corporation v. Export and Industry Bank,* G.R. No. 163011, June 7, 2007, 523 SCRA 405, 413-414; citing *Almeida v. Court of Appeals,* G.R. No. 159124, January 17, 2005, 448 SCRA 681.

[33] *St. James College of Parañaque v. Equitable PCI Bank,* G.R. No. 179441, August 9, 2010, 627 SCRA 328, 350.

The petitioners' reliance on the ruling in *Almeda v. Court of Appeals* was misplaced.

Although it is true that the ruling in *Almeda v. Court of Appeals* sustained the issuance of the preliminary injunction pending the determination of the issue on the interest rates, with the Court stating:

> In the first place, because of the dispute regarding the interest rate increases, an issue which was never settled on merit in the courts below, the exact amount of petitioners' obligations could not be determined. Thus, the foreclosure provisions of P.D. 385 could be validly invoked by respondent bank only after settlement of the question involving the interest rate on the loan, and only after the spouses refused to meet their obligations following such determination.[34] x x x.

Almeda v. Court of Appeals involved circumstances that were far from identical with those obtaining herein. To start with, *Almeda v. Court of Appeals* involved the mandatory foreclosure of a mortgage by a government financial institution pursuant to Presidential Decree No. 385[35] should the arrears reach 20% of the total outstanding obligation. On the other hand, Metrobank is not a government financial institution. Secondly, the petitioners in *Almeda v. Court of Appeals* were not yet in default at the time they brought the action questioning the propriety of the interest rate increases, but the herein petitioners were already in default and the mortgage had already been foreclosed when they assailed the interest rates in court. Thirdly, the Court found in *Almeda v. Court of Appeals* that the increases in the interest rates had been made without the prior assent of the borrowers, who had even consistently protested the increases in the stipulated interest rate. In contrast, the Court cannot make the same conclusion herein for lack of basis. Fourthly, the interest rates in *Almeda v. Court of Appeals* were raised to such a very high

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[34] *Supra* note 16, at 324.

[35] *Requiring Government Financial Institutions to Foreclose Mandatorily All Loans with Arrearages, including Interest and Charges amounting to at least Twenty Percent (20%) of the Total Outstanding Obligation.*

level that the borrowers were practically enslaved and their assets depleted, with the interest rate even reaching at one point a high of 68% *per annum*. Here, however, the increases reached a high of only 31% *per annum*, according to the petitioners themselves. Lastly, the Court in *Almeda v. Court of Appeals* attributed good faith to the petitioners by their act of consigning in court the amounts of what they believed to be their remaining obligation. No similar tender or consignation of the amount claimed by the petitioners herein to be their correct outstanding obligation was made by them.

In fine, the petitioners in *Almeda v. Court of Appeals* had the existing right to a writ of preliminary injunction pending the resolution of the main case, but the herein petitioners did not. Stated otherwise, no writ of preliminary injunction to enjoin an impending extrajudicial foreclosure sale should issue except upon a clear showing of a violation of the mortgagors' unmistakable right to the injunction.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on February 19, 2002; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 160260. October 24, 2012]

WESTMONT BANK, formerly ASSOCIATED BANK now UNITED OVERSEAS BANK PHILIPPINES, *petitioner, vs.* **MYRNA DELA ROSA-RAMOS, DOMINGO TAN and WILLIAM CO,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; BANKS AND BANKING; FIDUCIARY RELATIONSHIP BETWEEN THE BANK AND ITS CLIENTS/DEPOSITORS; BANKS ARE REQUIRED TO TREAT THE ACCOUNTS AND DEPOSITS OF THEIR CLIENTS/DEPOSITORS WITH METICULOUS CARE; RATIONALE.— It must be remembered that public interest is intimately carved into the banking industry because the primordial concern here is the trust and confidence of the public. This fiduciary nature of every bank's relationship with its clients/depositors impels it to exercise the highest degree of care, definitely more than that of a reasonable man or a good father of a family. It is, therefore, required to treat the accounts and deposits of these individuals with meticulous care. The rationale behind this is well-expressed in *Sandejas v. Ignacio*, The banking system has become an indispensable institution in the modern world and plays a vital role in the economic life of every civilized society – banks have attained a ubiquitous presence among the people, who have come to regard them with respect and even gratitude and most of all, confidence, and it is for this reason, banks should guard against injury attributable to negligence or bad faith on its part.

2. ID.; ID.; ID.; ID.; A BANK'S LIABILITY AS AN OBLIGOR IS NOT MERELY VICARIOUS, BUT PRIMARY SINCE IT IS EXPECTED TO OBSERVE AN EQUALLY HIGH DEGREE OF DILIGENCE, NOT ONLY IN THE SELECTION, BUT ALSO IN THE SUPERVISION OF ITS EMPLOYEES.— Considering that banks can only act through their officers and employees, the fiduciary obligation laid down for these institutions necessarily extends to their employees.

Thus, banks must ensure that their employees observe the same high level of integrity and performance for it is only through this that banks may meet and comply with their own fiduciary duty. It has been repeatedly held that "a bank's liability as an obligor is not merely vicarious, but primary" since they are expected to observe an equally high degree of diligence, not only in the selection, but also in the supervision of its employees. Thus, even if it is their employees who are negligent, the bank's responsibility to its client remains paramount making its liability to the same to be a direct one. Guided by the following standard, the Bank, given the fiduciary nature of its relationship with Dela Rosa- Ramos, should have exerted every effort to safeguard and protect her money which was deposited and entrusted with it. As found by both the RTC and the CA, Ramos was defrauded and she lost her money because of the negligence attributable to the Bank and its employees. Indeed, it was the employees who directly dealt with Dela Rosa-Ramos, but the Bank cannot distance itself from them. That they were the ones who gained at the expense of Dela Rosa-Ramos will not excuse it of its fundamental responsibility to her.

3. CIVIL LAW; DAMAGES; CONTRIBUTORY NEGLIGENCE; WHERE THE BANK AND THE DEPOSITOR ARE EQUALLY NEGLIGENT, THEY SHOULD EQUALLY SUFFER THE LOSS, AND MUST BOTH BEAR THE CONSEQUENCES OF THEIR MISTAKES.— [T]he Bank should only be made to answer the value of **Check No. 467322** in the amount of ₱200,000.00 plus the legal rate of interest. This must be further tempered down for there is no denying that it was Dela Rosa-Ramos who exposed herself to risk when she entered into that "special arrangement" with Tan. While the Bank reneged on its responsibility to Dela Rosa-Ramos, she is nevertheless equally guilty of contributory negligence. It has been held that where the bank and a depositor are equally negligent, they should equally suffer the loss. The two must both bear the consequences of their mistakes. Thus, the Bank should only pay 50% of the actual damages awarded while Dela Rosa-Ramos should have to shoulder the remaining 50%.

APPEARANCES OF COUNSEL

Villanueva Cana & Associates Law Offices for petitioner.
Noe–Lacsamana Maglalang Matibag & Associates Law Office for Myrna Dela Rosa-Ramos.
Ilaw T. Bernal for William Co.

D E C I S I O N

MENDOZA, *J.*:

This is a Petition for Review under Rule 45 of the 1997 Rules of Civil Procedure seeking a partial review of the February 14, 2003 Decision[1] and the October 2, 2003 Resolution[2] of the Court of Appeals *(CA)*, in CA-G.R. CV No. 63983, which modified the September 16, 1998 Decision of the Regional Trial Court, Branch 7, Manila *(RTC)* in Civil Case No. 89-47926 entitled, *Myrna Dela Rosa-Ramos v. Westmont Bank, formerly Associated Bank, Domingo Tan, and William Go.*

The petition was filed on November 24, 2003 and received by this Court on December 15, 2003. The case was given due course on February 6, 2008.

The Facts

From 1986, respondent Myrna Dela Rosa-Ramos *(Dela Rosa-Ramos)* maintained a checking/current account with the United Overseas Bank Philippines[3] *(Bank)* at the latter's Sto. Cristo Branch, Binondo, Manila. In her several transactions with the Bank, Dela Rosa-Ramos got acquainted with its Signature Verifier, respondent Domingo Tan *(Tan)*.[4]

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[1] *Rollo*, pp. 8-25. Penned by Justice Mercedes Gozo-Dadole with Associate Justice B.A. Adefuin-Dela Cruz and Associate Justice Mariano C. Del Castillo (now an Associate Justice of the Supreme Court), concurring.

[2] *Id.* at 27.

[3] The Bank was formerly known as **Associated Bank**, later became **Westmont Bank** and now known as **United Overseas Bank Philippines**.

[4] *Rollo*, p. 85.

In the course of their acquaintance, Tan offered Dela Rosa-Ramos a "special arrangement"[5] wherein he would finance or place sufficient funds in her checking/current account whenever there would be an overdraft or when the amount of said checks would exceed the balance of her current account. It was their arrangement to make sure that the checks she would issue would not be dishonored. Tan offered the service for a fee of ₱50.00 a day for every ₱40,000.00 he would finance. This financier-debtor relationship started in 1987 and lasted until 1998.[6]

In order to guarantee payment for such funding, Dela Rosa-Ramos issued postdated checks covering the principal amount plus interest as computed by Tan on specified date. There were also times when she just paid in cash.[7] Relative to their said agreement, Dela Rosa-Ramos issued and delivered to Tan the following Associated Bank checks[8] drawn against her current account and payable to "**cash**," to wit:

CHECK NO.	CURRENT ACCT.	DATE	AMOUNT
467322 (Exh. A)	1008-08341-0	May 8, 1988	PhP200,000.00
510290 (Exh. C)	1008-08734-3	June 10, 1988	232,500.00
613307 (Exh. E)	1008-08734-3	June 14, 1988	200,000.00
613306 (Exh. D)	1008-08734-3	July 4, 1988	290,595.00

According to Dela Rosa-Ramos, **Check No. 467322** for ₱200,000.00 was a "stale" guarantee check. The check was originally dated August 28, 1987 but was altered to make it appear that it was dated May 8, 1988. Tan then deposited the check in the account of the other respondent, William Co *(Co)*, despite the obvious superimposed date. As a result, the amount

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[5] *Id.* at 9.

[6] *Id.* at 9-10.

[7] *Id.* at 389.

[8] *Id.* at 556.

of ₱200,00.00 or the value indicated in the check was eventually charged against her checking account.[9]

Check No. 510290 for ₱232,500.00, dated June 10, 1988, was issued in payment of cigarettes that Dela Rosa-Ramos bought from Co. This check allegedly "bounced" so she replaced it with her "good customer's check and cash" and gave it to Tan. The latter, however, did not return the bounced check to her. Instead, he "redeposited" it in Co's account.[10]

Check No. 613307 for ₱200,000.00, was another guarantee check that was also "undated." Dela Rosa-Ramos claimed that it was Tan who placed the date "June 14, 1988." For this check, an order to stop payment was issued because of insufficient funds. Expectedly, the words "PAYMENT STOPPED" were stamped on both sides of the check. This check was not returned to her either and, instead, it was "redeposited" in Co's account.[11]

Check Nos. 510290 and **613307** were both dishonored for insufficient funds. When Dela Rosa-Ramos got the opportunity to confront Co regarding their deposit of the two checks, the latter disclosed that her two checks were deposited in his account to cover for his ₱432,500.00 cash which was taken by Tan. Then, with a threat to expose her relationship with a married man, Tan and Co were able to coerce her to replace the two above-mentioned checks with Check No. 598648[12] in the amount of ₱432,500.00 which was equivalent to the total amount of the two dishonored checks.[13]

Check No. 613306 for ₱290,595.00, was also undated when delivered to Tan who later placed the date, July 4, 1988. Dela Rosa-Ramos pointed out that as of July 5, 1988, her checking account had ₱121,989.66 which was insufficient to answer for

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[9] *Id.* at 163.

[10] *Id.*

[11] *Rollo,* p. 390.

[12] Not in issue.

[13] *Rollo,* p. 390.

the value of said check. A check of a certain Lee See Bin in the amount of ₱170,000.00 was, however, deposited in her checking account. As a result, Tan was able to encash **Check No. 613306** and withdrew her ₱121,989.66 balance. Later, Dela Rosa-Ramos found out that the Lee See Bin Check was not funded because the Bank's bookkeeper demanded from her the return of the deficiency.[14]

Claiming that the four checks mentioned were deposited by Tan without her consent, Dela Rosa-Ramos instituted a complaint[15] against Tan and the Bank before the RTC seeking, among other things, to recover from the Bank the sum of ₱754,689.66 representing the total amount charged or withdrawn from her current account. Dela Rosa-Ramos subsequently amended her complaint to include Co.[16]

During the trial, Tan's partial direct testimony was ordered stricken off the records because he failed to complete it and make himself available for cross-examination. Later, it was found out that he had passed away.[17]

On September 16, 1998, the RTC resolved the case in this wise:

> WHEREFORE, judgment is hereby rendered, sentencing defendant Associated Bank now the Westmont Bank and defendants – DOMINGO TAN and WILLIAM CO, to pay the plaintiff, jointly and severally:
>
> 1. The sum of ₱754,689.66, representing plaintiff's lost deposit, plus interest thereon at the legal rate of 12% per annum from the filing of the complaint, until fully paid;
> 2. The sum of ₱1,000,000.00, as moral damages;
> 3. The sum equivalent to 10% thereof, as exemplary damages;
> 4. The sum equivalent to 25% of the total amount due, as and for attorney's fees; and
> 5. Costs.

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[14] *Id.* at 164.

[15] *Id.* at 85-93.

[16] *Id.* at 38.

[17] *Id.* at 167.

Defendant's counterclaims are hereby dismissed for lack of merit.

SO ORDERED.[18]

Co and the Bank appealed their cases to the CA. As Co failed to file a brief within the period prescribed, his appeal was dismissed.[19] The CA then proceeded to resolve the appeal of the Bank. On February 14, 2003, the CA rendered its appealed decision, the dispositive portion of which reads:

WHEREFORE, premises considered, Decision dated September 16, 1998 of the Regional Trial Court of Manila, National Capital Region, Branch 7, in Civil Case No. 89-17926, is hereby AFFIRMED with the MODIFICATION that: (a) the defendants are liable only for the amount of 521,989.00 covering Check Nos. 467322, 613307 and 121,989.66 covered by Check No. 613306 and (b) deleting the award for moral damages and attorney's fees.

SO ORDERED.[20]

Still not satisfied, the Bank moved for partial reconsideration. On October 2, 2003, the CA denied it for lack of merit. In the case of Co, he never appealed the CA decision. Thus, only the Bank is now before this Court raising the following issues:

I.

WITHOUT DELINEATING THE SOURCE OF THE RESPECTIVE OBLIGATIONS OF PETITIONER BANK, RESPONDENT TAN AND RESPONDENT CO IN RELATION TO RESPONDENT DELA ROSA-RAMOS, THE HONORABLE COURT OF APPEALS UTTERLY AND GRAVELY ERRED WHEN IT SWEEPINGLY AFFIRMED THE JUDGMENT OF THE HONORABLE TRIAL COURT MAKING THEM JOINTLY AND SEVERALLY LIABLE FOR THE JUDGMENT AWARD IN FAVOR OF RESPONDENT DELA ROSA-RAMOS.

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[18] *Id.* at 172.

[19] *Id.* at 41.

[20] *Id.* at 25.

II.

THE JUDGMENT AWARD AGAINST PETITIONER BANK UNDER CHECK NO. 467322 (EXH. 'A') IS TOTALLY WITHOUT LEGAL BASIS AS THE SAME WAS MERELY BASED ON SPECULATIVE ASSUMPTION OR PURE SPECULATION.

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE ACCOUNT OF RESPONDENT DELA ROSA-RAMOS WAS DEBITED WITH THE FACE AMOUNT OF CHECK NO. 613307 (EXH. 'E') AS SUCH FINDING IS CONTRARY TO THE FINDING OF THE HONORABLE TRIAL COURT THAT THE SAID CHECK WAS DISHONORED TOGETHER WITH CHECK NO. 510290 (EXH. 'C') FOR THE REASON THAT BOTH CHECKS WERE DRAWN AGAINST INSUFFICIENT FUNDS.

IV.

NOTWITHSTANDING AND CLEARLY CONTRADICTING ITS VERY FINDING THAT "AS TO CHECK NO. 613306 (EXH.'D'), THIS COURT OPINES THAT NO MANIFEST IRREGULARITY EXISTS," THE HONORABLE COURT OF APPEALS GROSSLY ERRED WHEN IT ERRONEOUSLY FOUND PETITIONER BANK LIABLE IN THE AMOUNT OF ₱121,989.96 COVERED BY SAID CHECK.

V.

ASSUMING *ARGUENDO* THAT PETITIONER BANK IS LIABLE TO ANSWER FOR THE ALLEGED DAMAGES SUFFERED BY RESPONDENT DELA ROSA-RAMOS, THE HONORABLE COURT OF APPEALS GROSSLY ERRED WHEN IT FAILED TO PASS UPON PETITIONER BANK'S CROSS-CLAIM AGAINST RESPONDENT TAN.[21]

It must be remembered that public interest is intimately carved into the banking industry because the primordial concern here is the trust and confidence of the public. This fiduciary nature of every bank's relationship with its clients/depositors impels it to exercise the highest degree of care, definitely more than that

[21] *Id.* at 561-562.

of a reasonable man or a good father of a family.[22] It is, therefore, required to treat the accounts and deposits of these individuals with meticulous care.[23] The rationale behind this is well-expressed in *Sandejas v. Ignacio*,[24]

> The banking system has become an indispensable institution in the modern world and plays a vital role in the economic life of every civilized society – banks have attained a ubiquitous presence among the people, who have come to regard them with respect and even gratitude and most of all, confidence, and it is for this reason, banks should guard against injury attributable to negligence or bad faith on its part.

Considering that banks can only act through their officers and employees, the fiduciary obligation laid down for these institutions necessarily extends to their employees. Thus, banks must ensure that their employees observe the same high level of integrity and performance for it is only through this that banks may meet and comply with their own fiduciary duty.[25] It has been repeatedly held that "a bank's liability as an obligor is not merely vicarious, but primary"[26] since they are expected to observe an equally high degree of diligence, not only in the selection, but also in the supervision of its employees. Thus, even if it is their employees who are negligent, the bank's responsibility to its client remains paramount making its liability to the same to be a direct one.

Guided by the following standard, the Bank, given the fiduciary nature of its relationship with Dela Rosa- Ramos, should have exerted every effort to safeguard and protect her money which

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[22] *BPI v. Lifetime Marketing Corp*., G.R. No. 176434, June 25, 2008, 555 SCRA 373, 381; *PNB v. Pike*, 507 Phil. 322, 340 (2005).

[23] *Id*. at 381; *BPI v. Casa Montessori Internationale*, G.R. Nos. 149454 and 149507, May 23, 2004, 430 SCRA 261, 283.

[24] G.R. No. 155033, December 19, 2007, 541 SCRA 61, 82.

[25] *Cadiz v. CA*, 510 Phil. 721, 735 (2005).

[26] *PNB v. Pike*, 507 Phil. 322, 340 (2005); *PCIBank v. CA*, 403 Phil. 361, 388 (2001).

was deposited and entrusted with it. As found by both the RTC and the CA, Ramos was defrauded and she lost her money because of the negligence attributable to the Bank and its employees. Indeed, it was the employees who directly dealt with Dela Rosa-Ramos, but the Bank cannot distance itself from them. That they were the ones who gained at the expense of Dela Rosa-Ramos will not excuse it of its fundamental responsibility to her. As stated by the RTC,

> The factual circumstances attending the repeated irregular entries and transactions involving the current account of the plaintiff-appellee is evidently due to, if not connivance, gross negligence of other bank officers since the repeated assailed transactions could not possibly be committed by defendant Tan alone considering the fact that the processing of the questioned checks would pass the hands of various bank officers who positively identified their initials therein. Having a number of employees commit mistake or gross negligence at the same situation is so puzzling and obviates the appellant bank's laxity in hiring and supervising its employees. Hence, this Court is of the opinion that the appellant bank should be held liable for the damages suffered by the plaintiff-appellee in the case at bench.[27]

That matter being settled, the next matter to be determined is the amount of liability of the Bank.

As regards **Check No. 467322**, the Bank avers that Dela Rosa- Ramos' acquiesced to the change of the date in the said check. It argues that her continued acts of dealing and transacting with the Bank like subsequently issuing checks despite her experience with this check only shows her acquiescence which is tantamount to giving her consent. Obviously, the Bank has not taken to heart its fiduciary responsibility to its clients. Rather than ask and wonder why there were indeed subsequent transactions, the more paramount issue is why the Bank through its several competent employees and officers, did not stop, double check and ascertain the genuineness of the date of the check which displayed an obvious alteration. This failure on the part of the Bank makes it liable for that loss. As the RTC held:

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[27] *Rollo*, p. 24.

x x x defendant-bank is not faultless in the irregularities of its signature-verifier. In the first place, it should have readily rejected the obviously altered plaintiff's ₱200,000.00-check, thus, avoid its unwarranted deposit in defendant-Co's account and its corollary loss from plaintiff's deposit, had its other employees, even excepting TAN, performed their duties efficiently and well. x x x[28]

The glaring error did not escape the observation of the CA either. On the matter, it hastened to add:

A careful scrutiny of the evidence shows that indeed the date of Check No. 467322 had been materially altered from August 1987 to May 8, 1988 in accordance with Section 125 of the Negotiable Instruments Law. It is worthy to take note of the fact that such alteration was not countersigned by the drawer to make it a valid correction of its date as consented by its drawer as the standard operating procedure of the appellant bank in such situation as admitted by its Sto. Cristo Branch manager, Mabini Z. Mil(l)an. x x x.[29]

On **Check No. 613307**, the Bank argues that the CA erred in considering that the said check was debited against the account of Dela Rosa-Ramos when the fact was that it was dishonored for having been drawn against insufficient funds. This means that the check was not charged against her account.

In this regard, the Court agrees with the Bank. Indeed, the admission made by Dela Rosa-Ramos that she had to issue a replacement check for **Check No. 613307** as well as for **Check No. 510290** only proves that these checks were never paid and charged or debited against her account. The replacement check is, of course, a totally different matter and is not covered as an issue in this case.

Lastly, with respect to **Check No. 613306**, the Court agrees with the CA when it found:

x x x that no manifest irregularity exists as shown from the Statement of Accounts for the month of July 1988 that as of July 4,

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[28] *Id.* at 169-170.

[29] *Id.* at 21.

1988, the plaintiff-appellee had an outstanding deposit of ₱121,989.66. It was also cleared therein that, on July 5, 1988, ₱170,000.00, through the check of Lee See Bin with the same UNITED OVERSEAS BANK-Sto. Cristo Branch, was deposited on the account of the plaintiff-appellee and on the very same day Check No. 613306 in the amount of ₱290,595.00 was approved and processed and its equivalent was debited from the account of the plaintiff-appellee since the check is an 'on-us' check which is deposited to an account of another with the same branch as that of the drawer of the said check, and is considered as good as cash if funded, hence, may be withdrawn on the very same day it was deposited.[30]

The Court has reviewed the findings of the RTC on the matter and agrees with the CA that there was no irregularity. The burden of proof was on Dela Rosa-Ramos to establish that Lee See Bin was fictitious and that the money which purportedly came from him was merely simulated. She unfortunately failed to discharge this burden.

Withal, the Bank should only be made to answer the value of **Check No. 467322** in the amount of ₱200,000.00 plus the legal rate of interest. This must be further tempered down for there is no denying that it was Dela Rosa-Ramos who exposed herself to risk when she entered into that "special arrangement" with Tan. While the Bank reneged on its responsibility to Dela Rosa-Ramos, she is nevertheless equally guilty of contributory negligence. It has been held that where the bank and a depositor are equally negligent, they should equally suffer the loss. The two must both bear the consequences of their mistakes.[31] Thus, the Bank should only pay 50% of the actual damages awarded while Dela Rosa-Ramos should have to shoulder the remaining 50%.

Considering that Tan was primarily responsible for the damages caused to Dela Rosa-Ramos, the Bank can seek compensation from his estate, subject to the applicable laws and rules.

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[30] *Id.* at 23.

[31] *PNB v. Spouses Cheah Chee Chong and Ofelia Camacho Cheah*, G.R. No. 170865, April 25, 2012.

The reinstatement of deleted damages sought by Dela Rosa-Ramos in her comment may not be entertained for she did not appeal the CA decision.

WHEREFORE, the petition for review is **PARTIALLY GRANTED**. The February 14, 2003 Decision and the October 2, 2003 Resolution of the Court of Appeals in CA-G.R. CV No. 63983 are **MODIFIED**. Petitioner United Overseas Bank Philippines (formerly Westmont Bank) is hereby ordered to pay respondent Myrna Dela Rosa-Ramos the amount of ₱100,000.00, representing 50% of the actual damages awarded plus legal interest.

SO ORDERED.

Velasco, Jr. (Chairperson), Leonardo-de Castro,[*] *Peralta,* and *Abad, JJ.,* concur.

THIRD DIVISION

[G.R. No. 163182. October 24, 2012]

TOM TAN, ANNIE U. TAN and NATHANIEL TAN, *petitioners, vs.* **HEIRS OF ANTONIO F. YAMSON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE COURT'S POWER OF JUDICIAL REVIEW IS LIMITED ONLY TO QUESTIONS OF LAW; EXCEPTIONS; NOT PRESENT; QUESTIONS OF FACT

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[*] Designated additional member, per Special Order No. 1343, dated October 9, 2012.

AND QUESTIONS OF LAW, DISTINGUISHED.— Well-established is the principle that in a petition for review on *certiorari*, the Court's power of judicial review is limited only to questions of law and that questions of fact cannot be entertained, except in certain instances. The difference between questions of law and questions of fact has been extensively discussed in the case of *Velayo-Fong v. Spouses Velayo*: A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, **it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact**. It is utterly obvious that the issues raised by petitioners in this case are factual in nature as they would require this Court to delve into the records of the case and review the evidence presented by the parties in order to properly resolve the dispute. Thus, the Court cannot exercise its power of judicial review, more so that none of the exceptions to the rule is present in this case. Petitioners did not even attempt to cite such exemptions to justify the review of facts by this Court. x x x. Consequently, this petition must be denied as it only raises questions of fact.

2. ID.; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, WHEN ADOPTED AND CONFIRMED BY THE APPELLATE COURT, ARE BINDING AND CONCLUSIVE AND WILL GENERALLY NOT BE REVIEWED ON APPEAL.— It bears stressing that the evaluation of witnesses and other pieces of evidence by the RTC is "accorded great respect and finality in the absence of any indication that it overlooked certain facts or circumstances of weight and influence, which if reconsidered, would alter the result of the case." Emphasis should also be placed on the fact that both

the RTC and the CA similarly evaluated the evidence presented during the trial and reached the same conclusion. As a rule, factual findings of the trial court, when adopted and confirmed by the appellate court, are binding and conclusive on this Court and will generally not be reviewed on appeal.

3. ID.; ID.; RULES OF ADMISSIBILITY; RULE ON EVIDENCE OF WRITTEN AGREEMENTS, APPLIED.— As the CA correctly discerned, a plain reading of the Authority to Look for Buyer/Buyers reveals that nowhere in the said document is it indicated that the sale of all seven lots was a prerequisite to the payment by petitioners of Yamson's commission. If petitioners' intention was for Yamson to locate a buyer for all their properties, then they should have had this condition reduced to writing and included in the Authority to Look for Buyer/ Buyers that they executed. Since no such stipulation appears, then it would be fair to conclude that the petitioners had no such intention, following Section 9, Rule 130 of the Revised Rules on Evidence which provides: Sec. 9. Evidence of written agreements. – When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

4. ID.; ID.; ID.; THE TESTIMONY OF THE SOLE WITNESS, IF UNCORROBORATED BY ANY OTHER DOCUMENTARY OR TESTIMONIAL EVIDENCE, COULD ONLY BE ASSESSED AS SELF-SERVING.— A perusal of the cited case of *Reyes* relied on by petitioners reveals that the sale in the said case was consummated and the price and the terms agreed upon by the contracting parties without the intervention of the broker, who resorted to trickery in order to obtain from the seller an authority to look for a buyer. Furthermore, the seller therein presented the buyer of the property as a witness to refute the allegations of their broker who was seeking to claim her commission. In contrast, petitioners purposely engaged Yamson as their broker and knowingly authorized him to look for a buyer for their properties. More importantly, petitioners offered no other testimony but their own to bolster their allegations. If, as they say, they already knew of Chua's interest in purchasing their property, then they should have

presented Chua as their witness. Unfortunately, their sole witness was Annie Tan, whose testimony was uncorroborated by any other documentary or testimonial evidence and could only be assessed as self-serving. On the basis of the foregoing, Yamson is entitled to his commission for the sale of the two lots.

APPEARANCES OF COUNSEL

Hermosisima Hermosisima & Hermosisima for petitioners.
Renta Pe & Associates for respondents.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure, assailing the December 3, 2003 Decision[1] and the March 15, 2004 Resolution[2] of the Court of Appeals *(CA)*, in CA-G.R. CV No. 66892, entitled "*Antonio F. Yamson v. Tom U. Tan, Annie U. Tan and Nathaniel U. Tan.*"

The Facts

This case arose from the Complaint for Collection of Sum of Money and Damages filed by Antonio F. Yamson *(Yamson)* against petitioners Tom Tan, Annie Tan and Nathaniel Tan *(petitioners)* before the Regional Trial Court, Cebu City, Branch 58 *(RTC)*.[3]

Petitioners were owners of seven parcels of land located in Mandaue City. In order to raise funds to meet their unpaid obligations to a certain Philip Lo, they decided to sell their

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[1] *Rollo*, pp. 26-37; penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justice Buenaventura J. Guerrero and Associate Justice Regalado E. Maambong.

[2] *Id.* at 38.

[3] *Id.* at 26-27.

properties.[4] They issued the Authority to Look for Buyer/Buyers on May 19, 1998 in favor of Yamson to facilitate their search for prospective buyers, the terms of which are as follows:

I. Description of Lot:

Lot #	Area	TCT #	T.D. #
2309-B-2	287 sq.m.	31733	0751-A
2309-C-2-A	445 sq.m.	36022	1193
2309-C-1	2,841 sq.m.	114242	01461
2318-B	2,001 sq.m.	25974	0291
2309-C-2-B	1,292 sq.m.	25973	0290
2316	5,950 sq.m.	25975	0288
2309-B-1	300 sq.m.	25976	0289
Total Area =	13,116 sq.m.		

II. Price: Two Thousand Pesos (₱ 2,000.00) per sq.m.

III. Commission: Five Percent (5%)

IV. Expenses: All expenses inclusive of Capital Gains Tax, Documentary stamps, Estate Tax, Realty Tax, shall be borne by the seller except transfer tax, re-survey fee which will for (sic) the buyer's account. It is expressly understood that if the selling price (as stated above) is of (sic) the owner, overpricing by Mr. Antonio F. Yamson and Co. is allowed, provided Capital Gains Tax & other related fees of the said overprice shall be borne by Mr. Antonio F. Yamson and Co., Furthermore, in the event of an overprice, broker's commission is waived.

V. Terms of Payment: Spot Cash

VI. Nature of Authority: Non-exclusive

VII. Period of Authority: Good up to June 30, 1998

VIII. Protection Clause: After Agent reports the name of his buyer to the Seller in writing, he is entitled to his commission even after the expiration of his authority provided the sale is consumed (sic) between the same buyer and seller within a period of one year from date of submission of buyer's name to the seller.[5]

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[4] *Id.* at 47.

[5] *Id.* at 30-32.

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On June 1, 1998, Yamson informed petitioners in writing that he had found an interested buyer. The letter, the text of which is quoted herein, was signed by petitioner Annie Tan to acknowledge the registration of Oscar Chua *(Chua)* as Yamson's buyer:

Dear Miss Annie Tan,

We are pleased to register our buyer – Simon Enterprises and or Mr. Simon Chuahe, Mr. Oscar Chuahe of your properties known as Lot nos. 2309-B-2, 2309-C-2-A, 2309-C-1, 2318-B, 2309-C-2-B, 2316, 2309-B-1, situated along Pakna-an St., Mandaue city.

The property has been inspected by the officials of the company and are (sic) interested to acquire for their corporate expansion in the near future.

Please acknowledge this registration.[6]

Subsequently, two lots were sold to Kimhee Realty Corporation, represented by Chua,[7] and the relevant parties executed the Deed of Absolute Sale, dated June 22, 1998.[8] The remaining five (5) lots became the subject of a Memorandum of Agreement between Lo and petitioners wherein the parties agreed to transfer the said properties to Lo as payment for petitioners' outstanding obligations.[9]

Yamson then demanded his commission from petitioners for the sale of the lots to his registered buyer. Petitioners, however, refused to pay him, arguing that he was not entitled to his commission because it was petitioners themselves who introduced Yamson to Chua and that the agreement was for Yamson to sell all seven lots, which he failed to accomplish.[10]

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[6] *Id.* at 32.

[7] The same Oscar Chuahe referred to by Yamson in his letter, *id.* at 32.

[8] *Id.* at 33.

[9] *Id.* at 49, 55-56 and 60.

[10] *Id.* at 28-29.

On January 21, 2000, the RTC promulgated its Decision[11] in favor of Yamson, pointing out that the due execution of the Authority to Look for Buyer/Buyers by petitioners and the June 1, 1998 letter of Yamson registering Chua as his buyer were not contested by petitioners, and, as such, the said documents were valid and enforceable. The RTC did not give credence to petitioner's defense that they were the ones who introduced Yamson to Chua. It reasoned out that had petitioners truly known, as early as December 1997, that Chua was interested in purchasing their properties, then they would have had no reason to engage the services of a broker. Finally, the RTC noted that the allegation that Yamson was tasked specifically to convince Chua to purchase all seven lots was not put in writing. Neither did the Authority to Look for Buyer/Buyers reflect any such agreement.[12] The dispositive portion of the RTC decision[13] reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff and against defendants, ordering the latter to pay the plaintiff jointly and severally the following amounts:
>
> 1. ₱457,182.50 plus interest at the legal rate to commence from the date of the filing of this complaint, October 14, 1998 until fully paid;
> 2. ₱50,000.00 as moral damages;
> 3. ₱50,000 as exemplary damages;
> 4. ₱150,000.00 as attorney's fees; and
> 5. ₱10,000.00 as litigation expenses.
>
> The counterclaim of the defendants is dismissed.
>
> With costs against the defendant.
>
> SO ORDERED.

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[11] *Id.* at 59-64.

[12] *Id.* at 63.

[13] *Id.* at 64.

Aggrieved, petitioners elevated the case to the CA. In its December 3, 2003 Decision, the CA affirmed the ruling of the RTC and added that nothing in the Authority to Look for Buyer/ Buyers mandated Yamson to find a buyer for all seven parcels of land of petitioners. Neither was there a stipulation that Yamson would not be entitled to his 5% commission should he fail to find a buyer for all seven properties.[14] The CA took note that the Authority to Look for Buyer/Buyers appeared to have been drafted by petitioners themselves. Consequently, following Article 1377 of the Civil Code,[15] if there is any doubt as to the contents of the documents and whether they reflect the true intention of the parties, as insisted by petitioners, any obscurity should not be interpreted to favor the parties who caused the same.[16] Moreover, petitioners' argument which was supported solely by the testimony of petitioner Annie Tan, was considered self-serving as no documentary evidence was presented to corroborate their claims.[17]

Hence, this petition.

On June 4, 2004, while the case was pending before this Court, Yamson died.[18] He was substituted by his children, his legal heirs *(respondents)*.[19]

The Issues

I. Whether or not the respondent was the efficient procuring cause that brought about the sale of the properties as would entitle him to claim a broker's commission.

II. Whether or not the petitioners should be held liable to the respondent for broker's commission despite the

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[14] *Id.* at 34.

[15] Art. 1377. The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity.

[16] *Rollo*, pp. 34-35.

[17] *Id.* at 36.

[18] *Id.* at 165.

[19] *Id.* at 182.

uncontroverted and undisputed evidence that he failed to comply with the terms of the letter of authority.

III. Whether or not the petitioners should be held liable for moral and exemplary damages.[20]

The issues can be reduced to a single pivotal question – whether Yamson was entitled to the payment by petitioners of his broker's commission.

Petitioners contend that, as early as December 1997, they were already aware that Chua wanted to acquire their properties but that negotiations failed because he wanted to purchase only two lots.[21] Thus, they engaged the services of Yamson, informed him of Chua's interest and instructed him to convince Chua to purchase all seven lots.[22] As it was petitioners who introduced Chua to Yamson as a potential buyer, they claim now that Yamson should not be given a commission because he was not the efficient procuring cause for the sale of the two lots.[23]

Moreover, petitioners aver that the Authority to Look for Buyer/Buyers clearly shows that their agreement with Yamson was for the latter to search for buyers who were willing to purchase all seven lots for the price of ₱2,000.00 per square meter.[24] Citing *Reyes v. Mosqueda*,[25] petitioners further argue that in order for a broker to earn his commission, it is not enough for him to simply find a prospective buyer, but he must also find the one who is willing to purchase the property on the terms imposed by the owner.[26]

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[20] *Id.* at 266.

[21] *Id.* at 268-269.

[22] *Id.* at 269-270.

[23] *Id.* at 272-273.

[24] *Id.* at 276.

[25] 99 Phil. 241 (1956).

[26] *Rollo*, p. 277.

The Court's Ruling

The petition is without merit.

Well-established is the principle that in a petition for review on *certiorari*, the Court's power of judicial review is limited only to questions of law and that questions of fact cannot be entertained, except in certain instances.[27] The difference between questions of law and questions of fact has been extensively discussed in the case of *Velayo-Fong v. Spouses Velayo*:[28]

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, **it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact**.[29] (Emphasis supplied)

It is utterly obvious that the issues raised by petitioners in this case are factual in nature as they would require this Court to delve into the records of the case and review the evidence presented by the parties in order to properly resolve the dispute. Thus, the Court cannot exercise its power of judicial review, more so that none of the exceptions to the rule is present in this case. Petitioners did not even attempt to cite such exemptions to justify the review of facts by this Court.

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[27] *Diokno v. Cacdac*, G.R. No. 168475, July 4, 2007, 526 SCRA 440, 460.

[28] 539 Phil. 377 (2006).

[29] *Id.* at 386-387.

It bears stressing that the evaluation of witnesses and other pieces of evidence by the RTC is "accorded great respect and finality in the absence of any indication that it overlooked certain facts or circumstances of weight and influence, which if reconsidered, would alter the result of the case."[30] Emphasis should also be placed on the fact that both the RTC and the CA similarly evaluated the evidence presented during the trial and reached the same conclusion. As a rule, factual findings of the trial court, when adopted and confirmed by the appellate court, are binding and conclusive on this Court and will generally not be reviewed on appeal.[31]

Consequently, this petition must be denied as it only raises questions of fact. Nevertheless, even if this Court is willing to overlook this defect, the petition must still fail.

As the CA correctly discerned, a plain reading of the Authority to Look for Buyer/Buyers reveals that nowhere in the said document is it indicated that the sale of all seven lots was a prerequisite to the payment by petitioners of Yamson's commission. If petitioners' intention was for Yamson to locate a buyer for all their properties, then they should have had this condition reduced to writing and included in the Authority to Look for Buyer/Buyers that they executed. Since no such stipulation appears, then it would be fair to conclude that the petitioners had no such intention, following Section 9, Rule 130 of the Revised Rules on Evidence which provides:

> Sec. 9. Evidence of written agreements. – When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

A perusal of the cited case of *Reyes* relied on by petitioners reveals that the sale in the said case was consummated and the

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[30] *Tan v. Gullas*, 441 Phil. 622, 632 (2002).

[31] *Eterton Multi-Resources Corporation v. Filipino Pipe and Foundry Corporation*, G.R. No. 179812, July 6, 2010, 624 SCRA 148, 154.

price and the terms agreed upon by the contracting parties without the intervention of the broker, who resorted to trickery in order to obtain from the seller an authority to look for a buyer. Furthermore, the seller therein presented the buyer of the property as a witness to refute the allegations of their broker who was seeking to claim her commission.

In contrast, petitioners purposely engaged Yamson as their broker and knowingly authorized him to look for a buyer for their properties. More importantly, petitioners offered no other testimony but their own to bolster their allegations. If, as they say, they already knew of Chua's interest in purchasing their property, then they should have presented Chua as their witness. Unfortunately, their sole witness was Annie Tan, whose testimony was uncorroborated by any other documentary or testimonial evidence and could only be assessed as self-serving.

On the basis of the foregoing, Yamson is entitled to his commission for the sale of the two lots. The other points raised in the petition need not be discussed as they are a mere repetition of the arguments which have been judiciously resolved by the courts *a quo*.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Leonardo-de Castro,[*] *Peralta,* and *Abad, JJ.,* concur.

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[*] Designated acting member, per Special Order No. 1343, dated October 9, 2012.

THIRD DIVISION

[G.R. No. 166462. October 24, 2012]

P.L. UY REALTY CORPORATION, *petitioner, vs.* **ALS MANAGEMENT AND DEVELOPMENT CORPORATION and ANTONIO K. LITONJUA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; WHEN THE COURT MAY *MOTU PROPRIO* DISMISS A CASE, GROUNDS.— Under [Section 1, Rule 9 of the Rules of Court], the Court may *motu proprio* dismiss a case when any of the four (4) grounds referred to therein is present. These are: (a) lack of jurisdiction over the subject matter; (b) *litis pendentia*; (c) *res judicata*; and (d) prescription of action.

2. ID.; ID.; JUDGMENTS; *RES JUDICATA*; CONCEPTS; BAR BY PRIOR JUDGMENT, WHEN PRESENT; CASE AT BAR.— Secs. 47(b) and (c) of Rule 39 provides for the two (2) concepts of *res judicata*: bar by prior judgment and conclusiveness of judgment, respectively. x x x The Court, in *Social Security Commission v. Rizal Poultry and Livestock Association, Inc.*, distinguished the two (2) concepts. x x x All the elements of *res judicata*, as a "bar by prior judgment," are present in the instant case. The previous complaint for foreclosure of mortgage was dismissed by the trial court for being premature in Civil Case No. 47438. The dismissal action, when eventually elevated to this Court in G.R. No. 91656, was affirmed and the affirmatory resolution of the Court becoming final and executory on February 7, 1990. Further, the element of identity of parties is considered existing even though Litonjua was only impleaded in Civil Case No. 60221 and not in Civil Case No. 47438. Absolute identity of parties is not required for *res judicata* to apply; substantial identity is sufficient. x x x Plainly, the two (2) cases involve the very same parties, the same property and the same cause of action arising from the violation of the terms of one and the same deed of absolute

sale with mortgage. In fact, PLU prayed substantially the same relief in both complaints. There is no reason not to apply this principle to the instant controversy. Clearly, the instant complaint must be dismissed.

3. CIVIL LAW; CONTRACTS; WHEN THE PROVISIONS OF A CONTRACT ARE VALID, THE PARTIES ARE BOUND BY SUCH TERMS; APPLICATION IN CASE AT BAR.— [I]t would be relevant to note that Art. 1306 of the Civil Code guarantees the freedom of parties to stipulate the terms of their contract provided that they are not contrary to law, morals, good customs, public order, or public policy. Thus, when the provisions of a contract are valid, the parties are bound by such terms under the principle that a contract is the law between the parties. Here, both parties knew for a fact that the property subject of their contract was occupied by informal settlers, whose eviction would entail court actions that in turn, would require some amount of time. They also knew that the length of time that would take to conclude such court actions was not within their power to determine. Despite such knowledge, both parties still agreed to the stipulation that the payment of the balance of the purchase price would be deferred until the informal settlers are ejected. There was never any allegation that PLU was coerced into signing the Deed of Sale with Mortgage or that its consent was in any way vitiated. PLU was free to accept or decline such contractual provision. Thus, PLU cannot now be allowed to renege on its agreement.

APPEARANCES OF COUNSEL

D.G. Macalino and Associates for petitioner.
Benedict A. Litonjua for respondents.

R E S O L U T I O N

VELASCO, JR., *J.*:

For consideration of the Court is a Petition for Review on *Certiorari* dated February 2005 filed under Rule 45 by petitioner P. L. Uy Realty Corporation (PLU). In the petition, PLU seeks

the reversal of the Decision dated August 21, 2002[1] and Resolution dated December 22, 2004[2] issued by the Court of Appeals (CA) in CA-G.R. CV No. 44377 entitled *P. L. Uy Realty Corporation v. ASL*[3] *Management and Development Corporation, et al.* The CA Decision affirmed the Decision dated November 17, 1993[4] of the Regional Trial Court of Pasig City, Branch 156, in Civil Case No. 60221 which dismissed, on the ground of prematurity, the complaint filed by PLU for foreclosure of mortgage against ALS Management and Development Corporation (ALS) and Antonio S. Litonjua.[5]

The antecedent facts of the case are as follows:

On September 3, 1980, PLU, as vendor, and ALS, as vendee, executed a Deed of Absolute Sale with Mortgage[6] covering a parcel of land, registered under Transfer Certificate of Title (TCT) No. 16721, in the name of petitioner and located at F. Blumentritt Street, Mandaluyong, Metro Manila. The purchase price for the land was set at PhP 8,166,705 payable, as follows:

a. Upon execution of the Contract	- ₱ 500,000.00
b. Within 100 days thereafter, a downpayment equivalent to 24% (₱1,960,000.00) of the principal amount less the advance of ₱500,000.00	- 1,460,009.20
c. The balance of ₱6,206,695.80 together with interest of 12% per annum (estimated interest included) on the diminishing balance shall be payable over a period	

[1] *Rollo*, pp. 7-34. Penned by Associate Justice Godardo A. Jacinto and concurred in by Associate Justices Eloy R. Bello, Jr. and Rebecca De Guia-Salvador.

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

[3] This should be "ALS" as shown in the *Articles of Incorporation of the ALS Management and Development Corporation* dated February 3, 1976 marked as Exhibit "H" (records, pp. 80-84), showing Antonio K. Litonjua as an incorporator, board of director and majority stockholder.

[4] *Rollo*, pp. 116-133.

[5] *Id.* at 116.

[6] Records, pp. 7-10.

of four (4) years on or before the month and day of the first downpayment as follows:

2nd Payment (24%)	₱1,960,009.20	
Interest	744,803.49	2,704,812.69
3rd Payment (24%)	1,960,009.20	
Interest	509,602.39	2,469,611.59
4th Payment (24%)	1,960,009.20	
Interest	274,401.28	2,234,410.48
5th Payment (24%)	326,668.20	
Interest	19,600.09	346,268.29[7]

Notably, the parties stipulated in paragraph 4.a of the Deed of Absolute Sale with Mortgage on the eviction of informal settlers, as follows:

4. a. It is understood that the VENDOR shall have the property clear of any existing occupants/squatters, the removal of which shall be for the sole expenses & responsibilities of the VENDOR & that the VENDEE is authorized to withhold payment of the 1st 24% installment unless the above-undertaking is done and completed to the satisfaction of the VENDEE;[8]

Section 6 of the deed, on the other hand, provided that "realty taxes during the validity of this mortgage, shall be for the account of the VENDEE [ALS]."[9]

Thereafter, the parties entered into an Agreement dated December 23, 1980,[10] paragraph 3 of which reads:

3. That all accruals of interest as provided for in paragraph 2-c of the Deed of Sale With Mortgage will be deferred and the subsequent payments of installments will correspondingly [sic] extended to the date the occupants/squatters will vacate the subject property.[11]

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[7] *Id.* at 8.

[8] *Id.*

[9] *Id.* at 9.

[10] *Id.* at 355-358.

[11] *Id.* at 356.

The succeeding paragraph 4 provided that in the event the informal settlers do not leave the property, PLU would reimburse ALS the following amounts:

> 4. That in the event the occupants/squatters will refuse to vacate the premises despite the amicable payments being offered by the FIRST PARTY (PLU) and paid by the SECOND PARTY (ALS) for the account of the FIRST PARTY, the following amount [sic] will be refunded by the FIRST PARTY to the SECOND PARTY:
>
> a. All payments made, including the downpayment
>
> b. All costs of temporary/permanent improvements introduced by the SECOND PARTY in the subject property
>
> c. All damages suffered by the SECOND PARTY due to the refusal of the occupants/squatters to vacate the premises.[12]

On January 26, 1981, TCT No. 16721 was canceled and a new one, TCT No. 26048, issued in the name of ALS.[13]

Subsequently, the parties executed a Partial Release of Mortgage dated April 3, 1981[14] attesting to the payment by ALS of the first installment indicated in the underlying deed. The relevant portion of the Partial Release of Mortgage reads:

> 1. Upon the execution of this document, the SECOND PARTY shall pay the net sum of THREE HUNDRED NINETY FIVE THOUSAND PESOS (₱395,000.00) after deducting expenses, covered by UCPB Check No. 078993 dated April 2, 1981 to complete the full payment of the first 24% installment.
>
> 2. The FIRST PARTY hereby executes a partial release of the mortgage to the extent of TWENTY THOUSAND SQUARE METERS (20,000 sq.m.) in consideration of the advance payment which would now amount to a total of ₱1,960,009.20, of a portion of the said property indicated in the attached subdivision plan herewith x x x.[15]

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[12] *Id.* at 356-357.

[13] *Id.* at 362.

[14] *Id.* at 359-360.

[15] *Id.* at 359.

ALS, however, failed to pay the 2nd payment despite demands.

Thus, on August 25, 1982, PLU filed a Complaint[16] against ALS for Foreclosure of Mortgage and Annulment of Documents. The case was initially raffled to the Court of First Instance (CFI) of Rizal, but eventually re-raffled to the Regional Trial Court, Branch 137 in Makati City (Makati RTC) thereat docketed as Civil Case No. 47438 entitled *PLU Realty Corporation v. ALS (or ASL) Management and Development Corporation*.[17] In the complaint, PLU alleged having had entered into an oral agreement with ALS whereby the latter "[agreed to] take over the task of ejecting the squatters/occupants from the property covered by TCT No. 26048 issued in its name,"[18] adding that, through the efforts of ALS, the property was already 90% clear of informal settlers.[19] Notably, PLU's prayer for relief states:

WHEREFORE, plaintiff respectfully prays that judgment be rendered:

(1) Declaring null and void the documents attached to, and made an integral part of this complaint as Annexes "D" and "G";

(2) Sentencing the defendant to pay the plaintiff the sum of Six Million Two Hundred Six Thousand Six hundred Ninety-Five Pesos & 60/100 (₱6,206,695.80), with interest thereon as provided in sub-paragraph (c), paragraph 2 of the Deed of Sale with Mortgage and paragraph 6 of the same Deed, plus interests at the legal rate from the date of filing of this complaint;

(3) Sentencing the defendant to pay the plaintiff the actual damages and attorney's fees it has suffered, as above alleged, in the total sum of Four Hundred Fifty Thousand Pesos (₱450,000.00);

(4) Providing that, in the event defendant refuses or fails to pay all the above-mentioned amounts after the decision of this Hon. Court has become final and executory, the corresponding order is

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[16] *Id.* at 361-372.

[17] *Id.* at 67.

[18] *Id.*

[19] *Id.* at 363.

issued for the sale, in the corresponding Foreclosure sale of the mortgaged property described in the Deed of Sale with Mortgage, to satisfy the judgment rendered by this Hon. Court, plus costs of suit.

Plaintiff prays for such further reliefs as this Hon. Court may deem just and proper in the premises.[20]

On May 9, 1986, the Makati RTC rendered a Decision[21] ruling that the obligation of PLU to clear the property of informal settlers was superseded by an oral agreement between the parties whereby ALS assumed the responsibility of ejecting said informal settlers. The Makati RTC, however, declared that the removal of the informal settlers on the property is still a subsisting and valid condition.[22] In this regard, the trial court, citing a CA case entitled *Jacinto v. Chua Leng* (45 O.G. 2915), ruled:

> In the case at bar, the fulfillment of the conditional obligation to pay the subsequent installments does not depend upon the sole will or exclusive will of the defendant-buyer. In the first place, although the defendant-buyer has shown an apparent lack of interest in compelling the squatters to vacate the premises, as it agreed to do, there is nothing either in the contract or in law that would bar the plaintiff-seller from taking the necessary action to eject the squatters and thus compel the defendant-buyer to pay the balance of the purchase price. In the second place, should the squatters vacate the premises, for reasons of convenience or otherwise, and despite defendant's lack of diligence, the latter's obligation to pay the balance of the purchase price would arise unavoidably and inevitably. x x x Moreover, considering that the squatters' right of possession to the premises is involved in Civil Case No. 40078 of this Court, defendant's obligation to pay the balance of the purchase price would necessarily be dependent upon a final judgment of the Court ordering the squatters to vacate the premises.

The trial court further ruled that because informal settlers still occupied 28% of the property, the condition, as to their

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[20] *Id.* at 370-371.

[21] *Id.* at 67-74.

[22] *Id.* at 73.

eviction, had not yet been complied with.[23] For this reason, the Makati RTC found the obligation of ALS to pay the balance of the purchase price has not yet fallen due and demandable; thus, it dismissed the case for being premature. The dispositive portion of the Makati RTC Decision reads:

> WHEREFORE, judgment is hereby rendered dismissing the instant action for foreclosure of mortgage, as the same is premature. Likewise the counterclaim is hereby ordered dismissed, for lack of sufficient merit. No pronouncement as to costs.
>
> SO ORDERED.[24]

Therefrom, both parties appealed to the CA which eventually affirmed the ruling of the trial court in a Decision dated August 30, 1989[25] in CA-G.R. CV No. 12663 entitled *PLU Realty Corporation v. ALS (or ASL) Management and Development Corporation*. The dispositive portion of the Decision states:

> WHEREFORE, premises considered, the decision of the trial court is AFFIRMED *in toto*.
>
> No costs.
>
> SO ORDERED.[26]

ALS appealed the case to this Court primarily questioning the finding of the Makati RTC that it had assumed the responsibility of ejecting the informal settlers on the property. On February 7, 1990, in G.R. No. 91656, entitled *ALS Management and Development Corporation v. Court of Appeals and PLU Realty*, the Court issued a Resolution[27] affirming the rulings of the CA and the Makati RTC. The resolution became final and executory on February 7, 1990.[28]

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[23] *Id.*

[24] *Id.* at 74.

[25] *Id.* at 89-100.

[26] *Id.* at 100.

[27] *Id.*

[28] *Id.* at 87.

Sometime thereafter, PLU again filed a Complaint dated November 12, 1990[29] against ALS for Judicial Foreclosure of Real Estate Mortgage under Rule 68, before the RTC, Branch 156 in Pasig City (Pasig RTC), docketed as Civil Case No. 60221 and entitled *P. L. Uy Realty Corporation v. ASL Management and Development Corporation and Antonio S. Litonjua*. In the complaint, PLU claimed that ALS had not yet completed the agreed 1st payment obligation despite numerous demands. The complaint's prayer reads:

> WHEREFORE, it is most respectfully prayed that after hearing judgment be rendered directing the defendants to pay within ninety (90) days from receipt of an order the following amount:
>
> 1. The outstanding balance of the purchase price amounting to ₱6,206,695.80 plus 12% interest per annum from January, 1981 until full payment thereof has been made;
> 2. The sum equivalent to 10% of the total outstanding obligations as and for attorney's fee;
> 3. The sum of ₱100,000.00 as and for moral damages; and,
> 4. The sum of ₱50,000.00 as and for exemplary damages, plus costs;
>
> and in case of default to order the sale of the properties to satisfy the aforestated obligations pursuant to the provisions of Rule 68 of the Revised Rules of Court.
>
> Plaintiff also prays for such other just and equitable reliefs in the premises.

In defense, ALS claims that the installment payments for the balance of the purchase price of the property are not yet due and demandable, as the removal of the informal settlers, a condition precedent for such payments to be demandable, is still to be completed. ALS further avers that respondent Antonio Litonjua (Litonjua) cannot be made personally liable under the Deed of Absolute Sale with Mortgage, not being a party thereto and as no ground exists for piercing the veil of corporate fiction to make Litonjua, a corporate officer of ALS, liable. By way of counterclaim, ALS alleged that because there were still informal

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

settlers on the property, PLU should be directed to reimburse ALS the payments that it already made, the cost of improvements introduced by ALS on the property and for other damages.

During the course of the trial, the court conducted an ocular inspection and found 1 ½ hectares of the 5.4 hectare property still being occupied by informal settlers.[30]

In a Decision dated November 17, 1993, the Pasig RTC dismissed the case for being premature, the dispositive portion of which reads:

> WHEREFORE, premises considered, the present Complaint is hereby ordered DISMISSED for being premature.
>
> On the counterclaim, the plaintiff is hereby ordered to reimburse the defendant-corporation the amount of ₱131,331.20 representing the real estate taxes paid by the latter with 12% interest thereon from the time of their actual payments to the Government until the same are fully reimbursed.
>
> The other counterclaims are hereby ordered DISMISSED for want of sufficient merits.
>
> SO ORDERED.[31]

Just like the Makati RTC in Civil Case No. 47438, the Pasig RTC found that the payment of the installments has not yet become due and demandable as the suspensive condition, the ejection of the informal settlers on the property, has not yet occurred.[32] Further, even if ALS has taken up the obligation to eject the informal settlers, its inaction cannot be deemed as constructive fulfillment of the suspensive condition. The court reasoned that it is only when the debtor prevents the fulfillment of the condition that constructive fulfillment can be concluded, citing Article 1186 of the Civil Code. And inasmuch as PLU has failed to demand the removal of the informal settlers from the property, so the court noted citing Art. 1169 of the Civil

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[30] *Rollo*, p. 29.

[31] *Id.* at 132-133.

[32] *Id.* at 129.

Code, ALS cannot be deemed as in default *vis-à-vis* its obligation to remove the informal settlers.[33] Furthermore, the trial court, citing Art. 1167 of the Civil Code, ruled that the foreclosure of the mortgage is not the proper remedy, and that PLU should have caused the ejectment of the informal settlers.[34] Also, the court found no reason to render Litonjua personally liable for the transaction of ALS as there was no ground to pierce the veil of corporate fiction.[35]

From such Decision, PLU appealed to the CA which rendered the assailed Decision affirming that of the Pasig RTC. PLU moved for a reconsideration of the CA Decision but was denied in the assailed Resolution.

Hence, the instant petition.

The instant petition must be dismissed.

Section 1, Rule 9 of the Rules of Court provides:

> Section 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause**, or that the action is barred by a prior judgment** or by statute of limitations, **the court shall dismiss the claim**. (Emphasis supplied)

Under this provision of law, the Court may *motu proprio* dismiss a case when any of the four (4) grounds referred to therein is present. These are: (a) lack of jurisdiction over the subject matter; (b) *litis pendentia*; (c) *res judicata*; and (d) prescription of action. Thus, in *Heirs of Domingo Valientes v. Ramas*,[36] the Court ruled:

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[33] *Id.* at 130; Art. 1169 reads: Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation. x x x

[34] *Id.* at 130-131.

[35] *Id.* at 132.

[36] G.R. No. 157852, December 15, 2010, 638 SCRA 444, 451.

Secondly, and more importantly, Section 1, Rule 9 of the Rules of Court provides:

> Section 1. *Defenses and objections not pleaded*. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

The second sentence of this provision does not only supply exceptions to the rule that defenses not pleaded either in a motion to dismiss or in the answer are deemed waived, it also allows courts to dismiss cases *motu proprio* on any of the enumerated grounds – (1) lack of jurisdiction over the subject matter; (2) *litis pendentia*; (3) *res judicata*; and (4) prescription – provided that the ground for dismissal is apparent from the pleadings or the evidence on record.

Correlatively, Secs. 47(b) and (c) of Rule 39 provides for the two (2) concepts of *res judicata*: bar by prior judgment and conclusiveness of judgment, respectively. The provisions state:

> Section 47. *Effect of judgments or final orders*. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
>
> x x x x x x x x x
>
> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been missed in relation thereto, conclusive between the parties and their successors in interest, by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
>
> (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

The Court, in *Social Security Commission v. Rizal Poultry and Livestock Association, Inc.*,[37] distinguished the two (2) concepts in this wise:

Res judicata embraces two concepts: (1) bar by prior judgment as enunciated in Rule 39, Section 47(b) of the Rules of Civil Procedure; and (2) conclusiveness of judgment in Rule 39, Section 47(c).

There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action.

But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies, whether or not the claim, demand, purpose, or subject matter of the two actions is the same.

Thus, if a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required but merely identity of issue.

In the same *Social Security Commission* case, the Court enumerated the elements of *res judicata*, to wit:

The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties;

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[37] G.R. No. 167050, June 1, 2011, 650 SCRA 50, 56-57.

(3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action. **Should identity of parties, subject matter, and causes of action be shown in the two cases, then *res judicata* in its aspect as a "bar by prior judgment" would apply.** If as between the two cases, only identity of parties can be shown, but not identical causes of action, then *res judicata* as "conclusiveness of judgment" applies. (Emphasis supplied.)

All the elements of *res judicata*, as a "bar by prior judgment," are present in the instant case. The previous complaint for foreclosure of mortgage was dismissed by the trial court for being premature in Civil Case No. 47438. The dismissal action, when eventually elevated to this Court in G.R. No. 91656, was affirmed and the affirmatory resolution of the Court becoming final and executory on February 7, 1990. Further, the element of identity of parties is considered existing even though Litonjua was only impleaded in Civil Case No. 60221 and not in Civil Case No. 47438. Absolute identity of parties is not required for *res judicata* to apply; substantial identity is sufficient. The Court articulated this principle was raised in *Cruz v. Court of Appeals*[38] in this wise:

> The principle of *res judicata* may not be evaded by the mere expedient of including an additional party to the first and second action. Only substantial identity is necessary to warrant the application of *res judicata*. The addition or elimination of some parties does not alter the situation. There is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case albeit the latter was not impleaded in the first case.
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> x x x x x x x x x
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> x x x Such identity of interest is sufficient to make them privy-in-law, thereby satisfying the requisite of substantial identity of parties.

Plainly, the two (2) cases involve the very same parties, the same property and the same cause of action arising from the

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[38] G.R. No. 164797, February 13, 2006, 482 SCRA 379, 392-393.

violation of the terms of one and the same deed of absolute sale with mortgage. In fact, PLU prayed substantially the same relief in both complaints. There is no reason not to apply this principle to the instant controversy.

Clearly, the instant complaint must be dismissed.

On a final note, it would be relevant to note that Art. 1306 of the Civil Code guarantees the freedom of parties to stipulate the terms of their contract provided that they are not contrary to law, morals, good customs, public order, or public policy. Thus, when the provisions of a contract are valid, the parties are bound by such terms under the principle that a contract is the law between the parties.

Here, both parties knew for a fact that the property subject of their contract was occupied by informal settlers, whose eviction would entail court actions that in turn, would require some amount of time. They also knew that the length of time that would take to conclude such court actions was not within their power to determine. Despite such knowledge, both parties still agreed to the stipulation that the payment of the balance of the purchase price would be deferred until the informal settlers are ejected. There was never any allegation that PLU was coerced into signing the Deed of Sale with Mortgage or that its consent was in any way vitiated. PLU was free to accept or decline such contractual provision. Thus, PLU cannot now be allowed to renege on its agreement. Justice J. B. L. Reyes, in *Gregorio Araneta, Inc. v. Phil. Sugar Estate Development Co., Inc.*,[39] a case cast against a similar factual milieu, stated the following apt observation:

> In this connection, it is to be borne in mind that the contract shows that the parties were fully aware that the land described therein was occupied by squatters, because the fact is expressly mentioned therein (Rec. on Appeal, Petitioner's Appendix B, pp. 12-13). As the parties must have known that they could not take the law into their own hands, but must resort to legal processes in evicting the squatters, they must have realized that the duration of the suits to

[39] No. L-22558, May 31, 1967, 20 SCRA 330, 336.

be brought would not be under their control nor could the same be determined in advance. **The conclusion is thus forced that the parties must have intended to defer the performance of the obligations under the contract until the squatters were duly evicted, as contended by the petitioner Gregorio Araneta, Inc.** (Emphasis supplied.)

WHEREFORE, premises considered, the instant petition is hereby **DENIED**. No costs.

SO ORDERED.

Leonardo-de Castro,[*] *Peralta, Abad,* and *Mendoza, JJ.*, concur.

THIRD DIVISION

[G.R. No. 170677. October 24, 2012]

VSD REALTY & DEVELOPMENT CORPORATION, *petitioner, vs.* **UNIWIDE SALES, INC. and DOLORES BAELLO TEJADA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; IN CIVIL CASES, BURDEN OF PROOF MEANS EACH PARTY MUST ESTABLISH HIS OWN CASE.— In civil cases, the specific rule as to the burden of proof is that the plaintiff has the burden of proving the material allegations of the complaint which are denied by the answer; and the defendant has the burden of proving the material allegations in his answer, which sets up new matter as a defense. This rule does not involve a shifting of the burden of proof, but merely means that each party must establish his own case.

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[*] Acting member per Special Order No. 1343 dated October 9, 2012.

2. CIVIL LAW; PROPERTY; OWNERSHIP; THE PERSON CLAIMING BETTER RIGHT TO THE PROPERTY MUST PROVE THE IDENTITY OF THE LAND CLAIMED AND HIS TITLE THERETO; APPLICATION IN CASE AT BAR.— Article 434 of the Civil Code provides that 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. x x x In this case, petitioner proved his title over the property in dispute as well as the identity of the said property; hence, it is entitled to recover the possession of the property from respondents.

3. ID.; ID.; RIGHTS OF A BUILDER IN GOOD FAITH; A LESSEE UNDER A RENTAL CONTRACT CANNOT AVAIL OF THE RIGHTS OF A BUILDER IN GOOD FAITH.— It is noted that when the contract of lease was executed, Uniwide was unaware that the property leased by it was owned by another person other than Dolores Baello. Nevertheless, Uniwide cannot avail of the rights of a builder in good faith under Article 448 of the Civil Code, in relation to Article 546 of the same Code, which provides for full reimbursement of useful improvements and retention of the premises until reimbursement is made, as the said provisions apply only to a possessor in good faith who builds on land with the belief that he is the owner thereof. It does not apply where one's only interest is that of a lessee under a rental contract. x x x Based on the foregoing, Uniwide cannot recover the cost of its improvement on the land from VSD under Article 448 of the Civil Code.

4. ID.; DAMAGES; ATTORNEY'S FEES; REQUIREMENT FOR THE GRANT THEREOF.— The Court holds that the trial court erred in awarding attorney's fees in the amount of ₱200,000.00 to petitioner as it failed to state in the body of its decision the basis for such award. The power of courts to grant attorney's fees demands factual, legal and equitable justification; its basis cannot be left to speculation or conjecture.

APPEARANCES OF COUNSEL

The Law Firm of Donato Faylona for petitioner.
Angara Abello Concepcion Regala & Cruz for D.B. Tejada.
Fortun Narvasa & Salazar for Uniwide Sales.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Decision of the Court of Appeals dated May 30, 2005 in CA-G.R. CV No. 69824 and its Resolution dated December 6, 2005, denying petitioner's motion for reconsideration.

The Decision of the Court of Appeals reversed and set aside the Decision of the Regional Trial Court (RTC) of Caloocan City, Branch 126, in Civil Case No. C-16933, and dismissed petitioner's Complaint for annulment of title and recovery of possession of property.

The facts are as follows:

On June 8, 1995, petitioner VSD Realty and Development Corporation (VSD) filed a Complaint[2] for annulment of title and recovery of possession of property against respondents Uniwide Sales, Inc. (Uniwide) and Dolores Baello[3] with the RTC of Caloocan City, Branch 126 (trial court).[4] Petitioner sought the nullification of Transfer Certificate of Title (TCT) No. (35788) 12754 in the name of Dolores Baello and the recovery of possession of property that is being occupied by Uniwide by virtue of a contract of lease with Dolores Baello.

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

[2] Records, Vol. I, pp. 2-8.

[3] Referred to as respondent Dolores Baello Tejada in the title of G.R. No. 170677.

[4] The case was docketed as Civil Case No. C-16933.

Petitioner alleged that it is the registered owner of a parcel of land in Caloocan City, with an area of 2,835.30 square meters, more or less, and covered by TCT No. T-285312[5] of the Register of Deeds of Caloocan City. Petitioner purchased the said property from Felisa D. Bonifacio, whose title thereto, TCT No. 265777, was registered by virtue of an Order[6] dated October 8, 1992 authorizing the segregation of the same in Land Registration Commission (LRC) Case No. C-3288. Petitioner also alleged that its right to the subject property and the validity and correctness of the technical description and location of the property are duly established in LRC Case No. C-3288.[7]

Petitioner alleged that respondent Baello is the holder and registered owner of a parcel of land covered by TCT No. (35788) 12754 in the Register of Deeds for the Province of Rizal. By virtue of the said title, Baello claims ownership and has possession of the property covered by petitioner's title, and she entered into a contract of lease with respondent Uniwide.

Petitioner alleged that its title, TCT No. 285312, is the correct, valid and legal document that covers the subject property, since it is the result of land registration proceedings in accordance with law.

Petitioner alleged that Baello's title, TCT No. 35788, is spurious and can only be the result of falsification and illegal machinations, and has no legal basis to establish any right over the subject property. Moreover, the technical description of Baello's title is so general that it is impossible to determine with certainty the exact location of the property covered by it. Petitioner further alleged that the technical description has no legal basis per the records of the Lands Management Bureau and the Bureau of

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[5] Annex "A", records, Vol. I, p. 9.

[6] Records, Vol. II, pp. 585-586.

[7] Entitled "*In the Matter of Petition for Authority to Segregate an Area of 5,680.1 Square Meters from Lot 23-A-4-B-2-A-3-B, PSD 706 (PSU-2345) of Maysilo Estate and Issuance of Separate Certificate of Title in the name of Felisa D. Bonifacio*," filed by Felisa D. Bonifacio.

Lands. It added that Baello's title described the property to be Lot 3-A of subdivision plan Psd 706, but an examination of Psd 706 shows that there is no Lot 3-A in plan Psd 706.[8] Petitioner contends that in view of the foregoing reasons, Baello has no legal basis to claim the subject property, and Baello's title, TCT No. 35788, is spurious and illegal and should be annulled. Thus, petitioner sought recovery of possession of the subject property.

Petitioner prayed that judgment be rendered:

1) declaring TCT No. 35788 (12754) to be null and void;

2) ordering respondent Baello and all persons/entity claiming title under her, including Uniwide, to convey and to return the property to petitioner;

3) ordering respondents Baello and Uniwide, jointly and severally, to pay just and reasonable compensation per month in the amount of ₱1.5 million for the occupancy and use of petitioner's land from the time it acquired ownership of the land on September 12, 1994 until actual vacation by respondents; and

4) ordering respondents, jointly and severally, to pay attorney's fees of ₱250,000.00 plus 20 percent of amounts or value actually recovered.

In its Answer,[9] respondent Uniwide alleged that on July 15, 1988, it entered into a Contract of Lease[10] with respondent Baello involving a parcel of land with an area of about 2,834 square meters, located in Caloocan City, which property is covered by TCT No. 35788 in the name of Baello. As a consequence of the lease agreement, it constructed a building worth at least ₱200,000,000.00 on the said property. It prayed that judgment be rendered dismissing the complaint for lack of cause of action against Uniwide; declaring the contract of lease

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[8] Annex "D", records, Vol. I, p. 14.

[9] Records, Vol. I, pp. 144-157.

[10] *Id*. at 65-72.

as valid and enforceable; and ordering petitioner to pay Uniwide moral and exemplary damages, among others.

On the other hand, respondent Baello filed a Motion to Dismiss on the grounds that the complaint stated no cause of action, and that the demand for annulment of title and/or conveyance, whether grounded upon the commission of fraud or upon a constructive trust, has prescribed, and is barred by laches.

In an Order[11] dated December 5, 1995, the trial court denied Baello's motion to dismiss for lack of merit. Baello's motion for reconsideration was likewise denied for lack of merit in an Order[12] dated February 27, 1996.

Subsequently, respondent Baello filed an Answer,[13] alleging that the subject property was bequeathed to her through a will by her adoptive mother, Jacoba Galauran. She alleged that during the lifetime of Jacoba Galauran, the subject property was originally surveyed on January 24-26, 1923[14] and, thereafter, on December 29, 1924.[15] Baello alleged that after Jacoba Galauran died in 1952, her will was duly approved by the probate court, the Court of First Instance, Pasig, Rizal. Baello stated that she registered the subject property in her name, and TCT No. (35788) 12754 was issued in her favor on September 6, 1954. In 1959, she had the subject property surveyed.[16] On July 15, 1988, she entered into a Contract of Lease[17] with respondent Uniwide, which erected in full public view the building it presently occupies. Baello stated that she has been religiously paying realty taxes for the subject property.[18]

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[11] *Id*. at p. 154.

[12] *Id*. at 176.

[13] *Id*. at 179-194.

[14] *Id*. at 196.

[15] *Id*. at 195.

[16] *Id*. at 292-285.

[17] Annex "1", *id*. at 65-72.

[18] Annexes "4", to "4-H", *id*. at 201-209.

Baello alleged that during her open and public possession of the subject property spanning over 40 years, nobody came forward to contest her title thereto. It was only in September 1994, when Baello was absent from the Philippines that petitioner demanded rentals from Uniwide, asserting ownership over the land.

As an affirmative defense, respondent Baello contended that the Complaint should be dismissed as she enjoys a superior right over the subject property because the registration of her title predates the registration of petitioner's title by at least 40 years.

The deposition of respondent Baello, which was taken on October 1, 1998 at the Philippine Consular Office in San Francisco, California, United States of America, affirmed the same facts stated in her Answer.

On October 2, 2000, the trial court rendered a Decision[19] in favor of petitioner. The trial court stated that the evidence for petitioner showed that it is the rightful owner of the subject lot covered by TCT No. 285312 of the Register of Deeds of Caloocan City. The lot was purchased by petitioner from Felisa D. Bonifacio, who became the owner thereof by virtue of her petition for segregation of the subject property from Original Certificate of Title (OCT) No. 994 of the Register of Deeds of Rizal in LRC Case No. C-3288.[20] The trial court found no reason to deviate from the ruling of Judge Geronimo Mangay in LRC Case No. C-3288, which was rendered after receiving all the evidence, including that of Engineer Elpidio de Lara, who testified under oath that his office, the Technical Services of the Department of Environment and Natural Resources (DENR), had not previously issued the technical description appearing on TCT No. 265777 (Felisa Bonifacio's title), and he also certified to the records of the technical description of Lot 23-A-4-B-2-A-3-A of subdivision plan Psd 706 on July 9,

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[19] *Rollo*, pp. 78-96.

[20] Exhibit "G", Records, Vol. II, p. 589.

1990, which refers to the same technical description appearing on Felisa D. Bonifacio's title. The trial court stated that it cannot question the Order in LRC Case No. C-3288 issued by a co-equal court in this respect, considering that Regional Trial Courts now have the authority to act not only on applications for original registration, but also over all petitions filed after original registration of title, with power to hear and determine all questions arising from such applications or petitions.

Moreover, the trial court stated that aside from the complete records of the land registration proceedings (LRC Case No. C-3288), petitioner presented witnesses to support its causes of action, thus:

> Norberto Vasquez, Deputy Register of Deeds of Caloocan City, testified that TCT No. 28531[2] (Exh. "A") in the name of the plaintiff VSD Realty and Development Corporation originated from TCT No. 265777 (Exh. "B") in the name of Felisa D. Bonifacio; that Felisa Bonifacio sold the property to VSD Realty and Development Corporation, and the same was registered under the name of the plaintiff; that Felisa Bonifacio came in possession of TCT No. 265777 by virtue of an Order (Exh. "C") issued by the Regional Trial Court, Branch 125, Kalookan City, dated May 31, 1993; that the Registry of Deeds received the Order of the RTC Branch 125 and by virtue of said Order with finality, their office issued TCT No. 265777 in the name of Felisa D. Bonifacio; that their office only issue[s] titles if there is a court Order. He related the [derivative] documents that were filed before their office such as the Court Order dated October 8, 1992, in L.R.C. Case No. 3288; the Certificate of finality to said Order dated April 6, 1999 and the subdivision plan to Lot No. 23-A-4-B-2-A-3-A.
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> Evelyn Celzo, a Geodetic Engineer, DENR, NCR, testified that she was the one who conducted the survey of the property of Felisa D. Bonifacio covered by TCT No. 265777; that she prepared a Verification Plan (Exh. "D") duly approved by the DENR, NCR, Director; that before the survey was conducted, she notified the adjoining owners that a survey will be conducted on the property of Felisa Bonifacio; that she was a witness in that case filed by *Felisa Bonifacio vs. Syjuco* before RTC Br. 125, Kalookan City. She attested to the verification survey she conducted of the subject lot as directed by her office. She confirmed that the technical description approved

and recorded in their office is Lot 23-A-4-B-2-A-3-A of Psd 706. The DENR, NCR keeps a record of all technical descriptions approved and authorized by it under the Torrens system. She pointed out that only one (1) technical description is allowed for one particular lot. The subject technical description was submitted as Exhibit "F" for the plaintiff.

On January 27, 1997, witness Evelyn Celzo was subjected for cross-examination.

Witness testified that a request for verification survey was made by Felisa D. Bonifacio addressed to the Chief, Survey Division of the DENR, NCR; that a survey order was given to their office by the Regional Technical Director, Lands Management Service on August 22, 1994; that they conducted the verification survey at the actual site of the property of Felisa D. Bonifacio; that they checked all the boundaries of the property where they conducted the verification survey; that they likewise conducted actual visual inspection on the monuments; that the whole area covered by TCT No. 265777 is occupied by Uniwide Sales, Inc.; that she went to the office of the Registry of Deeds and inquired as to the address of the owner of Uniwide Sales, Inc., but she was told by the people there that they do not know; that when she conducted the survey, she tried to inform the owner of the adjoining buildings, but nobody answered; that only one became the subject of the verification survey and this is the lot covered by TCT No. 265777 in the name of Felisa Bonifacio.

Soccoro Andrade, in-charge of the records of Civil/LRC cases in Branch 125 of the Regional Trial Court, Caloocan City, appeared bringing with her the records. She identified the pages of L.R.C. Case No. 3288, submitted as Exhibit "G" in this case.

Atty. Kaulayao V. Faylona, Director and Corporate Secretary of VSD Realty and Development Corporation testified on the details that led to the purchase of subject property. He verified the records of L.R.C. Case No. C-3288, as well as the transcripts and exhibits submitted in the case. He checked with the Registry of Deeds and was satisfied that the title was clean. Uniwide Sales, Inc., through its counsel Fortun and Narvasa, stated that it was not the owner of the subject property. It was a mere lessee, but during their talks on possible amicable settlement, Uniwide had to reveal the identity and address of the owner. This matter was clearly stated in the letter of Fortun and Narvasa dated May 18, 1995. As suggested by defendant

Uniwide, the instant case was filed on June 8, 1995, to include the alleged lessor of the land, Dolores Baello, care of ACCRA Law Office. He likewise testified on the damages suffered by VSD. Witness testified that plaintiff VSD Realty and Development Corporation filed the instant case against the defendants because plaintiff is the owner of the lot wherein Uniwide Sales is located x x x.[21]

Further, the trial court found that the technical description in respondent Baello's title is not the same as the technical description in petitioner's title. A mere reading of the technical description in petitioner's title and that in Baello's title would show that they are not one and the same. The trial court averred that the technical description of the subject lot in petitioner's title is recorded with the Register of Deeds of Caloocan City.[22] It stated that Baello's claim to the same technical description cannot by itself alone be given weight, and the evidence offered by Baello is not enough.

The trial court held that from the evidence adduced, petitioner is the registered owner of TCT No. 275312, formerly TCT No. 265777 when Felisa D. Bonifacio was the registered owner, while respondent Baello is the registered owner of a parcel of land covered by TCT No. (35788) 12754 and respondent Uniwide is a mere lessee of the land. Baello is the holder of a title over a lot entirely different and not in anyway related to petitioner's title and its technical description. Petitioner proved its ownership and the identity of the subject property.

The dispositive portion of the trial court's decision reads:

WHEREFORE, in the light of the foregoing consideration, judgment is hereby rendered ordering the following:

1. Declaring TCT No. 35788 (12754) to be null and void;

2. Defendant Baello and all persons/entity claiming title under her, including UNIWIDE, to convey and to return the property to plaintiff VSD on the basis of the latter's full, complete, valid and legal ownership;

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[21] RTC Decision, *rollo*, pp. 82-84.

[22] Exhibit "F", records, Vol. II, p. 588.

3. Defendant Baello and UNIWIDE, jointly and severally, to pay a just and reasonable compensation per month of ₱1,200,000.00 with legal interest for the occupancy and use of plaintiff's land from September 12, 1994, until actually vacated by them;

4. Defendants, jointly and severally, to pay attorney's fees of ₱200,000.00.

SO ORDERED.[23]

Respondents filed their respective motion for reconsideration. In its Order[24] dated January 12, 2001, the trial court denied respondents' motions for reconsideration for lack of merit, and it also denied petitioner's motion for immediate execution.

Respondents appealed the trial court's decision to the Court of Appeals.

On May 30, 2005, the Court of Appeals rendered a Decision[25] in favor of respondents and dismissed petitioner's complaint.

The Court of Appeals stated that the main issue to be resolved was whether or not there is a valid ground to annul respondent Baello's TCT No. 35788 to warrant the reconveyance of the subject property to petitioner.

The Court of Appeals held that the trial court erred in declaring respondent Baello's TCT No. 35788 as null and void. It stated that well settled is the rule that a Torrens title is generally a conclusive evidence of ownership of the land referred to therein, and a strong presumption exists that it was regularly issued and valid.[26] Hence, respondent Baello's TCT No. 35788 enjoys the presumption of validity.

The Court of Appeals stated that based on existing jurisprudence, a certificate of title may be annulled or cancelled

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[23] *Rollo*, pp. 95-96.

[24] *Id*. at 97-100.

[25] *Id*. at 45-58.

[26] *Id*. at 54, citing *Republic v. Orfinada, Sr.*, 485 Phil. 18 (2004).

by the court under the following grounds: (1) when the title is void because (a) it was procured through fraud, (b) it was issued for a land already covered by a prior Torrens title, (c) it covers land reserved for military, naval or civil public purposes, and (d) it covers a land which has not been brought under the registration proceeding; (2) when the title is replaced by one issued under a cadastral proceeding; and (3) when the condition for its issuance has been violated by the registered owner.[27]

The Court of Appeals averred that while petitioner sought to annul respondent Baello's TCT No. 35788 on the ground that the same was spurious, it failed to prove that Baello's title was indeed spurious. The appellate court also noted that the trial court's decision never mentioned that Baello's title was spurious. It further stated that any doubt or uncertainty as to the technical description contained in a certificate of title is not a ground for annulment of title. It held that since there was no legal basis for the annulment of Baello's TCT No. 35788, the trial court erred in declaring the said title null and void.

The Court of Appeals denied the cross-claim for moral damages filed by respondent Uniwide against respondent Baello, since Uniwide failed to establish its claim of besmirched reputation so as to be entitled to moral damages; hence, there was no basis to award the same. The other claims were likewise denied for lack of merit.

The dispositive portion of the Decision of the Court of Appeals reads:

> WHEREFORE, the assailed Decision of the Regional Trial Court of Caloocan City, Branch 126, in Civil Case No. C-16933 is REVERSED and SET ASIDE and a new one entered DISMISSING the instant complaint.[28]

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[27] *Id*., citing Noblejas & Noblejas, *Registration of Land Titles and Deeds*, 1992 edition, pp. 239-242.

[28] *Rollo*, p. 58.

Petitioner's motion for reconsideration was denied by the Court of Appeals for lack of merit in the Resolution[29] dated December 6, 2005.

Hence, petitioner filed this petition raising the following issues:

I

THE COURT OF APPEALS ERRED IN RULING THAT THE BURDEN OF PROOF DID NOT SHIFT TO RESPONDENTS, NOTWITHSTANDING THE OVERWHELMING EVIDENCE PRESENTED BY PETITIONER.

II

THE COURT OF APPEALS MISCONSTRUED PETITIONER'S ALLEGATION THAT THE "ISSUANCE OF TWO TITLES OVER THE SAME PIECE OF LAND HAS NOT BEEN PROVED."

III

THE COURT OF APPEALS ERRED IN TREATING PETITIONER'S COMPLAINT AS ONE ONLY FOR ANNULMENT OF TITLE WHEN PETITIONER ALSO SOUGHT RECONVEYANCE OF THE LOT IN QUESTION.

IV

THE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT BAELLO'S TITLE IS NOT SPURIOUS.

V

RESPONDENT UNIWIDE IS NOT A LESSOR IN GOOD FAITH.[30]

The pertinent issues raised by petitioner shall be discussed together with the main issues which are: (1) whether or not petitioner is entitled to recovery of possession of the subject property; and (2) whether or not the title of respondent Baello may be annulled.

Petitioner contends that the Court of Appeals erred in ruling that the burden of proof did not shift to respondents Baello and

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[29] *Id.* at 102.

[30] *Id.* at 11.

Uniwide, as it more than adequately proved its title to the lot in question by testimonial and documentary evidence.

In civil cases, the specific rule as to the burden of proof is that the plaintiff has the burden of proving the material allegations of the complaint which are denied by the answer; and the defendant has the burden of proving the material allegations in his answer, which sets up new matter as a defense.[31] This rule does not involve a shifting of the burden of proof, but merely means that each party must establish his own case.[32]

In this case, petitioner seeks the annulment of respondent Baello's title and the recovery of possession of property being occupied by Uniwide on the ground that it has the correct title to the subject property, with the proper technical description, while respondent Baello's title is spurious and the technical description in her title is in general terms and does not identify her land with certainty.

The Court holds that petitioner was able to establish through documentary and testimonial evidence that the technical description of its Torrens title covers the property that is being occupied by respondent Uniwide by virtue of a lease contract with respondent Baello. A comparison of the technical description of the land covered by the title of petitioner and the technical description of the land covered by the title of Baello shows that they are not the same.

TCT No. 285312 registered in the name of petitioner reads:

IT IS HEREBY CERTIFIED that certain land situated in Caloocan City, Philippines, bounded and described as follows:

> A parcel of land (Lot 23-A-4-B-2-A-3-A of the subd. plan Psd-706, LRC x x x situated in Balintawak, Caloocan, Rizal. Bounded on the E., along line 1-2, by Lot 23-A-4-B-2-A-3-D, on the SE., along line 2-3 by Lot 23-A-4-B-2-A-3-B, both of the subd. plan and on the SW., NW., along line 3-4-1 by Lot

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[31] R.J. Francisco, *Evidence*, Rules 128-134, 1993 edition, pp. 384, 385.

[32] *Id.* at 385.

23-A-4-B-2-A-6, Beginning at a point marked "1" on plan being N. 69 deg. 07'E., 1,306.21m. from BLLM No. 1, Caloocan thence; S. 01 deg. 46'W., 25.16 m. to point 2; S 65 deg. 116.78 m. to point 3; N. 23 deg. 12'W., 23.85 m. to point 4; N. 65 deg. 57'E. 127.39 m. to the point of beginning; containing an area of TWO THOUSAND EIGHT HUNDRED THIRTY-FOUR SQUARE METERS AND EIGHTY SQ. DECIMETERS (2,834.80) more or less. All pts. referred to are indicated on plan and are marked on the ground by P.S. old points bearings true; date of original survey, Date of subd. survey, Dec. 29, 1922.[33]

On the other hand, TCT No. (35788) 12754, registered in the name of respondent Dolores Baello, states:

IT IS HEREBY CERTIFIED that certain land situated in the Municipality of Caloocan, Province of Rizal, Philippines, bounded and described as follows:

Un terreno (Lote No. 3-A del plano de subdivision Psd-706, parte del Lote No. 23-A, plano original Psu-2345 de la Hacienda de Maysilo), situado en el Barrio de Balintawak, Municipio de Caloocan, Provincia de Rizal. Linda por el NE, con el Lote No. 3-D del plano de subdivision; por el SE, con el lote No. 3-B del plano de subdivision; por el SO, con el Lote No. 7; y por el NO, con propiedad de Ramos Dane (Lote No. 1). x x x midiendo una extension superficial de DOS MIL OCHOCIENTOS TREINTA Y CUATRO METROS CUADRADOS CON OCHENTA DECIMETROS (2,834.80) mas o menos. x x x la fecha de la medicion original, 8 al 27 de Septiembre, 4 al 21 de Octubre y 17-18 de Noviembre de 1911, y de la subdivision 29 de Diciembre de 1924. (Full technical description appears on Transfer Certificate of Title No. 10300/T-42).[34]

From the foregoing, the title of petitioner covers a parcel of land referred to as Lot 23-A-4-B-2-A-3-A of the subdivision plan Psd-706, while the title of respondent Baello covers a parcel of land referred to as Lot No. 3-A of the subdivision plan Psd-

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[33] Records, Vol. II, pp. 572-573.

[34] Records, Vol. I, pp. 54, 197.

706. It should be pointed out that the verification survey of Lot 23-A-4-B-2-A-3-A based on its technical description showed that Lot 23-A-4-B-2-A-3-A is the lot being occupied by Uniwide.[35] Baello claims that her Lot No. 3-A is the same as Lot 23-A-4-B-2-A-3-A. However, the claim cannot be given credence because of the disparity of the lot description, and the technical description of the land covered by Baello's title shows that it is not the same as the technical description of the land covered by petitioner's title. Moreover, the technical description of the land covered by Baello's title, or the boundaries stated therein, are not the same as those indicated in the survey plans[36] which she adduced in evidence. Since Baello's title covers a different property, she cannot claim a superior right over the subject property on the ground that she registered her title ahead of petitioner.

As petitioner has proven that its title covers the property in dispute, it is entitled to recover the possession thereof, the basis of which shall be discussed subsequently. The recovery of possession of the subject property by petitioner is not dependent on first proving the allegation that Baello's title is spurious and the annulment of Baello's title, since Baello's title does not cover the subject property and petitioner has proven its title over the subject property and the identity of the property.

Petitioner contends that the Court of Appeals erred in treating its complaint as one only for annulment. It asserts that it prayed not only for annulment of Baello's title, but also for the reconveyance of Lot 23-A-4-B-2-A-3-B of subdivision plan Psd 706, which was the subject of lease between lessee Uniwide and lessor Baello, and over which property Baello claims ownership. Petitioner contends that reconveyance is in order as it has complied with the requisites of reconveyance under Article 434 of the Civil Code, thus:

> Art. 434. In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.

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[35] TSN, November 11, 1996, p. 4.

[36] Annex "1-A", and Annex "3", records, Vol. I, pp. 196, 200.

Petitioner's contention is meritorious.

Article 434 of the Civil Code provides that 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.[37]

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.[38]

In this case, petitioner proved the identity of the land it is claiming through the technical description contained in its title, TCT No. T-285312; the derivative title of Felisa D. Bonifacio, TCT No. 265777; the technical description[39] included in the official records of the subject lot in the Register of Deeds of Caloocan City; and the verification survey conducted by Geodetic Engineer Evelyn Celzo of the DENR-NCR.

This conclusion is further supported by the finding of the trial court, thus:

> The technical description of a titled lot registered under the Torrens system should appear on the face of the title. x x x Exhibits "F", "F-1" (Technical description of the land appearing in [plaintiff VSD's title,] Exh. "A") was acknowledged by the representative of the Register of Deeds as part of the records of TCT No. 28512. As testified by Engr. Evelyn G. Celzo of the DENR, NCR, the same certification was also established as stated in L.R.C. 3288, a technical description as approved and recorded in DENR, NCR. The technical description appearing in plaintiff's title shows the precise measurement, boundaries and location of the plaintiff's property. These measurements/ metes and bounds confirm the averments made by the plaintiff that the title of defendant Baello does not even clearly show where the land is located.

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[37] *Hutchinson v. Buscas*, 498 Phil. 257, 262 (2005).

[38] *Id.* at 220.

[39] Exhibit "F", records, Vol. II, p. 588.

Defendant BAELLO claimed that the technical description appearing on plaintiff's title belonged to her. In support of her claim[,] she submitted Exhibits "2", "3", "3-B". Exhibits "3" and "3-B" were Survey Plans alleged to have been as prepared the Technical Description for TCT No. (35186) 12754. Firstly, the technical description appearing on her title is not the technical description alleged to be Exhibit "4", which is the plan of Psd 706, Lot 23-A-4-B-2-A-3-A. Secondly, Exhibit "4", which she submitted separately from the title, was not established by any competent witness. Said Exhibits could only be considered as part of the testimony of defendant Baello, and not proof of the matters averred in said exhibits. No other witness was presented to testify on BAELLO's claim to her technical description, being claimed. x x x[40]

In addition, petitioner proved its title over the property by presenting in evidence its title, TCT No. T-285312, which describes the metes and bounds of the subject lot covered therein, that is Lot 23-A-4-B-2-A-3-A of the subdivision plan Psd-706, which lot was acquired by VSD from Felisa D. Bonifacio, as evidenced by a Deed of Absolute Sale.[41]

A background of the ownership of Felisa D. Bonifacio over Lot No. 23-A-4-B-2-A-3-A of the subdivision plan Psd-706 is contained in the Order[42] dated October 8, 1992 of Judge Geronimo S. Mangay in LRC Case No. C-3288,[43] granting Felisa D. Bonifacio's petition[44] for authority to segregate an area of 5,680.1 square meters covering Lot 23-A-4-B-2-A-3-A and Lot 23-A-4-B-2-A-3-B, Psd 706 (PSU-2345) of the Maysilo Estate, and for issuance of a separate certificate of title in the name of Felisa D. Bonifacio. The Order dated October 8, 1992 stated

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[40] *Rollo*, pp. 92-93.

[41] Exhibit "A-3", records, Vol. II, pp. 574-576.

[42] Records, Vol. II, pp. 585-586.

[43] Entitled *In the Matter of Petition for Authority to Segregate an Area of 5,680.1 Square Meters from Lot 23-A-4-B-2-A-3-B, PSD-706 (PSU-2345) of Maysilo Estate And Issuance of Separate Certificate of Title in the Name of Felisa D. Bonifacio*.

[44] Records, Vol. II, pp. 590-593.

that from the evidence presented, the court found that in Case No. 4557 for Petition for Substitution of Names, in the then Court of First Instance of Rizal, Branch 1, the then Presiding Judge Cecilia Muñoz Palma issued an Order dated May 25, 1962 substituting Maria de la Concepcion Vidal as one of the registered owners of several parcels of land forming the Maysilo Estate and covered by, among others, OCT No. 994 of the Register of Deeds of Rizal with, among others, Eleuteria Rivera Bonifacio to the extent of 1/6 of 1-189/1,000 percent of the entire Maysilo Estate.[45]

Moreover, the Order dated October 8, 1992 stated that Eleuteria Rivera Bonifacio executed in favor of Felisa D. Bonifacio a Deed of Assignment assigning all her rights and interests over Lot 23-A-4-B-2-A-3-A and Lot 23-A-4-B-2-A-3-B, both of Psd 706 and covered by OCT No. 994 of the Register of Deeds of Rizal.[46] It stated that even prior to the execution of the Deed of Assignment, but while negotiations with Eleuteria Rivera Bonifacio were ongoing, Felisa Bonifacio already requested the Lands Management Sector, DENR-NCR, to prepare and issue the technical descriptions of the two lots. Upon the finality of the Order and the payment of the prescribed fees, if any, and presentation of clearances of the said lots, the Register of Deeds of Caloocan City was ordered to issue a new transfer certificate of title in the name of Felisa D. Bonifacio over Lot 23-A-4-B-2-A-3-A and Lot 23-A-4-B-2-A-3-B, both on Psd 706 of OCT No. 994 of the Register of Deeds of Rizal.[47]

The evidence of petitioner, consisting of its Torrens title (TCT No. T-285312) and the derivative title of Felisa D. Bonifacio (TCT No. 265777), the technical description issued by the DENR for the segregation of the property of Felisa D. Bonifacio in LRC Case No. C-3288, and the testimonies of DENR representatives, show that the title of petitioner covers

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[45] Order dated October 8, 1992, *id*. at 585-586.

[46] *Id*. at 586.

[47] *Id*.

the property therein referred to as Lot 23-A-4-B-2-A-3-A, which is being occupied by Uniwide.

Hutchison v. Buscas[48] held:

> x x x [I]t bears stress that in an action to recover real property, the settled rule is that the plaintiff must rely on the strength of his title, not on the weakness of the defendant's title. This requirement is based on two (2) reasons: first, it is possible that neither the plaintiff nor the defendant is the true owner of the property in dispute, and second, the burden of proof lies on the party who substantially asserts the affirmative of an issue for he who relies upon the existence of a fact should be called upon to prove that fact. x x x

In this case, petitioner proved his title over the property in dispute as well as the identity of the said property; hence, it is entitled to recover the possession of the property from respondents.

Considering that Uniwide constructed a building on the subject parcel of land, is Uniwide entitled to recover from VSD the cost of its improvement on the land?

It is noted that when the contract of lease was executed, Uniwide was unaware that the property leased by it was owned by another person other than Dolores Baello. Nevertheless, Uniwide cannot avail of the rights of a builder in good faith under Article 448[49] of the Civil Code, in relation to Article 546 of the same Code, which provides for full reimbursement of useful improvements and retention of the premises until reimbursement is made, as the said provisions apply only to a

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[48] *Supra* note 37, at 264.

[49] Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

possessor in good faith who builds on land with the belief that he is the owner thereof.[50] It does not apply where one's only interest is that of a lessee under a rental contract.[51]

Parilla v. Pilar[52] held:

> Jurisprudence is replete with cases which categorically declare that **Article 448 covers only cases in which the builders, sowers or planters believe themselves to be owners of the land or, at least, have a claim of title thereto**, but not when the interest is merely that of a holder, such as a mere tenant, agent or usufructuary. A tenant cannot be said to be a builder in good faith as he has no pretension to be owner.
>
> In a plethora of cases, **this Court has held that Articles 448 of the Civil Code, in relation to Article 546 of the same Code**, which allows full reimbursement of useful improvements and retention of the premises until reimbursement is made, **applies only to a possessor in good faith, *i.e.*, one who builds on land with the belief that he is the owner thereof**. **It does not apply where one's only interest is that of a lessee under a rental contract**; otherwise, it would always be in the power of the tenant to "improve" his landlord out of his property. (Italics supplied)[53]

Based on the foregoing, Uniwide cannot recover the cost of its improvement on the land from VSD under Article 448 of the Civil Code.

Further, petitioner prays that the Decision of the Court of Appeals be reversed and the Decision of the trial court be reinstated. An examination of the dispositive portion of the trial court's decision shows that some modifications are in order.

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[50] *Chua v. Court of Appeals*, G.R. No. 109840, January 21, 1999, 301 SCRA 356, 364; 361 Phil. 308, 318 (1999); *Pada-Kilario v. Court of Appeals*, G.R. No. 134329, January 19, 2000, 322 SCRA 481, 492-493; 379 Phil. 515, 529 (2000).

[51] *Parilla v. Pilar*, G.R. No. 167680, November 30, 2006, 509 SCRA 420, 427; 538 Phil. 909, 917 (2006).

[52] *Id*.

[53] *Id*. at 427-428; *id*. at 916-917. (Citations omitted.)

First, the trial court declared the title of respondent Dolores Baello, TCT No. (35788) 12754, to be null and void.

The Court, however, holds that the title of respondent Dolores Baello cannot be nullified, because the records show that petitioner failed to present any proof that the title was issued through fraud, and Baello's title covers a different property from that described in petitioner's title.

Second, the trial court ordered respondents Baello and Uniwide to pay, jointly and severally, a just and reasonable compensation of ₱1,200,000.00 per month with legal interest for the occupancy and use of petitioner's land from the time petitioner acquired ownership of the land on September 12, 1994 until the land is actually vacated by respondents.

The Court notes that the trial court did not state in its decision how it determined the amount of ₱1.2 million as monthly compensation for the occupation and use of petitioner's property from the time petitioner acquired ownership of the property until it is vacated by respondents, particularly Uniwide which is in possession of the property. Although petitioner, in its Complaint, prayed for the payment of ₱1.5 million as compensation for the occupancy and use of the subject property, it did not present evidence to prove that it is entitled to such amount. The only basis for compensation for the use of the subject property is the contract of lease between Uniwide and Dolores Baello covering a period of 25 years from July 1, 1988 to June 30, 2013,[54] renewable for another 25 years, with the agreement that upon termination of the lease, the ownership of whatever buildings and improvements constructed by the lessee on the leased premises shall automatically be owned by the lessor.[55] The lease contract provides payment of rent in the amount of ₱700,000.00 per annum,[56] or a monthly rental of ₱58,333.30. The Court holds that the payment of ₱58,333.30 per month is a reasonable

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[54] Records, Vol. I, p. 66.

[55] *Id*. at 69.

[56] *Id*. at 66.

compensation for the occupation and use by respondents of the subject property from the time petitioner acquired ownership of the land on September 12, 1994. The monthly compensation of ₱58,333.30 shall earn an interest of six percent (6%) per annum[57] from the filing of the Complaint on June 8, 1995[58] until the award is final and executory, after which the interest rate shall be 12 percent (12%) per annum from the date the award becomes final and executory until fully paid.[59]

However, Uniwide should not be made to pay jointly and severally with Baello just compensation for the occupancy and use of petitioner's land from June 8, 1995, the date of the filing of the complaint, up to the finality of this Decision, since Uniwide already paid rentals to Baello. However, Baello and Uniwide may be held jointly and severally liable to VSD for the payment of rentals from the finality of this Decision until the possession of the subject property is returned to VSD, since Uniwide would not yet have paid rentals during that time.

Third, the trial court awarded attorney's fees to petitioner.

The Court holds that the trial court erred in awarding attorney's fees in the amount of ₱200,000.00 to petitioner as it failed to state in the body of its decision the basis for such award.[60] The power of courts to grant attorney's fees demands factual, legal and equitable justification; its basis cannot be left to speculation or conjecture.[61]

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[57] Civil Code, Art. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent per annum.

[58] Civil Code, Art. 2212. Interest due shall earn legal interest from the time it is judicially remanded, although the obligation may be silent upon this point.

[59] *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78.

[60] *Pang-oden v. Leonen*, G.R. No. 138939, December 6, 2006, 510 SCRA 93, 102; 539 Phil. 148, 157 (2006).

[61] *Id*.

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals dated May 30, 2005 and its Resolution dated December 6, 2005, in CA-G.R. CV No. 69824, are **REVERSED** and **SET ASIDE**. The Decision of the Regional Trial Court of Caloocan City, Branch 126, in Civil Case No. C-16933 is **REINSTATED** with **MODIFICATION** as follows:

(1) Paragraph 1 of the dispositive portion of the Decision dated October 2, 2000 of the Regional Trial Court of Caloocan City, Branch 126, in Civil Case No. C-16933, is deleted;

(2) Respondent Dolores Baello and all persons/entities claiming title under her, including respondent Uniwide Sales, Inc., are ordered to convey and to return the property or the lot covered by TCT No. T-285312 to petitioner VSD Realty and Development Corporation upon finality of this Decision;

(3) Respondent Dolores Baello is ordered to pay just and reasonable compensation for the occupancy and use of the land of petitioner VSD Realty and Development Corporation in the amount of ₱58,333.30 per month from September 12, 1994 until the Decision is final and executory, with legal interest of six percent (6%) *per annum* reckoned from the filing of the Complaint on June 8, 1995 until the finality of this Decision. Thereafter, respondent Uniwide Sales, Inc. is jointly and severally liable with Dolores Baello for the payment to petitioner VSD Realty and Development Corporation of monthly rental in the amount of ₱58,333.30 from the finality of this Decision until the land is actually vacated, with twelve percent (12%) interest *per annum.*

(4) The award of attorney's fees is deleted.

No costs.

SO ORDERED.

Velasco, Jr. (Chairperson), Leonardo-de Castro,[*] *Abad,* and *Mendoza, JJ.,* concur.

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[*] Designated Acting Member per Special Order No. 1343 dated October 9, 2012.

FIRST DIVISION

[G.R. No. 175177. October 24, 2012]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **GLORIA JARALVE substituted by ALAN JESS JARALVE DOCUMENTO, JR., EDGARDO JARALVE, SERAFIN UY, JR., SHELLA UY, NIMFA LAGNADA, PANTALEON SAYA-ANG, STARGLAD INTERNATIONAL AND DEVELOPMENT CORPORATION, ANNIE TAN, TEOTIMO CABARRUBIAS, JESSICA DACLAN, MA. EMMA RAMAS, DANILO DEEN, and ERIC ANTHONY DEEN,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; LAND REGISTRATION; THE PUBLIC LAND ACT (COMMONWEALTH ACT NO. 141); IMPORTANCE THEREOF, EXPLAINED.— The Public Land Act or Commonwealth Act No. 141, until this day, is the existing general law governing the classification and disposition of lands of the public domain, except for timber and mineral lands. "Under the *Regalian* doctrine embodied in our Constitution, land that has not been acquired from the government, either by purchase, grant, or any other mode recognized by law, belongs to the State as part of the public domain." Thus, it is indispensable for a person claiming title to a public land to show that his title was acquired through such means.

2. ID.; ID.; ID.; REQUIREMENTS UNDER SECTION 14(1) OF PRESIDENTIAL DECREE NO. 1529, SPECIFIED.— [A]pplicants for registration under Section 14(1) of Presidential Decree No. 1529 must sufficiently establish the following: 1. that the subject land forms part of the disposable and alienable lands of the public domain; 2. that the applicant and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the same; and 3. that it is under a *bona fide* claim of ownership since June 12, 1945, or earlier.

3. ID.; ID.; ID.; THE PENRO/CENRO (PROVINCIAL/ COMMUNITY ENVIRONMENT AND NATURAL RESOURCES OFFICER) CERTIFICATION IS NOT ENOUGH TO CERTIFY THAT THE LAND IS ALIENABLE AND DISPOSABLE; RATIONALE.— Land classification or reclassification cannot be assumed. It must be proved. To prove that the subject property is alienable and disposable land of the public domain, respondents presented the CENRO Certificate dated March 20, 1996 signed by CENR Officer Iluminado C. Lucas and PENR Officer Isabelo R. Montejo, and verified by Forester Anastacio C. Cabalejo. However, this Court, in *Republic v. T.A.N. Properties, Inc.*, ruled that a CENRO or PENRO Certification is not enough to certify that a land is alienable and disposable: x x x **The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable.** x x x Under Section G(1) of the above DAO, **CENROs** issue certificates of land classification status for areas **below 50 hectares**. For those falling **above 50 hectares**, the issuance of such certificates is within the function of the **PENROs**, as per Section F(1) of the same DAO. This delineation, with regard to the offices authorized to issue certificates of land classification status, was retained in DAO No. 38 dated April 19, 1990.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Eliseo A. Daniot for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the June 28, 2006 Decision[2] and October 27, 2006 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 78633, which affirmed the November 15, 2002 Decision[4] of the Regional Trial Court (RTC), Branch 20, Cebu City, in Land Registration Case No. 1421-N/LRA Rec. No. N-67272.

On October 22, 1996, Gloria Jaralve,[5] Edgardo Jaralve, Serafin Uy, Jr., Shella Uy, Nimfa Lagnada, Pantaleon Saya-Ang, Starglad International and Development Corporation, Annie Tan, Teotimo Cabarrubias, Jessica Daclan, and Ma. Emma Ramas filed an Application[6] with Branch 20 of the RTC of Cebu City, for the registration in their names of Lot Sgs-07-000307 (subject property), under Presidential Decree No. 1529. On November 29, 1996 and November 7, 1997, they filed their Amended[7] and Second Amended[8] Applications, respectively, to conform to the procedural requirements of the law, as per Order[9] of the RTC, and to join Danilo Deen and Eric Anthony Deen as applicants[10] (for brevity, we will

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[1] Rule 45, 1997 Rules of Court.

[2] *Rollo*, pp. 35-61; penned by Executive Justice Arsenio J. Magpale with Associate Justices Vicente L. Yap and Romeo F. Barza, concurring.

[3] *Id.* at 68-69.

[4] *Id.* at 87-112.

[5] Due to her death on August 5, 2009 (*Rollo*, p. 379), she was substituted by her surviving son, Alan Jess Jaralve Documento, Jr., as per this Court's Resolution dated October 6, 2010 (*Rollo*, p. 384).

[6] Records, Volume I, pp. 1-7.

[7] *Id.* at 85-92.

[8] *Id.* at 359-368.

[9] *Id.* at 82.

[10] *Id.* at 352.

refer to all the foregoing applicants as *respondents*). This was docketed as LRC Case No. 1421-N/LRA Rec. No. N-67272.

In their original and amended applications, respondents declared that they were the co-owners in fee simple of the subject property, a parcel of land with an area of 731,380 square meters, belonging to Cadastral Lot 18590, and situated in Barangay Quiot, City of Cebu, and all the improvements thereon. They alleged that they occupied the subject property and to the best of their knowledge, there was no mortgage or encumbrance affecting it, and no one was in possession thereof.[11] Respondents further averred that the subject property was not covered by any certificate of title or any pending case before the RTC of Cebu City.[12] Respondents also identified the names and complete postal addresses of the owners of the adjoining lots.[13]

The respondents claimed that they had acquired ownership over the subject property by way of purchase from predecessors-in-interest who had been in continuous, open, adverse, public, uninterrupted, exclusive, and notorious possession thereof for more than thirty (30) years, or from June 12, 1945.[14]

In support of their application, respondents submitted the following:

1. Sepia Plan;[15]
2. Blue Print Copy of Survey Plan;[16]
3. Technical Description of SGS-07-000307;[17]

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[11] *Id.* at 1-2 and 85-87.

[12] *Id.* at 27-28.

[13] *Id.* at 83-84.

[14] *Id.* at 3 and 87.

[15] *Id.* at 351.

[16] *Id.* at 8.

[17] *Id.* at 9-12.

4. Geodetic Engineer's Certificate (of the survey of the subject property);[18]

5. Certificate of Community Environment and Natural Resources Office (CENRO) dated March 20, 1996, signed by CENR and Provincial Environmental and Natural Resources [PENR] Officers (CENRO Certificate) that the subject property is within the alienable and disposable portion of Lot 18590;[19]

6. Deeds of Sale;[20]

7. Tax Clearances;[21] and

8. Department of Environment and Natural Resources (DENR), Region 7 Certification that subject property is not covered by any subsisting land application.[22]

The respondents' application was opposed by the following parties:

1. Gertrudes N. Tabanas-Singson, Lourdes N. Tabanas, Francisco N. Tabanas, Vicente N. Tabanas, Heirs of Enrique N. Tabanas, Heirs of Mercedes N. Tabanas-Raganas, and Heirs of Primitiva N. Tabanas-Nadera, who claimed that they owned portions of the subject property, containing an area of 406,810 square meters, as described and bounded under Tax Declaration No. 97GR-11-075-00581, issued in the name of their father Agaton Tabanas; and that they and their predecessors-in-interest had been in peaceful, open, continuous, exclusive, and notorious possession and occupation of their alleged property since time immemorial. They prayed that the respondents' application be dismissed with respect

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[18] *Id.* at 64-66.

[19] *Id.* at 343-a.

[20] *Id.* at 29-56.

[21] *Id.* at 67-78.

[22] *Id.* at 63.

to the portion they were claiming, and that their title be confirmed (Opposition was filed on March 3, 1997).[23]

2. Petitioner Republic of the Philippines, represented by the Director of Lands, who argued that: a) neither the respondents nor their predecessors-in-interest had been in open, continuous, exclusive, and notorious possession and occupation of the subject property since June 12, 1945 or prior thereto; b) that the muniments of title and/or the tax declarations and tax payment receipts submitted in evidence appeared to be of recent vintage and did not constitute competent and sufficient proof of a bona fide acquisition of the subject property; c) that the period for an application based on a Spanish title or grant had already lapsed; and d) that the subject property was part of the public domain, which belonged to the State and not subject to private appropriation (Opposition was filed on March 4, 1997).[24]

3. The Aznar Brothers Realty Co. and Aznar Enterprises, Inc., that opposed the application insofar as it might affect the fifteen-hectare portion they claimed and owned (Opposition was filed on March 7, 1997).[25]

4. Ponciano Tabanas Ybiernas, for himself and for the other heirs of Esteban Tabanas and Ciriaca Gabuya, who alleged that he, his co-owners, and their predecessors-in-interest, had been occupying portions of the subject property in the concept of owners, exclusively, openly, continuously, and peacefully for many years. He prayed that the respondents' application for registration be denied with respect to the portions he and his co-owners claimed (Opposition was filed on March 10, 1997).[26]

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[23] *Id.* at 94-96.

[24] *Id.* at 99-101.

[25] *Id.* at 172-173.

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

5. Rufina and Julia Ragasajo, who contended that the respondents' application was without legal basis as the respondents were not the true owners of the subject property, which also encroached on their own land (Opposition was filed on March 10, 1997).[27]

6. The National Power Corporation (NPC), that opposed the respondents' application with respect to a six-hectare portion of the subject property. NPC alleged that it was in the process of finalizing with DENR its permit/grant to occupy as a substation office, six hectares of the subject property, which was a public forest land in Antuanga Hills, Quiot, Pardo, Cebu City. NPC added that the grant of respondents' application would cause the government great prejudice (Opposition was filed on March 11, 1997).[28]

7. Amelia and Delia Dionaldo, who opposed the respondents' application on the ground that they had interests in the subject property (Opposition was filed on March 11, 1997).[29]

8. Jeremias L. Dolino, in his official capacity as Regional Executive Director of the DENR, Region VII, Banilad, Mandaue City, who averred that the subject property fell within Timberland Block 3-C and was within the Cebu City Reforestation project, formerly known as the Osmeña Reforestation Project.[30] Dolino said that there was an implied admission on the part of the respondents of this assertion as their predecessors-in-interest had previously filed a Petition for Reclassification of Land[31] of the subject property before the DENR. Dolino added that the CENRO Certificate relied on by

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[27] *Id.* at 199-201.

[28] *Id.* at 132-136.

[29] *Id.* at 250.

[30] *Id.* at 263-264.

[31] *Id.* at 267-269.

> the respondents was discovered to have been inadvertently and erroneously issued as it was based on a mistaken projection (Opposition was filed on April 10, 1997).[32] The CENRO Certificate was subsequently recalled, cancelled, and revoked by the Regional Executive Director of DENR *via* a Memorandum dated March 12, 1998.[33]

During the trial, respondents presented the testimony of the following witnesses in support of their application: Estanislao Nacorda, Leoncio Llamedo, Rodolfo Amancia, Melecio Joboneita, Regino Gabuya, Constancio Llamedo, Teotimo Cabarrubias, Andres Alfanta, Efren Binolirao, Sergio Paran, Gloria Jaralve, Ma. Emma Ramas, Shella Uy Coca, Danilo Deen, and Edgardo Jaralve.[34]

The foregoing witnesses testified on how the respondents acquired their respective portions of the subject property and how they and their predecessors-in-interest had been in actual, open, continuous, exclusive, peaceful, and notorious possession and occupation of the subject property in the concept of owners since before the war and for more than 30 years.[35]

The respondents also presented Forester III Anastacio Cabalejo, a duly licensed and registered forester connected with the CENRO, and Geodetic Engineer Celso P. Mayol, the CENRO-DENR Chief of Survey Unit to testify that upon the request of Carmelina Cuizon, one of the predecessors-in-interest of the respondents, they, with other members of the Land Evaluation Party of the Bureau of Forestry, using Administrative Order No. 4-642 and the Bureau of Forestry Land Classification Map No. 2124 as references, conducted an actual survey of Cadastral Lot 18590 on November 4, 1995, and found that the subject property was within its alienable and disposable portion.[36]

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[32] *Id.* at 261-266.

[33] *Rollo*, p. 26.

[34] *Id.* at 13-18.

[35] *Id.* at 99-106.

[36] *Id.* at 95.

Engineer Mayol further testified that in connection with the foregoing survey, he had prepared a plan,[37] which was the subject of the CENRO Certificate made at its dorsal side.

Forestry Administrative Order No. 4-642 dated July 31, 1957 declared certain portions of the public domain situated in Cebu City under Project No. 3-C as alienable and disposable lands. The Bureau of Forestry Land Classification Map No. 2124[38] contains the bearings and distances of the areas in Cebu City declared as alienable and disposable lands.[39]

Finding the testimonial and documentary evidence of the respondents sufficient to show that they had acquired ownership over the subject property, the RTC ruled in their favor in its Decision dated November 15, 2002. The dispositive portion reads:

WHEREFORE, from all the foregoing undisputed facts supported by oral and documentary evidence, the Court finds and so holds that the applicants have a registerable title to the parcel of land herein applied for original registration of title, and thereby confirming the same and ordering its registration under CA 141, as amended by Presidential Decree No. 1529 over the land, denominated as SGS-07-000307, in accordance with the respective technical descriptions of herein applicants.

Once this decision becomes final, let the decree and original certificate of title be issued in the names of the applicants as follows:

Names [addresses deleted]	Extent of Interest in Lot Sgs-07-000307
1. GLORIA JARALVE	..... 74,940 square meters;
2. EDGARDO JARALVE	..... 44,700 square meters;
3. SERAFIN UY, JR.	..... 61,210 square meters;
4. SHELLA UY	..... 62,632 square meters;
5. NIMFA LAGNADA	..... 26,972 square meters;
6. PANTALEON SAYA-ANG	..... 44,700 square meters;

[37] Records, Volume I, p. 343.

[38] *Id.* at 274-a.

[39] *Rollo*, p. 54.

7. ATTY. DANILO DEEN AND ZENAIDA DEEN	..... 106,903 square meters;
8. ERIC ANTHONY DEEN	..... 110,660 square meters;
9. MA. EMMA RAMAS	..... 23,060 square meters;
10. STARGLAD INTERNATIONAL AND DEVELOPMENT CORPORATION	..... 82,023 square meters;
11. ANNIE TAN	..... 10,000 square meters;
12. TEOTIMO CABARRUBIAS	..... 5,000 square meters;
13. MA. EMMA RAMAS	..... 68,580 square meters;
14. JESSICA DACLAN	..... 10,000 square meters[.][40]

The RTC held that according to jurisprudence and under Section 48(b) of Commonwealth Act No. 141 or the Public Land Act, as amended by Republic Act No. 1942[41] and Republic Act No. 3872,[42] "alienable public land held by a possessor personally or through his predecessors-in-interest, openly, continuously, and exclusively for the prescribed period of 30 years x x x is converted to private property by mere lapse or completion of said period *ipso jure*, and without need of judicial or other sanction, ceases to be public land and becomes private property."[43]

The RTC also granted Starglad International and Development Corporation's application despite the constitutional prohibition on acquisition of public lands of private corporations or associations, explaining that such prohibition does not apply when the corporation's predecessors-in-interest had satisfied

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[40] *Id.* at 110-112.

[41] An Act to Amend Subsection (b) of Section Forty-Eight of Commonwealth Act Numbered One Hundred Forty-One, Otherwise Known as the Public Land Act.

[42] An Act to Amend Sections Forty-Four, Forty-Eight and One Hundred Twenty of Commonwealth Act Numbered One Hundred Forty-One, As Amended, Otherwise Known as the "Public Land Act," and For Other Purposes.

[43] *Rollo*, pp. 106-107.

the requirements in acquiring ownership over public lands before such land was transferred to the corporation.[44]

The RTC stated that the private oppositors were not able to present any convincing evidence and/or approved survey plan that clearly identified the portions of the subject property they were claiming.[45] Likewise, the RTC held that the DENR Region VII failed to controvert the fact that the subject property was within the alienable and disposable portion of the public domain. The RTC added that its witnesses did not even conduct an actual relocation or verification survey of the subject property to determine its relative position to the timberland area. Thus, the RTC stated, the DENR Region VII's conclusion with respect to the subject property's position was inaccurate and unreliable.[46] In giving more credit to respondents' evidence, particularly the CENRO Certificate, the RTC explained:

> As against the approved plan of [the subject property] which has been thoroughly verified under the Land Classification Map No. 2124 (Exhibit J-NAMRIA) and which merely conformed to the actual verification/relocation surveys (Exhibits K, K-1) of the Land Evaluation Party of CENRO and PENRO, specifically conducted by CENRO Chief of Survey Unit Engr. Celso Mayol and the Chief of the Land Evaluation Party Anastacio Cabalejo and Forester Justicio Nahid (Exhibits L, L-1), the relocation survey and map prepared by Engineer Icoy are simply undeserving of any weight. DENR-7 Regional Executive Director Jeremias Dolino and Director Estanislao Galano of the Regional Management Services of DENR-7, themselves, admitted that the task of determining whether a parcel of land is within the alienable and disposable area of the public domain falls within the Land Evaluation Party of the Forest Management Services of CENRO and PENRO of the DENR. In this case, the CENRO/PENRO Land Evaluation Party headed by Forester Anastacio Cabalejo, together with the Chief of the Survey Unit of CENRO, Engr. Celso Mayol, actually conducted a segregation survey of Cadastral Lot 18590 on November 4, 1995 to determine the alienable and disposable portion of Cadastral Lot 18590 and on the ground that they located

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[44] *Id.* at 107.

[45] *Id.*

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

three (3) Forest Reserve (FR) monuments marked as FR 67, FR 69 and FR 70. Thus, after the said verification survey, a survey plan was prepared by Engr. Celso Mayol and at the back portion thereof, he certified to the following, x x x.

x x x x x x x x x

The [CENRO Certificate], having been issued by the proper government officers tasked with the duty of certifying as to land classifications in the region, the same should be given weight and believed, especially so that the results of the actual ground survey of November 4, 1996 were re-verified and re-checked upon the order of PENRO Isabelo Montejo.[47]

The CENRO Certificate relied on by the respondents and given much weight by the RTC reads as follows:

Republic of the Philippines
Department of Environment and Natural Resources
COMMUNITY ENVIRONMENT AND NATURAL RESOURCES OFFICE
Cebu City

CENRO, Cebu City/Lands Verification
CARMELINA CUIZON, *et al.* (Cebu City) March 20, 1996

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

This is to certify that per projection and verification conducted by Forester Anastacio C. Cabalejo, a tract of land lot No. 18590, Cebu Cadastre 12 Extension, situated at Quiot, Pardo, Cebu City. As shown and described in the Plan at the back hereof, as surveyed by Geodetic Engineer Celso P. Mayol for Carmelina Cuizon, *et al.* The same was found as here-under indicated:

Lot A – containing an area of SEVEN HUNDRED THIRTY[-] SEVEN THOUSAND THREE HUNDRED FIVE (737, 305) square meters, more or less, is within the Alienable and Disposable, block-1, land classification project 3-C, per Map 2124 of Cebu City. Certified under Forestry Administrative Order No. 4-642 dated July 31, 1957.

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[47] *Id.* at 96-98.

Lot B – containing an area of TWO HUNDRED SIX THOUSAND FIVE HUNDRED FIFTY[-]TWO (206,552) square meters, more or less, is within the Timberland block- C, land classification project 3-C, per Map 2124 of Cebu City. Certified under Forestry Administrative Order No. 4-642 dated July 31, 1957.

This certification is issued upon the request of the interested party for the purpose of ascertaining the land classification status only and does not [entitle] him/her preferential priority rights of possession until determine[d] by competent authorities.

[signed]	[signed]
ILUMINADO C. LUCAS	ISABELO R. MONTEJO
Community Environment and	Provincial Environment and
Natural Resources Officer	Natural Resources Officer

S W O R N S T A T E M E N T

I, Anastacio C. Cabalejo, forest officer, after having been duly sworn to under oath according to the law do hereby depose and say that I personally projected and verified the area and the result is the basis of the aforementioned certification.

[signed]
ANASTACIO C. CABALEJO
FORESTER III

SUBSCRIBED AND SWORN to before me this 12[th] day of April 1996, at Cebu City, Philippines.

[signed]
ILUMINADO C. LUCAS
Community Environment and
Natural Resources Officer[48]

Aggrieved, the petitioner and three of the private oppositors appealed the decision of the RTC to the Court of Appeals in CA-G.R. CV No. 78633, positing the following assignment of errors:

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[48] Records, Volume I, p. 343-a.

1. Raised by private oppositors Gertrudes N. Tabanas-Singson, Lourdes N. Tabanas, Francisco N. Tabanas, and Vicente N. Tabanas (Heirs of Agaton Tabanas):

I.

THE LOWER COURT ERRED IN HOLDING THAT APPLICANTS HAVE A REGISTERABLE TITLE TO THE PARCEL OF LAND HEREIN APPLIED FOR ORIGINAL REGISTRATION OF TITLE AND CONFIRMING THE SAME AND ORDERING ITS REGISTRATION UNDER CA 141, AS AMENDED BY P.D. 1529 OVER THE LAND DENOMINATED AS SGS-07-000307, IN ACCORDANCE WITH THE RESPECTIVE TECHNICAL DESCRIPTIONS.

II.

THE LOWER COURT ERRED IN ORDERING THAT ONCE THE DECISION BECOMES FINAL, THE DECREE AND ORIGINAL CERTIFICATE OF TITLE BE ISSUED IN THE NAME OF THE APPLICANTS x x x.[49]

2. Raised by petitioner Republic of the Philippines:

THE COURT *A QUO* ERRED IN GRANTING [RESPONDENTS'] APPLICATION FOR REGISTRATION DESPITE THE FACT THAT THE AREA COVERED BY THE APPLICATION IS CLASSIFIED AS TIMBERLAND AND THEREFORE UNALIENABLE.[50]

3. Raised by private oppositors Heirs of Ponciano Ybiernas:

Error No. 1 – That the trial court erred in disposing all the area of Lot 18590 to the [respondents], but none to the oppositors-applicants, contrary to the Magsaysay Credo: THAT THOSE WHO HAVE LESS IN LIFE SHOULD HAVE MORE IN LAW;

Error No. 2 – That under Art. 24 of the Civil Code, judges are enjoined by law to protect the underdog, which provides as follows:

> "Art. 24. In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection."

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[49] CA *rollo*, p. 59.

[50] *Id.* at 263.

Error No. 3 – That none of the [respondents] have complied with the requirement as alluded to in Error No. 1, which is the procurement of a permit from the government agency in charge of issuance of such permit, to occupy a public land, duly endorsed by the DENR official, but PONCIANO YBIERNAS has duly complied with all the requirements, plus possession of more than 30 years of the land applied for by him, and yet PONCIANO YBIERNAS, the poorest among all the oppositors-applicants, was not given a single square meter by the trial court. Hence this shows that money talks.[51]

4. Raised by private oppositors Aznar Enterprises, Inc. and Aznar Brothers Realty Co.:

I.

THE HONORABLE LOWER COURT HAS ERRED IN HOLDING THAT [RESPONDENTS] HAVE REGISTRABLE TITLE OVER THE SUBJECT PARCEL OF LAND DESCRIBED AS LOT SGS-07-000307, PORTION OF LOT 18590 AND ORDERING ITS REGISTRATION IN THE NAMES OF THE APPLICANTS UNDER ***COMMONWEALTH ACT NO. 141 AS AMENDED BY PRESIDENTIAL DECREE NO. 1529.***

II.

THE LOWER COURT HAS GRAVELY ERRED IN INCLUDING THE PORTIONS OF 41.2092 HECTARES OF THE LOT WHICH BELONGS TO THE APPELLANTS AZNAR ENTERPRISES, INC. AND AZNAR BROTHERS REALTY CO., IN ITS DECISION AND ORDERING ITS REGISTRATION IN THE NAMES OF THE [RESPONDENTS].

III.

THE LOWER COURT HAS GRAVELY ERRED IN DENYING THE MOTION FILED BY [THE] AZNARS DATED MARCH 31, 1998, TO ALLOW THEM TO RELOCATE THE PORTION THEY CLAIMED OUT OF THE AREA APPLIED FOR BY THE [RESPONDENTS].[52]

Finding for the respondents, the Court of Appeals affirmed the RTC in its Decision dated June 28, 2006.

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[51] *Id.* at 367-368.

[52] *Id.* at 520.

The Court of Appeals stated that the private oppositors failed to prove that the parcels of land they were claiming were identical to the respective portions of the subject property the respondents sought to register.[53]

As for the petitioner's appeal, the Court of Appeals agreed with the RTC's findings that the petitioner failed to controvert the fact that the subject property was within the alienable and disposable portion of the public domain. It added that it was a great blunder that petitioner's own witness, for his failure to conduct an actual relocation or verification survey, could not even categorically identify the relative position of the subject property to the timberland area.[54]

Undaunted, the Heirs of Agaton Tabanas,[55] Aznar Enterprises, Inc. and Aznar Brothers Realty Co.,[56] and the petitioner[57] each moved to have the Court of Appeals reconsider its Decision.

The Court of Appeals, however, denied these motions on October 27, 2006 for lack of merit.[58]

The same oppositors filed their separate Petitions for Review on *Certiorari* before this Court, *to wit*:

1. Private oppositors Aznar Enterprises, Inc. and Aznar Brothers Realty Co.'s Petition for Review on *Certiorari* was docketed as G.R. No. 175568 and was denied by this Court in its February 26, 2007 Resolution[59] for the following reasons:

a. as the petition was filed beyond the extended period pursuant to Section 5[a], Rule 56;

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[53] *Rollo*, p. 58.

[54] *Id.* at 60.

[55] CA *rollo*, pp. 674-700.

[56] *Id.* at 728-740.

[57] *Id.* at 773-779.

[58] *Rollo*, pp. 68-69.

[59] *Id.* at 215-216.

b. for failure to accompany the petition with a clearly legible duplicate original, or a certified true copy of the assailed resolution in violation of Section[s] 4[d] and 5, Rule 45 in relation to Section 5[d], Rule 56; and

c. for insufficient or defective verification, the same being based "on knowledge and belief" in violation of Section 4, Rule 7, as amended by Administrative Matter No. 00-2-10-SC.

In any event, the petition failed to sufficiently show that the appellate court committed any reversible error in the challenged decision and resolution as to warrant the exercise by this Court of its discretionary appellate jurisdiction and the issues raised therein are factual in nature.

This Court likewise denied with finality the Motion for Reconsideration[60] of Aznar Enterprises, Inc. and Aznar Brothers Realty Co. in a Resolution[61] dated July 2, 2007.

2. Private oppositors Heirs of Agaton Tabanas's Petition for Review on *Certiorari*[62] was docketed as G.R. No. 175397 and in a Resolution[63] dated March 14, 2007, was denied by this Court "for [the Heirs'] failure to sufficiently show that the Court of Appeals committed any reversible error in the challenged decision and resolution as to warrant the exercise of this Court's discretionary appellate jurisdiction[,]" and for raising issues, which were factual in nature.

This Court similarly denied with finality the Heirs of Agaton Tabanas's Motion for Reconsideration[64] in a Resolution dated June 18, 2007.[65]

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[60] CA *rollo*, pp. 1065-1075.

[61] *Rollo*, p. 352.

[62] CA *rollo*, pp. 858-913.

[63] *Rollo*, pp. 353-354.

[64] CA *rollo*, pp. 1076-1092.

[65] *Rollo*, p. 355.

> On October 1, 2007, this Court denied for lack of merit the Heirs of Agaton Tabanas's motion to file a second motion for reconsideration, and added that no further pleadings would be entertained.[66]

The Petition for Review on *Certiorari*[67] now before us is the one filed by the petitioner Republic of the Philippines, which presented the following ground:

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW WHEN IT AFFIRMED THE JUDGMENT OF THE TRIAL COURT THAT THE SUBJECT LOTS ARE ALIENABLE LAND DESPITE THE CLEAR EVIDENCE TO THE CONTRARY.[68]

The petitioner avers that the Court of Appeals ignored the long-standing rule that in land registration proceedings, the applicants have the burden of overcoming the presumption that the land sought to be registered is inalienable land of the public domain when it affirmed the RTC's decision to grant the respondents' application for original registration over the subject property despite their failure to prove that it was alienable and disposable.[69]

The petitioner argues that the CENRO Certificate the respondents relied on was erroneously issued; thus, it did not afford them any vested right. The petitioner adds: "[a]t any rate, being the government department charged with the duty to conduct survey and classification of lands, the DENR's recall of the certification that the subject [property] is alienable and disposable should have been accorded respect."[70]

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[66] *Id.* at 357-358.

[67] *Id.* at 8-34.

[68] *Id.* at 24.

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

[70] *Id.* at 28.

The respondents, in their Comment,[71] contend that the findings of the RTC, as affirmed by the Court of Appeals, that the subject property falls within the alienable and disposable portion of the public domain, is duly supported by substantial evidence. Moreover, they asseverate, that the issue posed by the petitioner is a factual issue, which had been thoroughly discussed and resolved by the lower courts.

Issue

The crux of the controversy in the case at bar boils down to whether the grant of respondents' application for registration of title to the subject property was proper under the law and jurisprudence.

This Court's Ruling

This Court finds the petition to be meritorious.

Procedural Issue: Nature of Issue

At the outset, this Court would like to address respondents' concern that the petition involves an issue purely factual in nature; thus, it cannot be subject of a petition for review under Rule 45.

This Court, in *New Rural Bank of Guimba (N.E.), Inc. v. Abad*,[72] reiterated the distinction between a question of law and a question of fact, *viz*:

> We reiterate the distinction between a question of law and a question of fact. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their

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[71] *Id.* at 147-214.

[72] G.R. No. 161818, August 20, 2008, 562 SCRA 503, 509-510.

relation to each other and to the whole, and the probability of the situation. (Citation omitted.)

The petitioner herein is not calling for an examination of the probative value or truthfulness of the evidence presented.[73] What it wants to know is whether the lower courts correctly applied the law and jurisprudence when they granted the respondents' application for registration of title to the subject property.

Main Issue: Nature and Character of Subject Property

Going to the merits of the case, this Court agrees with the petitioner that the respondents failed to prove in accordance with law that the subject property is within the alienable and disposable portion of the public domain.

The Public Land Act or Commonwealth Act No. 141, until this day, is the existing general law governing the classification and disposition of lands of the public domain, except for timber and mineral lands. "Under the *Regalian* doctrine embodied in our Constitution, land that has not been acquired from the government, either by purchase, grant, or any other mode recognized by law, belongs to the State as part of the public domain."[74] Thus, it is indispensable for a person claiming title to a public land to show that his title was acquired through such means.[75]

Section 48(b) of Commonwealth Act No. 141, as amended by Presidential Decree No. 1073,[76] provides:

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[73] *Jarantilla, Jr. v. Jarantilla*, G.R. No. 154486, December 1, 2010, 636 SCRA 299, 308.

[74] *Republic v. Heirs of Juan Fabio*, G.R. No. 159589, December 23, 2008, 575 SCRA 51, 73.

[75] *Id.*

[76] Extending the Period of Filing Applications for Administrative Legalization (Free Patent) and Judicial Confirmation of Imperfect and Incomplete Titles to Alienable and Disposable Lands of the Public Domain Under Chapter VII and Chapter VIII of Commonwealth Act No. 141, as amended, for Eleven (11) Years Commencing January 1, 1977. Effective January 25, 1977.

Sec. 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

x x x x x x x x x

(b) Those who by themselves or through their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a *bona fide* claim of acquisition or ownership, since June 12, 1945, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

Section 14(1) of Presidential Decree No. 1529 or the Property Registration Decree, likewise provides:

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 duly 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.

Based on the foregoing parameters, applicants for registration under Section 14(1) of Presidential Decree No. 1529 must sufficiently establish the following:

1. that the subject land forms part of the disposable and alienable lands of the public domain;

2. that the applicant and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the same; and

3. that it is under a *bona fide* claim of ownership since June 12, 1945, or earlier.[77]

Land classification or reclassification cannot be assumed. It must be proved.[78] To prove that the subject property is alienable and disposable land of the public domain, respondents presented the CENRO Certificate dated March 20, 1996 signed by CENR Officer Iluminado C. Lucas and PENR Officer Isabelo R. Montejo, and verified by Forester Anastacio C. Cabalejo.

However, this Court, in *Republic v. T.A.N. Properties, Inc.*,[79] ruled that a CENRO or PENRO Certification is not enough to certify that a land is alienable and disposable:

> **Further, it is not enough for the PENRO or CENRO to certify that a land is alienable and disposable. The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable.** Respondent failed to do so because the certifications presented by respondent do not, by themselves, prove that the land is alienable and disposable. (Emphasis ours.)

Although the survey and certification were done in accordance with Forestry Administrative Order No. 4-642, issued by the then Secretary of Agriculture and Natural Resources declaring certain portions of the public domain situated in Cebu City as alienable and disposable, an actual copy of such classification, certified as true by the legal custodian of the official records,

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[77] *Republic v. Manimtim,* G.R. No. 169599, March 16, 2011, 645 SCRA 520, 532-533.

[78] *Mercado v. Valley Mountain Mines Exploration, Inc.*, G.R. No. 141019, November 23, 2011, 661 SCRA 13, 45.

[79] G.R. No. 154953, June 26, 2008, 555 SCRA 477, 489.

was not presented in evidence. This was a crucial mistake. What was presented was the certification[80] of Nicomedes R. Armilla, the Land Evaluation Party Coordinator, that the Cebu CENRO had on file a certified photocopy of the administrative order. In fact, one of the private oppositors objected to its submission in evidence for violating the best evidence rule.[81]

Moreover, DENR Administrative Order (DAO) No. 20 dated May 30, 1988,[82] delineated the functions and authorities of the offices within the DENR. Under Section G(1) of the above DAO, **CENROs** issue certificates of land classification status for areas **below 50 hectares**. For those falling **above 50 hectares**, the issuance of such certificates is within the function of the **PENROs**, as per Section F(1) of the same DAO. This delineation, with regard to the offices authorized to issue certificates of land classification status, was retained in DAO No. 38[83] dated April 19, 1990.[84]

In the case at bar, the subject property has an area of 731,380 square meters or 73.138 hectares. Clearly, under DAO No. 38, series of 1990, the subject property is **beyond** the authority of the CENRO to certify as alienable and disposable.[85]

It is undisputed that while PENR Officer Montejo's signature appears on the CENRO Certificate, it was under the CENRO that the survey of the subject property was conducted. The certificate was likewise issued under the CENRO, and not the PENRO. The respondents admit and even emphasize that it was the CENRO that was involved in the conduct of the survey and issuance of the certification with respect to the land classification status of the subject property.

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[80] Records, Volume I, p. 277.

[81] *Id.* at 441.

[82] Delineation of Regulatory Functions and Authorities.

[83] Revised Regulations on the Delineation of Functions and Delineation of Authorities.

[84] *Republic v. T.A.N. Properties, Inc.*, *supra* note 78 at 487.

[85] *Id.* at 488.

In *Republic v. Medida*,[86] this Court said:

> This Court x x x holds that the alienability and disposability of land are not among the matters that can be established by mere admissions, or even the agreement of parties. The law and jurisprudence provide stringent requirements to prove such fact. Our Constitution, no less, embodies the Regalian doctrine that all lands of the public domain belong to the State, which is the source of any asserted right to ownership of land. The courts are then empowered, as we are duty-bound, to ensure that such ownership of the State is duly protected by the proper observance by parties of the rules and requirements on land registration.

Unfortunately, respondents were not able to discharge the burden of overcoming the presumption that the land they sought to be registered forms part of the public domain.

WHEREFORE, the petition is hereby **GRANTED**. The June 28, 2006 Decision and October 27, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 78633, are **REVERSED** and **SET ASIDE**. The respondents' application for registration and issuance of title to Lot SGS-07-000307, Cebu Cad. 12 Extension, Barangay Quiot, Cebu City, in Land Registration Case No. 1421-N/LRA Rec. No. N-67272 filed with the Regional Trial Court of Cebu City, Branch 20 is accordingly **DISMISSED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[86] G.R. No. 195097, August 13, 2012.

THIRD DIVISION

[G.R. No. 189754. October 24, 2012]

LITO BAUTISTA and JIMMY ALCANTARA, *petitioners, vs.* **SHARON G. CUNETA-PANGILINAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; OFFICE OF THE SOLICITOR GENERAL (OSG); POWERS AND FUNCTIONS, EXPLAINED.— The authority to represent the State in appeals of criminal cases before the Supreme Court and the CA is solely vested in the Office of the Solicitor General (OSG). Section 35 (1), Chapter 12, Title III, Book IV of the 1987 Administrative Code explicitly provides that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. It shall have specific powers and functions to represent the Government and its officers in the Supreme Court and the CA, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. The OSG is the law office of the Government. To be sure, in criminal cases, the acquittal of the accused or the dismissal of the case against him can only be appealed by the Solicitor General, acting on behalf of the State. The private complainant or the offended party may question such acquittal or dismissal only insofar as the civil liability of the accused is concerned. In a catena of cases, this view has been time and again espoused and maintained by the Court. In *Rodriguez v. Gadiane*, it was categorically stated that if the criminal case is dismissed by the trial court or if there is an acquittal, the appeal on the criminal aspect of the case must be instituted by the Solicitor General in behalf of the State. The capability of the private complainant to question such dismissal or acquittal is limited only to the civil aspect of the case. The same determination was also arrived at by the Court in *Metropolitan Bank and Trust Company v. Veridiano II*. In the recent case of *Bangayan, Jr. v. Bangayan*, the Court again upheld this guiding principle. x x x The Court has definitively ruled that

in a criminal case in which the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability arising therefrom. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal of the criminal aspect may be undertaken, whenever legally feasible, only by the State through the solicitor general. As a rule, only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not undertake such appeal.

2. ID.; CRIMINAL PROCEDURE; DEMURRER TO EVIDENCE; EFFECT OF FILING THEREOF, WITH OR WITHOUT LEAVE OF COURT; EXPLAINED.— Under Section 23, Rule 119 of the Rules of Court on Demurrer to Evidence, after the prosecution terminates the presentation of evidence and rests its case, the trial court may dismiss the case on the ground of insufficiency of evidence upon the filing of a Demurrer to Evidence by the accused with or without leave of court. If the accused files a Demurrer to Evidence with prior leave of court and the same is denied, he may adduce evidence in his defense. However, if the Demurrer to Evidence is filed by the accused without prior leave of court and the same is denied, he waives his right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. Corollarily, after the prosecution rests its case, and the accused files a Demurrer to Evidence, the trial court is required to evaluate whether the evidence presented by the prosecution is sufficient enough to warrant the conviction of the accused beyond reasonable doubt. If the trial court finds that the prosecution evidence is not sufficient and grants the accused's Demurrer to Evidence, the ruling is an adjudication on the merits of the case which is tantamount to an acquittal and may no longer be appealed. Any further prosecution of the accused after an acquittal would, thus, violate the constitutional proscription on double jeopardy.

3. CRIMINAL LAW; LIBEL; WHEN LIABILITY IS STATUTORY IN NATURE; EFFECT, EXPLAINED IN CASE AT BAR.— Article 360 of the Revised Penal Code specifies the persons that can be held liable for libel. x x x Not only is the person who published, exhibited or caused the publication or exhibition of any defamation in writing shall be responsible for the same,

all other persons who participated in its publication are liable, including the editor or business manager of a daily newspaper, magazine or serial publication, who shall be equally responsible for the defamations contained therein to the same extent as if he were the author thereof. The liability which attaches to petitioners is, thus, statutory in nature. x x x The Court stressed that an editor or manager of a newspaper, who has active charge and control over the publication, is held equally liable with the author of the libelous article. This is because it is the duty of the editor or manager to know and control the contents of the paper, and interposing the defense of lack of knowledge or consent as to the contents of the articles or publication definitely will not prosper. The rationale for the criminal culpability of those persons enumerated in Article 360 was already elucidated as early as in the case of *U.S. v. Ocampo*. x x x Accordingly, Article 360 would have made petitioners Bautista and Alcantara, being the Editor and Assistant Editor, respectively, of *Bandera Publishing Corporation*, answerable with Ampoloquio, for the latter's alleged defamatory writing, as if they were the authors thereof. x x x Nevertheless, petitioners could no longer be held liable in view of the procedural infirmity that the petition for *certiorari* was not undertaken by the OSG, but instead by respondent in her personal capacity. Although the conclusion of the trial court may be wrong, to reverse and set aside the Order granting the demurrer to evidence would violate petitioners' constitutionally-enshrined right against double jeopardy. Had it not been for this procedural defect, the Court could have seriously considered the arguments advanced by the respondent in seeking the reversal of the Order of the RTC. The granting of a demurrer to evidence should, therefore, be exercised with caution, taking into consideration not only the rights of the accused, but also the right of the private offended party to be vindicated of the wrongdoing done against him, for if it is granted, the accused is acquitted and the private complainant is generally left with no more remedy.

APPEARANCES OF COUNSEL

Ortega Del Castillo Bacorro Odulio Calma and Carbonell for petitioners.

Medialdea Ata Bello Guevarra & Suarez for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is the petition for review on *certiorari* seeking to set aside the Decision[1] dated May 19, 2009 and Resolution[2] dated September 28, 2009 of the Court of Appeals (CA), in CA-G.R. SP No. 104885, entitled *Sharon G. Cuneta-Pangilinan v. Hon. Rizalina T. Capco-Umali, in her capacity as Presiding Judge of the Regional Trial Court in Mandaluyong City, Branch 212, Lito Bautista, and Jimmy Alcantara*, which granted the petition for *certiorari* of respondent Sharon G. Cuneta-Pangilinan. The CA Decision reversed and set aside the Order[3] dated April 25, 2008 of the Regional Trial Court (RTC), Branch 212, Mandaluyong City, but only insofar as it pertains to the granting of the Demurrer to Evidence filed by petitioners Lito Bautista (Bautista) and Jimmy Alcantara (Alcantara), and also ordered that the case be remanded to the trial court for reception of petitioners' evidence.

The antecedents are as follows:

On February 19, 2002, the Office of the City Prosecutor of Mandaluyong City filed two (2) informations, both dated February 4, 2002, with the RTC, Branch 212, Mandaluyong City, against Pete G. Ampoloquio, Jr. (Ampoloquio), and petitioners Bautista and Alcantara, for the crime of libel, committed by publishing defamatory articles against respondent Sharon Cuneta-Pangilinan in the tabloid *Bandera*.

In Criminal Case No. MC02-4872, the Information dated February 4, 2002 reads:

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[1] Penned by Associate Justice Isaias Dicdican, with Associate Justices Bienvenido L. Reyes (now a Member of this Court) and Marlene Gonzales-Sison, concurring, *rollo*, pp. 33-42.

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

[3] Per Judge Rizalina T. Capco-Umali, CA *rollo*, pp. 21-28.

That on or about the 24th day of April, 2001, in the City of Mandaluyong, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Jane/John Does unknown directors/officer[s] of *Bandera* Publishing Corporation, publisher of *Bandera*, whose true identities are unknown, and mutually helping and aiding one another, with deliberate intent to bring SHARON G. CUNETA-PANGILINAN into public dishonor, shame and contempt, did then and there wilfully, unlawfully and feloniously, and with malice and ridicule, cause to publish in *Bandera* (tabloid), with circulation in Metro Manila, which among others have the following insulting and slanderous remarks, to wit:

MAGTIGIL KA, SHARON!

Sharon Cuneta, the mega-taba singer-actress, I'd like to believe, is really brain-dead. Mukhang totoo yata yung sinasabi ng kaibigan ni Pettizou Tayag na ganyan siya.

Hayan at buong ingat na sinulat namin yung interview sa kaibigan ng may-ari ng Central Institute of Technology at ni isang side comment ay wala kaming ginawa and all throughout the article, we've maintained our objectivity, pero sa interview sa aparadoric singer-actress in connection with an album launching, ay buong ningning na sinabi nitong she's supposedly looking into the item that we've written and most probably would take some legal action.

x x x *x x x* *x x x*

Magsalita ka, Missed Cuneta, at sabihin mong hindi ito totoo.

Ang hindi lang namin nagustuhan ay ang pagbintangan kaming palagi naman daw namin siyang sinisiraan, kaya hindi lang daw niya kami pinapansin, believing na part raw siguro yun ng aming trabaho.

Dios mio perdon, what she gets to see are those purportedly biting commentaries about her katabaan and kaplastikan but she has simply refused to acknowledge the good reviews we've done on her.

x x x *x x x* *x x x*

Going back to this seemingly disoriented actress who's desperately trying to sing even if she truly can't, itanggi mo na hindi mo kilala si Pettizou Tayag gayung nagkasama raw kayo ng tatlong araw sa mother's house ng mga Aboitiz sa Cebu more than a month ago, in connection with one of those political campaigns of your husband.

x x x *x x x* *x x x*

thereby casting publicly upon complainant, malicious contemptuous imputations of a vice, condition or defect, which tend to cause complainant her dishonor, discredit or contempt.

CONTRARY TO LAW.[4]

In Criminal Case No. MC02-4875, the Information dated February 4, 2002 reads:

That on or about the 27th day of March, 2001, in the City of Mandaluyong, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Jane/John Does unknown directors/officers of *Bandera* Publishing Corporation, publisher of *Bandera*, whose true identities are unknown, and mutually helping, and aiding one another, with deliberate intent to bring SHARON G. CUNETA-PANGILINAN into public dishonor, shame and contempt did, then and there wilfully, unlawfully and feloniously, and with malice and ridicule, cause to publish in *Bandera* (tabloid), with circulation in Metro Manila, which, among others, have the following insulting and slanderous remarks, to wit:

NABURYONG SA KAPLASTIKAN NI SHARON ANG MILYONARY[A]NG SUPPORTER NI KIKO!

FREAKOUT pala kay Sharon Cuneta ang isa sa mga loyal supporters ni Kiko Pangilinan na si Pettizou Tayag, a multi-millionaire who owns Central Institute of Technology College in Sampaloc, Manila (*it is also one of the biggest schools in Paniqui, Tarlac*).

x x x *x x x* *x x x*

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[4] CA *rollo*, pp. 30-31.

Which in a way, she did. Bagama't busy siya (*she was having a meeting with some business associates*), *she went out of her way to give Sharon security.*

So, ang ginawa daw ni Ms. Tayag ay tinext nito si Sha[ron] para mabigyan ito ng instructions para kumportable itong makarating sa Bulacan.

She was most caring and solicitous, pero tipong na-offend daw ang megastar at nagtext pang "You don't need to produce an emergency SOS for me, I'll be fine."

Now, nang makara[t]ing na raw sa Bulacan si Mega nagtatarang daw ito at binadmouth si Pettizou. Kesyo ang kulit-kulit daw nito, atribida, mapapel at kung anu-ano pang mga derogatory words na nakarating siyempre sa kinauukulan.

Anyhow, if it's true that Ms. Pettizou has been most financially supportive of Kiko, how come Sharon seems not to approve of her?

"She doesn't want kasi her husband to win as a senator because when that happens, mawawalan siya ng hold sa kanya," our caller opines.

Pettizou is really sad that Sharon is treating her husband like a wimp.

"In public," our source goes on tartly, "pa kiss-kiss siya. Pa-embrace-embrace pero kung silang dalawa [na] lang parang kung sinong sampid kung i-treat niya si Kiko."

My God Pete, Harvard graduate si Kiko. He's really intelligent as compared to Sharon who appears to be brain dead most of the time.

Yung text message niyang "You don't need to produce an emergency SOS for me," hindi ba't she was being redundant?

Another thing, I guess it's high time that she goes on a diet [again]. Jesus, she looks 6'11 crosswise!

x x x *x x x* *x x x*

Kunsabagay, she was only being most consistent. Yang si Sharon daw ay talagang mega-brat, mega-sungit. But who does she think she is? Her wealth, dear, would pale in comparison with the Tayag's millions. Kunsabagay, she's brain dead most of the time.

x x x *x x x* *x x x*

thereby casting publicly upon complainant, malicious contemptuous imputation of a vice, condition or defect, which tend to cause complainant her dishonor, discredit or contempt.

CONTRARY TO LAW.[5]

Upon arraignment, petitioners, together with their co-accused Ampoloquio, each entered a plea of not guilty. Thereafter, a joint pre-trial and trial of the case ensued.[6]

Respondent's undated Complaint-Affidavit[7] alleged that Bautista and Alcantara were Editor and Associate Editor, respectively, of the publication *Bandera*, and their co-accused, Ampoloquio, was the author of the alleged libelous articles which were published therein, and subject of the two informations. According to respondent, in April 2001, she and her family were shocked to learn about an article dated March 27, 2001, featured on page 7 of *Bandera* (Vol. 11, No. 156), in the column *Usapang Censored* of Ampoloquio, entitled *Naburyong sa Kaplastikan ni Sharon ang Milyonaryang Supporter ni Kiko*, that described her as plastic (hypocrite), ingrate, mega-brat, mega-*sungit*, and brain dead, which were the subject of Criminal Case No. MC02-4875.[8] Another article, with the same title and similar text, also featured on the same date, appeared on page 6 of *Saksi Ngayon*, in the column *Banatan* of Ampoloquio.[9]

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[5] *Id.* at 32-34.

[6] CA Decision dated May 19, 2009, p. 2; *rollo*, p. 34.

[7] CA *rollo*, pp. 35-44.

[8] *Id.* at 35-37, 45.

[9] *Id.* at 37, 46.

Moreover, respondent averred that on April 24, 2001, Ampoloquio wrote two follow-up articles, one appeared in his column *Usapang Censored*, entitled *Magtigil Ka, Sharon!*, stating that she bad-mouthed one Pettizou Tayag by calling the latter *kulit-kulit* (annoyingly persistent), *atribida* (presumptuous), *mapapel* (officious or self-important), and other derogatory words; that she humiliated Tayag during a meeting by calling the latter *bobo* (stupid); that she exhibited offensive behavior towards Tayag; and that she was a dishonest person with questionable credibility, which were the subject of Criminal Case No. MC02-4872.[10] Another article, entitled *Magtigil Ka, Sharon Cuneta!!!!*, also featured on the same date with similar text, and appeared on page 7 of *Saksi Ngayon* (Vol. 3, No. 285), in the column *Banatan* of Ampoloquio,[11] with the headline in bold letters, *Sharon Cuneta, May Sira?* on the front page of the said issue.[12] Respondent added that Ampoloquio's articles impugned her character as a woman and wife, as they depicted her to be a domineering wife to a browbeaten husband. According to Ampoloquio, respondent did not want her husband (Senator Francis Pangilinan) to win (as Senator) because that would mean losing hold over him, and that she would treat him like a wimp and *sampid* (hanger-on) privately, but she appeared to be a loving wife to him in public. Respondent denied that Tayag contributed millions to her husband's campaign fund. She clarified that Tayag assisted during the campaign and was one of the volunteers of her husband's *Kilos Ko* Movement, being the first cousin of one Atty. Joaquinito Harvey B. Ringler (her husband's partner in Franco Pangilinan Law Office); however, it was Atty. Ringler who asked Tayag to resign from the movement due to difficulty in dealing with her.

After presenting respondent on the witness stand, the prosecution filed its Formal Offer of Documentary Exhibits

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[10] *Id.* at 38-40.

[11] *Id.* at 40, 49.

[12] *Id.* at 40, 48.

dated October 11, 2006, which included her undated Complaint-Affidavit.[13]

On November 14, 2006, petitioners filed a Motion for Leave of Court to File the Attached Demurrer to Evidence.[14] In their Demurrer to Evidence,[15] which was appended to the said Motion, Bautista and Alcantara alleged that the prosecution's evidence failed to establish their participation as Editor and Associate Editor, respectively, of the publication *Bandera*; that they were not properly identified by respondent herself during her testimony; and that the subject articles written by Ampoloquio were not libelous due to absence of malice.

On April 25, 2008, the RTC issued an Order[16] granting petitioners' Demurrer to Evidence and dismissed Criminal Case Nos. MCO2-4872 and MCO2-4875. The trial court opined, among others, that since the prosecution did not submit its Comment/Opposition to the petitioners' Demurrer to Evidence, the averments therein thus became unrebutted; that the testimonial and documentary evidence adduced by the prosecution failed to prove the participation of petitioners as conspirators of the crime charged; and that during the direct examination on July 27, 2004 and cross-examination on August 1, 2006, respondent neither identified them, nor was there any mention about their actual participation.

As a consequence, the prosecution filed a Motion to Admit[17] dated May 29, 2008, with the attached Comment ([to] Accused Lito Bautista and Jimmy Alcantara's Demurrer to Evidence)[18]

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[13] CA Decision dated May 19, 2009, p. 2; *rollo*, p. 34. (The prosecution's Formal Offer of Documentary Exhibits, dated October 11, 2006, was not elevated to the CA so as to form part of the records of the case.)

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

[15] *Id*. at 51-57.

[16] *Id*. at 24, 27.

[17] *Id*. at 63-67.

[18] *Id*. at 68-71.

dated March 24, 2008, stating that during the pendency of the trial court's resolution on the petitioners' Motion for Leave of Court to File the Attached Demurrer to Evidence, with the attached Demurrer to Evidence, the prosecution intended to file its Comment, by serving copies thereof, through registered mail, upon counsels for the petitioners, including the other accused, and the respondent; however, said Comment was not actually filed with the trial court due to oversight on the part of the staff of the State Prosecutor handling the case.[19] Claiming that it was deprived of due process, the prosecution prayed that its Comment be admitted and that the same be treated as a reconsideration of the trial court's Order dated April 25, 2008.

In an Order dated June 3, 2008, the RTC granted the prosecutions' Motion to Admit, with the attached Comment, and ruled that its Comment be admitted to form part of the court records.

On August 19, 2008, respondent filed a Petition for *Certiorari* with the CA, seeking to set aside the RTC Orders dated April 25, 2008 (which granted petitioners' Demurrer to Evidence and ordered the dismissal of the cases against them) and June 3, 2008 (which noted and admitted respondent's Comment to form part of the records of the case).

In a Decision dated May 19, 2009, the CA granted respondent's petition, thereby reversing and setting aside the RTC Order dated April 25, 2008, but only insofar as it pertains to the grant of petitioners' Demurrer to Evidence, and ordered that the case be remanded to the trial court for reception of petitioners' evidence.

Aggrieved, petitioners filed a Motion for Reconsideration dated June 7, 2009 which, however, was denied by the CA in a Resolution dated September 28, 2009.

Hence, petitioners filed this present petition, raising the following arguments:

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[19] *Id.* at 66.

I.

[RESPONDENT'S] PETITION FOR *CERTIORARI* BEFORE THE COURT OF APPEALS IS BARRED BY THE PETITIONERS' RIGHT AGAINST DOUBLE JEOPARDY.

II.

[RESPONDENT'S] PETITION FOR *CERTIORARI* BEFORE THE COURT OF APPEALS DOES NOT LIE TO CORRECT ALLEGED ERRORS OF JUDGMENT COMMITTED BY THE REGIONAL TRIAL COURT.

III.

THE COURT OF APPEALS ERRED IN FINDING THAT THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION IN GRANTING PETITONERS' DEMURRER [TO] EVIDENCE.

Petitioners allege that the Order of the RTC, dated April 25, 2008, granting the Demurrer to Evidence was tantamount to an acquittal. As such, the prosecution can no longer interpose an appeal to the CA, as it would place them in double jeopardy. Petitioners contend that respondent's petition for *certiorari* with the CA should not have prospered, because the allegations therein, in effect, assailed the trial court's judgment, not its jurisdiction. In other words, petitioners posit that the said Order was in the nature of an error of judgment rendered, which was not correctible by a petition for *certiorari* with the CA.

Petitioners aver that although the CA correctly ruled that the prosecution had not been denied due process, however, it erred in ruling that the trial court committed grave abuse of discretion in granting petitioners' Demurrer to Evidence, on the basis that the prosecution failed to prove that they acted in conspiracy with Ampoloquio, the author of the questioned articles. They added that what the prosecution proved was merely their designations as Editor and Associate Editor of the publication *Bandera*, but not the fact that they had either control over the articles to be published or actually edited the subject articles.

Respondent counters that petitioners failed to show special and important reasons to justify their invocation of the Court's power to review under Rule 45 of the Rules of Court. She avers that the acquittal of petitioners does not preclude their further prosecution if the judgment acquitting them is void for lack of jurisdiction. Further, she points out that contrary to petitioners' contention, the principle of double jeopardy does not attach in cases where the court's judgment acquitting the accused or dismissing the case is void, either for having disregarded the State's right to due process or for having been rendered by the trial court with grave abuse of discretion amounting to lack or excess of jurisdiction, and not merely errors of judgment.

Respondent also avers that even if the prosecution was deemed to have waived its right to file a Comment on the petitioners' Motion for Leave of Court to File the Attached Demurrer to Evidence, this did not give the trial court any reason to deprive the prosecution of its right to file a Comment on the petitioners' Demurrer to Evidence itself, which was a clear violation of the due process requirement. By reason of the foregoing, respondent insists that petitioners cannot invoke violation of their right against double jeopardy.

The petition is impressed with merit.

At the onset, it should be noted that respondent took a procedural misstep, and the view she is advancing is erroneous. The authority to represent the State in appeals of criminal cases before the Supreme Court and the CA is solely vested in the Office of the Solicitor General (OSG). Section 35 (1), Chapter 12, Title III, Book IV of the 1987 Administrative Code explicitly provides that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. It shall have specific powers and functions to represent the Government and its officers in the Supreme Court and the CA, and all other courts or tribunals in all civil actions and special proceedings in which the

Government or any officer thereof in his official capacity is a party.[20] The OSG is the law office of the Government.[21]

To be sure, in criminal cases, the acquittal of the accused or the dismissal of the case against him can only be appealed by the Solicitor General, acting on behalf of the State. The private complainant or the offended party may question such acquittal or dismissal only insofar as the civil liability of the accused is concerned. In a catena of cases, this view has been time and again espoused and maintained by the Court. In *Rodriguez v. Gadiane*,[22] it was categorically stated that if the criminal case is dismissed by the trial court or if there is an acquittal, the appeal on the criminal aspect of the case must be instituted by the Solicitor General in behalf of the State. The capability of the private complainant to question such dismissal or acquittal is limited only to the civil aspect of the case. The same determination was also arrived at by the Court in *Metropolitan Bank and Trust Company v. Veridiano II*.[23] In the recent case of *Bangayan, Jr. v. Bangayan*,[24] the Court again upheld this guiding principle.

Worthy of note is the case of *People v. Santiago*,[25] wherein the Court had the occasion to bring this issue to rest. The Court elucidated:

It is well-settled that in criminal cases where the offended party is the State, the interest of the private complainant or the private

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[20] *People v. Duca*, G.R. No. 171175, October 9, 2009, 603 SCRA 159, 166.

[21] *Id*. at 167, citing *Labaro v. Panay*, G.R. No. 129567, December 4, 1998, 299 SCRA 714, 720.

[22] G.R. No. 152903, July 17, 2006, 495 SCRA 368, 372; 527 Phil. 691, 697 (2006).

[23] G.R. No. 118251, June 29, 2001, 360 SCRA 359, 367-368; 412 Phil. 795, 804-805 (2001).

[24] *Bangayan, Jr. v. Bangayan*, G.R. Nos. 172777 and 172792, October 19, 2011, 659 SCRA 590, 597.

[25] G.R. No. 80778, June 20, 1989, 174 SCRA 143; 255 Phil. 851 (1989).

offended party is limited to the civil liability. Thus, in the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General. Only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not take such appeal. However, the said offended party or complainant may appeal the civil aspect despite the acquittal of the accused.

In a special civil action for *certiorari* filed under Section 1, Rule 65 of the Rules of Court wherein it is alleged that the trial court committed a grave abuse of discretion amounting to lack of jurisdiction or on other jurisdictional grounds, the rules state that the petition may be filed by the person aggrieved. In such case, the aggrieved parties are the State and the private offended party or complainant. The complainant has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action of the respondent court on jurisdictional grounds. In so doing, complainant should not bring the action in the name of the People of the Philippines. The action may be prosecuted in name of said complainant.[26]

Thus, the Court has definitively ruled that in a criminal case in which the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability arising therefrom. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal of the criminal aspect may be undertaken, whenever legally feasible, only by the State through the solicitor general. As a rule, only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not undertake such appeal.[27]

In the case at bar, the petition filed by the respondent before the CA essentially questioned the criminal aspect of the Order of the RTC, not the civil aspect of the case. Consequently, the

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[26] *People v. Santiago, supra,* at 152-153; at 861-862.

[27] *Neplum, Inc. v. Orbeso*, G.R. No. 141986, July 11, 2002, 384 SCRA 467, 481-482; 433 Phil. 844, 864 (2002).

petition should have been filed by the State through the OSG. Since the petition for *certiorari* filed in the CA was not at the instance of the OSG, the same should have been outrightly dismissed by the CA. Respondent lacked the personality or legal standing to question the trial court's order because it is only the Office of the Solicitor General (OSG), who can bring actions on behalf of the State in criminal proceedings, before the Supreme Court and the CA.[28] Thus, the CA should have denied the petition outright.

Moreover, not only did the CA materially err in entertaining the petition, it should be stressed that the granting of petitioners' Demurrer to Evidence already amounted to a dismissal of the case on the merits and a review of the order granting the demurrer to evidence will place the accused in double jeopardy. Consequently, the Court disagrees with the CA's ruling reversing the trial court's order dismissing the criminal cases against petitioners.

Under Section 23,[29] Rule 119 of the Rules of Court on Demurrer to Evidence, after the prosecution terminates the presentation

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[28] *Ong v. Genio*, G.R. No. 182336, December 23, 2009, 609 SCRA 188, 195 (Citations omitted); *Heirs of Federico C. Delgado v. Gonzalez*, G.R. No. 184337, August 7, 2009, 595 SCRA 501, 524; *People v. Court of Appeals*, G.R. No. 132396, September 23, 2002, 389 SCRA 461, 475, citing *Republic v. Partisala*, G.R. No. 61997, November 15, 1982, 118 SCRA 370, 373.

[29] SEC. 23. *Demurrer to evidence.* – After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution an opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

of evidence and rests its case, the trial court may dismiss the case on the ground of insufficiency of evidence upon the filing of a Demurrer to Evidence by the accused with or without leave of court. If the accused files a Demurrer to Evidence with prior leave of court and the same is denied, he may adduce evidence in his defense. However, if the Demurrer to Evidence is filed by the accused without prior leave of court and the same is denied, he waives his right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

Corollarily, after the prosecution rests its case, and the accused files a Demurrer to Evidence, the trial court is required to evaluate whether the evidence presented by the prosecution is sufficient enough to warrant the conviction of the accused beyond reasonable doubt. If the trial court finds that the prosecution evidence is not sufficient and grants the accused's Demurrer to Evidence, the ruling is an adjudication on the merits of the case which is tantamount to an acquittal and may no longer be appealed. Any further prosecution of the accused after an acquittal would, thus, violate the constitutional proscription on double jeopardy.[30]

Anent the prosecution's claim of denial of due process. As correctly found by the CA, the prosecution was not denied due process. Suffice it to state that the prosecution had actively participated in the trial and already rested its case, and upon petitioners' filing of their Demurrer to Evidence, was given the opportunity to file its Comment or Opposition and, in fact, actually filed its Comment thereto, albeit belatedly. The CA emphasized that the word "may" was used in Section 23 of Rule 119 of the Revised Rules of Criminal Procedure, which states that if leave

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If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment.

[30] *People v. Laguio, Jr.*, G.R. No. 128587, March 16, 2007, 518 SCRA 393, 403.

of court is granted, and the accused has filed the Demurrer to Evidence within a non-extendible period of ten (10) days from notice, the prosecution "may" oppose the Demurrer to Evidence within a similar period from its receipt. In this regard, the CA added that the filing of a Comment or Opposition by respondent is merely directory, not a mandatory or jurisdictional requirement, and that in fact the trial court may even proceed with the resolution of the petitioners' Demurrer to Evidence even without the prosecution's Comment.

One final note. Article 360 of the Revised Penal Code specifies the persons that can be held liable for libel. It provides:

ART. 360. *Persons responsible*. — Any person who shall publish, exhibit or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.

The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamation contained therein to the same extent as if he were the author thereof.[31]

From the foregoing, not only is the person who published, exhibited or caused the publication or exhibition of any defamation in writing shall be responsible for the same, all other persons who participated in its publication are liable, including the editor or business manager of a daily newspaper, magazine or serial publication, who shall be equally responsible for the defamations contained therein to the same extent as if he were the author thereof. The liability which attaches to petitioners is, thus, statutory in nature.

In *Fermin v. People,*[32] therein petitioner argued that to sustain a conviction for libel under Article 360 of the Code, it is mandatory that the publisher knowingly participated in or consented to the preparation and publication of the libelous article. She also averred that she had adduced ample evidence to show that she had no hand in the preparation and publication

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[31] Emphasis supplied.

[32] G.R. No. 157643, March 28, 2008, 550 SCRA 132.

of the offending article, nor in the review, editing, examination, and approval of the articles published in *Gossip* Tabloid. The Court struck down her erroneous theory and ruled that therein petitioner, who was not only the Publisher of *Gossip* Tabloid but also its President and Chairperson, could not escape liability by claiming lack of participation in the preparation and publication of the libelous article.

Similarly, in *Tulfo v. People*,[33] therein petitioners, who were Managing Editor, National Editor of *Remate* publication, President of Carlo Publishing House, and one who does typesetting, editing, and layout of the page, claim that they had no participation in the editing or writing of the subject articles which will hold them liable for the crime of libel and, thus, should be acquitted. In debunking this argument, the Court stressed that an editor or manager of a newspaper, who has active charge and control over the publication, is held equally liable with the author of the libelous article. This is because it is the duty of the editor or manager to know and control the contents of the paper, and interposing the defense of lack of knowledge or consent as to the contents of the articles or publication definitely will not prosper.

The rationale for the criminal culpability of those persons enumerated in Article 360 was already elucidated as early as in the case of *U.S. v. Ocampo*,[34] to wit:

> According to the legal doctrines and jurisprudence of the United States, the printer of a publication containing libelous matter is liable for the same by reason of his direct connection therewith and his cognizance of the contents thereof. With regard to a publication in which a libel is printed, not only is the publisher but also all other persons who in any way participate in or have any connection with its publication are liable as publishers.[35]

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[33] G.R. Nos. 161032 and 161176, September 16, 2008, 565 SCRA 283, 314-315.

[34] 18 Phil. 1 (1910).

[35] *Id.* at 50.

Accordingly, Article 360 would have made petitioners Bautista and Alcantara, being the Editor and Assistant Editor, respectively, of *Bandera Publishing Corporation*, answerable with Ampoloquio, for the latter's alleged defamatory writing, as if they were the authors thereof. Indeed, as aptly concluded by the court *a quo*:

> The aforestated provision is clear and unambiguous. It equally applies to an editor of a publication in which a libelous article was published and states that the editor of the same shall be responsible for the defamation in writing as if he were the author thereof. Indeed, when an alleged libelous article is published in a newspaper, such fact alone sufficient evidence to charge the editor or business manager with the guilt of its publication. This sharing of liability with the author of said article is based on the principle that editors and associate editors, by the nature of their positions, edit, control and approve the materials which are to be published in a newspaper. This means that, without their nod of approbation, any article alleged to be libelous would not be published. Hence, by virtue of their position and the authority which they exercise, newspaper editors and associate editors are as much critical part in the publication of any defamatory material as the writer or author thereof.[36]

Nevertheless, petitioners could no longer be held liable in view of the procedural infirmity that the petition for *certiorari* was not undertaken by the OSG, but instead by respondent in her personal capacity. Although the conclusion of the trial court may be wrong, to reverse and set aside the Order granting the demurrer to evidence would violate petitioners' constitutionally-enshrined right against double jeopardy. Had it not been for this procedural defect, the Court could have seriously considered the arguments advanced by the respondent in seeking the reversal of the Order of the RTC.

The granting of a demurrer to evidence should, therefore, be exercised with caution, taking into consideration not only the rights of the accused, but also the right of the private offended party to be vindicated of the wrongdoing done against him, for

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[36] *Rollo*, p. 40.

if it is granted, the accused is acquitted and the private complainant is generally left with no more remedy. In such instances, although the decision of the court may be wrong, the accused can invoke his right against double jeopardy. Thus, judges are reminded to be more diligent and circumspect in the performance of their duties as members of the Bench, always bearing in mind that their decisions affect the lives of the accused and the individuals who come to the courts to seek redress of grievances, which decision could be possibly used by the aggrieved party as basis for the filing of the appropriate actions against them.

Perforce, the Order dated April 25, 2008 of the Regional Trial Court, Branch 212, Mandaluyong City, in Criminal Case Nos. MC02-4872 and MC02-4875, which dismissed the actions as against petitioners Lito Bautista and Jimmy Alcantara, should be reinstated.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 19, 2009 and Resolution dated September 28, 2009 of the Court of Appeals, in CA-G.R. SP No. 104885, are **REVERSED AND SET ASIDE**. The portion of the Order dated April 25, 2008 of the Regional Trial Court, Branch 212, Mandaluyong City, in Criminal Case Nos. MC02-4872 and MC02-4875, which dismissed the actions as against petitioners Lito Bautista and Jimmy Alcantara, is **REINSTATED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Leonardo-de Castro,[*] *Abad,* and *Mendoza, JJ.,* concur.

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[*] Designated Acting Member per Special Order No. 1343 dated October 9, 2012.

FIRST DIVISION

[G.R. No. 189808. October 24, 2012]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **MERIAM GURU *y* KAZAN,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In the prosecution of illegal sale of drugs, the elements that should be proven are the following: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. The prosecution must (1) prove that the transaction or sale actually took place, and (2) present in court evidence of the *corpus delicti*.

2. ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— As regards the prosecution for illegal possession of dangerous drugs, the elements to be proven are the following: (1) the accused is in possession of an item or an object identified to be a prohibited or a regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.

3. ID.; ILLEGAL POSSESSION/SALE OF DANGEROUS DRUGS; CHAIN OF CUSTODY RULE, EXPLAINED; NOT ESTABLISHED IN CASE AT BAR.— [I]n order for the prosecution to successfully overturn the constitutionally mandated presumption of innocence in favor of the accused, it should, in drug-related cases, prove not only the acquisition of the subject specimens through a legitimate buy-bust operation, but likewise the identity and integrity of the *corpus delicti* by a substantially unbroken chain in the custody of said specimens from their acquisition to the necessary laboratory examination. x x x The above elements that should be proven in both the sale and possession of dangerous drugs intrinsically include the identification of what was seized by police officers to be the same item examined and presented in court. This identification must be established with moral certainty and is a function of

> the rule on the chain of custody. x x x In the case at bar, the physical inventory of the subject specimens was made only at the police station and by an unnamed investigator. This, in itself, evokes to a reasonable mind several questions on the safekeeping of the specimens from the time accused-appellant was arrested, up to the time she and the buy-bust team arrived at the police station. The identity of the person who marked the specimens and his or her competence to distinguish between the *item sold by accused-appellant* and the *item recovered from her* are likewise relevant points of inquiry. Finally, the conflicting evidence as regards the persons who had custody of the specimens after the marking casts serious doubts as to whether the identity and integrity of said items had truly been preserved. We find that these are all substantial gaps in the chain of custody which inevitably creates a rational uncertainty in the appreciation of the existence of the *corpus delicti*. We are, therefore, constrained to acquit accused-appellant in both Criminal Case No. 04-230545 and Criminal Case No. 04-230546 on account of reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 03301 dated August 12, 2009, which affirmed *in toto* the Decision[2] of the Regional Trial Court (RTC) of Manila in Crim. Case Nos. 04-230545-46 dated April 12, 2008.

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[1] *Rollo*, pp. 2-19; penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Andres B. Reyes, Jr. and Apolinario D. Bruselas, Jr., concurring.

[2] CA *rollo*, pp. 14-22.

Accused-appellant Meriam Guru *y* Kazan was charged in two separate Informations, charging her with violation of Sections 5 and 11(3), respectively, of Article II, Republic Act No. 9165:

Criminal Case No. 04-230545
(Violation of Section 5, Article II, R.A. No. 9165):

That on or about September 24, 2004, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell to a poseur-buyer ZERO POINT ZERO ONE TWO (0.012) GRAM of white crystalline substance placed in one (1) heat sealed transparent plastic sachet marked as "MG" containing methylamphetamine hydrochloride known as "*SHABU*," a dangerous drug.[3]

Criminal Case No. 04-230546
(Violation of Section 11[3], Article II, R.A. No. 9165):

That on or about September 24, 2004, x x x in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully, and knowingly have in [her] possession and under [her] custody and control ZERO POINT ZERO ONE SEVEN (0.017) grams of white crystalline substance known as "*SHABU*" marked as "MGK" placed in a transparent plastic sachet containing methylamphetamine hydrochloride, which is a dangerous drug.[4]

The forensic chemist, Police Inspector (P/Insp.) Maritess Mariano (P/Insp. Mariano) was not presented as a witness, due to the stipulation by the defense as to her qualification, as well as the "genuineness and due execution of the documents she executed together with the specimen."[5] The prosecution, on the other hand, admitted that P/Insp. Mariano "does not have personal knowledge as to the ultimate source of the subject specimen."[6]

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[3] Records, p. 2.

[4] *Id.* at 3.

[5] TSN, April 21, 2006, p. 2.

[6] *Id.*

Police Officer (PO) 1 Conrado Juaño (PO1 Juaño) testified that on September 23, 2004, a confidential informant went to the Moriones Police Station 2, Station Anti-Illegal Drug Special Operations Task Unit (SAID-SOTU) and informed P/Insp. Ricardo Layug, Jr. (P/Insp. Layug) and the members of SAID-SOTU that a certain "Meriam" was conducting illegal shabu activities along Isla Puting Bato, Tondo, Manila. P/Insp. Layug instructed Senior Police Officer (SPO) 3 Rolando del Rosario (SPO3 Del Rosario) to verify the information and, if possible, carry out a buy-bust operation. At around 6:30 p.m. that day, PO1 Juaño, SPO3 Del Rosario, and the confidential informant proceeded to an alley in Isla Puting Bato identified by the informant to conduct the surveillance, but the subject could not be located. They returned to the station where P/Insp. Layug instructed them to return to the place the following day to continue the operation.[7]

The confidential informant returned to the station at around 12:00 noon the following day, September 24, 2004. SPO3 Del Rosario conducted a briefing to plan their operation against the subject. PO1 Juaño was designated as *poseur-buyer*, while PO1 Earlkeats Bajarias (PO1 Bajarias) and SPO3 Del Rosario were designated as perimeter backups. SPO3 Del Rosario handed PO1 Juaño a 100-peso bill marked "RR", the initials of Del Rosario. PO1 Arnel Tubbali (PO1 Tubbali) prepared a Coordination and Pre-Operation Report[8] which was received by the Philippine Drug Enforcement Agency (PDEA) on the same day.[9]

The buy-bust team and the confidential informant arrived at Isla Puting Bato at around 4:00 p.m. They found accused-appellant seated in an alley in front of her house. They approached accused-appellant, who recognized the confidential informant, and asked, "*Kukuha ka ba*? *Magkano*?" The informant replied, "*Siya daw kukuha*," pointing to PO1 Juaño. PO1 Juaño

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

[8] Records, p. 8; Exhibit "H".

[9] TSN, April 21, 2006, pp. 4-5.

confirmed, "*Piso lang*" (₱100.00), and showed accused-appellant the money. Accused-appellant took a small plastic sachet from her pants' back pocket and handed it to PO1 Juaño. PO1 Juaño introduced himself as a police officer. Accused-appellant was surprised. PO1 Juaño arrested accused-appellant, while SPO3 Del Rosario and PO1 Bajarias rushed to the scene for assistance. The marked ₱100-bill was recovered from accused-appellant. Accused-appellant was asked to empty her pocket. Another small transparent plastic sachet was recovered from accused-appellant.[10]

The team conveyed accused-appellant to the station, where the items recovered were marked by the investigator in front of PO1 Juaño. The sachet sold to PO1 Juaño was marked "MG", while the sachet recovered from accused-appellant was marked "MGK". PO1 Bajarias prepared a request for the examination of the specimens, the Affidavit of Apprehension, Booking Sheet, Arrest Report and Referral Letter for Inquest.[11]

On cross-examination, PO1 Juaño testified that when he arrested accused-appellant, he informed her of her constitutional rights. He clarified that the Coordination and Pre-Operation Report prepared by PO1 Tubbali was faxed to PDEA, which in turn returned it with a certification giving them authority for the operation. When confronted by the fact that the name of accused-appellant was not mentioned in the Coordination and Pre-Operation Report, PO1 Juaño testified that it was not the policy of the PDEA in 2005 to state the name of the subject.[12]

PO1 Bajarias corroborated PO1 Juaño's testimony that they, together with SPO3 Del Rosario and the confidential informant, were at Isla Puting Bato, Tondo, Manila on September 24, 2004, at around 4:00 p.m. PO1 Bajarias was around 10 meters away from PO1 Juaño during the operation for 10 to 15 minutes. At this time, PO1 Juaño and the confidential informant talked

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

[11] *Id.* at 7-9.

[12] *Id.* at 10-17.

to a woman, who was later identified as accused-appellant. PO1 Juaño handed the buy-bust money to accused-appellant, while the latter handed to the former a transparent plastic sachet. PO1 Bajarias saw PO1 Juaño introducing himself as a police officer, arresting the accused-appellant and informing her of her constitutional rights. Throughout the operation, PO1 Bajarias guarded the place to ensure their safety.[13]

On cross-examination, PO1 Bajarias disclosed that he saw what PO1 Juaño, the accused-appellant, and the informant were doing, but could not hear what they were saying.[14] However, during the time PO1 Juaño was informing accused-appellant of her constitutional rights, PO1 Bajarias was already within four meters from the suspect.[15]

The defense presented the testimony of accused-appellant herself. Accused-appellant testified that she was at home on September 24, 2004. She was praying at around 3:00 p.m. that day, when a group of men arrived. Two of them simply entered her house, which was left open, while four were left outside. They waited for her to finish her prayers, before asking her to go with them. She was told that she should explain herself at the precinct. She cried since she does not know why she was arrested and she believed that she did not violate any law. She was brought to the police station, detained, and was asked what she was selling. She told them that she was not selling anything. She was in Manila to apply for a job abroad. She denied the charges filed against her.[16]

Bhoy Tagadaya, who was fetching his brother-in-law in the vicinity where accused-appellant was arrested, testified that at around 3:00 p.m. on September 24, 2004, he saw six men in civilian clothes alight from a Ford Fiera. Two men went inside the house in front of that of his brother-in-law. Fifteen minutes

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[13] TSN, May 2, 2006, pp. 2-3.

[14] *Id.* at 5.

[15] *Id.* at 11.

[16] TSN, January 15, 2008, pp. 3-6.

later, the two men came out of the house with the accused-appellant, who was crying and shouting, and left. Someone had asked his brother-in-law about the incident. Tagadaya's brother-in-law told that person that it was Tagadaya who saw the incident.[17]

On April 12, 2008, the RTC rendered its Decision, the dispositive portion of which is as follows:

WHEREFORE, judgment is hereby rendered as follows, to wit:

1. In Criminal Case No. 04-230545, finding accused, Meriam Guru *y* Kazan, **GUILTY** beyond reasonable doubt of the crime charged, she is hereby sentenced to life imprisonment and to pay the fine of ₱500,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

2. In Criminal Case No. 04-230546, finding accused, Meriam Guru *y* Kazan, **GUILTY** beyond reasonable doubt of the crime charged, she is hereby sentenced to suffer the indeterminate penalty of 12 years and 1 day as minimum to 17 years and 4 months as maximum; to pay a fine of [₱300,000.00][18] without subsidiary imprisonment in case of insolvency and to pay the costs.[19]

The RTC found the testimonies of PO1 Juaño and PO1 Bajarias, together with the documentary and object evidence, sufficient to prove accused-appellant's guilt beyond reasonable doubt. On the other hand, accused-appellant failed to show any ill motive on the part of the police officers to testify against her. As regards the testimony of Tagadaya, the court held that there was no showing that he witnessed the incident leading to accused-appellant's arrest.[20]

On August 12, 2009, the Court of Appeals rendered its Decision in accused-appellant's appeal, affirming the RTC Decision *in*

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[17] TSN, April 1, 2008, pp. 3-6.

[18] Erroneously encoded as "₱300,0000.00" in the RTC Decision.

[19] CA *rollo*, p. 21.

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

toto. According to the Court of Appeals, the alleged failure of the police officers to indicate the name of the accused-appellant in the pre-operation report did not affect the legality of the buy-bust operation, and was adequately explained by PO1 Juaño, who had testified that it was not yet the policy of the PDEA in 2005 to indicate the name of the subject of the buy-bust operation.[21] Neither is the examination of marked money for fingerprints required. It is sufficient that the marked money was received by the accused during the buy-bust operation.[22] As regards the allegation of accused-appellant that the prosecution failed to comply with the procedure for the proper custody and disposition of the confiscated drugs, the Court of Appeals held that the Implementing Rules and Regulations of Republic Act No. 9165 explicitly provides that noncompliance with the prescribed procedure can be excused if there are justifiable grounds therefor.[23] The Court of Appeals emphasized that, contrary to established jurisprudence, accused-appellant was not shown to have questioned the custody of the confiscated drugs or raised the issue of disposition and preservation of said drugs before the trial court.[24]

On appeal before this Court, accused-appellant manifested that she is adopting the Appellant's Brief submitted to the Court of Appeals.[25] In said Brief, accused-appellant presented the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED WHEN HER GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

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[21] *Id.* at 109-110.

[22] *Id.* at 111.

[23] *Id.* at 111-112.

[24] *Id.* at 113-114.

[25] *Rollo*, pp. 29-30.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE NON-COMPLIANCE WITH THE REQUIREMENTS FOR THE PROPER CUSTODY OF SEIZED DANGEROUS DRUGS UNDER R.A. NO. 9165.

III

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE PROSECUTION'S EVIDENCE NOTWITHSTANDING THE FAILURE OF THE APPREHENDING TEAM TO PROVE THE IDENTITY AND INTEGRITY OF THE *CORPUS DELICTI* OF THE OFFENSE.[26]

Evidence of the Sale and Possession

In the prosecution of illegal sale of drugs, the elements that should be proven are the following: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. The prosecution must (1) prove that the transaction or sale actually took place, and (2) present in court evidence of the *corpus delicti*.[27] As regards the prosecution for illegal possession of dangerous drugs, the elements to be proven are the following: (1) the accused is in possession of an item or an object identified to be a prohibited or a regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[28]

As held by both the trial court and the Court of Appeals, the testimonies of PO1 Juaño and PO1 Bajarias sufficiently prove there was a transaction between the *poseur-buyer*, PO1 Juaño, and accused-appellant:

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[26] CA *rollo*, pp. 40-41.

[27] *People v. Morales*, G.R. No. 188608, February 9, 2011, 642 SCRA 612, 619.

[28] *People v. Mendoza*, G.R. No. 186387, August 31, 2011, 656 SCRA 616, 622.

Q: What was Meriam doing at that time?
A: She was seated in an alley in front of her house.

Q: Who was with her, if you know?
A: She was alone, sir.

Q: What happened next upon seeing Meriam?
A: We approached the subject and the subject recognized the informant.

Q: What happened?
A: When Meriam recognized the informant, the subject asked to the informant – *kukuha ka ba*? *Magkano*?

Q: What was the reply of the informant?
A: The informant was pointing to me – *siya daw kukuha*.

Q: What happened when the informant pointed [at] you?
A: And I replied – *piso lang*, and showed the money, sir.

Q: To whom did you [show] the money?
A: To a certain Meriam, sir.

Q: Then, what transpired next, Mr. Witness?
[A:] I handed to her the ₱100.00 bill, sir.

Q: What happened when you handed it to Meriam?
A: And the subject took from her back pants pocket one small plastic sachet containing *shabu* and handed it to me, sir.

Asst. Pros. Yap:

Q: So, upon receipt of the same, what did you do?
A: At the time we examined the small plastic sachet containing [the] suspected *shabu*, sir.

Q: What was the white crystalline substance suspected to be *shabu*? What was inside?
A: White crystalline substance suspected to be *shabu*, sir.

Q: What happened next after that?
A: At that point, I introduced myself as a police officer and the subject was surprised and then I arrested her then SPO2 Del Rosario and Bajarias rushed to the scene for assistance.[29] (Italics supplied.)

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[29] TSN, April 21, 2006, pp. 6-7.

The testimony of PO1 Juaño likewise tended to establish the possession by the accused-appellant of another sachet containing the allegedly prohibited substance:

Q: After that, what did you do?
A: I requested her to empty her pockets at the back, sir.

Q: And then, did the accused comply?
A: Yes, sir.

Q: What happened?
A: I recovered another plastic sachet, sir.

Q: From where?
A: From her back pocket, sir.

Q: Who recovered it?
A: I was the one, sir.

Q: How did you recover that?
A: When she emptied her pocket at the back I saw a plastic sachet, sir.[30]

However, in order for the prosecution to successfully overturn the constitutionally mandated presumption of innocence in favor of the accused, it should, in drug-related cases, prove not only the acquisition of the subject specimens through a legitimate buy-bust operation, but likewise the identity and integrity of the *corpus delicti* by a substantially unbroken chain in the custody of said specimens from their acquisition to the necessary laboratory examination.

Chain of custody

The above elements that should be proven in both the sale and possession of dangerous drugs intrinsically include the identification of what was seized by police officers to be the same item examined and presented in court. This identification must be established with moral certainty and is a function of

[30] *Id.* at 16.

the rule on the chain of custody.[31] In *Malillin v. People*,[32] we discussed how the chain of custody of seized items should be established:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.
>
> While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering — without regard to whether the same is advertent or otherwise not — dictates the level of strictness in the application of the chain of custody rule. (Citations omitted.)

In the case at bar, PO1 Juaño testified that he obtained the first plastic sachet containing white crystalline substance when the same was sold to him by accused-appellant.[33] PO1 Juaño introduced himself as a police officer and confiscated the marked

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[31] *People v. Sitco*, G.R. No. 178202, May 14, 2010, 620 SCRA 561, 574-575.

[32] G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.

[33] TSN, April 21, 2006, pp. 5-7.

₱100-bill which he had just recently given to accused-appellant as payment for the item sold. He asked accused-appellant to empty her pocket and recovered the second plastic sachet containing white crystalline substance.[34]

According to PO1 Juaño, the buy-bust team brought accused-appellant to the station, where the items recovered were marked by "the investigator" in his presence. He, however, failed to mention the name of this investigator. The sachet sold to PO1 Juaño was marked "MG", while the sachet recovered from accused-appellant was marked "MGK".[35] PO1 Juaño further testified that PO1 Bajarias prepared a request for the examination of the specimens.[36] Curiously though, the specimens were not discussed in the testimony of PO1 Bajarias,[37] except for his account of accused-appellant handing a transparent plastic sachet to PO1 Juaño in exchange for the buy-bust money.[38]

Contrary to the testimony of PO1 Juaño, however, the request for the laboratory examination of the specimens submitted in evidence by the prosecution was prepared by a certain Police Superintendent Ernesto Tubale Barlam.[39] The lower left hand portion of the Request shows that it was delivered by a certain PO2 Garcia. The testimonies of the prosecution witnesses, PO1 Juaño and PO1 Bajarias, did not mention a Police Superintendent Barlam or a PO2 Garcia.

It is noteworthy that there was no further testimony regarding the subject specimens. As stated earlier, forensic chemist P/Insp. Mariano was not presented as a witness due to the stipulation by the defense as to her qualification, as well as the "genuineness and due execution of the documents she executed together with

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[34] *Id.*

[35] *Id.* at 8.

[36] *Id.* at 7-9.

[37] TSN, May 2, 2006, pp. 2-11.

[38] *Id.* at 3.

[39] Records, p. 90; "Exhibit A".

the specimen."[40] However, the prosecution likewise admitted that P/Insp. Mariano "does not have personal knowledge as to the ultimate source of the subject specimen,"[41] leaving it to the other witnesses to establish that the specimen examined by P/Insp. Mariano were the same ones recovered in the buy-bust operation.

Pertinently, Section 21 of Republic Act No. 9165 provides as follows:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation**, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.] (Emphasis supplied.)

While this Court has disregarded the strict compliance of the requisites under Section 21 of Republic Act No. 9165, such liberality, as stated in the Implementing Rules and Regulations,[42]

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[40] TSN, April 21, 2006, p. 2.

[41] *Id.*

[42] The Implementing Rules and Regulations state:

> Section 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled

can be applied only when the evidentiary value and integrity of the illegal drug are properly preserved.

In the case at bar, the physical inventory of the subject specimens was made only at the police station and by an unnamed investigator. This, in itself, evokes to a reasonable mind several questions on the safekeeping of the specimens from the time accused-appellant was arrested, up to the time she and the buy-bust team arrived at the police station. The identity of the person who marked the specimens and his or her competence to distinguish between the *item sold by accused-appellant* and the *item recovered from her* are likewise relevant points of inquiry. Finally, the conflicting evidence as regards the persons who had custody of the specimens after the marking casts serious doubts as to whether the identity and integrity of said items had truly been preserved. We find that these are all substantial gaps in the chain of custody which inevitably creates a rational uncertainty in the appreciation of the existence of the *corpus delicti*. We are, therefore, constrained to acquit accused-appellant in both Criminal Case No. 04-230545 and Criminal Case No. 04-230546 on account of reasonable doubt.

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precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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

In light of the foregoing discussion, we find it no longer necessary to pass upon the other issues raised in the present appeal.

WHEREFORE, the appeal is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 03301 dated August 12, 2009 is **REVERSED** and **SET ASIDE**. Accused-appellant Meriam Guru *y* Kazan is hereby **ACQUITTED** in both Criminal Case No. 04-230545 and Criminal Case No. 04-230546 for the failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered immediately **RELEASED** from detention, unless she is confined for another lawful cause.

Let a copy of this Decision be furnished the Director, Women's Correctional, Mandaluyong City, for immediate implementation. The Director of the Bureau of Corrections is directed to report the action he has taken to this Court, within five (5) days from receipt of this Decision.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 192650. October 24, 2012]

FELIX MARTOS, JIMMY ECLANA, RODEL PILONES, RONALDO NOVAL, JONATHAN PAILAGO, ERNESTO MONTANO, DOYONG JOSE, DEO MAMALATEO, ROSELO MAGNO, BONNIE SANTILLAN, ARSENIO GONZALES, ALEX EDRADAN, MICHAEL ERASCA, MARLON MONTANO, VICENTE OLIVEROS, REYNALDO LAMBOSON, DOMINGO ROTA, EDDIE ROTA, ZALDY OLIVEROS, ANTONIO NATIL, HERMIE BUISON, ROGER BUISON, MARIANO LAZATE, JUAN VILLABER, LIMUEL LLANETA, LITO BANTILO, TERSO GARAY, ROWEL BESTOLO, JERRY YORTAS, PASTOR PANTIG, GAVINO NICOLAS, RAFAEL VILLA, FELIX YORTAS, MELVIN GARAY, NEIL DOMINGUEZ, REYNALDO EVANGELISTA, JR., JOSE RAMOS, ELVIN ROSALES, JUN GRANEHO, DANNY ASPARES, SALVEDOR TONLOC, ROLANDO EVANGELISTA, RICKY M. FRANCISCO, EDUARDO ALEGRIA, SALVADOR SANTOS, GREG BISONIA, RUFO CARBILLO, MARVIN MONTERO, DANILO BESSIRE, ALLAN CABALLERO, ORLANDO LIMOS, EDGARDO BICLAR, MANDY MAMALATEO, ALFRED GAJO, ERIC CASTRENCE, ANTHONY MOLINA, JAIME SALIM, ROY SILVA, DANILO BEGORIE, PEPING CELISANA, ERIC RONDA, RUFO CARBANILLO, ROWEL BATA, RICARDO TOLENTINO, ARNEL ARDINEZ, FERDINAND R. ARANDIA, ROMEO R. GARBO, ANTONIO ROTA, REYNIELANDRE QUINTANILLA, JOSELITO HILARIO, JIMMY CAMPANA, DANILO LIDO-AN, EMERSON PENAFLOR, CESAR PABALINAS, JONATHAN MELCHOR, ALEX DAVID, EUTIQUIO ALCALA, MICHAEL CARANDANG, EDUARDO

MANUEL, RAMON EVANGELISTA, RUBEN MENDOZA, ERNESTO MENDOZA, RICKY RAMOS, ROBERTO NOVELLA, RUBEN CONDE, DANILO POLISTICO, DOMINGO MENDOZA, FERNANDO SAN GABRIEL, and DOMINGO ROTO, *petitioners, vs.* **NEW SAN JOSE BUILDERS, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; VERIFICATION REQUIREMENT; WHEN DEEMED SUBSTANTIALLY COMPLIED WITH; NOT PRESENT IN CASE AT BAR.— The verification requirement is significant, as it is intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. Verification is deemed substantially complied with when, as in this case, one who has ample knowledge to swear to the truth of the allegations in the complaint or petition **signs** the verification, and when matters alleged in the petition have been made in good faith or are true and correct. The absence of a proper verification is cause to treat the pleading as unsigned and dismissible. The lone signature of Martos would have been sufficient if he was authorized by his co-petitioners to sign for them. Unfortunately, petitioners failed to adduce proof that he was so authorized.

2. ID.; ID.; ID.; ID.; THE RULE ON VERIFICATION, NOT BEING INFLEXIBLE, ALLOWS THE APPLICATION OF LIBERALITY; NOT APPLICABLE IN CASE AT BAR.— The liberal construction of the rules may be invoked in situations where there may be some excusable formal deficiency or error in a pleading, provided that the same does not subvert the essence of the proceeding and it at least connotes a reasonable attempt at compliance with the rules. Besides, fundamental is the precept that rules of procedure are meant not to thwart but to facilitate the attainment of justice; hence, their rigid application may, for deserving reasons, be subordinated by the need for an apt dispensation of substantial justice in the normal course. They ought to be relaxed when there is subsequent or even substantial compliance, consistent

with the policy of liberality espoused by Rule 1, Section 6. Not being inflexible, the rule on verification allows for such liberality. Considering that the dismissal of the other complaints by the LA was without prejudice, the other complainants should have taken the necessary steps to rectify their procedural mistake after the decision of the LA was rendered. They should have corrected this procedural flaw by immediately filing another complaint with the correct verification this time. Surprisingly, they did not even attempt to correct this technical blunder. Worse, they committed the same procedural error when they filed their appeal with the NLRC. Under the circumstances, the Court agrees with the CA that the dismissal of the other complaints were brought about by the own negligence and passive attitude of the complainants themselves.

APPEARANCES OF COUNSEL

Miralles and Associates Law Offices for petitioners.
Andres Marcelo Paternal Guerrero & Paras for respondent.

D E C I S I O N

MENDOZA, *J.*:

Questioned in this Petition for Review is the July 31, 2009 Decision[1] of the Court of Appeals *(CA)* and its June 17, 2010 Resolution,[2] which *reversed* and *set aside* the July 30, 2008 Decision[3] and October 28, 2008, Resolution[4] of the National Labor Relations Commission *(NLRC);* and *reinstated* the May 23, 2003 Decision[5] of the Labor Arbiter *(LA)*. The dispositive portion of the CA Decision reads:

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[1] *Rollo*, pp. 66-84 (Penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justice Celia C. Librea-Leagogo and Associate Justice Antonio L. Villamor).

[2] *Id.* at 87-88.

[3] *Id.* at 125-132.

[4] *Id.* at 123-124.

[5] *Id.* at 304-315.

WHEREFORE, decision is hereby rendered, as follows:

1. Declaring the complainant Felix Martos was illegally dismissed and ordering respondent New San Jose Builders, Inc. to pay him his separation pay, backwages, salary differentials, 13th month pay, service incentive leave pay, and attorney's fees in the total amount of TWO HUNDRED SIXTY THOUSAND SIX HUNDRED SIXTY ONE PESOS and 50/1000 (260, 661.50).

The awards for separation pay, backwages and the corresponding attorney's fees are subject to further computation until the decision in this case becomes final and executory; and

2. Dismissing the complaints/claim of the other complainants without prejudice.

SO ORDERED.[6]

The Facts

The factual and procedural antecedents were succinctly summarized by the CA as follows:

New San Jose Builders, Inc. (hereafter petitioner) is a domestic corporation duly organized and existing under the laws of the Philippines and is engaged in the construction of road, bridges, buildings, and low cost houses primarily for the government. One of the projects of petitioner is the San Jose Plains Project (hereafter SJPP), located in Montalban, Rizal. SJPP, which is also known as the "Erap City" calls for the construction of low cost housing, which are being turned over to the National Housing Authority to be awarded to deserving poor families.

Private respondents alleged that, on various dates, petitioner hired them on different positions, hereunder specified:

	Names	Date Employed	Date Dismissed
1.	Felix Martos	October 5, 1998	February 25, 2002
2.	Jimmy Eclana	1999	July 2001
3.	Rodel Pilones	February 1999	July 2001
4.	Ronaldo Noval		
5.	Jonathan Pailago		
6.	Ernesto Montaño	1998	2000

[6] *Id.* at 314-315.

7.	Doyong Jose	1996	July 2001
8.	Deo Mamalateo	1999	July 2001
9.	Roselo Magno	1994	November 2000
10.	Bonnie Santillan	1998	July 2001
11.	Arsenio Gonzales	1998	July 2001
12.	Alex Edradan	1998	November 2001
13.	Michael Erasca	1999	July 2001
14.	Marlon Montaño	1998	July 2001
15.	Vicente Oliveros	April 5, 1998	July 2001
16.	Reynaldo Lamboson	1999	July 2001
17.	Domingo Rota	1998	
18.	Eddie Rota	1998	
19.	Zaldy Oliveros	1999	July 2001
20.	Antonio Natel	1998	July 2001
21.	Hermie Buison	1998	July 2001
22.	Roger Buison	1998	2000
23.	Mariano Lazate	February 19, 1995	
24.	Juan Villaber	January 10, 1997	
25.	Limuel Llaneta	March 5, 1994	
26.	Lito Bantilo	May 1987	
27.	Terso Garay	October 3, 1986	
28.	Rowel Bestolo	February 6, 1999	
29.	Jerry Yortas	May 1994	
30.	Pastor Pantig	April 11, 1998	
31.	Gavino Nicolas	June 20, 1997	
32.	Rafael Villa	March 9, 1998	
33.	Felix Yortas	1992	
34.	Melvin Garay	February 2, 1994	
35.	Neil Dominguez	February 16, 1998	
36.	Reynaldo Evangelista, Jr.	October 10, 1998	
37.	Jose Ramos	October 10, 1998	
38.	Elvis Rosales	June 14, 1998	
39.	Jun Graneho	January 15, 1998	
40.	Danny Espares	April 1999	
41.	Salvador Tonloc	January 8, 1998	
42.	Rolando Evangelista	March 15, 1998	
43.	Ricky M. Francisco	September 28, 1991	
44.	Eduardo Alegria	May 2001	
45.	Salvador Santos	September 22, 2000	
46.	Greg Bisonia	March 28, 1993	
47.	Rufo Carbillo	March 28, 1993	
48.	Marvin Montero	1997	January 2001
49.	Danilo Bessiri	1997	2002
50.	Allan Caballero	1997	2002

51.	Orlando Limos	1997	July 2001
52.	Edgardo Biclar	1997	July 2001
53.	Mandy Mamalatco	1989	2002
54.	Alfred Gajo	1998	July 2001
55.	Eric Castrence	1988	2002
56.	Anthony Molina	1997	2002
57.	Jaime Salin		
58.	Roy Silva	1997	2002
59.	Danilo V. Begorie	1994	January 2001
60.	Peping Celisana	1999	July 2001
61.	Eric Ronda	1998	July 2001
62.	Rufo Carbanillo	1998	July 2001
63.	Rowel Batta	1999	July 2001
64.	Ricardo Tolentino	1997	July 2001
65.	Arnel Ardinez	1998	July 2001
66.	Ferdinand P. Arandia	1998	1999
67.	Romeo R. Garbo	1998	2000
68.	Antonio Rota	1998	July 2001
69.	Reynielande Quintanilla	February 28, 1998	2002
70.	Joselito Hilario	1998	2002
71.	Jimmy Campana	August 15, 1998	August 2001
72.	Danilo Lido-An	September 8, 1998	
73.	Emerson Peñaflor	August 8, 1998	
74.	Cesar Pabalinas		
75.	Jonathan Melchor	November 1998	
76.	Alex David	1998	
77.	Eutiquio Alcala	December 1999	
78.	Michael Carandang	June 2000	
79.	Eduardo Nanuel	October 1999	
80.	Ramon Evangelista	February 15, 1998	
81.	Ruben Mendoza	1999	July 2001
82.	Ernesto A. Mendoza	1998	July 2001
83.	Ricky Ramos	1999	July 2001
84.	Roberto Novella	1998	July 2001
85.	Ruben Conde	1998	July 2001
86.	Ramon Evangelista	1997	July 2001
87.	Danilo Polistico	1999	July 2001
88.	Domingo Mendoza	1999	July 2001
89.	Fernando San Gabriel	1999	July 2001
90.	Domingo Roto	1994	July 2001

Sometime in 2000, petitioner was constrained to slow down and suspend most of the works on the SJPP project due to lack of funds of the National Housing Authority. Thus, the workers were informed that many of them [would] be laid off and the rest would be reassigned to other projects. Juan Villaber, Terso Garay, Rowell Batta, Pastor Pantig, Rafael Villa, and Melvin Garay were laid off. While on the other hand, Felix Martos, Ariel Dominguez, Greg Bisonia, Allan Caballera, Orlando Limos, Mandy Mamalateo, Eric Castrence, Anthony Molina, and Roy Silva were among those who were retained and were issued new appointment papers to their respective assignments, indicating therein that they are project employees. However, they refused to sign the appointment papers as project employees and subsequently refused to continue to work.

On different dates, three (3) Complaints for Illegal Dismissal and for money claims were filed before the NLRC against petitioner and Jose Acuzar, by private respondents who claimed to be the former employees of petitioner, to wit:

1. Complaint dated March 11, 2002, entitled "*Felix Martos, et al. vs. NSJBI*," docketed as NLRC-NCR Case No. 03-01639-2002;

2. Complaint dated July 9, 2002, entitled "*Jimmy Campana, et al. vs. NSJBI*," docketed as NLRC-NCR Case No. 07-04969-2002;

3. Complaint dated July 4, 2002, entitled "*Greg Bisonia, et al. vs. NSJBI*," docketed as NLRC-NCR Case No. 07-02888-2002.

Petitioner denies that private respondents were illegally dismissed, and alleged that they were project employees, whose employments were automatically terminated upon completion of the project for which they were hired. On the other hand, private respondents claim that petitioner hired them as regular employees, continuously and without interruption, until their dismissal on February 28, 2002.

Subsequently, the three Complaints were consolidated and assigned to Labor Arbiter Facundo Leda.[7]

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[7] *Id.* at 68-72.

Ruling of the Labor Arbiter

As earlier stated, on May 23, 2003, the LA handed down a decision declaring, among others, that petitioner Felix Martos *(Martos)* was illegally dismissed and entitled to separation pay, backwages and other monetary benefits; and dismissing, without prejudice, the complaints/claims of the other complainants *(petitioners)*.

Ruling of The NLRC

Both parties appealed the LA decision to the NLRC. Petitioners appealed that part which dismissed all the complaints, without prejudice, except that of Martos. On the other hand, New San Jose Builders, Inc. *(respondent)* appealed that part which held that Martos was its regular employee and that he was illegally dismissed.

On July 30, 2008, the NLRC resolved the appeal by dismissing the one filed by respondent and partially granting that of the other petitioners. The dispositive portion of the NLRC decision reads as follows:

> WHEREFORE, premises considered, respondent's appeal is DISMISSED for lack of merit. The appeal of the complainants is, however, PARTIALLY GRANTED by modifying the 23 May 2003 Decision of the Labor Arbiter Facundo L. Leda, in that, respondents are ordered to reinstate all the complainants to their former positions, without loss of seniority rights and with full backwages, counted from the time their compensation was withheld from them until actual reinstatement.
>
> Respondents are likewise ordered to pay complainants their salary differentials, service incentive leave pay, and 13th month pay, using, as basis, the computation made on the claims of complainant Felix Martos.
>
> In all other aspects, the Decision is AFFIRMED.
>
> SO ORDERED.[8]

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[8] *Id.* at 132.

Ruling Of The CA

After the denial of its motion for reconsideration, respondent filed before the CA a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, as amended, raising the following issues:

I) The public respondent has committed grave abuse of discretion in holding that the private respondents were regular employees and, thus, have been illegally dismissed.

II) The public respondent has committed grave abuse of discretion in reviving the complaints of the other private respondents despite their failure to verify the same.

III) The public respondent has committed grave abuse of discretion when it upheld the findings of the Labor Arbiter granting relief in favor of those supposed complainants who did not even render service to the petitioner and, hence, are not on its payroll.

On July 31, 2009, the CA rendered a decision *reversing* and *setting aside* the July 30, 2008 Decision and the October 28, 2008 Resolution of the NLRC and *reinstating* the May 23, 2003 Decision of the LA. The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the present petition is hereby GRANTED. Accordingly, the assailed Resolution dated October 28, 2008 of public respondent National Labor Relations Commission is REVERSED and SET ASIDE, and the Decision dated May 23, 2003 of Labor Arbiter Facundo L. Leda, is hereby ordered reinstated.

SO ORDERED.[9]

The CA explained that the NLRC committed grave abuse of discretion in reviving the complaints of petitioners despite their failure to verify the same. Out of the 102 complainants, only Martos verified the position paper and his counsel never offered any explanation for his failure to secure the verification of the others. The CA also held that the NLRC gravely abused its

[9] *Id.* at 83.

discretion when it took cognizance of petitioners' appeal because Rule 41, Section 1(h) of the 1997 Rules of Civil Procedure, as amended, which is suppletory, provides that no appeal may be taken from an order dismissing an action without prejudice.

Nevertheless, the CA stated that the factual circumstances of Martos' employment and his dismissal from work could not equally apply to petitioners because they were not similarly situated. The NLRC did not even bother to look at the evidence on record and inappropriately granted monetary awards to petitioners who had either denied having filed a case or withdrawn the case against respondent. According to the CA, the position papers should have covered only those claims and causes of action raised in the complaint excluding those that might have been amicably settled.

With respect to Martos, the CA ruled that he was a regular employee of respondent and his termination was illegal. It explained that Martos should have been considered a regular employee because there was no indication that he was merely a project employee when he was hired. To show otherwise, respondent should have presented his employment contract for the alleged specific project and the successive employment contracts for the different projects or phases for which he was hired. In the absence of such document, he could not be considered such an employee because his work was necessary and desirable to the respondent's usual business and that he was not required to sign any employment contract fixing a definite period or duration of his engagement. Thus, Martos already attained the status of a regular employee. Moreover, the CA noted that respondent did not report the termination of Martos' supposed project employment to the Department of Labor and Employment (DOLE), as required under Department Order No. 19.

Being a regular employee, the CA concluded that he was constructively dismissed when he was asked to sign a new appointment paper indicating therein that he was a project employee and that his appointment would be co-terminus with the project.

Not in conformity with the CA decision, petitioners filed this petition anchored on the following

ASSIGNMENT OF ERRORS

A

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS AND THE LABOR ARBITER BELOW GRAVELY ERRED IN DISMISSING THE COMPLAINTS OF THE NINETY NINE (99) PETITIONERS DUE TO FAILURE OF THE LATTER TO VERIFY THEIR POSITION PAPER WHEN, OBVIOUSLY, SUCH TECHNICALITY SHOULD NOT HAVE BEEN RESORTED TO BY THEM AS IT WILL DEPRIVE THESE PETITIONERS OF THEIR PROPERTY RIGHT TO WORK.

B

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS AND THE LABOR ARBITER BELOW GRAVELY ERRED IN NOT ORDERING THE REINSTATEMENT OF PETITIONER MARTOS AND THE OTHER 99 PETITIONERS WHEN, OBVIOUSLY, AND AS FOUND BY THEM, THE DISMISSAL OF MARTOS IS ILLEGAL WHICH WOULD WARRANT HIS REINSTATEMENT AND THE GRANT TO HIM OF FULL BACKWAGES AND OTHER EMPLOYEES' BENEFITS.

C

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT ORDERING THE RESPONDENTS TO PAY THE PETITIONERS ACTUAL, MORAL AND EXEMPLARY DAMAGES.

Position of Petitioners

Petitioners basically argue that the CA was wrong in affirming the dismissal of their complaints due to their failure to verify their position paper. They insist that the lack of verification of a position paper is only a formal and not a jurisdictional defect. Hence, it was not fatal to their cause of action considering that the CA could have required them to submit the needed verification.

The CA overlooked the fact that all of them verified their complaints by declaring under oath relevant and material facts such as their names, addresses, employment status, salary rates, facts, causes of action, and reliefs common to all of them. The information supplied in their complaints is sufficient to prove their status of employment and entitlement of their monetary claims. In the adjudication of labor cases, the adherence to stringent technical rules may be relaxed in the interest of the working man. Moreover, respondent failed to adduce evidence of payment of their money claims.

Finally, petitioners argue that they and Martos were similarly situated. The award of separation pay instead of reinstatement to an illegally dismissed employee was improper because the strained relations between the parties was not clearly established. Moreover, they are entitled to actual, moral and exemplary damages for respondent's illegal act of violating labor standard laws, the minimum wage law and the 13th month pay law.

Position of Respondents

On the other hand, respondent principally counters that the CA and the LA 1) did not err in dismissing the complaints of the 88 petitioners who failed to verify their position paper, without prejudice; 2) correctly ruled that Martos and the 88 petitioners concerned were not entitled to reinstatement; and 3) correctly ruled that petitioners were not entitled to an award of actual, moral and exemplary damages.

Petitioners have the propensity to disregard the mandatory provisions of the 2005 Revised Rules of Procedure of the NLRC *(NLRC Rules)* which require the parties to submit simultaneously their verified position papers with supporting documents and affidavits. In the proceedings before the LA, the complaints of the 99 workers were dismissed because they failed to verify or affix their signatures to the position paper filed with the LA.

While it is true that the NLRC Rules must be liberally construed and that the NLRC is not bound by the technicalities of law and procedure, it should not be the first to arbitrarily disregard specific provisions of the rules which are precisely intended to

assist the parties in obtaining just, expeditious and inexpensive settlement of labor disputes. It was only Felix Martos who verified their position paper and their memorandum of appeal. It was only he alone who was vigilant in looking after his interest and enforcing his rights. Petitioners should be considered to have waived their rights and interests in the case for their consistent neglect and passive attitude.

Moreover, Martos was never authorized by any of his fellow complainants through a special power of attorney or other document in the proceedings to represent them before the LA and the NLRC. His acts and verifications were made only in his own personal capacity and did not bind or benefit petitioners. There is only one logical reason why a majority of them failed to verify their position paper, their appeal and now their petition: they were not in any way employees of the respondent. They were total strangers to the respondent. They even refused to identify themselves during the proceedings by their failure to appear thereat. Hence, it is too late for the others to participate in the fruits, if any, of this litigation.

Finally, the reinstatement being sought by Martos and the others was no longer practicable because of the strained relation between the parties. Petitioners can no longer question this fact. This issue was never raised or taken up on appeal before the NLRC. It was only when the petitioners lost in the appeal in the CA that they first raised the issue of strained relation. Moreover, no proof of actual damages was presented by the petitioners. There is no clear and convincing evidence on record showing that the termination of an employee's services had been carried out in an arbitrary, capricious or malicious manner.

The Court's Ruling

The Court is basically asked to resolve two (2) issues: 1] whether or not the CA was correct in dismissing the complaints filed by those petitioners who failed to verify their position papers; and 2] whether or not Martos should be reinstated.

Regarding the first issue, the Court agrees with the respondent.

Sections 4 and 5 of Rule 7 of the 1997 Rules of Civil Procedure provide:

SEC. 4. Verification. – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleadings and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief" or lacks a proper verification, shall be treated as an unsigned pleading.

SEC. 5. Certification against forum shopping. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the **dismissal of the case without prejudice**, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. x x x. [Emphases supplied]

The verification requirement is significant, as it is intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith.[10] Verification is deemed substantially complied with when, as in this case, one who has ample knowledge to swear to the truth of the allegations in the complaint or petition **signs** the verification, and when matters alleged in the petition have been made in good faith or are true and correct.[11]

The absence of a proper verification is cause to treat the pleading as unsigned and dismissible.[12]

The lone signature of Martos would have been sufficient if he was authorized by his co-petitioners to sign for them. Unfortunately, petitioners failed to adduce proof that he was so authorized. The complaints of the other parties in the case of *Nellie Vda. De Formoso v. PNB*[13] suffered a similar fate. Thus:

> Admittedly, among the seven (7) petitioners mentioned, only Malcaba signed the verification and certification of non-forum shopping in the subject petition. There was no proof that Malcaba was authorized by his co-petitioners to sign for them. There was no special power of attorney shown by the Formosos authorizing Malcaba as their attorney-in-fact in filing a petition for review on *certiorari*. Neither could the petitioners give at least a reasonable explanation as to why only he signed the verification and certification of non-forum shopping.

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[10] *Christine Chua v. Jorge Torres & Antonio Beltran*, 505 Phil. 455, 461 (2005).

[11] *Georgia T. Estel v. Recaredo P. Diego, Sr.*, G.R. No. 174082, January 16, 2012, 663 SCRA 17, 27, citing *Nellie Vda. de Formoso v. Philippine National Bank*, G.R. No. 154704, June 1, 2011, 650 SCRA 35.

[12] *Christine Chua v. Jorge Torres & Antonio Beltran*, *supra* note 10.

[13] G.R. No. 154704, June 1, 2011, 650 SCRA 35, 45.

The liberal construction of the rules may be invoked in situations where there may be some excusable formal deficiency or error in a pleading, provided that the same does not subvert the essence of the proceeding and it at least connotes a reasonable attempt at compliance with the rules. Besides, fundamental is the precept that rules of procedure are meant not to thwart but to facilitate the attainment of justice; hence, their rigid application may, for deserving reasons, be subordinated by the need for an apt dispensation of substantial justice in the normal course. They ought to be relaxed when there is subsequent or even substantial compliance, consistent with the policy of liberality espoused by Rule 1, Section 6.[14] Not being inflexible, the rule on verification allows for such liberality.[15]

Considering that the dismissal of the other complaints by the LA was without prejudice, the other complainants should have taken the necessary steps to rectify their procedural mistake after the decision of the LA was rendered. They should have corrected this procedural flaw by immediately filing another complaint with the correct verification this time. Surprisingly, they did not even attempt to correct this technical blunder. Worse, they committed the same procedural error when they filed their appeal[16] with the NLRC.

Under the circumstances, the Court agrees with the CA that the dismissal of the other complaints were brought about by the own negligence and passive attitude of the complainants themselves. In *Formoso*, the Court further wrote:

> The petitioners were given a chance by the CA to comply with the Rules when they filed their motion for reconsideration, but they refused to do so. Despite the opportunity given to them to make all of them sign the verification and certification of non-forum shopping,

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[14] SEC. 6. Construction. — These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

[15] *Edito Pagadora v. Julieta S. Ilao*, G.R. No. 165769, December 12, 2011, 662 SCRA 14, 25.

[16] *Rollo*, pp. 263-281.

they still failed to comply. Thus, the CA was constrained to deny their motion and affirm the earlier resolution.

The Court can only do so much for them.

Most probably, as the list[17] submitted is not complete with the information as to when each started and when each was dismissed there must be some truth in the claim of respondent that those complainants who failed to affix their signatures in the verification were either not employees of respondent at all or they simply refused to prosecute their complaints. In its position paper,[18] respondent alleged that, aside from the four (4) complainants who withdrew their complaints, only 17 out of the more or less 104 complainants appeared on its records as its former project employees or at least known by it to have worked in one of its construction projects. From the sworn statements executed by Felix Yortas,[19] Marvin Batta,[20] Lito Bantillo,[21] Gavino Felix Nicolas,[22] and Romeo Pangacian Martos,[23] they already withdrew their complaints against respondent. Their status and cause of action not being clear and proven, it is just not right that these complainants be considered as similarly situated as Martos and entitled to the same benefits.

As to Martos, the Court agrees that the reinstatement being sought by him was no longer practicable because of strained relation between the parties. Indeed, he can no longer question this fact. This issue was never raised or taken up on appeal before the NLRC. It was only after he lost the appeal in the CA that he raised it.

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[17] *Id.* at 139-140-147.

[18] *Id.* at 148-174.

[19] *Id.* at 236.

[20] *Id.* at 237.

[21] *Id.* at 238.

[22] *Id.* at 239.

[23] *Id.* at 240.

Thus, the Court deems it fair to award separation pay in lieu of reinstatement. In addition to his separation pay, Martos is also entitled to payment of full backwages, 13th month pay, service incentive leave pay, and attorney's fees.

The accepted doctrine is that separation pay may avail in lieu of reinstatement if reinstatement is no longer practical or in the best interest of the parties. Separation pay in lieu of reinstatement may likewise be awarded if the employee decides not to be reinstated.

Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.[24]

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Leonardo-de Castro,[*] *Brion,*[**] and *Peralta, JJ.,* concur.

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[24] *Golden Ace Builders and Arnold U. Azul v. Jose A. Talde*, G.R. No. 187200, May 5, 2010, 620 SCRA 283, 289-290.

[*] Designated acting member, per Special Order No. 1343, dated October 9, 2012.

[**] Designated additional member, per Special Order No. 1332, dated October 9, 2012.

THIRD DIVISION

[G.R. No. 192799. October 24, 2012]

ROLEX RODRIGUEZ *y* OLAYRES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and ALLIED DOMECQ SPIRITS AND WINES, represented by ALLIED DOMECQ PHILS., INC.,** *respondents.*

SYLLABUS

REMEDIAL LAW; CRIMINAL PROCEDURE; FRESH PERIOD RULE; APPLICATION THEREOF IN CRIMINAL CASE, SUSTAINED; CASE AT BAR.— It is, thus, now settled that the fresh period rule is applicable in criminal cases, like the instant case, where the accused files from a judgment of conviction a motion for new trial or reconsideration which is denied by the trial court. The accused will have a fresh 15-day period counted from receipt of such denial within which to file his or her notice of appeal. Verily, the application of the statutory privilege of appeal must not prejudice an accused who must be accorded the same statutory privilege as litigants in civil cases who are granted a fresh 15-day period within which to file an appeal from receipt of the denial of their motion for new trial or reconsideration. It is indeed absurd and incongruous that an appeal from a conviction in a criminal case is more stringent than those of civil cases. If the Court has accorded litigants in civil cases—under the spirit and rationale in *Neypes*—greater leeway in filing an appeal through the "fresh period rule," with more reason that it should equally grant the same to criminal cases which involve the accused's "sacrosanct right to liberty, which is protected by the Constitution, as no person should be deprived of life, liberty, or property without due process of law." Consequently, in light of the foregoing, we hold that petitioner seasonably filed his notice of appeal on February 2, 2009, within the fresh period of 15 days, counted from January 19, 2009, the date of receipt of the RTC Order denying his motion for reconsideration.

APPEARANCES OF COUNSEL

Britanico Britanico & Associates Law Offices for petitioner.
The Solicitor General for public respondent.
Vergara Mamagun Jamero Gonzales Law Office for private respondents.

R E S O L U T I O N

VELASCO, JR., *J.*:

In this Petition for Review on *Certiorari*, petitioner assails the March 2, 2010 Decision[1] and June 29, 2010 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 108789, which affirmed the April 14, 2009 Order[3] of the Regional Trial Court (RTC), Branch 24 in Manila, denying due course to petitioner's Notice of Appeal in Criminal Case No. 02-206499.

The RTC convicted petitioner for Unfair Competition penalized under Sections 155, 168, 160 in relation to Sec. 170 of Republic Act No. 8293 or the Intellectual Property Code of the Philippines, and sentenced him to serve imprisonment of two (2) years, to pay a fine of PhP 50,000 and actual damages of PhP 75,000.

The pertinent factual antecedents are undisputed.

After promulgation of the Decision in Criminal Case No. 02-206499 convicting him for unfair competition, petitioner filed a motion for reconsideration before the RTC on the 15th or the last day of the reglementary period to appeal. Fourteen (14) days after receipt of the RTC Order denying his motion for reconsideration, petitioner filed his Notice of Appeal.[4] Thus, the denial of his Notice of Appeal on the ground of its being

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[1] *Rollo*, pp. 69-81. Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Japar B. Dimaampao and Francisco P. Acosta.

[2] *Id.* at 82-83.

[3] *Id.* at 62-63. Penned by Judge Antonio M. Eugenio, Jr.

[4] *Id.* at 56-59, dated January 29, 2009.

filed out of time under Sec. 6, Rule 122, Revised Rules of Criminal Procedure. Before the RTC, the CA and now here, petitioner was unwavering in his assertion of the applicability of the "fresh period rule" as laid down in *Neypes v. Court of Appeals*.[5]

The rationale of the "fresh period rule" is:

> To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.
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> Henceforth, this "fresh period rule" shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; Rule 42 on petitions for review from the Regional Trial Courts to the Court of Appeals; Rule 43 on appeals from quasi-judicial agencies to the Court of Appeals and Rule 45 governing appeals by *certiorari* to the Supreme Court. The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution.[6]

Neypes elucidates that the "fresh period rule" applies to appeals under Rule 40 (appeals from the Municipal Trial Courts to the RTC) and Rule 41 (appeals from the RTCs to the CA or this Court); Rule 42 (appeals from the RTCs to the CA); Rule 43 (appeals from quasi-judicial agencies to the CA); and Rule 45 (appeals by *certiorari* to this Court).[7] A scrutiny of the said rules, however, reveals that the "fresh period rule" enunciated in *Neypes* need NOT apply to Rules 42, 43 and 45 as there is no interruption in the 15-day reglementary period to appeal. It is explicit in Rules 42, 43 and 45 that the appellant

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[5] G.R. No. 241524, April 14, 2005, 469 SCRA 633.

[6] *Id.* at 644-645.

[7] See *Panolino v. Tajala*, G.R. No. 183616, June 29, 2010, 622 SCRA 309, 315.

or petitioner is accorded a fresh period of 15 days from the notice of the decision, award, judgment, final order or resolution or **of the denial of petitioner's motion for new trial or reconsideration** filed.[8]

The pivotal question is whether the "fresh period rule" is applicable to appeals from conviction in criminal cases governed by Sec. 6 of Rule 122 which pertinently provides:

> Sec. 6. *When appeal to be taken*. – An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from. This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion has been served upon the accused or his counsel at which time the **balance of the period begins to run**. (Emphasis supplied.)

While *Neypes* was silent on the applicability of the "fresh period rule" to criminal cases, the issue was squarely addressed in *Yu v. Tatad*,[9] which expanded the scope of the doctrine in *Neypes* to criminal cases in appeals of conviction under Sec. 6, Rule 122 of the Revised Rules of Criminal Procedure. Thus, the Court held in *Yu*:

> While *Neypes* involved the period to appeal in civil cases, the **Court's pronouncement of a "fresh period" to appeal should equally apply to the period for appeal in criminal cases under Section 6 of Rule 122 of the Revised Rules of Criminal Procedure** x x x.[10]
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> x x x x x x x x x
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> Were we to strictly interpret the "fresh period rule" in *Neypes* and make it applicable only to the period to appeal in civil cases, we shall effectively foster and encourage an absurd situation where a litigant in a civil case will have a better right to appeal than an accused in a criminal case—a situation that gives undue favor to civil litigants and unjustly discriminates against the accused-appellants. It suggests

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[8] Sec. 1 of Rule 42; Sec. 4 of Rule 43; and Sec. 2 of Rule 45.

[9] G.R. No. 170979, February 9, 2011, 642 SCRA 421.

[10] *Id.* at 428.

a *double standard of treatment* when we favor a situation where property interests are at stake, as against a situation where liberty stands to be prejudiced. We must emphatically reject this double and unequal standard for being contrary to reason. Over time, courts have recognized with almost pedantic adherence that what is contrary to reason is not allowed in law—*Quod est inconveniens, aut contra rationem non permissum est in lege.*

Thus, we agree with the OSG's view that if a delay in the filing of an appeal may be excused on grounds of substantial justice in civil actions, with more reason should the same treatment be accorded to the accused in seeking the review on appeal of a criminal case where no less than the liberty of the accused is at stake. The concern and the protection we must extend to matters of liberty cannot be overstated.[11] (Emphasis supplied.)

It is, thus, now settled that the fresh period rule is applicable in criminal cases, like the instant case, where the accused files from a judgment of conviction a motion for new trial or reconsideration which is denied by the trial court. The accused will have a fresh 15-day period counted from receipt of such denial within which to file his or her notice of appeal.

Verily, the application of the statutory privilege of appeal must not prejudice an accused who must be accorded the same statutory privilege as litigants in civil cases who are granted a fresh 15-day period within which to file an appeal from receipt of the denial of their motion for new trial or reconsideration. It is indeed absurd and incongruous that an appeal from a conviction in a criminal case is more stringent than those of civil cases. If the Court has accorded litigants in civil cases—under the spirit and rationale in *Neypes*—greater leeway in filing an appeal through the "fresh period rule," with more reason that it should equally grant the same to criminal cases which involve the accused's "sacrosanct right to liberty, which is protected by the Constitution, as no person should be deprived of life, liberty, or property without due process of law."[12]

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[11] *Id.* at 430.

[12] CONSTITUTION, Art. III, Sec. 1; *Macasasa v. Sicad*, G.R. No. 146547, June 20, 2006, 491 SCRA 368, 383.

Consequently, in light of the foregoing, we hold that petitioner seasonably filed his notice of appeal on February 2, 2009, within the fresh period of 15 days, counted from January 19, 2009, the date of receipt of the RTC Order denying his motion for reconsideration.

WHEREFORE, the instant petition is **GRANTED**. Accordingly, the April 14, 2009 Order of the RTC, Branch 24 in Manila and the assailed March 2, 2010 Decision and June 29, 2010 Resolution of the CA in CA-G.R. SP No. 108789 are **REVERSED** and **SET ASIDE**. The Notice of Appeal of petitioner Rolex Rodriguez *y* Olayres dated January 29, 2009 is hereby **GIVEN DUE COURSE**. Let the case records be elevated by the RTC to the CA for the review of petitioner's appeal with dispatch. No costs.

SO ORDERED.

Leonardo-de Castro,[*] *Peralta, Abad,* and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 194758. October 24, 2012]

RUBEN D. ANDRADA, *petitioner, vs.* **AGEMAR MANNING AGENCY, INC., and/or SONNET SHIPPING LTD./ MALTA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF QUASI-JUDICIAL BODIES LIKE THE NLRC (NATIONAL LABOR RELATIONS COMMISSION); GENERALLY

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[*] Acting member per Special Order No. 1343 dated October 9, 2012.

CONCLUSIVE UPON THE SUPREME COURT ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS; EXCEPTION; PRESENT IN CASE AT BAR.— Elementary is the principle that this Court is not a trier of facts and this doctrine applies with greater force in labor cases. Questions of fact are for the labor tribunals to resolve. Only errors of law are generally reviewed in petitions for review on *certiorari* criticizing decisions of the CA. Moreover, findings of fact of quasi-judicial bodies like the NLRC, as affirmed by the CA, are generally conclusive on this Court. In exceptional cases, however, the Court may be urged to probe and resolve factual issues when there is insufficient or insubstantial evidence to support the findings of the tribunal or the court below, or when too much is concluded, inferred or deduced from the bare or incomplete facts submitted by the parties or, where the LA and the NLRC came up with conflicting positions. In the case at bench, considering the conflicting findings of the LA, on one hand, and the NLRC and the CA, on the other, this Court is impelled to resolve the factual issues along with the legal ones.

2. LABOR AND SOCIAL LEGISLATION; COMPENSATION AND DISABILITY BENEFITS; SECTION 20 OF THE POEA-SEC (PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION – STANDARD EMPLOYMENT CONTRACT) LAID DOWN THE PROCEDURE FOR CLAIMING SAID BENEFITS; EFFECT OF FAILURE TO OBSERVE; CASE AT BAR.— The issue of whether the petitioner can legally demand and claim disability benefits from the respondents for an illness suffered is best addressed by the provisions of the POEA-SEC which incorporated the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels. x x x Jurisprudence is replete with pronouncements that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. It is his findings and evaluations which should form the basis of the seafarer's disability claim. His assessment, however, is not automatically final, binding or conclusive on the claimant, the labor tribunal or the courts, as its inherent merits would still have to be weighed and duly

considered. The seafarer may dispute such assessment by seasonably exercising his prerogative to seek a second opinion and consult a doctor of his choice. In case of disagreement between the findings of the company-designated physician and the seafarer's doctor of choice, the employer and the seaman may agree jointly to refer the latter to a third doctor whose decision shall be final and binding on them. The Court notes that the dispute regarding Andrada's medical condition could have been easily clarified and resolved had the parties observed and stayed true to the procedure laid down in Section 20 (B), par. 3 of the POEA-SEC. Considering that the parties did not jointly resort to seek the opinion of a third physician in the determination and assessment of Andrada's disability or the absence of it, the credibility of the findings of their respective doctors was properly evaluated by the NLRC on the basis of their inherent merits.

3. ID.; ID.; AS A RULE, WHOEVER CLAIMS ENTITLEMENT TO THE BENEFITS PROVIDED BY LAW SHOULD ESTABLISH HIS OR HER RIGHT THERETO BY SUBSTANTIAL EVIDENCE; NOT PRESENT IN CASE AT BAR.— True, strict rules on evidence are not applicable in claims for compensation and disability benefits. Probability and not ultimate degree of certainty is the test of proof in compensation proceedings. It cannot be gainsaid, however, that award of compensation and disability benefits cannot rest on speculations, presumptions or conjectures. In the absence of adequate tests and reasonable findings to support the same, Dr.Vicaldo's assessment should not be taken at face value. The oft-repeated rule is that whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence. In labor cases, as in other administrative proceedings, substantial evidence is required and it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, often described as more than a scintilla. The *onus probandi* fell on Andrada to establish his claim for disability benefits by the requisite quantum of evidence to serve as basis for the grant of relief. In this task, he failed. x x x The Court is not unaware of the principle that, consistent with the purpose underlying the formulation of the POEA-SEC, its provisions must be applied fairly, reasonably and liberally in favor of the seafarers, for it is only then that its beneficent

provisions can be carried into effect. Said exhortation, however, cannot be taken to sanction award of disability benefits anchored on flimsy evidence. There is nothing on record that would justify a compensation on top of the monetary aid and assistance already extended to Andrada by respondents Agemar Manning and Sonnet Shipping.

APPEARANCES OF COUNSEL

Valmores & Valmores Law Office for petitioner.
Ortega Del Castillo Bacorro Odulio Calma & Carbonell for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the May 28, 2010 Decision[1] of the Court of Appeals (*CA*) and its December 9, 2010 Resolution[2] in CA-G.R. SP No. 109853 entitled *"Ruben D. Andrada v. National Labor Relations Commission, Agemar Manning Agency, Inc., and/or Sonnet Shipping Ltd./Malta."*

The Facts

On June 23, 2003, petitioner Ruben D. Andrada *(Andrada)* was employed by respondent Agemar Manning Agency, Inc. *(Agemar Manning)*, for and in behalf of its foreign principal, respondent Sonnet Shipping Ltd./Malta (*Sonnet Shipping*), as chief cook steward on board M/T Superlady for a contract period of twelve (12) months which was, upon his request, extended for another five (5) months. Andrada's basic monthly salary was US$650.00 plus US$65.00 tanker allowance on a 48-hour work week, with a fixed overtime pay of US$195.00 for 105

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[1] Penned by Associate Justice Normandie B. Pizarro with Associate Justice Amelita G. Tolentino and Associate Justice Ruben C. Ayson, concurring; *rollo* pp. 259-275.

[2] *Id.* at 291-292.

hours per month and vacation leave with pay of four days a month. Andrada finished five (5) contracts of employment with the respondents from December 1994 to April 2003 on board their other vessels. Prior to his last embarkation, Andrada underwent a pre-employment medical examination (PEME) and was found fit for sea service. He boarded his vessel on June 24, 2003.

Sometime in April 2004, while the vessel was navigating in high seas, Andrada experienced severe abdominal pain while carrying heavy food provisions which was part of his job. Thinking that it would not lead to any serious consequences, he just let it pass. The abdominal pain, however, recurred during the latter part of his extended contract. On October 10, 2004, he was referred to the Island Healthy Center in Texas, U.S.A., where he was diagnosed with umbilical hernia. Andrada was advised to undergo surgery and to use a girdle whenever he lifted heavy objects. Andrada requested for a medical sign-off and was repatriated to the Philippines on December 8, 2004 so he could continue his treatment and medication as per advice of a doctor in Texas, U.S.A.

On the day following his arrival, Andrada immediately reported to the Agemar Manning, which referred him to YGEIA Medical Clinic for a general check-up. In a letter, dated December 14, 2004, Dr. Roberto M. De Leon *(Dr. De Leon)* recommended that Andrada should undergo surgical operation of his umbilical hernia and multiple gallbladder stones at the soonest time possible. On January 25, 2005, the medical procedures called umbilical herniorrhapy and laparoscopic cholecystectomy were performed on him at the Philippine General Hospital where he was confined for five (5) days, from January 25 to 29, 2005, under the care of Dr. Jose Macario V. Faylona *(Dr. Faylona).*

On February 8, 2005, as he could still feel the symptoms of his illness, Andrada consulted Dr. Efren R. Vicaldo *(Dr. Vicaldo)* of the Philippine Heart Center. In his medical certificate, Dr. Vicaldo came out with the following prognosis: Hypertension, essential; Gall bladder stone; S/P laparascopic cholecystectomy;

Umbilical Hernia, S/P repair; Impediment Grade VIII (33.59%). Dr. Vicaldo opined that Andrada's illness was considered work aggravated/related. He concluded that Andrada was unfit to resume work as a seaman in any capacity and could not be expected to land a gainful employment due to his medical condition.[3]

Record bears out that Dr. Faylona, through a letter, dated March 14, 2005, certified that Andrada was "fully recovered from the surgery and is now fit to work."[4] On March 21, 2005 or almost two months after his surgery, Andrada submitted himself to a medical check-up at the YGEIA Medical Clinic. In the progress report, dated March 22, 2005, Dr. Maria Cristina L. Ramos *(Dr. Ramos)*, the medical director of YGEIA Medical Clinic, declared Andrada as fit to work effective March 22, 2005.[5] On April 21, 2005, Andrada signed the Deed of Release, Waiver and Quitclaim wherein he acknowledged receipt of the amount of $3,501.53 or its peso equivalent of ₱192,357.41.[6] The said deed stated that Andrada was thereby releasing and discharging the respondents from all actions, complaints and demands on account or arising out of his employment as a seaman on board M/T Superlady.[7]

Notwithstanding, Andrada demanded payment of disability and illness allowance/benefits from the respondents pursuant to the Philippine Overseas Employment Administration *(POEA)* Standard Employment Contract *(POEA-SEC)* on the basis of the findings/recommendations of Dr. Vicaldo. His claims were refused.

On May 26, 2005, Andrada filed a complaint[8] for the recovery of disability benefits, sickness allowance, reimbursement of

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[3] *Id.* at 11-16.

[4] *Id.* at 222.

[5] *Id.* at 222-223.

[6] *Id.* at 223.

[7] *Id.* at 224.

[8] *Id.* at 44-45.

medical expenses, damages, and attorney's fees against the respondents. The parties were required to submit their respective position papers due to their failure to amicably settle their disputes during the mandatory conciliation conference.

On January 9, 2007, Labor Arbiter Ramon Valentin C. Reyes *(LA)* rendered judgment and ruled that Andrada was entitled to disability benefits. The LA opined that his inability to perform his work for more than 120 days constituted permanent total disability. He gave scant consideration on the two certifications separately issued by Dr. Faylona and Dr. Ramos which he considered self-serving and biased in favor of the respondents and certainly could not be considered independent. The LA said that his umbilical hernia was contracted during his employment with the respondents for the last ten (10) years because his job entailed the lifting of heavy food provisions. He added that considering this long stint with the respondents, Andrada's non-redeployment put in doubt the respondents' claim that he was indeed fit to work. The dispositive portion of said judgment reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the respondents Agemar Manning Agency, Inc. and/or Sonnet Shipping Ltd./Malta to pay complainant Ruben D. Andrada the amount of THIRTY TWO THOUSAND FOUR HUNDRED NINETEEN US DOLLARS & 20/100 (US$32,419.20) or its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment representing his disability benefits, sickness wages and attorney's fees.
>
> All other claims are DISMISSED for lack of merit.
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> SO ORDERED.[9]

On appeal, the National Labor Relations Commission *(NLRC)* reversed the judgment of the LA ratiocinating that Andrada's claim for disability benefit was bereft of legal and factual basis in the face of the certificate of fitness to work issued by the company-designated physician. The NLRC said that the findings

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[9] *Id.* at 119.

and assessment of the company-designated physician, who also supervised and monitored Andrada's treatment, should be upheld as the truthful declaration of the latter's medical status at the time of the issuance of the certificate. It was likewise ruled that the execution by Andrada of the Deed of Release, Waiver and Quitclaim effectively negated his claim for disability benefits. Lastly, the NLRC declared that Andrada's non-disclosure of the fact that he was afflicted with umbilical hernia as early as 2002 further precluded him from claiming said disability benefits. The award of sickness wages was also set aside because the same was already paid to Andrada as shown by copies of the corresponding check vouchers issued by the respondents. Thus, the NLRC adjudged:

> WHEREFORE, premises considered, the Decision dated January 7, 2007 is hereby SET ASIDE and a new one entered dismissing the complaint for lack of merit.
>
> SO ORDERED.[10]

Aggrieved, Andrada assailed the NLRC decision via a petition for *certiorari* before the CA ascribing grave abuse of discretion on the part of the NLRC for denying his entitlement for disability benefits and other monetary claims.

On May 28, 2010, the CA rendered its judgment finding that the challenged decision of the NLRC was in accordance with law and prevailing jurisprudence and that no grave abuse of discretion amounting to lack or excess of jurisdiction could be imputed against it for reversing the January 9, 2007 LA decision. The CA disposed the case as follows:

> WHEREFORE, the petition is DISMISSED. The assailed Decision and Resolution of the NLRC are AFFIRMED. Costs against the Petitioner.
>
> SO ORDERED.[11]

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[10] *Id.* at 172.

[11] *Id.* at 274.

Andrada's motion for reconsideration was denied by the CA in its Resolution, dated December 9, 2010. Hence, he filed this petition raising the following

ISSUES

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN DISREGARDING JURISPRUDENCE INTERPRETING THE PROVISIONS OF SECTION 20(B), PARAGRAPH 3 OF THE POEA STANDARD CONTRACT REGARDING THE AUTHORITY OF THE COMPANY-DESIGNATED PHYSICIAN.

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT DID NOT APPLY THE CORRECT LAW AND JURISPRUDENCE ON CLAIMS FOR FULL DISABILITY BENEFITS AND ATTORNEY'S FEES.

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN UPHOLDING THE QUITCLAIM EXECUTED BY PETITIONER AS TO BAR HIS CLAIM FOR DISABILITY BENEFITS.[12]

Arguments

Essentially, Andrada argues that the company-designated physician is not conferred with the sole and exclusive authority to determine whether a seafarer is suffering from disability or whether his sickness is work-related and, hence, his declaration anent the medical condition of the seafarer is not conclusive upon the latter and the courts. He posits that the Court should weigh the inherent merits of the assessment of the company-designated physician and of his independent doctor taking into consideration not only its medical significance but more importantly, his ability to still perform his laborious and strenuous work after the surgery.

Andrada insists that umbilical hernia is an occupational disease and one of its risk factors is the lifting of heavy objects which was part of his job. He claims that he could no longer perform his customary work despite the repair of his umbilical hernia

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

because there was always a risk that his medical condition could recur. He avers that the Deed of Release, Waiver and Quitclaim pertained only to the payment of sickness allowance and not to disability benefits which have yet to be settled. He adds that a deed of release or quitclaim cannot bar an employee from demanding benefits to which he is legally entitled to receive, and any agreement whereby a worker agrees to receive less compensation than what he is entitled to recover is invalid.

By way of Comment,[13] the respondents counter that the errors raised by Andrada involve questions of fact as these would require the examination and determination of the evidentiary weight of the documents submitted by the latter, specifically the medical certificate issued by Dr. Vicaldo and the Deed of Release, Waiver and Quitclaim executed by him. They posit that factual issues may not be passed upon by this Court through a petition for review on *certiorari* under Rule 45 and Andrada did not cite any circumstances that could warrant exemption from this rule.

On the merits, the respondents argue that Andrada's entitlement for disability benefits was negated by the pronouncement of his fitness to work by Dr. Ramos, the company-designated physician, and by Dr. Faylona, the physician who treated him extensively. They stress that the CA was correct in not giving weight on the medical assessment of Andrada's private doctor, Dr. Vicaldo, because the same was not supported by any medical record and was issued after a single medical check-up done merely ten days after his surgery. They assert that Andrada's alleged disability is not compensable because his umbilical hernia was pre-existing. Lastly, they contend that the Deed of Release, Waiver and Quitclaim is valid, and cover all possible claims that Andrada may have against them including the disability benefits.

The Court's Ruling

From a perusal of the arguments of Andrada, it is quite apparent that this petition is raising questions of facts inasmuch as this

[13] *Id.* at 309-324.

Court is being asked to revisit and assess anew the factual findings of the CA and the NLRC. Andrada is fundamentally assailing the findings of the CA and the NLRC that the evidence on record did not support his claim for disability benefits. In effect, he would have the Court sift through, calibrate and re-examine the credibility and probative value of the evidence on record so as to ultimately decide whether or not there is sufficient basis to hold Agemar Manning and Sonnet Shipping accountable for refusing to pay for his disability benefits under the POEA's Revised Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, which is deemed written in his contract of employment. This clearly involves a factual inquiry, the determination of which is the statutory function of the NLRC.[14]

Elementary is the principle that this Court is not a trier of facts and this doctrine applies with greater force in labor cases. Questions of fact are for the labor tribunals to resolve.[15] Only errors of law are generally reviewed in petitions for review on *certiorari* criticizing decisions of the CA. Moreover, findings of fact of quasi-judicial bodies like the NLRC, as affirmed by the CA, are generally conclusive on this Court.[16]

In exceptional cases, however, the Court may be urged to probe and resolve factual issues when there is insufficient or insubstantial evidence to support the findings of the tribunal or the court below, or when too much is concluded, inferred or deduced from the bare or incomplete facts submitted by the parties or, where the LA and the NLRC came up with conflicting positions.[17] In the case at bench, considering the conflicting findings of the LA, on one hand, and the NLRC and the CA, on the other, this Court is impelled to resolve the factual issues

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[14] *CBL Transit, Inc. v. National Labor Relations Commission*, 469 Phil. 363, 371 (2004).

[15] *Alfaro v. Court of Appeals*, 416 Phil. 310, 318 (2001).

[16] *Acevedo v. Advanstar Company, Inc.*, 511 Phil. 279, 287 (2005).

[17] *Nisda v. Sea Serve Maritime Agency*, G.R. No. 179177, July 23, 2009, 593 SCRA 668, 689.

along with the legal ones. The core issue is whether or not Andrada is entitled to disability benefits on account of his medical condition.

The Court rules in the negative.

The issue of whether the petitioner can legally demand and claim disability benefits from the respondents for an illness suffered is best addressed by the provisions of the POEA-SEC which incorporated the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels. Section 20 thereof provides:

Section 20 [B]. *Compensation and Benefits for Injury or Illness*

x x x x x x x x x

2. xxx

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 as he is declared fit or the degree of his disability has been established by the company-designated physician.

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of his permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

Jurisprudence is replete with pronouncements that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment.[18] It is his findings and evaluations which should form the basis of the seafarer's disability claim. His assessment, however, is not automatically final, binding or conclusive on the claimant, the labor tribunal or the courts,[19] as its inherent merits would still have to be weighed and duly considered. The seafarer may dispute such assessment by seasonably exercising his prerogative to seek a second opinion and consult a doctor of his choice.[20] In case of disagreement between the findings of the company-designated physician and the seafarer's doctor of choice, the employer and the seaman may agree jointly to refer the latter to a third doctor whose decision shall be final and binding on them.

The Court notes that the dispute regarding Andrada's medical condition could have been easily clarified and resolved had the parties observed and stayed true to the procedure laid down in Section 20 (B), par. 3 of the POEA-SEC. Considering that the parties did not jointly resort to seek the opinion of a third physician in the determination and assessment of Andrada's disability or the absence of it, the credibility of the findings of their respective doctors was properly evaluated by the NLRC[21] on the basis of their inherent merits.

Andrada based his claim for disability benefits on the medical certificate, dated February 8, 2005, issued by Dr. Vicaldo who

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[18] *Coastal Safeway Marine Services, Inc. v. Esguerra,* G.R. No. 185352, August 10, 2011, 655 SCRA 300, 307-308; *German Marine Agencies, Inc. v. National Labor Relations Commission,* 403 Phil. 572, 588 (2001).

[19] *Maunlad Transport, Inc. v. Manigo, Jr.,* G.R. No. 161416, June 13, 2008, 554 SCRA 446, 457.

[20] *Seagull Maritime Corp. v. Dee,* G.R. No. 165156, April 2, 2007, 520 SCRA 109, 188.

[21] *Magsaysay Maritime Corp. v. Velasquez,* G.R. No. 179802, November 14, 2008, 571 SCRA 239, 249.

assessed his alleged disability as impediment grade VIII (33.59%). Record, however, shows that said medical certification was not supported by such diagnostic tests and/or procedures as would adequately refute the normal results of those administered to Andrada by the physicians at the YGEIA Medical Clinic and by Dr. Faylona at the Philippine General Hospital. Dr. Vicaldo's justification for his assessment of impediment grade VIII was merely anchored on the following general impressions, to wit:

- This patient/seaman is a known case of umbilical hernia. He is also known hypertensive for three years now and is currently on anti-hypertensive medication.
- On routine laboratory exam (abdominal ultrasound), he was noted to have cholecystolithiasis. He underwent laparoscopic cholecystectomy and umbilical herniorrhapy at Philippine General Hospital on January 7, 2005.
- When seen at the clinic, his blood pressure was 130/90 mmHg; he presented with post lap chole and post umbilical hernia scars on the abdomen.
- He is now unfit to resume work as seaman in any capacity.
- His illness is considered work aggravated/related
- He would require lifetime maintenance medication to control his hypertension and prevent other cardiovascular complications such as coronary artery disease, stroke, congestive heart failure and renal insufficiency.
- He may experience bowel disturbances after his gall bladder surgery.
- He is not expected to land a gainful employment given his medical background.

Verily, Andrada had nothing to support his claim other than the cryptic comments of Dr. Vicaldo, that "his illness is considered work aggravated/related," and "he is now unfit to resume work as seaman...," without specifically indicating the ailment being adverted to and without elaborating on how he arrived at such conclusions. The declarations were plain statements; nothing more followed. To the mind of the Court, Dr. Vicaldo must be

referring to hypertension as the illness that rendered Andrada unfit to resume work because according to the said doctor a lifetime maintenance medication is required to control this sickness and to prevent other cardiovascular complications. It could not have been umbilical hernia because the same had already been repaired or cholecystolithiasis because the gall stones were already removed during the surgery performed on him. Dr. Vicaldo even noted the scars in his abdomen. The problem is that hypertension was not the illness, for which he was seeking compensation. Also, there was no showing that hypertension was directly connected with the abdominal pains he suffered, the reason why he was medically repatriated. There was not a single instance when he complained about his hypertension while in the vessel. At any rate, no medical records or other sufficient proof was adduced to substantiate the above findings and evaluations of Dr. Vicaldo.

True, strict rules on evidence are not applicable in claims for compensation and disability benefits. Probability and not ultimate degree of certainty is the test of proof in compensation proceedings.[22] It cannot be gainsaid, however, that award of compensation and disability benefits cannot rest on speculations, presumptions or conjectures. In the absence of adequate tests and reasonable findings to support the same, Dr.Vicaldo's assessment should not be taken at face value. The oft-repeated rule is that whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence.[23] In labor cases, as in other administrative proceedings, substantial evidence is required and it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,[24] often described as more than a scintilla. The *onus*

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[22] *NFD International Manning Agents, Inc. v. National Labor Relations Commission*, 336 Phil. 466, 474 (1997).

[23] *Signey v. Social Security System*, G.R. No. 173582, January 28, 2008, 542 SCRA 629, 639.

[24] *Oriental Shipmanagement Co., Inc. v. Bastol*, G.R. No. 186289, June 29, 2010, 622 SCRA 352, 377.

probandi fell on Andrada to establish his claim for disability benefits by the requisite quantum of evidence to serve as basis for the grant of relief. In this task, he failed.

The Court sustains the NLRC in ruling that the separate assessments of the company-designated physician and Dr. Faylona as to the medical condition of Andrada deserved greater evidentiary weight than that of Dr. Vicaldo. The respondents exerted real efforts to extend medical assistance and paid his sickness allowance and even for all the expenses incurred in the course of the treatment of Andrada. The company-designated physician, Dr. Ramos, monitored his health status from the beginning and, thus, the Court cannot simply throw out her certification, as Andrada suggested. Records show that it was Dr. Ramos who referred his health problems to the proper medical specialist so that the appropriate and necessary surgeries could be performed on him and, whose medical results were not essentially disputed; who kept track of his medical case during its progress; and who issued the certification of his fitness to work, dated March 22, 2005, on the basis of the available medical records.

The certification issued by Dr. Faylona likewise deserves credence. Let it be underscored that Dr. Faylona was the one who performed the laparoscopic cholecystectomy and umbilical herniorrhapy on Andrada. Dr. Faylona also monitored and attended to Andrada's treatment and recuperation from January 25 to 29, 2005 at the Philippine General Hospital. Certainly, this enabled Dr. Faylona to acquire detailed knowledge of Andrada's medical condition and, thus, was in a better position to reach an accurate evaluation of his health condition and his fitness for work resumption. On the other hand, it is undisputed that the recommendation of Dr. Vicaldo was based on a single medical report which outlined the alleged findings and medical history of Andrada obtained after Dr. Vicaldo examined him only once. It is pristine clear that the examination and treatment of Andrada by Dr. Faylona had been more extensive than the examination conducted by Dr. Vicaldo.

It must be emphasized, at this juncture, that the declaration of Andrada's fitness to work by Dr. Faylona on March 14, 2005 and by Dr. Ramos on March 22, 2005, were made well within the 120-day treatment or the temporary total disability period from the date of the seafarer's sign-off. Viewed in this perspective, both the NLRC and the CA were legally correct when they refused to recognize that Andrada was suffering from any disability, whether permanent or temporary, because he had already been cleared to go back to work.

Additionally, it is worth pointing out that instead of questioning the assessment done by Dr. Ramos and by Dr. Faylona, Andrada executed the Deed of Release, Waiver and Quitclaim in favor of the respondents on April 21, 2005. By doing so, Andrada impliedly admitted the correctness of the medical assessments, and acknowledged to have "completely released and forever discharged" the respondents "from all actions, claims, complaints and demand whatsoever xxx on account of or arising out of my employment as seaman on board MT Superlady."[25] Considering Andrada's non-entitlement to disability benefits, this Court does not see the need to delve on the issue of whether the Deed of Release, Waiver and Quitclaim precluded him from recovering said benefits.

The Court is not unaware of the principle that, consistent with the purpose underlying the formulation of the POEA-SEC, its provisions must be applied fairly, reasonably and liberally in favor of the seafarers, for it is only then that its beneficent provisions can be carried into effect.[26] Said exhortation, however, cannot be taken to sanction award of disability benefits anchored on flimsy evidence. There is nothing on record that would justify a compensation on top of the monetary aid and assistance already extended to Andrada by respondents Agemar Manning and Sonnet Shipping.

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[25] *Rollo,* p. 322.

[26] *Philippine Transmarine Carriers v. National Labor Relations Commission*, 405 Phil. 487, 495 (2001).

WHEREFORE, the petition is **DENIED**. The assailed May 28, 2010 Decision and the December 9, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 109853 are hereby **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Leonardo-de Castro,[*] *Peralta,* and *Abad, JJ.,* concur.

THIRD DIVISION

[G.R. No. 196434. October 24, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CHITO NAZARENO,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; CONSPIRACY; DEFINED AND CONSTRUED. — There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Actions indicating close personal association and shared sentiment among the accused can prove its presence. Proof that the perpetrators met beforehand and decided to commit the crime is not necessary as long as their acts manifest a common design and oneness of purpose.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; SMALL INCONSISTENCIES CAN STRENGTHEN CREDIBILITY AS THEY EVINCE SPONTANEITY AND CANDOR; APPLICATION IN CASE

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[*] Designated additional member, per Special Order No. 1343, dated October 9, 2012.

AT BAR.— Magallanes and Francisco saw the commission of the offense from different angles but the core of their stories remains cohesive. The result of the autopsy of David's body corroborates such stories. True their accounts have certain inconsistencies but these do not weaken their credibility since they concurred on material points. Rather, those small inconsistencies strengthened their credibility as they evince spontaneity and candor. Completely uniform and identical statements manifest rehearsed testimonies.

3. CRIMINAL LAW; MURDER; DEFENSE OF ALIBI; WHEN ADMISSIBLE.— The Court cannot give credence to Nazareno's defense of alibi. To be admissible, not only must he be at a different place during the commission of the crime, his presence at the crime scene must also be physically impossible. Here, Nazareno even admits that he encountered Saliendra, the accused who went into hiding, on the street and noticed the commotion.

4. ID.; ID.; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; WHEN PRESENT; CASE AT BAR.— There is abuse of superior strength when the aggressors purposely use excessive force rendering the victim unable to defend himself. The notorious inequality of forces creates an unfair advantage for the aggressor. Here, Nazareno and Saliendra evidently armed themselves beforehand, Nazareno with a stick and Saliendra with a heavy stone. David was unarmed. The two chased him even as he fled from them. And when they caught up with him, aided by some unnamed *barangay tanod*s, Nazareno and Saliendra exploited their superior advantage and knocked the defenseless David unconscious. He evidently died from head fracture caused by one of the blows on his head.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ABAD, *J.*:

This case is about the evidence required for proving conspiracy and the qualifying circumstance of abuse of superior strength in a murder case.

The Facts and the Case

The Office of the City Prosecutor of Manila charged the accused Chito Nazareno and Fernando Saliendra, a *barangay tanod*, of murder before the Regional Trial Court (RTC) of that city in Criminal Case 94-133117.[1]

Since Saliendra remained at-large, only Nazareno was tried. The prosecution presented Roy Magallanes, Roger Francisco, SPO1 Teodoro Sinag, SPO1 Julian Bustamante, Dr. Antonio E. Rebosa, and Jovelo Valdez.[2]

On November 10, 1993 David Valdez (David), Magallanes, and Francisco attended the wake of a friend. While there, they drank liquor with accused Nazareno and Saliendra.[3] A heated argument ensued between Magallanes and Nazareno but their companions pacified them.[4]

On the following day, November 11, David, Magallanes, and Francisco returned to the wake. Accused Nazareno and Saliendra also arrived and told the three not to mind the previous night's altercation. At around 9:30 in the evening, while David, Francisco, and their friend, Aida Unos were walking on the street, Nazareno and Saliendra blocked their path.[5] Nazareno boxed Francisco who

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[1] Records, p. 1.

[2] RTC Decision, *id.* at 399.

[3] TSN, July 30, 1998, pp. 225-226.

[4] *Id.* at 226-227.

[5] *Id.* at 231.

fled but Saliendra went after him with a *balisong*.[6] Francisco, who succeeded in hiding saw Nazareno hit David on the body with a stick while Saliendra struck David's head with a stone.[7] David ran towards a gasoline station but Nazareno and Saliendra, aided by some *barangay tanods*, caught up with him.[8] As David fell, the *barangay tanods* took over the assault.[9] This took place as Magallanes stood about five meters across the highway unable to help his friend.[10] Afterwards, Unos brought David to the hospital.[11] Dr. Rebosa performed surgery on David's head but he died on November 14, 1993 of massive intra-cranial hemorrhage secondary to depressed fracture on his right temporal bone[12] in a form of blunt trauma.[13]

On November 12, 1993 after David's relatives reported the killing to the police, SPO1 Sinag investigated the case and took Unos's statement.[14] On November 15, accompanied by SPO1 Bustamante and two other police officers, SPO1 Sinag went to the UST Hospital and took a look at David's body, noting the wounds on his forehead.[15] Subsequently, the officers went to the crime scene but found no witness there.

In his defense, accused Nazareno claimed that he left his house at around 9:30 in the evening on November 11, 1993 to buy milk. While on a street near his house, he noted a commotion taking place nearby. He then bumped into Saliendra. Nazareno

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[6] TSN, August 13, 1998, p. 262.

[7] *Id.* at 263.

[8] *Id.* at 233.

[9] TSN, August 13, 1998, p. 265.

[10] TSN, July 30, 1998, pp. 234-235.

[11] TSN, August 13, 1998, p. 263.

[12] Notes of the Post-Mortem Examination, records, p. 62.

[13] Certificate of Death, *id.* at 61.

[14] TSN, September 24, 1998, pp. 186-187.

[15] TSN, December 14, 1998, pp. 200-201.

proceeded home and went to bed.[16] His wife Isabel supported his testimony, claiming that she asked her husband on that night to buy milk for their children. When Nazareno returned home, he informed her of the commotion outside and how someone bumped into him.[17]

Unos testified that she saw Saliendra chasing David as the latter hang on the rear of a running jeepney. She claimed that she did not see Nazareno around the place.[18]

On March 9, 2004, the RTC found Nazareno guilty beyond reasonable doubt of murder, qualified by abuse of superior strength and aggravated by treachery. The RTC sentenced Nazareno to suffer the penalty of *reclusion perpetua* and ordered him to pay ₱141,670.25 as actual damages, ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages, without any subsidiary imprisonment.[19]

On appeal, the Court of Appeals (CA) affirmed with modification the decision of the RTC.[20] Finding no treachery, it convicted Nazareno of murder qualified by abuse of superior strength, hence, this appeal.

Issues Presented

The issues in this case are:

1. Whether or not Nazareno took part in a conspiracy to kill David;

2. Whether or not a qualifying circumstance of abuse of superior strength attended the killing of David.

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[16] TSN, April 11, 2000, pp. 286-288.

[17] TSN, March 2, 2000, p. 315.

[18] TSN, February 14, 2000, pp. 366-368.

[19] *Supra* note 2, at 404-405.

[20] *Rollo*, pp. 3-14.

The Court's Ruling

One. As a rule, the factual findings of the trial court are, except for compelling or exceptional reasons, conclusive to the Court especially when fully supported by evidence and affirmed by the CA.[21] Here, no sound reason exists to alter the findings of the RTC and the CA with respect to the facts they deemed to have been proved and the credibility of the witnesses.[22]

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[23] Actions indicating close personal association and shared sentiment among the accused can prove its presence.[24] Proof that the perpetrators met beforehand and decided to commit the crime is not necessary as long as their acts manifest a common design and oneness of purpose.

Here, both the RTC and the CA found conspiracy in attendance. Magallanes and Francisco testified that accused Nazareno and Saliendra purposely waited for David and his companions out on the street as they came out of the wake. The witnesses testified that each of Nazareno and Saliendra took concerted steps aimed at killing or causing serious harm to David. Nazareno repeatedly struck David on the area of his neck with a stick; Saliendra hurled a fist-sized stone on his head. Even when David tried to flee, they still chased him and together with other *barangay tanods*, beat him to unconsciousness. Although Magallanes testified that Saliendra and Nazareno acted "quite differently" from each other before the attack,[25] their actions before and during the incident reveal a common purpose.[26]

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[21] *Serra v. Mumar*, G.R. No. 193861, March 14, 2012.

[22] *Miranda v. People of the Philippines*, G.R. No. 176298, January 25, 2012.

[23] Revised Penal Code, Art. 8.

[24] *People v. Bustamante*, G.R. No. 172357, March 19, 2010, 616 SCRA 203, 216.

[25] TSN, July 30, 1998, p. 231.

[26] *People v. Esoy*, G.R. No. 185849, April 7, 2010, 617 SCRA 552, 564.

Saliendra appears to have delivered the fatal blow but Nazareno cannot escape liability because, in conspiracy, the act of one is the act of all.[27]

Magallanes and Francisco saw the commission of the offense from different angles but the core of their stories remains cohesive. The result of the autopsy of David's body corroborates such stories. True their accounts have certain inconsistencies but these do not weaken their credibility since they concurred on material points.[28] Rather, those small inconsistencies strengthened their credibility as they evince spontaneity and candor.[29] Completely uniform and identical statements manifest rehearsed testimonies.[30]

Taken against these considerations, the Court cannot give credence to Nazareno's defense of alibi. To be admissible, not only must he be at a different place during the commission of the crime, his presence at the crime scene must also be physically impossible.[31] Here, Nazareno even admits that he encountered Saliendra, the accused who went into hiding, on the street and noticed the commotion.[32]

Two. The CA held that the killing of David should be characterized as one of murder qualified by abuse of superior strength. The Court finds no fault in this ruling. There is abuse of superior strength when the aggressors purposely use excessive force rendering the victim unable to defend himself.[33] The notorious inequality of forces creates an unfair advantage for the aggressor.

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[27] *People v. Rollan*, G.R. No. 175835, July 13, 2010, 625 SCRA 57, 63.

[28] *People v. Pajes*, G.R. No. 184179, April 12, 2010, 618 SCRA 147, 161.

[29] *People v. Miguel*, G.R. No. 180505, June 29, 2010, 622 SCRA 210, 227.

[30] *People v. Leonardo*, G.R. No. 181036, July 6, 2010, 624 SCRA 166, 197.

[31] *People v. Estrada*, G.R. No. 178318, January 15, 2010, 610 SCRA 222, 233.

[32] TSN, April 11, 2000, p. 295.

[33] *People v. Beduya*, G.R. No. 175315, August 9, 2010, 627 SCRA 275, 284.

Here, Nazareno and Saliendra evidently armed themselves beforehand, Nazareno with a stick and Saliendra with a heavy stone. David was unarmed. The two chased him even as he fled from them. And when they caught up with him, aided by some unnamed *barangay tanod*s, Nazareno and Saliendra exploited their superior advantage and knocked the defenseless David unconscious. He evidently died from head fracture caused by one of the blows on his head.

On the matter of penalty, the Court affirms the imposition of *reclusion perpetua*.[34] The Court retains the amount of ₱141,670.25 as actual damages.[35] But, consistent with current jurisprudence,[36] the Court is awarding ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

WHEREFORE, the Court **AFFIRMS** the assailed Decision of the Court of Appeals in CA-G.R. CR-H.C. 01308 dated December 17, 2010, that found Chito Nazareno guilty beyond reasonable doubt of the crime of murder qualified by abuse of superior strength in Criminal Case 94-133117.

The Court also **AFFIRMS** the penalty of *reclusion perpetua* imposed on accused Nazareno but **MODIFIES** the award of damages to ₱141,670.25 as actual damages, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages, and to pay the costs.

SO ORDERED.

Velasco, Jr. (Chairperson), Leonardo-de Castro,[*] *Peralta*, and *Mendoza, JJ.*, concur.

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[34] Republic Act 9346: "*An Act Prohibiting the Imposition of Death Penalty in the Philippines*," approved on June 24, 2006.

[35] *Supra* note 2.

[36] *People v. Arbalate*, G.R. No. 183457, September 17, 2009, 600 SCRA 239, 255.

[*] Designated Acting Member in lieu of Associate Justice Jose P. Perez, per Special Order 1343 dated October 9, 2012.

FIRST DIVISION

[G.R. No. 199264. October 24, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NOEL T. LAURINO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT ARE GENERALLY ACCORDED GREAT WEIGHT AND RESPECT AND WILL NOT BE DISTURBED ON APPEAL; PRESENT IN CASE AT BAR.— It is doctrinally settled that factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal. More importantly, the Court's own assessment of the case records indicates no reversible error committed by the lower courts. AAA's testimony that she was ravished by her uncle on May 11, 2002, at around 1:00 in the afternoon and 10:00 in the evening, is worthy of belief as it was clear, consistent and spontaneously given. There is no compelling reason to disbelieve AAA's declaration that Laurino employed force and intimidation against her, as she was even threatened with a knife to keep her silent while being raped. Laurino also grabbed AAA by the left arm, and while she, then only 17 years of age, tried to resist her uncle's sexual aggression, Laurino answered, "*Hilom diha*", directing her to remain silent. AAA had positively identified Laurino as her rapist, given that he was an uncle and she was familiar with him.

2. ID.; ID.; ID.; THE CREDIBILITY OF A RAPE VICTIM IS NOT DIMINISHED BY MINOR INCONSISTENCIES IN HER TESTIMONY.— Discrepancies referring only to minor details and collateral matters – not to the central fact of the crime – do not affect the veracity or detract from the essential credibility of witnesses' declarations, as long as these are coherent and intrinsically believable on the whole. For a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must establish beyond doubt

the innocence of the appellant for the crime charged. It cannot be overemphasized that the credibility of a rape victim is not diminished, let alone impaired, by minor inconsistencies in her testimony.

3. CRIMINAL LAW; RAPE; LUST IS NO RESPECTER OF TIME AND PLACE.— Time and again, we have ruled that lust is no respecter of time and place. Neither the crampness of the room, nor the presence of other people therein, nor the high risk of being caught, has been held sufficient and effective obstacle to deter the commission of rape.

4. ID.; ID.; ALIBI AND DENIAL; CANNOT PREVAIL OVER THE POSITIVE AND CATEGORICAL IDENTIFICATION OF AN ACCUSED BY THE COMPLAINANT.— Laurino's defense of *alibi* deserves scant consideration. *Alibi* is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the appellant must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time when the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed. In this case, Laurino failed to prove that it was physically impossible for him to be at the crime scene on May 11, 2002. x x x Settled is the rule that *alibi* and denial cannot prevail over the positive and categorical testimony and identification of an accused by the complainant.

5. ID.; ID.; IMPOSABLE PENALTY.— Both the minority of the victim and her relationship to her offender were sufficiently alleged in the information and proved by the prosecution. Such offense is punishable by death under Article 266-B of the Revised Penal Code, but the trial court correctly imposed the penalty of *reclusion perpetua*, without eligibility for parole, in view of the provisions of Republic Act No. 9346 that prohibit the imposition of death penalty. However, considering that Laurino was found guilty of two (2) counts of qualified rape, the trial court should have indicated that the corresponding penalty of *reclusion perpetua* should be for each of the two (2) counts of rape.

6. ID.; CIVIL LIABILITY; AWARD THEREOF, PROPER.— As to the judgment on civil liabilities, the trial court correctly

awarded in favor of AAA civil indemnity of ₱75,000.00 and moral damages of ₱75,000.00 for each count of rape. However, to conform to prevailing jurisprudence, the award of exemplary damages is increased to ₱30,000.00 for each count of rape.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

REYES, *J.*:

This is an appeal filed by accused-appellant Noel T. Laurino (Laurino) from the Decision[1] dated August 18, 2011 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00786-MIN. The CA Decision affirmed the Decision[2] dated August 28, 2009 of the Regional Trial Court (RTC), Initao, Misamis Oriental, Branch 44 finding Laurino guilty beyond reasonable doubt of two (2) counts of qualified rape.

Factual Background

Laurino was accused of raping his niece, AAA,[3] then a 17-year old minor, in two (2) separate informations filed with the RTC. When arraigned, he entered a plea of "not guilty." After pre-trial, trial on the merits ensued.

The pertinent facts, as narrated by the RTC in its Decision dated August 28, 2009, are as follows:

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[1] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Pamela Ann Abella Maxino and Zenaida T. Galapate-Laguilles, concurring; *rollo,* pp. 3-17.

[2] Under the sala of Presiding Judge Dennis Z. Alcantar; CA *rollo,* pp. 32-44.

[3] Under Republic Act No. 9262, also known as the "Anti-Violence Against Women and their Children Act of 2004", and its implementing rules, the real name of the victim and those of her immediate family members are withheld; fictitious initials are instead used to protect the victim's identity.

Accused is the uncle of AAA. His half-sister, BBB, is AAA's mother. Sometime in December 2001, accused stayed in the house of AAA's family in Buhanginan Hills, Iligan City.

On *May 2, 2002*, AAA and CCC – AAA's younger sister, went to Jampason, Initao, Misamis Oriental to assist in the harvesting of coconuts in a parcel of land, owned by a certain Evangeline Seno. Accused was also in Jampason, Initao to tend to the harvesting of the coconuts, which was done on a quarterly basis.

On May 11, 2002, on or about 1:00 o'clock in the afternoon, while AAA and CC[C] were inside the hut beside the coco drier, accused suddenly appeared and directed CCC, who had a toothache at that time, to go upstairs. As soon as CCC was out of sight, accused grabbed AAA and fiercely kissed her on the lips. AAA resisted his advances by saying "*ayaw lagi, kol*" but accused was not deterred. He made AAA lie down. Placing his knife beside AAA, he removed AAA's short pants and panty. AAA pleaded with him to stop but her pleas fell on deaf ears. Accused positioned himself on top of AAA, parted her legs and inserted his penis inside her vagina. AAA cried but accused just laughed and uttered "*moning angay sa imo*". He warned AAA not to tell anybody.

The second incident took place on the same day, May 11, 2002, at around 10:00 o'clock in the evening. While AAA and CCC were sleeping in one of the rooms, accused entered their room and grabbed her left arm. Again, AAA pleaded with accused but accused just told her, "*hilon* (sic) *diha*", meaning that AAA should stay quiet. He covered her mouth with his hand, after which, AAA felt something sharp poked [sic] her side. Accused was armed with a knife. He removed her short pants and panty. Then, he inserted his penis inside her vagina. Abused and feeling so helpless, AAA cried.

After the harrowing ordeal, she kept mum about the incident, as she was threatened by the accused.

On *October 4, 2002*, BBB, AAA's mother, discovered what accused did from AAA's classmates, who came to their house and told her that accused, her half-brother, raped AAA.

On October 7, 2002, Dr. Cecilio A. Paquit, MD, conducted a physical examination on BBB [sic]. The *Medical Report* shows:

Introitus	=	easily admits 2 xxx fingers
Hymen	=	old hymenal laceration noted at 9 o'clock, 3 o'clock and 6 o'clock position

On the same day, AAA executed an *affidavit* complaint [sic] before the National Bureau of Investigation, Iligan City.

x x x x x x x x x

Accused, for his part, interposed the defenses of denial and alibi. He admitted that he was in Jampason, Initao on May 11, 2002 but he alleged that between 12:00 o'clock noon to 3:00 o'clock in the afternoon, he was in the cemetery, together with his family, AAA and AAA'[s] family and that at 7:00 pm of the same day till 5:00 am of the next day (May 12, 2002), he went fishing with Baltazar Lacno.

Accused further testified that the reason why he was falsely charged of rape is [sic] because BBB, AAA's mother and his half-sister, wanted to exclusively tend the land that they were both tending.[4] (Citations omitted and italics supplied)

The Decision of the RTC

On August 28, 2009, the RTC convicted Laurino of two (2) counts of rape, qualified by the minority of AAA and her relationship to him. The trial court explained that the clear, detailed and spontaneous testimony of AAA had established that Laurino succeeded in having carnal knowledge of AAA, after employing force and intimidation against her. Any minor inconsistencies in AAA's testimony as to the time and place of the crime's commission did not render her statements unreliable. For the court, such inconsistencies in fact "tend to reinforce rather than impair her credibility for [these] evince that her testimony was not rehearsed."[5] Furthermore, since time is not an element of the crime of rape, any discrepancy, granting that there was any, in her testimony on the time of its commission was inconsequential to Laurino's culpability.

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[4] CA *rollo*, pp. 33-35.

[5] *Id.* at 38.

The RTC brushed aside Laurino's denial and *alibi*. *Firstly*, it found no ill-motive on the part of AAA which would have impelled her to falsely testify against her uncle. The court rejected Laurino's claim that he was falsely charged only because BBB wanted to exclusively tend the land that they were both tending. It took note of the testimony of Laurino's mother that BBB in fact did not harvest the produce of said land, even after Laurino had been sent to prison. *Secondly*, Laurino failed to establish that he was in some other place, or that it was physically impossible for him to be anywhere within the vicinity of the crime scene, at the time that the rape was committed.

The dispositive portion of the RTC's decision then reads:

> **WHEREFORE**, premises considered[,] accused Noel T. Laurino is found guilty beyond reasonable doubt of two counts of qualified rape and is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole. He is hereby ordered to pay private complainant, for each count of rape, civil indemnity of Php 75,000.00, moral damages of Php 75,000.00, and exemplary damages of Php 25,000.00.
>
> SO ORDERED.[6]

Feeling aggrieved, Laurino appealed to the CA.

The Decision of the CA

On August 18, 2011, the CA rendered its Decision affirming *in toto* the RTC's decision. The CA found AAA's testimony credible as it clearly showed how Laurino employed force and intimidation against AAA, even threatening her with a knife each time that he committed the rape. These were heightened by Laurino's moral ascendancy for being an uncle of the victim.

The CA agreed with the RTC's observation that Laurino failed to show the physical impossibility for him to be at or near the crime scene during the time when the two incidents of rape were committed. On the contrary, Laurino claimed to be then just a few kilometers away from the scene. The CA then

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[6] *Id.* at 44.

rejected the defense of *alibi*, and emphasized that denial, like *alibi*, is an inherently weak and unreliable defense that could easily be fabricated.[7]

Hence, this appeal.

This Court's Ruling

We dismiss the appeal.

The Court finds no cogent reason to disturb the RTC's factual findings, as affirmed by the CA. It is doctrinally settled that factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal.[8] More importantly, the Court's own assessment of the case records indicates no reversible error committed by the lower courts. AAA's testimony that she was ravished by her uncle on May 11, 2002, at around 1:00 in the afternoon and 10:00 in the evening, is worthy of belief as it was clear, consistent and spontaneously given. There is no compelling reason to disbelieve AAA's declaration that Laurino employed force and intimidation against her, as she was even threatened with a knife to keep her silent while being raped. Laurino also grabbed AAA by the left arm, and while she, then only 17 years of age, tried to resist her uncle's sexual aggression, Laurino answered, "*Hilom diha*", directing her to remain silent. AAA had positively identified Laurino as her rapist, given that he was an uncle and she was familiar with him.[9]

Any minor inconsistencies in AAA's testimony do not warrant Laurino's acquittal. Discrepancies referring only to minor details and collateral matters – not to the central fact of the crime – do not affect the veracity or detract from the essential credibility of witnesses' declarations, as long as these are coherent and intrinsically believable on the whole. For a discrepancy or

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[7] *Rollo*, p. 16.

[8] *People v. Ramos*, G.R. No. 198017, June 13, 2012.

[9] *Rollo*, p. 12.

inconsistency in the testimony of a witness to serve as a basis for acquittal, it must establish beyond doubt the innocence of the appellant for the crime charged. It cannot be overemphasized that the credibility of a rape victim is not diminished, let alone impaired, by minor inconsistencies in her testimony.[10] AAA's statements were also not rendered implausible by her claim that CCC saw her being raped by their uncle. Time and again, we have ruled that lust is no respecter of time and place. Neither the crampness of the room, nor the presence of other people therein, nor the high risk of being caught, has been held sufficient and effective obstacle to deter the commission of rape.[11]

We also uphold the rulings of the RTC and the CA that Laurino's defense of *alibi* deserves scant consideration. *Alibi* is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the appellant must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time when the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed.[12] In this case, Laurino failed to prove that it was physically impossible for him to be at the crime scene on May 11, 2002. Both the RTC and the CA even observed that Laurino claimed to be then merely two (2) to five (5) kilometers away from the crime scene.

At any rate, settled is the rule that *alibi* and denial cannot prevail over the positive and categorical testimony and

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[10] *People v. Tubat*, G.R. No. 183093, February 1, 2012, 664 SCRA 712, 719-720, citing *People v. Laog*, G.R. No. 178321, October 5, 2011, 658 SCRA 654, 671.

[11] *People v. Rellota*, G.R. No. 168103, August 3, 2010, 626 SCRA 422, 433.

[12] *People v. Arpon*, G.R. No. 183563, December 14, 2011, 662 SCRA 506, 529, citing *People v. Tabio*, G.R. No. 179477, February 6, 2008, 544 SCRA 156, 166.

identification of an accused by the complainant.[13] We thus ruled in *People v. Agcanas*:[14]

> Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.[15]

Given the foregoing, the CA correctly affirmed Laurino's conviction for two (2) counts of qualified rape. Both the minority of the victim and her relationship to her offender were sufficiently alleged in the information and proved by the prosecution. Such offense is punishable by death under Article 266-B of the Revised Penal Code, but the trial court correctly imposed the penalty of *reclusion perpetua*, without eligibility for parole, in view of the provisions of Republic Act No. 9346 that prohibit the imposition of death penalty. However, considering that Laurino was found guilty of two (2) counts of qualified rape, the trial court should have indicated that the corresponding penalty of *reclusion perpetua* should be for each of the two (2) counts of rape.

As to the judgment on civil liabilities, the trial court correctly awarded in favor of AAA civil indemnity of ₱75,000.00 and moral damages of ₱75,000.00 for each count of rape. However, to conform to prevailing jurisprudence,[16] the award of exemplary damages is increased to ₱30,000.00 for each count of rape.

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[13] *People v. Malate*, G.R. No. 185724, June 5, 2009, 588 SCRA 817, 829, citing *People v. Gingos*, G.R. No. 176632, September 11, 2007, 532 SCRA 670, 683.

[14] G.R No. 174476, October 11, 2011, 658 SCRA 842.

[15] *Id.* at 847, citing *People v. Caisip*, 352 Phil. 1058, 1065 (1998).

[16] *People v. Dollano, Jr.*, G.R. No. 188851, October 19, 2011, 659 SCRA 740, 755.

WHEREFORE, the Decision dated August 18, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 00786-MIN is **AFFIRMED** with **MODIFICATION** in that (a) the accused-appellant Noel T. Laurino is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, for each of the two (2) counts of qualified rape, and (b) the award of exemplary damages is increased to ₱30,000.00. The accused is also ordered to pay legal interest on all damages awarded at the legal rate of 12% *per annum* from the date of finality of this Decision.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, and *Villarama, Jr., JJ.,* concur.

Leonardo-de Castro, J., did not sign in the official copy.

THIRD DIVISION

[G.R. No. 199735. October 24, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **AISA MUSA *Y* PINASILO, ARA MONONGAN *Y* PAPAO, FAISAH ABAS *Y* MAMA, and MIKE SOLALO *Y* MLOK,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; SALE OF DANGEROUS DRUGS; ELEMENTS. — In determining the guilt of the accused for the sale of dangerous drugs, the prosecution is obliged to establish the following essential elements: (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. There must be proof that the transaction or sale actually took place and that the *corpus delicti* be presented in court as evidence.

2. REMEDIAL LAW; EVIDENCE; FACTS ESTABLISHED BY THE TRIAL AND APPELLATE COURTS DESERVE FULL WEIGHT AND CREDIT; APPLICATION IN CASE AT BAR. — Where there is no showing that the trial court overlooked or misinterpreted some material facts or that it gravely abused its discretion, the Court will not disturb the trial court's assessment of the facts and the credibility of the witnesses since the RTC was in a better position to assess and weigh the evidence presented during trial. x x x Settled is the rule that the factual findings of the appellate court sustaining those of the trial court are binding on this Court, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error. Absent any indication that the courts *a quo* committed misinterpretation of antecedents or grave abuse of discretion, the facts as established by the trial and appellate courts deserve full weight and credit, and are deemed conclusive.

3. ID.; ID.; DENIALS AND PLEA OF FRAME-UP; INVARIABLY VIEWED WITH DISFAVOR; RATIONALE; CASE AT BAR. — As regards accused-appellants' denial and claim of frame-up, the trial and appellate courts correctly ruled that these defenses cannot stand unless the defense could show with clear and convincing evidence that the members of the buy-bust team were inspired with ill motives or that they were not properly performing their duties. The defenses of denial and frame-up are invariably viewed with disfavor because such defenses can easily be fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs. Here, in the absence of evidence showing ill motives on the part of the members of the buy-bust team, accused-appellants' denials and plea of frame-up deserve scant consideration in light of the positive identification made by PO1 Memoracion and PO1 Arago.

4. ID.; ID.; ALIBI AS A DEFENSE; REQUISITES; NOT PRESENT IN CASE AT BAR.— Similarly, accused-appellants' alibis failed to fortify their claim of innocence because, while they insist on their own version of events, they failed to demonstrate compliance with the requisites of the defense of alibi. In *People v. Apattad*, the Court reiterated the jurisprudential rules and precepts in assessing the defense of alibi: x x x It is clear,

therefore, that in order for the defense of alibi to prosper, the accused should demonstrate, by clear and convincing evidence, that he or she **was somewhere else** when the buy-bust operation was conducted, and that it was **physically impossible** for him or her to be present at the scene of the crime either **before**, **during**, or **after** the offense was committed. It is on this thrust that the alibis made by accused-appellants failed to convince since all of them admitted that they were within the vicinity of Building 2, Maharlika Village, Taguig City, which, apparently, was the *locus criminis* of the offense. Furthermore, considering that alibi as evidence is negative in nature and self-serving, it cannot attain more credibility than the testimonies of prosecution witnesses who testify on clear and positive evidence.

5. CRIMINAL LAW; SALE OF DANGEROUS DRUGS; CHAIN OF CUSTODY RULE; PROPERLY OBSERVED IN CASE AT BAR.— We reiterate that the essence of the chain of custody rule is to ensure that the dangerous drug presented in court as evidence against the accused is the same dangerous drug recovered from his or her possession. x x x Since the "perfect chain" is almost always impossible to obtain, non-compliance with Sec. 21 of RA 9165, as stated in the Implementing Rules and Regulations, does not, without more, automatically render the seizure of the dangerous drug void, and evidence is admissible as long as the **integrity** and **evidentiary** value of the seized items are properly preserved by the apprehending officer/team. x x x Thru the testimonies of the PO1 Memoracion and PO1 Arago, the prosecution was able to prove that the *shabu* seized from Musa was the very same *shabu* presented in evidence as part of the *corpus delicti*. x x x Hence, the fact that the PO1 Memoracion and PO1 Arago did not make an inventory of the seized items or that they did not take photographs of them is not fatal considering that the prosecution in this case was able to establish, with moral certainty, that the identity, integrity, and evidentiary value of the *shabu* was not jeopardized from the time of its seizure until the time it was presented in court. x x x As stated, the records are bereft of any showing that PO1 Memoracion and PO1 Arago were ill motivated in testifying against accused-appellants. Neither was there any indication that they were in bad faith nor had digressed from their ordinary

tour of duty. There is, therefore, no cogent basis to taint their testimonies with disbelief. Hence, We submit to the presumption that both of them and the other police officers involved in the buy-bust operation had performed faithfully the matters with which they are charged, and that they acted within the sphere of their authority. *Omnia praesumumtur rite esse acta* (All things are presumed to have been done regularly).

6. ID.; ID.; AGGRAVATING CIRCUMSTANCES; THE OFFENSE WAS COMMITTED BY AN ORGANIZED/SYNDICATED GROUP; NOT ESTABLISHED IN CASE AT BAR.— By definition, a drug syndicate is any organized group of two (2) or more persons forming or joining together with the intention of committing any offense prescribed under RA 9165. x x x The existence of conspiracy among accused-appellants in selling *shabu* was duly established, but the prosecution failed to provide proof that they operated as an organized group or as a drug syndicate. Consequently, the aggravating circumstance that "the offense was committed by an organized/ syndicated group" cannot be appreciated. Thus, the maximum PhP 10 million imposed by the trial and appellate courts upon each of accused-appellants should be modified accordingly. This is in consonance with the dictum in Criminal Law that the existence of aggravating circumstances must be based on positive and conclusive proof, and not merely on hypothetical facts no matter how truthful the suppositions and presumptions may seem. Aggravating circumstances which are taken into consideration for the purpose of increasing the degree of the penalty imposed must be proved with equal certainty as the commission of the act charged as criminal offense.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal seeking to nullify the February 28, 2011 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03758, which affirmed the October 7, 2008 Decision[2] in Criminal Case No. 13536-D of the Regional Trial Court (RTC), Branch 163 in Taguig City. The RTC convicted accused-appellants of violating Section 5, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002* for selling dangerous drugs.

The Facts

An Information charged the accused Aisa Musa *y* Pinasilo (Musa), Ara Monongan *y* Papao, Faisah Abas *y* Mama (Abas), and Mike Solano *y* Mlok (Solano) with the following:

> That, on or about the 1st day of June, 2004 in the Municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with one another and acting as an organized or syndicated crime group, without being authorized by law, did, then and there willfully, unlawfully and knowingly sell and give away to one PO1 Rey Memoracion one (1) heat sealed transparent plastic sachet containing 4.05 grams of white crystalline substance, which was found positive for Methamphetamine hydrochloride also known as "*shabu*", a dangerous drug, in violation of the above-cited law.
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> CONTRARY TO LAW.[3]

Version of the Prosecution

The prosecution's version of facts was anchored heavily on the testimony of Police Officer 1 Rey Memoracion (PO1

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[1] Penned by Associate Justice Fernanda Lampas-Peralta and concurred in by Associate Justices Priscilla J. Baltazar-Padilla and Manuel M. Barrios.

[2] Penned by Judge Leili Cruz Suarez.

[3] *Rollo*, p. 5; records, p. 1.

Memoracion). From the findings of the trial and appellate courts, We synthesize his testimony, as follows:

On June 1, 2004, at or about 9:00 p.m., the Station Anti-Illegal Drugs-Special Operating Task Force of the Taguig City Police received a report from an informant about the selling of prohibited drugs by Musa and her cohorts at Maharlika Village, Taguig City. The police immediately organized a buy-bust operation which included PO1 Danilo Arago (PO1 Arago) and PO1 Memoracion as team members. The police agreed that PO1 Memoracion was the designated poseur-buyer; that five one-thousand peso (PhP 1000) bills with Memoracion's initials were to be used as marked money; and that Memoracion's lighting of the cigarette was the pre-arranged signal to signify the consummation of the transaction. The buy-bust team submitted a pre-operation report to the Philippine Drug Enforcement Agency and entered it in the police blotter. Thereafter, the buy-bust team, along with the informant, proceeded to a nearby shopping mall (Sunshine Mall) where the police had arranged PO1 Memoracion and the informant to meet with the alleged drug dealers.

The buy-bust team arrived at the mall at around 9:45 p.m. The informant and Memoracion alighted from the vehicle while the rest of the buy-bust team waited at the parking lot. The informant then introduced Memoracion, as a potential buyer, to Abas and Solano. PO1 Memoracion then told Abas and Solano that he wanted to score *shabu* worth five-thousand pesos (PhP 5,000) but the two replied that they do not have available stocks on hand. Abas and Solano offered to accompany PO1 Memoracion to Musa who was at a nearby condominium unit at Building II, Maharlika Village. Memoracion agreed and pretended to go to the comfort room in order to inform PO1 Arago regarding the change of venue. PO1 Memoracion also changed the pre-arranged signal from lighting a cigarette to a phone ring or "missed call" and asked the rest of the buy-bust team to follow them.

Thereafter, the informant, Memoracion, Abas and Solano boarded a tricycle to Musa's place. They arrived at the

condominium at around 10:30 in the evening and went to the 4th floor of the building while the rest of the buy-bust team remained at the ground floor while waiting for Memoracions's call. The four met Musa at the hallway outside Unit 403. Abas introduced Memoracion to Musa as the buyer. Musa then ordered Ara Monongan (Monongan) to count the money. Afterwards, Musa took from her pocket one (1) heat sealed plastic sachet of *shabu* and gave it to PO1 Memoracion. The latter immediately made the call to PO1 Arago who, together with two (2) other police officers,[4] proceeded right away to PO1 Memoracion's location, which was about 15 meters away from the ground floor.[5]

Upon seeing accused-appellants, the police officers made the arrest. PO1 Arago confiscated from Monongan the marked money of five PhP 1000 bills with Memoracion's initials. PO1 Memoracion, on the other hand, marked the seized sachet of shabu with "APM" or the initials of accused Aisa Pinasilo Musa. He then delivered the confiscated item to the Philippine National Police (PNP) Crime Laboratory, Fort Bonifacio, Taguig City and requested an examination of the substance. The PNP Crime Lab Report showed that the indicated substance weighing 4.05 grams tested positive for *shabu*.[6]

The prosecution likewise presented PO1 Arago, who stood as PO1 Memoracion's back-up during the buy-bust operation,[7] to corroborate the foregoing version of events.

Version of the Defense

In defense, each of accused-appellants denied the accusations against them and submitted their respective alibis, as follows:

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[4] PO1 Alexander Saez and PO3 Edgar Orias, records, p. 120; TSN, May 20, 2005, pp. 31-32, 37.

[5] TSN, May 28, 2007, p. 9.

[6] *Rollo*, pp. 3-5; CA *rollo*, p. 17; TSN, May 28, 2007.

[7] Records, pp. 90-140; TSN, May 20, 2005.

Accused Aiza Musa claimed that on June 1, 2004, she and her husband, Bakar Musa, went to their friend Sonny Sagayno's house, located at Unit 512, Building 2, Maharlika Village, Taguig City, to discuss [their] forthcoming travel to Saudi Arabia and that while they were inside Sonny's house, two police officers barged into the house, while their companions stood outside, and searched for prohibited drugs, but found no shabu. Aside from saying that Ara [Monongan] was her neighbor, [she] denied knowing [her] and Faisah [Abas] that well.

Accused Ara Monongan averred that from the morning up to 12:00 noon of June 1, 2004, she was with her aunt Habiba's house at Unit 403, Building 2, Maharlika Village, Taguig City, washing clothes and looking over her aunt's children; that at about 12:00 noon of the same day, a visitor, whose name was Norma, arrived and that at around 1:00 o'clock in the afternoon, Sonny [Sagayno], Faisah [Abas] and the latter's textmate, Angie, arrived; that at about 3:00 or 4:00 o'clock in the afternoon, policemen in civilian clothes barged into the house, searched for illegal drugs, but found none, and arrested her; that she went to stay in her aunt's place only for a vacation; and that it was the first time she saw Faisah and Angie. She testified that Aiza was her neighbor but disclaimed knowing her; that she was 17 years old at the time of the complained incident; and that her real name was Ara Nonongan and not Ara Monongan.

Accused Mike Solano alleged that on June 1, 2004 at around 11:00 o'clock in the morning, his cousin Faisah [Abas] requested him to accompany to Sunshine Mall to meet her textmate, Angie; that while Faisah waited for Angie, Mike went to the 2nd floor of the mall for window shopping; that Angie arrived together with two pregnant women but left at 12:00 o'clock noon to go to a condominium in Maharlika Village; that after he and the two pregnant women had eaten in Jollibee, a big man sat beside him, introduced himself as a policeman and ordered him to come with him peacefully and to just explain in his office. He claimed not knowing Aiza [Musa] and Ara [Monongan] and that he saw them for the first time only when they boarded in the same vehicle.

And, finally, accused Faisah Abas claimed that on that particular day, she and her cousin Mike [Solano] proceeded to Sunshine Mall to meet Angie; that she accompanied Angie to Building 2 of Maharlika Village where they met Angie's cousin, Sonny [Sagayno], at the 5th floor and that they all proceeded to the 4th floor; that when they

were inside Sonny's house, she saw Ara [Monongan], another female person and three children; that after they had eaten their lunch, she heard a gunshot and discovered that Sonny was not there anymore; that shortly thereafter, three persons in civilian clothes barged into the house, introduced themselves as policemen, poked a gun at her and frightened and handcuffed her; that two of the operatives went inside the room and ransacked some of Ara's belongings; that the policemen accused her of selling illegal drugs; that no *shabu* was found in her possession.[8]

Ruling of the RTC

The RTC found all the accused guilty as charged, to wit:

WHEREFORE, accused Aiza *Musa y* Pinasilo, Faisah *Abas y* Mama and Mike *Solano y* Mlok, are found GUILTY beyond reasonable doubt of the crime of Violation of Section 5, 1st paragraph Article II, RA 9165 in relation to Article 62, 2nd paragraph of the Revised Penal Code and are sentenced to suffer the penalty of life imprisonment and a fine of Ten Million Pesos (PhP 10, 000, 000.00) and to pay the costs.

Accused Ara *Monongan y* Papao is likewise found GUILTY beyond reasonable doubt of the crime charged and, there being no mitigating or aggravating circumstance, is sentenced to suffer the indeterminate penalty of from fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as minimum, to sixteen (16) years of *reclusion temporal*, as maximum, and to pay a fine of PhP 500, 000.00 and to pay the costs. The period of preventive suspension is credited in her favor.[9]

The RTC gave credence to the testimony of PO1 Memoracion. It found his testimony as "candid, straightforward, firm, unwavering, nay credible," since it was not shown that PO1 Memoracion was "ill-motivated in testifying as he did in Court against all accused."[10] On the other hand, the RTC rejected accused-appellants' defenses of alibi and denial because they

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[8] CA *rollo*, p. 18.

[9] CA *rollo*, pp. 19-20; 57-58.

[10] *Id.* at 19, 57.

failed to present clear and convincing evidence to establish that it was impossible for them to be at the *locus criminis* at the time of the buy-bust operation.[11]

As regards the penalty imposed, the RTC declared each of the accused liable as principal because it found the presence of conspiracy among all four accused.[12] Citing Article 62 of the Revised Penal Code,[13] it likewise imposed the maximum penalty of life imprisonment and a fine of PhP 10 million because of its finding that the offense was committed by an organized/syndicated crime group. However, it reduced the penalty imposed against Monongan because she was a minor at the time of the commission of the offense.

Ruling of the CA

On appeal, all of the accused assailed their conviction and faulted the RTC in finding them guilty beyond reasonable doubt for the sale of dangerous drugs. In their Brief, accused-appellants raised doubts on the credibility of the testimonies of the prosecution witnesses, and questioned the ruling of RTC for rejecting their alibis. They also averred that the prosecution failed to establish the *corpus delicti* of the offense and that the chain of custody rule under RA 9165 was not complied with since no physical inventory and photograph of the seized items were taken in their presence or in the presence of their counsel, a representative from the media and the Department of Justice and an elective official. Furthermore, they refuted the findings of the RTC that conspiracy existed among them, and that they were members of an organized/ syndicated crime group.[14]

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[11] *Id.*

[12] *Id.*

[13] REVISED PENAL CODE, Art. 62. x x x The *maximum penalty* shall be imposed if the offense was committed by any person who belongs to an organized/ syndicated crime group.

An **organized/syndicated crime group** means a group of two or more persons collaborating, confederating or mutually helping one another for purposes of gain in the commission of any crime. (Emphasis supplied.)

[14] *Rollo,* p. 7.

Notwithstanding, the CA affirmed the findings of the RTC but modified the penalty imposed on Monongan, to wit:

> WHEREFORE, the appealed Decision dated October 7, 2008 of the trial is affirmed, with modification that the penalty meted upon accused-appellant Ara Monongan is life imprisonment and fine of ₱10,000,000, but the case is hereby remanded to trial court for appropriate disposition under Section 51, RA No. 9344 with respect to said accused – appellant.
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> The Decision is affirmed in all other respects.[15]

The CA ruled that the RTC erred in reducing the penalty of *reclusion temporal* in favor of Monongan. It reasoned that the penalty of life imprisonment as provided in RA 9165 cannot be lowered because **only** the penalties provided in the Revised Penal Code, and not in special laws, may be lowered by one or two degrees.[16]

The Issues

I

Whether the Court of Appeals erred in affirming the credibility of the testimonies of the prosecution witnesses?

II

Whether the Court of Appeals erred in upholding the ruling of the RTC in rejecting accused-appellants denials and alibis?

III

Whether the Court of Appeals erred in ruling that there was compliance with the chain of custody rule as required by RA 9165?

IV

Whether the Court of Appeals erred in imposing the maximum penalty of life imprisonment and a fine of ten million pesos (Php 10,000,000) against ALL of the accused?

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[15] *Id.* at 34.

[16] *Id.* at 33.

The Ruling of this Court

We sustain the conviction of accused-appellants.

In determining the guilt of the accused for the sale of dangerous drugs, the prosecution is obliged to establish the following essential elements: (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. There must be proof that the transaction or sale actually took place and that the *corpus delicti* be presented in court as evidence.[17]

In finding the existence of these elements, the trial and appellate courts in the present case upheld the credibility of the testimony of PO1 Memoracion, as supported by the testimony of PO1 Arago. In this regard, We find no sufficient reason to interfere with the findings of the RTC on the credibility of the prosecution witnesses pursuant to the principle that the trial court's assessment of the credibility of a witness is entitled to great weight and sometimes, even with finality.[18] Where there is no showing that the trial court overlooked or misinterpreted some material facts or that it gravely abused its discretion, the Court will not disturb the trial court's assessment of the facts and the credibility of the witnesses since the RTC was in a better position to assess and weigh the evidence presented during trial.[19] The rationale behind this principle was explained by the Court in *People v. Dinglasan*,[20] to wit:

In the matter of credibility of witnesses, we reiterate the familiar and well-entrenched rule that the factual findings of the trial court should be respected. **The judge *a quo* was in a better position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying**. **It is doctrinally settled that the**

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[17] *People v. Pascua*, G.R. 194580, August 31, 2011.

[18] *People v. Bautista*, G.R. No. 191266, June 6, 2011.

[19] *Id.;* citing *People v. Combate*, G.R. No. 189301, December 15, 2010, 638 SCRA 797.

[20] G.R. No. 101312, January 28, 1997, 267 SCRA 26, 39.

evaluation of the testimony of the witnesses by the trial court is received on appeal with the highest respect, because it had the direct opportunity to observe the witnesses on the stand and detect if they were telling the truth. This assessment is binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily or that the trial court had plainly overlooked certain facts of substance or value that if considered might affect the result of the case. (Emphasis supplied.)

Moreover, the factual findings of the RTC are strengthened by an affirmatory ruling of the CA. Settled is the rule that the factual findings of the appellate court sustaining those of the trial court are binding on this Court, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error.[21] Absent any indication that the courts *a quo* committed misinterpretation of antecedents or grave abuse of discretion, the facts as established by the trial and appellate courts deserve full weight and credit, and are deemed conclusive.[22]

As regards accused-appellants' denial and claim of frame-up, the trial and appellate courts correctly ruled that these defenses cannot stand unless the defense could show with clear and convincing evidence that the members of the buy-bust team were inspired with ill motives or that they were not properly performing their duties. The defenses of denial and frame-up are invariably viewed with disfavor because such defenses can easily be fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs.[23] Here, in the absence of evidence showing ill motives on the part of the members of the buy-bust team, accused-appellants' denials and plea of frame-up deserve scant consideration in light of the positive identification made by PO1 Memoracion and PO1 Arago.

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[21] *Asiatico v. People*, G.R. No. 195005, September 12, 2011; citing *People v. Quiamanlon*, G.R. No. 191198, January 26, 2011 and *Fuentes v. Court of Appeals*, G.R. No. 109849, February 26, 1997, 268 SCRA 703, 708-709.

[22] *People v. Gabrino*, G.R. No. 189981, March 9, 2011, 645 SCRA 187 and *People v. Combate*, *supra* note 19.

[23] *People v. Andres*, G.R. No. 193184, February 7, 2011.

Similarly, accused-appellants' alibis failed to fortify their claim of innocence because, while they insist on their own version of events, they failed to demonstrate compliance with the requisites of the defense of alibi. In *People v. Apattad*,[24] the Court reiterated the jurisprudential rules and precepts in assessing the defense of alibi:

> *One*, alibis and denials are generally disfavored by the courts for being weak. *Two*, they cannot prevail over the positive identification of the accused as the perpetrators of the crime. *Three*, for alibi to prosper, the accused must prove not only that they were somewhere else when the crime was committed, but also that it was physically impossible for them to be at the scene of the crime at the time of its commission. *Fourth*, alibi assumes significance or strength only when it is amply corroborated by credible and disinterested witnesses. *Fifth*, alibi is an issue of fact that hinges on the credibility of witnesses, and the assessment made by the trial court — unless patently and clearly inconsistent — must be accepted.

It is clear, therefore, that in order for the defense of alibi to prosper, the accused should demonstrate, by clear and convincing evidence, that he or she **was somewhere else** when the buy-bust operation was conducted, and that it was **physically impossible** for him or her to be present at the scene of the crime either **before**, **during**, or **after** the offense was committed.[25] It is on this thrust that the alibis made by accused-appellants failed to convince since all of them admitted that they were within the vicinity of Building 2, Maharlika Village, Taguig City, which, apparently, was the *locus criminis* of the offense. Furthermore, considering that alibi as evidence is negative in nature and self-serving, it cannot attain more credibility than

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[24] G.R. No. 193188, August 10, 2011; citing *People v. Estoya*, G.R. No. 153538, May 19, 2004, 428 SCRA 544.

[25] *People v. Sancholes*, G.R. Nos. 110999 & 111000, April 18, 1997 citing *People vs. Baniaga, et al.*, G.R. No. L-14905, January 28, 1961, 1 SCRA 283; See also Herrera, Oscar M., *Remedial Law, Book VI, Revised Rules on Evidence*, 1999 ed. p. 378 citing *Arceno v. People*, G.R. No. 116098, April 26, 1996.

the testimonies of prosecution witnesses who testify on clear and positive evidence.[26]

Anent the third issue, accused-appellants demand their acquittal on the ground that the chain of custody rule under Section 21 of RA 9165 or the *Comprehensive Dangerous Drugs Act of 2002* was not complied with. The said section 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. — 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.

Corollarily, the law's Implementing Rules and Regulations provides:

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

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[26] *People vs. Apattad*, *supra* note 24.

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

At this juncture, We reiterate that the essence of the chain of custody rule is to ensure that the dangerous drug presented in court as evidence against the accused is the same dangerous drug recovered from his or her possession.[27] As explained in *Castro v. People*:[28]

As a **mode of authenticating evidence**, the chain of custody rule requires that the presentation and admission of the seized prohibited drug as an exhibit be preceded by evidence to support a finding that the matter in question is what the proponent clams it to be. **This requirement is essential to obviate the possibility of substitution as well as to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements and custody of the seized prohibited item, from the accused, to the police, to the forensic laboratory for examination, and to its presentation in evidence in court**. Ideally, the custodial chain would include testimony about every link in the chain or movements of the illegal drug, from the moment of seizure until it is finally adduced in evidence. **It cannot**

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[27] *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 267.

[28] G.R. No. 193379, August 15, 2011.

be overemphasized, however, that a testimony about a perfect chain is almost always impossible to obtain. (Emphasis supplied.)

Since the "perfect chain" is almost always impossible to obtain, non-compliance with Sec. 21 of RA 9165, as stated in the Implementing Rules and Regulations, does not, without more, automatically render the seizure of the dangerous drug void, and evidence is admissible as long as the **integrity** and **evidentiary** value of the seized items are properly preserved by the apprehending officer/team.[29]

In the present case, accused-appellants insist on the police officer's non-compliance with the chain of custody rule since there was "no physical inventory and photograph of the seized items were taken in their presence or in the presence of their counsel, a representative from the media and the Department of Justice and an elective official."

We, however, find these observations insignificant since a review of the evidence on record shows that the chain of custody rule has been sufficiently observed by the apprehending officers. Thru the testimonies of the PO1 Memoracion and PO1 Arago, the prosecution was able to prove that the *shabu* seized from Musa was the very same *shabu* presented in evidence as part of the *corpus delicti*. The factual findings of the CA, affirming those of the RTC, are elucidating:

Here, the testimonial and documentary evidence presented by the prosecution showed that the integrity and evidentiary value of the "*shabu*" was preserved. Contrary to the accused-appellants allegations, ***the shabu specimen presented in court by the prosecution was the same item received from accused-appellant Aiza Musa by PO1 Memoracion.*** The *buy-bust operation was conducted about 10:30 in the evening* of June 1, 2004. Immediately thereafter, **PO1 Memoracion marked the seized sachet of shabu with his initials "APM"** at the masking tape, and the ***accused-appellants were turned over to the police station for investigation.*** At *1:55H of June 2,*

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[29] *People v. Pambid*, G.R. No. 192237, January 26, 2011; *People v. De Mesa*, G.R. No. 188570, July 6, 2010, 624 SCRA 248; and *People v. Mariacos*, G.R. No. 188611, June 21, 2010, 621 SCRA 327.

2004, **PO1 Memoracion delivered to the PNP Crime Laboratory Service, SPD Fort Bonifacio, Taguig, a Request for Laboratory Examination dated June 2, 2004, together with the sachet of shabu seized form accused-appellant Aiza Musa.** Stamped on the right portion of the Request for Examination shows the time and *date of delivery at "01:55H 02 June 04", "RECEIVED BY: Nup Bacayan" and "DELIVERED BY: PO1 Memoracion."* Thus:

> e) Evidence Submitted
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> One (1) transparent plastic sachet (heat sealed) containing white crystalline substance suspected to be Methylamphetamine Hydrochloride or *shabu* marked "APM". (item purchased from Aiza Musa)

At *0300H 02 June 2004*, the *PNP Crime Laboratory* Southern Police District Crime Laboratory, Fort A. Bonifacio, Taguig Metro Manila **issued Physical Science Report No. D-439-04S stating that the heat salad plastic sachet with markings "APM" containing 4.05 grams of crystalline substance yielded positive for *shabu*.**

Also it bears stressing that during the hearing on May 28, 2007, **accused-appellants, thru their counsel, stipulated on the testimony of the forensic chemist, Police Inspector Richard Allan Manganib, with respect to his forensic examination of the subject sachet of *shabu*.** Clearly, ***the integrity of the sachet of "shabu" was duly preserved as it was duly marked by PO1 Rey Memoracion and it was the very same item transmitted to and examined by the PNP Crime Laboratory***.[30] (Emphasis supplied.)

It is likewise significant to note that a similar conclusion was reached in *People v. Presas*[31] where the Court disposed, as follows:

> In this case, the **failure on the part of the MADAC operatives to take photographs and make an inventory of the drugs seized from the appellant was not fatal because the prosecution was able to preserve the integrity and evidentiary value of the said illegal drugs.** The concurrence of all elements of the illegal sale

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[30] *Rollo*, pp. 23-24.

[31] G.R. No. 182525, March 2, 2011.

of *shabu* was proven by the prosecution. The chain of custody did not appear to be broken. The recovery and handling of the seized drugs were satisfactorily established. Fariñas was able to **put the necessary markings on the plastic sachet of shabu bought from appellant immediately after the consummation of the drug sale.** This was **done in the presence of appellant and the other operatives**, **and while in the crime scene**. **The seized items were then brought to the PNP Crime Laboratory for examination on the same day.** Both **prosecution witnesses were able to identify and explain said markings in court.** (Emphasis supplied.)

Hence, the fact that the PO1 Memoracion and PO1 Arago did not make an inventory of the seized items or that they did not take photographs of them is not fatal considering that the prosecution in this case was able to establish, with moral certainty, that the identity, integrity, and evidentiary value of the *shabu* was not jeopardized from the time of its seizure until the time it was presented in court.

Furthermore, We find enlightenment in *People v. Vicente, Jr.*:[32]

Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation. Oft-repeated is the rule that 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.** Absent any indication that the police officers were ill-motivated in testifying against the accused, full credence should be given to their testimonies.[33] (Emphasis supplied.)

As stated, the records are bereft of any showing that PO1 Memoracion and PO1 Arago were ill motivated in testifying

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[32] G.R. No. 188847, January 31, 2011.

[33] Citing *People v. Tamayo*, G.R. No. 187070, February 24, 2010, 613 SCRA 556, 564; *People v. Villamin*, G.R. No. 175590, February 9, 2010, 612 SCRA 91, 106; and *People v. Gum-Oyen*, G.R. No. 182231, April 16, 2009, 585 SCRA 668, 678.

against accused-appellants. Neither was there any indication that they were in bad faith nor had digressed from their ordinary tour of duty. There is, therefore, no cogent basis to taint their testimonies with disbelief. Hence, We submit to the presumption that both of them and the other police officers involved in the buy-bust operation had performed faithfully the matters with which they are charged, and that they acted within the sphere of their authority. *Omnia praesumumtur rite esse acta* (All things are presumed to have been done regularly).

In view of the foregoing considerations, the Court finds no reversible error on the part of the RTC and CA in finding accused-appellants guilty beyond reasonable doubt of violating of Sec. 5, RA 9165 for selling dangerous drugs.

Notwithstanding, We rule that the penalty imposed against the accused-appellants must be modified.

With reference to accused-appellant Monongan, the RTC found her to be a minor or 17 years old at the time of the commission of the offense.[34] Accordingly, it imposed the indeterminate penalty of imprisonment of fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as minimum, to sixteen (16) years of *reclusion temporal*, as maximum.[35] On appeal, the CA increased the penalty of Monongan to life imprisonment.[36]

However, We find these impositions contrary to prevailing jurisprudence. In the recent *People v. Mantalaba*,[37] where the accused was likewise 17 years old at the time of the commission of the offense, the Court held, *inter alia*, that: (a) pursuant to Sec. 98 of RA 9165, the penalty for acts punishable by life imprisonment to death provided in the same law shall be *reclusion perpetua* to death when the offender is a minor; and

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[34] CA *rollo*, pp. 19-20; 57-58.

[35] *Id.* at 20, 58.

[36] *Rollo*, p. 34.

[37] G.R. No. 186227, July 20, 2011, 654 SCRA 188.

(b) that the penalty should be graduated since the said provision adopted the technical nomenclature of penalties provided for in the Revised Penal Code.[38] The Court in the said case established the rules as follows:

> Consequently, the privileged mitigating circumstance of minority can now be appreciated in fixing the penalty that should be imposed. The RTC, as affirmed by the CA, imposed the penalty of *reclusion perpetua* without considering the minority of the appellant. Thus, applying the rules stated above, the **proper penalty should be one degree lower than *reclusion perpetua*, which is *reclusion temporal*,** the privileged mitigating circumstance of minority having been appreciated. Necessarily, also applying the Indeterminate Sentence Law (ISLAW), **the minimum penalty should be taken from the penalty next lower in degree which is *prision mayor*** and **the maximum penalty shall be taken from the medium period of *reclusion temporal*, there being no other mitigating circumstance nor aggravating circumstance.** The **ISLAW is applicable** in the present case because *the penalty which has been originally an indivisible penalty (reclusion perpetua to death), where ISLAW is inapplicable, became a divisible penalty (reclusion temporal) by virtue of the presence of the privileged mitigating circumstance of minority.* Therefore, **a penalty of six (6) years and one (1) day of *prision mayor*, as minimum, and fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum, would be the proper imposable penalty.** (Emphasis supplied.)

Therefore, the penalty of imprisonment imposed against Monongan should mirror the ruling of the Court in *Mantalaba* in the absence of any mitigating circumstance or aggravating circumstance other than the minority of Monongan. Consequently, the penalty of imprisonment imposed on Monongan should be six (6) years and one (1) day of *prision mayor*, as minimum, and fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum.

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[38] Adopting the principle in *People v. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 555.

As regards the fine imposed, the RTC sentenced accused-appellants the maximum fine of PhP 10 million on the ground that accused-appellants sold *shabu* as members of an organized crime group[39] or a **drug syndicate**. It ruled that Article 62 of the Revised Penal Code, as amended by Sec. 23 of RA 7659, mandates that the maximum penalty shall be imposed if the offense was committed by any person who belongs to an organized/syndicated crime group.[40] These findings were eventually affirmed by CA.[41]

The records, however, are bereft of any proof that accused-appellants operated as members of a drug syndicate. By definition, a drug syndicate is any organized group of two (2) or more persons forming or joining together with the intention of committing any offense prescribed under RA 9165.[42] In determining whether or not the offense was committed by any person belonging to an organized/syndicated crime group, We are guided by the ruling in *People v. Alberca*[43] where the Court, after scrutinizing the deliberations held by Congress on what is now Art. 62, paragraph 1(a) of the Revised Penal Code, held:

> We hold that the trial court erred in finding that accused-appellant and his companions constituted a syndicated or an organized crime group within the meaning of Article 62, as amended. **While it is true they confederated and mutually helped one another for the purpose of gain, there is no proof that they were a group organized for the general purpose of committing crimes for gain, which is the essence of a syndicated or organized crime group.**
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> x x x x x x x x x

[39] CA *rollo*, pp. 19, 57.

[40] *Id.*

[41] *Rollo*, p. 34.

[42] RA 9165, Sec. 3(o).

[43] 327 Phil. 398 (1996).

What emerges from this discussion is the idea of **a group of persons; at least two in number, which is organized for the purpose of committing crimes for gain**." (Emphasis supplied.)

Applying this principle in *Alberca*, the Court held in *People v. Santiago*:[44]

Article 62 of the Revised Penal Code, as amended by Section 23 of Republic Act No. 7659, mandates that the maximum penalty shall be imposed if the offense was committed by any person who belongs to an organized/syndicated crime group. The same article defines an organized/syndicated crime group as a group of two or more persons collaborating, confederating, or mutually helping one another for the purposes of gain in the commission of any crime.

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While the existence of conspiracy among appellants in selling *shabu* was duly established, there was no proof that appellants were a group organized for the general purpose of committing crimes for gain, which is the essence of the aggravating circumstance of organized/syndicated group under Article 62 of the Revised Penal Code. (Emphasis supplied.)

We find the present case similar to *Santiago*. The existence of conspiracy among accused-appellants in selling *shabu* was duly established, but the prosecution failed to provide proof that they operated as an organized group or as a drug syndicate. Consequently, the aggravating circumstance that "the offense was committed by an organized/syndicated group" cannot be appreciated. Thus, the maximum PhP 10 million imposed by the trial and appellate courts upon each of accused-appellants should be modified accordingly.

This is in consonance with the dictum in Criminal Law that the existence of aggravating circumstances must be based on positive and conclusive proof, and not merely on hypothetical facts no matter how truthful the suppositions and presumptions may seem.[45] Aggravating circumstances which are taken into

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[44] G.R. No. 175326, November 28, 2007, 539 SCRA 198.

[45] *People v. Mongado*, No. L-24877, June 30, 1969, 28 SCRA 642.

consideration for the purpose of increasing the degree of the penalty imposed must be proved with equal certainty as the commission of the act charged as criminal offense.[46]

Incidentally, a survey of recent jurisprudence[47] shows that the Court has consistently imposed a fine of five hundred thousand pesos (PhP 500,000) for violation of Sec. 5, Art. II, RA 9165 in the absence of any aggravating circumstance.

WHEREFORE, the February 28, 2011 CA Decision in CA-G.R. CR-H.C. No. 03758 finding accused-appellants guilty of violating Sec. 5, Art. II of RA 9165 is hereby **AFFIRMED** with **MODIFICATIONS** that: **(a)** accused-appellant Ara Monongan *y* Papao is sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor*, as minimum, and fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum; and **(b)** each of the accused-appellants shall pay a fine in the amount of five hundred thousand pesos (PhP 500,000).

SO ORDERED.

Bersamin,[*] *Abad, Villarama, Jr.,*[**] and *Mendoza, JJ.*, concur.

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[46] *People v. Rabanal*, G.R. No. 146687, August 22, 2002, 387 SCRA 685.

[47] *People v. Nicart*, G.R. No. 182059, July 4, 2012; *People v. Abedin*, G.R. No. 179936, April 11, 2012; *People v. Cardenas*, G.R. No. 190342, March 21, 2012; *People v. Bautista*, G.R. No. 177320, February 22, 2012; *People v. Arriola*, G.R. No. 187736, February 8, 2012; *People v. Ulama*, G.R. No. 186530, December 14, 2011; *People v. Amansec*, G.R. No. 186131, December 14, 2011; *People v. Buenaventura*, G.R. No. 184807, November 23, 2011; *People v. Legaspi*, G.R. No. 173485, November 23, 2011; *People v. Bara*, G.R. No. 184808, November 14, 2011.

[*] Designated additional member per Special Order No. 1328 dated October 9, 2012.

[**] Designated acting member per special Order No. 1299-H dated August 28, 2012.

FIRST DIVISION

[G.R. No. 156296. November 12, 2012]

DENNIS Q. MORTEL, *petitioner, vs.* **SALVADOR E. KERR,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; WHERE THE NEGLIGENCE OF THE COUNSEL WAS SO GROSS AND PALPABLE AS TO DEPRIVE THE CLIENT OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW, THE CLIENT DESERVES ANOTHER CHANCE TO PRESENT HIS CASE; PRINCIPLE APPLIED IN CASE AT BAR.— The negligence and mistakes committed by his several counsels were so gross and palpable that they denied due process to Mortel and could have cost him his valuable asset. They thereby prevented him from presenting his side, which was potentially highly unfair and unjust to him on account of his defense being plausible and seemingly meritorious. He stated that he had already paid the principal of the loan and the interest, submitting in support of his statement a receipt for ₱200,000.00 that Kerr had allegedly signed. He also stated that he had actually overpaid in view of his arrangement for Kerr to withdraw ₱6,000.00 each month from Mortel's bank account as payment of the interest, a statement that he would confirm in court through the testimony of a bank representative. We held in *Apex Mining, Inc. v. Court of Appeals* that when the incompetence, ignorance or inexperience of counsel is so great and the result is so serious that the client, who otherwise has a good cause, is prejudiced and denied his day in court, the client deserves another chance to present his case; hence, the litigation may be reopened for that purpose. x x x Court litigation is primarily a search for truth, and a liberal interpretation of the rules that gives to both parties the fullest opportunity to adduce proof is the best way to ferret out such truth. Thus, a court may suspend its own rules or except a case from them in order to serve the ends of justice; or, it may altogether disregard the rules in a proper case. To cling to the general rule of having the ignorance,

negligence and dereliction of duty of the counsel bind the client is only to condone rather than to rectify a serious injustice to a party whose only fault was to repose his faith and entrust his cause to his counsel.

APPEARANCES OF COUNSEL

Arias Law Office for petitioner.
Mendoza Law Office for respondent.

D E C I S I O N

BERSAMIN, *J.*:

When the incompetence, ignorance or inexperience of counsel is so great and the resulting error is so serious that the client, who otherwise has a good cause, is prejudiced and denied his day in court, the client deserves another chance to present his case. Hence, the litigation may be reopened for that purpose.

The client seeks the reversal of the resolution dated September 5, 2002,[1] whereby the Court of Appeals (CA) denied his petition for review on *certiorari* from the order of the Regional Trial Court, Branch 72, in Olongapo City (RTC) issued in Civil Case No. 279-0-2000. He pleads that the rules of procedure should be liberally construed in his case, and that he should not be bound by the negligence and errors of his previous counsels that deprived him of his property without being afforded his day in court.

Antecedents

On July 19, 2000, respondent Salvador E. Kerr (Kerr) instituted a complaint for foreclosure of mortgage, docketed as Civil Case No. 279-0-2000, against Dennis Q. Mortel (Mortel), who duly filed an answer on August 11, 2000 through Atty. Leonuel N.

[1] *Rollo*, pp. 13-14; penned by Associate Justice Sergio L. Pestaño (retired/deceased), and concurred in by Associate Justice Delilah Vidallon-Magtolis (retired) and Associate Justice Josefina Guevarra-Salonga (retired).

Mas (Atty. Mas) of the Public Attorney's Office**.** The pre-trial was re-set four times for various reasons, but on the fifth setting on December 7, 2000, Mortel and Atty. Mas were not around when the case was called. On motion of Kerr's counsel, the RTC declared Mortel as in default and allowed Kerr to present evidence *ex parte*.

On December 28, 2000, Atty. Eugenio S. Tumulak (Atty. Tumulak) filed a notice of appearance in behalf of Mortel, but the RTC did not act on the notice of appearance.

On February 28, 2001, the RTC rendered judgment in favor of Kerr,[2] disposing as follows:

> WHEREFORE, judgment is hereby rendered ordering the defendant Dennis Q. Mortel to pay the plaintiff Salvador E. Kerr within a period of not more than ninety (90) days from receipt of this Decision the sum of ₱130,000.00 plus interest of ₱6,000.00 per month from November 1999 until the whole obligation has been fully paid and the further sum of ₱20,000.00 by way of attorney's fees and the costs.
>
> In default of such payment, let the house and lot described in the Deed of Real Estate Mortgage (Exhibits "A-1" and "A-2") in the plaintiff's complaint be sold at public auction and the proceeds thereof applied to the aforesaid obligation and the costs of this suit.
>
> SO ORDERED.

On March 22, 2001, Mortel, through Atty. Leopoldo C. Lacambra, Jr. (Atty. Lacambra), filed a motion for new trial.[3]

On March 23, 2001, Atty. Mas filed his withdrawal of appearance.[4]

On April 5, 2001, the RTC denied Mortel's motion for new trial, noting that Atty. Mas' withdrawal as counsel of Mortel had been filed only on March 23, 2001 and approved by the RTC on March 26, 2001. It held that considering that the

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[2] Records, pp. 72-A-73.

[3] *Id.* at 78-82.

[4] *Id.* at 88.

records of the case showed that Atty. Mas had received the decision on March 1, 2001, the motion for new trial had been filed out of time on March 20, 2001.[5]

On May 4, 2001, Mortel, this time through Atty. Tumulak, filed a verified petition for relief from judgment under Rule 38 of the *Rules of Court*.[6]

On August 20, 2001, the RTC denied the verified petition for relief from judgment on the ground that the petition for relief had been filed beyond the reglementary period of 60 days based on a reckoning of the start of the period from March 1, 2001, the date when Atty. Mas received the notice and copy of the Order,[7] to wit:

> x x x. Now, the petition for relief is again filed by a counsel whose Notice of Appearance has not been acted upon. Defendant's counsel on record received the Decision on March 1, 2001, which is the reckoning point to count the mandatory sixty (60) days in order that a Petition for Relief can be filed. It is elementary that notice to counsel is notice to party (*People v. Midtomod*, 283 SCRA 395). Hence, from March 1, 2001 up to May 4, 2001 – the filing of the Petition for Relief – is already sixty-four (64) days which is four days beyond the period within which to file the same. The defendant's Counsel now reckoned the period from the time the client received the said Decision.[8]

On November 14, 2001, Mortel moved for the reconsideration of the denial of his petition for relief from judgment.[9]

On December 6, 2001, the RTC granted the withdrawal of Atty. Lacambra and Atty. Mas as counsels for Mortel, and finally recognized Atty. Tumulak as the only counsel.[10]

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[5] *Id.* at 95.

[6] *Id.* at 97-107.

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

[8] *Id.* at 125.

[9] *Id.* at 133-134.

[10] *Id.* at 143.

On January 16, 2002, the RTC treated Mortel's motion for reconsideration as a mere scrap of paper and ordered it stricken from the records for failure of the counsel to serve a notice of hearing with the motion for reconsideration.[11]

Mortel filed an urgent motion for reconsideration *vis-à-vis* the RTC's order of January 16, 2002.[12]

On June 17, 2002, the RTC denied the urgent motion for reconsideration for being a second motion for reconsideration and for being moot and academic; and granted Kerr's *ex parte* motion for the issuance of a writ of possession.[13]

Subsequently, the RTC issued a writ of execution on June 20, 2002,[14] and Kerr was then placed in possession of the property.

On August 26, 2002, Mortel, through Atty. Tumulak, filed in the CA a petition for review on *certiorari* with prayer for the issuance of a restraining order.[15]

On September 5, 2002, the CA issued a resolution dismissing Mortel's petition for review for failing to state the specific material dates showing that the petition had been filed within the reglementary period, in violation of Section 6(d), Rule 43 of the *Rules of Court*. It observed that Mortel thereby resorted to the wrong remedy considering that he was assailing the propriety of the RTC's order declaring him in default, against which the proper remedy was a petition for *certiorari*.[16]

On October 14, 2002, Mortel sought the reconsideration of the denial of his petition for review.[17]

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[11] *Id.* at 159.

[12] *Id.* at 168-175.

[13] *Id.* at 181-182.

[14] *Id.* at 184-185.

[15] CA *rollo*, pp. 2-15.

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

[17] *Id.* at 97-101.

On November 18, 2002, the CA denied Mortel's motion for reconsideration for lack of merit because the defects of the petition for review were not corrected, and for availing himself of the remedy of petition for review when he should have filed a petition for *certiorari* instead.[18]

Atty. Tumulak received the denial by the CA on December 5, 2002.[19]

Instead of appealing *via* petition for review on *certiorari* in the Supreme Court (SC), Mortel, through Atty. Tumulak, filed in the CA on December 20, 2002 an urgent motion for extension of time to appeal to the SC.[20]

On December 23, 2002, Mortel, by himself, sought an extension of time to file a petition for review on *certiorari*.[21]

On January 27, 2003, the Court granted Mortel's motion for extension with a warning that no further extension would be given.[22]

On January 22, 2003, Mortel, still by himself, filed his petition for review on *certiorari* assailing the CA's dismissal of his petition for review on *certiorari*.

Issues

Mortel contends that:

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED IN DENYING THE MOTION FOR RECONSIDERATION DATED SEPTEMBER 28, 2002 FROM THE RESOLUTION DATED SEPTEMBER 5, 2002 DISMISSING THE PETITION FOR REVIEW FILED BY THE PETITIONER.[23]

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[18] *Id.* at 110.

[19] *Id.* at 108-109.

[20] *Rollo*, pp. 9-11.

[21] *Id.* at 3-7.

[22] *Id.* at 34.

[23] *Id.* at 41.

Mortel prays that the *Rules of Court* be liberally interpreted in his favor to allow his petition for review on *certiorari* despite the various lapses of his counsels resulting in the loss of his opportunity to assail the resolutions of the RTC.

On the other hand, Kerr insists that the CA correctly dismissed the petition because the errors of his former counsels bound Mortel.[24]

Accordingly, the issues to be resolved are the following:

1. Whether or not the negligence of Mortel's previous counsels should bind him; and
2. Whether or not Mortel was deprived of his property without due process of law.

Ruling

The petition, being meritorious, is granted.

The CA found that despite the opportunity given to him to do so, Mortel's counsel erred in failing to state the specific material dates required by Section 6(d) of Rule 43, *Rules of Court* to show that the petition for review was filed within the reglementary period; and that Mortel resorted to the wrong remedy by filing a petition for review instead of a petition for *certiorari* because he was questioning the propriety of the RTC's order declaring him as in default.[25]

Mortel's counsel committed another error when he filed his urgent motion for extension of time to file an appeal in the CA, instead of in the SC, resulting in not stopping the running of the period of appeal and in thereby rendering the Resolution of the CA final.

As a rule, a client is bound by his counsel's conduct, negligence and mistake in handling a case.[26] To allow a client to disown

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[24] *Id.* at 70.

[25] CA *Rollo*, pp. 95-96.

[26] *Saint Louis University v. Cordero*, G.R. No. 144118, July 21, 2004, 434 SCRA 575, 584.

his counsel's conduct would render proceedings indefinite, tentative, and subject to reopening by the mere subterfuge of replacing counsel.[27]

But the rule admits of exceptions. In several rulings, the Court held the client not concluded by the negligence, incompetence or mistake of the counsel. For instance, in *Suarez v. Court of Appeals*,[28] the Court set aside the judgment and mandated the trial court to reopen the case for the reception of the evidence for the defense after finding that the negligence of the therein petitioner's counsel had deprived her of the right to present and prove her defense. Also, in *Legarda v. Court of Appeals*,[29] the Court ordered restored to the petitioner her property that had been sold at public auction in satisfaction of a default judgment resulting from the failure of her counsel to file an answer and from counsel's lack of vigilance in protecting her interests in subsequent proceedings before the trial court and the CA. Lastly, in *Amil v. Court of Appeals*,[30] the Court declared that an exception to the rule that a client is bound by the mistakes of his counsel is when the negligence of the counsel is so gross that the client was deprived of his day in court, thereby also depriving the client of his property without due process of law.

The relevant question becomes, therefore, whether the negligence of Mortel's counsels was so gross and palpable as to deprive him of his property without due process of law.

We hold that it was.

Mortel did not have his day in court, because he was unable to submit his evidence to controvert the claim of Kerr about his contractual default after the RTC declared Mortel as in default due to his counsel's failure to appear at the fifth setting of the

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[27] *Gomez v. Montalban*, G.R. No. 174414, March 14, 2008, 548 SCRA 693, 708.

[28] G.R. No. 91133, March 22, 1993, 220 SCRA 274.

[29] G.R. No. 94457, March 18, 1991, 195 SCRA 418.

[30] G.R. No. 125272, October 7, 1999, 316 SCRA 317.

pre-trial. Yet, he explained that he was only late because he arrived in court a few minutes after the case had been called. His explanation appears plausible, considering that he had unfailingly appeared in court in the four previous settings of the pre-trial. In view of the fact that it was his first time not to be present when the case was called at the fifth setting of the pre-trial, the RTC could have allowed a second or a third call instead of immediately granting his adverse party's motion to declare him as in default. In *Leyte v. Cusi*,[31] the Court has admonished against precipitate orders of default because such orders have the effect of denying a litigant the chance to be heard. Indeed, we have reminded trial courts that although there are instances when a party may be properly defaulted, such instances should be the exception rather than the rule and should be allowed only in clear cases of a litigant's obstinate refusal or inordinate neglect to comply with the orders of the court. Without such a showing, the litigant must be given every reasonable opportunity to present his side and to refute the evidence of the adverse party in deference to due process of law.[32]

Nevertheless, the negligence that actually warrants the undoing of the RTC's decision was serial on the part of Atty. Mas, the RTC and Atty. Tumulak.

The primary negligence occurred on the part of Atty. Mas. He did not appear at the pre-trial despite being notified of it. What is very disturbing is that he was then an attorney in the Public Attorney's Office in Olongapo City whose place of work was located in the same Hall of Justice of Olongapo City where the RTC was then sitting. Moreover, he did not offer any explanation for his non-appearance at the pre-trial despite notice to him; nor did he take the necessary move to protect the interest of Mortel upon learning that Mortel had been declared as in default by the RTC. His non-appearance despite notice and his subsequent inaction for his client's cause manifested his indifference and lack of professionalism, and is difficult to

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[31] G.R. No. L-31974, July 31, 1987, 152 SCRA 496.

[32] *Id.* at 498-499.

comprehend considering that he was the primary cause why Mortel was declared as in default by the RTC.

The RTC was equally responsible for Mortel's dire plight. It appears that Mortel engaged Atty. Tumulak to take over as counsel from Atty. Mas. Atty. Tumulak notified the RTC of his appearance for Mortel on December 28, 2000. The RTC could have easily noted and acted on Atty. Tumulak's entry of appearance for Mortel, or, if the RTC still desired to require the submission of Atty. Mas' withdrawal as counsel, to direct such withdrawal to be first submitted, especially after Atty. Mas filed his withdrawal of appearance on March 23, 2001. But the RTC uncharacteristically did not take either of such actions on the notice of appearance but proceeded to render its judgment on the merits, a copy of which it dispatched to Atty. Mas (who received it on March 1, 2001) and to Mortel himself (who received it on March 7, 2001). In effect, the RTC disregarded Atty. Tumulak's notice of his substitution of Atty. Mas as counsel of Mortel. The disregard continued for nearly a year, and the RTC finally recognized Atty. Tumulak as the only counsel of Mortel on December 6, 2001. The reason for the RTC's disregard of and long-delayed action upon a matter as essential to the client and to the administration of justice in the case as the substitution of counsel is not easy to appreciate, especially because the RTC tendered no good reason for it.

With Atty. Tumulak left out and remaining unaware of the developments in the case because of the RTC's inaction on his notice of appearance, Mortel, upon receipt of the decision and feeling abandoned again by Atty. Tumulak, his new counsel, engaged Atty. Lacambra to collaborate as his counsel. Atty. Lacambra filed on March 20, 2001 a motion for new trial. Counting from the time when Mortel received the copy of the decision on March 7, 2001, Mortel probably thought that he had filed the motion for new trial within the required period. However, the RTC considered March 1, 2001 as the reckoning date, being the date when Atty. Mas received the notice of the decision, and ruled that Mortel's motion for new trial was already filed beyond the prescribed period. That action of the RTC

was not prudent and circumspect, considering that the records of the case already contained since December 28, 2000 the entry of appearance of Atty. Tumulak as replacement of Atty. Mas as Mortel's counsel. The RTC should have at least informed either Mortel or Atty. Tumulak or both of them that it was either allowing or disallowing Atty. Tumulak's entry of appearance in order to enable Mortel to seasonably clarify his dire situation and, if necessary, even to rectify it. That prudential and circumspect approach would have been easy for the RTC to take because the RTC became all too aware of the neglect of Atty. Mas in protecting the interest of Mortel following the declaration of Mortel as in default. In addition, the RTC could have reckoned the period for Mortel to bring the motion for new trial from March 7, 2001, the date when Mortel received a copy of the decision the RTC sent to him directly, instead of March 1, 2001, the date when Atty. Mas received the copy of the decision, considering all the indications about Atty. Mas having neglected the interest of Mortel.

Atty. Tumulak shared the blame for the predicament of Mortel through his own series of errors that mirrored an ignorance of the rules of procedure. There is no question that the errors deprived Mortel of the timely means to successfully undo the adverse decision rendered by the RTC. Atty. Tumulak's first error was in filing a motion for reconsideration *vis-à-vis* the RTC's denial of the petition for relief from judgment without including a proper notice of hearing. He next filed a motion for reconsideration *vis-à-vis* the RTC's denial of his first motion for reconsideration, which the RTC then denied on the ground of its being already a prohibited second motion for reconsideration. This was another fatal error. The series of errors did not end there, for Atty. Tumulak opted to file in the CA a petition for review on *certiorari* instead of a petition for *certiorari*, which was the appropriate remedy due to his alleging grave abuse of discretion on the part of the RTC. This was one more error. The ultimate error was not any less serious, because Atty. Tumulak filed in the CA instead of in this Court the motion for extension of time to appeal the CA's November 18, 2002 denial

of Mortel's motion for reconsideration. Atty. Tumulak's moves in behalf of Mortel, no matter how well intentioned, were contrary to the pertinent rules of procedure and worked against the client's interest.

The negligence and mistakes committed by his several counsels were so gross and palpable that they denied due process to Mortel and could have cost him his valuable asset. They thereby prevented him from presenting his side, which was potentially highly unfair and unjust to him on account of his defense being plausible and seemingly meritorious. He stated that he had already paid the principal of the loan and the interest, submitting in support of his statement a receipt for ₱200,000.00 that Kerr had allegedly signed. He also stated that he had actually overpaid in view of his arrangement for Kerr to withdraw ₱6,000.00 each month from Mortel's bank account as payment of the interest, a statement that he would confirm in court through the testimony of a bank representative.[33]

We held in *Apex Mining, Inc. v. Court of Appeals*[34] that when the incompetence, ignorance or inexperience of counsel is so great and the result is so serious that the client, who otherwise has a good cause, is prejudiced and denied his day in court, the client deserves another chance to present his case; hence, the litigation may be reopened for that purpose. Also, when an unsuccessful party has been prevented from fully and fairly presenting his case because of his attorney's professional delinquency or infidelity the litigation may be reopened to allow the party to present his side. Lastly, where counsel is guilty of gross ignorance, negligence and dereliction of duty, which resulted in the client's being held liable for damages in a damage suit, the client is deprived of his day in court and the judgment may be set aside on such ground.[35]

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[33] CA *Rollo*, pp. 38-39.

[34] G.R. No. 133750, November 29, 1999, 319 SCRA 456.

[35] *Id.* at 468.

Court litigation is primarily a search for truth, and a liberal interpretation of the rules that gives to both parties the fullest opportunity to adduce proof is the best way to ferret out such truth.[36] Thus, a court may suspend its own rules or except a case from them in order to serve the ends of justice; or, it may altogether disregard the rules in a proper case.[37] To cling to the general rule of having the ignorance, negligence and dereliction of duty of the counsel bind the client is only to condone rather than to rectify a serious injustice to a party whose only fault was to repose his faith and entrust his cause to his counsel.[38]

WHEREFORE, the Court **REVERSES** the resolution promulgated on September 5, 2002; **ANNULS** and **SETS ASIDE** the decision rendered in Civil Case No. 279-0-2000 on February 28, 2001 by the Regional Trial Court, Branch 72, in Olongapo City; and **RE-OPENS** Civil Case No. 279-0-2000 for the reception of evidence for the petitioner as the defendant.

Costs of suit to be paid by the respondent.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

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[36] *Go v. Tan*, G.R. No. 130330, September 26, 2003, 412 SCRA 123, 129-130.

[37] *People v. Del Mundo*, G.R. Nos. 119964-69. September 20, 1996, 262 SCRA 266.

[38] *Apex Mining, Inc. v. Court of Appeals, supra* note 35 at 468.

FIRST DIVISION

[G.R. No. 157649. November 12, 2012]

ARABELLE J. MENDOZA, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES and DOMINIC C. MENDOZA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; EXPERT WITNESS; WHERE THE FINDINGS OF AN EXPERT WITNESS AS TO THE PSYCHOLOGICAL INCAPACITY OF A PERSON CANNOT BE GIVEN PROBATIVE VALUE.— We consider the CA's refusal to accord credence and weight to the psychiatric report to be well taken and warranted. The CA correctly indicated that the ill-feelings that she harbored towards Dominic, which she admitted during her consultation with Dr. Samson, furnished the basis to doubt the findings of her expert witness; that such findings were one-sided, because Dominic was not himself subjected to an actual psychiatric evaluation by petitioner's expert; and that he also did not participate in the proceedings; and that the findings and conclusions on his psychological profile by her expert were solely based on the self-serving testimonial descriptions and characterizations of him rendered by petitioner and her witnesses. Moreover, Dr. Samson conceded that there was the need for her to resort to other people in order to verify the facts derived from petitioner about Dominic's psychological profile considering the ill-feelings she harbored towards him. It turned out, however, that the only people she interviewed about Dominic were those whom petitioner herself referred[.] x x x [T]he failure to examine and interview Dominic himself naturally cast serious doubt on Dr. Samson's findings. The CA rightly refused to accord probative value to the testimony of such expert for being avowedly given to show compliance with the requirements set in *Santos* and *Molina* for the establishment of Dominic's psychological incapacity.

2. CIVIL LAW; FAMILY CODE; MARRIAGE; PSYCHOLOGICAL INCAPACITY; NOT ESTABLISHED IN CASE AT BAR.— [E]ven if the expert opinions of psychologists are not conditions

sine qua non in the granting of petitions for declaration of nullity of marriage, the actual medical examination of Dominic was to be dispensed with only *if* the totality of evidence presented was enough to support a finding of his psychological incapacity. This did not mean that the presentation of any form of medical or psychological evidence to show the psychological incapacity would have automatically ensured the granting of the petition for declaration of nullity of marriage. What was essential, we should emphasize herein, was the "presence of evidence that can adequately establish the party's psychological condition," as the Court said in *Marcos*. But where, like here, the parties had the full opportunity to present the professional and expert opinions of psychiatrists tracing the root cause, gravity and incurability of the alleged psychological incapacity, then the opinions should be presented and be weighed by the trial courts in order to determine and decide whether or not to declare the nullity of the marriages. It bears repeating that the trial courts, as in all the other cases they try, must always base their judgments not solely on the expert opinions presented by the parties but on the totality of evidence adduced in the course of their proceedings. We find the totality of the evidence adduced by petitioner insufficient to prove that Dominic was psychologically unfit to discharge the duties expected of him as a husband, and that he suffered from such psychological incapacity as of the date of the marriage. Accordingly, the CA did not err in dismissing the petition for declaration of nullity of marriage.

3. ID.; ID.; ID.; ID.; PSYCHOLOGICAL INCAPACITY AS A GROUND FOR NULLIFICATION OF MARRIAGE, EXPLAINED.— We have time and again held that psychological incapacity should refer to no less than a mental, not physical, incapacity that causes a party to be truly incognitive of the basic marital covenants that must concomitantly be assumed and discharged by the parties to the marriage that, as so expressed by Article 68 of the *Family Code*, include their mutual obligations to live together, to observe love, respect and fidelity, and to render help and support. We have also held that the intendment of the law has been to confine the meaning of psychological incapacity to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to

the marriage. To qualify as psychological incapacity as a ground for nullification of marriage, a person's psychological affliction must be grave and serious as to indicate an utter incapacity to comprehend and comply with the essential objects of marriage, including the rights and obligations between husband and wife. The affliction must be shown to exist at the time of marriage, and must be incurable.

4. ID.; ID.; ID.; ROLE OF THE OFFICE OF THE SOLICITOR GENERAL (OSG) IN CASES OF DECLARATION OF NULLITY OF MARRIAGE.— The obvious intent of the Resolution was to require the OSG to appear as counsel for the State in the capacity of a *defensor vinculi* (*i.e.,* defender of the marital bond) to oppose petitions for, and to appeal judgments in favor of declarations of nullity of marriage under Article 36 of the *Family Code*, thereby ensuring that only the meritorious cases for the declaration of nullity of marriages based on psychological incapacity—those sufficiently evidenced by gravity, incurability and juridical antecedence—would succeed.

APPEARANCES OF COUNSEL

Cabrera Makalintal & Baliad Law Offices for petitioner.
The Solicitor General for respondents.

D E C I S I O N

BERSAMIN, *J.*:

To entitle petitioner spouse to a declaration of the nullity of his or her marriage, the totality of the evidence must sufficiently prove that respondent spouse's psychological incapacity was grave, incurable and existing prior to the time of the marriage.

Petitioner wife appeals the decision promulgated on March 19, 2003,[1] whereby the Court of Appeals (CA) reversed the judgment

[1] *Rollo*, pp. 13-21; penned by Associate Justice Rodrigo V. Cosico (retired), with Associate Justice Rebecca De Guia-Salvador and Associate Justice Regalado E. Maambong (retired/deceased) concurring.

of the Regional Trial Court in Mandaluyong City (RTC) declaring her marriage with respondent Dominic C. Mendoza (Dominic) as null and void.

Antecedents

Petitioner and Dominic met in 1989 upon his return to the country from his employment in Papua New Guinea. They had been next-door neighbors in the appartelle they were renting while they were still in college – she, at Assumption College while he, at San Beda College taking a business management course. After a month of courtship, they became intimate and their intimacy ultimately led to her pregnancy with their daughter whom they named Allysa Bianca. They got married on her eighth month of pregnancy in civil rites solemnized in Pasay City on June 24, 1991,[2] after which they moved to her place, although remaining dependent on their parents for support.

When petitioner delivered Alyssa Bianca, Dominic had to borrow funds from petitioner's best friend to settle the hospital bills. He remained jobless and dependent upon his father for support until he finished his college course in October 1993. She took on various jobs to meet the family's needs, first as a part-time aerobics instructor in 1992 and later, in 1993, as a full-time employee in Sanofi, a pharmaceutical company. Being the one with the fixed income, she shouldered all of the family's expenses (*i.e.*, rental, food, other bills and their child's educational needs).

On his part, Dominic sold Collier's Encyclopedia for three months after his graduation from college before he started working as a car salesman for Toyota Motors in Bel-Air, Makati in 1994.[3] Ironically, he spent his first sales commission on a celebratory bash with his friends inasmuch as she shouldered all the household expenses and their child's schooling because his irregular income could not be depended upon. In September 1994, she discovered

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

[3] *Id.* at 79.

his illicit relationship with Zaida, his co-employee at Toyota Motors. Eventually, communication between them became rare until they started to sleep in separate rooms, thereby affecting their sexual relationship.[4]

In November 1995, Dominic gave her a Daihatsu Charade car as a birthday present. Later on, he asked her to issue two blank checks that he claimed would be for the car's insurance coverage. She soon found out, however, that the checks were not paid for the car's insurance coverage but for his personal needs. Worse, she also found out that he did not pay for the car itself, forcing her to rely on her father-in-law to pay part of the cost of the car, leaving her to bear the balance of ₱120,000.00.

To make matters worse, Dominic was fired from his employment after he ran away with ₱164,000.00 belonging to his employer. He was criminally charged with violation of *Batas Pambansa Blg*. 22 and *estafa*, for which he was arrested and incarcerated. After petitioner and her mother bailed him out of jail, petitioner discovered that he had also swindled many clients some of whom were even threatening petitioner, her mother and her sister themselves.[5]

On October 15, 1997, Dominic abandoned the conjugal abode because petitioner asked him for "time and space to think things over." A month later, she refused his attempt at reconciliation, causing him to threaten to commit suicide. At that, she and her family immediately left the house to live in another place concealed from him.

On August 5, 1998, petitioner filed in the RTC her petition for the declaration of the nullity of her marriage with Dominic based on his psychological incapacity under Article 36 of the *Family Code*. The Office of the Solicitor General (OSG) opposed the petition.

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

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

Ruling of the RTC

In the RTC, petitioner presented herself as a witness, together with a psychiatrist, Dr. Rocheflume Samson, and Professor Marites Jimenez. On his part, Dominic did not appear during trial and presented no evidence.

On August 18, 2000, the RTC declared the marriage between petitioner and Dominic an absolute nullity,[6] holding in part:

> xxx. The result of Dr. Samson's clinical evaluation as testified to by her and per Psychiatric Report she issued together with one Dr. Doris Primero showed that petitioner appears to be mature, strong and responsible individual. Godly, childlike trust however, makes her vulnerable and easy to forgive and forget. Petitioner also believes that marriage was a partnership "for better and for worse", she gave all of herself unconditionally to respondent. Unfortunately, respondent cannot reciprocate. On the one hand, respondent was found to have a personality that can be characterized as inadequate, immature and irresponsible. His criminal acts in the present time are mere extensions of his misconduct established in childhood. His childhood experiences of separations and emotional deprivation largely contributed to this antisocial (sociopathic) attitude and lifestyle.
>
> She concluded that respondent had evidently failed to comply with what is required of him as a husband and father. Besides from his adulterous relationship and irresponsibility, his malevolent conduct and lack of true remorse indicate that he is psychologically incapacitated to fulfill the role of a married man.[7]

The RTC found that all the characteristics of psychological incapacity, *i.e.*, gravity, antecedence and incurability, as set forth in *Republic v. Court of Appeals* (*Molina*),[8] were attendant, establishing Dominic's psychological incapacity, *viz*:

> Gravity — from the evidence adduced it can be said that respondent cannot carry out the normal and ordinary duties of marriage and

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[6] CA *Rollo*, pp. 41-44.

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

[8] G.R. No. 108763, February 13, 1997, 268 SCRA 198, 207.

family shouldered by any average couple existing under ordinary circumstances of life and work. Respondent is totally incapable of observing mutual love, respect and fidelity as well as to provide support to his wife and child. Ever since the start of the marriage respondent had left all the household concerns and the care of their child to petitioner while he studied and indulged in night outs with friends. This continued even when he finished his studies and landed a job. He concealed his salary from the petitioner and worse, had the gall to engage in sexual infidelity. Likewise worthy of serious consideration is respondent's propensity to borrow money, his deceitfulness and habitual and continuous evasion of his obligations which (sic) more often than not had led to the filing of criminal cases against him.

Antecedence — Before the marriage petitioner was not aware of respondent's personality disorder and it was only after marriage that it begun to surface. Dr. Samson declared that respondent's behavioral equilibrium started at a very early age of fifteen. His dishonesty and lack of remorse are mere extensions of his misconduct in childhood which generally attributable to respondent's childhood experiences of separation and emotional deprivations. In fine, his psychological incapacity is but a product of some genetic causes, faulty parenting and influence of the environment although its over manifestation appear only after the wedding.

Incurability — Respondent's personality disorder having existed in him long before he contracted marriage with petitioner, there appears no chance for respondent to recover any (sic) ordinary means from such incapacity.

All told, the callous and irresponsible ways of respondent show that he does not possess the proper outlook, disposition and temperament necessary for marriage. Indeed, this ultimate recourse of nullity is the only way by which petitioner can be delivered from the bondage of a union that only proved to be a mockery and brought pain and dishonor to petitioner.[9]

Ruling of the CA

The Republic appealed to the CA, arguing that there was no showing that Dominic's personality traits either constituted

[9] *Rollo*, p. 6.

psychological incapacity existing at the time of the marriage or were of the nature contemplated by Article 36 of the *Family Code*; that the testimony of the expert witness, while persuasive, was not conclusive upon the court; and that the real reason for the parties' separation had been their frequent quarrels over financial matters and the criminal cases brought against Dominic.[10]

On March 19, 2003 the CA promulgated its assailed decision reversing the judgment of the RTC.[11] Specifically, it refused to be bound by the findings and conclusions of petitioner's expert witness, holding:

> It has not been established to our satisfaction as well that respondent's condition, assuming it is serious enough, was present before or during the celebration of the marriage. Although petitioner's expert witness concluded that petitioner was psychologically incapacitated even before the parties' marriage, the Court refuses to be bound by such finding, in view of the fact that the witness' findings, admittedly, were concluded only on the basis of information given by the petitioner herself, who, at the time of the examination, interview, was already head strong in her resolve to have her marriage with the respondent nullified, and harbored ill-feelings against respondent throughout her consultation with Dr. Samson.[12]

The CA held the testimonies of petitioner's witnesses insufficient to establish Dominic's psychological affliction to be of such a grave or serious nature that it was medically or clinically rooted. Relying on the pronouncements in *Republic v. Dagdag*,[13] *Hernandez v. Court of Appeals*[14] and *Pesca v. Pesca*,[15] the CA observed:

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[10] *Id.* at 84.

[11] *Id.* at 84-85.

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

[13] G.R. No. 109975, February 9, 2001, 351 SCRA 425.

[14] G.R. No. 126010, December 8, 1999, 320 SCRA 76.

[15] G.R. No. 136921, April 17, 2001, 356 SCRA 588.

In her testimony, petitioner described her husband as immature, deceitful and without remorse for his dishonesty, and lack of affection. Such characteristics, however, do not necessarily constitute a case of psychological incapacity. A person's inability to share or take responsibility, or to feel remorse for his misbehavior, or even to share his earnings with family members, are indicative of an immature mind, but not necessarily a medically rooted psychological affliction that cannot be cured.

Even the respondent's alleged sexual infidelity is not necessarily equivalent to psychological incapacity, although it may constitute adequate ground for an action for legal separation under Article 55 of the Family Code. Nor does the fact that the respondent is a criminal suspect for estafa or violation of the B.P. Blg. 22 constitutes a ground for the nullification of his marriage to petitioner. Again, it may constitute ground for legal separation provided the respondent is convicted by final judgment and sentenced to imprisonment of more than six (6) years.[16]

Hence, this appeal by petitioner.

Issues

Petitioner assails the CA's refusal to be bound by the expert testimony and psychiatric evaluation she had presented in the trial of the case, and the CA's reliance on the pronouncements in *Dagdag*, *Hernandez* and *Pesca*, *supra*. She contends that the report on the psychiatric evaluation conducted by Dr. Samson more than complied with the requirements prescribed in *Santos v. Court of Appeals* (G.R. No. 112019, January 4, 1995, 240 SCRA 20) and *Molina*. She insists that the CA should have applied the ruling in *Marcos v. Marcos* (G.R. No. 136490, October 19, 2000, 343 SCRA 755) to the effect that personal medical or psychological examination was not a requirement for a declaration of psychological incapacity.

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[16] *Rollo*, p. 19.

Ruling

The appeal has no merit.

We consider the CA's refusal to accord credence and weight to the psychiatric report to be well taken and warranted. The CA correctly indicated that the ill-feelings that she harbored towards Dominic, which she admitted during her consultation with Dr. Samson, furnished the basis to doubt the findings of her expert witness; that such findings were one-sided, because Dominic was not himself subjected to an actual psychiatric evaluation by petitioner's expert; and that he also did not participate in the proceedings; and that the findings and conclusions on his psychological profile by her expert were solely based on the self-serving testimonial descriptions and characterizations of him rendered by petitioner and her witnesses.

Moreover, Dr. Samson conceded that there was the need for her to resort to other people in order to verify the facts derived from petitioner about Dominic's psychological profile considering the ill-feelings she harbored towards him. It turned out, however, that the only people she interviewed about Dominic were those whom petitioner herself referred, as the following testimony indicated:

Fiscal Zalameda

Q: So you're saying that the petitioner have an ill-feeling towards the respondent? At the time you interviewed?

A: Yes, Sir, during the first interview.

Q: How about during the subsequent interview?

A: During the subsequent interview more or less the petitioner was able to talk regarding her marital problems which is uncomfort(able), so she was able to adapt, she was able to condition herself regarding her problems, Sir.

Q: But the ill-feeling was still there?

A: But the feeling was still there, Sir.

Q: Now, considering that this ill feeling of the petitioner insofar as the respondent is concerned, would you say that the petitioner would only tell you information negative against the respondent?

A: Yes, may be Sir. But I do try to conduct or verify other people the facts given to me by the petitioner, Sir.

Q: And these other people were also people given to you or the name are given to you by the petitioner, Madame Witness?

A: Yes, Sir.[17]

In fine, the failure to examine and interview Dominic himself naturally cast serious doubt on Dr. Samson's findings. The CA rightly refused to accord probative value to the testimony of such expert for being avowedly given to show compliance with the requirements set in *Santos* and *Molina* for the establishment of Dominic's psychological incapacity.

The CA's reliance on *Dagdag*, *Hernandez* and *Pesca* was not misplaced. It is easy to see why.

In *Dagdag*, we ruled that "Erlinda failed to comply with guideline No. 2 which requires that the *root cause* of psychological incapacity must be medically or clinically identified and sufficiently proven by experts, since no psychiatrist or medical doctor testified as to the alleged psychological incapacity of her husband."[18] But here, the expert's testimony on Dominic's psychological profile did not identify, much less prove, the root cause of his psychological incapacity because said expert did not examine Dominic in person before completing her report but simply relied on other people's recollection and opinion for that purpose.

In *Hernandez*, we ruminated that:

xxx expert testimony should have been presented to establish the precise cause of private respondent's psychological incapacity, if any, in order to show that it existed at the inception of the marriage. The burden of proof to show the nullity of the marriage rests upon

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[17] TSN, May 26, 1999, pp. 25-26.

[18] *Supra* note 13, at 434-435.

petitioner. The Court is mindful of the policy of the 1987 Constitution to protect and strengthen the family as the basic autonomous social institution and marriage as the foundation of the family. Thus, any doubt should be resolved in favor of the validity of the marriage.[19]

but the expert evidence submitted here did not establish the precise cause of the supposed psychological incapacity of Dominic, much less show that the psychological incapacity existed at the inception of the marriage.

The Court in *Pesca* observed that:

At all events, petitioner has utterly failed, both in her allegations in the complaint and in her evidence, to make out a case of psychological incapacity on the part of respondent, let alone at the time of solemnization of the contract, so as to warrant a declaration of nullity of the marriage. Emotional immaturity and irresponsibility, invoked by her, cannot be equated with psychological incapacity.[20]

Apparent from the aforecited pronouncements is that it was not the absence of the medical expert's testimony alone that was crucial but rather petitioners' failure to satisfactorily discharge the burden of showing the existence of psychological incapacity at the inception of the marriage. In other words, the totality of the evidence proving such incapacity at and prior to the time of the marriage was the crucial consideration, as the Court has reminded in *Ting v. Velez-Ting*:[21]

By the very nature of cases involving the application of Article 36, it is logical and understandable to give weight to the expert opinions furnished by psychologists regarding the psychological temperament of parties in order to determine the root cause, juridical antecedence, gravity and incurability of the psychological incapacity. However, such opinions, while highly advisable, are not conditions *sine qua non* in granting petitions for declaration of nullity of marriage. At best, courts must treat such opinions as decisive but not indispensable evidence in determining the merits of a given case. In fact, if the

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[19] *Supra* note 14, at 88.

[20] *Supra* note 15, at 594.

[21] G.R. No. 166562, March 31, 2009, 582 SCRA 694, 709.

totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical or psychological examination of the person concerned need not be resorted to. The trial court, as in any other given case presented before it, must always base its decision not solely on the expert opinions furnished by the parties but also on the totality of evidence adduced in the course of the proceedings.

Petitioner's view that the Court in *Marcos* stated that the personal medical or psychological examination of respondent spouse therein was not a requirement for the declaration of his psychological incapacity[22] is not entirely accurate. To be clear, the statement in *Marcos* ran as follows:

> The guidelines incorporate the three basic requirements earlier mandated by the Court in *Santos v. Court of Appeals*: "psychological incapacity must be characterized by (a) gravity (b) juridical antecedence, and (c) incurability." The foregoing guidelines do not require that a physician examine the person to be declared psychologically incapacitated. In fact, the root cause may be "medically *or clinically* identified." What is important is the presence of evidence that can adequately establish the party's *psychological* condition. For indeed, **if the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to**.

In light of the foregoing, even if the expert opinions of psychologists are not conditions *sine qua non* in the granting of petitions for declaration of nullity of marriage, the actual medical examination of Dominic was to be dispensed with only *if* the totality of evidence presented was enough to support a finding of his psychological incapacity. This did not mean that the presentation of any form of medical or psychological evidence to show the psychological incapacity would have automatically ensured the granting of the petition for declaration of nullity of marriage. What was essential, we should emphasize herein, was the "presence of evidence that can adequately establish the party's psychological condition," as the Court said in *Marcos*.

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[22] *Rollo*, p. 8.

But where, like here, the parties had the full opportunity to present the professional and expert opinions of psychiatrists tracing the root cause, gravity and incurability of the alleged psychological incapacity, then the opinions should be presented and be weighed by the trial courts in order to determine and decide whether or not to declare the nullity of the marriages. It bears repeating that the trial courts, as in all the other cases they try, must always base their judgments not solely on the expert opinions presented by the parties but on the totality of evidence adduced in the course of their proceedings.[23]

We find the totality of the evidence adduced by petitioner insufficient to prove that Dominic was psychologically unfit to discharge the duties expected of him as a husband, and that he suffered from such psychological incapacity as of the date of the marriage. Accordingly, the CA did not err in dismissing the petition for declaration of nullity of marriage.

We have time and again held that psychological incapacity should refer to no less than a mental, not physical, incapacity that causes a party to be truly incognitive of the basic marital covenants that must concomitantly be assumed and discharged by the parties to the marriage that, as so expressed by Article 68 of the *Family Code*, include their mutual obligations to live together, to observe love, respect and fidelity, and to render help and support. We have also held that the intendment of the law has been to confine the meaning of psychological incapacity to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. To qualify as psychological incapacity as a ground for nullification of marriage, a person's psychological affliction must be grave and serious as to indicate an utter incapacity to comprehend and comply with the essential objects of marriage, including the rights and obligations between husband and wife. The affliction must be shown to exist at the time of marriage, and must be incurable.

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[23] *Id.*

Accordingly, the RTC's findings that Dominic's psychological incapacity was characterized by gravity, antecedence and incurability could not stand scrutiny. The medical report failed to show that his actions indicated a psychological affliction of such a grave or serious nature that it was medically or clinically rooted. His alleged immaturity, deceitfulness and lack of remorse for his dishonesty and lack of affection did not necessarily constitute psychological incapacity. His inability to share or to take responsibility or to feel remorse over his misbehavior or to share his earnings with family members, albeit indicative of immaturity, was not necessarily a medically rooted psychological affliction that was incurable. Emotional immaturity and irresponsibility did not equate with psychological incapacity.[24] Nor were his supposed sexual infidelity and criminal offenses manifestations of psychological incapacity. If at all, they would constitute a ground only for an action for legal separation under Article 55 of the *Family Code*.

Finally, petitioner contends that the Court's Resolution in A.M. No. 02-11-10 rendered appeals by the OSG no longer required, and that the appeal by the OSG was a mere superfluity that could be deemed to have become *functus officio* if not totally disregarded.[25]

The contention is grossly erroneous and unfounded. The Resolution nowhere stated that appeals by the OSG were no longer required. On the contrary, the Resolution explicitly required the OSG to actively participate in all stages of the proceedings, to wit:

> a) The petitioner shall serve a copy of the petition on the Office of the Solicitor General and the Office of the City or Provincial Prosecutor, within five days from the date of its filing and submit to the court proof of such service within the same period.[26]

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[24] *Pesca v. Pesca*, *supra* note 15, at 594.

[25] *Rollo*, p. 9.

[26] A.M. No. 02-11-10, Section 5, paragraph 4.

b) The court may require the parties and the public prosecutor, in consultation with the Office of the Solicitor General, to file their respective memoranda support of their claims within fifteen days from the date the trial is terminated. It may require the Office of the Solicitor General to file its own memorandum if the case is of significant interest to the State. No other pleadings or papers may be submitted without leave of court. After the lapse of the period herein provided, the case will be considered submitted for decision, with or without the memoranda.[27]

c) The parties, including the Solicitor General and the public prosecutor, shall be served with copies of the decision personally or by registered mail. If the respondent summoned by publication failed to appear in the action, the dispositive part of the decision shall be published once in a newspaper of general circulation.[28]

d) The decision becomes final upon the expiration of fifteen days from notice to the parties. Entry of judgment shall be made if no motion for reconsideration or new trial, or appeal is filed by any of the parties, the public prosecutor, or the Solicitor General.[29]

e) An aggrieved party or the Solicitor General may appeal from the decision by filing a Notice of Appeal within fifteen days from notice of denial of the motion for reconsideration or new trial. The appellant shall serve a copy of the notice of appeal on the adverse parties.[30]

The obvious intent of the Resolution was to require the OSG to appear as counsel for the State in the capacity of a *defensor vinculi* (*i.e.*, defender of the marital bond) to oppose petitions for, and to appeal judgments in favor of declarations of nullity of marriage under Article 36 of the *Family Code*, thereby ensuring that only the meritorious cases for the declaration of nullity of marriages based on psychological incapacity—those sufficiently evidenced by gravity, incurability and juridical antecedence—would succeed.

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[27] *Id.*, Section 18.

[28] *Id.*, Section 19, paragraph 2.

[29] *Id.*, Section 19, paragraph 3.

[30] *Id.*, Section 20, paragraph 2.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; and **AFFIRMS** the decision promulgated on March 19, 2003 in CA-G.R. CV No. 68615.

The petitioner shall pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 159594. November 12, 2012]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **THE HON. COURT OF APPEALS (NINTH DIVISION), and EDUARDO C. DE QUINTOS, JR.,** *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; MARRIAGE; PSYCHOLOGICAL INCAPACITY; WHAT CONSTITUTES PSYCHOLOGICAL INCAPACITY.— Psychological incapacity under Article 36 of the *Family Code* contemplates an incapacity or inability to take cognizance of and to assume basic marital obligations, and is not merely the difficulty, refusal, or neglect in the performance of marital obligations or ill will. It consists of: (*a*) a true inability to commit oneself to the essentials of marriage; (*b*) the inability must refer to the essential obligations of marriage, that is, the conjugal act, the community of life and love, the rendering of mutual help, and the procreation and education of offspring; and (*c*) the inability must be tantamount to a psychological abnormality. Proving that a spouse failed to meet his or her responsibility and duty as a married person is not enough; it is essential that he or she must be

shown to be incapable of doing so due to some psychological illness. The x x x pronouncements in *Santos* and *Molina* have remained as the precedential guides in deciding cases grounded on the psychological incapacity of a spouse. But the Court has declared the existence or absence of the psychological incapacity based strictly on the facts of each case and not on *a priori* assumptions, predilections or generalizations. Indeed, the incapacity should be established by the totality of evidence presented during trial, making it incumbent upon the petitioner to sufficiently prove the existence of the psychological incapacity.

2. ID.; ID.; ID.; ID.; PSYCHOLOGICAL INCAPACITY, NOT SUFFICIENTLY ESTABLISHED IN CASE AT BAR.— Both lower courts did not exact a compliance with the requirement of sufficiently explaining the gravity, root cause and incurability of Catalina's purported psychological incapacity. Rather, they were liberal in their appreciation of the scanty evidence that Eduardo submitted to establish the incapacity. To start with, Catalina's supposed behavior (*i.e.*, her frequent gossiping with neighbors, leaving the house without Eduardo's consent, refusal to do the household chores and to take care of their adopted daughter, and gambling), were not even established. Eduardo presented no other witnesses to corroborate his allegations on such behavior. At best, his testimony was self-serving and would have no serious value as evidence upon such a serious matter that was submitted to a court of law. Secondly, both lower courts noticeably relied heavily on the results of the neuro-psychological evaluation by Dr. Reyes despite the paucity of factual foundation to support the claim of Catalina's psychological incapacity. x x x [T]he report was ostensibly vague about the root cause, gravity and incurability of Catalina's supposed psychological incapacity. Nor was the testimony given in court by Dr. Reyes a source of vital information that the report missed out on. Aside from rendering a brief and general description of the symptoms of borderline personality disorder, both the report and court testimony of Dr. Reyes tendered no explanation on the root cause that could have brought about such behavior on the part of Catalina. They did not specify which of Catalina's various acts or omissions typified the conduct of a person with borderline personality, and did not also discuss the gravity of her behavior that translated to her

inability to perform her basic marital duties. Dr. Reyes only established that Catalina was childish and immature, and that her childishness and immaturity could no longer be treated due to her having already reached an age "beyond maturity."

3. REMEDIAL LAW; EVIDENCE; EXPERT WITNESS; WHERE THE EXPERT'S REPORT AND TESTIMONY DID NOT SHOW THE GRAVITY AND INCURABILITY OF THE PARTY'S PSYCHOLOGICAL INCAPACITY.— [W]e have said that the expert evidence presented in cases of declaration of nullity of marriage based on psychological incapacity presupposes a thorough and in-depth assessment of the parties by the psychologist or expert to make a conclusive diagnosis of a grave, severe and incurable presence of psychological incapacity. x x x But Dr. Reyes had only one interview with Catalina, and did not personally seek out and meet with other persons, aside from Eduardo, who could have shed light on and established the conduct of the spouses before and during the marriage. For that reason, Dr. Reyes' report lacked depth and objectivity, a weakness that removed the necessary support for the conclusion that the RTC and the CA reached about Catalina's psychological incapacity to perform her marital duties. Under the circumstances, the report and court testimony by Dr. Reyes did not present the gravity and incurability of Catalina's psychological incapacity. There was, to start with, no evidence showing the root cause of her alleged borderline personality disorder and that such disorder had existed prior to her marriage. We have repeatedly pronounced that the root cause of the psychological incapacity must be identified as a psychological illness, with its incapacitating nature fully explained and established by the totality of the evidence presented during trial.

4. ID.; ID.; IN AN ACTION FOR DECLARATION OF NULLITY OF MARRIAGE, PAYMENT TO THE SPOUSE OF A CERTAIN AMOUNT SO AS TO CONVINCE HER NOT TO OPPOSE THE PETITION IS NOT AN INDICATION OF COLLUSION BETWEEN THE PARTIES.— [W]e do not concur with the assertion by the OSG that Eduardo colluded with Catalina. The assertion was based on his admission during trial that he had paid her the amount of ₱50,000.00 as her share in the conjugal home in order to convince her not to oppose

> his petition or to bring any action on her part[.] x x x [T]he payment to Catalina could not be a manifest sign of a collusion between her and Eduardo. To recall, she did not interpose her objection to the petition to the point of conceding her psychological incapacity, but she nonetheless made it clear enough that she was unwilling to forego her share in the conjugal house. The probability that Eduardo willingly gave her the amount of ₱50,000.00 as her share in the conjugal asset out of his recognition of her unquestionable legal entitlement to such share was very high, so that whether or not he did so also to encourage her to stick to her previously announced stance of not opposing the petition for nullity of the marriage should by no means be of any consequence in determining the issue of collusion between the spouses.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Corleto R. Castro for private respondent.

D E C I S I O N

BERSAMIN, *J.*:

The State appeals the decision promulgated on July 30, 2003,[1] whereby the Court of Appeals (CA) affirmed the declaration by the Regional Trial Court, Branch 38, in Lingayen, Pangasinan of the nullity of the marriage between respondent Eduardo De Quintos, Jr. (Eduardo) and Catalina Delos Santos-De Quintos (Catalina) based on the latter's psychological incapacity under Article 36 of the *Family Code*.

We find the State's appeal to be meritorious. Hence, we uphold once again the validity of a marriage on the ground that the alleged psychological incapacity was not sufficiently established.

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[1] *Rollo*, pp. 51-57; penned by Associate Justice B.A. Adefuin-Dela Cruz (retired), with Associate Justices Perlita J. Tria Tirona (retired) and Hakim S. Abdulwahid, concurring.

Antecedents

Eduardo and Catalina were married on March 16, 1977 in civil rites solemnized by the Municipal Mayor of Lingayen, Pangasinan.[2] The couple was not blessed with a child due to Catalina's hysterectomy following her second miscarriage.[3]

On April 6, 1998, Eduardo filed a petition for the declaration of nullity of their marriage,[4] citing Catalina's psychological incapacity to comply with her essential marital obligations. Catalina did not interpose any objection to the petition, but prayed to be given her share in the conjugal house and lot located in Bacabac, Bugallon, Pangasinan.[5] After conducting an investigation, the public prosecutor determined that there was no collusion between Eduardo and Catalina.[6]

Eduardo testified that Catalina always left their house without his consent; that she engaged in petty arguments with him; that she constantly refused to give in to his sexual needs; that she spent most of her time gossiping with neighbors instead of doing the household chores and caring for their adopted daughter; that she squandered by gambling all his remittances as an overseas worker in Qatar since 1993; and that she abandoned the conjugal home in 1997 to live with Bobbie Castro, her paramour.[7]

Eduardo presented the results of the neuro-psychiatric evaluation conducted by Dr. Annabelle L. Reyes, a psychiatrist. Based on the tests she administered on Catalina,[8] Dr. Reyes

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[2] Exhibit "A", Exhibit Folder, p. 1.

[3] Exhibit Folder, p. 2.

[4] Records, pp. 2-4.

[5] *Id.* at 10-11.

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

[7] TSN dated December 7, 1998, pp. 4-5.

[8] Dr. Reyes administered the following tests, namely:- Purdue Non Verbal Test, Draw-A-Person Test, House-Tree-Person Test, Sack's Sentence Completion Test, and Bender Visual Motor Gestalt Test (see Exhibit "B", Exhibit Folder, p. 5).

opined that Catalina exhibited traits of Borderline Personality Disorder that was no longer treatable. Dr. Reyes found that Catalina's disorder was mainly characterized by her immaturity that rendered her psychologically incapacitated to meet her marital obligations.[9]

Catalina did not appear during trial but submitted her Answer/Manifestation,[10] whereby she admitted her psychological incapacity, but denied leaving the conjugal home without Eduardo's consent and flirting with different men. She insisted that she had only one live-in partner; and that she would not give up her share in the conjugal residence because she intended to live there or to receive her share should the residence be sold.[11]

Ruling of the RTC

The RTC granted the petition on August 9, 2000, decreeing:

> WHEREFORE, in view of all the foregoing considerations, this Honorable Court finds for the plaintiff and judgment is hereby rendered:
>
> 1. Declaring the marriage between Eduardo C. de Quintos and Catalina delos Santos de Quintos, a nullity under Article 36 of the Family Code, as amended.
>
> 2. Ordering the Municipal Civil Registrar of Lingayen[,] Pangasinan to cancel the marriage of the parties from the Civil Register of Lingayen, Pangasinan in accordance with this decision.
>
> SO ORDERED.[12]

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[9] TSN dated January 18, 1999, pp. 3-4.

[10] Records, pp. 10-11.

[11] *Id.* at 10-11.

[12] *Id.* at 68.

The RTC ruled that Catalina's infidelity, her spending more time with friends rather than with her family, and her incessant gambling constituted psychological incapacity that affected her duty to comply with the essential obligations of marriage. It held that considering that the matter of determining whether a party was psychologically incapacitated was best left to experts like Dr. Reyes, the results of the neuro-psychiatric evaluation by Dr. Reyes was the best evidence of Catalina's psychological incapacity.[13]

Ruling of the CA

On appeal, the State raised the lone error that:

THE LOWER COURT ERRED IN DECLARING THE PARTIES' MARRIAGE NULL AND VOID, DEFENDANT CATALINA DELOS SANTOS-DE QUINTOS' PSYCHOLOGICAL INCAPACITY NOT HAVING BEEN PROVEN TO EXIST.

On July 30, 2003, the CA promulgated its decision affirming the judgment of the RTC. The CA concluded that Eduardo proved Catalina's psychological incapacity, observing that the results of the neuro-psychiatric evaluation conducted by Dr. Reyes showed that Catalina had been "mentally or physically ill to the extent that she could not have known her marital obligations;" and that Catalina's psychological incapacity had been medically identified, sufficiently proven, duly alleged in the complaint and clearly explained by the trial court.

Issue

In this appeal, the State, through the Office of the Solicitor General (OSG), urges that the CA gravely erred because:

I

THERE IS NO SHOWING THAT CATALINA'S ALLEGED PERSONALITY TRAITS ARE CONSTITUTIVE OF PSYCHOLOGICAL INCAPACITY EXISTING AT THE TIME OF MARRIAGE CELEBRATION; NOR ARE THEY OF THE NATURE CONTEMPLATED BY ARTICLE 36 OF THE FAMILY CODE.

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

II

MARITAL UNFAITHFULNESS OF THE [sic] CATALINA WAS NOT SHOWN TO BE A SYMPTOM OF PSYCHOLOGICAL INCAPACITY.

III

ABANDONMENT OF ONE'S FAMILY IS ONLY A GROUND FOR LEGAL SEPARATION.

IV

GAMBLING HABIT OF CATALINA NOT LIKEWISE ESTABLISHED TO BE A SYMPTOM OF PSYCHOLOGICAL INCAPACITY.

V

THE NEUROPSYCHIATRIC EVALUATION AND TESTIMONY OF DR. ANNABELLE REYES FAILED TO ESTABLISH THE CAUSE OF CATALINA'S INCAPACITY AND PROVE THAT IT EXISTED AT THE INCEPTION OF MARRIAGE, IS GRAVE AND INCURABLE.[14]

The OSG argues that the findings and conclusions of the RTC and the CA did not conform to the guidelines laid down by the Court in *Republic v. Court of Appeals*, (*Molina*);[15] and that Catalina's refusal to do household chores, and her failure to take care of her husband and their adopted daughter were not "defects" of a psychological nature warranting the declaration of nullity of their marriage, but mere indications of her difficulty, refusal or neglect to perform her marital obligations.

The OSG further argues that Catalina's infidelity, gambling habits and abandonment of the conjugal home were not grounds under Article 36 of the *Family Code*; that there was no proof that her infidelity and gambling had occurred prior to the marriage, while her abandonment would only be a ground for legal separation under Article 55(10) of the *Family Code*; that the neuro-psychiatric evaluation by Dr. Reyes did not sufficiently establish Catalina's

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

[15] G.R. No. 108763, February 13, 1997, 268 SCRA 198.

psychological incapacity; that Dr. Reyes was not shown to have exerted effort to look into Catalina's past life, attitudes, habits and character as to be able to explain her alleged psychological incapacity; that there was not even a finding of the root cause of her alleged psychological incapacity; and that there appeared to be a collusion between the parties inasmuch as Eduardo admitted during the trial that he had given ₱50,000.00 to Catalina in exchange for her non-appearance in the trial.

The OSG postulated that Catalina's unsupportive in-laws and Eduardo's overseas deployment that had required him to be away most of the time created the strain in the couple's relationship and forced her to seek her friends' emotional support and company; and that her ambivalent attitude towards their adopted daughter was attributable to her inability to bear children of her own.

Issue

The issue is whether there was sufficient evidence warranting the declaration of the nullity of Catalina's marriage to Eduardo based on her psychological incapacity under Article 36 of the *Family Code*.

Ruling

We grant the petition for review.

Psychological incapacity under Article 36 of the *Family Code* contemplates an incapacity or inability to take cognizance of and to assume basic marital obligations, and is not merely the difficulty, refusal, or neglect in the performance of marital obligations or ill will. It consists of: (*a*) a true inability to commit oneself to the essentials of marriage; (*b*) the inability must refer to the essential obligations of marriage, that is, the conjugal act, the community of life and love, the rendering of mutual help, and the procreation and education of offspring; and (*c*) the inability must be tantamount to a psychological abnormality. Proving that a spouse failed to meet his or her responsibility and duty as a married person is not enough; it is essential that

he or she must be shown to be incapable of doing so due to some psychological illness.[16]

In *Santos v. Court of Appeals*,[17] we decreed that psychological incapacity should refer to a mental incapacity that causes a party to be truly incognitive of the basic marital covenants such as those enumerated in Article 68 of the *Family Code* and must be characterized by gravity, juridical antecedence and incurability. In an effort to settle the confusion that may arise in deciding cases involving nullity of marriage on the ground of psychological incapacity, we then laid down the following guidelines in the later ruling in *Molina*,[18] *viz*:

(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. x x x.

x x x x x x x x x

(2) The root cause of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. x x x.

x x x x x x x x x

(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. x x x.

x x x x x x x x x

(4) Such incapacity must also be shown to be medically or clinically permanent or incurable. x x x.

x x x x x x x x x

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[16] *Yambao v. Republic*, G.R. No. 184063, January 24, 2011, 640 SCRA 355, 367.

[17] G.R. No. 112019, January 4, 1995, 240 SCRA 20.

[18] *Supra* note 15.

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. x x x.

x x x x x x x x x

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. x x x.

x x x x x x x x x

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. x x x.[19]

The foregoing pronouncements in *Santos* and *Molina* have remained as the precedential guides in deciding cases grounded on the psychological incapacity of a spouse. But the Court has declared the existence or absence of the psychological incapacity based strictly on the facts of each case and not on *a priori* assumptions, predilections or generalizations.[20] Indeed, the incapacity should be established by the totality of evidence presented during trial,[21] making it incumbent upon the petitioner to sufficiently prove the existence of the psychological incapacity.[22]

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[19] *Id.* at 209-213.

[20] *Republic v. Dagdag*, G.R. No. 109975, February 9, 2001, 351 SCRA 425, 431.

[21] *Bier v. Bier*, G.R. No. 173294, February 27, 2008, 547 SCRA 123, 132.

[22] *Antonio v. Reyes*, G.R. No. 155800, March 10, 2006, 484 SCRA 353, 376.

Eduardo defends the rulings of the RTC and the CA, insisting that they thereby explained the gravity and severity of Catalina's psychological incapacity that had existed even prior to the celebration of their marriage.[23]

We are not convinced. Both lower courts did not exact a compliance with the requirement of sufficiently explaining the gravity, root cause and incurability of Catalina's purported psychological incapacity. Rather, they were liberal in their appreciation of the scanty evidence that Eduardo submitted to establish the incapacity.

To start with, Catalina's supposed behavior (*i.e.*, her frequent gossiping with neighbors, leaving the house without Eduardo's consent, refusal to do the household chores and to take care of their adopted daughter, and gambling), were not even established. Eduardo presented no other witnesses to corroborate his allegations on such behavior. At best, his testimony was self-serving and would have no serious value as evidence upon such a serious matter that was submitted to a court of law.

Secondly, both lower courts noticeably relied heavily on the results of the neuro-psychological evaluation by Dr. Reyes despite the paucity of factual foundation to support the claim of Catalina's psychological incapacity. In particular, they relied on the following portion of the report of Dr. Reyes, to wit:

REMARKS AND RECOMMENDATIONS:

Catalina is exhibiting traits of a borderline personality. This is characterized, mainly by immaturity in several aspects of the personality. One aspect is in the area of personal relationships, where a person cannot really come up with what is expected in a relationship that involves commitments. They are generally in and out of relationships, as they do not have the patience to sustain this [sic] ties. Their behavior is like that of a child who has to be attended to as they might end up doing things which are often regrettable. These people however usually do not feel remorse for their wrongdoings. They do not seem to learn from their mistakes, and they have the habit of repeating these mistakes to the detriment of their own lives

[23] *Rollo*, p. 62.

and that of their families. Owing to these characteristics, people with these pattern of traits cannot be expected to have lasting and successful relationships as required in marriage. It is expected that even with future relationships, things will not work out.

Families of these people usually reveal that parents relationship are not also that ideal. If this be the background of the developing child, it is likely that his or her relationships would also end up as such.

x x x x x x x x x

With all these collateral information being considered and a longitudinal history of defendant made, it is being concluded that she was not able to come up with the minimum expected of her as a wife. Her behavior and attitude before and after the marriage is highly indicative of a very immature and childish person, rendering her psychologically incapacitated to live up and meet the responsibilities required in a commitment like marriage. Catalina miserably failed to fulfill her role as wife and mother, rendering her incapacitated to comply with her duties inherent in marriage. In the same vein, it cannot be expected that this attitude and behavior of defendant will still change because her traits have developed through the years and already ingrained within her.[24]

Yet, the report was ostensibly vague about the root cause, gravity and incurability of Catalina's supposed psychological incapacity. Nor was the testimony given in court by Dr. Reyes a source of vital information that the report missed out on. Aside from rendering a brief and general description of the symptoms of borderline personality disorder, both the report and court testimony of Dr. Reyes tendered no explanation on the root cause that could have brought about such behavior on the part of Catalina. They did not specify which of Catalina's various acts or omissions typified the conduct of a person with borderline personality, and did not also discuss the gravity of her behavior that translated to her inability to perform her basic marital duties. Dr. Reyes only established that Catalina was childish and immature, and that her childishness and immaturity

[24] Exhibit Folder, pp. 4, 6.

could no longer be treated due to her having already reached an age "beyond maturity."[25]

Thirdly, we have said that the expert evidence presented in cases of declaration of nullity of marriage based on psychological incapacity presupposes a thorough and in-depth assessment of the parties by the psychologist or expert to make a conclusive diagnosis of a grave, severe and incurable presence of psychological incapacity.[26] We have explained this need in *Lim v. Sta. Cruz-Lim*,[27] stating:

> The expert opinion of a psychiatrist arrived at after a maximum of seven (7) hours of interview, and unsupported by separate psychological tests, cannot tie the hands of the trial court and prevent it from making its own factual finding on what happened in this case. The probative force of the testimony of an expert does not lie in a mere statement of his theory or opinion, but rather in the assistance that he can render to the courts in showing the facts that serve as a basis for his criterion and the reasons upon which the logic of his conclusion is founded.[28]

But Dr. Reyes had only one interview with Catalina, and did not personally seek out and meet with other persons, aside from Eduardo, who could have shed light on and established the conduct of the spouses before and during the marriage. For that reason, Dr. Reyes' report lacked depth and objectivity, a weakness that removed the necessary support for the conclusion that the RTC and the CA reached about Catalina's psychological incapacity to perform her marital duties.

Under the circumstances, the report and court testimony by Dr. Reyes did not present the gravity and incurability of Catalina's psychological incapacity. There was, to start with,

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[25] TSN dated January 18, 1999, p. 7.

[26] *Marable v. Marable*, G.R. No. 178741, January 17, 2011, 639 SCRA 557, 567; *Suazo v.Suazo*, G.R. No. 164493, March 12, 2010, 615 SCRA 154, 176.

[27] G.R. No. 176464, February 4, 2010, 611 SCRA 569.

[28] *Id.* at 585.

no evidence showing the root cause of her alleged borderline personality disorder and that such disorder had existed prior to her marriage. We have repeatedly pronounced that the root cause of the psychological incapacity must be identified as a psychological illness, with its incapacitating nature fully explained and established by the totality of the evidence presented during trial.[29]

What we can gather from the scant evidence that Eduardo adduced was Catalina's immaturity and apparent refusal to perform her marital obligations. However, her immaturity alone did not constitute psychological incapacity.[30] To rule that such immaturity amounted to psychological incapacity, it must be shown that the immature acts were manifestations of a disordered personality that made the spouse completely unable to discharge the essential obligations of the marital state, which inability was merely due to her youth or immaturity.[31]

Fourthly, we held in *Suazo v. Suazo*[32] that there must be proof of a natal or supervening disabling factor that effectively incapacitated the respondent spouse from complying with the basic marital obligations, *viz:*

> It is not enough that the respondent, alleged to be psychologically incapacitated, had difficulty in complying with his marital obligations, or was unwilling to perform these obligations. Proof of a natal or supervening disabling factor – an adverse integral element in the respondent's personality structure that effectively incapacitated him from complying with his essential marital obligations – must be shown. Mere difficulty, refusal or neglect in the performance of marital obligations or ill will on the part of the spouse is different

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[29] *Ligeralde v. Patalinghug*, G.R. No. 168796, April 15, 2010, 618 SCRA 315, 321-322.

[30] *Republic v. Galang*, G.R. No. 168335, June 6, 2011, 650 SCRA 524, 540; *Navarro, Jr. v. Cecilio-Navarro*, G.R. No. 162049, April 13, 2007, 521 SCRA 121, 130.

[31] *Dedel v. Court of Appeals*, G.R. No. 151867, January 29, 2004, 421 SCRA 461, 466.

[32] *Supra* note 26, at 174-175.

from incapacity rooted in some debilitating psychological condition or illness; irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility and the like, do not by themselves warrant a finding of psychological incapacity under Article 36, as the same may only be due to a person's refusal or unwillingness to assume the essential obligations of marriage.

The only fact established here, which Catalina even admitted in her Answer, was her abandonment of the conjugal home to live with another man. Yet, abandonment was not one of the grounds for the nullity of marriage under the *Family Code*. It did not also constitute psychological incapacity, it being instead a ground for legal separation under Article 55(10) of the *Family Code*. On the other hand, her sexual infidelity was not a valid ground for the nullity of marriage under Article 36 of the *Family Code*, considering that there should be a showing that such marital infidelity was a manifestation of a disordered personality that made her completely unable to discharge the essential obligations of marriage.[33] Needless to state, Eduardo did not adduce such evidence, rendering even his claim of her infidelity bereft of factual and legal basis.

Lastly, we do not concur with the assertion by the OSG that Eduardo colluded with Catalina. The assertion was based on his admission during trial that he had paid her the amount of ₱50,000.00 as her share in the conjugal home in order to convince her not to oppose his petition or to bring any action on her part,[34] to wit:

CROSS-EXAMINATION BY FISCAL MUERONG

Q Mr. de Quintos, also during the first part of the hearing, your wife, the herein defendant, Catalina delos Santos-de Quintos, has been religiously attending the hearing, but lately, I noticed that she is no longer attending and represented by counsel, did you talk to your wife?

A No, sir.

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[33] *Villalon v. Villalon*, G.R. No. 167206, November 18, 2005, 475 SCRA 572, 582.

[34] TSN dated December 14, 1998.

Q And you find it more convenient that it would be better for both of you, if, she will not attend the hearing of this case you filed against her, is it not?
A No, sir. I did not.

Q But, am I correct, Mr. de Quintos, that you and your wife had an agreement regarding this case?
A None, sir.

Q And you were telling me something about an agreement that you will pay her an amount of ₱50,000.00, please tell us, what is that agreement that you have to pay her ₱50,000.00?
A Regarding our conjugal properties, sir.

Q Why, do you have conjugal properties that you both or acquired at the time of your marriage?
A Yes, sir.

Q And why did you agree that you have to give her ₱50,000.00?
A It is because we bought a lot and constructed a house thereat, that is why I agreed, sir.

Q Is it not a fact, Mr. witness, that your wife does not oppose this petition for declaration of marriage which you filed against her?
A She does not opposed [sic], sir.

Q As a matter of fact, the only thing that she is concern [sic] about this case is the division of your conjugal properties?
A Yes, sir.

Q That is why you also agreed to give her ₱50,000.00 as her share of your conjugal properties, so that she will not pursue whatever she wanted to pursue with regards to the case you filed against her, is that correct?
A Yes, sir.

Q And you already gave her that amount of ₱50,000.00, Mr. witness?
A Yes, sir.

Q And because she has already gotten her share of ₱50,000.00 that is the reason why she is no longer around here?
A Yes sir, it could be.[35]

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

Verily, the payment to Catalina could not be a manifest sign of a collusion between her and Eduardo. To recall, she did not interpose her objection to the petition to the point of conceding her psychological incapacity, but she nonetheless made it clear enough that she was unwilling to forego her share in the conjugal house. The probability that Eduardo willingly gave her the amount of ₱50,000.00 as her share in the conjugal asset out of his recognition of her unquestionable legal entitlement to such share was very high, so that whether or not he did so also to encourage her to stick to her previously announced stance of not opposing the petition for nullity of the marriage should by no means be of any consequence in determining the issue of collusion between the spouses.

In fine, given the insufficiency of the evidence proving the psychological incapacity of Catalina, we cannot but resolve in favor of the existence and continuation of the marriage and against its dissolution and nullity.[36]

WHEREFORE, we **GRANT** the petition for review on *certiorari*; **SET ASIDE** the decision the Court of Appeals promulgated on July 30, 2003; and **DISMISS** the petition for the declaration of nullity of marriage filed under Article 36 of the *Family Code* for lack of merit.

Costs to be paid by the respondent.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

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[36] *Alcazar v. Alcazar*, G.R. No. 174451, October 13, 2009, 603 SCRA 604, 620.

FIRST DIVISION

[G.R. No. 160453. November 12, 2012]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ARCADIO IVAN A. SANTOS III, and ARCADIO C. SANTOS, JR.,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; ACCRETION; CONCEPT.— Accretion is the process whereby the soil is deposited along the banks of rivers. The deposit of soil, to be considered accretion, must be: (*a*) gradual and imperceptible; (*b*) made through the effects of the current of the water; and (*c*) taking place on land adjacent to the banks of rivers. Accordingly, respondents should establish the concurrence of the elements of accretion to warrant the grant of their application for land registration.

2. ID.; ID.; ID.; ACCRETION, NOT A CASE OF; DRYING UP OF A RIVER TO FORM DRY LAND CANNOT BE EQUATED AS ACCRETION.— The RTC and the CA grossly erred in treating the dried-up river bed as an accretion that became respondents' property pursuant to Article 457 of the *Civil Code*. That land was definitely not an accretion. The process of drying up of a river to form dry land involved the recession of the water level from the river banks, and the dried-up land did not equate to accretion, which was the gradual and imperceptible deposition of soil on the river banks through the effects of the current. In accretion, the water level did not recede and was more or less maintained. Hence, respondents as the riparian owners had no legal right to claim ownership of Lot 4998-B. Considering that the clear and categorical language of Article 457 of the *Civil Code* has confined the provision only to accretion, we should apply the provision as its clear and categorical language tells us to. Axiomatic it is, indeed, that where the language of the law is clear and categorical, there is no room for interpretation; there is only room for application. The first and fundamental duty of courts is then to apply the law.

3. ID.; ID.; DRIED-UP RIVER BED CONTINUE TO BELONG TO THE STATE AS ITS PROPERTY OF PUBLIC DOMINION.— The State exclusively owned Lot 4998-B and may not be divested of its right of ownership. Article 502 of the *Civil Code* expressly declares that rivers and their natural beds are public dominion of the State. It follows that the river beds that dry up, like Lot 4998-B, continue to belong to the State as its property of public dominion, unless there is an express law that provides that the dried-up river beds should belong to some other person.

4. ID.; ID.; ACQUISITIVE PRESCRIPTION, NOT APPLICABLE IN CASE AT BAR.— The RTC apparently reckoned respondents' period of supposed possession to be "more than thirty years" from the fact that "their predecessors in interest are the adjoining owners of the subject parcel of land." Yet, its decision nowhere indicated what acts respondents had performed showing their possession of the property "continuously, openly, publicly and adversely" in that length of time. The decision mentioned only that they had paid realty taxes and had caused the survey of the property to be made. That, to us, was not enough to justify the foregoing findings, because, *firstly*, the payment of realty taxes did not conclusively prove the payor's ownership of the land the taxes were paid for, the tax declarations and payments being mere indicia of a claim of ownership; and, *secondly*, the causing of surveys of the property involved was not itself constitutive of continuous, open, public and adverse possession. The principle that the riparian owner whose land receives the gradual deposits of soil does not need to make an express act of possession, and that no acts of possession are necessary in that instance because it is the law itself that pronounces the alluvium to belong to the riparian owner from the time that the deposit created by the current of the water becomes manifest has no applicability herein. This is simply because Lot 4998-B was not formed through accretion. Hence, the ownership of the land adjacent to the river bank by respondents' predecessor-in-interest did not translate to possession of Lot 4998-B that would ripen to acquisitive prescription in relation to Lot 4998-B.

5. ID.; ID.; ALL RIVER BEDS REMAIN PROPERTY OF PUBLIC DOMINION AND CANNOT BE ACQUIRED BY

ACQUISITIVE PRESCRIPTION UNLESS DECLARED BY THE GOVERNMENT TO BE ALIENABLE AND DISPOSABLE.— Subject to the exceptions defined in Article 461 of the *Civil Code* (which declares river beds that are abandoned through the natural change in the course of the waters as *ipso facto* belonging to the owners of the land occupied by the new course, and which gives to the owners of the adjoining lots the right to acquire only the abandoned river beds not *ipso facto* belonging to the owners of the land affected by the natural change of course of the waters only after paying their value), all river beds remain property of public dominion and cannot be acquired by acquisitive prescription unless previously declared by the Government to be alienable and disposable. Considering that Lot 4998-B was not shown to be already declared to be alienable and disposable, respondents could not be deemed to have acquired the property through prescription.

6. ID.; LAND REGISTRATION; THAT THE LAND SUBJECT OF AN APPLICATION FOR REGISTRATION IS ALIENABLE MUST BE ESTABLISHED CONCLUSIVELY; NOTATION ON THE SURVEY PLAN TO THE EFFECT THAT THE LAND WAS "INSIDE" THE MAP "CLASSIFIED AS ALIENABLE/DISPOSABLE BY THE BUREAU OF FOREST DEV'T", NOT CONSIDERED AS CONCLUSIVE PROOF.— To prove that the land subject of an application for registration is alienable, an applicant must conclusively establish the existence of a positive act of the Government, such as a presidential proclamation, executive order, administrative action, investigation reports of the Bureau of Lands investigator, or a legislative act or statute. Until then, the rules on confirmation of imperfect title do not apply. x x x [R]ulings of the Court indicate that the notation on the survey plan of Lot 4998-B, Cad-00-000343 to the effect that the "survey is inside a map classified as alienable/disposable by the Bureau of Forest Dev't" did not prove that Lot 4998-B was already classified as alienable and disposable. Accordingly, respondents could not validly assert acquisitive prescription of Lot 4988-B.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Orosa Blanco Dime and Ortiz Law Offices for respondents.

D E C I S I O N

BERSAMIN, *J.*:

By law, accretion – the gradual and imperceptible deposit made through the effects of the current of the water – belongs to the owner of the land adjacent to the banks of rivers where it forms. The drying up of the river is not accretion. Hence, the dried-up river bed belongs to the State as property of public dominion, not to the riparian owner, unless a law vests the ownership in some other person.

Antecedents

Alleging continuous and adverse possession of more than ten years, respondent Arcadio Ivan A. Santos III (Arcadio Ivan) applied on March 7, 1997 for the registration of Lot 4998-B (the property) in the Regional Trial Court (RTC) in Parañaque City. The property, which had an area of 1,045 square meters, more or less, was located in Barangay San Dionisio, Parañaque City, and was bounded in the Northeast by Lot 4079 belonging to respondent Arcadio C. Santos, Jr. (Arcadio, Jr.), in the Southeast by the Parañaque River, in the Southwest by an abandoned road, and in the Northwest by Lot 4998-A also owned by Arcadio Ivan.[1]

On May 21, 1998, Arcadio Ivan amended his application for land registration to include Arcadio, Jr. as his co-applicant because of the latter's co-ownership of the property. He alleged that the property had been formed through accretion and had been in their joint open, notorious, public, continuous and adverse possession for more than 30 years.[2]

The City of Parañaque (the City) opposed the application for land registration, stating that it needed the property for its flood control program; that the property was within the legal easement of 20 meters from the river bank; and that assuming

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[1] Records, Vol. I, pp. 13-15.

[2] *Id.* at 138-142.

that the property was not covered by the legal easement, title to the property could not be registered in favor of the applicants for the reason that the property was an orchard that had dried up and had not resulted from accretion.[3]

Ruling of the RTC

On May 10, 2000,[4] the RTC granted the application for land registration, disposing:

> WHEREFORE, the Court hereby declares the applicants, ARCADIO IVAN A. SANTOS, III and ARCADIO C. SANTOS, JR., both Filipinos and of legal age, as the TRUE and ABSOLUTE OWNERS of the land being applied for which is situated in the Barangay of San Dionisio, City of Parañaque with an area of one thousand forty five (1045) square meters more or less and covered by Subdivision Plan Csd-00-000343, being a portion of Lot 4998, Cad. 299, Case 4, Parañaque Cadastre, LRC Rec. No. and orders the registration of Lot 4998-B in their names with the following technical description, to wit:
>
> x x x x x x x x x
>
> Once this Decision became (sic) final and executory, let the corresponding Order for the Issuance of the Decree be issued.
>
> SO ORDERED.

The Republic, through the Office of the Solicitor General (OSG), appealed.

Ruling of the CA

In its appeal, the Republic ascribed the following errors to the RTC,[5] to wit:

I

THE TRIAL COURT ERRED IN RULING THAT THE PROPERTY SOUGHT TO BE REGISTERED IS AN ACCRETION TO THE

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[3] *Id.* at 255-258.

[4] Records, Vol. II, pp. 519-523.

[5] CA *Rollo*, p. 26.

ADJOINING PROPERTY OWNED BY APPELLEES DESPITE THE ADMISSION OF APPELLEE ARCADIO C. SANTOS JR. THAT THE SAID PROPERTY WAS NOT FORMED AS A RESULT OF THE GRADUAL FILLING UP OF SOIL THROUGH THE CURRENT OF THE RIVER.

II

THE TRIAL COURT ERRED IN GRANTING THE APPLICATION FOR LAND REGISTRATION DESPITE APPELLEE'S FAILURE TO FORMALLY OFFER IN EVIDENCE AN OFFICIAL CERTIFICATION THAT THE SUBJECT PARCEL OF LAND IS ALIENABLE AND DISPOSABLE.

III

THE TRIAL COURT ERRED IN RULING THAT APPELLEES HAD SUFFICIENTLY ESTABLISHED THEIR CONTINUOUS, OPEN, PUBLIC AND ADVERSE OCCUPATION OF THE SUBJECT PROPERTY FOR A PERIOD OF MORE THAN THIRTY (30) YEARS.

On May 27, 2003, the CA affirmed the RTC.[6]

The Republic filed a motion for reconsideration, but the CA denied the motion on October 20, 2003.[7]

Issues

Hence, this appeal, in which the Republic urges that:[8]

I

RESPONDENTS' CLAIM THAT THE SUBJECT PROPERTY IS AN ACCRETION TO THEIR ADJOINING LAND THAT WOULD ENTITLE THEM TO REGISTER IT UNDER ARTICLE 457 OF THE NEW CIVIL CODE IS CONTRADICTED BY THEIR OWN EVIDENCE.

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[6] *Id.* at 99-107, penned by Associate Justice B.A. Adefuin-de la Cruz (retired), concurred by Associate Justice Jose L. Sabio, Jr. (retired/deceased) and Associate Justice Hakim S. Abdulwahid.

[7] *Id.* at 155.

[8] *Rollo*, pp. 21-22.

II

ASSUMING THAT THE LAND SOUGHT TO BE REGISTERED WAS "PREVIOUSLY A PART OF THE PARAÑAQUE RIVER WHICH BECAME AN ORCHARD AFTER IT DRIED UP," THE REGISTRATION OF SAID PROPERTY IN FAVOR OF RESPONDENTS CANNOT BE ALTERNATIVELY JUSTIFIED UNDER ARTICLE 461 OF THE CIVIL CODE.

III

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN NOT RULING THAT THE FAILURE OF RESPONDENTS TO FORMALLY OFFER IN EVIDENCE AN OFFICIAL CERTIFICATION THAT THE SUBJECT PROPERTY IS ALIENABLE AND DISPOSABLE IS FATAL TO THEIR APPLICATION FOR LAND REGISTRATION.

IV

THE FINDING OF THE COURT OF APPEALS THAT RESPONDENTS HAVE CONTINUOUSLY, OPENLY, PUBLICLY AND ADVERSELY OCCUPIED THE SUBJECT PROPERTY FOR MORE THAN THIRTY (30) YEARS IS NOT SUPPORTED BY WELL-NIGH INCONTROVERTIBLE EVIDENCE.

To be resolved are whether or not Article 457 of the *Civil Code* was applicable herein; and whether or not respondents could claim the property by virtue of acquisitive prescription pursuant to Section 14(1) of Presidential Decree No. 1529 (*Property Registration Decree*).

Ruling

The appeal is meritorious.

I.
The CA grossly erred in applying Article 457 of the *Civil Code* to respondents' benefit

Article 457 of the *Civil Code* provides that "(t)o the owners of lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the currents of the waters."

In ruling for respondents, the RTC pronounced as follows:

> On the basis of the evidence presented by the applicants, the Court finds that Arcadio Ivan A. Santos III and Arcadio C. Santos, Jr., are the owners of the land subject of this application which was previously a part of the Parañaque River which became an orchard after it dried up and further considering that Lot 4 which adjoins the same property is owned by applicant, Arcadio C. Santos, Jr., after it was obtained by him through inheritance from his mother, Concepcion Cruz, now deceased.
>
> Conformably with Art. 457 of the New Civil Code, it is provided that:
>
> > "Article 457. To the owners of the lands adjoining the bank of rivers belong the accretion which they gradually receive from the effects of the current of the waters."[9]

The CA upheld the RTC's pronouncement, holding:

> It could not be denied that "to the owners of the lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters" (Article 457 New Civil Code) as in this case, Arcadio Ivan Santos III and Arcadio Santos, Jr., are the owners of the land which was previously part of the Parañaque River which became an orchard after it dried up and considering that Lot 4 which adjoins the same property is owned by the applicant which was obtained by the latter from his mother (Decision, p. 3; p. 38 *Rollo*).[10]

The Republic submits, however, that the application by both lower courts of Article 457 of the *Civil Code* was erroneous in the face of the fact that respondents' evidence did not establish accretion, but instead the drying up of the Parañaque River.

The Republic's submission is correct.

Respondents as the applicants for land registration carried the burden of proof to establish the merits of their application by a preponderance of evidence, by which is meant such

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[9] Records, Vol. II, pp. 521-522.

[10] CA *Rollo,* p. 105.

evidence that is of greater weight, or more convincing than that offered in opposition to it.[11] They would be held entitled to claim the property as their own and apply for its registration under the Torrens system only if they established that, indeed, the property was an accretion to their land.

Accretion is the process whereby the soil is deposited along the banks of rivers.[12] The deposit of soil, to be considered accretion, must be: (*a*) gradual and imperceptible; (*b*) made through the effects of the current of the water; and (*c*) taking place on land adjacent to the banks of rivers.[13] Accordingly, respondents should establish the concurrence of the elements of accretion to warrant the grant of their application for land registration.

However, respondents did not discharge their burden of proof. They did not show that the gradual and imperceptible deposition of soil through the effects of the current of the river had formed Lot 4998-B. Instead, their evidence revealed that the property was the dried-up river bed of the Parañaque River, leading both the RTC and the CA to themselves hold that Lot 4998-B was "the land which was previously part of the Parañaque River xxx (and) became an orchard after it dried up."

Still, respondents argue that considering that Lot 4998-B did not yet exist when the original title of Lot 4 was issued in their mother's name in 1920, and that Lot 4998-B came about only thereafter as the land formed between Lot 4 and the Parañaque River, the unavoidable conclusion should then be that soil and sediments had meanwhile been deposited near Lot 4 by the current of the Parañaque River, resulting in the formation of Lot 4998-B.

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[11] *Rivera v. Court of Appeals*, G.R. No. 115625, January 23, 1998, 284 SCRA 673, 681.

[12] *Heirs of Emiliano Navarro v. Intermediate Appellate Court*, G.R. No. 68166, February 12, 1997, 268 SCRA 74, 85.

[13] *Republic v. Court of Appeals*, No. 61647, October 12, 1984, 132 SCRA 514, 520.

The argument is legally and factually groundless. For one, respondents thereby ignore that the effects of the current of the river are not the only cause of the formation of land along a river bank. There are several other causes, including the drying up of the river bed. The drying up of the river bed was, in fact, the uniform conclusion of both lower courts herein. In other words, respondents did not establish at all that the increment of land had formed from the gradual and imperceptible deposit of soil by the effects of the current. Also, it seems to be highly improbable that the large volume of soil that ultimately comprised the dry land with an area of 1,045 square meters had been deposited in a gradual and imperceptible manner by the current of the river in the span of about 20 to 30 years – the span of time intervening between 1920, when Lot 4 was registered in the name of their deceased parent (at which time Lot 4998-B was not yet in existence) and the early 1950s (which respondents' witness Rufino Allanigue alleged to be the time when he knew them to have occupied Lot 4988-B). The only plausible explanation for the substantial increment was that Lot 4988-B was the dried-up bed of the Parañaque River. Confirming this explanation was Arcadio, Jr.'s own testimony to the effect that the property was previously a part of the Parañaque River that had dried up and become an orchard.

We observe in this connection that even Arcadio, Jr.'s own Transfer Certificate of Title No. 44687 confirmed the uniform conclusion of the RTC and the CA that Lot 4998-B had been formed by the drying up of the Parañaque River. Transfer Certificate of Title No. 44687 recited that Lot 4 of the consolidated subdivision plan Pcs-13-002563, the lot therein described, was bounded "on the SW along line 5-1 by Dried River Bed."[14] That boundary line of "SW along line 5-1" corresponded with the location of Lot 4998-B, which was described as "bounded by Lot 4079 Cad. 299, (Lot 1, Psu-10676), in the name of respondent Arcadio Santos, Jr. (Now Lot 4, Psd-13-002563) in the Northeast."[15]

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[14] Records, Vol. 2, p. 428 (Transfer Certificate of Title No. 44687).

[15] Records, Vol. 1, pp. 138-139.

The RTC and the CA grossly erred in treating the dried-up river bed as an accretion that became respondents' property pursuant to Article 457 of the *Civil Code*. That land was definitely not an accretion. The process of drying up of a river to form dry land involved the recession of the water level from the river banks, and the dried-up land did not equate to accretion, which was the gradual and imperceptible deposition of soil on the river banks through the effects of the current. In accretion, the water level did not recede and was more or less maintained. Hence, respondents as the riparian owners had no legal right to claim ownership of Lot 4998-B. Considering that the clear and categorical language of Article 457 of the *Civil Code* has confined the provision only to accretion, we should apply the provision as its clear and categorical language tells us to. Axiomatic it is, indeed, that where the language of the law is clear and categorical, there is no room for interpretation; there is only room for application.[16] The first and fundamental duty of courts is then to apply the law.[17]

The State exclusively owned Lot 4998-B and may not be divested of its right of ownership. Article 502 of the *Civil Code* expressly declares that rivers and their natural beds are public dominion of the State.[18] It follows that the river beds that dry up, like Lot 4998-B, continue to belong to the State as its property of public dominion, unless there is an express law that provides that the dried-up river beds should belong to some other person.[19]

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[16] *Cebu Portland Cement Company v. Municipality of Naga, Cebu,* Nos. L-24116-17, August 22, 1968, 24 SCRA 708, 712.

[17] *Quijano v. Development Bank of the Philippines*, No. L-26419, October 16, 1970, 35 SCRA 270, 277.

[18] The *Civil Code* states:

Article. 502. The following are of public dominion:

(1) Rivers and their natural beds;

x x x x x x x x x

[19] II Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, 1994, pp. 137-138, opines:

II
Acquisitive prescription was not applicable in favor of respondents

The RTC favored respondents' application for land registration covering Lot 4998-B also because they had taken possession of the property continuously, openly, publicly and adversely for more than 30 years based on their predecessor-in-interest being the adjoining owner of the parcel of land along the river bank. It rendered the following ratiocination, *viz*:[20]

> In this regard, the Court found that from the time the applicants became the owners thereof, they took possession of the same property continuously, openly, publicly and adversely for more than thirty (30) years because their predecessors-in-interest are the adjoining owners of the subject parcel of land along the river bank. Furthermore, the fact that applicants paid its realty taxes, had it surveyed per subdivision plan Csd-00-000343 (Exh. "L") which was duly approved by the Land Management Services and the fact that Engr. Chito B. Cainglet, OIC–Chief, Surveys Division Land Registration Authority, made a Report that the subject property is not a portion of the Parañaque River and that it does not fall nor overlap with Lot 5000, thus, the Court opts to grant the application.
>
> Finally, in the light of the evidence adduced by the applicants in this case and in view of the foregoing reports of the Department of Agrarian Reforms, Land Registration Authority and the Department of Environment and Natural Resources, the Court finds and so holds that the applicants have satisfied all the requirements of law which are essential to a government grant and is, therefore, entitled to the

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When River Dries Up. – The present article contemplates a case where a river bed is abandoned by a natural change in the course of the river, which opens up a new bed. It has no reference to a case where the river simply dries up. In fact, it cannot be applied at all to the drying up of the river, because there are no persons whose lands are occupied by the waters of the river. **Who shall own the river bed thus left dry? We believe that in such case, the river bed will continue to remain property of public dominion. Under Article 502 of the Code, rivers and their natural beds are property of public dominion. In the absence of any provision vesting the ownership of the dried up river bed in some other person, it must continue to belong to the State.**

[20] Records, Vol. II, p. 522.

issuance of a certificate of title in their favor. So also, oppositor failed to prove that the applicants are not entitled thereto, not having presented any witness.

In fine, the application is GRANTED.

As already mentioned, the CA affirmed the RTC.

Both lower courts erred.

The relevant legal provision is Section 14(1) of Presidential Decree No. 1529 (*Property Registration Decree*), which pertinently states:

Section 14. *Who may apply.* —The following persons may file in the proper [Regional Trial Court] an application for registration of title to land, whether personally or through their duly 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.**

x x x x x x x x x

Under Section 14(1), then, applicants for confirmation of imperfect title must prove the following, namely: (*a*) that the land forms part of the disposable and alienable agricultural lands of the public domain; and (*b*) that they have been in open, continuous, exclusive, and notorious possession and occupation of the land under a *bona fide* claim of ownership either since time immemorial or since June 12, 1945.[21]

The Republic assails the findings by the lower courts that respondents "took possession of the same property continuously, openly, publicly and adversely for more than thirty (30) years."[22]

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[21] *Republic v. Alconaba*, G.R. No. 155012, April 14, 2004, 427 SCRA 611, 617.

[22] *Rollo*, pp. 32-36.

Although it is well settled that the findings of fact of the trial court, especially when affirmed by the CA, are accorded the highest degree of respect, and generally will not be disturbed on appeal, with such findings being binding and conclusive on the Court,[23] the Court has consistently recognized exceptions to this rule, including the following, to wit: (*a*) when the findings are grounded entirely on speculation, surmises, or conjectures; (*b*) when the inference made is manifestly mistaken, absurd, or impossible; (*c*) when there is grave abuse of discretion; (*d*) when the judgment is based on a misapprehension of facts; (*e*) when the findings of fact are conflicting; (*f*) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (*g*) when the findings are contrary to those of the trial court; (*h*) when the findings are conclusions without citation of specific evidence on which they are based; (*i*) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by respondent; and (*j*) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[24]

Here, the findings of the RTC were obviously grounded on speculation, surmises, or conjectures; and that the inference made by the RTC and the CA was manifestly mistaken, absurd, or impossible. Hence, the Court should now review the findings.

In finding that respondents had been in continuous, open, public and adverse possession of the land for more than 30 years, the RTC declared:

> In this regard, the Court found that from the time the applicant became the owners thereof, they took possession of the same property continuously, openly, publicly and adversely for more than thirty years because their predecessor in interest are the adjoining owners of the subject parcel of land along the river banks. Furthermore,

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[23] *Bulos, Jr. v. Yasuma*, G.R. No. 164159, July 17, 2007, 527 SCRA 727, 737.

[24] *Citibank, N.A. (formerly First National City Bank) v. Sabeniano*, G.R. No. 156132, October 16, 2006, 504 SCRA 378, 409.

the fact that the applicant paid its realty taxes, had it surveyed per subdivision plan Csd-00-000343 (Exh. "L") which was duly approved by the Land Management Services and the fact that Engr. Chito B. Cainglet, OIC – Chief, Surveys Division Land Registration Authority, made a Report that the subject property is not a portion of the Parañaque River and that it does not fall nor overlap with Lot 5000, thus, the Court opts to grant the application.

The RTC apparently reckoned respondents' period of supposed possession to be "more than thirty years" from the fact that "their predecessors in interest are the adjoining owners of the subject parcel of land." Yet, its decision nowhere indicated what acts respondents had performed showing their possession of the property "continuously, openly, publicly and adversely" in that length of time. The decision mentioned only that they had paid realty taxes and had caused the survey of the property to be made. That, to us, was not enough to justify the foregoing findings, because, *firstly*, the payment of realty taxes did not conclusively prove the payor's ownership of the land the taxes were paid for,[25] the tax declarations and payments being mere indicia of a claim of ownership;[26] and, *secondly*, the causing of surveys of the property involved was not itself constitutive of continuous, open, public and adverse possession.

The principle that the riparian owner whose land receives the gradual deposits of soil does not need to make an express act of possession, and that no acts of possession are necessary in that instance because it is the law itself that pronounces the

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[25] *Ebreo v. Ebreo*, G.R. No. 160065, February 28, 2006, 483 SCRA 583, 594; *Seriña v. Caballero*, G.R. No. 127382, August 17, 2004, 436 SCRA 593, 604; *Del Rosario v. Republic*, G.R. No. 148338, June 6, 2002, 383 SCRA 262, 274; *Bartolome v. Intermediate Appellate Court*, G.R. No. 76792, March 12, 1990, 183 SCRA 102, 112.

[26] *Ebreo v. Ebreo, supra*; *Heirs of Mariano, Juan, Tarcela and Josefa Brusas v. Court of Appeals*, G.R. No. 126875, August 26, 1999, 313 SCRA 176, 184; *Rivera v. Court of Appeals*, G.R. No. 107903, May 22, 1995, 244 SCRA 218, 222; *Director of Lands v. Intermediate Appellate Court*, G.R. No. 73246, March 2, 1993, 219 SCRA 339, 348; *San Miguel Corporation v. Court of Appeals*, G.R. No. 57667, May 28, 1990, 185 SCRA 722, 725.

alluvium to belong to the riparian owner from the time that the deposit created by the current of the water becomes manifest[27] has no applicability herein. This is simply because Lot 4998-B was not formed through accretion. Hence, the ownership of the land adjacent to the river bank by respondents' predecessor-in-interest did not translate to possession of Lot 4998-B that would ripen to acquisitive prescription in relation to Lot 4998-B.

On the other hand, the claim of thirty years of continuous, open, public and adverse possession of Lot 4998-B was not even validated or preponderantly established. The admission of respondents themselves that they declared the property for taxation purposes only in 1997 and paid realty taxes only from 1999[28] signified that their alleged possession would at most be for only nine years as of the filing of their application for land registration on March 7, 1997.

Yet, even conceding, for the sake of argument, that respondents possessed Lot 4998-B for more than thirty years in the character they claimed, they did not thereby acquire the land by prescription or by other means without any competent proof that the land was already declared as alienable and disposable by the Government. Absent that declaration, the land still belonged to the State as part of its public dominion.

Article 419 of the *Civil Code* distinguishes property as being either of public dominion or of private ownership. Article 420 of the *Civil Code* lists the properties considered as part of public dominion, namely: (*a*) those intended for public use, such as roads, canals, **rivers**, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character; and (*b*) those 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. As earlier mentioned, Article 502 of the *Civil Code* declares that **rivers** and **their natural beds** are of public dominion.

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[27] I Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, 1994, p. 28.

[28] *Rollo*, p. 88.

Whether the dried-up river bed may be susceptible to acquisitive prescription or not was a question that the Court resolved in favor of the State in *Celestial v. Cachopero*,[29] a case involving the registration of land found to be part of a dried-up portion of the natural bed of a creek. There the Court held:

> As for petitioner's claim of ownership over the subject land, admittedly a dried-up bed of the Salunayan Creek, based on (1) her alleged long term adverse possession and that of her predecessor-in-interest, Marcelina Basadre, even prior to October 22, 1966, when she purchased the adjoining property from the latter, and (2) the right of accession under Art. 370 of the Spanish Civil Code of 1889 and/or Article 461 of the Civil Code, the same must fail.
>
> Since **property of public dominion is outside the commerce of man and not susceptible to private appropriation and acquisitive prescription, the adverse possession which may be the basis of a grant of title in the confirmation of an imperfect title refers only to alienable or disposable portions of the public domain**. It is only after the Government has declared the land to be alienable and disposable agricultural land that the year of entry, cultivation and exclusive and adverse possession can be counted for purposes of an imperfect title.
>
> A creek, like the Salunayan Creek, is a recess or arm extending from a river and participating in the ebb and flow of the sea. As such, **under Articles 420(1) and 502(1) of the Civil Code, the Salunayan Creek, including its natural bed, is property of the public domain which is not susceptible to private appropriation and acquisitive prescription.** And, **absent any declaration by the government, that a portion of the creek has dried-up does not, by itself, alter its inalienable character.**
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> x x x x x x x x x
>
> Had the disputed portion of the Salunayan Creek dried up after the present Civil Code took effect, the subject land would clearly not belong to petitioner or her predecessor-in-interest since under the aforementioned provision of Article 461, "river beds which are abandoned through the natural change in the course of the waters *ipso facto* belong to the owners of the land occupied by the new

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[29] G.R. No. 142595, October 15, 2003, 413 SCRA 469, 485-489.

course," and the owners of the adjoining lots have the right to acquire them only after paying their value.

And both Article 370 of the Old Code and Article 461 of the present Civil Code are applicable only when "[r]iver beds are abandoned through the natural change in the course of the waters." It is uncontroverted, however, that, as found by both the Bureau of Lands and the DENR Regional Executive Director, the subject land became dry as a result of the construction an irrigation canal by the National Irrigation Administration. Thus, in *Ronquillo v. Court of Appeals,* this Court held:

> The law is clear and unambiguous. It leaves no room for interpretation. **Article 370 applies only if there is a natural change in the course of the waters. The rules on alluvion do not apply to man-made or artificial accretions nor to accretions** to lands that adjoin canals or esteros or artificial drainage systems. **Considering our earlier finding that the dried-up portion of Estero Calubcub was actually caused by the active intervention of man, it follows that Article 370 does not apply to the case at bar and, hence, the Del Rosarios cannot be entitled thereto supposedly as riparian owners.**
>
> **The dried-up portion of Estero Calubcub should thus be considered as forming part of the land of the public domain which cannot be subject to acquisition by private ownership.** xxx (Emphasis supplied)

Furthermore, **both provisions pertain to situations where there has been a change in the course of a river, not where the river simply dries up.** In the instant Petition, it is not even alleged that the Salunayan Creek changed its course. **In such a situation, commentators are of the opinion that the dry river bed remains property of public dominion.** (Bold emphases supplied)

Indeed, under the Regalian doctrine, all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State.[30] No public land can be acquired by private persons without any grant, express or implied, from the Government. It is indispensable, therefore, that there is a

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[30] *Republic v. Sayo,* G.R. No. 60413, October 31, 1990, 191 SCRA 71, 74.

showing of a title from the State.[31] Occupation of public land in the concept of owner, no matter how long, cannot ripen into ownership and be registered as a title.[32]

Subject to the exceptions defined in Article 461 of the *Civil Code* (which declares river beds that are abandoned through the natural change in the course of the waters as *ipso facto* belonging to the owners of the land occupied by the new course, and which gives to the owners of the adjoining lots the right to acquire only the abandoned river beds not *ipso facto* belonging to the owners of the land affected by the natural change of course of the waters only after paying their value), all river beds remain property of public dominion and cannot be acquired by acquisitive prescription unless previously declared by the Government to be alienable and disposable. Considering that Lot 4998-B was not shown to be already declared to be alienable and disposable, respondents could not be deemed to have acquired the property through prescription.

Nonetheless, respondents insist that the property was already classified as alienable and disposable by the Government. They cite as proof of the classification as alienable and disposable the following notation found on the survey plan, to wit:[33]

NOTE

ALL CORNERS NOT OTHERWISE DESCRIBED ARE OLD BL CYL. CONC. MONS 15 X 60CM

All corners marked PS are cyl. conc. mons 15 x 60 cm

Surveyed in accordance with Survey Authority NO. 007604-48 of the Regional Executive Director issued by the CENR-OFFICER dated Dec. 2, 1996.

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[31] *Gordula v. Court of Appeals*, G.R. No. 127296, January 22, 1998, 284 SCRA 617, 630.

[32] *Pagkatipunan v. Court of Appeals*, G.R. No. 129682, March 21, 2002, 379 SCRA 621, 627.

[33] *Rollo*, pp. 80-81.

This survey is inside L.C. Map No. 2623, Proj. No. 25 classified as alienable/disposable by the Bureau of Forest Dev't. on Jan. 3, 1968.

Lot 4998-A = Lot 5883} Cad 299

Lot 4998-B = Lot 5884} Paranaque Cadastre.

Was the notation on the survey plan to the effect that Lot 4998-B was "inside" the map "classified as alienable/disposable by the Bureau of Forest Development on 03 Jan. 1968" sufficient proof of the property's nature as alienable and disposable public land?

To prove that the land subject of an application for registration is alienable, an applicant must conclusively establish the existence of a positive act of the Government, such as a presidential proclamation, executive order, administrative action, investigation reports of the Bureau of Lands investigator, or a legislative act or statute. Until then, the rules on confirmation of imperfect title do not apply.

As to the proofs that are admissible to establish the alienability and disposability of public land, we said in *Secretary of the Department of Environment and Natural Resources v. Yap*[34] that:

The **burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration** (or claiming ownership), who must prove that the land subject of the application is alienable or disposable. To overcome this presumption, **incontrovertible evidence must be established that the land subject of the application (or claim) is alienable or disposable.** There must still be a positive act declaring land of the public domain as alienable and disposable. **To prove that the land subject of an application for registration is alienable, the applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation**

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[34] G.R. No. 167707 and G.R. No. 173775, October 8, 2008, 568 SCRA 164, 192-193.

reports of Bureau of Lands investigators; and a legislative act or a statute. The applicant may also secure a certification from the government that the land claimed to have been possessed for the required number of years is alienable and disposable.

In the case at bar, **no such proclamation, executive order, administrative action, report, statute, or certification was presented to the Court.** The records are bereft of evidence showing that, prior to 2006, the portions of Boracay occupied by private claimants were subject of a government proclamation that the land is alienable and disposable. **Absent such well-nigh incontrovertible evidence, the Court cannot accept the submission that lands occupied by private claimants were already open to disposition before 2006. Matters of land classification or reclassification cannot be assumed. They call for proof."** (Emphasis supplied)

In *Menguito v. Republic*,[35] which we reiterated in *Republic v. Sarmiento*,[36] we specifically resolved the issue of whether the notation on the survey plan was sufficient evidence to establish the alienability and disposability of public land, to wit:

To prove that the land in question formed part of the alienable and disposable lands of the public domain, petitioners relied on the printed words which read: "This survey plan is inside Alienable and Disposable Land Area, Project No. 27-B as per L.C. Map No. 2623, **certified by the Bureau of Forestry on January 3, 1968," appearing on Exhibit "E"** (Survey Plan No. Swo-13-000227).

This proof is not sufficient. Section 2, Article XII of the 1987 Constitution, provides: "All lands of the *public domain*, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources *are owned by the State*. x x x."

For the original registration of title, the applicant (petitioners in this case) **must overcome the presumption that the land sought to be registered forms part of the public domain.** Unless public land is shown to have been reclassified or alienated to a private person by the State, it remains part of the inalienable public domain. Indeed,

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[35] G.R. No. 134308, December 14, 2000, 348 SCRA 128, 139-140.

[36] G.R. No. 169397, March 13, 2007, 518 SCRA 250, 259-260.

"occupation thereof in the concept of owner, no matter how long, cannot ripen into ownership and be registered as a title." To overcome such presumption, incontrovertible evidence must be shown by the applicant. Absent such evidence, the land sought to be registered remains inalienable.

In the present case, petitioners cite a surveyor-geodetic engineer's notation in Exhibit "E" indicating that the survey was inside alienable and disposable land. **Such notation does not constitute a positive government act validly changing the classification of the land in question. Verily, a mere surveyor has no authority to reclassify lands of the public domain. By relying solely on the said surveyor's assertion, petitioners have not sufficiently proven that the land in question has been declared alienable.** (Emphasis supplied)

In *Republic v. T.A.N. Properties, Inc.*,[37] we dealt with the sufficiency of the certification by the Provincial Environmental Officer (PENRO) or Community Environmental Officer (CENRO) to the effect that a piece of public land was alienable and disposable in the following manner, *viz*:

x x x **it is not enough for the PENRO or CENRO to certify that a land is alienable and disposable. The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO.** In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable. Respondent failed to do so because **the certifications presented by respondent do not, by themselves, prove that the land is alienable and disposable.**

Only Torres, respondent's Operations Manager, identified the certifications submitted by respondent. The government officials who issued the certifications were not presented before the trial

[37] G.R. No. 154953, June 26, 2008, 555 SCRA 477, 489-491.

court to testify on their contents. The trial court should not have accepted the contents of the certifications as proof of the facts stated therein. Even if the certifications are presumed duly issued and admissible in evidence, they have no probative value in establishing that the land is alienable and disposable.

x x x x x x x x x

The CENRO and Regional Technical Director, FMS-DENR, certifications do not prove that Lot 10705-B falls within the alienable and disposable land as proclaimed by the DENR Secretary. Such government certifications do not, by their mere issuance, prove the facts stated therein. Such government certifications may fall under the class of documents contemplated in the second sentence of Section 23 of Rule 132. As such, the certifications are *prima facie* evidence of their due execution and date of issuance but they do not constitute *prima facie* evidence of the facts stated therein. (Emphasis supplied)

These rulings of the Court indicate that the notation on the survey plan of Lot 4998-B, Cad-00-000343 to the effect that the "survey is inside a map classified as alienable/disposable by the Bureau of Forest Dev't" did not prove that Lot 4998-B was already classified as alienable and disposable. Accordingly, respondents could not validly assert acquisitive prescription of Lot 4988-B.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision of the Court of Appeals promulgated on May 27, 2003; **DISMISSES** the application for registration of Arcadio C. Santos, Jr. and Arcadio Ivan S. Santos III respecting Lot 4998-B with a total area of 1,045 square meters, more or less, situated in Barangay San Dionisio, Parañaque City, Metro Manila; and **DECLARES** Lot 4998-B as exclusively belonging to the State for being part of the dried-up bed of the Parañaque River.

Respondents shall pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 166259. November 12, 2012]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HONEYCOMB FARMS CORPORATION,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (RA 6657); THE SPECIAL AGRARIAN COURT (SAC) PROPERLY ACQUIRED JURISDICTION OVER A COMPLAINT FOR DETERMINATION OF JUST COMPENSATION EVEN DURING THE PENDENCY OF DARAB PROCEEDINGS.— [I]n *Land Bank of the Philippines v. Court of Appeals*, whose factual circumstances mirror that of the present case, we pointedly ruled that the SAC acquired jurisdiction over the action for the determination of just compensation even during the pendency of the DARAB proceedings, for the following reason: It is clear from Sec. 57 x x x that the RTC, sitting as a Special Agrarian Court, has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." This "original and exclusive" jurisdiction of the RTC would be undermined if the DAR would vest in administrative officials original jurisdiction in compensation cases and make the RTC an appellate court for the review of administrative decisions. x x x **Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into an appellate jurisdiction would be contrary to Sec. 57 and therefore would be void. Thus, direct resort to the SAC by private respondent is valid**. To reiterate, the taking of property under RA 6657 is an exercise of the State's power of eminent domain. "The valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies." Specifically, "[w]hen the parties cannot agree on the amount of just compensation, only the exercise of judicial power can settle the dispute with binding effect on the winning and losing parties." Thus, in the present case, HFC correctly filed a petition

for the determination of just compensation with the SAC, which has the original and exclusive jurisdiction in just compensation cases under RA 6657. The DARAB's valuation, being preliminary in nature, could not have attained finality, as only the courts can resolve the issue of just compensation. Consequently, the SAC properly took cognizance of HFC's petition for determination of just compensation.

2. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; CONCEPT; TEST TO DETERMINE.— Forum shopping is the act of litigants who repetitively avail themselves of multiple judicial remedies in different *fora*, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances; and raising substantially similar issues either pending in or already resolved adversely by some other court; or for the purpose of increasing their chances of obtaining a favorable decision, if not in one court, then in another. The rationale against forum-shopping is that a party should not be allowed to pursue simultaneous remedies in two different courts, for to do so would constitute abuse of court processes which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts. To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or **whether a final judgment in one case will amount to *res judicata* in another**; otherwise stated, the test for determining forum shopping is whether, in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.

3. ID.; ID.; ID.; FILING OF A CASE FOR DETERMINATION OF JUST COMPENSATION BEFORE THE SAC WHILE THERE IS A PENDING DARAB PROCEEDING DOES NOT CONSTITUTE FORUM SHOPPING.— In the present case, HFC did not commit forum shopping because the third element of *litis pendentia* is lacking. As previously mentioned, the DARAB's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. The courts, in this case, the SAC, will still have to review with finality the determination, in the exercise

of what is admittedly a judicial function. Thus, it becomes clear that there is no identity between the two cases such that a judgment by the DARAB, regardless of which party is successful, would amount to *res judicata* in the case before the SAC. It has been held that "[w]hat is essential in determining the existence of forum-shopping is the vexation caused the courts and litigants by a party who asks different courts and/or administrative agencies to rule on similar or related causes and/or grant the same or substantially similar reliefs, in the process creating the possibility of conflicting decisions being rendered upon the same issues." In the present case, the evil sought to be prevented by the prohibition on forum shopping, *i.e.*, the possibility of conflicting decisions, is lacking since the DARAB determination is merely preliminary and is not binding on the parties; such determination is subject to challenge before the courts. The law, in fact, allows the landowner to file a case for the determination of just compensation with the SAC without the necessity of first filing the same with the DARAB. Based on these considerations, it is clear that the HFC cannot be charged with forum shopping.

4. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (RA 6657); DETERMINATION OF JUST COMPENSATION; THE SAC MUST TAKE INTO CONSIDERATION THE FACTORS PRESCRIBED UNDER RA 6657 AND IS OBLIGED TO APPLY THE DAR FORMULA.— [I]t is clear that the SAC is duty bound to take into consideration the factors fixed by Section 17 of RA 6657 and apply the basic formula prescribed and laid down in the pertinent administrative regulations, in this case, DAR Administrative Order No. 6, series of 1992, as amended by DAR Administrative Order No. 11, series of 1994, to determine just compensation. In the present case, we thus find no difficulty in concluding that the CA and the RTC, acting as a SAC, seriously erred when they effectively eschewed the basic formula prescribed by the DAR regulations and chose instead to come up with their own basis for the valuation of the land in question.

5. ID.; ID.; ID.; ID.; THE SAC CANNOT TAKE JUDICIAL NOTICE OF THE NATURE OF THE SUBJECT LAND WITHOUT THE REQUISITE HEARING.— Separately from disregarding

the basic formula prescribed by the DAR, it has also not escaped our notice that the SAC also erred in concluding that the subject land consisting of 29.0966 hectares is commercial in nature, after taking judicial notice that it is "situated near the commercial district of Curvada, Cataingan, Masbate." In *Land Bank of the Philippines v. Honeycomb Farms Corporation*, we categorically ruled that the parties must be given the opportunity to present evidence on the nature of the property before the court *a quo* can take judicial notice of the commercial nature of a portion of the subject landholding[.]

6. ID.; ID.; ID.; ID.; WHERE REMAND OF THE CASE FOR DETERMINATION OF JUST COMPENSATION IS NECESSARY.— [W]e thus find that a remand of this case is necessary in order for the SAC to determine just compensation, strictly in accordance with Section 17 of RA 6657 and applicable DAR regulations, in particular, DAR Administrative Order No. 6, series of 1992, as amended by DAR Administrative Order No. 11, series of 1994.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
Pejo Aquino & Associates for respondent.

D E C I S I O N

BRION, *J.*:

Before us is a petition for review on *certiorari*,[1] filed by the petitioner Land Bank of the Philippines (*LBP*), assailing the Court of Appeals' (*CA's*) Amended Decision[2] and Resolution[3] in C.A.-G.R. CV No. 69661. The CA amended Decision

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[1] *Rollo*, pp. 17-55*;* under Rule 45 of the Rules of Court.

[2] Dated September 16, 2004; *id.* at 57-62. Penned by Associate Justice Jose L. Sabio (retired), and concurred in by Associate Justices Delilah Vidallon-Magtolis (retired) and Hakim S. Abdulwahid.

[3] Dated November 25, 2004; *id.* at 65-66.

reinstated with modification the Judgment[4] of the Regional Trial Court (RTC) of Masbate, Masbate, Branch 48, acting as a Special Agrarian Court (SAC) in Special Civil Case No. 4637 for Determination and Payment of Just Compensation under Republic Act No. (RA) 6657.

The Factual Antecedents

Respondent Honeycomb Farms Corporation (*HFC*) was the registered owner of a parcel of agricultural land under Transfer Certificate of Title No. T-2550, with an area of 29.0966 hectares, situated in "Curvada, Caintagan, Masbate."[5] Through a letter dated February 5, 1988, HFC voluntarily offered its land to the Department of Agrarian Reform (*DAR*) for coverage under RA 6657, the Comprehensive Agrarian Reform Law of 1988 (*CARL*), for ₱581,932.00 or at ₱20,000.00 per hectare.[6] Pursuant to the rules and regulations governing the CARL, the government, through the DAR and the LBP, determined an acquirable and compensable area of 27.5871 hectares, while 1.5095 hectares were excluded for being hilly and underdeveloped.[7]

Subsequently, the LBP, as the agency with the authority to determine land valuation and compensation under the CARL, and using the guidelines set forth in DAR Administrative Order No. 6, series of 1992,[8] fixed the value of the land in the amount of ₱165,739.44 and sent a Notice of Valuation to HFC.[9]

HFC rejected the LBP's valuation and it filed, on January 15, 1996,[10] a petition with the DAR Adjudication Board (*DARAB*) for

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[4] Dated July 27, 2000; *id.* at 110-114. Penned by Judge Jacinta S. Tambago.

[5] *Id.* at 97.

[6] *Id.* at 231.

[7] *Id.* at 232.

[8] As amended by DAR Administrative Order No. 11, series of 1994.

[9] *Rollo,* pp. 232-233.

[10] HFC alleges in its complaint that it filed the petition on January 4, 1996.

a summary administrative determination of just compensation. In its petition, HFC claimed that the just compensation for the land should be in the amount of ₱25,000.00 per hectare, considering its location and productivity, or for an aggregate amount of ₱725,000.00.[11]

While the DARAB proceedings were still pending, HFC filed a Complaint for Determination and Payment of Just Compensation with the RTC, praying for a just compensation of ₱725,000.00, plus attorney's fees of ten percent (10%) of the just compensation.[12] HFC justified the direct filing with the SAC by what it saw as unreasonable delay or official inaction. HFC claimed that the DARAB disregarded Section 16 of RA 6657 which mandates that the "DAR shall decide the case within thirty (30) days after it is submitted for decision."[13] The LBP meanwhile countered that HFC's petition was "premature and lacks [a] cause of action for failure to [exhaust] administrative remedies[.]"[14]

Meanwhile, on May 14, 1998, the DARAB issued a Decision[15] affirming the LBP's valuation. The dispositive portion states:

WHEREFORE, conformably to the foregoing consideration, this Board hereby AFFIRMS the valuation of ₱165,739.44 fixed by the Land Bank of the Philippines on the subject 27.5871-hectare agricultural landholding.

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[11] *Rollo*, pp. 232-233.

[12] *Id.* at 97.

[13] *Id*. at 98. Section 16 of RA 6657 pertinently states:

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation of the land by requiring the landowner, the LBP and other interested parties to [submit] evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

[14] *Id.* at 104.

[15] *Id.* at 231-235.

The Petition dated October 7, 1995 for determination and payment of Just Compensation filed by the landowner with this forum is hereby DENIED or ordered dismissed without prejudice for want of jurisdiction over the same on the part of this forum.[16]

The RTC Decision

On July 27, 2000, the RTC rendered a Judgment[17] whose dispositive portion reads:

WHEREFORE, judgment is hereby rendered by:

1.) Fixing the just compensation of the parcel of land owned by plaintiff Honeycomb Farms Corp. under TCT No. T-2550 which is covered by agrarian reform for an area of 27.5871 hectares at ₱931,109.20 subject to the lien for the docket fee of the amount in excess of ₱725,000.00 as pleaded for by herein plaintiff in its complaint;

2.) Ordering the defendants to pay jointly and severally the plaintiff an attorney's fee equivalent to 10% of the total just compensation.[18]

Owing to the parties' conflicting valuations, the SAC made its own valuation and briefly concluded that:

A judicious evaluation of the evidence on record shows that the subject area is sporadically planted to (sic) coconut and corn as is not fully develop (sic) when the government conducted its ocular inspection and thereafter took over possession of the same although majority of it is a fertile grass land and undisputedly deemed suitable to agriculture. However, the parcel of land under consideration is **located in the side of the road. It is likewise of judicial notice that it is situated near the commercial district of Curvada, Cataingan, Masbate.** In the light of the foregoing premises, the Court is of the opinion and so holds that the just compensation for the land of herein plaintiff corporation under TCT No. T-2550 covered by agrarian reform is **₱32,000.00 per hectare or ₱882,787.20 for the area of 27.58571 hectares** plus consequential damages at the

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[16] *Id.* at 235.

[17] *Supra* note 4.

[18] *Id.* at 114.

same value (₱32,000.00) per hectare for the remaining 1.5095 hectares of the plaintiff's property left and rendered useless by the compulsory coverage or for the total sum of ₱931,109.20.[19] (emphasis ours)

Both parties appealed to the CA.

HFC argued that the RTC erred in its determination of just compensation; the amount of ₱931,109.20 is not supported by the evidence on record while its presented evidence correctly shows that the market value of the land at the time of taking was ₱113,000.00 per hectare.[20]

The LBP raised the threshold issue of whether the SAC had jurisdiction to hear HFC's complaint because of the pending DARAB proceedings, emphasizing that the completion of the administrative proceedings before the DARAB is a condition precedent for the filing of a complaint for the determination of just compensation before the SAC. The LBP also argued that the RTC committed a serious error when it took judicial notice of the property's roadside location, its proximity to a commercial district, its incomplete development as coconut and corn land, and its condition as grassland, to determine just compensation; thereby, it effectively eschewed the formula for fixing just compensation, provided under DAR Administrative Order No. 6, series of 1992.[21] Lastly, the LBP questioned the award of consequential damages and attorney's fees for lack of legal and factual basis.[22]

The CA Decision

The CA, in its January 28, 2004 Decision, reversed the RTC Judgment and dismissed HFC's complaint for failure to exhaust administrative remedies that Section 16(f) of RA 6657 requires. The CA ruled that the LBP "made a procedural [shortcut]"

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[19] *Ibid.*

[20] *Id.* at 195-209.

[21] *Supra* note 8.

[22] *Rollo,* pp. 126-152.

when it filed the complaint with the SAC without waiting for the DARAB's decision.[23]

On the LBP's motion for reconsideration (to which a copy of the May 14, 1998 DARAB Decision was attached),[24] the CA, in its Amended Decision of September 16, 2004, proceeded to decide the case on the merits and recalled its January 28, 2004 Decision. The dispositive portion of the Amended Decision reads:

> WHEREFORE, in view of the foregoing, Our January 28, 2004 Decision is hereby **RECALLED** and **SET ASIDE** and a new one entered. The assailed decision of the Regional Trial Court of Masbate, Branch 48 in Civil Case No. 4637 is hereby **REINSTATED with MODIFICATION** that the award of attorney's fees in favor of herein plaintiff-appellant is hereby deleted. No costs.[25]

The CA ruled that in expropriation proceedings, the just compensation to which the owner of the condemned property is entitled to is the market value. It noted that in order to arrive at the proper market value, several factors such as the current value of like properties, their actual or potential uses and their size, shape and location must be considered. The CA thus concluded that the valuation made by the RTC was based on the evidence on record since the latter considered the sketch plan of the property, the testimonies of the witnesses and the field reports of both parties. In addition, the CA also deleted the award of attorney's fees for lack of factual and legal basis.[26]

The Petition

The LBP's petition for review on *certiorari* raised the following errors:

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[23] *Id.* at 221.

[24] *Id.* at 223-235.

[25] *Id.* at 60-61.

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

First, the CA erred in reinstating the decision of the SAC since it had no jurisdiction to hear HFC's complaint while the DARAB proceedings were pending. It stressed that the SAC could not acquire jurisdiction over the complaint since the DARAB continued to retain jurisdiction over the determination of just compensation.

Second, the CA failed to dismiss the complaint on the ground of non-exhaustion of administrative remedies and forum shopping on the part of HFC. It notes that the HFC's complaint was premature and violative of the forum shopping prohibition since the complaint was filed with the SAC despite the pendency of the DARAB proceedings.

Lastly, the CA erred when it failed to apply the "basic formula" for determining just compensation prescribed by DAR Administrative Order No. 6, series of 1992, as amended by DAR Administrative Order No. 11, series of 1994. It emphasizes that by adopting the values fixed by the SAC, the CA's determination is contrary to: (1) Section 17 of RA 6657 and (2) the rulings of the Court bearing on the determination of just compensation, in particular, *Land Bank of the Philippines v. Sps. Banal*[27] where the Court categorically held that the formula prescribed by the DAR in Administrative Order No. 6, series of 1992, shall be used in the valuation of the land.[28]

HFC prays for the dismissal of the LBP's petition on the following grounds:

First, it submits that the pendency of the DARAB proceedings has no bearing on the jurisdiction of the SAC since Section 57 of RA 6657 provides that the SAC has original and exclusive jurisdiction over petitions for the determination of just compensation. Conformably with the dictates of Section 57, litigants can file a case for the determination of just compensation without the necessity of a DARAB determination. *Second*, it argues that jurisprudence allows resort to judicial intervention

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[27] 478 Phil. 701 (2004).

[28] *Rollo,* pp. 17-55.

without completing administrative remedies when there has been unreasonable delay or official inaction, as in this case, on the part of the administrative agency. *Third*, for the same reason, it contends that it cannot be charged with forum shopping. *Finally*, it argues that strict adherence to the formula prescribed by DAR Administrative Order No. 6, series of 1992, as amended by DAR Administrative Order No. 5, series of 1994, unduly "ties the hands of the SAC" in the determination of just compensation.[29]

The Court's Ruling

We find the LBP's petition meritorious.

The SAC properly acquired jurisdiction over HFC's complaint for the determination of just compensation despite the pendency of the DARAB proceedings

At the core of the LBP's lack of jurisdiction theory is the premise that SAC could not acquire jurisdiction over the complaint since the DARAB continued to retain jurisdiction over the matter of determination of just compensation.

The premise is erroneous because the DARAB does not "exercise concurrent jurisdiction with the SAC in just compensation cases. The determination of just compensation is judicial in nature."[30]

"The original and exclusive jurisdiction of the SAC xxx is not a novel issue"[31] and is in fact, well-settled. In *Republic of the Philippines v. CA*,[32] we first ruled that it would subvert the 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, *viz*:

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[29] *Id.* at 243-255.

[30] *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines*, G.R. No. 166461, April 30, 2010, 619 SCRA 609, 625.

[31] *Ibid*.

[32] 331 Phil. 1070 (1996).

Thus, under 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.[33] (citations omitted)

In the recent case of *Land Bank of the Philippines v. Belista*,[34] we extensively discussed the reasons why the SAC can properly assume jurisdiction over petitions for the determination of just compensation despite the pendency of administrative proceedings, thus:

Sections 50 and 57 of RA No. 6657 provide:

> Section 50. *Quasi-judicial Powers of the DAR*. – The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR) x x x

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[33] *Id*. at 1077-1078.

[34] G.R. No. 164631, June 26, 2009, 591 SCRA 137.

> Section 57. *Special Jurisdiction*. – The Special Agrarian Court shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. x x x
>
> The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

Clearly, under Section 50, DAR has primary jurisdiction to determine and adjudicate agrarian reform matters and exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the DA and the DENR. Further exception to the DAR's original and exclusive jurisdiction are all petitions for the determination of just compensation to landowners and the prosecution of all criminal offenses under RA No. 6657, which are within the jurisdiction of the RTC sitting as a Special Agrarian Court. Thus, jurisdiction on just compensation cases for the taking of lands under RA No. 6657 is vested in the courts.

In *Republic v. CA* [G.R. No. 122256, October 30, 1996, 263 SCRA 758], the Court explained:

> Thus, Special Agrarian Courts, which are Regional Trial Courts, are given original and exclusive jurisdiction over two categories of cases, to wit: (1) "all petitions for the determination of just compensation to landowners" and (2) "the prosecution of all criminal offenses under [R.A. No. 6657]." The provisions of §50 must be construed in harmony with this provision by considering cases involving the determination of just compensation and criminal cases for violations of R.A. No. 6657 as excepted from the plenitude of power conferred on the DAR. Indeed, there is a reason for this distinction. The DAR is an administrative agency which cannot be granted jurisdiction over cases of eminent domain (for such are takings under R.A. No. 6657) and over criminal cases. Thus, in *EPZA v. Dulay* and *Sumulong v. Guerrero* – we held that the valuation of property in eminent domain is essentially a judicial function which cannot be vested in administrative agencies, while in *Scoty's Department Store v. Micaller*, we struck down a law granting the then Court of Industrial Relations jurisdiction to try criminal cases for violations of the Industrial Peace Act.

In a number of cases, the Court has upheld the original and exclusive jurisdiction of the RTC, sitting as SAC, over all petitions for determination of just compensation to landowners in accordance with Section 57 of RA No. 6657.

In *Land Bank of the Philippines v. Wycoco* [G.R. Nos. 140160 and 146733, January 13, 2004, 419 SCRA 67], the Court upheld the RTC's jurisdiction over Wycoco's petition for determination of just compensation even where no summary administrative proceedings was held before the DARAB which has primary jurisdiction over the determination of land valuation. The Court held:

> In *Land Bank of the Philippines v. Court of Appeals*, the landowner filed an action for determination of just compensation without waiting for the completion of DARAB's re-evaluation of the land. This, notwithstanding, the Court held that the trial court properly acquired jurisdiction because of its exclusive and original jurisdiction over determination of just compensation, thus –
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> > … It is clear from Sec. 57 that the RTC, sitting as a Special Agrarian Court, has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." This "original and exclusive" jurisdiction of the RTC would be undermined if the DAR would vest in administrative officials original jurisdiction in compensation cases and make the RTC an appellate court for the review of administrative decisions. Thus, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, it is clear from Sec. 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 an appellate jurisdiction would be contrary to Sec. 57 and, therefore, would be void. Thus, direct resort to the SAC [Special Agrarian Court] by private respondent is valid.
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> x x x x x x x x x

In *Land Bank of the Philippines v. Natividad* [G.R. No. 127198, May 16, 2005, 458 SCRA 441], wherein Land Bank questioned the

alleged failure of private respondents to seek reconsideration of the DAR's valuation, but instead filed a petition to fix just compensation with the RTC, the Court said:

> At any rate, in *Philippine Veterans Bank v. CA*, we held that there is nothing contradictory between the DAR's primary jurisdiction to determine and adjudicate agrarian reform matters and exclusive original jurisdiction over all matters involving the implementation of agrarian reform, which includes the determination of questions of just compensation, and the original and exclusive jurisdiction of regional trial courts over all petitions for the determination of just compensation. The first refers to administrative proceedings, while the second refers to judicial proceedings.
>
> In accordance with settled principles of administrative law, primary jurisdiction is vested in the DAR to determine in a preliminary manner the just compensation for the lands taken under the agrarian reform program, but such determination is subject to challenge before the courts. The resolution of just compensation cases for the taking of lands under agrarian reform is, after all, essentially a judicial function.
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> Thus, the trial court did not err in taking cognizance of the case as the determination of just compensation is a function addressed to the courts of justice.

In *Land Bank of the Philippines v. Celada* [G.R. No. 164876, January 23, 2006, 479 SCRA 495], where the issue was whether the SAC erred in assuming jurisdiction over respondent's petition for determination of just compensation despite the pendency of the administrative proceedings before the DARAB, the Court stated that:

> It would be well to emphasize that the taking of property under RA No. 6657 is an exercise of the power of eminent domain by the State. The valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies. Consequently, the SAC properly took cognizance of respondent's petition for determination of just compensation.[35] (Italicization supplied; citations omitted)

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[35] *Id.* at 143-147.

Similarly, in *Land Bank of the Philippines v. Court of Appeals,*[36] whose factual circumstances mirror that of the present case, we pointedly ruled that the SAC acquired jurisdiction over the action for the determination of just compensation even during the pendency of the DARAB proceedings, for the following reason:

> It is clear from Sec. 57 x x x that the RTC, sitting as a Special Agrarian Court, has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." This "original and exclusive" jurisdiction of the RTC would be undermined if the DAR would vest in administrative officials original jurisdiction in compensation cases and make the RTC an appellate court for the review of administrative decisions. Thus, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, it is clear from Sec. 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 an appellate jurisdiction would be contrary to Sec. 57 and therefore would be void. Thus, direct resort to the SAC by private respondent is valid**.[37] (emphasis ours)

To reiterate, the taking of property under RA 6657 is an exercise of the State's power of eminent domain. "The valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies."[38] Specifically, "[w]hen the parties cannot agree on the amount of just compensation, only the exercise of judicial power can settle the dispute with binding effect on the winning and losing parties."[39]

Thus, in the present case, HFC correctly filed a petition for the determination of just compensation with the SAC, which has the original and exclusive jurisdiction in just compensation cases under RA 6657. The DARAB's valuation, being preliminary

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[36] 376 Phil. 252 (1999).

[37] *Id.* at 262-263.

[38] *Landbank of the Philippines v. Celada,* 515 Phil. 467, 477 (2006).

[39] *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines, supra* note 30, at 630.

in nature, could not have attained finality, as only the courts can resolve the issue of just compensation. Consequently, the SAC properly took cognizance of HFC's petition for determination of just compensation.

We also find no merit in the LBP's argument that the HFC failed to exhaust administrative remedies when it directly filed a petition for the determination of just compensation with the SAC even before the DARAB case could be resolved. In *Land Bank of the Phils. v. Wycoco*,[40] we held that the doctrine of exhaustion of administrative remedies does not apply when the issue has been rendered moot and academic.[41] In the present case, the issue is now moot considering that the valuation made by the LBP had long been affirmed *in toto* by the DARAB in its May 14, 1998 Decision.

HFC is not guilty of forum shopping

We do not agree with the LBP's view that HFC committed forum shopping.

Forum shopping is the act of litigants who repetitively avail themselves of multiple judicial remedies in different *fora*, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances; and raising substantially similar issues either pending in or already resolved adversely by some other court; or for the purpose of increasing their chances of obtaining a favorable decision, if not in one court, then in another. The rationale against forum-shopping is that a party should not be allowed to pursue simultaneous remedies in two different courts, for to do so would constitute abuse of court processes which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts.[42]

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[40] 464 Phil. 83, 97-98 (2004).

[41] *Landbank of the Philippines v. Celada, supra* note 38, at 476.

[42] *Spouses Daisy and Socrates M. Arevalo v. Planters Development Bank, et al.,* G.R. No. 193415, April 18, 2012.

To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or **whether a final judgment in one case will amount to *res judicata* in another**; otherwise stated, the test for determining forum shopping is whether, in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.[43]

In *Yu v. Lim*,[44] we enumerated the requisites of forum shopping, as follows:

> Forum shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.

In the present case, HFC did not commit forum shopping because the third element of *litis pendentia* is lacking. As previously mentioned, the DARAB's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. The courts, in this case, the SAC, will still have to review with finality the determination, in the exercise of what is admittedly a judicial function.[45] Thus, it becomes clear that there is no identity between the two cases such that a judgment by the DARAB, regardless of which party is successful, would amount to *res judicata* in the case before the SAC.

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[43] *Jesse Yap v. Court of Appeals, (Special Eleventh [11th] Division), et al.*, G.R. No. 186730, June 13, 2012.

[44] G.R. No. 182291, September 22, 2010, 631 SCRA 172, 184.

[45] *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines*, *supra* note 30, at 629.

It has been held that "[w]hat is essential in determining the existence of forum-shopping is the vexation caused the courts and litigants by a party who asks different courts and/or administrative agencies to rule on similar or related causes and/or grant the same or substantially similar reliefs, in the process creating the possibility of conflicting decisions being rendered upon the same issues."[46] In the present case, the evil sought to be prevented by the prohibition on forum shopping, *i.e.*, the possibility of conflicting decisions, is lacking since the DARAB determination is merely preliminary and is not binding on the parties; such determination is subject to challenge before the courts. The law, in fact, allows the landowner to file a case for the determination of just compensation with the SAC without the necessity of first filing the same with the DARAB. Based on these considerations, it is clear that the HFC cannot be charged with forum shopping.

To determine just compensation, the SAC must take into consideration the factors prescribed by Section 17 of RA 6657 and is obliged to apply the DAR formula

The CA, in affirming the SAC's valuation and disregarding that of the LBP, briefly held:

> In the instant case, the trial court based its valuation of the property at ₱32,000.00 per hectare on the evidence submitted by the parties, such as the sketch plan of the property, the testimonies of witnesses, and the field investigation reports of both parties. Hence, herein litigants cannot claim that the valuation made by the court was not based on the evidence on record.[47]

The LBP maintains that the SAC committed serious error when it failed to apply the "basic formula" for determining just compensation, prescribed by DAR Administrative Order No. 6, series of 1992, as amended by DAR Administrative Order No. 11,

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[46] *Spouses Daisy and Socrates M. Arevalo v. Planters Development Bank, et al., supra* note 42.

[47] *Rollo,* p. 60.

series of 1994. It emphasizes that by adopting the values fixed by the SAC, the CA's determination is contrary to Section 17 of RA 6657 and the applicable rulings of the Court bearing on the determination of just compensation, which require that the basic formula prescribed by the DAR shall be used in the valuation of the land.

We agree with the LBP. In *Land Bank of the Philippines v. Honeycomb Farms Corporation*,[48] a recent case with substantially the same factual antecedents and the same respondent company, we categorically ruled that the CA and the RTC grievously erred when they disregarded the formula laid down by the DAR, and chose instead to come up with their own basis for the valuation of the land in question, *viz.*:

> That it is the RTC, sitting as a SAC, which has the power to determine just compensation for parcels of land acquired by the State, pursuant to the agrarian reform program, is made clear in Section 57 of RA 6657, which reads:
>
> > Section 57. Special Jurisdiction. – The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts unless modified by this Act.
> >
> > The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.
>
> To guide the RTC in this function, Section 17 of RA 6657 enumerates the factors that have to be taken into consideration to accurately determine just compensation. This provision states:
>
> > Section 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

[48] G.R. No. 169903, February 29, 2012.

> assessors, shall be considered. The social and economic benefits contributed by the farmers and the farm workers and by the Government to the property, as well as the non-payment of taxes or loans secured from any government financing institution on the said land, shall be considered as additional factors to determine its valuation.

In *Land Bank of the Philippines v. Sps. Banal*, we recognized that the DAR, as the administrative agency tasked with the implementation of the agrarian reform program, already came up with a formula to determine just compensation which incorporated the factors enumerated in Section 17 of RA 6657. We said:

> These factors [enumerated in Section 17] have been translated into a basic formula in DAR Administrative Order No. 6, Series of 1992, as amended by DAR Administrative Order No. 11, Series of 1994, issued pursuant to the DAR's rule-making power to carry out the object and purposes of R.A. 6657, as amended.

In *Landbank of the Philippines v. Celada*, we emphasized the duty of the RTC to apply the formula provided in the applicable DAR AO to determine just compensation, stating that:

> While [the RTC] is required to consider the acquisition cost of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declaration and the assessments made by the government assessors to determine just compensation, it is equally true that these factors have been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of R.A. No. 6657. As the government agency principally tasked to implement the agrarian reform program, it is the DAR's duty to issue rules and regulations to carry out the object of the law. [The] DAR [Administrative Order] precisely "filled in the details" of Section 17, R.A. No. 6657 by providing a basic formula by which the factors mentioned therein may be taken into account. The [RTC] was at no liberty to disregard the formula which was devised to implement the said provision.
>
> It is elementary that rules and regulations issued by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law, and are entitled to great respect. Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality.

> As such, courts cannot ignore administrative issuances especially when, as in this case, its validity was not put in issue. Unless an administrative order is declared invalid, courts have no option but to apply the same.

We reiterated the mandatory application of the formula in the applicable DAR administrative regulations in *Land Bank of the Philippines v. Lim*, *Land Bank of the Philippines v. Heirs of Eleuterio Cruz*, and *Land Bank of the Philippines v. Barrido*. *In Barrido*, we were explicit in stating that:

> While the determination of just compensation is essentially a judicial function vested in the RTC acting as a Special Agrarian Court, the judge cannot abuse his discretion by not taking into full consideration the factors specifically identified by law and implementing rules. **Special Agrarian Courts are not at liberty to disregard the formula laid down in DAR A.O. No. 5, series of 1998, because unless an administrative order is declared invalid, courts have no option but to apply it.** The courts cannot ignore, without violating the agrarian law, the formula provided by the DAR for the determination of just compensation.

These rulings plainly impose on the RTC the duty to apply the formula laid down in the pertinent DAR administrative regulations to determine just compensation. Clearly, the CA and the RTC acted with grievous error when they disregarded the formula laid down by the DAR, and chose instead to come up with their own basis for the valuation of the subject land. [Italicization supplied; emphases ours]

As the law now stands, it is clear that the SAC is duty bound to take into consideration the factors fixed by Section 17 of RA 6657 and apply the basic formula prescribed and laid down in the pertinent administrative regulations, in this case, DAR Administrative Order No. 6, series of 1992, as amended by DAR Administrative Order No. 11, series of 1994, to determine just compensation. In the present case, we thus find no difficulty in concluding that the CA and the RTC, acting as a SAC, seriously erred when they effectively eschewed the basic formula prescribed by the DAR regulations and chose instead to come up with their own basis for the valuation of the land in question.

The SAC cannot take judicial notice of the nature of land in question without the requisite hearing

Separately from disregarding the basic formula prescribed by the DAR, it has also not escaped our notice that the SAC also erred in concluding that the subject land consisting of 29.0966 hectares is commercial in nature, after taking judicial notice that it is "situated near the commercial district of Curvada, Cataingan, Masbate."[49] In *Land Bank of the Philippines v. Honeycomb Farms Corporation*,[50] we categorically ruled that the parties must be given the opportunity to present evidence on the nature of the property before the court *a quo* can take judicial notice of the commercial nature of a portion of the subject landholding, thus:

> While the lower court is not precluded from taking judicial notice of certain facts, it must exercise this right within the clear boundary provided by Section 3, Rule 129 of the Rules of Court, which provides:
>
> > Section 3. *Judicial notice, when hearing necessary.* – During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.
> >
> > After the trial, and before judgment or on appeal, the proper court, on its own initiative, or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case.
>
> The classification of the land is obviously essential to the valuation of the subject property, which is the very issue in the present case. The parties should thus have been given the opportunity to present evidence on the nature of the property before the lower court took judicial notice of the commercial nature of a portion of the subject landholdings. As we said in *Land Bank of the Phils. v. Wycoco* [464 Phil. 83, 97-98 (2004)]:

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[49] *Rollo*, p. 114.

[50] *Supra* note 48.

> The power to take judicial notice is to be exercised by courts with caution especially where the case involves a vast tract of land. Care must be taken that the requisite notoriety exists; and every reasonable doubt on the subject should be promptly resolved in the negative. To say that a court will take judicial notice of a fact is merely another way of saying that the usual form of evidence will be dispensed with if knowledge of the fact can be otherwise acquired. This is because the court assumes that the matter is so notorious that it will not be disputed. But judicial notice is not judicial knowledge. The mere personal knowledge of the judge is not the judicial knowledge of the court, and he is not authorized to make his individual knowledge of a fact, not generally or professionally known, the basis of his action. [Italicization supplied]

The present case must be remanded to the court of origin for the determination of just compensation in accordance with Section 17 of RA 6657 and applicable DAR regulations

In *Land Bank of the Philippines v. Sps. Banal*,[51] we remanded the case to the SAC for further reception of evidence because the trial court based its valuation upon a different formula and did not conduct any hearing for the reception of evidence.[52]

The mandatory application of the aforementioned guidelines in determining just compensation has been reiterated recently in *Land Bank of the Philippines v. Lim*,[53] *Land Bank of the Philippines v. Heirs of Eleuterio Cruz*,[54] and *Land Bank of the Philippines v. Honeycomb Farms Corporation*,[55] where

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[51] *Supra* note 27.

[52] *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines, supra* note 30, at 639.

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

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

[55] *Supra* note 48.

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.[56]

As we are not a trier of facts, we thus find that a remand of this case is necessary in order for the SAC to determine just compensation, strictly in accordance with Section 17 of RA 6657 and applicable DAR regulations, in particular, DAR Administrative Order No. 6, series of 1992, as amended by DAR Administrative Order No. 11, series of 1994.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The assailed Amended Decision dated September 16, 2004 and Resolution dated November 25, 2004 of the Court of Appeals in C.A.-G.R. CV No. 69661 are **REVERSED** and **SET ASIDE**. Special Civil Case No. 4637 is **REMANDED** to the Regional Trial Court of Masbate, Masbate, Branch 48, for the determination of just compensation, based on Section 17 of Republic Act No. 6657 and the applicable administrative orders of the Department of Agrarian Reform.

No pronouncement as to costs.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[56] *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines, supra* note 30 at 639.

SECOND DIVISION

[G.R. No. 172471. November 12, 2012]

ANTONIO PERLA, *petitioner, vs.* **MIRASOL BARING and RANDY PERLA,** *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; SUPPORT; WHERE THE COMPLAINT FOR SUPPORT WAS BASED ON ILLEGITIMATE FILIATION, SUCH FILIATION MUST BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE.— Respondents' Complaint for support is based on Randy's alleged illegitimate filiation to Antonio. Hence, for Randy to be entitled for support, his filiation must be established with sufficient certainty. A review of the Decision of the RTC would show that it is bereft of any discussion regarding Randy's filiation. Although the appellate court, for its part, cited the applicable provision on illegitimate filiation, it merely declared the certified true copies of Randy's birth certificate and baptismal certificate both identifying Antonio as the father as good proofs of his filiation with Randy and nothing more. This is despite the fact that the said documents do not bear Antonio's signature. "Time and again, this Court has ruled that a high standard of proof is required to establish paternity and filiation. An order for x x x support may create an unwholesome situation or may be an irritant to the family or the lives of the parties so that it must be issued only if paternity or filiation is established by clear and convincing evidence."

2. ID.; ID.; ID.; ID.; WHERE A CERTIFICATE OF LIVE BIRTH CANNOT BE CONSIDERED AS A PROOF OF ILLEGITIMATE FILIATION.— Respondents presented the Certificate of Live Birth of Randy identifying Antonio as the father. However, said certificate has no probative value to establish Randy's filiation to Antonio since the latter had not signed the same. It is settled that "[a] certificate of live birth purportedly identifying the putative father is not competent evidence of paternity when there is no showing that the putative

father had a hand in the preparation of said certificate." We also cannot lend credence to Mirasol's claim that Antonio supplied certain information through Erlinda. Aside from Antonio's denial in having any participation in the preparation of the document as well as the absence of his signature thereon, respondents did not present Erlinda to confirm that Antonio indeed supplied certain entries in Randy's birth certificate. Besides, the several unexplained discrepancies in Antonio's personal circumstances as reflected in the subject birth certificate are manifestations of Antonio's non-participation in its preparation. Most important, it was Mirasol who signed as informant thereon which she confirmed on the witness stand.

3. ID.; ID.; ID.; ID.; A SINGULAR OCCASION IN WHICH THE FATHER ALLEGEDLY HUGGED HIS ILLEGITIMATE SON AND PROMISED TO SUPPORT HIM WAS NOT AN INDICATION OF AN OPEN AND CONTINUES POSSESSION OF THE STATUS OF AN ILLEGITIMATE CHILD.— Neither does the testimony of Randy establish his illegitimate filiation. That during their first encounter in 1994 Randy called Antonio "Papa" and kissed his hand while Antonio hugged him and promised to support him; or that his Aunt Lelita treated him as a relative and was good to him during his one-week stay in her place, cannot be considered as indications of Randy's open and continuous possession of the status of an illegitimate child under the second paragraph of Article 172(1). "[T]o prove open and continuous possession of the status of an illegitimate child, there must be evidence of the manifestation of the permanent intention of the supposed father to consider the child as his, by continuous and clear manifestations of parental affection and care, which cannot be attributed to pure charity. Such acts must be of such a nature that they reveal not only the conviction of paternity, but also the apparent desire to have and treat the child as such in all relations in society and in life, not accidentally, but continuously." Here, the single instance that Antonio allegedly hugged Randy and promised to support him cannot be considered as proof of continuous possession of the status of a child. To emphasize, "[t]he father's conduct towards his son must be spontaneous and uninterrupted for this ground to exist." Here, except for that singular occasion in which they met, there are no other acts of Antonio treating Randy as his son.

4. ID.; ID.; ID.; ID.; BAPTISMAL CERTIFICATE IS INCOMPETENT TO PROVE FILIATION.— Anent Randy's baptismal certificate, we cannot agree with the CA that the same is a good proof of Antonio's paternity of Randy. Just like in a birth certificate, the lack of participation of the supposed father in the preparation of a baptismal certificate renders this document incompetent to prove paternity. And "while a baptismal certificate may be considered a public document, it can only serve as evidence of the administration of the sacrament on the date specified but not the veracity of the entries with respect to the child's paternity. Thus, x x x baptismal certificates are *per se* inadmissible in evidence as proof of filiation and they cannot be admitted indirectly as circumstantial evidence to prove the same."

5. ID.; ID.; ID.; ID.; IN AN ACTION FOR SUPPORT, IT IS INCUMBENT UPON THE MOTHER TO PROVE THAT SHE HAD SEXUAL INTERCOURSE WITH THE PUTATIVE FATHER PRIOR TO THE USUAL PERIOD OF PREGNANCY OR NINE MONTHS BEFORE THE BIRTH OF THE CHILD.— This Court cannot likewise agree with the RTC's conclusion that Antonio fathered Randy merely on the basis of his admission that he had sexual encounters with Mirasol. Neither does it agree with the CA that the inconsistencies in Antonio's testimony with regard to the number of times he had sexual intercourse with Mirasol are good reasons to disregard his denials and uphold the respondents' claims. It is well to stress that as plaintiff, Mirasol has the burden of proving her affirmative allegation that Antonio is the father of her son Randy. She must rely on the strength of her evidence and not on the weakness of the defense. As Randy was born on November 11, 1983, it was incumbent upon Mirasol to prove that she had sexual intercourse with Antonio prior to the usual period of pregnancy or nine months before the birth of Randy. This crucial period therefore is during the early part of the first quarter of 1983. However, nothing from Mirasol's testimony indicates that she had sexual intercourse with Antonio during that time. She merely testified that she last met with Antonio in 1983 but could not remember the particular month. Plainly, this hardly means anything not only because it was not established that the said meeting took place during that crucial period but also because Mirasol never mentioned that they had sexual contact during their meeting.

APPEARANCES OF COUNSEL

Ernesto P. Layusa for petitioner.
Public Attorney's Office for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

"An order for x x x support x x x must be issued only if paternity or filiation is established by clear and convincing evidence."[1]

Assailed in this Petition for Review on *Certiorari*[2] is the March 31, 2005 Decision[3] of the Court of Appeals (CA) in CA-G.R. CV No. 79312 which dismissed petitioner Antonio Perla's (Antonio) appeal from the February 26, 2003 Decision[4] of the Regional Trial Court (RTC) of Antipolo City, Branch 71 in Civil Case No. 96-3952, ordering him to give monthly support to respondent Randy Perla (Randy). Likewise assailed is the CA's May 5, 2006 Resolution[5] denying the motion for reconsideration thereto.

Factual Antecedents

Respondent Mirasol Baring (Mirasol) and her then minor son, Randy (collectively respondents), filed before the RTC a Complaint[6] for support against Antonio.

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[1] *Cabatania v. Court of Appeals*, 484 Phil. 42, 50 (2004).

[2] *Rollo*, pp. 10-26.

[3] CA *rollo*, pp. 91-97; penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso.

[4] Records, pp. 188-190; penned by Presiding Judge Felix S. Caballes.

[5] CA *rollo*, pp. 124-126.

[6] Records, pp. 1-3.

They alleged in said Complaint that Mirasol and Antonio lived together as common-law spouses for two years. As a result of said cohabitation, Randy was born on November 11, 1983. However, when Antonio landed a job as seaman, he abandoned them and failed to give any support to his son. Respondents thus prayed that Antonio be ordered to support Randy.

In his Answer with Counterclaim,[7] Antonio, who is now married and has a family of his own, denied having fathered Randy. Although he admitted to having known Mirasol, he averred that she never became his common-law wife nor was she treated as such. And since Mirasol had been intimidating and pestering him as early as 1992 with various suits by insisting that Randy is his son, Antonio sought moral and exemplary damages by way of counterclaim from respondents.

During trial, Mirasol testified that from 1981 to 1983, she lived in Upper Bicutan, Taguig where Antonio was a neighbor.[8] In the first week of January 1981, Antonio courted her[9] and eventually became her first boyfriend.[10] Antonio would then visit her everyday until 1982.[11] Upon clarificatory question by the court whether she and Antonio eventually lived together as husband and wife, Mirasol answered that they were just sweethearts.[12]

When Mirasol became pregnant in 1983, Antonio assured her that he would support her.[13] Eventually, however, Antonio started to evade her.[14] Mirasol last saw Antonio in 1983 but could not remember the particular month.[15]

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[7] *Id.* at 35-38.

[8] TSN, April 7, 1999, pp. 6-7.

[9] *Id.* at 10-11, 25.

[10] *Id.* at 25.

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

[12] *Id.* at 10.

[13] *Id.* at 11.

[14] *Id.* at 26.

[15] *Id.*

On November 11, 1983, Mirasol gave birth to Randy.[16] She presented Randy's Certificate of Live Birth[17] and Baptismal Certificate[18] indicating her and Antonio as parents of the child. Mirasol testified that she and Antonio supplied the information in the said certificates.[19] Antonio supplied his name and birthplace after Erlinda Balmori (Erlinda), the "*hilot*" who assisted in Mirasol's delivery of Randy, went to his house to solicit the said information.[20] Mirasol also claimed that it was Erlinda who supplied the date and place of marriage of the parents so that the latter can file the birth certificate.[21] Mirasol likewise confirmed that she is the same "Mirasol Perla" who signed as the informant therein.[22]

Next to take the witness stand was Randy who at that time was just 15 years old.[23] Randy claimed that he knew Antonio to be the husband of her mother and as his father.[24] He recounted having met him for the first time in 1994 in the house of his Aunt Lelita, Antonio's sister, where he was vacationing.[25] During their encounter, Randy called Antonio "Papa" and kissed his hand while the latter hugged him.[26] When Randy asked him for support, Antonio promised that he would support him.[27]

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[16] *Id.* at 13.

[17] *Id.* at 14; See the certified true copy of said birth certificate which was issued by the National Statistics Office, records, p. 122.

[18] *Id.* at 16-17; *id.* at 123.

[19] TSN, April 21, 1999, p. 4.

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

[21] *Id.* at 5.

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

[23] TSN, September 8, 1999, p. 3.

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

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

[26] *Id.* at 8.

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

Randy further testified that during his one-week stay in his Aunt Lelita's place, the latter treated him as member of the family.[28]

For her part, Aurora Ducay testified that she knew both Mirasol and Antonio as they were neighbors in Upper Bicutan, Taguig. Presently, Antonio is still her neighbor in the said place.[29] According to her, she knew of Mirasol's and Antonio's relationship because aside from seeing Antonio frequenting the house of Mirasol, she asked Antonio about it.[30] She further narrated that the two have a son named Randy[31] and that Antonio's mother even tried to get the child from Mirasol.[32]

Testifying as an adverse witness for the respondents, Antonio admitted having sexual intercourse with Mirasol in February and August[33] of 1981.[34] When shown with Randy's Certificate of Live Birth and asked whether he had a hand in the preparation of the same, Antonio answered in the negative.[35]

Testifying for himself, Antonio denied having courted Mirasol on January 5, 1981 because during that time, he was studying in Iloilo City. He graduated from the Iloilo Maritime Academy in March of 1981[36] as shown by his diploma.[37] It was only in May 1981 or after his graduation that he came to Manila. Further, he denied having any relationship with Mirasol.[38] He claimed

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[28] *Id.* at 10-11.

[29] TSN, October 7, 1999, pp. 3-4.

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

[31] *Id.* at 5.

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

[33] TSN, February 10, 2000, p. 13.

[34] *Id.* at 16.

[35] *Id.* at 15.

[36] TSN, August 1, 2001, p. 6.

[37] *Id.* at 7; records, p. 168.

[38] *Id.* at 5.

that he had sexual intercourse with Mirasol only once which happened in the month of September or October of 1981.[39]

Antonio came to know that he was being imputed as the father of Randy only when Mirasol charged him with abandonment of minor in 1994, which was also the first time he saw Randy.[40] Prior to that, neither Mirasol nor her sister, Norma, whom he met a few times told him about the child.[41]

Anent Randy's Certificate of Live Birth, Antonio testified as to several inaccuracies in the entries thereon. According to him, his middle initial is "E" and not "A" as appearing in the said certificate of live birth.[42] Also, he is not a protestant and a laborer as indicated in said certificate.[43] Antonio likewise alleged that Mirasol only made up the entries with respect to their marriage on October 28, 1981.[44]

Daisy Balmori Rodriguez (Daisy), for her part, testified that she came to know Mirasol through her mother Erlinda who was the "*hilot*" when Mirasol gave birth to Randy.[45] She narrated that her mother asked Mirasol the details to be entered in the child's Certificate of Live Birth such as the names of the parents, date and place of marriage, and the intended name of the child.[46] Her mother also told her that Mirasol's son has no acknowledged father.[47] Daisy likewise claimed that Mirasol later left to her

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[39] *Id.* at 6.

[40] *Id.* at 26-27; The said charge and the counter-charges filed by Antonio against Mirasol were eventually dismissed by the Provincial Prosecution Office of Rizal on July 28, 1994, records, pp. 19-20.

[41] *Id.*

[42] *Id.* at 19.

[43] *Id.* at 20.

[44] *Id.*

[45] TSN, August 15, 2001, pp. 11-12.

[46] *Id.* at 14.

[47] *Id.* at 37.

care the then infant Randy until Mirasol took him away without permission when the child was almost five years old.[48]

Ruling of the Regional Trial Court

After trial, the RTC rendered a Decision[49] dated February 26, 2003 ordering Antonio to support Randy.

The RTC ruled that Mirasol and Randy are entitled to the relief sought since Antonio himself admitted that he had sex with Mirasol. It also noted that when the 15-year old Randy testified, he categorically declared Antonio as his father. The RTC opined that Mirasol would not have gone through the trouble of exposing herself to humiliation, shame and ridicule of public trial if her allegations were untrue. Antonio's counterclaim was denied due to the absence of bad faith or ill-motive on the part of Mirasol and Randy.

The dispositive portion of the RTC Decision reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff Randy Perla and against the defendant [Antonio Perla], ordering the latter to give a reasonable monthly support of ₱5,000.00 to Randy Perla for his sustenance and support to be given to him from the time of the filing of this Complaint."
>
> Defendant's counterclaim is DISMISSED.
>
> SO ORDERED.[50]

Antonio filed a Notice of Appeal[51] which was given due course by the RTC.[52]

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[48] *Id.* at 17-20.

[49] Records, pp. 188-190.

[50] *Id.* at 190.

[51] *Id.* at 191.

[52] *Id.*, unpaginated, following p.194.

Ruling of the Court of Appeals

In its Decision[53] of March 31, 2005, the CA upheld Randy's illegitimate filiation based on the certified true copies of his birth certificate and of his baptismal certificate identifying Antonio as his father. According to the appellate court, while these documents do not bear the signature of Antonio, they are proofs that Antonio is the known, imputed and identified father of Randy. The CA also affirmed the trial court's findings on the credibility of the witnesses and its appreciation of facts, as there was nothing to suggest that the RTC erred in such respects. It highlighted Antonio's vacillation in his testimony regarding the number of times he had sex with Mirasol and concluded that the same is a clear badge of his lack of candor – a good reason to disregard his denials. Thus:

> WHEREFORE, the appeal is DISMISSED and the appealed Decision is AFFIRMED.
>
> SO ORDERED.[54]

Antonio filed a Motion for Reconsideration[55] which was denied by the CA in its Resolution[56] of May 5, 2006.

Hence, this Petition for Review on *Certiorari*.

Issue

The pivotal issue to be resolved in this case is whether the lower courts correctly ordered Antonio to support Randy.

Our Ruling

There is merit in the petition.

A re-examination of the factual findings of the RTC and the CA is proper in this case.

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[53] CA *rollo*, pp. 124-126.

[54] *Id.* at 96.

[55] *Id.* at 98-107.

[56] *Id.* at 124-126.

"Generally, factual findings of trial courts, when affirmed by the CA, are binding on this Court."[57] However, this rule admits of certain exceptions such as when the finding is grounded entirely on speculations, surmises or conjectures or when the judgment of the CA is based on misapprehension of facts.[58] As this case falls under these exceptions, the Court is constrained to re-examine the factual findings of the lower courts.

Since respondents' complaint for support is anchored on Randy's alleged illegitimate filiation to Antonio, the lower courts should have first made a determination of the same.

Respondents' Complaint for support is based on Randy's alleged illegitimate filiation to Antonio. Hence, for Randy to be entitled for support, his filiation must be established with sufficient certainty. A review of the Decision of the RTC would show that it is bereft of any discussion regarding Randy's filiation. Although the appellate court, for its part, cited the applicable provision on illegitimate filiation, it merely declared the certified true copies of Randy's birth certificate and baptismal certificate both identifying Antonio as the father as good proofs of his filiation with Randy and nothing more. This is despite the fact that the said documents do not bear Antonio's signature. "Time and again, this Court has ruled that a high standard of proof is required to establish paternity and filiation. An order for x x x support may create an unwholesome situation or may be an irritant to the family or the lives of the parties so that it must be issued only if paternity or filiation is established by clear and convincing evidence."[59]

Respondents failed to establish Randy's illegitimate filiation to Antonio.

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[57] *Navales v. Navales*, G.R. No. 167523, June 27, 2008, 556 SCRA 272, 285.

[58] *Dimaranan v. Heirs of Spouses Hermogenes Arayata and Flaviana Arayata*, G.R. No. 184193, March 29, 2010, 617 SCRA 101, 113.

[59] *Cabatania v. Court of Appeals*, *supra* note 1.

The rules for establishing filiation are found in Articles 172 and 175 of the Family Code which provide as follows:

Article 172. The filiation of legitimate children is established by any of the following:

(1) The record of birth appearing in the civil register or a final judgment; or

(2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

(1) The open and continuous possession of the status of a legitimate child; or

(2) Any other means allowed by the Rules of Court and special laws.

x x x x x x x x x

Article 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

x x x x x x x x x

Respondents presented the Certificate of Live Birth of Randy identifying Antonio as the father. However, said certificate has no probative value to establish Randy's filiation to Antonio since the latter had not signed the same.[60] It is settled that "[a] certificate of live birth purportedly identifying the putative father is not competent evidence of paternity when there is no showing that the putative father had a hand in the preparation of said certificate."[61] We also cannot lend credence to Mirasol's claim that Antonio supplied certain information through Erlinda. Aside from Antonio's denial in having any participation in the preparation of the document as well as the absence of his signature thereon,

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[60] *Nepomuceno v. Lopez*, G.R. No. 181258, March 18, 2010, 616 SCRA 145, 153.

[61] *Cabatania v. Court of Appeals*, *supra* note 1 at 51.

respondents did not present Erlinda to confirm that Antonio indeed supplied certain entries in Randy's birth certificate. Besides, the several unexplained discrepancies in Antonio's personal circumstances as reflected in the subject birth certificate are manifestations of Antonio's non-participation in its preparation. Most important, it was Mirasol who signed as informant thereon which she confirmed on the witness stand.

Neither does the testimony of Randy establish his illegitimate filiation. That during their first encounter in 1994 Randy called Antonio "Papa" and kissed his hand while Antonio hugged him and promised to support him; or that his Aunt Lelita treated him as a relative and was good to him during his one-week stay in her place, cannot be considered as indications of Randy's open and continuous possession of the status of an illegitimate child under the second paragraph of Article 172(1). "[T]o prove open and continuous possession of the status of an illegitimate child, there must be evidence of the manifestation of the permanent intention of the supposed father to consider the child as his, by continuous and clear manifestations of parental affection and care, which cannot be attributed to pure charity. Such acts must be of such a nature that they reveal not only the conviction of paternity, but also the apparent desire to have and treat the child as such in all relations in society and in life, not accidentally, but continuously."[62] Here, the single instance that Antonio allegedly hugged Randy and promised to support him cannot be considered as proof of continuous possession of the status of a child. To emphasize, "[t]he father's conduct towards his son must be spontaneous and uninterrupted for this ground to exist."[63] Here, except for that singular occasion in which they met, there are no other acts of Antonio treating Randy as his son.[64] Neither can Antonio's paternity be deduced from how his sister Lelita treated Randy. To this Court, Lelita's actuations could have been done due to charity or some other reasons.

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[62] *Jison v. Court of Appeals*, 350 Phil. 138, 172 (1998).

[63] *Ong v. Court of Appeals*, 339 Phil. 109, 119 (1997).

[64] *Id.*

Anent Randy's baptismal certificate, we cannot agree with the CA that the same is a good proof of Antonio's paternity of Randy. Just like in a birth certificate, the lack of participation of the supposed father in the preparation of a baptismal certificate renders this document incompetent to prove paternity.[65] And "while a baptismal certificate may be considered a public document, it can only serve as evidence of the administration of the sacrament on the date specified but not the veracity of the entries with respect to the child's paternity. Thus, x x x baptismal certificates are *per se* inadmissible in evidence as proof of filiation and they cannot be admitted indirectly as circumstantial evidence to prove the same."[66]

This Court cannot likewise agree with the RTC's conclusion that Antonio fathered Randy merely on the basis of his admission that he had sexual encounters with Mirasol. Neither does it agree with the CA that the inconsistencies in Antonio's testimony with regard to the number of times he had sexual intercourse with Mirasol are good reasons to disregard his denials and uphold the respondents' claims. It is well to stress that as plaintiff, Mirasol has the burden of proving her affirmative allegation that Antonio is the father of her son Randy.[67] She must rely on the strength of her evidence and not on the weakness of the defense.[68] As Randy was born on November 11, 1983, it was incumbent upon Mirasol to prove that she had sexual intercourse with Antonio prior to the usual period of pregnancy or nine months before the birth of Randy. This crucial period therefore is during the early part of the first quarter of 1983. However, nothing from Mirasol's testimony indicates that she had sexual intercourse with Antonio during that time. She merely testified that she last met with Antonio in 1983 but could not remember

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[65] *Jison v. Court of Appeals, supra* at 176.

[66] *Cabatania v. Court of Appeals, supra* note 1 at 51.

[67] *Spouses Angeles v. Spouses Tan,* 482 Phil. 635, 646 (2004).

[68] *Ek Lee Steel Works Corporation v. Manila Castor Oil Corporation,* G.R. No. 119033, July 9, 2008, 557 SCRA 339, 352.

the particular month.[69] Plainly, this hardly means anything not only because it was not established that the said meeting took place during that crucial period but also because Mirasol never mentioned that they had sexual contact during their meeting.

Antonio's admission of sexual intercourse with Mirasol does not likewise by any means strengthen respondents' theory that he fathered Randy. When Antonio testified as an adverse witness for the respondents, he stated that he had sexual intercourse with Mirasol in February and August of 1981. Later testifying as witness for his own behalf, he mentioned that he had a one night affair with Mirasol which happened in the month of September or October of 1981. Assuming that he indeed had sexual contact with Mirasol on the dates mentioned, still, none of these sexual congresses could have led to the conception of Randy who was born two years later in 1983.

All told, it is clear that respondents failed to establish Randy's illegitimate filiation to Antonio. Hence, the order for Antonio to support Randy has no basis.

WHEREFORE, the Petition for Review on *Certiorari* is **GRANTED**. The assailed Decision dated March 31, 2005 and Resolution dated May 5, 2006 of the Court of Appeals in CA-G.R. CV No. 79312 are **REVERSED** and **SET ASIDE** and the Decision dated February 26, 2003 of the Regional Trial Court of Antipolo City, Branch 71, in Civil Case No. 96-3952 is **VACATED**. A new one is entered **DISMISSING** the Complaint for Support filed by Mirasol Baring and Randy Perla against Antonio Perla.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[69] TSN, April 7, 1999, p. 26.

SECOND DIVISION

[G.R. No. 178431. November 12, 2012]

V.C. PONCE COMPANY, INC., *petitioner, vs.* **MUNICIPALITY OF PARAÑAQUE and SAMPAGUITA HILLS HOMEOWNERS ASSOCIATION, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; PERIOD TO FILE MOTION FOR RECONSIDERATION IS NOT EXTENDIBLE; FAILURE TO FILE ON TIME RENDERS THE DECISION FINAL.— VCP received the CA Decision on April 10, 2007. Based on Rule 52 of the Rules of Court and Rule 7 of the 2002 Internal Rules of the Court of Appeals (IRCA), VCP had 15 days from its receipt of the Decision, or until April 25, 2007, to file a motion for reconsideration, an appeal, or a motion for new trial. Failure to file the necessary pleading within the reglementary period would render the CA Decision final and executory. Instead of filing a Motion for Reconsideration on April 25, 2007, VCP filed a MOTEX on the ground that its lawyer had withdrawn from the case and it was still in the process of retaining a new counsel. The CA was correct in denying petitioner's MOTEX because the period to file a Motion for Reconsideration is not extendible. The Court has pronounced strict adherence to the rule laid down in *Habaluyas Enterprises, Inc. v. Judge Japson* that "no motion for extension of time to file a motion for new trial or reconsideration may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the Intermediate Appellate Court (now Court of Appeals)." Since the period to file a Motion for Reconsideration is not extendible, VCP's MOTEX did not toll the reglementary period. Thus, there being no Motion for Reconsideration as of April 25, 2007, the Decision of the CA dated March 23, 2007 became final and executory by operation of law. The CA was correct in denying the Motion for Reconsideration that VCP had belatedly filed on May 25, 2007 as its lateness had rendered it moot.

2. ID.; ID.; ID.; ID.; PARTY'S INACTION TO HIRE NEW COUNSEL CANNOT JUSTIFY APPLICATION OF EQUITY AND RELAXATION OF THE RULES.— The Court, in the interest of equity and justice, sometimes allows a liberal reading of the rules, so long as the petitioner is able to prove the existence of cogent reasons to excuse its non-observance. The Court, however, does not find a justification to warrant such relaxation in this instance. It is incumbent upon the client to exert all efforts to retain the services of new counsel. VCP knew since August 29, 2006, seven months *before* the CA rendered its Decision, that it had no counsel. Despite its knowledge, it did not immediately hire a lawyer to attend to its affairs. Instead, it waited until the last minute, when it had already received the adverse CA Decision on April 10, 2007, to search for a counsel; and even then, VCP did not rush to meet the deadline. It asked for an extension of 30 days to file a Motion for Reconsideration. It finally retained the services of a new counsel on May 24, 2007, nine months from the time that its former counsel withdrew her appearance. VCP did not even attempt to explain its inaction. The Court cannot grant equity where it is clearly undeserved by a grossly negligent party.

3. ID.; ID.; APPEALS; APPEAL IS A SUFFICIENT AND ADEQUATE REMEDY UNLESS THE PARTY PROVES OTHERWISE.— VCP attempts to extricate itself from the effects of its negligence by alleging that an appeal would not have been speedy and adequate for its purpose. The Court, however, finds no merit in its contention. A court with appellate jurisdiction can review both the facts and the law, including questions of jurisdiction. It can set aside an erroneous decision and even nullify the same, if warranted. Appeal is a speedy remedy, as an adverse party can file its appeal from a final decision or order immediately after receiving it. A party, who is alleging that an appeal will not promptly relieve it of the injurious effects of the judgment, should establish facts to show how the appeal is not speedy or adequate. VCP's empty protestations, therefore, fail to impress. There is no reason, and VCP cannot explain, why an appeal would not be speedy and adequate to address its assigned errors. VCP cannot complain of delay because it was guilty of delay itself, and it even waited until the 58th day of its receipt of the CA Decision before taking action. Clearly, petitioner resorted to *certiorari*

as a substitute for its lost appeal. The CA did not err in dismissing the same.

APPEARANCES OF COUNSEL

Gilberto G. Gordove for petitioner.
YFLim & Associates Law Firm for SHHAI.
Ruben R. Aldea for City of Parañaque.

D E C I S I O N

DEL CASTILLO, *J.*:

"It is a settled rule that relief will not be granted to a party x x x when the loss of the remedy at law was due to his own negligence, or to a mistaken mode of procedure."[1]

Before the Court is a Petition for Review[2] on *Certiorari* of the March 23, 2007 Decision[3] of the Court of Appeals (CA), as well as its June 4, 2007 Resolution,[4] in CA-G.R. SP No. 91791, which dismissed V.C. Ponce Company, Inc.'s (VCP) Petition for *Certiorari*. The CA held that VCP's resort to a petition for *certiorari* under Rule 65 of the Rules of Court was inappropriate and that the trial court's rejection of the commissioners' appraisal report did not amount to a grave abuse of its discretion. The *fallo* of the assailed Decision reads:

WHEREFORE, the petition is **DISMISSED**. Public respondent judge's Decision dated 10 March 2005 and Order dated 15 August 2005 in Civil Case No. 94-0009 for Expropriation are **AFFIRMED**.

SO ORDERED.[5]

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[1] *Amatorio v. People*, 445 Phil. 481, 491 (2003).

[2] *Rollo*, pp. 9-37.

[3] CA *rollo*, pp. 345-360; penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Marina L. Buzon and Edgardo F. Sundiam.

[4] *Id.* at 398-401.

[5] *Id.* at 359. Emphases in the original.

The assailed June 4, 2007 Resolution denied VCP's Motions for Extension of Time to file motion for reconsideration, and consequently, dismissed its Motion for Reconsideration for belated filing.[6]

Factual Antecedents

On October 5, 1987, respondent Municipality (now City) of Parañaque (municipality) filed a complaint[7] against petitioner VCP for the expropriation of its property, which is located in the municipality's Barrio San Dionisio and covered by Transfer Certificate of Title (TCT) No. 116554.[8] The municipality intended to develop the property for its landless residents, in line with the Presidential Commission on Urban Poor's classification of the site as an area of priority development.[9] Respondent Sampaguita Hills Homeowners Association, Inc. (SHHAI), consisting of the property's actual occupants, who are also the intended beneficiaries of the action, intervened in the case.[10]

On August 23, 2002, the Regional Trial Court (RTC) of Parañaque, Branch 274, sustained the municipality's right to expropriate the said property[11] and to a writ of possession.[12]

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[6] *Id.* at 401.

[7] Records, Vol. 1, pp. 11-13.

[8] *Id.* at 226-227.

[9] *Rollo,* p. 388.

[10] Records, Vol. 2, p. 664.

[11] *Id.,* Vol. 3, pp. 1077-1081; penned by Presiding Judge Fortunito L. Madrona.

[12] The RTC held, in its August 23, 2002 Order, that, under Section 2 of Rule 67 of the Rules of Court, the plaintiff has the right to take possession of the real property once it deposits an amount equivalent to the property's assessed value for purposes of taxation. Based on the property's Tax Declaration No. B-016-05896 (*Id.* at 1064), its assessed value in 1985 was ₱409,920.00; additionally, according to the certification from the Office of the City Assessor, the above assessed value remained effective from 1985 until 1993 (*Id.* at 1076). Since the Municipality had already deposited the amount of ₱500,000.00 with its City Treasurer, the trial court concluded that the municipality's deposit is adequate and it is entitled to a writ of possession. (*Id.* at 1080)

The trial court also informed the parties in the same Order of the reckoning period for the determination of just compensation, thus:

> The defenses having thus been ruled [upon], the Court hereby declares that the plaintiff has the lawful right to take the property sought to be **expropriated** for the public use or purpose described in the complaint, upon the payment of just compensation to be determined **as of the date of the taking of the property or the filing of the complaint, whichever came first.**[13]

The parties did not file any objection to the above Order and proceeded to submit the names of their respective nominees for commissioner. On February 26, 2003, the trial court appointed three commissioners[14] to assist in ascertaining the just compensation.[15] The trial court defined the scope of the commissioners' work as follows:

> (1) [T]o undertake the evaluation for purposes of determining just compensation on the property as described and delineated in paragraph 3 of the amended complaint, taking into consideration several factors for assessment with reckoning time of the filing of the complaint and the taking of the property and incidental periods reasonable and fair in determining just compensation;[16]

On March 15, 2004, commissioners Bienvenido Reyes and Jose Marleo Del Rosario informed the trial court that VCP did not participate in the meetings despite notification[17] and that, due to time constraints,[18] the commissioners denied[19] VCP's

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[13] *Id.* Emphases supplied.

[14] The three commissioners were Engineers Bienvenido Reyes, Cenon Astudillo (*Id.* at 1122-1123), and Jose Marleo P. Del Rosario (*Id.* at 1138, 1141, 1144, 1153).

[15] *Id.* at 1122-1123.

[16] *Id.* at 1122.

[17] *Id.* at 1235.

[18] The commissioners missed their deadline and had to extend their work for an additional two months. (*Id.* at 1183)

[19] *Id.* at 1237.

request for an additional four months to submit its independent valuation of the property.[20] The commissioners also informed the court that Cenon Astudillo, VCP's choice for commissioner, did not contribute to the commission's work due to his frequent absences.[21]

On even date, the commissioners submitted their appraisal report,[22] stating that they considered sales data of properties within the vicinity from the years 1994 to 2003, and tax declarations from the years 1996 to 2003.[23] Based on these, they determined the just compensation at ₱1,150.00 per square meter.[24]

The trial court admitted the report into the records, after both parties manifested that they were not objecting thereto,[25] and declared the case submitted for decision.[26]

Ruling of the Trial Court

On March 10, 2005, Judge Fortunito L. Madrona (Judge Madrona) rendered his Decision rejecting the report. The trial court explained that just compensation, as Section 4 of Rule 67 of the Rules of Court provides,[27] must reflect the value and character of the property sought to be expropriated, at the time it was taken or at the time the complaint for expropriation was filed, whichever came first. Applying this rule to the facts of

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[20] *Id.* at 1236

[21] *Id.* at 1235.

[22] *Id.* at 1239-1250.

[23] *Id.* at 1240.

[24] *Id.* at 1241.

[25] *Id.* at 1270-1279.

[26] *Id.* at 1282.

[27] SEC. 4. *Order of Expropriation.* – x x x [T]he court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated x x x upon payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.

the case, the reckoning period should have been the time of filing of the complaint in 1987 because it took place before the taking of the property in 2002. The report violated this rule by using data from 1996 onwards.

The trial court then made an independent finding based on the evidence already on hand. It determined that there exists, on record, a certification from the Office of the City Assessor, that the property's market value for the years 1985 to 1993 (which includes the year the complaint was filed) was ₱1,366,400.00.[28] This value roughly translates to ₱75 per square meter, for a total of ₱1,372,350.00. The dispositive portion of the trial court's Decision reads:

> WHEREFORE, based then from [sic] the foregoing considerations, considering that the land was then a rawland in 1987 at the time of the filing of the Amended Complaint for expropriation, it is the determination of the Court that the just compensation for the expropriation of the parcel of land described as Lot No. 4598 of the Cad. Survey of Parañaque, located in San Dionisio, Parañaque City, containing an area of 18,298 square meters, registered under Transfer Certificate of Title No. 116554 of the Registry of Deeds of Parañaque City in the name of the defendant V.C. Ponce Co., Inc., is hereby fixed at ₱75.00 per square meter, or for an aggregate valuation of ₱1,372,350.00.
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> x x x x x x x x x
>
> SO ORDERED.[29]

VCP moved for a reconsideration, which the trial court denied in its Order dated August 15, 2005.[30]

VCP received its copy of the said Order on August 24, 2005.[31]

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[28] Records, Vol. 3, p. 1076.

[29] *Id.* at 1315-1316; penned by Presiding Judge Fortunito L. Madrona.

[30] *Id.* at 1367.

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

On October 21, 2005 or 58 days since VCP received the Order denying its Motion for Reconsideration, it filed with the CA a Motion for Extension of Time (MOTEX) to File Petition for *Certiorari*,[32] which the CA granted.[33]

VCP filed its Petition for *Certiorari* on November 7, 2005.[34] It justified its resort to the extraordinary remedy on the ground that "there is no appeal or plain, speedy and adequate remedy in the course of law that is available to the petitioner."[35] It assailed the trial court's rejection of the appraisal report as a grave abuse of discretion. VCP maintained that the appraisal, which is based on the property's value at the time of its taking in 2002, is correct. Assuming *arguendo* that the commissioners committed an error, the trial court should have recommitted the valuation to a new set of commissioners, instead of substituting its own judgment.[36] VCP insisted that the trial court's own valuation of ₱75.00 per square meter is unrealistic and is unsupported by the evidence.[37] Lastly, VCP argued that the trial court committed grave abuse of discretion when it failed to impose legal interests on the just compensation from the time of taking until VCP is fully paid.[38] It prayed for the annulment of the trial court's Decision.[39]

After the parties had filed their respective memoranda, the CA received, on September 4, 2006, a Notice of Withdrawal of Appearance from VCP's counsel, Atty. Candice Marie T. Bandong, which notice contained VCP's conformity.[40]

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[32] *Id.* at 2-6.

[33] *Id.* at 16.

[34] *Id.* at 17-53.

[35] *Id.* at 37.

[36] *Id.* at 41-45.

[37] *Id.* at 38-41.

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

[39] *Id.* at 48.

[40] *Id.* at 334-335.

Ruling of the Court of Appeals

At the outset, the CA observed that an ordinary appeal under Rule 41 was available to petitioner and would have constituted a plain, speedy and adequate remedy to correct any perceived error in the RTC Decision. VCP, for unknown reasons, failed to avail itself of the said remedy within the reglementary period. Having lost its right to appeal, VCP resorted to a Petition for *Certiorari* in the hope that it could nevertheless, obtain a reversal of the RTC Decision. The CA held that *certiorari* is unavailing as a substitute for a lost appeal. The CA brushed aside as unfounded VCP's excuse that an appeal would be slow and inadequate. Such excuse, it noted, would allow any litigant to avail itself of extraordinary remedies after they lose their right to appeal.[41]

The CA then held that, even if it were to rule that *certiorari* is proper, it would still dismiss the petition for *certiorari*. It held that grave abuse of discretion was not attendant in the trial court's rejection of the commissioners' report. The CA explained that the trial court has such authority as long as it finds just cause. The report's contravention of the principle regarding the proper reckoning period for the determination of just compensation is such a cause.[42]

Petitioner received the CA Decision on April 10, 2007.[43] On the 15th day from its receipt of the Decision, or on April 25, 2007, it filed, through registered mail, a MOTEX of time to file a Motion for Reconsideration on the ground that it has yet to engage the services of a new counsel.[44] On May 10, 2007, VCP again requested for *another* 15 days to file its Motion for Reconsideration.[45]

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[41] *Id.* at 356-357.

[42] *Id.* at 357-359.

[43] *Id.* at 365.

[44] *Id.* at 365-369.

[45] *Id.* at 371-376.

On May 25, 2007, which is 45 days since it received the CA Decision, VCP filed its Motion for Reconsideration through its new counsel.[46]

The CA denied petitioner's MOTEX in its Resolution dated June 4, 2007. It ratiocinated that the 15-day period for filing a Motion for Reconsideration cannot be extended. Thus, it dismissed VCP's Motion for Reconsideration for belated filing.[47]

Petitioner's arguments

Petitioner contends that the CA was unreasonably rigid in denying its MOTEX and Motion for Reconsideration. It urges the Court to appreciate its lack of counsel as a justification for its late filing.[48]

VCP maintains that the CA erred in holding that VCP should have appealed from the RTC Decision, instead of resorting to *certiorari*. VCP contends that *certiorari* is proper because an appeal would have been inadequate, and would have further prolonged the resolution of this case, which has already dragged for more than two decades.[49]

Lastly, VCP insists that the CA erred in not finding the trial court guilty of grave abuse of discretion.[50]

Respondents' arguments

Respondents insist that the CA was correct in denying petitioner's MOTEX to file Motion for Reconsideration. Jurisprudence has consistently ruled that the period for filing a Motion for Reconsideration is not extendible.

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[46] *Id.* at 377-389.

[47] *Id.* at 401.

[48] *Rollo*, pp. 25-26.

[49] *Id.* at 26-27.

[50] *Id.* at 29-33.

Besides, petitioner does not have a valid excuse for its belated filing. It consented to the withdrawal of its lawyer as early as August 29, 2006 (the date of the Notice of Withdrawal of Appearance). VCP then slept on its rights for eight months until the reglementary period for filing its Motion for Reconsideration lapsed on April 25, 2007. The Court should not reward VCP's negligence with a relaxation of the rules.[51]

Further, respondents insist that the CA is correct in dismissing VCP's petition for *certiorari*. The Rules provide for an appeal of the RTC Decision but VCP neglected to avail of the said remedy within the reglementary period. There is no merit to VCP's contention that an appeal would not have been a speedy and adequate remedy considering that VCP's dilatory pleadings caused the protracted proceedings.[52]

Respondents aver that the CA was correct in ruling that the trial court did not commit a grave abuse of discretion. The trial court cannot accept an appraisal which disregards a basic legal principle.[53] Its action was consistent with jurisprudence and the rules.[54] Further, petitioner cannot claim that it was denied due process. Both parties were sufficiently informed by the trial court, in its August 23, 2002 Order, that the just compensation will be determined as of the date of filing of the complaint.[55] None of the parties objected to the said Order.[56]

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[51] *Id.* at 380-382, 392-394, 396.

[52] *Id.* at 382-383, 394-395.

[53] *Id.* at 382-384, 399.

[54] *Id.* at 398-399.

[55] The relevant portion of the said Order reads as follows:

The defenses having thus been ruled, the Court **hereby declares that the plaintiff has the lawful right to take the property sought to be expropriated** for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first. (Records, Vol. 3, p. 1080. Emphasis in the original)

[56] *Rollo*, p. 398.

Issues

1. Is petitioner's lack of counsel a justifiable excuse for the late filing of a Motion for Reconsideration?

2. Is a Petition for *Certiorari* the proper remedy to correct alleged errors in the trial court's Decision?

Our Ruling

The petition has no merit.

Period for filing a Motion for Reconsideration not extendible; failure to file Motion for Reconsideration on time renders the Decision final.

VCP received the CA Decision on April 10, 2007. Based on Rule 52 of the Rules of Court[57] and Rule 7 of the 2002 Internal Rules of the Court of Appeals (IRCA),[58] VCP had 15 days from its receipt of the Decision, or until April 25, 2007, to file a motion for reconsideration, an appeal, or a motion for new trial. Failure to file the necessary pleading within the reglementary period would render the CA Decision final and executory.[59]

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[57] SECTION 1. *Period for filing.* – A party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice thereof, with proof of service on the adverse party.

[58] SEC. 1. *Entry of Judgment.* – Unless a motion for reconsideration or new trial is filed or an appeal taken to the Supreme Court, judgments and final resolutions of the Court shall be entered upon expiration of **fifteen (15) days from notice** to the parties. x x x (Emphasis supplied)

[59] SEC. 1. *Entry of Judgment.* – Unless a motion for reconsideration or new trial is filed or an appeal taken to the Supreme Court, **judgments and final resolutions of the Court shall be entered upon expiration** of fifteen (15) days from notice to the parties. x x x (Emphasis supplied)

SEC. 5. *Entry of Judgment and Final Resolution.* – If no appeal or motion for new trial or reconsideration is filed **within the time provided in these Rules, the judgment or final resolution shall forthwith be entered** by the clerk in the book of entries of judgments. The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry. x x x (Rule VII, 2002 INTERNAL RULES OF THE COURT OF APPEALS, AS AMENDED) (Emphasis supplied)

Instead of filing a Motion for Reconsideration on April 25, 2007, VCP filed a MOTEX on the ground that its lawyer had withdrawn from the case and it was still in the process of retaining a new counsel. The CA was correct in denying petitioner's MOTEX because the period to file a Motion for Reconsideration is not extendible.[60] The Court has pronounced strict adherence to the rule laid down in *Habaluyas Enterprises, Inc. v. Judge Japson*[61] that "no motion for extension of time to file a motion for new trial or reconsideration may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the Intermediate Appellate Court (now Court of Appeals)."[62] Since the period to file a Motion for Reconsideration is not extendible, VCP's MOTEX did not toll the reglementary period.[63] Thus, there being no Motion for Reconsideration as of April 25, 2007, the Decision of the CA dated March 23, 2007 became final and executory by operation of law.[64] The CA was correct in denying the Motion for Reconsideration that VCP had belatedly filed on May 25, 2007 as its lateness had rendered it moot.

There is no justification for the application of equity and for the relaxation of the rules.

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[60] *Amatorio v. People of the Philippines, supra* note 1 at 488-490; *Habaluyas Enterprises, Inc. v. Judge Japson,* 226 Phil. 144, 148 (1986).

[61] 226 Phil. 144 (1986).

[62] *Id.* at 148.

[63] *Villamor v. People,* G.R. Nos. 172110 & 181804, August 1, 2011, 655 SCRA 30, 38; *Bolos v. Bolos,* G.R. No. 186400, October 20, 2010, 634 SCRA 429, 438; *Marcelo v. Philippine Commercial International Bank (PCIB),* G.R. No. 182735, December 4, 2009, 607 SCRA 778, 792; *Apex Mining Co., Inc. v. Commissioner of Internal Revenue,* 510 Phil. 268, 273-274 (2005); *Habaluyas Enterprises, Inc. v. Judge Japson, supra*.

[64] *Ibasco v. Private Development Corporation of the Philippines,* G.R. No. 162473, October 12, 2009, 603 SCRA 317, 320; *International Corporate Bank, Inc. v. Court of Appeals,* G.R. No. 129910, September 5, 2006, 501 SCRA 20, 32.

VCP urges the Court to relax the rules on the reglementary period on the ground that it was impossible for it to meet the deadline without the aid of counsel.

The Court, in the interest of equity and justice, sometimes allows a liberal reading of the rules, so long as the petitioner is able to prove the existence of cogent reasons to excuse its non-observance.[65] The Court, however, does not find a justification to warrant such relaxation in this instance.

It is incumbent upon the client to exert all efforts to retain the services of new counsel.[66] VCP knew since August 29, 2006, seven months *before* the CA rendered its Decision, that it had no counsel. Despite its knowledge, it did not immediately hire a lawyer to attend to its affairs. Instead, it waited until the last minute, when it had already received the adverse CA Decision on April 10, 2007, to search for a counsel; and even then, VCP did not rush to meet the deadline. It asked for an extension of 30 days to file a Motion for Reconsideration.[67] It finally retained the services of a new counsel on May 24, 2007,[68] nine months from the time that its former counsel withdrew her appearance. VCP did not even attempt to explain its inaction. The Court cannot grant equity where it is clearly undeserved by a grossly negligent party.[69] As the Court pronounced in another case:

> x x x Both parties have a right to a speedy resolution of their case. Not only petitioners, but also the respondents, have a right to have the case finally settled without delay.

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[65] *Delos Santos v. Elizalde*, G.R. Nos. 141810 & 141812, February 2, 2007, 514 SCRA 14, 29-30.

[66] *Soriano v. Mendoza-Arcega*, G.R. No. 175473, January 31, 2011, 641 SCRA 51, 57-58.

[67] VCP's MOTEX of April 25, 2007 asked for a 15-day extension or until May 10, 2007. On May 10, 2007, VCP moved for another 15 days or until May 25, 2007 to file its Motion for Reconsideration. (CA *rollo*, pp. 365-369 & 371-376)

[68] *Id.* at 378.

[69] *Delos Santos v. Elizalde, supra*; *Razon v. People*, G.R. No. 158053, June 21, 2007, 525 SCRA 284, 296.

Furthermore, the failure to file x x x on time was due primarily to petitioners' unwise choices x x x. [T]hey hired their subsequent lawyers too late.

It must be pointed out that petitioners had a choice of whether to continue the services of their original lawyer or consent to let him go. x x x [T]hey delayed in engaging their replacement lawyer. Their poor choices and lack of sufficient diligence x x x are the main culprits for the situation they now find themselves in. It would not be fair to pass on the bad consequences of their choices to respondents. Petitioners' low regard for the rules or nonchalance toward procedural requirements x x x has in fact contributed much to the delay, and hence frustration of justice, in the present case.[70]

This Court cannot ascribe good faith to VCP as it had neglected reglementary periods in the past.

Another reason that this Court is unable to accept VCP's plea for indulgence is its observation that VCP has a penchant for disregarding procedural rules and the periods allotted to it for its action.

It did not attend the meetings before the commissioners for the initial and the final valuation of its property despite notice. When the commissioners were finalizing their report to meet its deadline, VCP asked for an additional four months to submit its independent valuation of the property. While the commissioners denied VCP's request, VCP's action betrays its lack of consideration for deadlines.

Further, VCP did not file a timely appeal from the RTC Order denying its Motion for Reconsideration. VCP received the said Order on August 24, 2005. Instead of appealing under Rule 41 of the Rules of Court, VCP filed, on the 58th day from its receipt of the RTC Order, a MOTEX to file a Petition for

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[70] *Alfonso v. Andres*, G.R. No. 166236, July 29, 2010, 626 SCRA 149, 155-156.

Certiorari. While the CA granted VCP's MOTEX,[71] it was correct in ultimately denying VCP's Petition for *Certiorari* on the ground that VCP cannot exploit the remedy of *certiorari* after it had lost its right to appeal.

Appeal is a sufficient and adequate remedy unless the party proves otherwise.

VCP attempts to extricate itself from the effects of its negligence by alleging that an appeal would not have been speedy and adequate for its purpose. The Court, however, finds no merit in its contention.

A court with appellate jurisdiction can review both the facts and the law, including questions of jurisdiction.[72] It can set aside an erroneous decision and even nullify the same, if warranted. Appeal is a speedy remedy, as an adverse party can file its appeal from a final decision or order immediately after receiving it. A party, who is alleging that an appeal will not promptly relieve it of the injurious effects of the judgment, should establish facts to show how the appeal is not speedy or adequate.[73] VCP's empty protestations, therefore, fail to impress. There is no reason, and VCP cannot explain, why an appeal would not be speedy and adequate to address its assigned errors.[74] VCP cannot complain of delay because it was guilty of delay itself, and it even waited until the 58th day of its receipt of the CA Decision before taking action. Clearly, petitioner resorted to *certiorari* as a substitute for its lost appeal.[75] The CA did not err in dismissing the same.

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[71] CA *rollo*, p. 16.

[72] *Manacop v. Equitable PCI Bank*, 505 Phil. 361, 377 (2005).

[73] *Lee v. People*, 483 Phil. 684, 699 (2004).

[74] *Leca Realty Corporation v. Republic of the Philippines*, 534 Phil. 693, 701 (2006).

[75] *Id; Swire Agricultural Products, Inc. v. Hyundai Corporation*, 499 Phil. 73, 79 (2005).

In sum, VCP's continued negligence, and its resort to the wrong remedy, placed all perceived errors in the decisions below beyond the CA's and this Court's grasp.

WHEREFORE, premises considered, the petition is **DENIED**. The March 23, 2007 Decision of the Court of Appeals in CA-G.R. SP No. 91791, as well as its June 4, 2007 Resolution, are **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 178622. November 12, 2012]

LUCIANO LADANO, [1] *petitioner, vs.* **FELINO NERI, EDWIN SOTO, ADAN ESPANOLA,** [2] **and ERNESTO BLANCO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; A CHARGE FOR INDIRECT CONTEMPT CANNOT BE MADE BY A MERE MOTION; IT MUST ALSO BE SUBSTANTIATED.— A charge for indirect contempt, such as disobedience to a court's lawful order, is initiated either *motu proprio* by order of or a formal charge by the offended court, or by a verified petition with supporting particulars and certified true copies of documents or papers involved therein,

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[1] Also spelled as Ladaño in some parts of the records.

[2] Also spelled as Española in some parts of the records.

and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. It cannot be initiated by a mere motion, such as the one that petitioner filed. Further, petitioner failed to substantiate his allegation that respondents violated the TRO. The entries in the *barangay* and police blotters attached to his motion carry little weight or probative value as they are not conclusive evidence of the truth thereof but merely of the fact that these entries were made. The pictures depicting bulldozing activities likewise contained no indication that they were taken after the Court's issuance of the restraining order. Simply, the Court has no way of gauging the veracity of petitioner's factual allegations. On the basis of the foregoing, the Court resolves to deny petitioner's motion.

2. LABOR AND SOCIAL LEGISLATION; CODE OF AGRARIAN REFORMS OF THE PHILIPPINES (R.A. 3844); REQUISITES FOR A VALID TENANCY RELATIONSHIP. — "A tenancy relationship arises between a landholder and a tenant once they agree, expressly or impliedly, to undertake jointly the cultivation of a land belonging to the landholder, as a result of which relationship the tenant acquires the right to continue working on and cultivating the land." For a tenancy relationship, express or implied, to exist, the following requisites must be present: (1) the parties must be landowner and tenant or agricultural lessee; (2) the subject matter is agricultural land; (3) there is consent by the landowner; (4) the purpose is agricultural production; (5) there is personal cultivation by the tenant; and (6) there is sharing of harvests between the landowner and the tenant. Independent and concrete evidence of the foregoing elements must be presented by the party asserting the existence of such a relationship. They cannot be arrived at by mere conjectures or by presumptions. "Unless a person has established his status as a *de jure* tenant, he is not entitled to security of tenure [nor is he] covered by the Land Reform Program of the Government under existing tenancy laws."

3. ID.; ID.; LONG OCCUPATION OF A PARCEL OF LAND WILL NOT AUTOMATICALLY CREATE A TENANCY RELATIONSHIP.— In the case at bar, the DARAB held that there is an implied tenancy because Ladano had been occupying

and cultivating the subject property for more than 30 years. From such a lengthy occupation, the DARAB concluded that the landowner must have consented to petitioner's occupation. The CA rightfully reversed this conclusion. The DARAB failed to consider that one's occupancy and cultivation of an agricultural land, no matter how long, will not *ipso facto* make him a *de jure* tenant. It should not have considered such occupation as a basis for assuming the landowner's consent, especially when the occupant himself never alleged that he obtained the landowner's consent. Petitioner did not even allege in his Complaint that he is a tenant of the landowner. Neither did he allege that he shared his harvests with the landowner. Without such factual assertions from Ladano, the DARAB arrived at a conclusion that is utterly bereft of factual bases. Petitioner is not a tenant on the land and is not entitled to security of tenure nor to disturbance compensation. His Complaint was properly dismissed for lack of merit.

4. ID.; ID.; A PERSON WHO HAS NO TENANCY RELATIONSHIP WITH THE LANDOWNER CANNOT PURSUE A CLAIM BEFORE THE DEPARTMENT OF AGRARIAN REFORM AND ITS ADJUDICATION BOARD.— There is another ground for dismissing Ladano's Complaint. The Department of Agrarian Reform and its adjudication boards have no jurisdiction over Ladano's Complaint. "For the DARAB to acquire jurisdiction over the case, there must exist a tenancy [relationship] between the parties." But a careful reading of Ladano's Complaint shows that Ladano did not claim to be a leasehold tenant on the land. x x x Petitioner never alleged that he had any agreement with the landowner of the subject property. Indeed Ladano's Complaint did not assert any right that arises from agrarian laws. He asserted his rights based on his prior physical possession of the two-hectare property and on his cultivation of the same in good faith. The issues that he wanted resolved are who between himself and the respondents have a better right to possess the property, and whether he has a right to be compensated for the improvements he introduced on the property. Clearly, the nature of the case he filed is one for forcible entry and for indemnification, neither of which is cognizable by the DARAB, but by the regular courts.

APPEARANCES OF COUNSEL

Raul Bautista for petitioner.
Crisanto & Salvador for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

A person who is not an agricultural tenant cannot claim the right to security of tenure under the Code of Agrarian Reforms of the Philippines[3] or Republic Act (RA) No. 3844, as amended.[4] Moreover, he cannot pursue his complaint before the Department of Agrarian Reform Adjudication Board (DARAB) whose jurisdiction lies over agrarian disputes between parties in a tenancy relationship.[5]

Before the Court is a Petition for Review on *Certiorari*,[6] assailing the February 14, 2007 Decision[7] of the Court of Appeals (CA) in CA-G.R. SP No. 93819, as well as its May 9, 2007 Resolution,[8] which denied reconsideration of its Decision. The *fallo* of the assailed Decision reads:

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[3] *Heirs of Jose Barredo v. Besañes*, G.R. No. 164695, December 13, 2010, 637 SCRA 717, 723.

[4] AN ACT TO ORDAIN THE AGRICULTURAL LAND REFORM CODE AND TO INSTITUTE LAND REFORMS IN THE PHILIPPINES, INCLUDING THE ABOLITION OF TENANCY AND THE CHANNELING OF CAPITAL INTO INDUSTRY, PROVIDE FOR THE NECESSARY IMPLEMENTING AGENCIES, APPROPRIATE FUNDS THEREFOR AND FOR OTHER PURPOSES.

[5] *Spouses Atuel v. Spouses Valdez*, 451 Phil. 631, 643 (2003).

[6] *Rollo*, pp. 13-26.

[7] CA *rollo*, pp. 159-167; penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia.

[8] *Id.* at 183.

WHEREFORE, premises considered, the July 6, 2005 Decision of the Department of Agrarian Reform Adjudication Board, in DARAB Case No. 13172, is hereby **REVERSED and SET ASIDE** and a new one entered **DISMISSING** the April 1, 2004 complaint filed by respondent Luciano Ladano.

SO ORDERED.[9]

Factual Antecedents

This case originated from a Complaint[10] filed by petitioner Luciano Ladano (Ladano) before the DARAB Provincial Adjudicator against respondents Felino Neri (Neri), Edwin Soto, Adan Espanola and Ernesto Blanco. Ladano alleged that on May 7, 2003, the respondents forcibly entered the two-hectare land, located in Manalite I, *Barangay* Sta. Cruz, Antipolo City, which he and his family have been peaceably occupying and cultivating since 1970. The said respondents informed him that the property belongs to Neri and that he should vacate the same immediately. Not too long afterwards, the respondents fenced the property and destroyed some of the trees and *kawayan* planted thereon. Ladano prayed that he be declared the rightful "occupant/tiller" of the property, with the right to security of tenure thereon. In the alternative that the judgment is in the respondents' favor, he prayed that the respondents compensate him for the improvements that he introduced in the property.

Respondents countered that Ladano's Complaint should be dismissed for lack of merit.[11] He is not entitled to the reliefs he sought because he does not have, as he did not even allege having, a leasehold arrangement with Neri, the supposed owner of the land he is occupying.[12]

Instead of arguing that he has a right to remain on the property as its *bona fide* tenant, Ladano maintained that he has been its

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[9] *Id.* at 166. Emphases in the original.

[10] Records, pp. 1-4.

[11] *Id.* at 68.

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

possessor in good faith for more than 30 years. He believed then that the property was part of the "public land and [was] open to anybody."[13] As a possessor and builder in good faith, he cannot be removed from the subject property without being compensated for the improvements that he had introduced.[14] He prayed for an award of ₱100,000.00 as disturbance compensation.[15]

Decision of the Provincial Adjudicator

On June 23, 2004, the Provincial Adjudicator dismissed Ladano's Complaint.[16] She determined that the two-hectare property, while agricultural, is not covered by RA No. 6657, as amended,[17] which only covers agricultural properties beyond five hectares.[18] Presidential Decree No. 27, as amended,[19] does not apply either because the property was not planted with rice and corn. Neither is it covered by other agrarian tenancy laws because Ladano had not presented any evidence of his tenancy relationship with the landowner.[20] The Provincial Adjudicator disposed of the case as follows:

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[13] *Id.* at 78.

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

[15] *Id.* at 77.

[16] *Id.* at 82-86; penned by Provincial Adjudicator Rosalina Amonoy-Vergel De Dios.

[17] COMPREHENSIVE AGRARIAN REFORM LAW OF 1998.

[18] SEC. 6. *Retention Limits. – Except* as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-sized farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed five (5) hectares. x x x. (REPUBLIC ACT NO. 6657, As Amended)

[19] DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR.

[20] Records, pp. 83-84.

WHEREFORE, in view therefrom, **JUDGMENT** is hereby rendered **DISMISSING** the instant complaint for lack of merit.

SO ORDERED.[21]

Ladano appealed to the DARAB Central Office (DARAB).[22] He questioned Neri's title to the property and Neri's right to eject him therefrom. He maintained that, for more than 30 years, he believed that the land was part of the public domain because no one disturbed his possession thereof. He continued cultivating and possessing the same in good faith. Under Article 1678 of the Civil Code,[23] Ladano averred that he is entitled to be compensated for the improvements that he introduced.[24]

DARAB Decision

The DARAB determined that the only issue to be resolved is whether Ladano is a tenant on the subject landholding.[25] If he is a tenant, he is entitled to security of tenure and cannot be removed from the property.[26]

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[21] *Id.* at 82.

[22] *Id.* at 87-88.

[23] ARTICLE 1678. If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon the termination of the lease shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary.

With regard to ornamental expenses, the lessee shall not be entitled to any reimbursement, but he may remove the ornamental objects, provided no damage is caused to the principal thing, and the lessor does not choose to retain them by paying their value at the time the lease is extinguished.

[24] Records, pp. 97-99.

[25] *Id.* at 121.

[26] *Id.* at 119-120.

The DARAB held that Ladano's 30-year occupation and cultivation of the land could not have possibly escaped the landowner's notice. Since the landowner must have known about, and acquiesced to, Ladano's actions, an implied tenancy is deemed to exist between them.[27] The landowner, who denied the existence of a tenancy relationship, has the burden of proving that the occupant of the land is a mere intruder thereon.[28] In the instant case, respondents failed to discharge such burden. The *fallo* of the DARAB Decision[29] reads:

> **WHEREFORE**, premises considered, the Decision dated June 23, 2004 rendered by the Honorable Adjudicator *a quo* is hereby **REVERSED** and **SET ASIDE**. A **NEW JUDGMENT** is hereby rendered:
>
> 1. Declaring x x x Luciano Ladaño a bonafide tenant on the subject landholding;
> 2. Ordering [respondents] to respect [Ladano's] peaceful possession [of] the subject landholding;
> 3. Directing the Municipal Agrarian Reform Officer (MARO) of Brg. St[a]. Cruz, Antipolo City to assist the parties in the execution of an Agricultural Leasehold Contract in accordance with the provisions of Republic Act No. 3844, as amended.
>
> No pronouncement as to costs.
>
> **SO ORDERED**.[30]

Respondents filed a Motion for Reconsideration.[31] They assailed the DARAB's finding of a tenancy relationship as having

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[27] *Id.* at 120.

[28] *Id.* at 119.

[29] *Id.* at 117-122; penned by Augusto P. Quijano, Assistant Secretary-Member and concurred in by Lorenzo R. Reyes, Assistant Secretary-Vice Chairman, Edgar A. Igano, Assistant Secretary-Member and Delfin B. Samson, Assistant Secretary-Member.

[30] *Id.* at 118. Emphases in the original.

[31] *Id.* at 126-129.

no factual basis. Ladano himself never claimed sharing his harvests with, or paying rentals to, the landowner. Without such an arrangement, no tenancy relationship can exist between them[32] and Ladano cannot claim rights under the agrarian laws.[33]

The DARAB denied reconsideration on March 17, 2006.[34]

Respondents appealed to the appellate court.[35]

Ruling of the Court of Appeals

The appellate court reversed the DARAB Decision and dismissed Ladano's Complaint.[36]

Contrary to the DARAB's ruling, the CA held that the burden lies on the person who is asserting the existence of a tenancy relationship to prove that all the elements necessary for its existence are present. These requisites are: "(a) the parties [must be] landowner and tenant; (b) the subject matter is agricultural land; (c) there is consent by the landowner; (d) the purpose is agricultural production; (e) there is personal cultivation by the tenant; and (f) there is sharing of harvests between the [landowner and the tenant]."[37]

The CA concluded that there is no evidence supporting the DARAB's conclusion that a tenancy relationship exists between Ladano and Neri.[38] In fact, Ladano himself admitted that he

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[32] *Id.* at 127-128.

[33] *Id.* at 127.

[34] *Id.* at 169-170; penned by Augusto P. Quijano, Assistant Secretary-Vice Chairman and concurred in by Edgar A. Igano, Assistant Secretary-Member, Delfin B. Samson, Assistant Secretary-Member, and Patricia Rualo-Bello, Acting Assistant Secretary-Member.

[35] CA *rollo*, pp. 5-20.

[36] *Id.* at 159-167; penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia.

[37] *Id.* at 164.

[38] *Id.* at 166.

entered and tilled the subject property without the knowledge and consent of the landowner. Such admission negates the requisites of consent and of an agreement to share harvests.[39]

The CA also faulted the DARAB for considering Ladano's lengthy occupation of the land as an indication of the existence of a leasehold relationship. A person's tillage of another's landholding, without anything else, will not raise the presumption of an agricultural tenancy.[40]

In seeking a reconsideration[41] of the CA Decision Ladano alleged, for the first time, that he indeed shared a portion of his harvest with the landowner's caretaker.[42] He prayed that the CA reverse itself and that the DARAB Decision be reinstated *in toto*.[43]

The CA denied[44] Ladano's motion, hence the latter filed this Petition.

Proceedings before this Court

Petitioner filed a Motion for Urgent Issuance of [Temporary Restraining Order] TRO[45] before the Court. He alleged that, despite the pendency of his appeal, respondents bulldozed the subject land and destroyed petitioner's trees.[46] Since respondents did not deny petitioner's factual allegations,[47] the Court granted petitioner's motion and issued a TRO on

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[39] *Id.* at 164.

[40] *Id.* at 163.

[41] *Id.* at 170-177.

[42] *Id.* at 172-173.

[43] *Id.* at 176.

[44] *Id.* at 183.

[45] *Rollo*, pp. 184-187.

[46] *Id.* at 185.

[47] *Id.* at 195-197.

February 18, 2009.[48] The TRO enjoined the respondents from immediately implementing the appellate court's Decision and removing petitioner from the subject property until further orders from the Court.[49]

On July 20, 2009, petitioner filed an Urgent Motion To Cite Private Respondents Felino Neri and Edwin Soto in Contempt of Court.[50] He alleged that these respondents defied the Court's TRO by bulldozing the subject property on July 10, 2009. He had the incident blottered with the Office of the *Barangay* Captain and with Precinct 2 of the Philippine National Police in Antipolo City.[51] He attached pictures of bulldozed earth to his motion.[52]

Respondents denied the allegations. They maintained that the pictures attached to petitioner's motion were taken way back in 2003 and were not truthful representations of the current state of the subject property.[53]

Issues

(1) Whether respondents are guilty of indirect contempt;

(2) Whether the CA erred in giving due course to respondents' appeal; and

(3) Whether petitioner is an agricultural tenant on the subject property.

Our Ruling

Anent the issue of citing respondents in contempt of court

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[48] *Id.* at 199-203.

[49] *Id.* at 201-203.

[50] *Id.* at 226-230.

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

[52] *Id.* at 233-234.

[53] *Id.* at 243-247.

A charge for indirect contempt, such as disobedience to a court's lawful order,[54] is initiated either *motu proprio* by order of or a formal charge by the offended court, or by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned.[55] It cannot be initiated by a mere motion,[56] such as the one that petitioner filed.

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[54] RULES OF COURT, Rule 71, Sec. 3, provides:

SEC. 3. *Indirect contempt to be punished after charge and hearing.* – After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

x x x x x x x x x

(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

[55] *Id., id.,* SEC. 4. *How proceedings commenced.* – Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision. (n)

[56] *Bases Conversion Development Authority v. Provincial Agrarian Reform Officer of Pampanga,* G.R. Nos. 155322-29, June 27, 2012; *Oliveros v. Sison,* A.M. No. RTJ-07-2050, June 27, 2007, 525 SCRA 795, 803.

Further, petitioner failed to substantiate his allegation that respondents violated the TRO. The entries in the *barangay* and police blotters attached to his motion carry little weight or probative value as they are not conclusive evidence of the truth thereof but merely of the fact that these entries were made.[57] The pictures depicting bulldozing activities likewise contained no indication that they were taken after the Court's issuance of the restraining order. Simply, the Court has no way of gauging the veracity of petitioner's factual allegations. On the basis of the foregoing, the Court resolves to deny petitioner's motion.

Procedural aspects; improper verification and incomplete payment of docket fees before the CA

Petitioner assails the CA for giving due course to respondents' appeal despite the latter's failure to pay the complete docket fees when they filed their motion for extension of time to file a petition for review and to properly verify their petition for review. These omissions were allegedly sufficient grounds for the dismissal of the petition.[58]

The Court finds the allegations of procedural missteps unfounded. It appears from the CA *rollo* that the respondents paid the complete docket fees on the day that they filed their motion for extension of time to file a petition for review on March 28, 2006.[59] There was also a proper verification of the petition for review. Contrary to petitioner's allegation that the verification was based on "knowledge and belief,"[60] which is violative of Section 4, Rule 7 of the Rules of Court, the verification actually stated that it was based on "own personal knowledge,"[61] which complied with the requirements of the said provision.

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[57] *Santiago v. Court of Appeals*, 356 Phil. 647, 667 (1998); *People v. Ledesma*, 320 Phil. 215, 221-222 (1995).

[58] *Rollo*, pp. 128-129.

[59] CA *rollo*, p. 1.

[60] *Rollo*, p. 128.

[61] CA *rollo*, pp. 18-19.

The CA Decision correctly ruled that there is no tenancy relationship between the parties

Ladano faults the CA for ruling that there was no tenancy relationship between himself and landowner Neri. He avers that they have an implied tenancy arrangement as shown by his delivery of the landowner's agricultural share to the latter's caretaker. Such actual sharing of harvest creates a tenancy relationship despite the absence of a written leasehold contract. The same has been pronounced in *Santos v. Vda. De Cerdenola*,[62] which states that an implied contract of tenancy is created if the landowner, represented by his overseer, permits the tilling of the land by another for a period of six (6) years.

The Court notes petitioner's sudden change of thesis in the case. He insisted in his Complaint and in the proceedings before the Provincial Adjudicator, as well as before the DARAB, that the property is a public land and that no one has ever claimed ownership over the same. He maintained that he was in good faith when he cultivated the land because he believed that the land does not belong to anyone. This contention is in stark contrast with his new assertion, raised for the first time in his Motion for Reconsideration before the CA, that he consistently paid rentals to the landowner's caretaker. The belatedness of the factual assertion raises doubts as to its truthfulness. Moreover, his bare assertion is bereft of evidentiary support. He did not name the alleged caretaker or the landowner for whom the caretaker was allegedly collecting rentals. He did not state the quantity of harvests collected as rental or the terms of payment. Given the belatedness[63] and flimsiness of petitioner's factual allegation, the CA cannot be faulted for not accepting it in its assailed Decision and Resolution.

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[62] 115 Phil. 813, 819 (1962).

[63] *Bernas v. Court of Appeals*, G.R. No. 85041, August 5, 1993, 225 SCRA 119, 129.

"A tenancy relationship arises between a landholder and a tenant once they agree, expressly or impliedly, to undertake jointly the cultivation of a land belonging to the landholder, as a result of which relationship the tenant acquires the right to continue working on and cultivating the land."[64] For a tenancy relationship, express or implied, to exist, the following requisites must be present: (1) the parties must be landowner and tenant or agricultural lessee; (2) the subject matter is agricultural land; (3) there is consent by the landowner; (4) the purpose is agricultural production; (5) there is personal cultivation by the tenant; and (6) there is sharing of harvests between the landowner and the tenant.[65] Independent and concrete evidence of the foregoing elements must be presented by the party asserting the existence of such a relationship.[66] They cannot be arrived at by mere conjectures or by presumptions.[67] "Unless a person has established his status as a *de jure* tenant, he is not entitled to security of tenure [nor is he] covered by the Land Reform Program of the Government under existing tenancy laws."[68]

In the case at bar, the DARAB held that there is an implied tenancy because Ladano had been occupying and cultivating the subject property for more than 30 years. From such a lengthy occupation, the DARAB concluded that the landowner must have consented to petitioner's occupation.

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[64] *Landicho v. Sia,* G.R. No. 169472, January 20, 2009, 576 SCRA 602, 618-619.

[65] *Rodriguez v. Salvador,* G.R. No. 171972, June 8, 2011, 651 SCRA 429, 437; *Estate of Pastor M. Samson v. Susano,* G.R. Nos. 179024 & 179086, May 30, 2011, 649 SCRA 345, 365; *Heirs of Jose Barredo v. Besañes, supra* note 3 at 723; *Adriano v. Tanco,* G.R. No. 168164, July 5, 2010, 623 SCRA 218, 228; *Soliman v. Pampanga Sugar Development Company (PASUDECO), Inc.,* G.R. No. 169589, June 16, 2009, 589 SCRA 236, 246.

[66] *Rodriguez v. Salvador, supra* at 438; *Estate of Pastor M. Samson v. Susano, supra* at 367; *Heirs of Jose Barredo v. Besañes, supra* note 3 at 726.

[67] *Heirs of Jose Barredo v. Besanes, supra* note 3.

[68] *Heirs of Jose Barredo v. Besañes, supra* note 3; *Soliman v. Pampanga Sugar Development Company (PASUDECO), Inc., supra*.

The CA rightfully reversed this conclusion. The DARAB failed to consider that one's occupancy and cultivation of an agricultural land, no matter how long, will not *ipso facto* make him a *de jure* tenant.[69] It should not have considered such occupation as a basis for assuming the landowner's consent, especially when the occupant himself never alleged that he obtained the landowner's consent. Petitioner did not even allege in his Complaint that he is a tenant of the landowner. Neither did he allege that he shared his harvests with the landowner. Without such factual assertions from Ladano, the DARAB arrived at a conclusion that is utterly bereft of factual bases. Petitioner is not a tenant on the land and is not entitled to security of tenure nor to disturbance compensation. His Complaint was properly dismissed for lack of merit.

There is another ground for dismissing Ladano's Complaint. The Department of Agrarian Reform and its adjudication boards have no jurisdiction over Ladano's Complaint. "For the DARAB to acquire jurisdiction over the case, there must exist a tenancy [relationship] between the parties."[70] But a careful reading of Ladano's Complaint shows that Ladano did not claim to be a leasehold tenant on the land. The Complaint reads:

COMES NOW, the Complainant, most respectfully avers and states:

1. That complainant is of legal age, a resident of Manalite I, Brgy. Sta. Cruz, Antipolo City; while respondent, Felino Neri is also of legal age, with principal office address at Uni Rock, Bagong Nayon I, Antipolo City; respondents Edwin Soto, Adan Española and Ernesto Blanco are likewise of legal age, with principal office at Uni Rock, Bagong Nayon I, Antipolo City, where they may be served with summons and other legal Board's processes;

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[69] *Rodriguez v. Salvador, supra* at 439; *Estate of Pastor M. Samson v. Susano, supra* at 367; *Heirs of Jose Barredo v. Besañes, supra* note 3 at 726; *Adriano v. Tanco, supra* at 229; *Landicho v. Sia, supra* at 620.

[70] *Spouses Atuel v. Spouses Valdez, supra* note 5.

2. That complainant is an actual occupant/tiller in a parcel of land having an area of approximately two (2) hectare[s], more or less[,] located at Manalite I, Brgy. Sta. Cruz, Antipolo City since 1970 up to present, having introduced substantial improvements thereat;

3. That complainant and his family have been in peaceful possession and occupation, open, exclusive and uninterrupted from any claimants or intruders for several years, HOWEVER, on the 7th day of May 2003, respondents (Edwin Soto and Adan Espanola) upon strength [sic] instruction of respondent, Felino Neri, claiming ownership over the subject property, forcibly entered thereon and strongly threatened herein complainant and his family to vacate immediately thereat, otherwise, any members [sic] of the complainant [sic] might be killed;

4. That immediately thereafter, complainant sought the assistance of the DAR Municipal Office of Antipolo City, HOWEVER, pending mediation-conference proceedings, purposely to exhaust possible settlement, the RESPONDENTS on the 29th day of May 2003 at 9:00 in the morning, in a total wanton disregard of the complainant's rights, destroyed/cut down several guava trees and *kawayans* [sic], with force and threat, respondents constructed a fence purposely to deprive herein complainant from ingress and egress on the subject property;

5. That as a result, complainant and his family could hardly move freely, they are terribly and seriously disturbed from their peaceful and enjoyment [sic] possession causing so much irreparable damage and injury;

6. That for the protection of the complainant's existing rights, there is an extreme urgency to prevent herein respondents from further doing unlawful acts, hence compelled to file a case against the respondents for Injunction, Damages and Payment of the improvements before this Honorable Adjudicator[;]

7. That complainant is earnestly praying that he be exempted from paying the required docket fees in filing of the instant case due to financial difficulties as his means of livelihood is farming.

WHEREFORE, premises considered, it is most respectfully prayed unto this Honorable Adjudicator, that judgment be rendered in favor of the complainant and against the respondents:

1. Declaring the complainant to be a bonafide occupant/tiller in the subject property and is entitled to [s]ecurity of [t]enure;

2. Ordering the respondents to respect the rights and interest of the complainant as a legitimate occupant/tiller thereat and to pay the improvements destroyed;

3. Or in the alternative, ordering the respondents to pay the complainant of all the improvements he introduced in the subject property.

Other reliefs that are just and fair are likewise prayed for under the premises.

Bagumbayan, Teresa, Rizal.

LUCIANO LADANO
Complainant[71]

Petitioner never alleged that he had any agreement with the landowner of the subject property. Indeed Ladano's Complaint did not assert any right that arises from agrarian laws. He asserted his rights based on his prior physical possession of the two-hectare property and on his cultivation of the same in good faith. The issues that he wanted resolved are who between himself and the respondents have a better right to possess the property, and whether he has a right to be compensated for the improvements he introduced on the property. Clearly, the nature of the case he filed is one for forcible entry[72] and for indemnification,[73] neither of which is cognizable by the DARAB,

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[71] Records, pp. 1-4.

[72] *Pagadora v. Ilao*, G.R. No. 165769, December 12, 2011, 662 SCRA 14, 29-33.

[73] CIVIL CODE, Article 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof. (361a)

but by the regular courts. While neither of the parties challenged the jurisdiction of the DARAB, the Court can consider the issue of jurisdiction *motu proprio.*[74]

WHEREFORE, premises considered, the Petition is **DENIED**. The Court **AFFIRMS** the dismissal of petitioner's Complaint in the assailed Decision of the Court of Appeals in CA-G.R. SP No. 93819. The Court further **DISSOLVES** the temporary restraining order it issued on February 18, 2009 against the respondents, and **DENIES** petitioner's Urgent Motion To Cite Private Respondents Felino Neri and Edwin Soto in Contempt of Court for lack of merit.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 180804. November 12, 2012]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **SPS. ROKAYA and SULAIMAN BONA,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; AGRARIAN LAW; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (RA 6657) IN RELATION TO PRESIDENTIAL DECREE NO. 27 (PD 27); WHILE ACQUISITION OF THE LAND WAS MADE UNDER PD 27, JUST COMPENSATION WILL HAVE TO BE COMPUTED IN ACCORDANCE WITH

[74] *Spouses Atuel v. Spouses Valdez, supra* note 5 at 641.

SECTION 17 OF RA 6657.— [A]cquisition of the property under OLT or P.D. No. 27 does not necessarily mean that the determination of just compensation therefor must be under the same decree. To determine the applicable formula, it is important to determine whether on 15 June 1988, which is the effectivity date of R.A. 6657, there has already been payment of just compensation, which payment completes the agrarian reform process. If on such date just compensation remains unpaid, the agrarian reform process remains incomplete even if started under P.D. No. 27. Under R.A. 6657, just compensation will have to be computed in accordance with Section 17 or Determination of Just Compensation in relation to the formula under Administrative Order No. 5, Series of 1998.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Lim Narrazid & Associates Law Offices for respondents.

D E C I S I O N

PEREZ, *J.*:

The Case

Before the Court is a Petition for Review on *Certiorari*[1] filed by the Land Bank of the Philippines (LBP) alleging error on the part of the appellate court in reversing the finding of the Regional Trial Court (RTC) of Puerto Princesa City, Palawan, sitting as Special Agrarian Court, that the land subject of this case was under the coverage of R.A. 6657 or the *Comprehensive Agrarian Reform Law of 1988* and not under P.D. No. 27.[2]

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[1] *Rollo*, pp. 24-55.

[2] Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor.

LBP is appealing the Decision[3] of the Ninth Division of the Court of Appeals (CA) in CA-G.R. SP No. 90907 dated 21 May 2007 and the Resolution of the said Division dated 4 December 2007 which resulted in the reversal of the Decision of the aforementioned Special Agrarian Court.

The dispositive portion of the assailed decision reads:

WHEREFORE in view of the foregoing, the instant petition for review is **DISMISSED**. The assailed Decision dated October 11, 2004 is **REVERSED** and **SET ASIDE**. The instant case is **REMANDED** to the Regional Trial Court sitting as Special Agrarian Court for further proceedings.[4]

On the basis of settled rulings, we sustain the decision of the appellate court and therefore, deny the petition.

The Facts

Rokaya Narrazid-Bona (Rokaya) is the owner by succession of a parcel of land with an area of 338.2826 hectares located at Bataraza, Palawan covered by TCT No. T-7193. She inherited this property from her mother Bautan Narrazid who also inherited the same from her husband who traces his roots back to Sultan Narrazid, a former Sultan of Palawan.[5]

LBP is the financial intermediary for the Comprehensive Agrarian Reform Program (CARP) as designated under Section 64 of R.A. 6657.

The Department of Agrarian Reform (DAR) on the other hand, is the lead implementing agency of the CARP. It undertakes land tenure improvement and development of program beneficiaries.

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[3] Penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Remedios A. Salazar-Fernando and Enrico A. Lanzanas concurring. *Rollo*, pp. 56-65.

[4] *Id.* at 64.

[5] Complaint of Rokaya. *Id.* at 99.

From 4 December 1989 until 5 November 1990, several emancipation patents under TCT No.T-231 up to TCT No. T-429 were issued to different farmer-beneficiaries under the Operation Land Transfer (OLT) that covered the land of Rokaya.[6] A total area of 76.2380 hectares of the property was covered by the TCTs. Rokaya contested these patents asserting that they were issued without her consent and knowledge. She alleged that the farmers were not qualified to become beneficiaries because they were not her tenants but were merely squatter-farmers.[7]

Meanwhile, on 12 December 1989, then Secretary Miriam Defensor Santiago of the DAR sent a Notice of Acquisition addressed to Bautan Narrazid, the mother of Rokaya, placing an area of 168.8379 hectares of the property under CARP. In the Notice, the land was valued in the amount of ₱3,866.36 per hectare for a total compensation of ₱652,788.87.[8]

On 16 January 1990, Rokaya, through a letter to the Bureau of Land Acquisition and Distribution, DAR, objected to the offered price for being too low.[9] In October 1993, Rokaya filed a complaint before the RTC of Puerto Princessa City, Palawan but the same was dismissed for lack of merit.[10]

Following the dismissal, Rokaya sent a letter to Provincial Agrarian Reform Officer (PARO) Homer P. Tobias requesting for a re-evaluation based on the Average Annual Production per hectare of the land.

In a Decision dated 8 November 1993, Regional Adjudicator for DAR Region IV Isidro Carrasca Gumtang fixed the amount of just compensation at ₱14,084.50 per hectare for a 121.5212 hectare-portion[11] of the property.

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[6] *Id.* at 102.

[7] *Id.*

[8] Notice of Acquisition. CA *rollo*, p. 237.

[9] *Id.* at 238.

[10] Complaint of Rokaya. *Rollo*, p. 103.

[11] Decision of DARAB-Region IV. *Id.* at 378-382.

On 7 December 1998, Rokaya agreed to a higher valuation and accepted LBP's payment of ₱98,633.00 per hectare or a total of ₱11,986, 001.00.[12]

On 14 July 2000, Rokaya filed another complaint[13] before the RTC of Puerto Princesa City, Palawan praying that the just compensation for the 76.2380 hectare-portion previously distributed to the farmer-beneficiaries, be fixed in the amount not less than the value of the 121.5212 hectare-portion.[14]

During trial, Rokaya testified that she signed a Deed of Assignment, Warranties and Undertaking (DAWU) containing the provision that she received a partial payment for the contested 76.2380 hectares amounting to ₱668,680.12 on 8 March 2001.[15] To quote:

x x x x x x x x x

> 1. That the amount of SIX HUNDRED SIXTY EIGHT THOUSAND SIX HUNDRED EIGHTY PESOS AND 12/100 (₱668,680.12) in cash and bonds is understood to be not full compensation for the area covered by Presidential Decree No. 27 but the initial government valuation.[16]

x x x x x x x x x

She also admitted that LBP paid her ₱98,633.00 per hectare for the 121.52 hectare-portion as per Memorandum dated 7 December 1998.[17]

To support her claim of higher valuation for the 76.2380 hectares, she presented Municipal Agrarian Reform Officer of

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[12] Complaint of Rokaya. *Id.* at 104.

[13] *Id.* at 98-106.

[14] Complaint of Rokaya. *Id.* at 106.

[15] Deed of Assignment, Warranties and Undertaking. *Id.* at 387.

[16] *Id.* at 388.

[17] RTC Decision. *Id.* at 130.

Bataraza, Palawan Rogelio Madarcos who testified that the value of the contested portion is ₱104, 384.52 per hectare.[18]

For its part, LBP presented its Landowners' Compensation Department Officer Christina Austria. Austria testified that among her duties were the determination and approval of the list of claims transmitted by DAR. She processed the claim of Rokaya for the 76.2380 hectare-portion of her property covered by the Land Transfer Claim Transmittal dated 21 February 1992,[19] together with its various attachments such as the Orders of Placement,[20] all dated 16 June 1984.[21] She explained that if the acquisition of the land is under P.D. No. 27, it is DAR's duty to make a valuation; if under R.A. 6657, it is the bank's obligation to make one. She clarified that the list of claims will only be referred to the bank after DAR's classification and identification of the land to be transferred to the farmer-beneficiaries. After the transmittal and processing of claims, the bank pays the landowner and collects the amortization payments of the farmer-beneficiaries.[22]

She added that the bank paid Rokaya the sum of ₱668,680.12 and an increment of ₱647,107.83 as evidenced by a certified photocopy of the acknowledgment receipt.

The Trial Court's Ruling

On 11 October 2004, the trial court rejected the prayer for higher valuation in its decision[23] which reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering fixing the just compensation due for the *76.2380 hectares*

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[18] *Id.* at 131.

[19] *Id.* at 275.

[20] "Order of Placement" is a document issued by DAR stating the portion of the land was placed under the coverage of Operation Land Transfer beginning on such date as appearing on the order of placement.

[21] *Rollo*, pp. 276-313.

[22] *Id.* at 131.

[23] RTC Decision. *Id.* at 129-134.

property subject of this case in the amount of *Fifty Six Thousand Two Hundred Fifty pesos (₱56,250.00)* per hectare or a total amount of *Four Million Two Hundred Eighty Eight Thousand Three Hundred Eighty Seven Pesos and 5/100 (4,288, 387.05)* for the whole property.

The sum of *Fifteen Thousand Pesos (₱15,000.00)* as Attorney's fees is hereby awarded in favor of the plaintiffs.[24]

It ruled that the 76.2380 hectare-portion was completely acquired through the OLT in 1989. Pursuant to the governing law, P.D. No. 27, and the ruling in *Land Bank v. Court of Appeals*,[25] the agrarian court recomputed the value of the land using the formula *"Land Value = 2.5 x Annual Gross Production*[26] *x ₱300.00."*[27]

Discontented, LBP filed an appeal before the CA.

The argument of the LBP in its Petition for Review,[28] centered on the alleged violation of the applicable laws, P.D. No. 27 and E.O. 228, and settled jurisprudence when the trial court valued the annual gross production of the subject land at seventy five (75) cavans per hectare and the government support price at ₱300.00. It also averred error in awarding attorney's fees in favor of Rokaya.[29]

The Court of Appeals' Ruling

The appellate court reversed and set aside the decision of the trial court. It overturned the finding that the subject lands are under the coverage of P.D. No. 27 and E.O. 228. It even cast doubts on the authenticity of the Orders of Placement. The materiality of the Notice of Acquisition sent to Rokaya

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[24] *Id.* at 134.

[25] 378 Phil. 1248 (1999).

[26] The annual gross production at 75 cavans per hectare was based on the uncontested allegation in the complaint.

[27] RTC Decision. *Rollo,* pp 132-133.

[28] Petition for Review, CA *rollo*,pp. 15-28.

[29] *Id.* at 39.

dated 12 December 1989 was stressed and was relied upon by the CA as evidence that the lands were not acquired under P.D. No. 27, reasoning that there was no need to file such a Notice if indeed the lands were acquired under the old law and not under compulsory acquisition via R.A. 6657.[30]

In its petition[31] before this Court, LBP insists that the lands were covered by the OLT Program under P.D. No. 27 and not by compulsory acquisition under R.A. 6657.

In its Memorandum,[32] LBP added the argument that the DAWU embodies the assent of Rokaya that the land was placed under the OLT Program and its genuineness and due execution had already been judicially admitted.[33]

The Court's Ruling

LBP is steadfast in its contention that the applicable laws are P.D. No. 27 and E.O. 228. To establish its position, LBP presented the different Orders of Placement of DAR to prove that the lands were under the OLT. It also pointed that the DAWU signed by Rokaya is an acknowledgement that the lands were under OLT. It is further posited that applying R.A. 6657 to the P.D. No. 27-acquired properties will result in the retroactive application of R.A. 6657.

We agree with LBP that the land was acquired under the OLT; however, we do not agree that the computation of the just compensation is still based on the old formula and that the application of R.A. 6657 will result in the retroactivity of the law.

We explain.

Upon review of the complaint of Rokaya before the agrarian court, we find an apparent contradiction in the prayers:

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[30] *Id* at 63.

[31] *Id.* at 24-55.

[32] Memorandum. *Rollo*, pp. 781-805.

[33] *Id.* at 786.

1. That the JUST COMPENSATION for the above-described property [76.2380 hectare-portion] should be fixed in the amount not less than the value of the land subject of CACF No. RAC98-169 [121.52 hectare-portion], per Memorandum dated December 7, 1998, xxx.

x x x x x x x x x

5. To Order the Department of Agrarian Reform and the Register of Deeds to cancel the Emancipation Patent/OLT issued and listed/encumbered in the memorandum of encumbrances xxx.[34] (Underlining supplied)

Evidently, her prayer for fixing the just compensation *vis–à–vis* her request for cancellation of patents, shows that if the valuation of the 121.5212 hectare-portion of her property is not applied to the 76.2380 hectare property already covered by Emancipation Patents, such patents should be cancelled. Rokaya thus admitted the acquisition of the 76.2380 hectare-portion under P.D. No. 27.

Further, the different Orders of Placement all dated 16 June 1984 issued by the DAR and signed by its Regional Director Benjamin R. Estrellado, prove that the portion comprising the 76.238 hectares was acquired during the effectivity of P.D. No. 27.[35] The Court takes judicial notice[36] of these orders as issued by DAR pursuant to the Memorandum Circular No. 2, Series of 1978[37] involving the inclusion of landholding tenanted after 21 October 1972 within the coverage of P.D. No. 27.

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[34] *Id.* at 106.

[35] Orders of Placement. *Id.* at 276-313.

[36] RULE 129 Sec. 1, Rules of Court

SECTION 1. Judicial Notice, when mandatory – A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. (1a)

[37] Guidelines on the Inclusion of Land-Holdings Tenanted after October 21, 1972 within the Coverage of Presidential Decree No. 27.

Finally, the DAWU itself signed by Rokaya showed her acknowledgment of the acquisition under P.D. No. 27 of the portion of her land in question. Her signature[38] signifying her assent indicates her acceptance of the fact. To restate the pertinent provision:

> WHEREAS, the area of SEVENTY SIX AND 2380/10000 (76.2380) hectares appearing in the said title has been actually transferred to the tenant farmer/s therein, pursuant to Presidential Decree No. 27 as shown in the list of beneficiaries who were awarded Certificates of land Transfer, copy of which is hereto attached as Annex A and forming an integral part hereof, the said area transferred is subject of Land Transfer Claim No. EO-92-039 Amd. for settlement/ compensation in the Land Bank of the Philippines.[39] (Underlining supplied)

However, acquisition of the property under OLT or P.D. No. 27 does not necessarily mean that the determination of just compensation therefor must be under the same decree.

To determine the applicable formula, it is important to determine whether on 15 June 1988, which is the effectivity date of R.A. 6657, there has already been payment of just compensation, which payment completes the agrarian reform process. If on such date just compensation remains unpaid, the agrarian reform process remains incomplete even if started under P.D. No. 27. Under R.A. 6657, just compensation will have to be computed in accordance with Section 17[40] or

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[38] *Rollo*, p. 387.

[39] DAWU, Second Whereas Clause. *Id.*

[40] **Section 17.** ***Determination of Just Compensation.*** — In determining just compensation, the cost of acquisition of the land, the current value of the 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 the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Determination of Just Compensation in relation to the formula under Administrative Order No. 5, Series of 1998.

The Court in *Paris v. Alfeche*[41] ruled that the passage of R.A. 6657 before the completion of agrarian reform process over the lands acquired under P.D. No. 27 should, for compensation purposes now be completed under the said law, with P.D. No. 27 and E.O. 228 having suppletory effect, thus:

> **Section 75.** ***Suppletory Application of Existing Legislation.*** — The provisions of Republic Act No. 3844 as amended, Presidential Decree Nos. 27 and 266 as amended, Executive Order Nos. 228 and 229, both Series of 1987; and other laws not inconsistent with this Act shall have suppletory effect.[42]

In *Land Bank of the Philippines v. Hon. Natividad*,[43] this Court ruled that seizure of landholdings or properties covered by P.D. No. 27 did not take place on 21 October 1972, but upon the payment of just compensation. Taking into account the passage in 1988 of R.A. 6657 pending the settlement of just compensation, this Court concluded that it is R.A. 6657 which is the applicable law, with P.D. No. 27 and E.O. 228 having only suppletory effect.

The same interpretation was arrived at in the subsequent decisions in *Land Bank of the Philippines v. Estanislao;*[44] *Land Bank of the Philippines v. Heirs of Eleuterio Cruz;*[45] *LBP v. J. L. Jocson and Sons;*[46] in *Land Bank of the Philippines v. Ferrer;*[47] and more recently in the *Land Bank of the Philippines v. Araneta.*[48]

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[41] 416 Phil. 473, 488 (2001).

[42] Emphasis ours.

[43] 497 Phil. 738, 746 (2005) citing *Office of the President v. Court of Appeals*, 413 Phil. 711. (2001).

[44] G.R. No. 166777, 10 July 2007, 527 SCRA 181.

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

[46] G.R. No. 180803, 23 October 2009, 604 SCRA 373.

[47] G.R. No. 179421, 2 February 2011, 641 SCRA 414.

[48] G.R. No. 161796, 8 February 2012.

We here reiterate our consolidated ruling in *DAR v. Manuel Goduco* and *Land Bank v. Goduco,*[49] that when the reform process is still incomplete because the payment has not been settled yet and considering the passage of R.A. 6657, just compensation should be determined and the process concluded under the said law. As we so rule, we also repeat what was there said:

> One final but important point: As we at the outset clarified, the repeated rulings that the land reform process is completed only upon payment of just compensation relate to the issue of the applicable law on just compensation. The disposition that the seizure of the landholding would take effect on the payment of just compensation since it is only at that point that the land reform process is completely refers to property acquired under P.D. No. 27 but which remained unpaid until the passage of R.A. 6657. We said that in such a situation R.A. 6657 is the applicable law. But if the seizure is during the effectivity of R.A. 6657, the time of taking should follow the general rule in expropriation cases where the "time of taking" is the time when the State took possession of the same and deprived the landowner of the use and enjoyment of his property xxx. We here repeat *Land Bank of the Philippines v. Livioco.*[50]

Finally, we rule on the applicable formula.

The provision on the determination of just compensation is provided under Section 17 of R.A. No. 6657.[51] We quote:

> SECTION 17. *Determination of Just Compensation*. — In determining just compensation, the cost of acquisition of the land, the current value of the 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 the Government to the property as well as the non-payment of taxes or loans secured from any government

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[49] G.R. Nos. 174007 and 181327, 27 June 2012.

[50] *Id.*

[51] "An Act Instituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanism for its Implementation, and for other Purposes."

financing institution on the said land shall be considered as additional factors to determine its valuation.

Pursuant to this provision and the rule-making power of DAR under Section 49 of R.A. 6657, a formula was outlined in DAR Administrative Order No. 5, Series of 1998 in computing just compensation[52] for lands subject of acquisition whether under voluntary offer to sell (VOS) or compulsory acquisition (CA),[53] to wit:

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 the 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.

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[52] *Land Bank of the Philippines v. Soriano*, G.R. Nos. 180772 and 180776, 6 May 2010, 620 SCRA 347, 353.

[53] Administrative Order No. 5, Series of 1998 entitled "Revised Rules and Regulations Governing the Valuation of Lands Voluntarily Offered or Compulsory Acquired Pursuant to R.A. No. 6657."

WHEREFORE, premises considered, the Court hereby **RESOLVES**:

1. To **PARTIALLY DENY** the **APPEAL** of Land Bank of the Philippines; and
2. To **ORDER** the remand of the case to the trial court for the computation of the just compensation based on the formula under Section 17, R.A. No. 6657 and Administrative Order No. 5, Series of 1998.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 183553. November 12, 2012]

DIAGEO PHILIPPINES, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997 (TAX CODE); EXCISE TAX; PARTAKES OF THE NATURE OF AN INDIRECT TAX; WHEN THE EXCISE TAX IS PAID BY THE SUPPLIER, WHAT WAS SHIFTED ON TO THE BUYER IS NOT THE TAX *PER SE* BUT AN ADDITIONAL COST OF THE GOODS SOLD.— Excise taxes imposed under Title VI of the Tax Code are taxes on property which are imposed on "goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported." Though excise taxes are paid by the manufacturer or producer before removal of

domestic products from the place of production or by the owner or importer before the release of imported articles from the customs house, the same partake of the nature of indirect taxes when it is passed on to the subsequent purchaser. Indirect taxes are defined as those wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted to another person. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered. Accordingly, when the excise taxes paid by the supplier were passed on to Diageo, what was shifted is not the tax *per se* but an additional cost of the goods sold. Thus, the supplier remains the statutory taxpayer even if Diageo, the purchaser, actually shoulders the burden of tax.

2. ID.; ID.; ID.; THE PROPER PARTY TO CLAIM REFUND OF EXCISE TAXES IS THE STATUTORY TAXPAYER.— [T]he person entitled to claim a tax refund is the statutory taxpayer or the person liable for or subject to tax. In the present case, it is not disputed that the supplier of Diageo imported the subject raw alcohol, hence, it was the one directly liable and obligated to file a return and pay the excise taxes under the Tax Code before the goods or products are removed from the customs house. It is, therefore, the statutory taxpayer as contemplated by law and remains to be so, even if it shifts the burden of tax to Diageo. Consequently, the right to claim a refund, if legally allowed, belongs to it and cannot be transferred to another, in this case Diageo, without any clear provision of law allowing the same. Unlike the law on Value Added Tax which allows the subsequent purchaser under the tax credit method to refund or credit input taxes passed on to it by a supplier, no provision for excise taxes exists granting non-statutory taxpayer like Diageo to claim a refund or credit. It should also be stressed that when the excise taxes were included in the purchase price of the goods sold to Diageo, the same was no longer in the nature of a tax but already formed part of the cost of the goods.

APPEARANCES OF COUNSEL

Noval & Buñag Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a Petition for Review under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Tax Appeals (CTA) *En Banc* dated July 2, 2008 in CTA EB No. 260.

The petition seeks the proper interpretation of Section 130(D)[2] of the National Internal Revenue Code of 1997 (Tax Code), particularly, on the question of who may claim the refund or tax credit of excise taxes paid on goods actually exported.

The Factual Antecedents

Petitioner Diageo Philippines, Inc. (Diageo) is a domestic corporation organized and existing under the laws of the Republic of Philippines and is primarily engaged in the business of importing, exporting, manufacturing, marketing, distributing, buying and selling, by wholesale, all kinds of beverages and liquors and in dealing in any material, article, or thing required in connection with or incidental to its principal business.[3] It is registered with

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[1] *Rollo,* pp. 13-27. Penned by Associate Justice Lovell R. Bautista, with Associate Justices Juanito C. Castañeda, Jr., Erlinda I. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, concurring, and Presiding Justice Ernesto D. Acosta, dissenting.

[2] Sec. 130. *Filing of Return and Payment of Excise Tax on Domestic Products.* –

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(D) *Credit for Excise tax on Goods Actually Exported.* – When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment: Provided, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported.

[3] *Rollo,* p. 14.

the Bureau of Internal Revenue (BIR) as an excise tax taxpayer, with Tax Identification No. 000-161-879-000.[4]

For the period November 1, 2003 to December 31, 2004, Diageo purchased raw alcohol from its supplier for use in the manufacture of its beverage and liquor products. The supplier imported the raw alcohol and paid the related excise taxes thereon before the same were sold to the petitioner.[5] The purchase price for the raw alcohol included, among others, the excise taxes paid by the supplier in the total amount of ₱12,007,528.83.[6]

Subsequently, Diageo exported its locally manufactured liquor products to Japan, Taiwan, Turkey and Thailand and received the corresponding foreign currency proceeds of such export sales.[7]

Within two (2) years from the time the supplier paid the subject excise taxes, Diageo filed with the BIR Large Taxpayer's Audit and Investigation Division II applications for tax refund/ issuance of tax credit certificates corresponding to the excise taxes which its supplier paid but passed on to it as part of the purchase price of the subject raw alcohol invoking Section 130(D) of the Tax Code.

However, due to the failure of the respondent Commissioner of Internal Revenue (CIR) to act upon Diageo's claims, the latter was constrained to timely file a petition for review before the CTA.[8]

On December 27, 2005, the CIR filed its Answer assailing Diageo's lack of legal personality to institute the claim for refund because it was not the one that paid the alleged excise taxes but

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[4] *Id.* at 15.

[5] *Id.*

[6] *Id.* at 49.

[7] *Id.* at 48.

[8] *Id.* at 16.

its supplier.[9] Subsequently, the CIR filed a motion to dismiss reiterating the same issue.[10]

The Ruling of the Court of Tax Appeals

On July 20, 2006, the CTA Second Division issued a Resolution[11] dismissing the petition on the ground that Diageo is not the real party in interest to file the claim for refund. Citing *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*,[12] the CTA Second Division ruled that although an excise tax is an indirect tax which can be passed on to the purchaser of goods, the liability therefor still remains with the manufacturer or seller, hence, the right to claim refund is only available to it.[13] Diageo filed a motion for reconsideration which was subsequently denied in the Resolution dated January 8, 2007.[14]

On February 13, 2007, Diageo filed a petition for review[15] which the CTA *En Banc* in its Decision dated July 2, 2008 dismissed, thereby affirming the ruling of the CTA Second Division.[16]

Citing Rule 3, Section 2,[17] of the Rules of Court, the CTA *En Banc* held that the right to a refund or tax credit of the

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[9] *Id.*

[10] *Id.*

[11] *Id.* at 145-149. Signed by Associate Justices Juanito C. Castañeda Jr., Erlinda P. Uy and Olga Palanca-Enriquez.

[12] G.R. No. 19707, August 17, 1967, 10 SCRA 1056.

[13] *Supra* note 11, at 148.

[14] *Rollo,* pp. 166-167.

[15] *Id.* at 168-194.

[16] *Id.* at 13-27.

[17] Sec. 2. *Parties in interest*. – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

excise taxes under Section 130(D) of the Tax Code is available only to persons enumerated in Sections 130(A)(1)[18] and (2)[19]

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[18] Sec. 130. *Filing of Return and Payment of Excise Tax on Domestic Products.* –

(A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.* –

(1) *Persons Liable to File a Return.* – Every person liable to pay excise tax imposed under this Title shall file a separate return for each place of production setting forth, among others the description and quantity or volume of products to be removed, the applicable tax base and the amount of tax due thereon: Provided, however, That in the case of indigenous petroleum, natural gas or liquefied natural gas, the excise tax shall be paid by the first buyer, purchaser or transferee for local sale, barter or transfer, while the excise tax on exported products shall be paid by the owner, lessee, concessionaire or operator of the mining claim.

Should domestic products be removed from the place of production without the payment of the tax, the owner or person having possession thereof shall be liable for the tax due thereon.

[19] Sec. 130**.** *Filing of Return and Payment of Excise Tax on Domestic Products.* –

(2) *Time for Filing of Return and Payment of the Tax.* – Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products form place of production: Provided, That the tax excise on locally manufactured petroleum products and indigenous petroleum/levied under Sections 148 and 151(A)(4), respectively, of this Title shall be paid within ten (10) days from the date of removal of such products for the period from January 1, 1998 to June 30, 1998; within five (5) days from the date of removal of such products for the period from July 1, 1998 to December 31, 1998; and, before removal from the place of production of such products from January 1, 1999 and thereafter: Provided, further, That the excise tax on nonmetallic mineral or mineral products, or quarry resources shall be due and payable upon removal of such products from the locality where mined or extracted, but with respect to the excise tax on locally produced or extracted metallic mineral or mineral products, the person liable shall file a return and pay the tax within fifteen (15) days after the end of the calendar quarter when such products were removed subject to such conditions as may be prescribed by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner. For this purpose, the taxpayer shall file a bond in an amount which approximates the amount of excise tax due on the removals for the said quarter. The foregoing rules notwithstanding, for imported mineral or mineral products, whether metallic or nonmetallic, the excise tax due thereon shall be paid before their removal from customs custody.

of the same Code because they are the ones primarily and legally liable to pay such taxes. As Diageo failed to prove that it had actually paid the claimed excise taxes as manufacturer-exporter, the CTA *En Banc* likewise did not find it as the proper party to claim a refund. Hence, the instant petition.

Diageo claims to be a real party in interest entitled to recover the subject refund or tax credit because it stands to be benefited or injured by the judgment in this suit.[20] It contends that the tax privilege under Section 130(D) applies to every exporter provided the conditions therein set forth are complied with, namely, (1) the goods are exported either in their original state or as ingredients or part of any manufactured goods or products; (2) the exporter submits proof of exportation; and (3) the exporter likewise submits proof of receipt of the corresponding foreign exchange payment.[21] It argues that Section 130(D) does not limit the grant of the tax privilege to manufacturers/producers-exporters only but to every exporter of locally manufactured/produced goods subject only to the conditions aforementioned.[22]

The Issue

The sole issue to be resolved is whether Diageo has the legal personality to file a claim for refund or tax credit for the excise taxes paid by its supplier on the raw alcohol it purchased and used in the manufacture of its exported goods.

Ruling of the Court

The petition is without merit.

Excise taxes partake of the nature of indirect taxes.

Diageo bases its claim for refund on Section 130 of the Tax Code which reads:

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[20] *Rollo* at pp. 54-55.

[21] *Id.* at 57.

[22] *Id.* at 60.

Section 130. *Filing of Return and Payment of Excise Tax on Domestic Products.* – x x x

(A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.* –

(1) *Persons Liable to File a Return.* – Every person liable to pay excise tax imposed under this Title shall file a separate return for each place of production setting forth, among others, the description and quantity or volume of products to be removed, the applicable tax base and the amount of tax due thereon; Provided however, That in the case of indigenous petroleum, natural gas or liquefied natural gas, the excise tax shall be paid by the first buyer, purchaser or transferee for local sale, barter or transfer, while the excise tax on exported products shall be paid by the owner, lessee, concessionaire or operator of the mining claim. Should domestic products be removed from the place of production without the payment of the tax, the owner or person having possession thereof shall be liable for the tax due thereon.

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(D) *Credit for Excise tax on Goods Actually Exported.* – When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment: Provided, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported.

A reading of the foregoing provision, however, reveals that contrary to the position of Diageo, the right to claim a refund or be credited with the excise taxes belongs to its supplier. The phrase "any excise tax paid thereon shall be credited or refunded" requires that the claimant be the same person who paid the excise tax. In *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue,* the Court has categorically declared that "[t]he proper party to question, or seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is

imposed by law and who paid the same even if he shifts the burden thereof to another."[23]

Excise taxes imposed under Title VI of the Tax Code are taxes on property[24] which are imposed on "goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported."[25] Though excise taxes are paid by the manufacturer or producer before removal of domestic products from the place of production[26] or by the owner or importer before the release of imported articles from the customs house,[27] the same partake of the nature of indirect taxes when it is passed on to the subsequent purchaser.

Indirect taxes are defined as those wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted to another person. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered.[28]

Accordingly, when the excise taxes paid by the supplier were passed on to Diageo, what was shifted is not the tax *per se* but an additional cost of the goods sold. Thus, the supplier remains the statutory taxpayer even if Diageo, the purchaser, actually shoulders the burden of tax.

The statutory taxpayer is the proper party to claim refund of indirect taxes.

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[23] G.R. 173594, February 6, 2008, 544 SCRA 100, 112.

[24] *Petron Corporation v. Tiangco,* G.R. No. 158881, April 16, 2008, 551 SCRA 484, 493-494.

[25] TAX CODE, Sec. 129.

[26] TAX CODE, Sec. 130(A)(2).

[27] TAX CODE, Sec. 131(A).

[28] *CIR v. PLDT Co.*, G.R. No. 140230, December 15, 2005, 478 SCRA 61, 72.

As defined in Section 22(N) of the Tax Code, a taxpayer means any person subject to tax. He is, therefore, the person legally liable to file a return and pay the tax as provided for in Section 130(A). As such, he is the person entitled to claim a refund.

Relevant is Section 204(C) of the Tax Code which provides:

> Section 204. *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.* – The Commissioner may –
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> x x x x x x x x x
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> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refined their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed **unless the taxpayer** files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund. (Emphasis supplied)

Pursuant to the foregoing, the person entitled to claim a tax refund is the statutory taxpayer or the person liable for or subject to tax.[29] In the present case, it is not disputed that the supplier of Diageo imported the subject raw alcohol, hence, it was the one directly liable and obligated to file a return and pay the excise taxes under the Tax Code before the goods or products are removed from the customs house. It is, therefore, the statutory taxpayer as contemplated by law and remains to be so, even if it shifts the burden of tax to Diageo. Consequently, the right to claim a refund, if legally allowed, belongs to it and cannot be transferred to another, in this case Diageo, without any clear provision of law allowing the same.

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[29] *See* TAX CODE, Sec. 22(N).

Unlike the law on Value Added Tax which allows the subsequent purchaser under the tax credit method to refund or credit input taxes passed on to it by a supplier,[30] no provision for excise taxes exists granting non-statutory taxpayer like Diageo to claim a refund or credit. It should also be stressed that when the excise taxes were included in the purchase price of the goods sold to Diageo, the same was no longer in the nature of a tax but already formed part of the cost of the goods.

Finally, statutes granting tax exemptions are construed *stricissimi juris* against the taxpayer and liberally in favor of the taxing authority. A claim of tax exemption must be clearly shown and based on language in law too plain to be mistaken.[31] Unfortunately, Diageo failed to meet the burden of proof that it is covered by the exemption granted under Section 130(D) of the Tax Code.

In sum, Diageo, not being the party statutorily liable to pay excise taxes and having failed to prove that it is covered by the exemption granted under Section 130(D) of the Tax Code, is not the proper party to claim a refund or credit of the excise taxes paid on the ingredients of its exported locally produced liquor.

WHEREFORE, the petition is **DENIED** and the assailed CTA *En Banc* Decision in CTA EB No. 260 dated July 2, 2008 is **AFFIRMED**.

SO ORDERED.

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

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[30] See *Commissioner of Internal Revenue v. Seagate Technology (Phil.)*, G.R. No. 153866, February 11, 2005, 451 SCRA 132, 141-143; TAX CODE, Sec. 110(B).

[31] *Quezon City v. ABS-CBN Broadcasting Corp.*, G.R. No. 166408, October 6, 2008, 568 SCRA 496, 515.

SECOND DIVISION

[G.R. No. 183827. November 12, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ENERIO ENDING *Y* ONYONG,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; DESERVE NO MERIT IN CASE AT BAR; REASONS.— The defense of appellant is anchored on denial and alibi which do not impress belief. As often stressed, "[m]ere denial, if unsubstantiated by clear and convincing evidence, has no weight in law and cannot be given greater evidentiary value than the positive testimony of a rape victim." In this case, appellant's testimony, particularly his denial, was not substantiated by clear and convincing evidence. Also, for his alibi to prosper, appellant must establish that he was not at the *locus delicti* at the time the offense was committed and that it was physically impossible for him to be at the scene of the crime at the time of its commission. Appellant failed to establish these elements. The fact that "AAA" was living with her grandparents did not preclude the possibility that appellant was present at the crime scenes during their commission. Appellant himself admitted that the distance between his residence and that of "AAA's" grandparents is only approximately 7½ kilometers and which can be traversed by riding a *pedicab* in less than 30 minutes. In other words, it was not physically impossible for appellant to have been at the *situs* of the crimes during the dates when the separate acts of rape were committed. Moreover, it has been invariably ruled that alibi cannot prevail over the positive identification of the accused. Here, appellant was positively identified by "AAA" as the perpetrator of the crimes without showing any dubious reason or fiendish motive on her part to falsely charge him.

2. ID.; ID.; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE COURTS BELOW, ACCORDED RESPECT.— The Court, like the courts below, finds that "AAA" was without doubt telling the truth when she declared that her father raped her on three separate occasions. She was consistent in her

narration on how she was abused by her father in their own house, in the copra drier, and even in a nearby pasture land. After she was forced to lie down, appellant removed her clothes, went on top of her, inserted his penis into her vagina and threatened her with death if she would report the incidents. Hence, appellant's attempt to discredit the testimony of "AAA" deserves no merit. "[W]hen credibility is in issue, the [Court] generally defers to the findings of the trial court considering that it was in a better position to decide the question, having heard the witnesses themselves and observed their deportment during trial." Here, there is nothing from the records that would impel this Court to deviate from the findings and conclusions of the trial court as affirmed by the CA.

3. CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP, DULY ESTABLISHED. — Under Article 266-B of the Revised Penal Code (RPC), as amended by Republic Act (RA) No. 8353 or The Anti-Rape Law of 1997, the concurrence of minority and relationship qualifies the crime of rape. To warrant the imposition of the death penalty however, both the minority and the relationship must be alleged in the Information and proved during the trial. In the instant case, both circumstances were properly alleged in the Informations and proved during trial. The Informations alleged that "AAA" was 15 years old when the crimes were committed. Her minority was established not only by her Certificate of Live Birth but also by her testimony that she was born on November 6, 1985. Anent "AAA's" relationship with appellant, the Informations sufficiently alleged that "AAA" is appellant's daughter. This fact was likewise openly admitted by the appellant and further bolstered by the said Certificate of Live Birth indicating appellant as "AAA's" father. Moreover, the relationship between appellant and "AAA" became the subject of admission during the pre-trial conference.

4. ID.; ID.; PROPER PENALTY IS *RECLUSION PERPETUA* WITHOUT ELIGIBILITY FOR PAROLE.— Pursuant to Article 266-B of the RPC, the presence of the above-mentioned special qualifying circumstances increases the penalty to death. In view, however, of the passage of RA No. 9346 proscribing the imposition of death penalty, the proper penalty imposable

on appellant, in lieu of death and pursuant to Section 2 thereof, is *reclusion perpetua*. Thus, the CA correctly sentenced appellant to *reclusion perpetua*. Notably, however, the assailed Decision of the appellate court failed to provide that appellant shall not be eligible for parole pursuant to Section 3 of the said law; hence, the same needs to be modified in said respect. Accordingly, appellant is declared not eligible for parole.

5. ID.; ID.; PECUNIARY LIABILITIES.— The Court upholds the award of ₱75,000.00 as civil indemnity since this is mandatory upon conviction for rape if the crime is qualified by circumstances which warrant the imposition of the death penalty, as in this case. The award of ₱75,000.00 as moral damages is likewise upheld as the same is awarded without need of pleading the basis thereof, other than the fact of rape. However, the award of exemplary damages is increased to ₱30,000.00 in line with prevailing jurisprudence. Likewise, interest at the rate of six percent (6%) *per annum* shall be imposed on all the damages awarded from the date of finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

The controversy in this case involving incestuous rape is essentially one of credibility, a weighing of the evidence of the prosecution against that of the defense. In this regard, the settled doctrine is that the findings of the trial court on the credibility of a witness, especially when affirmed by the appellate court, is entitled to great weight and respect.[1] Absent any showing

[1] *People v. Saludo*, G.R. No. 178406, April 6, 2011, 647 SCRA 374, 387.

that the trial court overlooked, misunderstood or misapplied material facts or circumstances, which if considered would have changed the outcome of the case, this Court finds no reason to overturn the findings of the trial court thereon,[2] as in the instant case.

Enerio Ending *y* Onyong (appellant) assails the September 28, 2007 Decision[3] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00047 affirming with modification the October 17, 2001 Decision[4] of the Regional Trial Court (RTC), Branch 13, Oroquieta City in Criminal Case Nos. 1567-13-1295, 1568-13-1296 and 1569-13-1297 finding him guilty beyond reasonable doubt of three counts of rape.

Factual Antecedents

In three separate Informations,[5] appellant was indicted for raping his own daughter, "AAA."[6] Except for the dates of occurrence, the recitals of the Informations were similarly worded. For brevity, we quote the accusatory portion in Criminal Case No. 1567-13-1295, to wit:

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[2] *People v. Tubat*, G.R. No. 183093, February 1, 2012.

[3] CA *rollo*, pp. 97-110; penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Romulo V. Borja and Elihu A. Ybañez.

[4] Records, Vol. 2, pp. 58-61; penned by Judge Ma. Nimfa Penaco-Sitaca.

[5] Information for Criminal Case No. 1567-13-1295, records, Vol. I, pp. 2-3; Information for Criminal Case No. 1568-13-1296,, Vol. II, pp. 2-3; Information for Criminal Case No. 1569-13-1297, Vol. III, pp. 2-3.

[6] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 5, 2004." (*People v. Dumadag*, G.R. No.176740, June 22, 2011, 652 SCRA 535, 538-539.)

That on or about January 2, 2001 at about 3:00 in the afternoon at barangay "CCC," municipality of "DDD," province of Misamis Occidental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs ordered his own daughter "AAA," to help him pasture their cows at the land of her grandfather and while there accused [forcibly] brought her beneath [sic] a banana plantation then willfully, unlawfully and feloniously did then and there through threat, force and intimidation have carnal knowledge with [sic] his own daughter "AAA," a minor, 15 years old against her will and consent.

CONTRARY TO LAW, with qualifying circumstance of relative within the 2nd degree of consanguinity.[7]

When arraigned on April 3, 2001, appellant pleaded not guilty on all the three Informations.[8] Thereupon, pre-trial and trial ensued.

Version of the Prosecution

"AAA" is the second eldest in a brood of four siblings born to appellant and "BBB." At the time she testified, "AAA" was just 15 years old[9] having been born on November 6, 1985.[10]

"AAA" recounted that on January 18, 2000, she woke up early as it was the day of the National Elementary Achievement Test or NEAT. After taking a bath at a well near their house, she went inside her room to dress up. Shortly thereafter, her father (appellant) entered the room, embraced her and forcibly pulled the towel wrapped around her naked body. Appellant then pushed her to the floor, lowered his pants to his thigh, straddled her and inserted his penis into her vagina. She felt pain in her vagina but did not run or shout as it would be futile to do so since her mother was away attending a dawn rosary prayer while her brothers were still at the well. Besides, she was afraid because appellant was carrying a bolo and told her

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[7] Records, Vol. I, p. 2.

[8] *Id.* at 24.

[9] TSN, July 5, 2001, p. 2.

[10] *Id.* at 3.

not to tell her mother about the incident, otherwise he would kill them both.

"AAA's" ordeal was repeated sometime in the 4th week of January 2000 at about 7:00 p.m. Appellant requested her to help in chopping dried coconut meat at the copra drier of her grandfather.[11] As soon as she entered the copra drier, appellant forced her to lie down on a piece of wood, undressed her, placed himself on top of her, embraced her and then inserted his private organ into her vagina. After the assault, "AAA" went home. She still did not tell anybody about her ordeal because of her father's threats. Unfortunately for "AAA," this sexual assault was not the last and her misfortune was still far from over.

On January 2, 2001, at about 3:00 p.m., "AAA" went to "CCC" to help her father pasture their cow. Shortly after her arrival, appellant forced her to lean on a rock while he lowered his pants. He then took off her panty, inserted his penis into her vagina, kissed her and fondled her breasts. After this latest ordeal, "AAA" again kept mum and did not tell her mother of what befell her.[12]

Days after, "AAA" told her classmate "EEE" and their teacher "FFF" of what happened to her.[13] After learning of appellant's bestial acts committed against her student, "FFF" told the school principal about what happened to "AAA." The school principal, in turn, notified "AAA's" grandfather. It was "AAA's" grandfather who then informed "BBB" of her daughter's ordeal. "FFF," together with the guidance counselor, reported the incident to the police. "AAA" submitted herself to a medical examination, the result[14] of which showed the presence of old lacerations in her private parts.

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[11] *Id.* at 14.

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

[13] *Id.* at 7.

[14] See Medical Certificate, Exhibit "A"; records, Vol. III, p. 8.

Version of the Defense

Appellant testified in his own behalf and presented no other witnesses. In his Brief, he summarized his testimony thus:

> [Appellant] is 47 years old, married, and a resident of "CCC," [Municipality] of "DDD," Misamis Occidental. He has four x x x children, one of whom is "AAA" x x x. Sometime in 1998, he and his wife sent "AAA" to the house of his parents-in-law because she [had] been raped by a certain "GGG," wherein a complaint [had] been filed before the *barangay*. Eventually, the said case was amicably settled. As far as the instant case is concerned, [appellant] could not think of any reason, why her own daughter, whom he loves so dearly would file charges of rape against him. In the first place, "AAA" was then living with her grandparents at the time the alleged incident occurred. [He] recounted though that sometime in 1999 during a town fiesta in Oroquieta City, he reprimanded "AAA" for seeing [her] boyfriend "HHH". [He] warned her not to see her boyfriend again. He remembered that when he scolded her, he was then armed with a scythe. During their confrontation, h[e] slapped her. He knew that her daughter harbored ill feelings toward him.[15]

Ruling of the Regional Trial Court

After trial, the RTC was firmly convinced that "AAA" was telling the truth about her defilement and that it was appellant, her own father, who abused her. Thus, in its Decision[16] of October 17, 2001, the RTC declared appellant guilty of three counts of rape and imposed upon him the penalty of death for each count of rape with damages.

Appellant seasonably appealed to this Court. However, pursuant to the Court's pronouncement in *People v. Mateo*,[17] the case was transferred to the CA for intermediate review.

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[15] CA *rollo*, pp. 42-43.

[16] Records, Vol. 2, pp. 58-61.

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

Ruling of the Court of Appeals

The CA, in its Decision[18] of September 28, 2007, upheld the RTC's judgment of conviction after likewise being morally convinced that appellant consummated his debauched design over his daughter through intimidation, threat and force. However, considering the proscription on the imposition of the death penalty, it reduced the penalty imposed from death to *reclusion perpetua*, but increased the amounts of moral and exemplary damages awarded to "AAA."

Hence, the present appeal.

Issue

Raising as his lone assignment of error the argument that the court *a quo* erred in declaring him guilty beyond reasonable doubt of three counts of rape, appellant would have this Court disregard the testimony of "AAA." According to him, he could not have raped "AAA" at the time of the alleged incidents since she was then living with her grandparents and not with him. Also, "AAA" was ill-motivated in filing the charges against him.

Our Ruling

As appellant's arguments neither impress nor convince this Court, the present appeal must perforce fail.

Appellant's denial and alibi deserve no merit.

The defense of appellant is anchored on denial and alibi which do not impress belief. As often stressed, "[m]ere denial, if unsubstantiated by clear and convincing evidence, has no weight in law and cannot be given greater evidentiary value than the positive testimony of a rape victim."[19] In this case, appellant's testimony, particularly his denial, was not substantiated

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[18] CA *rollo*, pp. 97-110.

[19] *People v. Perez*, G.R. No. 182924, December 24, 2008, 575 SCRA 653, 678-679.

by clear and convincing evidence. Also, for his alibi to prosper, appellant must establish that he was not at the *locus delicti* at the time the offense was committed and that it was physically impossible for him to be at the scene of the crime at the time of its commission.[20] Appellant failed to establish these elements. The fact that "AAA" was living with her grandparents did not preclude the possibility that appellant was present at the crime scenes during their commission. Appellant himself admitted that the distance between his residence and that of "AAA's" grandparents is only approximately 7½ kilometers and which can be traversed by riding a *pedicab* in less than 30 minutes.[21] In other words, it was not physically impossible for appellant to have been at the *situs* of the crimes during the dates when the separate acts of rape were committed. Moreover, it has been invariably ruled that alibi cannot prevail over the positive identification of the accused. Here, appellant was positively identified by "AAA" as the perpetrator of the crimes without showing any dubious reason or fiendish motive on her part to falsely charge him. The contention of appellant that "AAA" was motivated by hatred because he prevented her from having a boyfriend is unconvincing. There is nothing novel in such a contrived defense. "Motives such as resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a rape victim."[22] It is a jurisprudentially conceded rule that "[i]t is against human nature for a young girl to fabricate a story that would expose herself as well as her family to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her own father."[23]

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[20] *People v. Aycardo*, G.R. No. 168299, October 6, 2008, 567 SCRA 523, 534.

[21] TSN, August 27, 2001, pp. 6-7.

[22] *People v. Aure*, G.R. No. 180451, October 17, 2008, 569 SCRA 836, 864.

[23] *People v. Dela Cruz*, G.R. No. 177572, February 26, 2008, 546 SCRA 703, 718.

The Court, like the courts below, finds that "AAA" was without doubt telling the truth when she declared that her father raped her on three separate occasions. She was consistent in her narration on how she was abused by her father in their own house, in the copra drier, and even in a nearby pasture land. After she was forced to lie down, appellant removed her clothes, went on top of her, inserted his penis into her vagina and threatened her with death if she would report the incidents. Hence, appellant's attempt to discredit the testimony of "AAA" deserves no merit. "[W]hen credibility is in issue, the [Court] generally defers to the findings of the trial court considering that it was in a better position to decide the question, having heard the witnesses themselves and observed their deportment during trial."[24] Here, there is nothing from the records that would impel this Court to deviate from the findings and conclusions of the trial court as affirmed by the CA.

Qualifying circumstances of minority and relationship duly established

Under Article 266-B of the Revised Penal Code (RPC), as amended by Republic Act (RA) No. 8353 or The Anti-Rape Law of 1997, the concurrence of minority and relationship qualifies the crime of rape. To warrant the imposition of the death penalty however, both the minority and the relationship must be alleged in the Information and proved during the trial.

In the instant case, both circumstances were properly alleged in the Informations and proved during trial. The Informations alleged that "AAA" was 15 years old when the crimes were committed. Her minority was established not only by her Certificate of Live Birth[25] but also by her testimony that she was born on November 6, 1985.[26] Anent "AAA's" relationship

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[24] *People v. Veluz*, G.R. No. 167755, November 28, 2008, 572 SCRA 500, 511.

[25] Exhibit "B", records, Vol. I, p. 45.

[26] TSN, July 5, 2001, p. 3.

with appellant, the Informations sufficiently alleged that "AAA" is appellant's daughter. This fact was likewise openly admitted by the appellant[27] and further bolstered by the said Certificate of Live Birth indicating appellant as "AAA's" father. Moreover, the relationship between appellant and "AAA" became the subject of admission during the pre-trial conference.[28]

The Penalty

Pursuant to Article 266-B of the RPC, the presence of the above-mentioned special qualifying circumstances increases the penalty to death. In view, however, of the passage of RA No. 9346[29] proscribing the imposition of death penalty, the proper penalty imposable on appellant, in lieu of death and pursuant to Section 2 thereof, is *reclusion perpetua*. Thus, the CA correctly sentenced appellant to *reclusion perpetua*. Notably, however, the assailed Decision of the appellate court failed to provide that appellant shall not be eligible for parole pursuant to Section 3 of the said law; hence, the same needs to be modified in said respect. Accordingly, appellant is declared not eligible for parole.

The Pecuniary Liabilities

The Court upholds the award of ₱75,000.00 as civil indemnity since this is mandatory upon conviction for rape if the crime is qualified by circumstances which warrant the imposition of the death penalty, as in this case. The award of ₱75,000.00 as

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[27] TSN, August 27, 2001, p. 1.

[28] Records, Vol. I, p. 30.

[29] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. – Although the incidents in this case happened in 2001 or before RA No. 9346 took effect in 2006, the law is nevertheless applicable to herein appellant in view of the principle in criminal law that penal laws which are favorable to the accused are given retroactive effect pursuant to Article 22 of the Revised Penal Code.

moral damages is likewise upheld as the same is awarded without need of pleading the basis thereof, other than the fact of rape. However, the award of exemplary damages is increased to ₱30,000.00 in line with prevailing jurisprudence.[30] Likewise, interest at the rate of six percent (6%) *per annum* shall be imposed on all the damages awarded from the date of finality of this judgment until fully paid.[31]

WHEREFORE, the appeal is **DISMISSED**. The September 28, 2007 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00047 is **AFFIRMED with modifications** in that appellant Enerio Ending *y* Onyong is declared not eligible for parole, the amount of exemplary damages awarded to "AAA" is increased to ₱30,000.00 for each case, and interest at the rate of six percent (6%) *per annum* is imposed on all the damages awarded from the date of finality of this judgment until fully paid.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[30] *People v. Mariano*, G.R. No. 168693, June 19, 2009, 590 SCRA 74, 94.

[31] *People v. Alverio*, G.R. No. 194259, March 16, 2011, 645 SCRA 658, 670.

FIRST DIVISION

[G.R. No. 184601. November 12, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARCIAL MALICDEM *Y* MOLINA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS, ACCORDED RESPECT.— Time and again, this Court has stated that, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances which would alter a conviction, it generally defers to the trial court's evaluation of the credibility of witnesses especially if such findings are affirmed by the Court of Appeals. This must be so since the trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed firsthand their deportment and manner of testifying under grueling examination. x x x Given the factual circumstances of the present case, we see no need to depart from the foregoing rules. Appellant failed to present proof of any showing that the trial court overlooked, misconstrued or misapplied some fact or circumstance of weight and substance that would have affected the result of the case. Prosecution witnesses positively identified appellant to have stabbed the victim.

2. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS; UNLAWFUL AGRESSION, NOT ESTABLISHED.— We agree that the death of Wilson at the hands of appellant was not occasioned by self-defense. For this Court to consider self-defense as a justifying circumstance, appellant has to prove the following essential elements: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense. The Court has repeatedly stated that a person who invokes self-defense has

the burden to prove all the aforesaid elements. The Court also considers unlawful aggression on the part of the victim as the most important of these elements. Thus, unlawful aggression must be proved first in order for self-defense to be successfully pleaded, whether complete or incomplete. x x x Based on the summary of facts by the RTC as affirmed by the Court of Appeals, the defense failed to discharge its burden to prove unlawful aggression on the part of Wilson by sufficient and satisfactory proof. The records were bereft of any indication that the attack by Wilson was not a mere threat or just imaginary. Bernardo, Joel and Wilson were just in the act of leaving when appellant suddenly plunged a knife to Wilson's chest.

3. ID.; QUALIFYING CIRCUMSTANCES; TREACHERY, PRESENT.— Anent the finding of treachery by the RTC, we agree that appellant's act of suddenly stabbing Wilson as he was about to leave constituted the qualifying circumstance of treachery. As we previously ruled, treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. Here, appellant caught Wilson by surprise when he suddenly embraced him and proceeded immediately to plunge a knife to his chest. The swift turn of events did not allow Wilson to defend himself, in effect, assuring appellant that he complete the crime without risk to his own person. x x x Hence, we sustain the findings of the trial court and the Court of Appeals of the qualifying circumstance of treachery attended the commission of the crime.

4. ID.; MURDER; PENALTY.— Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, provides for the penalty of *reclusion perpetua* to death for the crime of murder. There being no aggravating or mitigating circumstance, the RTC, as affirmed by the Court of Appeals, properly imposed the penalty of *reclusion perpetua*, pursuant to Article 63, paragraph 2, of the Revised Penal Code.

5. ID.; ID.; KINDS OF DAMAGES AWARDED TO THE VICTIM'S HEIRS.— Anent the award of 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. The heirs of the victim was able to prove before the trial court, actual damages in the amount of ₱38,300.00. Civil indemnity in the amount of ₱75,000.00 is mandatory and is granted without need of evidence other than the commission of the crime. Moral damages in the sum of ₱50,000.00 should be awarded despite the absence of proof of mental and emotional suffering of the victim's heirs. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. With respect to the award of exemplary damages, we agree with the Court of Appeals that the victim's heirs are entitled to it. x x x [R]ecent jurisprudence pegs the award of exemplary damages at ₱30,000.00. In addition, and in conformity with current policy, we also impose on all the monetary awards for damages interest at the legal rate of 6% *per annum* from date of finality of this Decision until fully paid.

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.*:

Before this Court is the appeal of the April 21, 2008 **Decision**[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 02522,[2] which affirmed with modification the July 31, 2006 **Decision**[3] of the Regional Trial Court (RTC), Branch 42, Dagupan City in Crim. Case No. 2002-0561-D, entitled *People of the Philippines*

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[1] *Rollo*, pp. 2-24; penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court) with Associate Justices Noel G. Tijam and Myrna Dimaranan Vidal, concurring.

[2] Entitled *People of the Philippines v. Marcial Malicdem y Molina.*

[3] CA *rollo*, pp. 51-66; penned by Judge Rolando G. Mislang.

v. Marcial Malicdem y Molina, that found appellant Marcial Malicdem guilty beyond reasonable doubt for the crime of murder.

On September 12, 2002, the following information for the crime of murder was filed against appellant:

> That on or about August 11, 2002 in the evening at Brgy. Anolid, Mangaldan, Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, with intent to kill and with treachery, did then and there, willfully, unlawfully and feloniously attack, stab and hit WILSON S. MOLINA, inflicting upon him a fatal stab wound on the vital part of the body, causing his untimely death to the damage and prejudice of his heirs.
>
> CONTRARY to Article 249 of the Revised Penal Code as amended by RA 7659.[4]

Appellant was arraigned on October 17, 2002 where he pleaded not guilty.[5] Trial on the merits ensued thereafter.

The prosecution presented the following as its witnesses: Dr. Ophelia T. Rivera (Dr. Rivera), Bernardo Casullar (Bernardo), Joel Concepcion (Joel), Felipe Molina (Felipe), and Maricon Nicolas (Maricon).

The defense presented as witnesses appellant and his wife, Anabel Malicdem (Anabel). Essentially, the appellant invoked self-defense to justify his participation in the cause of death of Wilson S. Molina (Wilson).

After both parties presented their respective evidence, the RTC rendered its Decision on July 31, 2006 convicting the accused of the crime charged.

The RTC summarized the testimonies of Bernardo and Joel in open court as follows:

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[4] Records, p. 3; signed by Teofilo A. Chiong, Jr., 2nd Assistant Provincial Prosecutor.

[5] *Id.* at 25.

On the night of August 11, 2002, as it was their practice after dinner, they met with Wilson near the artesian well. At around 9:00 p.m., while they were seated on the septic tank, appellant arrived asking if they knew the whereabouts of his godson, Rogelio[6] Molina (Rogelio). They answered in the negative. They noticed that appellant was reeking of alcohol and was drunk. Appellant asked again for the whereabouts of Rogelio. As they stood to leave, appellant suddenly embraced Wilson and lunged a six-inch knife to the left part of his chest. When appellant moved to strike again, Wilson was able to deflect this blow which resulted to a cut on his right arm. Intending to help his friend, Bernardo was hit by the knife in his stomach. In the course of aiding Wilson, Joel boxed the appellant. During the brawl, Francisco Molina, Rogelio's father, arrived at the scene, but was stabbed in the stomach by appellant. Appellant then ran away. Afterwards, Joel brought Wilson aboard a police patrol car to the Region I Medical Center in Dagupan City where Wilson was declared dead on arrival.[7]

In her post-mortem report, Dr. Rivera, Municipal Health Officer of Mangaldan, Pangasinan, stated:

FINDINGS:

Abrasion, 1.2 x 0.5 cm, just above the eyebrow, lateral aspect, left.

Stabbed (sic) wound, 3 cm, wound directed laterally and downward, parasternal line, infraclavicular area, left.

Abrasion (Teeth impression mark), middle third, anterior aspect, upper arm, left.

Stabbed (sic) wound, 3.5 cm, wound directed upward and posteriorly, middle third, medioposterior aspect, forearm, right.

Abrasion, 0.5 x 0.8 cm, lateral aspect, knee, left.

Abrasion, 2 x 1 cm, knee, right.

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[6] ROGEL in some parts of the *Rollo*.

[7] CA *rollo*, pp. 60-61.

CAUSE OF DEATH:

CARDIORESPIRATORY ARREST SECONDARY TO HYPOVOLEMIC SHOCK DUE TO STAB WOUND.[8]

The RTC gave a gist of the testimonies of appellant and Anabel as follows: Appellant and Anabel were in their house on the night of the incident. Appellant was looking after their children, aged four and seven, while Anabel was cooking dinner. When Anabel informed appellant that dinner was ready, he and Anabel went out to look for his godson, Rogelio. They went to the house of Rogelio's parents to look for the latter. They were informed, however, that Rogelio was not there. Rogelio's mother advised them to look outside.[9]

On their way home, the couple passed by the artesian well where Bernardo, Joel and Wilson were loitering. Appellant inquired from the three if they had seen Rogelio. Bernardo, allegedly, sarcastically replied "No, we have not seen him. Why do you look for him here, you have your eyes, you have your feet."[10] When appellant voiced out his observation that the three were drunk, he allegedly was struck by a bottle by Bernardo. Appellant tried to block the blow but the bottle still hit his right eyelid. A fistfight erupted between Bernardo and appellant, causing the bottle that Bernardo was holding to fall. Meanwhile, Joel and Wilson stationed themselves on different sides of the appellant. It was here that Anabel allegedly saw Wilson drawing a knife. She shouted a warning to her husband. Having issued her warning, Wilson boxed Anabel in the mouth and approached appellant. Appellant quickly grabbed a piece of bamboo and waited for Wilson to approach him. When Wilson was near enough, appellant grabbed hold of Wilson's arm and grappled with him for possession of the knife. While this was going on, Bernardo joined the melee and proceeded to repeatedly punch appellant. Appellant made a side-move causing Bernardo to be

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[8] Records, p. 83.

[9] CA *rollo*, pp. 55-57.

[10] TSN, October 28, 2004, p. 7.

hit by the knife held by Wilson in the stomach. Still grappling for possession of the knife with Wilson, Francisco Molina, Rogelio's father, arrived and tried to pacify the combatants. Appellant hit Francisco on the cheek. Weak from the blows he had received, appellant fell to the ground. Anabel had to help him up so that they could go home. Bernardo followed and shouted: "I will kill you, I will make sure that I will have my revenge."[11]

On cross examination, appellant stated that after Bernardo was hit with the knife, there was a continued grappling for the knife. Finally, appellant was able to throw Wilson to the ground. He said that the knife did not fall to the ground but was held by Wilson. Unfortunately, when Wilson was thrown to the ground he fell on the knife he was still holding.[12]

The RTC, after observing inconsistencies in the testimonies of the appellant and his wife, found appellant guilty beyond reasonable doubt of the crime of murder and declared:

> Undoubtedly, the prosecution was able to prove clearly and convincingly that [appellant] killed [Wilson] not in self defense. The sudden attack [on Wilson] by [appellant] without the former having [an] inkling of the evil act of [appellant] and opportunity to defend himself constitute the qualifying aggravating circumstance of treachery.
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> x x x x x x x x x
>
> WHEREFORE, premises considered, [appellant] MARCIAL MALICDEM his guilt having been proved beyond reasonable doubt of the felony of MURDER, is hereby convicted of the said felony and, there being no other aggravating nor mitigating circumstances, is sentenced to suffer the penalty of *RECLUSION PERPETUA*. In addition, he is ordered to pay ₱38,800 for actual damages, ₱50,000 for the death of Wilson Molina and another ₱50,000 as moral damages to the heirs of the victim.[13]

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[11] TSN, May 27, 2004, pp. 6-11.

[12] TSNs, October 28, 2004, pp. 16-17 and November 23, 2004, pp. 4-5.

[13] CA *rollo*, p. 66.

Appellant filed his notice of appeal on September 15, 2006. The same was given due course.

The Court of Appeals affirmed with modification the July 31, 2006 decision of the RTC and disposed of the appeal in the following manner:

> **WHEREFORE**, premises considered, the Decision of the Regional Trial Court of Dagupan City, Branch 42, promulgated on August 31, 2006, in Criminal Case No. 2002-0561-D finding [appellant] guilty beyond reasonable doubt of the crime of murder, and sentencing him to suffer the penalty of *reclusion perpetua* is hereby **AFFIRMED with MODIFICATION** in that aside from the damages awarded by the trial court, [appellant] is also directed to pay exemplary damages in the amount of ₱25,000.[14]

Petitioner's confinement was confirmed by the Bureau of Corrections on December 15, 2008.[15]

Hence, this appeal.[16] Both the appellee[17] and appellant[18] waived the filing of supplemental briefs and adopted the briefs they filed before the Court of Appeals.

Appellant made the following assignment of errors in his appeal:

ASSIGNMENT OF ERRORS

I

THE TRIAL COURT GRAVELY ERRED IN ITS INTERPRETATION OF FACTS.

II

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE APPARENT INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES.

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[14] *Rollo*, p. 24.

[15] *Id.* at 31.

[16] CA *rollo*, pp. 191-193.

[17] *Rollo*, pp. 42-44.

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

III

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE GUILT OF THE [APPELLANT] FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[19]

Appellant posits that the Court of Appeals misinterpreted the facts and circumstances of the case. He argues that minor inconsistencies and contradictions particularly in his and Anabel's testimonies did not affect their credibility as witnesses. He avers that the prosecution's version of the events was highly incredible since it was testified to that there was no grudge between the appellant and victim prior to the incident.

We affirm the April 21, 2008 Decision of the Court of Appeals with modification respecting the award of damages.

Time and again, this Court has stated that, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances which would alter a conviction, it generally defers to the trial court's evaluation of the credibility of witnesses especially if such findings are affirmed by the Court of Appeals.[20] This must be so since the trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed firsthand their deportment and manner of testifying under grueling examination.[21]

In *People v. Clores*,[22] this Court had occasion to state that:

When it comes to the matter of credibility of a witness, settled are the guiding rules, some of which are that (1) the [a]ppellate court will not disturb the factual findings of the lower [c]ourt, unless there is a showing that it had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case, which showing is

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[19] CA *rollo*, p. 89.

[20] *Ilisan v. People*, G.R. No. 179487, November 15, 2010, 634 SCRA 658, 663.

[21] *People v. Escleto*, G.R. No. 183706, April 25, 2012.

[22] 263 Phil. 585, 591 (1990).

absent herein; (2) the findings of the [t]rial [c]ourt pertaining to the credibility of a witness is entitled to great respect since it had the opportunity to examine his demeanor as he testified on the witness stand, and, therefore, can discern if such witness is telling the truth or not; and (3) a witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent on cross-examination is a credible witness. (Citations omitted.)

Given the factual circumstances of the present case, we see no need to depart from the foregoing rules. Appellant failed to present proof of any showing that the trial court overlooked, misconstrued or misapplied some fact or circumstance of weight and substance that would have affected the result of the case. Prosecution witnesses positively identified appellant to have stabbed the victim.

We agree that the death of Wilson at the hands of appellant was not occasioned by self-defense. For this Court to consider self-defense as a justifying circumstance, appellant has to prove the following essential elements: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.[23] The Court has repeatedly stated that a person who invokes self-defense has the burden to prove all the aforesaid elements. The Court also considers unlawful aggression on the part of the victim as the most important of these elements. Thus, unlawful aggression must be proved first in order for self-defense to be successfully pleaded, whether complete or incomplete.[24]

As stated in *People v. Fontanilla*[25]:

Unlawful aggression is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. Actual or material

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[23] *People v. Dolorido*, G.R. No. 191721, January 12, 2011, 639 SCRA 496, 502-503.

[24] *Id.* at 503.

[25] G.R. No. 177743, January 25, 2012, 664 SCRA 150, 158, citing *People v. Nugas*, G.R. No. 172606, November 23, 2011, 661 SCRA 159, 168.

unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.

x x x It is basic that once an accused in a prosecution for murder or homicide admitted his infliction of the fatal injuries on the deceased, he assumed the burden to prove by clear, satisfactory and convincing evidence the justifying circumstance that would avoid his criminal liability x x x.

Based on the summary of facts by the RTC as affirmed by the Court of Appeals, the defense failed to discharge its burden to prove unlawful aggression on the part of Wilson by sufficient and satisfactory proof. The records were bereft of any indication that the attack by Wilson was not a mere threat or just imaginary. Bernardo, Joel and Wilson were just in the act of leaving when appellant suddenly plunged a knife to Wilson's chest.

Anent the finding of treachery by the RTC, we agree that appellant's act of suddenly stabbing Wilson as he was about to leave constituted the qualifying circumstance of treachery. As we previously ruled, treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.[26] Here, appellant caught Wilson by surprise when he suddenly embraced him and proceeded immediately to plunge a knife to his chest. The swift turn of events did not allow Wilson to defend himself, in effect, assuring appellant that he complete the crime without risk to his own person.

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[26] *People v. Laurio*, G.R. No. 182523, September 13, 2012.

Moreover, we agree with the Court of Appeals that the claim of appellant that accident was the cause of the death of the victim, cannot be taken into consideration in lieu of self-defense. As we stated in *Toledo v. People*[27]:

> The petitioner is proscribed from changing in this Court, his theory of defense which he adopted in the trial court and foisted in the CA – by claiming that he stabbed and killed the victim in complete self-defense. The petitioner relied on Article 12, paragraph 4 of the Revised Penal Code in the trial and appellate courts, but adopted in this Court two divergent theories – (1) that he killed the victim to defend himself against his unlawful aggression; hence, is justified under Article 11, paragraph 1 of the Revised Penal Code; (2) that his bolo accidentally hit the victim and is, thus, exempt from criminal liability under Article 12, paragraph 4 of the Revised Penal Code.
>
> It is an aberration for the petitioner to invoke the two defenses at the same time because the said defenses are intrinsically antithetical. There is no such defense as accidental self-defense in the realm of criminal law.
>
> Self-defense under Article 11, paragraph 1 of the Revised Penal Code necessarily implies a deliberate and positive overt act of the accused to prevent or repel an unlawful aggression of another with the use of reasonable means. The accused has freedom of action. He is aware of the consequences of his deliberate acts. The defense is based on necessity which is the supreme and irresistible master of men of all human affairs, and of the law. From necessity, and limited by it, proceeds the right of self-defense. The right begins when necessity does, and ends where it ends. Although the accused, in fact, injures or kills the victim, however, his act is in accordance with law so much so that the accused is deemed not to have transgressed the law and is free from both criminal and civil liabilities. On the other hand, **the basis of exempting circumstances under Article 12 of the Revised Penal Code is the complete absence of intelligence, freedom of action, or intent, or the absence of negligence on the part of the accused. The basis of the exemption in Article 12, paragraph 4 of the Revised Penal Code is lack of negligence and intent.** The accused does not commit either an intentional or culpable felony. The accused commits a crime but

[27] 482 Phil. 292, 301-309 (2004).

there is no criminal liability because of the complete absence of any of the conditions which constitute free will or voluntariness of the act. An accident is a fortuitous circumstance, event or happening; an event happening wholly or partly through human agency, an event which under the circumstances is unusual or unexpected by the person to whom it happens.

Self-defense, under Article 11, paragraph 1, and accident, under Article 12, paragraph 4 of the Revised Penal Code, are affirmative defenses which the accused is burdened to prove, with clear and convincing evidence. Such affirmative defenses involve questions of facts adduced to the trial and appellate courts for resolution. **By admitting killing the victim in self-defense or by accident without fault or without intention of causing it, the burden is shifted to the accused to prove such affirmative defenses. He should rely on the strength of his own evidence and not on the weakness of that of the prosecution. If the accused fails to prove his affirmative defense, he can no longer be acquitted.**

x x x x x x x x x

x x x With the failure of the petitioner to prove self-defense, the inescapable conclusion is that he is guilty of homicide as found by the trial court and the CA. He cannot even invoke Article 12, paragraph 4 of the Revised Penal Code. (Citations omitted and emphases supplied.)

Hence, we sustain the findings of the trial court and the Court of Appeals of the qualifying circumstance of treachery attended the commission of the crime.

Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, provides for the penalty of *reclusion perpetua* to death for the crime of murder. There being no aggravating or mitigating circumstance, the RTC, as affirmed by the Court of Appeals, properly imposed the penalty of *reclusion perpetua*, pursuant to Article 63, paragraph 2, of the Revised Penal Code.[28]

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[28] *People v. Escleto*, G.R. No. 183706, April 25, 2012.

However, to conform to existing jurisprudence the Court must modify the amount of indemnity for death and exemplary damages awarded by the courts *a quo*.

Anent the award of 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.[29]

The heirs of the victim was able to prove before the trial court, actual damages in the amount of ₱38,300.00. Civil indemnity in the amount of ₱75,000.00 is mandatory and is granted without need of evidence other than the commission of the crime.[30] Moral damages in the sum of ₱50,000.00 should be awarded despite the absence of proof of mental and emotional suffering of the victim's heirs.[31] As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family.[32]

With respect to the award of exemplary damages, we agree with the Court of Appeals that the victim's heirs are entitled to it. We have previously stated:

> Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an

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[29] *People v. Rebucan*, G.R. No. 182551, July 27, 2011, 654 SCRA 726, 758.

[30] *People v. Anticamara*, G.R. No. 178771, June 8, 2011, 651 SCRA 489, 520-521.

[31] *People v. Concillado*, G.R. No. 181204, November 28, 2011, 661 SCRA 363, 384; *People v. Fontanilla*, *supra* note 25 at 162.

[32] *People v. Escleto*, *supra* note 28.

aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code.[33]

However, recent jurisprudence pegs the award of exemplary damages at ₱30,000.00.[34]

In addition, and in conformity with current policy, we also impose on all the monetary awards for damages interest at the legal rate of 6% *per annum* from date of finality of this Decision until fully paid.[35]

WHEREFORE, the appeal is **DISMISSED**. The April 21, 2008 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02522 is **AFFIRMED**. Appellant **MARCIAL MALICDEM *Y* MOLINA** is found **GUILTY** beyond reasonable doubt of **MURDER**, and is sentenced to suffer the penalty of *reclusion perpetua*. Appellant is further ordered to pay the heirs of Wilson S. Molina the amounts of ₱38,300.00 as actual damages, ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages. All monetary awards for damages shall earn interest at the legal rate of 6% *per annum* from date of finality of this Decision until fully paid.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J., Bersamin, del Castillo,[*] and *Reyes, JJ.,* concur.

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[33] *People v. Salafranca*, G.R. No. 173476, February 22, 2012, 666 SCRA 501, 517, citing *People v. Catubig*, 416 Phil. 102, 119-120 (2001).

[34] *People v. Escleto*, *supra* note 28.

[35] *Id.*

[*] Per Raffle dated October 17, 2012.

SECOND DIVISION

[G.R. No. 189984. November 12, 2012]

IN THE MATTER OF THE PETITION FOR THE PROBATE OF THE LAST WILL AND TESTAMENT OF ENRIQUE S. LOPEZ

RICHARD B. LOPEZ, *petitioner, vs.* **DIANA JEANNE LOPEZ, MARYBETH DE LEON and VICTORIA L. TUAZON,** *respondents.*

SYLLABUS

CIVIL LAW; SUCCESSION; FORMS OF WILLS; THE LAW REQUIRES THAT THE ATTESTATION MUST STATE THE NUMBER OF PAGES USED UPON WHICH THE WILL IS WRITTEN; WHERE THE STATEMENT IN THE ACKNOWLEDGMENT PORTION OF THE WILL CANNOT BE DEEMED SUBSTANTIAL COMPLIANCE.— The law is clear that the attestation must state the number of pages used upon which the will is written. The purpose of the law is to safeguard against possible interpolation or omission of one or some of its pages and prevent any increase or decrease in the pages. While Article 809 allows substantial compliance for defects in the form of the attestation clause, Richard likewise failed in this respect. The statement in the Acknowledgment portion of the subject last will and testament that it "consists of 7 pages including the page on which the ratification and acknowledgment are written" cannot be deemed substantial compliance. The will actually consists of 8 pages including its acknowledgment which discrepancy cannot be explained by mere examination of the will itself but through the presentation of evidence *aliunde*.

APPEARANCES OF COUNSEL

P.C. Nolasco & Associates for petitioner.
Poblador Bautista & Reyes for Marybeth De Leon.
Jose Bernas for Diana Jean Lopez.
Ma. Luwalhati C. Cruz for Victoria L. Tuazon.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This Petition for Review on *Certiorari* assails the March 30, 2009 Decision[1] and October 22, 2009 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 87064 which affirmed the August 26, 2005 Decision[3] of the Regional Trial Court of Manila, Branch 42 (RTC), in SP. Proc. No. 99-95225 disallowing the probate of the Last Will and Testament of Enrique S. Lopez.

The Factual Antecedents

On June 21, 1999, Enrique S. Lopez (Enrique) died leaving his wife, Wendy B. Lopez, and their four legitimate children, namely, petitioner Richard B. Lopez (Richard) and the respondents Diana Jeanne Lopez (Diana), Marybeth de Leon (Marybeth) and Victoria L. Tuazon (Victoria) as compulsory heirs. Before Enrique's death, he executed a Last Will and Testament[4] on August 10, 1996 and constituted Richard as his executor and administrator.

On September 27, 1999, Richard filed a petition for the probate of his father's Last Will and Testament before the RTC of Manila with prayer for the issuance of letters testamentary in his favor. Marybeth opposed the petition contending that the purported last will and testament was not executed and attested as required by law, and that it was procured by undue and improper pressure and influence on the part of Richard. The said opposition was also adopted by Victoria.

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[1] *Rollo*, pp. 38-53. Penned by Associate Justice Noel G. Tijam, with Presiding Justice Conrado M. Vasquez, Jr., and Associate Justice Sesinando E. Villon, concurring.

[2] *Id.* at 55-58.

[3] Records, Vol. III, pp. 378-383.

[4] Exhibit "H", *id.* at 17-24.

After submitting proofs of compliance with jurisdictional requirements, Richard presented the attesting witnesses, namely: Reynaldo Maneja; Romulo Monteiro; Ana Maria Lourdes Manalo (Manalo); and the notary public who notarized the will, Atty. Perfecto Nolasco (Atty. Nolasco). The instrumental witnesses testified that after the late Enrique read and signed the will on each and every page, they also read and signed the same in the latter's presence and of one another. Photographs of the incident were taken and presented during trial. Manalo further testified that she was the one who prepared the drafts and revisions from Enrique before the final copy of the will was made.

Likewise, Atty. Nolasco claimed that Enrique had been his client for more than 20 years. Prior to August 10, 1996, the latter consulted him in the preparation of the subject will and furnished him the list of his properties for distribution among his children. He prepared the will in accordance with Enrique's instruction and that before the latter and the attesting witnesses signed it in the presence of one another, he translated the will which was written in English to Filipino and added that Enrique was in good health and of sound mind at that time.

On the other hand, the oppositors presented its lone witness, Gregorio B. Paraon (Paraon), Officer-in-Charge of the Notarial Section, Office of the Clerk of Court, RTC, Manila. His testimony centered mainly on their findings that Atty. Nolasco was not a notary public for the City of Manila in 1996, which on cross examination was clarified after Paraon discovered that Atty. Nolasco was commissioned as such for the years 1994 to 1997.

Ruling of the RTC

In the Decision dated August 26, 2005,[5] the RTC disallowed the probate of the will for failure to comply with Article 805 of the Civil Code which requires a statement in the attestation clause of the number of pages used upon which the will is written. It held that while Article 809 of the same Code requires mere substantial compliance of the form laid down in Article

[5] *Supra* note 3.

805 thereof, the rule only applies if the number of pages is reflected somewhere else in the will with no evidence *aliunde* or extrinsic evidence required. While the acknowledgment portion stated that the will consists of 7 pages including the page on which the ratification and acknowledgment are written, the RTC observed that it has 8 pages including the acknowledgment portion. As such, it disallowed the will for not having been executed and attested in accordance with law.

Aggrieved, Richard filed a Notice of Appeal which the RTC granted in the Order dated October 26, 2005.[6]

Ruling of the Court of Appeals

On March 30, 2009,[7] the CA issued the assailed decision dismissing the appeal. It held that the RTC erroneously granted Richard's appeal as the Rules of Court is explicit that appeals in special proceedings, as in this case, must be made through a record on appeal. Nevertheless, even on the merits, the CA found no valid reason to deviate from the findings of the RTC that the failure to state the number of pages of the will in the attestation clause was fatal. It noted that while Article 809 of the Civil Code sanctions mere substantial compliance with the formal requirements set forth in Article 805 thereof, there was a total omission of such fact in the attestation clause. Moreover, while the acknowledgment of the will made mention of "7 pages including the page on which the ratification and acknowledgment are written," the will had actually 8 pages including the acknowledgment portion thus, necessitating the presentation of evidence *aliunde* to explain the discrepancy. Richard's motion for reconsideration from the decision was likewise denied in the second assailed Resolution[8] dated October 22, 2009.

Hence, the instant petition assailing the propriety of the CA's decision.

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[6] *Id.* at 388.

[7] *Supra* note 1.

[8] *Supra* note 2.

Ruling of the Court

The petition lacks merit.

The provisions of the Civil Code on Forms of Wills, particularly, Articles 805 and 809 of the Civil Code provide:

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. (underscoring supplied)

ART. 809. In the absence of bad faith, forgery, or fraud, or undue and improper pressure and influence, defects and imperfections in the form of attestation or in the language used therein shall not render the will invalid if it is proved that the will was in fact executed and attested in substantial compliance with all the requirements of Article 805.

The law is clear that the attestation must state the number of pages used upon which the will is written. The purpose of the law is to safeguard against possible interpolation or omission of one or some of its pages and prevent any increase or decrease in the pages.[9]

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[9] *Caneda v. CA*, G.R. No. 103554, May 28, 1993, 222 SCRA 781, 790.

While Article 809 allows substantial compliance for defects in the form of the attestation clause, Richard likewise failed in this respect. The statement in the Acknowledgment portion of the subject Last Will and Testament that it "consists of 7 pages including the page on which the ratification and acknowledgment are written"[10] cannot be deemed substantial compliance. The will actually consists of 8 pages including its acknowledgment which discrepancy cannot be explained by mere examination of the will itself but through the presentation of evidence *aliunde*.[11] On this score is the comment of Justice J.B.L. Reyes regarding the application of Article 809, to wit:

> x x x The rule must be limited to disregarding those defects that can be supplied by an examination of the will itself: whether all the pages are consecutively numbered; whether the signatures appear in each and every page; whether the subscribing witnesses are three or the will was notarized. All these are facts that the will itself can reveal, and defects or even omissions concerning them in the attestation clause can be safely disregarded. *But the total number of pages, and whether all persons required to sign did so in the presence of each other must substantially appear in the attestation clause, being the only check against perjury in the probate proceedings.*[12] (Emphasis supplied)

Hence, the CA properly sustained the disallowance of the will. Moreover, it correctly ruled that Richard pursued the wrong mode of appeal as Section 2(a), Rule 41 of the Rules of Court explicitly provides that in special proceedings, as in this case, the appeal shall be made by record on appeal.

WHEREFORE, premises considered, the petition is **DENIED**.

SO ORDERED.

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

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[10] CA Decision, *rollo,* p. 51.

[11] *Testate Estate of the late Alipio Abada v. Abaja,* G.R. No. 147145, January 31, 2005, 450 SCRA 264, 276.

[12] *Azuela v. CA,* 521 Phil. 263, 278 (2006), citing *Caneda v. CA, supra* note 8, at 794.

SECOND DIVISION

[G.R. No. 192975. November 12, 2012]

REPUBLIC OF THE PHILIPPINES, represented by the Regional Executive Director of the Department of Environment and Natural Resources, Regional Office No. 3, *petitioner, vs.* **ROMAN CATHOLIC ARCHBISHOP OF MANILA,** *respondent.*

[G.R. No. 192994. November 12, 2012]

SAMAHANG KABUHAYAN NG SAN LORENZO KKK, INC., represented by its Vice President Zenaida Turla, *petitioner, vs.* **ROMAN CATHOLIC ARCHBISHOP OF MANILA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; A DENIAL OF A MOTION TO DISMISS CANNOT BE QUESTIONED IN AN EXTRAORDINARY REMEDY OF *CERTIORARI* EXCEPT IF TAINTED WITH GRAVE ABUSE OF DISCRETION.— An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided on the merits. Thus, as a general rule, the denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari* which is a remedy designed to correct errors of jurisdiction and not errors of judgment. However, when the denial of the motion to dismiss is tainted with grave abuse of discretion, the grant of the extraordinary remedy of *certiorari* may be justified. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

2. ID.; ID.; ID.; ID.; WHERE THE REGIONAL TRIAL COURT'S ORDER DENYING A MOTION TO DISMISS DOES NOT AMOUNT TO GRAVE ABUSE OF DISCRETION.— In the present case, the material averments, as well as the character of the relief prayed for by petitioners in the complaint before the RTC, show that their action is one for cancellation of titles and reversion, not for annulment of judgment of the RTC. The complaint alleged that Lot Nos. 43 to 50, the parcels of land subject matter of the action, were not the subject of the CFI's judgment in the relevant prior land registration case. Hence, petitioners pray that the certificates of title of RCAM be cancelled which will not necessitate the annulment of said judgment. Clearly, Rule 47 of the Rules of Court on annulment of judgment finds no application in the instant case. The RTC may properly take cognizance of reversion suits which do not call for an annulment of judgment of the RTC acting as a Land Registration Court. Actions for cancellation of title and reversion, like the present case, belong to the class of cases that "involve the title to, or possession of, real property, or any interest therein" and where the assessed value of the property exceeds ₱20,000.00, fall under the jurisdiction of the RTC. Consequently, no grave abuse of discretion amounting to lack or excess of jurisdiction can be attributed to the RTC in denying RCAM's motion to dismiss.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Navarro Jumamil Escolin & Martinez Law Offices for respondent.

Mantaring Bagasbas & Associates for Samahang Kabuhayan ng San Lazaro, KKK, Inc.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court are two separate petitions filed under Rule 45 of the Rules of Court seeking to set aside the April 22, 2010

Decision[1] and July 19, 2010 Resolution[2] of the Court of Appeals (CA) which ordered the Regional Trial Court (RTC), Branch 84[3] of Malolos, Bulacan to grant the motion to dismiss filed by respondent Roman Catholic Archbishop of Manila (RCAM) and to dismiss the complaint of petitioner Republic of the Philippines (Republic).

On November 22, 2010, respondent RCAM filed a motion[4] for consolidation of the two (2) cases on the ground that they involve a common issue, have the same parties and assail the same Decision and Resolution of the CA which was granted by the Court in its January 12, 2011 Resolution.[5]

The Facts

On January 30, 2007, petitioner Republic filed a complaint docketed as Civil Case No. 62-M-2007 before the RTC of Malolos City, Bulacan, for cancellation of titles and reversion against respondent RCAM and several others.[6] The complaint alleged, *inter alia*, that RCAM appears as the registered owner of eight (8) parcels of land, Lot Nos. 43 to 50, with a total area of 39,790 square meters, situated in Panghulo, Obando, Bulacan under Original Certificate of Title (OCT) No. 588 supposedly issued by the Register of Deeds of Bulacan on November 7, 1917. OCT No. 588 allegedly emanated from Decree No. 57486 issued on October 30, 1917 by the Chief of the General Land Registration Office pursuant to a decision dated September 21, 1915 in Land Registration Case No. 5, G.L.R.O. Record No. 9269 in favor of RCAM. A reading, however, of the said decision reveals that it only refers to Lot Nos. 495, 496, 497, 498 and

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[1] Penned by Presiding Justice Andres B. Reyes, Jr. with Associate Justices Japar B. Dimaampao and Stephen C. Cruz, concurring, G.R. No. 192975 *rollo,* pp. 47-65.

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

[3] Erroneously referred to as Branch 89 in the CA Decision's dispositive portion. *Id.* at 65.

[4] G.R. No. 192994 *rollo*, pp. 214-217.

[5] *Id.* at 218-219.

[6] G.R. No. 192975 *rollo*, pp. 22 & 68.

638 and not to Lot Nos. 43 to 50. In 1934, RCAM sold the said eight (8) parcels of land to the other named defendants in the complaint resulting in the cancellation of OCT No. 588 and issuance of transfer certificates of title in the names of the corresponding transferees. Subsequently, the Lands Management Bureau conducted an investigation and ascertained that the subject lots are identical to Lot No. 2077, Cad-302-D and Lot Nos. 1293, 1306 and 1320, Cad-302-D with a total area of 22,703 square meters. These parcels of land were certified by the Bureau of Forest Development on January 17, 1983 as falling within the unclassified lands of the public domain and it was only on May 8, 1984 that they were declared alienable and disposable per Forestry Administrative Order No. 4-1776, with no public land application/ land patent.[7]

On April 16, 2007, petitioner Republic received a copy of a motion for leave to intervene and to admit complaint-in-intervention filed by the Samahang Kabuhayan ng San Lorenzo KKK, Inc. (KKK),[8] occupants of the subject property, which was subsequently granted by the RTC.[9] Thenceforth, answers and various other pleadings were filed by the appropriate parties.

During the course of the pre-trial, RCAM filed a motion to dismiss assailing the jurisdiction[10] of the RTC over the complaint. It alleged that the action for reversion of title was essentially one for annulment of judgment of the then Court of First Instance (CFI) of Bulacan, acting as a Land Registration Court,[11] hence, beyond the competence of the RTC to act upon.

Ruling of the Trial Court

In its Order dated January 27, 2009,[12] the RTC denied RCAM's motion to dismiss for being premature. It declared

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[7] *Id.* at 71-76.

[8] *Id.* at 23.

[9] *Id.* at 25.

[10] *Id.* at 27-28.

[11] *Id.* at 201.

[12] *Id.* at 201-203. Penned by Presiding Judge Wilfredo T. Nieves.

that while the decision of the CFI dated September 21, 1915 pertains only to parcels 495, 496, 497 and 498 and did not mention Lot Nos. 43 & 50, an examination of OCT No. 588 and Decree No. 57486 reveals that the subject lots were conferred on RCAM pursuant to a decision in G.L.R.O Record No. 9269 promulgated on December 3, 1914. Hence, it found a need to first ascertain the litigious issues of whether a separate prior decision was promulgated on December 3, 1914 as stated in Decree No. 57486[13] and whether the issuance of the subject decree and inclusion of Lot Nos. 43 to 50 were done in violation of such separate decision.

RCAM's motion for reconsideration having been denied, the matter was elevated to the CA on *certiorari* alleging grave abuse of discretion on the part of the RTC.

Ruling of the Court of Appeals

In its assailed Decision,[14] the CA held that while reversion suits are allowed under the law, the same should be instituted before the CA because the RTC cannot nullify a decision rendered by a co-equal land registration court. The CA further applied equitable estoppel against the State and considered it barred from filing a reversion suit. It explained that the lots were already alienated to innocent purchasers for value and the State failed to take action to contest the title for an unreasonable length of time. Hence, the CA ordered the RTC to grant RCAM's motion to dismiss.

Both petitioners separately moved for reconsideration which the CA denied in its July 12, 2010 Resolution. Hence, the present petitions.

Issue Before the Court

The consolidated cases raise the common issue of whether or not the RTC has jurisdiction over the action filed by the Republic.

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[13] *Id.* at 113-116.

[14] *Supra* note 1.

The Court's Ruling

The petitions are meritorious.

Petitioners insist that they do not seek the annulment of judgment of the RTC (then CFI) acting as Land Registration Court but the nullification of the subject OCT No. 588 and the derivative titles over Lot Nos. 43 to 50. They claim that these parcels of land could not have been validly titled in 1917 because they were not the subject of Land Registration Case No. 5, G.L.R.O. Record No. 9269. Moreover, these lots were not yet classified as alienable and disposable at that time, having been declared as such only on May 8, 1984. On the other hand, the respondent maintains that petitioners' suit essentially seeks the annulment of judgment of the RTC, hence, jurisdiction lies with the CA under Rule 47 of the Rules of Court. Consequently, the RTC was correctly ordered by the CA to grant the motion to dismiss.

An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided on the merits.[15] Thus, as a general rule, the denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari* which is a remedy designed to correct errors of jurisdiction and not errors of judgment.[16] However, when the denial of the motion to dismiss is tainted with grave abuse of discretion, the grant of the extraordinary remedy of *certiorari* may be justified.[17] By grave abuse of discretion is meant such capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction.[18] The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of

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[15] *NM Rothschild & Sons (Australia) v. Lepanto Consolidated Mining Company*, G.R. No. 175799, November 28, 2011, 661 SCRA 328.

[16] *Id.*

[17] *Id.*

[18] *Id.*

positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[19]

Respondent's motion to dismiss assails the jurisdiction of the RTC over the nature of the action before it. Hence, to determine whether the RTC gravely abused its discretion in denying the motion to dismiss it is pertinent to first ascertain whether the RTC has jurisdiction over the case.

It is axiomatic that the nature of an action and whether the tribunal has jurisdiction over such action are to be determined from the material allegations of the complaint, the law in force at the time the complaint is filed, and the character of the relief sought irrespective of whether the plaintiff is entitled to all or some of the claims averred.[20] Jurisdiction is not affected by the pleas or the theories set up by defendant in an answer to the complaint or a motion to dismiss the same.[21]

In the present case, the material averments, as well as the character of the relief prayed for by petitioners in the complaint before the RTC, show that their action is one for cancellation of titles and reversion, not for annulment of judgment of the RTC. The complaint alleged that Lot Nos. 43 to 50, the parcels of land subject matter of the action, were not the subject of the CFI's judgment in the relevant prior land registration case. Hence, petitioners pray that the certificates of title of RCAM be cancelled which will not necessitate the annulment of said judgment. Clearly, Rule 47 of the Rules of Court on annulment of judgment finds no application in the instant case.

The RTC may properly take cognizance of reversion suits which do not call for an annulment of judgment of the RTC[22] acting as a Land Registration Court. Actions for cancellation

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[19] *Id.*

[20] *Arzaga v. Copias*, 448 Phil. 171, 180 (2003); *Del Mar v. PAGCOR*, 400 Phil. 307, 326 (2000).

[21] *Id.*

[22] See *Republic v. Cacho*, G.R. 173401, July 7, 2010, 624 SCRA 360, 471-491.

of title and reversion, like the present case, belong to the class of cases that "involve the title to, or possession of, real property, or any interest therein"[23] and where the assessed value of the property exceeds ₱20,000.00,[24] fall under the jurisdiction of the RTC.[25] Consequently, no grave abuse of discretion amounting to lack or excess of jurisdiction can be attributed to the RTC in denying RCAM's motion to dismiss.

Moreover, it should be stressed that the only incident before the CA for resolution was the propriety of RCAM's motion to dismiss, thus, it was premature for the CA at this stage to apply the doctrine of equitable estoppel as the parties have not presented any evidence that would support such finding.

WHEREFORE, the petitions are **GRANTED**. The assailed April 22, 2010 Decision and July 19, 2010 Resolution of the Court of Appeals are hereby **ANNULLED** and **SET ASIDE**. The Order of the Regional Trial Court, Branch 84 of Malolos, Bulacan is **AFFIRMED**.

SO ORDERED.

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

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[23] Batas Pambansa Blg. 129, Sec. 19(2). *Santos v. CA*, G.R. No. 61218, September 23, 1992, 214 SCRA 162, 163.

[24] Republic Act 7691, An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, Amending for the Purpose Batas Pambansa Blg. 129, otherwise known as the "Judiciary Reorganization Act of 1980," approved on March 25, 1994.

[25] Sec. 19. *Jurisdiction in civil cases.* – Regional Trial Courts shall exercise exclusive original jurisdiction:

x x x x x x x x x

(2) In all civil actions which **involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000.00)** or, for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts. (Emphasis supplied)

SECOND DIVISION

[G.R. No. 195168. November 12, 2012]

BENJAMIN C. MILLAN, *petitioner, vs.* **WALLEM MARITIME SERVICES, INC., REGINALDO A. OBEN and/or WALLEM SHIPMANAGEMENT,**[1] **LTD.,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; SEAFARER; A SEAFARER MAY NOT FILE A CLAIM FOR TOTAL AND PERMANENT DISABILITY BENEFITS WITHIN THE 240-DAY APPLICABLE PERIOD.— Records show that from the time petitioner was repatriated on February 26, 2003, 129 days had lapsed when he last consulted with the company-designated physician on July 5, 2003 and 181 days had passed on the day he last visited his physiatrist on August 26, 2003. Concededly, said periods have already exceeded the 120-day period under Section 20(B) of the POEA-SEC and Article 192 of the Labor Code. However, it cannot be denied that the company-designated physician had determined as early as March 5, 2003 or even before his discharge from the hospital that petitioner's condition required further medical treatment in the form of physical therapy sessions, which he had subsequently completed per Dr. Estrada's Memo dated July 5, 2003, thus, justifying the extension of the 120-day period. The company-designated physician therefore had a period of 240 days from the time that petitioner suffered his injury or until October 24, 2003 within which to make a finding on his fitness for further sea duties or degree of disability. Consequently, despite the lapse of the 120-day period, petitioner was still considered to be under a state of *temporary total disability* at the time he filed his complaint on August 29, 2003, 184 days from the date of his medical repatriation which is well-within the 240-day applicable period in this case. Hence, he cannot be said to have acquired a cause of action for total

[1] Spelled as "Wallem Ship Management, Ltd." in the title of the Petition.

and permanent disability benefits. To stress, the rule is that a temporary total disability only becomes permanent when the company-designated physician, within the 240-day period, declares it to be so, or when after the lapse of the same, he fails to make such declaration.

APPEARANCES OF COUNSEL

Reynaldo A. Reyna for petitioner.
Esguerra & Blanco for respondents.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[2] dated August 20, 2010 and Resolution[3] dated January 13, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 104924 which decreed petitioner Benjamin C. Millan entitled only to partial disability benefits in the sum of US$7,465.00 plus ten percent (10%) thereof as attorney's fees, or its peso equivalent at the time of payment.

The facts are undisputed.

Petitioner Benjamin C. Millan has been under the employ of Wallem Maritime Services, Inc. as a seafarer since May 1981.[4] On October 19, 2002, he was deployed by the latter for its foreign principal, Wallem Shipmanagement, Ltd., as a messman with a basic salary of US$405.00 a month on board M/T "Front Vanadis."[5] On February 13, 2003, he slipped while carrying the ship's provisions and injured his left arm. He was examined at St. Paul's Surgical Clinic in Yosu City, South Korea where

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[2] *Rollo*, pp. 11-19; Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Normandie B. Pizzaro and Florito S. Macalino, concurring.

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

[4] *Id.* at 91.

[5] *Id.* at 88.

he was diagnosed to have suffered "fracture on left ulnar shaft."[6] Hence, he was medically repatriated on February 26, 2003.[7] On February 28, 2003, he proceeded to the Manila Doctor's Hospital where he consulted Dr. Ramon S. Estrada, the company-designated physician, and underwent an operation on March 3, 2003.[8] After his discharge, he went through a series of consultations and physical therapy sessions from May 6, 2003 until July 2, 2003.[9] On July 5, 2003, Dr. Estrada reported that petitioner had completed his physical therapy program but will have to undergo a physical capacity test on August 28, 2003[10] to evaluate his fitness to work.[11] Instead, on August 29, 2003, petitioner filed a complaint[12] against respondents Wallem Maritime Services, Inc., its President/Manager Reginaldo A. Oben, and Wallem Shipmanagement, Ltd. for medical reimbursement, sickness allowance, permanent disability benefits, compensatory damages, exemplary damages and attorney's fees.

On September 1, 2003, petitioner consulted Dr. Rimando C. Saguin, an orthopedic surgeon, who diagnosed him as suffering from Philippine Overseas Employment Administration (POEA) Disability Grade 11 and elbow bursitis which rendered him "unfit to work at the moment."[13] On September 10, 2003, petitioner sought the opinion of Dr. Nicanor F. Escutin who assessed his condition as a partial permanent disability with POEA Disability Grade 10, 20.15%. Dr. Escutin also opined that petitioner was suffering from "loss of grasping power of small objects in one hand, and inability to turn forearm to pronation or supination.

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[6] *Id.* at 93.

[7] *Id.* at 94-95.

[8] *Id.* at 96-99.

[9] *Id.* at 12.

[10] *Id.* at 139.

[11] *Id.* at 138.

[12] *Id.* at 103.

[13] *Id.* at 100.

The period of healing remains undetermined. The patient is now unfit to go back to work at sea at whatever capacity."[14]

In their defense, respondents denied any liability contending that proper treatment and management were afforded petitioner but he deliberately ignored his medical program by failing to appear on his scheduled appointment with the company-designated physician. Respondents also claim that petitioner was paid his sickness allowance in full, and his medical examinations, tests and check-ups were shouldered by the company.[15]

The Labor Arbiter's Ruling

In the Decision[16] dated September 27, 2006, the Labor Arbiter held that since the company-designated physician failed to make any pronouncement on petitioner's fitness to resume sea service within 120 days as required by law, his disability is deemed permanent and total. Consequently, respondents Wallem Maritime Services, Inc. and Wallem Shipmanagement, Ltd. were found jointly and severally liable to pay petitioner US$60,000.00 or its peso equivalent representing his permanent and total disability compensation plus ten percent (10%) thereof or US$6,000.00 as attorney's fees. Petitioner's claim for medical reimbursement and sickness allowance, however, were denied for lack of merit.

The NLRC Ruling

On appeal, the National Labor Relations Commission (NLRC) reversed and set aside the findings of the Labor Arbiter, ruling that the assessments made with respect to the degree of petitioner's disability by the two independent doctors who examined him only once cannot prevail over the extensive medical examinations conducted by the company-designated physician,

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[14] *Id.* at 101-102.

[15] *Id.* at 116-122.

[16] *Id.* at 141-152. Penned by Labor Judge Nieves Vivar-De Castro.

Dr. Estrada. It pointed out that under the POEA Standard Employment Contract, the post-employment medical examination and degree of disability must be performed and declared by the company-designated physician.[17]

Aggrieved, petitioner filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA.

The CA Ruling

In its assailed Decision[18] dated August 20, 2010, the CA set aside the NLRC's conclusions and rendered a new judgment finding petitioner as suffering from partial permanent disability Grade 10. It held that while petitioner's disability has exceeded 120 days, there was no showing that his "earning power was wholly destroyed and he is still capable of performing remunerative employment."[19] Thus, it ordered respondent manning agency and its principal liable to pay petitioner US$7,465.00 plus 10% thereof as attorney's fees by way of partial disability benefits.

Hence, the instant petition[20] based on the sole issue of whether or not the CA committed reversible error in granting petitioner only partial permanent disability Grade 10 despite his inability to work for more than 120 days.

In their Comment,[21] respondents averred that the determination made by the CA on the degree of petitioner's disability was in accordance with the Schedule of Disability Allowances under Section 32 of the POEA-Standard Employment Contract (POEA-SEC), hence, should be upheld.

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[17] *Id.* at 154-162. Penned by Presiding Commissioner Raul T. Aquino.

[18] *Id.* at 11-19.

[19] *Id.* at 16, citing *Malaysian International Shipping Corp. v. Lariza*, 218 Phil. 224, 232 (1984).

[20] *Id.* at 24-46.

[21] *Id.* at 174-183.

The Court's ruling

There is no merit in this petition.

A seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor.

In *Vergara v. Hammonia Maritime Services, Inc.*,[22] the Court elucidated on the seeming conflict between Paragraph 3, Section 20(B)[23] of the POEA-SEC (Department Order No. 004-00) and Article 192 (c)(1)[24] of the Labor Code in relation

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[22] G.R. No. 172933, October 6, 2008, 567 SCRA 610, 628.

[23] Sec. 20. *Compensation and Benefits*

A. Compensation and Benefits for Death

x x x x x x x x x

B. Compensation and Benefits for Injury or Illness

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

[24] ART. 192. *Permanent Total Disability.* – (a) x x x

x x x x x x x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

to Section 2(a), Rule X[25] of the Amended Rules on Employees Compensation, thus:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition. (Italics in the original)

Applying *Vergara*, the Court in the recent case of *C.F. Sharp Crew Management, Inc. v. Taok*[26] enumerated the following instances when a seafarer may be allowed to pursue an action for total and permanent disability benefits, to wit:

> (a) The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his

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[25] Sec. 2. *Period of Entitlement*. – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 days except when such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

[26] G.R. No. 193679, July 18, 2012.

temporary total disability, hence, justify an extension of the period to 240 days;

(b) 240 days had lapsed without any certification issued by the company-designated physician;

(c) The company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;

(d) The company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;

(e) The company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;

(f) The company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;

(g) The company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and

(h) The company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of said periods.

None of the foregoing circumstances is extant in this case.

Records show that from the time petitioner was repatriated on February 26, 2003, 129 days had lapsed when he last consulted with the company-designated physician on July 5, 2003 and 181 days had passed on the day he last visited his physiatrist on August 26, 2003.[27] Concededly, said periods

[27] *Id.* at 139.

have already exceeded the 120-day period under Section 20(B) of the POEA-SEC and Article 192 of the Labor Code. However, it cannot be denied that the company-designated physician had determined[28] as early as March 5, 2003 or even before his discharge from the hospital that petitioner's condition required further medical treatment in the form of physical therapy sessions, which he had subsequently completed per Dr. Estrada's Memo dated July 5, 2003,[29] thus, justifying the extension of the 120-day period. The company-designated physician therefore had a period of 240 days from the time that petitioner suffered his injury or until October 24, 2003 within which to make a finding on his fitness for further sea duties or degree of disability.

Consequently, despite the lapse of the 120-day period, petitioner was still considered to be under a state of *temporary total disability* at the time he filed his complaint on August 29, 2003, 184 days from the date of his medical repatriation which is well-within the 240-day applicable period in this case. Hence, he cannot be said to have acquired a cause of action for total and permanent disability benefits.[30] To stress, the rule is that a temporary total disability only becomes permanent when the company-designated physician, within the 240-day period, declares it to be so, or when after the lapse of the same, he fails to make such declaration.[31]

Besides, petitioner's own evidence shows that he is suffering only from partial permanent disability of either Grade 10 or 11.[32] Accordingly, in the absence of proof to the contrary,[33] the Court concurs with the CA's finding that petitioner suffers from a partial permanent disability grade of 10.

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[28] *Id.* at 130.

[29] *Id.* at 138.

[30] *C.F. Sharp Crew Management, Inc. v. Taok, supra* note 26.

[31] *Santiago v. Pacbasin Shipmanagement, Inc.*, G.R. No. 194677, April 18, 2012.

[32] *Rollo*, pp. 100, 103.

[33] Incidentally, respondents do not refute and are in full accord with the CA's disability grading in their Comment.

WHEREFORE, premises considered, the instant petition is **DENIED**. The Decision dated August 20, 2010 and Resolution dated January 13, 2011 of the Court of Appeals in CA-G.R. SP No. 104924 are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 198770. November 12, 2012]

AURELIA GUA-AN and SONIA GUA-AN MAMON, *petitioners, vs.* **GERTRUDES QUIRINO, represented by ELMER QUIRINO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; PRESIDENTIAL DECREE NO. 27 (TENANT EMANCIPATION DECREE); PROHIBITS ANY TRANSFER OF LANDHOLDING EXCEPT TO GOVERNMENT OR BY HEREDITARY SUCCESSION. — [U]pon the promulgation of P.D. 27, farmer-tenants were deemed owners of the land they were tilling and given the rights to possess, cultivate and enjoy the landholding for themselves. Thus, P.D. 27 specifically prohibited any transfer of such landholding except to the government or by hereditary succession. Section 27 of R.A. 6657 further allowed transfers to the Land Bank of the Philippines (LBP) and to other qualified beneficiaries. Consequently, any other transfer constitutes a violation of the above proscription and is null and void for being contrary to law.

2. ID.; ID.; ID.; ID.; THE PROHIBITION AGAINST ANY TRANSFER OF LANDHOLDING INCLUDES TRANSFER OF POSSESSION TO THE VENDEE *A RETRO*; CASE AT BAR.— A perusal of the Deed of Conditional Sale reveals the real intention of the parties not to enter into a contract of sale but merely to secure the payment of the ₱40,000.00 loan of Prisco. This is evident from the fact that the latter was given the right to repurchase the subject property even beyond the 12-year (original and extended) period, allowing in the meantime the continued possession of Ernesto pending payment of the consideration. Under these conditions and in accordance with Article 1602 of the Civil Code, the CA did not err in adjudging the *pacto de retro* sale to be in reality an equitable mortgage. However, contrary to the finding of the CA, the subject transaction is covered by the prohibition under P.D. No. 27 and R.A. No. 6657 which include transfer of possession of the landholding to the vendee *a retro*, Ernesto, who, not being a qualified beneficiary, remained in possession thereof for a period of eleven (11) years. Hence, notwithstanding such possession, the latter did not acquire any valid right or title thereto, especially since he failed to take any positive measure to cause the cancellation of Prisco's CLT No. 0-025227 despite the long lapse of time.

3. ID.; ID.; ID.; PROSCRIBES THE REVERSION OF THE LANDHOLDING TO THE FORMER OWNER.— [T]he redemption made by petitioner Aurelia was ineffective and void since reversion of the landholding to the former owner is likewise proscribed under P.D. No. 27 in accordance with its policy of holding such lands under trust for the succeeding generations of farmers.

4. ID.; ID.; ABANDONMENT; A GROUND FOR THE CANCELLATION OF AN AWARD TO THE AGRARIAN REFORM BENEFICIARY.— [W]hile CLT No. 0-025227 remains in Prisco's name, the Court cannot turn a blind eye to the fact that Prisco surrendered possession and cultivation of the subject land to Ernesto, not for a mere temporary period, but for a period of 11 years without any justifiable reason. Such act constituted abandonment despite his avowed intent to resume possession of the land upon payment of the loan. As defined in DAR Administrative Order No. 2, series of 1994,

abandonment is a willful failure of the agrarian reform beneficiary, together with his farm household, "to cultivate, till, or develop his land to produce any crop, or to use the land for any specific economic purpose continuously for a period of two calendar years." It is a ground for cancellation by the DARAB of an award to the agrarian reform beneficiary. Consequently, respondent and/or Prisco's heirs had lost any right to redeem the subject landholding.

APPEARANCES OF COUNSEL

Abundio L. Okit for petitioners.
Rat Pacana Law Office for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court are the Decision[1] dated February 25, 2011 and Resolution[2] dated September 15, 2011 rendered by the Court of Appeals (CA) in CA-G.R. SP. No. 00589-MIN which set aside the December 29, 2004 Decision[3] of the Department of Agrarian Reform Adjudication Board (DARAB) and afforded respondent the preferential right of redemption over the subject landholdings.

The Factual Antecedents

Subject of the instant case is a 2.8800 hectare agricultural land situated in Batangan, Valencia, Bukidnon known as Lot 0899, covered by Certificate of Land Transfer (CLT) No. 0-025227

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[1] *Rollo,* pp. 33-42. Penned by Associate Justice Leoncia R. Dimagiba, Associate Justices Edgardo A. Camello and Nina G. Antonio-Valenzuela, concurring.

[2] *Id.* at 44-45. Penned by Associate Justice Edgardo A. Camello, with Associate Justices Melchor Quirino C. Sadang & Zenaida Galapate Laguilles, concurring.

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

in the name of Prisco Quirino, Sr.[+] (Prisco[+]) issued by the Ministry (now Department) of Agrarian Reform on October 16, 1979 pursuant to Presidential Decree (P.D.) No. 27. On February 27, 1985, Prisco[+] executed a Deed of Conditional Sale (deed) covering the subject landholding to Ernesto Bayagna (Ernesto) under the following conditions:

> x x x that the condition of this sale is that I, Prisco Quirino, Sr. and my heirs hereby [reserve our] right to redeem or repurchase the herein subject parcel of land by returning to Ernesto Bayagna or his heirs the same amount of Forty thousand Pesos (₱40,000.00), Philippine currency, after the lapse of eight (8) years from the date of execution of this instrument and if the subject land is not redeemed or repurchased after the said eight years, there shall be an automatic extension of four (4) years from the date the [eighth] year expires, and if after the 4 term expires, and I, Prisco Quirino, Sr., or my heirs still [fail] to redeem or repurchase the herein subject land, Ernesto Bayagna or his heirs shall continue to possess and enjoy the subject land until it is finally redeemed or repurchased. After the ₱40,000.00 is returned to Ernesto Bayagna or his heirs, the latter shall be obligated to return peacefully the subject land without any tenant or lessee.[4]

Ernesto thereupon possessed and cultivated the subject land for more than 10 years before Prisco[+] offered to redeem the same in 1996, which was refused. Instead, Ernesto allowed the former owner of the land, petitioner Aurelia Gua-An (Aurelia), through her daughter, petitioner Sonia Gua-An Mamon (Sonia), to redeem the lot. Subsequently, Prisco[+] passed away.

On January 30, 1998, respondent Gertrudes Quirino, Prisco's widow, represented by their son, Elmer, filed before the Office of the Agrarian Reform Regional Adjudicator (RARAD) a Complaint for Specific Performance, Redemption, Reinstatement and Damages with Application for Writ of Preliminary Injunction and TRO against Ernesto and petitioners.

In their Answer, petitioners averred that Prisco's[+] right over the subject land was merely inchoate for failure to establish

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[4] *Id.* at 34.

payment of just compensation to the landowner; the deed was null and void for being violative of the law and public policy; and that the failure to consign the redemption money effectively bars the redemption prayed for.

For his part, Ernesto averred that he allowed petitioners to redeem the lot because Prisco+ failed to appear on the agreed date for redemption and on the information that the subject land was erroneously awarded to the latter.

On May 6, 1998, the RARAD dismissed the complaint for lack of merit.

The DARAB Ruling

In the Decision[5] dated December 29, 2004, the DARAB denied respondent's appeal and declared Prisco+ to have violated agrarian laws and of having abandoned the land by his failure to cultivate the same continuously for a period of more than two (2) calendar years. It canceled CLT No. 0-025227 in Prisco's+ name and ordered the Municipal Agrarian Reform Officer (MARO) to reallocate the subject landholding to a qualified beneficiary.

The CA Ruling

On petition for review, the CA reversed and set aside[6] the DARAB's decision. It ruled that the *pacto de retro* sale between Prisco+ and Ernesto was a mere equitable mortgage, hence, not a prohibited transaction under P.D. 27, which is limited to "transfers or conveyances of title to a landholding acquired under the Land Reform Program of the Government." Having acquired the subject land as a "qualified beneficiary," Prisco+ and his heirs possess security of tenure thereon and could not be dispossessed thereof except for cause and only through a final and executory judgment. Thus, the CA afforded the heirs of Prisco+ the preferential right of redemption over the subject landholding.

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[5] *Supra* note 3.

[6] *Supra* note 1.

In the instant petition, petitioners insist that since respondent failed to tender and consign the redemption money, the latter has no cause of action against them. Moreover, considering that Prisco+ was not the absolute owner of the subject property, he cannot validly mortgage the same. Besides, Prisco+ had lost his rights as a farmer-beneficiary when he transacted with Ernesto in violation of the provisions of Section 73(f)[7] of Republic Act (R.A.) No. 6657, as amended (Comprehensive Agrarian Reform Law of 1988).

Our Ruling

The petition is meritorious.

It bears to stress that upon the promulgation of P.D. 27, farmer-tenants were deemed owners of the land they were tilling and given the rights to possess, cultivate and enjoy the landholding for themselves.[8] Thus, P.D. 27 specifically prohibited any transfer of such landholding except to the government or by hereditary succession. Section 27[9] of R.A. 6657 further allowed transfers to the Land Bank of the Philippines (LBP) and to other qualified beneficiaries. Consequently, any other transfer constitutes a

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[7] Sec. 73. *Prohibited Acts and Omissions*. — The following are prohibited:

x x x x x x x x x

(f) The sale, transfer or conveyance by a beneficiary of the right to use or any other usufructuary right over the land he/she acquired by virtue of being a beneficiary, in order to circumvent the provisions of this Act.

[8] *Estolas v. Mabalot*, G.R. No. 133706, May 7, 2002, 381 SCRA 702, 708.

[9] Sec. 27. *Transferability of Awarded Lands.* – Lands acquired by beneficiaries under this Act or other agrarian reform laws shall *not be sold, transferred or conveyed except through hereditary succession, or to the government, or to the LBP, or to other qualified beneficiaries through the DAR for a period of ten (10) years:* Provided, however, That the children or the spouse of the transferor shall have a right to repurchase the land from the government or LBP within a period of two (2) years. Due notice of the availability of the land shall be given by the LBP to the BARC of the *barangay* where the land is situated. The PARCCOM, as herein provided, shall, in turn, be given due notice thereof by the BARC. (Emphasis supplied)

x x x x x x x x x

violation of the above proscription and is null and void for being contrary to law.[10] Relevant on this point is Ministry of Agrarian Reform Memorandum Circular No. 7, series of 1979 which provides:

"Despite the x x x prohibition, x x x many farmer-beneficiaries of P.D. 27 have transferred their ownership, rights and/or possession of their farms/homelots to other persons or have surrendered the same to their former landowners. All these transactions/surrenders are violative of P.D. 27 and therefore null and void."

A perusal of the Deed of Conditional Sale reveals the real intention of the parties not to enter into a contract of sale but merely to secure the payment of the ₱40,000.00 loan of Prisco+. This is evident from the fact that the latter was given the right to repurchase the subject property even beyond the 12-year (original and extended) period, allowing in the meantime the continued possession of Ernesto pending payment of the consideration. Under these conditions and in accordance with Article 1602[11] of the Civil Code, the CA did not err in adjudging the *pacto de retro* sale to be in reality an equitable mortgage.

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[10] *Vide Maylem v. Ellano*, G.R. No. 162721, July 13, 2009, 592 SCRA 440, 452*; Sta. Monica Industrial and Development Corporation v. Department of Agrarian Reform Regional Director for Region III*, G.R. No. 164846, June 18, 2008, 555 SCRA 97, 106.

[11] Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:

(1) When the price of a sale with right to repurchase is unusually inadequate;
(2) When the vendor remains in possession as lessee or otherwise;
(3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;
(4) When the purchaser retains for himself a part of the purchase price;
(5) When the vendor binds himself to pay the taxes on the thing sold;
(6) *In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.* (Emphasis supplied)

In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws.

However, contrary to the finding of the CA, the subject transaction is covered by the prohibition under P.D. No. 27 and R.A. No. 6657 which include transfer of possession of the landholding to the vendee *a retro*, Ernesto, who, not being a qualified beneficiary, remained in possession thereof for a period of eleven (11) years. Hence, notwithstanding such possession, the latter did not acquire any valid right or title thereto, especially since he failed to take any positive measure to cause the cancellation of Prisco's+ CLT No. 0-025227 despite the long lapse of time.

On the other hand, the redemption made by petitioner Aurelia was ineffective and void since reversion of the landholding to the former owner is likewise proscribed under P.D. No. 27 in accordance with its policy of holding such lands under trust for the succeeding generations of farmers.[12]

However, while CLT No. 0-025227 remains in Prisco's+ name, the Court cannot turn a blind eye to the fact that Prisco+ surrendered possession and cultivation of the subject land to Ernesto, not for a mere temporary period, but for a period of 11 years without any justifiable reason. Such act constituted abandonment despite his avowed intent to resume possession of the land upon payment of the loan. As defined in DAR Administrative Order No. 2, series of 1994, abandonment is a willful failure of the agrarian reform beneficiary, together with his farm household, "to cultivate, till, or develop his land to produce any crop, or to use the land for any specific economic purpose continuously for a period of two calendar years." It is a ground for cancellation by the DARAB of an award to the agrarian reform beneficiary. Consequently, respondent and/or Prisco's+ heirs had lost any right to redeem the subject landholding.

In fine, we find the DARAB Decision finding Prisco+ to have violated agrarian laws, canceling his CLT and ordering the reallocation of the subject land to be more in accord with the law and jurisprudence.

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[12] *Del Castillo vs. Orciga*, G.R. No. 153850, August 31, 2006, 500 SCRA 498, 508 & 511.

WHEREFORE, the assailed Decision dated February 25, 2011 and Resolution dated September 15, 2011 of the Court of Appeals in CA-G.R. SP. No. 00589-MIN are hereby **SET ASIDE**. The DARAB Decision dated December 29, 2004 is **REINSTATED**.

SO ORDERED.

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

EN BANC

[G.R. No. 152642. November 13, 2012]

HON. PATRICIA A. STO. TOMAS, ROSALINDA BALDOZ and LUCITA LAZO, *petitioners, vs.* **REY SALAC, WILLIE D. ESPIRITU, MARIO MONTENEGRO, DODGIE BELONIO, LOLIT SALINEL and BUDDY BONNEVIE,** *respondents.*

[G.R. No. 152710. November 13, 2012]

HON. PATRICIA A. STO. TOMAS, in her capacity as Secretary of Department of Labor and Employment (DOLE), HON. ROSALINDA D. BALDOZ, in her capacity as Administrator, Philippine Overseas Employment Administration (POEA), and the PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION GOVERNING BOARD, *petitioners, vs.* **HON. JOSE G. PANEDA, in his capacity as the Presiding Judge of Branch 220, Quezon City, ASIAN RECRUITMENT COUNCIL PHILIPPINE CHAPTER, INC. (ARCOPHIL), for itself and in behalf**

of its members: WORLDCARE PHILIPPINES SERVIZO INTERNATIONALE, INC., STEADFAST INTERNATIONAL RECRUITMENT CORP., VERDANT MANPOWER MOBILIZATION CORP., BRENT OVERSEAS PERSONNEL, INC., ARL MANPOWER SERVICES, INC., DAHLZEN INTERNATIONAL SERVICES, INC., INTERWORLD PLACEMENT CENTER, INC., LAKAS TAO CONTRACT SERVICES LTD. CO., SSC MULTI-SERVICES, DMJ INTERNATIONAL, and MIP INTERNATIONAL MANPOWER SERVICES, represented by its proprietress, MARCELINA I. PAGSIBIGAN, *respondents.*

[G.R. No. 167590. November 13, 2012]

REPUBLIC OF THE PHILIPPINES, represented by the HONORABLE EXECUTIVE SECRETARY, the HONORABLE SECRETARY OF LABOR AND EMPLOYMENT (DOLE), the PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA), the OVERSEAS WORKERS WELFARE ADMINISTRATION (OWWA), the LABOR ARBITERS OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC), the HONORABLE SECRETARY OF JUSTICE, the HONORABLE SECRETARY OF FOREIGN AFFAIRS and the COMMISSION ON AUDIT (COA), *petitioners, vs.* **PHILIPPINE ASSOCIATION OF SERVICE EXPORTERS, INC. (PASEI),** *respondent.*

[G.R. Nos. 182978-79. November 13, 2012]

BECMEN SERVICE EXPORTER AND PROMOTION, INC., *petitioner, vs.* **SPOUSES SIMPLICIO AND MILA CUARESMA (for and in behalf of daughter, Jasmin G. Cuaresma), WHITE FALCON SERVICES, INC., and JAIME ORTIZ (President of White Falcon Services, Inc.),** *respondents.*

[G.R. Nos. 184298-99. November 13, 2012]

SPOUSES SIMPLICIO AND MILA CUARESMA (for and in behalf of deceased daughter, Jasmin G. Cuaresma), *petitioners, vs.* **WHITE FALCON SERVICES, INC. and BECMEN SERVICES EXPORTER AND PROMOTION, INC.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT 8042 (THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995); ILLEGAL RECRUITMENT; LICENSED AND NON-LICENSED RECRUITERS, DISTINGUISHED. —"[I]llegal recruitment" as defined in Section 6 is clear and unambiguous and, contrary to the RTC's finding, actually makes a distinction between licensed and non-licensed recruiters. By its terms, persons who engage in "canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers" without the appropriate government license or authority are guilty of illegal recruitment whether or not they commit the wrongful acts enumerated in that section. On the other hand, recruiters who engage in the canvassing, enlisting, *etc.* of OFWs, although with the appropriate government license or authority, are guilty of illegal recruitment only if they commit any of the wrongful acts enumerated in Section 6.

2. ID.; ID.; ID.; FIXING TOUGH PENALTIES FOR EACH OF THE ENUMERATED ACTS UNDER SECTION 6 IS WITHIN THE POLICE POWER OF THE STATE.— [I]n fixing uniform penalties for each of the enumerated acts under Section 6, Congress was within its prerogative to determine what individual acts are equally reprehensible, consistent with the State policy of according full protection to labor, and deserving of the same penalties. It is not within the power of the Court to question the wisdom of this kind of choice. Notably, this legislative policy has been further stressed in July 2010 with the enactment of R.A. 10022 which increased even more the duration of the penalties of imprisonment and the amounts of fine for the commission of the acts listed under Section 7. Obviously, in fixing such tough penalties, the law considered the unsettling

fact that OFWs must work outside the country's borders and beyond its immediate protection. The law must, therefore, make an effort to somehow protect them from conscienceless individuals within its jurisdiction who, fueled by greed, are willing to ship them out without clear assurance that their contracted principals would treat such OFWs fairly and humanely. As the Court held in *People v. Ventura*, the State under its police power "may prescribe such regulations as in its judgment will secure or tend to secure the general welfare of the people, to protect them against the consequence of ignorance and incapacity as well as of deception and fraud." Police power is "that inherent and plenary power of the State which enables it to prohibit all things hurtful to the comfort, safety, and welfare of society."

3. ID.; ID.; ID.; VENUE; FIXING AN ALTERNATIVE VENUE FOR VIOLATIONS OF SECTION 6 IS AN EXCEPTION TO THE RULE ON VENUE OF CRIMINAL ACTIONS.— [T]here is nothing arbitrary or unconstitutional in Congress fixing an alternative venue for violations of Section 6 of R.A. 8042 that differs from the venue established by the Rules on Criminal Procedure. Indeed, Section 15(a), Rule 110 of the latter Rules allows exceptions provided by laws. x x x Section 9 of R.A. 8042, as an exception to the rule on venue of criminal actions is, consistent with that law's declared policy of providing a criminal justice system that protects and serves the best interests of the victims of illegal recruitment.

4. ID.; ID.; ID.; MONEY CLAIMS; THE LIABILITY OF CORPORATE DIRECTORS AND OFFICERS THEREFOR IS NOT AUTOMATIC.— [T]he liability of corporate directors and officers is not automatic. To make them jointly and solidarily liable with their company, there must be a finding that they were remiss in directing the affairs of that company, such as sponsoring or tolerating the conduct of illegal activities. In the case of Becmen and White Falcon, while there is evidence that these companies were at fault in not investigating the cause of Jasmin's death, there is no mention of any evidence in the case against them that intervenors Gumabay, *et al*., Becmen's corporate officers and directors, were personally involved in their company's particular actions or omissions in Jasmin's case.

5. POLITICAL LAW; STATUTES; EVERY STATUTE HAS IN ITS FAVOR THE PRESUMPTION OF CONSTITUTIONALITY. — R.A. 8042 is a police power measure intended to regulate the recruitment and deployment of OFWs. It aims to curb, if not eliminate, the injustices and abuses suffered by numerous OFWs seeking to work abroad. The rule is settled that every statute has in its favor the presumption of constitutionality. The Court cannot inquire into the wisdom or expediency of the laws enacted by the Legislative Department. Hence, in the absence of a clear and unmistakable case that the statute is unconstitutional, the Court must uphold its validity.

APPEARANCES OF COUNSEL

The Solicitor General for public petitioner.

Saudi A. Magbanua, Chato & Eleazar and *Law Firm of Soriano Torres Yap and Belmonte* for Philippine Association of Service Exporters, Inc.

Florante A. Miano for respondents in G.R. No. 152642.

Redemberto Villanueva for Asian Recruitment Council Philippine Chapter.

Gregorio V. De Lima for Spouses Cuaresma.

V.Y. Eleazar & Associates for Becmen Service Exporter and Promotion, Inc.

Barbaso Baraso Suico & Bontigao Law Offices for Rey Salac.

Francisco S. De Guzman Law Office for E. Gumbay, *et al.*

Romeo O. Trinidad for Licensed Recruitment Agencies, *et al.*

Angelo A. Palana for White Falcon Services, Inc.

D E C I S I O N

ABAD, *J.*:

These consolidated cases pertain to the constitutionality of certain provisions of Republic Act 8042, otherwise known as the *Migrant Workers and Overseas Filipinos Act of 1995*.

The Facts and the Case

On June 7, 1995 Congress enacted Republic Act (R.A.) 8042 or the Migrant Workers and Overseas Filipinos Act of 1995 that, for among other purposes, sets the Government's policies on overseas employment and establishes a higher standard of protection and promotion of the welfare of migrant workers, their families, and overseas Filipinos in distress.

G.R. 152642 and G.R. 152710
(Constitutionality of Sections 29 and 30, R.A. 8042)

Sections 29 and 30 of the Act[1] commanded the Department of Labor and Employment (DOLE) to begin deregulating within one year of its passage the business of handling the recruitment and migration of overseas Filipino workers and phase out within five years the regulatory functions of the Philippine Overseas Employment Administration (POEA).

On January 8, 2002 respondents Rey Salac, Willie D. Espiritu, Mario Montenegro, Dodgie Belonio, Lolit Salinel, and Buddy Bonnevie (Salac, *et al.*) filed a petition for *certiorari*, prohibition and *mandamus* with application for temporary restraining order (TRO) and preliminary injunction against petitioners, the DOLE Secretary, the POEA Administrator, and the Technical Education and Skills Development Authority (TESDA) Secretary-General before the Regional Trial Court (RTC) of Quezon City, Branch 96.[2]

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[1] SEC. 29. COMPREHENSIVE DEREGULATION PLAN ON RECRUITMENT ACTIVITIES. – Pursuant to a progressive policy of deregulation whereby the migration of workers becomes strictly a matter between the worker and his foreign employer, the DOLE within one (1) year from the effectivity of this Act, is hereby mandated to formulate a five-year comprehensive deregulation plan on recruitment activities taking into account labor market trends, economic conditions of the country and emerging circumstances which may affect the welfare of migrant workers.

SEC. 30. GRADUAL PHASE-OUT OF REGULATORY FUNCTIONS. – Within a period of five (5) years from the effectivity of this Act, the DOLE shall phase-out the regulatory functions of the POEA pursuant to the objectives of deregulation.

[2] Docketed as Civil Case Q-02-45907.

Salac, *et al*. sought to: ***1)*** nullify DOLE Department Order 10 (DOLE DO 10) and POEA Memorandum Circular 15 (POEA MC 15); ***2)*** prohibit the DOLE, POEA, and TESDA from implementing the same and from further issuing rules and regulations that would regulate the recruitment and placement of overseas Filipino workers (OFWs); and ***3)*** also enjoin them to comply with the policy of deregulation mandated under Sections 29 and 30 of Republic Act 8042.

On March 20, 2002 the Quezon City RTC granted Salac, *et al.*'s petition and ordered the government agencies mentioned to deregulate the recruitment and placement of OFWs.[3] The RTC also annulled DOLE DO 10, POEA MC 15, and all other orders, circulars and issuances that are inconsistent with the policy of deregulation under R.A. 8042.

Prompted by the RTC's above actions, the government officials concerned filed the present petition in G.R. 152642 seeking to annul the RTC's decision and have the same enjoined pending action on the petition.

On April 17, 2002 the Philippine Association of Service Exporters, Inc. intervened in the case before the Court, claiming that the RTC March 20, 2002 Decision gravely affected them since it paralyzed the deployment abroad of OFWs and performing artists. The Confederated Association of Licensed Entertainment Agencies, Incorporated (CALEA) intervened for the same purpose.[4]

On May 23, 2002 the Court[5] issued a TRO in the case, enjoining the Quezon City RTC, Branch 96, from enforcing its decision.

In a parallel case, on February 12, 2002 respondents Asian Recruitment Council Philippine Chapter, Inc. and others (Arcophil, *et al*.) filed a petition for *certiorari* and prohibition with application for TRO and preliminary injunction against

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[3] *Rollo* (G.R. 152642), pp. 70-82.

[4] *Id.* at 210-297.

[5] *Id.* at 845-849.

the DOLE Secretary, the POEA Administrator, and the TESDA Director-General,[6] before the RTC of Quezon City, Branch 220, to enjoin the latter from implementing the *2002 Rules and Regulations Governing the Recruitment and Employment of Overseas Workers* and to cease and desist from issuing other orders, circulars, and policies that tend to regulate the recruitment and placement of OFWs in violation of the policy of deregulation provided in Sections 29 and 30 of R.A. 8042.

On March 12, 2002 the Quezon City RTC rendered an Order, granting the petition and enjoining the government agencies involved from exercising regulatory functions over the recruitment and placement of OFWs. This prompted the DOLE Secretary, the POEA Administrator, and the TESDA Director-General to file the present action in G.R. 152710. As in G.R. 152642, the Court issued on May 23, 2002 a TRO enjoining the Quezon City RTC, Branch 220 from enforcing its decision.

On December 4, 2008, however, the Republic informed[7] the Court that on April 10, 2007 former President Gloria Macapagal-Arroyo signed into law R.A. 9422[8] which expressly repealed Sections 29 and 30 of R.A. 8042 and adopted the policy of close government regulation of the recruitment and deployment of OFWs. R.A. 9422 pertinently provides:

x x x x x x x x x

SEC. 1. Section 23, paragraph (b.1) of Republic Act No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995" is hereby amended to read as follows:

(b.1) Philippine Overseas Employment Administration – The Administration shall regulate private sector participation in the

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[6] Filed on February 12, 2002, docketed as Civil Case Q-02-46127 before RTC Branch 220 of Quezon City.

[7] Manifestation and Motion, *rollo* (G.R. 152642), pp. 1338-1359.

[8] An Act to Strengthen the Regulatory Functions of the Philippine Overseas Employment Administration (POEA), Amending for this Purpose Republic Act 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995."

recruitment and overseas placement of workers by setting up a licensing and registration system. It shall also formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements.

In addition to its powers and functions, the administration shall inform migrant workers not only of their rights as workers but also of their rights as human beings, instruct and guide the workers how to assert their rights and provide the available mechanism to redress violation of their rights.

In the recruitment and placement of workers to service the requirements for trained and competent Filipino workers of foreign governments and their instrumentalities, and such other employers as public interests may require, the administration shall deploy only to countries where the Philippines has concluded bilateral labor agreements or arrangements: *Provided,* That such countries shall guarantee to protect the rights of Filipino migrant workers; and: *Provided, further,* That such countries shall observe and/or comply with the international laws and standards for migrant workers.

SEC. 2. Section 29 of the same law is hereby repealed.

SEC. 3. Section 30 of the same law is also hereby repealed.

x x x x x x x x x

On August 20, 2009 respondents Salac, *et al*. told the Court in G.R. 152642 that they agree[9] with the Republic's view that the repeal of Sections 29 and 30 of R.A. 8042 renders the issues they raised by their action moot and academic. The Court has no reason to disagree. Consequently, the two cases, G.R. 152642 and 152710, should be dismissed for being moot and academic.

G.R. 167590

(Constitutionality of Sections 6, 7, and 9 of R.A. 8042)

On August 21, 1995 respondent Philippine Association of Service Exporters, Inc. (PASEI) filed a petition for declaratory

[9] Reply, *rollo* (G.R. 152642), pp. 1392-1395.

relief and prohibition with prayer for issuance of TRO and writ of preliminary injunction before the RTC of Manila, seeking to annul Sections 6, 7, and 9 of R.A. 8042 for being unconstitutional. (PASEI also sought to annul a portion of Section 10 but the Court will take up this point later together with a related case.)

Section 6 defines the crime of "illegal recruitment" and enumerates the acts constituting the same. Section 7 provides the penalties for prohibited acts. Thus:

> SEC. 6. *Definition*. – For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-license or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: *Provided*, That such non-license or non-holder, who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:
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> x x x x x x x x x
>
> SEC. 7. *Penalties*. –
>
> (a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine not less than two hundred thousand pesos (₱200,000.00) nor more than five hundred thousand pesos (₱500,000.00).
>
> (b) The penalty of life imprisonment and a fine of not less than five hundred thousand pesos (₱500,000.00) nor more than one million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.
>
> *Provided, however*, That the maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority.[10]

[10] Section 7 was subsequently amended to increase both the durations of imprisonment and the amounts of the fines.

Finally, Section 9 of R.A. 8042 allowed the filing of criminal actions arising from "illegal recruitment" before the RTC of the province or city where the offense was committed or where the offended party actually resides at the time of the commission of the offense.

The RTC of Manila declared Section 6 unconstitutional after hearing on the ground that its definition of "illegal recruitment" is vague as it fails to distinguish between licensed and non-licensed recruiters[11] and for that reason gives undue advantage to the non-licensed recruiters in violation of the right to equal protection of those that operate with government licenses or authorities.

But "illegal recruitment" as defined in Section 6 is clear and unambiguous and, contrary to the RTC's finding, actually makes a distinction between licensed and non-licensed recruiters. By its terms, persons who engage in "canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers" without the appropriate government license or authority are guilty of illegal recruitment whether or not they commit the wrongful acts enumerated in that section. On the other hand, recruiters who engage in the canvassing, enlisting, *etc.* of OFWs, although with the appropriate government license or authority, are guilty of illegal recruitment only if they commit any of the wrongful acts enumerated in Section 6.

The Manila RTC also declared Section 7 unconstitutional on the ground that its sweeping application of the penalties failed to make any distinction as to the seriousness of the act committed for the application of the penalty imposed on such violation. As an example, said the trial court, the mere failure to render a report under Section 6(h) or obstructing the inspection by the Labor Department under Section 6(g) are penalized by

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[11] A non-licensee or non-holder of authority means any person, corporation or entity which has not been issued a valid license or authority to engage in recruitment and placement by the Secretary of Labor, or whose license or authority has been suspended, revoked or cancelled by the POEA or the Secretary (*People v. Engr. Diaz*, 328 Phil. 794, 806 [1996]).

imprisonment for six years and one day and a minimum fine of ₱200,000.00 but which could unreasonably go even as high as life imprisonment if committed by at least three persons.

Apparently, the Manila RTC did not agree that the law can impose such grave penalties upon what it believed were specific acts that were not as condemnable as the others in the lists. But, in fixing uniform penalties for each of the enumerated acts under Section 6, Congress was within its prerogative to determine what individual acts are equally reprehensible, consistent with the State policy of according full protection to labor, and deserving of the same penalties. It is not within the power of the Court to question the wisdom of this kind of choice. Notably, this legislative policy has been further stressed in July 2010 with the enactment of R.A. 10022[12] which increased even more the duration of the penalties of imprisonment and the amounts of fine for the commission of the acts listed under Section 7.

Obviously, in fixing such tough penalties, the law considered the unsettling fact that OFWs must work outside the country's borders and beyond its immediate protection. The law must, therefore, make an effort to somehow protect them from conscienceless individuals within its jurisdiction who, fueled by greed, are willing to ship them out without clear assurance that their contracted principals would treat such OFWs fairly and humanely.

As the Court held in *People v. Ventura*,[13] the State under its police power "may prescribe such regulations as in its judgment will secure or tend to secure the general welfare of the people, to protect them against the consequence of ignorance and incapacity as well as of deception and fraud." Police power is "that inherent and plenary power of the State which enables it

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[12] An Act Amending Republic Act 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995, as Amended, Further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, their Families and Overseas Filipinos in Distress, and For Other Purposes.

[13] 114 Phil. 162, 167 (1962).

to prohibit all things hurtful to the comfort, safety, and welfare of society."[14]

The Manila RTC also invalidated Section 9 of R.A. 8042 on the ground that allowing the offended parties to file the criminal case in their place of residence would negate the general rule on venue of criminal cases which is the place where the crime or any of its essential elements were committed. Venue, said the RTC, is jurisdictional in penal laws and, allowing the filing of criminal actions at the place of residence of the offended parties violates their right to due process. Section 9 provides:

> SEC. 9. *Venue.* – A criminal action arising from illegal recruitment as defined herein shall be filed with the Regional Trial Court of the province or city where the offense was committed or where the offended party actually resides at the time of the commission of the offense: *Provided*, That the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts: *Provided, however*, That the aforestated provisions shall also apply to those criminal actions that have already been filed in court at the time of the effectivity of this Act.

But there is nothing arbitrary or unconstitutional in Congress fixing an alternative venue for violations of Section 6 of R.A. 8042 that differs from the venue established by the Rules on Criminal Procedure. Indeed, Section 15(a), Rule 110 of the latter Rules allows exceptions provided by laws. Thus:

> SEC. 15. *Place where action is to be instituted.*— (a) **Subject to existing laws**, the criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred. (Emphasis supplied)
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> x x x x x x x x x

Section 9 of R.A. 8042, as an exception to the rule on venue of criminal actions is, consistent with that law's declared policy[15]

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[14] *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660, 708 (1919).

[15] Par. d and e.

of providing a criminal justice system that protects and serves the best interests of the victims of illegal recruitment.

G.R. 167590, G.R. 182978-79,[16] ***and G.R. 184298-99***[17]
(Constitutionality of Section 10, last sentence of 2nd paragraph)

G.R. 182978-79 and G.R. 184298-99 are consolidated cases. Respondent spouses Simplicio and Mila Cuaresma (the Cuaresmas) filed a claim for death and insurance benefits and damages against petitioners Becmen Service Exporter and Promotion, Inc. (Becmen) and White Falcon Services, Inc. (White Falcon) for the death of their daughter Jasmin Cuaresma while working as staff nurse in Riyadh, Saudi Arabia.

The Labor Arbiter (LA) dismissed the claim on the ground that the Cuaresmas had already received insurance benefits arising from their daughter's death from the Overseas Workers Welfare Administration (OWWA). The LA also gave due credence to the findings of the Saudi Arabian authorities that Jasmin committed suicide.

On appeal, however, the National Labor Relations Commission (NLRC) found Becmen and White Falcon jointly and severally liable for Jasmin's death and ordered them to pay the Cuaresmas the amount of US$113,000.00 as actual damages. The NLRC relied on the Cabanatuan City Health Office's autopsy finding that Jasmin died of criminal violence and rape.

Becmen and White Falcon appealed the NLRC Decision to the Court of Appeals (CA).[18] On June 28, 2006 the CA held Becmen and White Falcon jointly and severally liable with their Saudi Arabian employer for actual damages, with Becmen having

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[16] Entitled *Becmen Service Exporter and Promotion, Inc. v. Spouses Simplicio and Mila Cuaresma, for and in behalf of their daughter Jasmin G. Cuaresma, et al.*

[17] Entitled *Spouses Simplicio and Mila Cuaresma, for and in behalf of their deceased daughter Jasmin G. Cuaresma v. White Falcon Services, Inc. and Becmen Services Exporter and Promotion, Inc.*

[18] Docketed as CA-G.R. SP 80619 and 81030.

a right of reimbursement from White Falcon. Becmen and White Falcon appealed the CA Decision to this Court.

On April 7, 2009 the Court found Jasmin's death not work-related or work-connected since her rape and death did not occur while she was on duty at the hospital or doing acts incidental to her employment. The Court deleted the award of actual damages but ruled that Becmen's corporate directors and officers are solidarily liable with their company for its failure to investigate the true nature of her death. Becmen and White Falcon abandoned their legal, moral, and social duty to assist the Cuaresmas in obtaining justice for their daughter. Consequently, the Court held the foreign employer Rajab and Silsilah, White Falcon, Becmen, and the latter's corporate directors and officers jointly and severally liable to the Cuaresmas for: ***1)*** ₱2,500,000.00 as moral damages; ***2)*** ₱2,500,000.00 as exemplary damages; ***3)*** attorney's fees of 10% of the total monetary award; and **4)** cost of suit.

On July 16, 2009 the corporate directors and officers of Becmen, namely, Eufrocina Gumabay, Elvira Taguiam, Lourdes Bonifacio and Eddie De Guzman (Gumabay, *et al*.) filed a motion for leave to Intervene. They questioned the constitutionality of the last sentence of the second paragraph of Section 10, R.A. 8042 which holds the corporate directors, officers and partners jointly and solidarily liable with their company for money claims filed by OFWs against their employers and the recruitment firms. On September 9, 2009 the Court allowed the intervention and admitted Gumabay, *et al*.'s motion for reconsideration.

The key issue that Gumabay, *et al*. present is *whether or not the 2nd paragraph of Section 10, R.A. 8042, which holds the corporate directors, officers, and partners of recruitment and placement agencies jointly and solidarily liable for money claims and damages that may be adjudged against the latter agencies, is unconstitutional.*

In G.R. 167590 (the PASEI case), the Quezon City RTC held as unconstitutional the last sentence of the 2nd paragraph of Section 10 of R.A. 8042. It pointed out that, absent sufficient

proof that the corporate officers and directors of the erring company had knowledge of and allowed the illegal recruitment, making them automatically liable would violate their right to due process of law.

The pertinent portion of Section 10 provides:

SEC. 10. *Money Claims*. – x x x

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. **If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.** (Emphasis supplied)

But the Court has already held, pending adjudication of this case, that the liability of corporate directors and officers is not automatic. To make them jointly and solidarily liable with their company, there must be a finding that they were remiss in directing the affairs of that company, such as sponsoring or tolerating the conduct of illegal activities.[19] In the case of Becmen and White Falcon,[20] while there is evidence that these companies were at fault in not investigating the cause of Jasmin's death, there is no mention of any evidence in the case against them that intervenors Gumabay, *et al.*, Becmen's corporate officers and directors, were personally involved in their company's particular actions or omissions in Jasmin's case.

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[19] *MAM Realty Development Corp. v. National Labor Relations Commission*, 314 Phil. 838, 845 (1995).

[20] G.R. 182978-79 and G.R. 184298-99.

As a final note, R.A. 8042 is a police power measure intended to regulate the recruitment and deployment of OFWs. It aims to curb, if not eliminate, the injustices and abuses suffered by numerous OFWs seeking to work abroad. The rule is settled that every statute has in its favor the presumption of constitutionality. The Court cannot inquire into the wisdom or expediency of the laws enacted by the Legislative Department. Hence, in the absence of a clear and unmistakable case that the statute is unconstitutional, the Court must uphold its validity.

WHEREFORE, in G.R. 152642 and 152710, the Court **DISMISSES** the petitions for having become moot and academic.

In G.R. 167590, the Court **SETS ASIDE** the Decision of the Regional Trial Court of Manila dated December 8, 2004 and **DECLARES** Sections 6, 7, and 9 of Republic Act 8042 valid and constitutional.

In G.R. 182978-79 and G.R. 184298-99 as well as in G.R. 167590, the Court **HOLDS** the last sentence of the second paragraph of Section 10 of Republic Act 8042 valid and constitutional. The Court, however, **RECONSIDERS and SETS ASIDE** the portion of its Decision in G.R. 182978-79 and G.R. 184298-99 that held intervenors Eufrocina Gumabay, Elvira Taguiam, Lourdes Bonifacio, and Eddie De Guzman jointly and solidarily liable with respondent Becmen Services Exporter and Promotion, Inc. to spouses Simplicio and Mila Cuaresma for lack of a finding in those cases that such intervenors had a part in the act or omission imputed to their corporation.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Villarama, Jr., Perez, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Brion, J., no part due to prior participation in related issues in a former position.

Bersamin, J., no part due to prior participation in the lower court.

Mendoza, J., no part.

EN BANC

[G.R. Nos. 162144-54. November 13, 2012]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HON. MA. THERESA L. DELA TORRE-YADAO, in her capacity as Presiding Judge, Branch 81, Regional Trial Court of Quezon City, HON. MA. NATIVIDAD M. DIZON, in her capacity as Executive Judge of the Regional Trial Court of Quezon City, PANFILO M. LACSON, JEWEL F. CANSON, ROMEO M. ACOP, FRANCISCO G. ZUBIA, JR., MICHAEL RAY B. AQUINO, CEZAR O. MANCAO II, ZOROBABEL S. LAURELES, GLENN G. DUMLAO, ALMARIO A. HILARIO, JOSE ERWIN T. VILLACORTE, GIL C. MENESES, ROLANDO ANDUYAN, JOSELITO T. ESQUIVEL, RICARDO G. DANDAN, CEASAR TANNAGAN, VICENTE P. ARNADO, ROBERTO T. LANGCAUON, ANGELITO N. CAISIP, ANTONIO FRIAS, CICERO S. BACOLOD, WILLY NUAS, JUANITO B. MANAOIS, VIRGILIO V. PARAGAS, ROLANDO R. JIMENEZ, CECILIO T. MORITO, REYNALDO C. LAS PIÑAS, WILFREDO G. CUARTERO, ROBERTO O. AGBALOG, OSMUNDO B. CARIÑO, NORBERTO LASAGA, LEONARDO GLORIA, ALEJANDRO G. LIWANAG, ELMER FERRER and ROMY CRUZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; PRINCIPLE OF JUDICIAL HIERARCHY OF COURTS; EXCEPTION.— [T]he Court notes that the prosecution skipped the CA and filed its action directly with this Court, ignoring the principle of judicial hierarchy of courts. Although the Supreme Court, the CA, and the RTCs have concurrent jurisdiction to issue a writ of *certiorari*, such concurrence does not give the People the unrestricted freedom of choice of forum. In any case, the immense public interest in these cases, the considerable length of time that has passed since the crime took place, and the

numerous times these cases have come before this Court probably warrant a waiver of such procedural lapse.

2. ID.; ID; FAMILY COURTS; HAVE EXCLUSIVE ORIGINAL JURISDICTION OVER CRIMINAL CASES INVOLVING MINORS; RATIONALE.— The Court is not impervious to the provisions of Section 5 of R.A. 8369, that vests in family courts jurisdiction over violations of R.A. 7610, which in turn covers murder cases where the victim is a minor. x x x Undoubtedly, in vesting in family courts exclusive original jurisdiction over criminal cases involving minors, the law but seeks to protect their welfare and best interests. For this reason, when the need for such protection is not compromised, the Court is able to relax the rule. In several cases, for instance, the Court has held that the CA enjoys concurrent jurisdiction with the family courts in hearing petitions for *habeas corpus* involving minors. Here, the two minor victims, for whose interests the people wanted the murder cases moved to a family court, are dead. As respondents aptly point out, there is no living minor in the murder cases that require the special attention and protection of a family court. In fact, no minor would appear as party in those cases during trial since the minor victims are represented by their parents who had become the real private offended parties.

3. JUDICIAL ETHICS; JUDGES; DISQUALIFICATION OF JUDICIAL OFFICERS; VOLUNTARY INHIBITION; PRIMARILY A MATTER OF CONSCIENCE AND SOUND DISCRETION ON THE PART OF THE JUDGE.— The rules governing the disqualification of judges are found, first, in Section 1, Rule 137 of the Rules of Court x x x and in Rule 3.12, Canon 3 of the Code of Judicial Conduct x x x. The first paragraph of Section 1, Rule 137 and Rule 3.12, Canon 3 provide for the compulsory disqualification of a judge while the second paragraph of Section 1, Rule 137 provides for his voluntary inhibition. The matter of voluntary inhibition is primarily a matter of conscience and sound discretion on the part of the judge since he is in a better position to determine whether a given situation would unfairly affect his attitude towards the parties or their cases. The mere imputation of bias, partiality, and prejudgment is not enough ground, absent clear and convincing evidence that can overcome the presumption that

the judge will perform his duties according to law without fear or favor. The Court will not disqualify a judge based on speculations and surmises or the adverse nature of the judge's rulings towards those who seek to inhibit him.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; ISSUANCE OF WARRANTS OF ARRESTS; THE JUDGE IS NOT REQUIRED TO CONDUCT A *DE NOVO* HEARING WHEN DETERMINING PROBABLE CAUSE FOR THE ISSUANCE OF WARRANTS OF ARRESTS; EXCEPTION, PRESENT IN CASE AT BAR.— The general rule of course is that the judge is not required, when determining probable cause for the issuance of warrants of arrests, to conduct a *de novo* hearing. The judge only needs to personally review the initial determination of the prosecutor finding a probable cause to see if it is supported by substantial evidence. But here, the prosecution conceded that their own witnesses tried to explain in their new affidavits the inconsistent statements that they earlier submitted to the Office of the Ombudsman. Consequently, it was not unreasonable for Judge Yadao, for the purpose of determining probable cause based on those affidavits, to hold a hearing and examine the inconsistent statements and related documents that the witnesses themselves brought up and were part of the records. Besides, she received no new evidence from the respondents.

5. ID.; ID.; ID.; ID.; OPTION TO ORDER THE PROSECUTOR TO PRESENT ADDITIONAL EVIDENCE IS NOT MANDATORY.— Section 6, Rule 112 of the Rules of Court gives the trial court three options upon the filing of the criminal information: (1) dismiss the case if the evidence on record clearly failed to establish probable cause; (2) issue a warrant of arrest if it finds probable cause; and (3) order the prosecutor to present additional evidence within five days from notice in case of doubt as to the existence of probable cause. But the option to order the prosecutor to present additional evidence is not mandatory. The court's first option under the above is for it to "immediately dismiss the case if the evidence on record clearly fails to establish probable cause." That is the situation here: the evidence on record clearly fails to establish probable cause against the respondents. It is only "in case of doubt on the existence of probable cause" that the judge may order the

prosecutor to present additional evidence within five days from notice. But that is not the case here. Discounting the affidavits of Ramos, Medes, Enad, and Seno, nothing is left in the record that presents some doubtful probability that respondents committed the crime charged. PNP Director Leandro Mendoza sought the revival of the cases in 2001, six years after it happened. It would have been ridiculous to entertain the belief that the police could produce new witnesses in the five days required of the prosecution by the rules.

6. ID.; RULES OF COURT; POWERS AND DUTIES OF COURTS AND JUDICIAL OFFICERS; THE TRIAL COURT IS GIVEN AMPLE INHERENT AND ADMINISTRATIVE POWERS TO EFFECTIVELY CONTROL THE CONDUCT OF ITS PROCEEDINGS.— Section 5, Rule 135 of the Rules of Court gives the trial court ample inherent and administrative powers to effectively control the conduct of its proceedings. x x x There is nothing arbitrary about Judge Yadao's policy of allowing only one public prosecutor and one private prosecutor to address the court during the hearing for determination of probable cause but permitting counsels representing the individual accused to do so. A criminal action is prosecuted under the direction and control of the public prosecutor. The burden of establishing probable cause against all the accused is upon him, not upon the private prosecutors whose interests lie solely in their clients' damages claim. Besides, the public and the private prosecutors take a common position on the issue of probable cause. On the other hand, each of the accused is entitled to adopt defenses that are personal to him. As for the prohibition against the prosecution's private recording of the proceedings, courts usually disallows such recordings because they create an unnecessary distraction and if allowed, could prompt every lawyer, party, witness, or reporter having some interest in the proceeding to insist on being given the same privilege. Since the prosecution makes no claim that the official recording of the proceedings by the court's stenographer has been insufficient, the Court finds no grave abuse of discretion in Judge Yadao's policy against such extraneous recordings.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Fortun Narvasa and Salazar Law Office for Sen. Panfilo Lacson.

Manuel M. Lazaro, Michelle B. Lazaro, Hector P. Corpus and J. Kieth P. Nieto for Jose Erwin T. Villacorte, Esquivel, Cariño and Agbalog.

Law Firm of Anacleto M. Diaz and Associates for Jewel F. Canson.

Manuel N. Camacho and Fritzie Tangkia-Fabricante for Angelito N. Caisip.

Alex O. Avisado, Jr. for Anduyan, Liwanag, Lasaga and Gloria.

Francisco I. Chavez Luis Angel G. Aseoche and Don Carlo R. Ybanez for Romeo M. Acop and Francisco Zubia.

Arno V. Sanidad for Sps. Abalora.

Ida May J. La'o for Antonino Redilles.

Abraham G. Espejo and Leo Gilo for Jimenez, Cuartero and Paragas.

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Daniel Soriano Frias for A. Frias.

Efren C. Moncupa for Sps. Siplon.

Felix J. Mariñas, Jr. for Sps. Sorronda.

Ianela G. Jusi-Barrantes for Ielda Montero.

Rodolfo U. Jimenez and *Diokno & Diokno Law Office* for Almario A. Hilario and Ricardo G. Dandan.

Lim and Leynes Law Offices for Candelaria Daig Arcadio.

HM Ramos Urmenita and Associates Law Office for Zorobabel Laureles.

D E C I S I O N

ABAD, *J.*:

This case, which involves the alleged summary execution of suspected members of the *Kuratong Baleleng* Gang, is once again before this Court this time questioning, among other things, the trial court's determination of the absence of probable cause and its dismissal of the criminal actions.[1]

The Facts and the Case

In the early morning of May 18, 1995, the combined forces of the Philippine National Police's Anti-Bank Robbery and Intelligence Task Group (PNP ABRITG) composed of Task Force Habagat (then headed by Police Chief Superintendent Panfilo M. Lacson), Traffic Management Command ([TMC] led by then Police Senior Superintendent Francisco G. Zubia, Jr.), Criminal Investigation Command (led by then Police Chief Superintendent Romeo M. Acop), and National Capital Region Command (headed by then Police Chief Superintendent Jewel F. Canson) killed 11 suspected members of the *Kuratong Baleleng* Gang[2] along Commonwealth Avenue in Quezon City.

Subsequently, SPO2 Eduardo Delos Reyes of the Criminal Investigation Command told the press that it was a summary execution, not a shoot-out between the police and those who were slain. After investigation, the Deputy Ombudsman for Military Affairs absolved all the police officers involved, including respondents Panfilo M. Lacson, Jewel F. Canson, Romeo M. Acop, Francisco G. Zubia, Jr., Michael Ray B. Aquino, Cezar O. Mancao II, and 28 others (collectively, the respondents).[3]

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[1] See *Lacson v. The Executive Secretary*, 361 Phil. 251 (1999); *People v. Lacson*, 432 Phil. 113 (2002); *People v. Lacson*, 448 Phil. 317 (2003).

[2] Namely: Manuel Montero, Rolando Siplon, Sherwyn Abalora, Ray Abalora, Joel Amora, Hilario Jevy Redillas, Meleubren Sorronda, Pacifico Montero, Jr., Welbor Elcamel, Carlito Alap-ap and Tirso Daig @ Alex Neri.

[3] Namely: Zorobabel S. Laureles, Glenn G. Dumlao, Almario A. Hilario, Jose Erwin T. Villacorte, Gil C. Meneses, Rolando Anduyan, Joselito T. Esquivel,

On review, however, the Office of the Ombudsman reversed the finding and filed charges of murder against the police officers involved before the Sandiganbayan in Criminal Cases 23047 to 57, except that in the cases of respondents Zubia, Acop, and Lacson, their liabilities were downgraded to mere accessory. On arraignment, Lacson pleaded not guilty.

Upon respondents' motion, the Sandiganbayan ordered the transfer of their cases to the Regional Trial Court (RTC) of Quezon City on the ground that none of the principal accused had the rank of Chief Superintendent or higher. Pending the resolution of the Office of the Special Prosecutor's motion for reconsideration of the transfer order, Congress passed Republic Act (R.A.) 8249 that expanded the Sandiganbayan's jurisdiction by deleting the word "principal" from the phrase "principal accused" to apply to all pending cases where trial had not begun. As a result of this new law, the Sandiganbayan opted to retain and try the *Kuratong Baleleng* murder cases.

Respondent Lacson challenged the constitutionality of R.A. 8249 in G.R. 128096[4] but this Court upheld its validity. Nonetheless, the Court ordered the transfer of the trial of the cases to the RTC of Quezon City since the amended informations contained no allegations that respondents committed the offenses charged in relation to, or in the discharge of, their official functions as required by R.A. 8249.

Before the RTC of Quezon City, Branch 81, then presided over by Judge Wenceslao Agnir, Jr., could arraign respondents in the re-docketed Criminal Cases Q-99-81679 to 89, however, SPO2 Delos Reyes and the other prosecution witnesses recanted their affidavits. Some of the victims' heirs also executed affidavits

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Ricardo G. Dandan, Ceasar Tannagan, Vicente P. Arnado, Roberto T. Langcauon, Angelito N. Caisip, Antonio Frias, Cicero S. Bacolod, Willy Nuas, Juanito B. Manaois, Virgilio V. Paragas, Rolando R. Jimenez, Cecilio T. Morito, Reynaldo C. Las Piñas, Wilfredo G. Cuartero, Roberto O. Agbalog, Osmundo B. Cariño, Norberto Lasaga, Leonardo Gloria, Alejandro G. Liwanag, Elmer Ferrer, and Romy Cruz.

[4] *Lacson v. The Executive Secretary*, *supra* note 1.

of desistance. These prompted the respondents to file separate motions for the determination of probable cause before the issuance of warrants of arrests.

On March 29, 1999 the RTC of Quezon City ordered the provisional dismissal of the cases for lack of probable cause to hold the accused for trial following the recantation of the principal prosecution witnesses and the desistance of the private complainants.

Two years later or on March 27, 2001 PNP Director Leandro R. Mendoza sought to revive the cases against respondents by requesting the Department of Justice (DOJ) to conduct another preliminary investigation in their cases on the strength of the affidavits of P/Insp. Ysmael S. Yu and P/S Insp. Abelardo Ramos. In response, then DOJ Secretary Hernando B. Perez constituted a panel of prosecutors to conduct the requested investigation.

Invoking their constitutional right against double jeopardy, Lacson and his co-accused filed a petition for prohibition with application for temporary restraining order and writ of preliminary injunction before the RTC of Manila in Civil Case 01-100933. In an Order dated June 5, 2001, that court denied the plea for temporary restraining order. Thus, on June 6, 2001 the panel of prosecutors found probable cause to hold Lacson and his co-accused liable as principals for 11 counts of murder, resulting in the filing of separate informations against them in Criminal Cases 01-101102 to 12 before the RTC of Quezon City, Branch 81, now presided over by respondent Judge Ma. Theresa L. Yadao.

On the same day, respondent Lacson filed a petition for *certiorari* before the Court of Appeals (CA), assailing the RTC of Manila's order which allowed the renewed preliminary investigation of the murder charges against him and his co-accused. Lacson also filed with the RTC of Quezon City a motion for judicial determination of probable cause. But on June 13, 2001 he sought the suspension of the proceedings in that court.

In the meantime, the CA issued a temporary restraining order enjoining the RTC of Quezon City from issuing warrants of arrest or conducting any proceeding in Criminal Cases 01-101102 to 12 before it. On August 24, 2001 the CA rendered a Decision, granting Lacson's petition on the ground of double jeopardy since, although the dismissal of Criminal Cases Q-99-81679 to 89 was provisional, such dismissal became permanent two years after when they were not revived.

Upon the prosecution's appeal to this Court in G.R. 149453,[5] the Court ruled that, based on the record, Lacson failed to prove compliance with the requirements of Section 8, Rule 117 governing provisional dismissals. The records showed that the prosecution did not file a motion for provisional dismissal and, for his part, respondent Lacson had merely filed a motion for judicial determination of probable cause. Nowhere did he agree to some proposal for a provisional dismissal of the cases. Furthermore, the heirs of the victims had no notice of any motion for such provisional dismissal.

The Court thus set aside the CA Decision of August 24, 2001 and directed the RTC of Quezon City to try the cases with dispatch. On motion for reconsideration by respondent Lacson, the Court ordered the re-raffle of the criminal cases to a heinous crimes court. Upon re-raffle, however, the cases still went to Branch 81, which as already stated was now presided over by Judge Yadao.

On October 12, 2003 the parents of two of the victims submitted birth certificates showing that they were minors. Apparently reacting to this, the prosecution amended the informations to show such minority and asked respondent Executive Judge Ma. Natividad M. Dizon to recall the assignment of the cases to Branch 81 and re-raffle them to a family court. The request for recall was denied.

On October 20, 2003 the prosecution filed an omnibus motion before Branch 81, praying for the re-raffle of Criminal Cases

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[5] *People v. Lacson*, *supra* note 1.

01-101102 to12 to the family courts in view of the changes in the two informations. On October 24, 2003 the prosecution also filed its consolidated comment *ex-abundanti cautela* on the motions to determine probable cause.

On November 12, 2003[6] Judge Yadao issued an order, denying the prosecution's motion for re-raffle to a family court on the ground that Section 5 of R.A. 8369 applied only to living minors. She also granted the motions for determination of probable cause and dismissed the cases against the respondents since the affidavits of the prosecution witnesses were inconsistent with those they submitted in the preliminary investigations before the Ombudsman for the crime of robbery.

On November 25, 2003 the prosecution filed a verified motion to recuse or disqualify Judge Yadao and for reconsideration of her order. It also filed an administrative complaint against her for dishonesty, conduct prejudicial to the best interests of the service, manifest partiality, and knowingly rendering an unjust judgment.[7] On January 14, 2004, the prosecution filed an urgent supplemental motion for compulsory disqualification with motion for cancellation of the hearing on motion for reconsideration.

On January 21, 2004 Judge Yadao issued an order, denying the motion to recuse her, prompting the prosecution to appeal from that order. Further, on January 22, 2004 Judge Yadao issued another order, denying the prosecution's motion for reconsideration of the Order dated November 12, 2003 that dismissed the action against the respondents. In response, the prosecution filed a notice of appeal from the same. Finally, on January 26, 2004 Judge Yadao issued an order, denying the prosecution's motion for reconsideration of its January 16, 2004 Order not only for lack of merit but also for having become moot and academic.

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[6] *Rollo*, Vol. I, pp. 235-251.

[7] *Id.*, Vol. II, pp. 768-796; Dismissed on May 17, 2004, see *rollo*, Vol. IV, pp. 3225-3226.

On February 16, 2004 the prosecution withdrew *ex-abundanti cautela* the notices of appeal that it filed in the cases. Subsequently, on March 3, 2004 it filed the present special civil action of *certiorari*.

The Issues Presented

The prosecution presents the following issues:

1. Whether or not Executive Judge Dizon gravely abused her discretion in allowing Criminal Cases 01-101102 to 12 to be re-raffled to other than among the RTC of Quezon City's family courts.

2. Whether or not Judge Yadao gravely abused her discretion when she took cognizance of Criminal Cases 01-101102 to 12 contrary to the prosecution's view that such cases fell under the jurisdiction of family courts.

3. Whether or not Judge Yadao gravely abused her discretion when she did not inhibit and disqualify herself from taking cognizance of the cases.

4. Whether or not Judge Yadao gravely abused her discretion when she dismissed the criminal actions on the ground of lack of probable cause and barred the presentation of additional evidence in support of the prosecution's motion for reconsideration.

5. Whether or not Judge Yadao gravely abused her discretion when she adopted certain policies concerning the conduct of hearings in her court.

The Court's Rulings

Before addressing the above issues, the Court notes respondents' contention that the prosecution's resort to special civil action of *certiorari* under Rule 65 is improper. Since the trial court dismissed the criminal actions against respondents, the prosecution's remedy was to appeal to the CA from that order of dismissal.

Ordinarily, the proper remedy from an order dismissing an action is an appeal.[8] Here, the prosecution in fact filed a notice of appeal from such an order issued in the subject cases. But it reconsidered its action and withdrew that notice, believing that appeal was not an effective, speedy, and adequate remedy.[9] In other words, the prosecution's move was not a case of forgotten remedy but a conscious resort to another based on a belief that respondent Judge Yadao gravely abused her discretion in issuing her various orders and that *certiorari* under Rule 65 was the proper and all-encompassing remedy for the prosecution. The Court is not prepared to say that the remedy is altogether implausible as to throw out the petition outright.

Still, the Court notes that the prosecution skipped the CA and filed its action directly with this Court, ignoring the principle of judicial hierarchy of courts. Although the Supreme Court, the CA, and the RTCs have concurrent jurisdiction to issue a writ of *certiorari*, such concurrence does not give the People the unrestricted freedom of choice of forum.[10] In any case, the immense public interest in these cases, the considerable length of time that has passed since the crime took place, and the numerous times these cases have come before this Court probably warrant a waiver of such procedural lapse.

1. Raffle of the Cases

The prosecution points out that the RTC of Quezon City Executive Judge gravely abused her discretion when she placed Criminal Cases 01-101102 to 12 under a separate category which did not restrict their raffle to the city's special criminal and family courts in accordance with SC Administrative Order 36-96. Further, the prosecution points out that she violated Administrative Order 19-98 when Branches 219 and 102 were left out of the raffle. The presiding judges of these two branches, both heinous crimes courts eligible to receive cases by raffle, had just been appointed to the CA.

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[8] *Santos v. Orda, Jr.*, G.R. No. 189402, May 6, 2010, 620 SCRA 375, 383.

[9] *Rollo*, Vol. II, p. 1244.

[10] *AAA v. Carbonell*, G.R. No. 171465, June 8, 2007, 524 SCRA 496, 506.

The records of the cases show nothing irregular in the conduct of the raffle of the subject cases. The raffle maintained a separate list for criminal and civil cases. Criminal cases cognizable by special criminal courts were separately listed. Criminal Cases 01-101102 to 12 were given a separate heading, "Re-Raffle," but there was nothing irregular in this since it merely indicated that the cases were not being raffled for the first time.

The Executive Judge did not err in leaving out Branches 219 and 102 from raffle since these branches remained without regularly appointed judges. Although the pairing judges of these branches had authority to act on incidental, interlocutory, and urgent matters, this did not mean that such branches should already be included in the raffle of cases.

Parenthetically, the prosecution was represented during the raffle yet it did not then object to the manner by which it was conducted. The prosecution raised the question only when it filed this petition, a clear afterthought.

2. Jurisdiction of Family Courts

The prosecution points out that, although this Court's October 7, 2003 Resolution directed a re-raffle of the cases to a heinous crimes court, the prosecution in the meantime amended the informations to reflect the fact that two of the murder victims were minors. For this reason, the Executive Judge should have raffled the cases to a family court pursuant to Section 5 of R.A. 8369.

The Court is not impervious to the provisions of Section 5 of R.A. 8369, that vests in family courts jurisdiction over violations of R.A. 7610, which in turn covers murder cases where the victim is a minor. Thus:

> Sec. 5. Jurisdiction of Family Courts. – The Family Courts shall have exclusive original jurisdiction to hear and decide the following cases:
>
> a) Criminal cases where one or more of the accused is below eighteen (18) years of age but not less than nine (9) years of age, or **where one or more of the victims is a minor at the time of the commission of the offense**: *Provided*, That if the minor is found

guilty, the court shall promulgate sentence and ascertain any civil liability which the respondent may have incurred. (Emphasis supplied)

Undoubtedly, in vesting in family courts exclusive original jurisdiction over criminal cases involving minors, the law but seeks to protect their welfare and best interests. For this reason, when the need for such protection is not compromised, the Court is able to relax the rule. In several cases,[11] for instance, the Court has held that the CA enjoys concurrent jurisdiction with the family courts in hearing petitions for *habeas corpus* involving minors.

Here, the two minor victims, for whose interests the people wanted the murder cases moved to a family court, are dead. As respondents aptly point out, there is no living minor in the murder cases that require the special attention and protection of a family court. In fact, no minor would appear as party in those cases during trial since the minor victims are represented by their parents who had become the real private offended parties.

3. Inhibition of Judge Yadao

The prosecution claims that Judge Yadao committed grave abuse of discretion in failing to inhibit herself from hearing the cases against the respondents.

The rules governing the disqualification of judges are found, first, in Section 1, Rule 137 of the Rules of Court, which provides:

> Sec. 1. *Disqualification of judges*. – No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily 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 in 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.

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[11] *Madriñan v. Madriñan*, G.R. No. 159374, July 12, 2007, 527 SCRA 487; *Thornton v. Thornton*, 480 Phil. 224 (2004).

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

and in Rule 3.12, Canon 3 of the Code of Judicial Conduct, which states:

Rule 3.12. – 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:

(a) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

x x x x x x x x x

(e) the judge knows the judge's spouse or child has a financial interest, as heir, legatee, creditor, fiduciary, or otherwise, in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding. In every instance, the judge shall indicate the legal reason for inhibition.

The first paragraph of Section 1, Rule 137 and Rule 3.12, Canon 3 provide for the compulsory disqualification of a judge while the second paragraph of Section 1, Rule 137 provides for his voluntary inhibition.

The matter of voluntary inhibition is primarily a matter of conscience and sound discretion on the part of the judge since he is in a better position to determine whether a given situation would unfairly affect his attitude towards the parties or their cases. The mere imputation of bias, partiality, and prejudgment is not enough ground, absent clear and convincing evidence that can overcome the presumption that the judge will perform his duties according to law without fear or favor. The Court will not disqualify a judge based on speculations and surmises or the adverse nature of the judge's rulings towards those who seek to inhibit him.[12]

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[12] *Spouses Abrajano v. Heirs of Augusto F. Salas, Jr.*, 517 Phil. 663, 674-675 (2006).

Here, the prosecution contends that Judge Yadao should have inhibited herself for improperly submitting to a public interview on the day following her dismissal of the criminal cases against the respondents. But the Court finds nothing basically reprehensible in such interview. Judge Yadao's dismissal of the multiple murder cases aroused natural public interest and stirred the media into frenzy for correct information. Judge Yadao simply accommodated, not sought, the requests for such an interview to clarify the basis of her order. There is no allegation that she gave out false information. To be sure, the prosecution never once accused her of making public disclosures regarding the merits of those cases prior to her order dismissing such cases.

The prosecution also assails as constituting bias Judge Yadao's statement that a very close relative stood to be promoted if she was to issue a warrant of arrest against the respondents. But this statement merely shows that she cannot be dissuaded by some relative who is close to her. How can this constitute bias? Besides, there is no evidence that the close relative she referred to was her spouse or child which would be a mandatory ground for disqualification.

Further, the prosecution claims that Judge Yadao prejudged its motion for reconsideration when she said in her comment to the administrative complaint against her that such motion was merely the prosecution's stubborn insistence on the existence of probable cause against the respondents. The comment could of course not be regarded as a prejudgment of the issue since she had precisely already issued an order holding that the complainant's evidence failed to establish probable cause against the respondents. And there is nothing wrong about characterizing a motion for reconsideration as a "stubborn" position taken by the party who filed it. Judge Yadao did not characterize the motion as wholly unjustified at the time she filed her comment.

4. Dismissal of the Criminal Cases

The prosecution claims that Judge Yadao gravely abused her discretion when she set the motions for determination of probable

cause for hearing, deferred the issuance of warrants of arrest, and allowed the defense to mark its evidence and argue its case. The prosecution stresses that under Section 6, Rule 112 of the Rules of Court Judge Yadao's duty was to determine probable cause for the purpose of issuing the arrest warrants solely on the basis of the investigating prosecutor's resolution as well as the informations and their supporting documents. And, if she had some doubts as to the existence of probable cause, the rules required her to order the investigating prosecutor to present additional evidence to support the finding of probable cause within five days from notice.

Rather than take limited action, said the prosecution, Judge Yadao dug up and adopted the Ombudsman's findings when the latter conducted its preliminary investigation of the crime of robbery in 1996. Judge Yadao gave weight to the affidavits submitted in that earlier preliminary investigation when such documents are proper for presentation during the trial of the cases. The prosecution added that the affidavits of P/S Insp. Abelardo Ramos and SPO1 Wilmor B. Medes reasonably explained the prior inconsistent affidavits they submitted before the Ombudsman.

The general rule of course is that the judge is not required, when determining probable cause for the issuance of warrants of arrests, to conduct a *de novo* hearing. The judge only needs to personally review the initial determination of the prosecutor finding a probable cause to see if it is supported by substantial evidence.[13]

But here, the prosecution conceded that their own witnesses tried to explain in their new affidavits the inconsistent statements that they earlier submitted to the Office of the Ombudsman. Consequently, it was not unreasonable for Judge Yadao, for the purpose of determining probable cause based on those affidavits, to hold a hearing and examine the inconsistent statements and related documents that the witnesses themselves brought

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[13] *AAA v. Carbonell, supra* note 10, at 508-509; *De Joya v. Judge Marquez*, 516 Phil. 717, 722 (2006).

up and were part of the records. Besides, she received no new evidence from the respondents.[14]

The public prosecutor submitted the following affidavits and documents along with the criminal informations to enable Judge Yadao to determine the presence of probable cause against the respondents:

1. P/Insp. Ysmael S. Yu's affidavit of March 24, 2001[15] in which he said that on May 17, 1995 respondent Canson, NCR Command Head, ordered him to form two teams that would go after suspected *Kuratong Baleleng* Gang members who were seen at the Superville Subdivision in Parañaque City. Yu headed the assault team while Marlon Sapla headed the perimeter defense. After the police team apprehended eight men inside the safe house, it turned them over to their investigating unit. The following day, Yu just learned that the men and three others were killed in a shoot-out with the police in Commonwealth Avenue in Quezon City.

2. P/S Insp. Abelardo Ramos' affidavit of March 24, 2001[16] in which he said that he was part of the perimeter defense during the Superville operation. After the assault team apprehended eight male suspects, it brought them to Camp Crame in two vans. Ramos then went to the office of respondent Zubia, TMC Head, where he saw respondents Lacson, Acop, Laureles, Villacorte and other police officers.

According to Ramos, Zubia said that the eight suspects were to be brought to Commonwealth Avenue and killed in a supposed shoot-out and that this action had been cleared with higher authorities, to which remark Lacson nodded as a sign of approval. Before Ramos left the meeting, Lacson supposedly told him, "*baka may mabuhay pa diyan*." Ramos then boarded an L-300 van with his men and four male suspects. In the early morning of May 18, 1995, they executed the plan and gunned down the

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[14] *Rollo*, Vol. I, pp. 235-251.

[15] *Id.* at 600-601.

[16] *Id.* at 632-634.

suspects. A few minutes later, P/S Insp. Glenn G. Dumlao and his men arrived and claimed responsibility for the incident.

3. SPO1 Wilmor B. Medes' affidavit of April 24, 2001[17] in which he corroborated Ramos' statements. Medes said that he belonged to the same team that arrested the eight male suspects. He drove the L-300 van in going to Commonwealth Avenue where the suspects were killed.

4. Mario C. Enad's affidavit of August 8, 1995[18] in which he claimed having served as TMC civilian agent. At around noon of May 17, 1995, he went to Superville Subdivision together with respondents Dumlao, Tannagan, and Nuas. Dumlao told Enad to stay in the car and observe what went on in the house under surveillance. Later that night, other police officers arrived and apprehended the men in the house. Enad went in and saw six men lying on the floor while the others were handcuffed. Enad and his companions left Sucat in the early morning of May 18, 1995. He fell asleep along the way but was awaken by gunshots. He saw Dumlao and other police officers fire their guns at the L-300 van containing the apprehended suspects.

5. SPO2 Noel P. Seno's affidavit of May 31, 2001[19] in which he corroborated what Ramos said. Seno claimed that he was part of the advance party in Superville Subdivision and was also in Commonwealth Avenue when the suspected members of the *Kuratong Baleleng* Gang were killed.

6. The PNP ABRITG After Operations Report of May 31, 1995[20] which narrated the events that took place on May 17 and 18, 1995. This report was submitted by Lacson, Zubia, Acop and Canson.

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[17] *Id.* at 665-666.

[18] *Id.* at 667-675.

[19] *Id.* at 676-680.

[20] *Id.* at 624-631.

7. The PNP Medico-Legal Reports[21] which stated that the suspected members of the *Kuratong Baleleng* Gang tested negative for gunpowder nitrates.

The Court agrees with Judge Yadao that the above affidavits and reports, taken together with the other documents of record, fail to establish probable cause against the respondents.

First. Evidently, the case against respondents rests on the testimony of Ramos, corroborated by those of Medes, Enad, and Seno, who supposedly heard the commanders of the various units plan the killing of the *Kuratong Baleleng* Gang members somewhere in Commonwealth Avenue in Quezon City and actually execute such plan. Yu's testimony is limited to the capture of the gang members and goes no further. He did not see them killed.

Second. Respecting the testimonies of Ramos, Medes, Enad, and Seno, the prosecution's own evidence—the PNP ABRITG's After Operations Report of May 31, 1995—shows that these men took no part in the operations against the *Kuratong Baleleng* Gang members. The report included a comprehensive list of police personnel from Task Force Habagat (Lacson), Traffic Management Command (Zubia), Criminal Investigation Command (Acop), and National Capital Region Command (Canson) who were involved. The names of Ramos, Medes, Enad, and Seno were not on that list. Notably, only Yu's name, among the new set of witnesses, was on that list. Since an after-battle report usually serves as basis for commendations and promotions, any omitted name would hardly have gone unchallenged.

Third. Ramos, whose story appeared to be the most significant evidence against the respondents, submitted in the course of the preliminary investigation that the Office of the Ombudsman conducted in a related robbery charge against the police officers involved a counter-affidavit. He claimed in that counter-affidavit that he was neither in Superville Subdivision nor Commonwealth

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[21] *Id.* at 618-622; Vol. II, pp. 685-706.

Avenue during the *Kuratong Baleleng* operations since he was in Bulacan on May 17, 1995 and at his home on May 18.[22] Notably, Medes claimed in a joint counter-affidavit that he was on duty at the TMC headquarters at Camp Crame on May 17 and 18.[23]

Fourth. The Office of the Ombudsman, looking at the whole picture and giving credence to Ramos and Medes' statements, dismissed the robbery case. More, it excluded Ramos from the group of officers that it charged with the murder of the suspected members of the *Kuratong Baleleng* Gang. Under the circumstances, the Court cannot be less skeptical than Judge Yadao was in doubting the sudden reversal after six years of testimony of these witnesses.

Of course, Yu may have taken part in the subject operation but, as he narrated, his role was limited to cornering and arresting the suspected *Kuratong Baleleng* Gang members at their safe house in Superville Subdivision. After his team turned the suspects over to an investigating unit, he no longer knew what happened to them.

Fifth. True, the PNP Medico-Legal Reports showed that the *Kuratong Baleleng* Gang members tested negative for gunpowder nitrates. But this finding cannot have any legal significance for the purpose of the preliminary investigation of the murder cases against the respondents absent sufficient proof that they probably took part in gunning those gang members down.

The prosecution points out that, rather than dismiss the criminal action outright, Judge Yadao should have ordered the panel of prosecutors to present additional evidence pursuant to Section 6, Rule 112 of the Rules of Court which provides:

Sec. 6. *When warrant of arrest may issue*. – (a) *By the Regional Trial Court*. – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution

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[22] *Id.,* Vol. III, pp. 2076-2078.

[23] *Id.* at 2081-2082.

of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.

Section 6, Rule 112 of the Rules of Court gives the trial court three options upon the filing of the criminal information: (1) dismiss the case if the evidence on record clearly failed to establish probable cause; (2) issue a warrant of arrest if it finds probable cause; and (3) order the prosecutor to present additional evidence within five days from notice in case of doubt as to the existence of probable cause.[24]

But the option to order the prosecutor to present additional evidence is not mandatory. The court's first option under the above is for it to "immediately dismiss the case if the evidence on record clearly fails to establish probable cause." That is the situation here: the evidence on record clearly fails to establish probable cause against the respondents.

It is only "in case of doubt on the existence of probable cause" that the judge may order the prosecutor to present additional evidence within five days from notice. But that is not the case here. Discounting the affidavits of Ramos, Medes, Enad, and Seno, nothing is left in the record that presents some doubtful probability that respondents committed the crime charged. PNP Director Leandro Mendoza sought the revival of the cases in 2001, six years after it happened. It would have been ridiculous to entertain the belief that the police could produce new witnesses in the five days required of the prosecution by the rules.

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[24] *Ong v. Genio*, G.R. No. 182336, December 23, 2009, 609 SCRA 188, 197.

In the absence of probable cause to indict respondents for the crime of multiple murder, they should be insulated from the tribulations, expenses and anxiety of a public trial.[25]

5. Policies Adopted for Conduct of Court Hearing

The prosecution claims that Judge Yadao arbitrarily recognized only one public prosecutor and one private prosecutor for all the offended parties but allowed each of the counsels representing the individual respondents to be heard during the proceedings before it. She also unjustifiably prohibited the prosecution's use of tape recorders.

But Section 5, Rule 135 of the Rules of Court gives the trial court ample inherent and administrative powers to effectively control the conduct of its proceedings. Thus:

> Sec. 5. *Inherent powers of court*. — Every court shall have power:
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> (b) To enforce order in proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority;
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> x x x x x x x x x
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> (d) To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a case before it, in every manner appertaining thereto;
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> x x x x x x x x x
>
> (g) To amend and control its process and orders so as to make them conformable to law and justice;
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> x x x x x x x x x

There is nothing arbitrary about Judge Yadao's policy of allowing only one public prosecutor and one private prosecutor to address the court during the hearing for determination of probable cause but permitting counsels representing the individual accused to do so. A criminal action is prosecuted under the

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[25] *Santos v. Orda, Jr., supra* note 8, at 386-387.

direction and control of the public prosecutor.[26] The burden of establishing probable cause against all the accused is upon him, not upon the private prosecutors whose interests lie solely in their clients' damages claim. Besides, the public and the private prosecutors take a common position on the issue of probable cause. On the other hand, each of the accused is entitled to adopt defenses that are personal to him.

As for the prohibition against the prosecution's private recording of the proceedings, courts usually disallows such recordings because they create an unnecessary distraction and if allowed, could prompt every lawyer, party, witness, or reporter having some interest in the proceeding to insist on being given the same privilege. Since the prosecution makes no claim that the official recording of the proceedings by the court's stenographer has been insufficient, the Court finds no grave abuse of discretion in Judge Yadao's policy against such extraneous recordings.

WHEREFORE, the Court **DISMISSES** this petition and **AFFIRMS** the following assailed Orders of the Regional Trial Court of Quezon City, Branch 81 in Criminal Cases 01-101102 to 12:

1. the Order dated November 12, 2003 which denied the prayer for re-raffle, granted the motions for determination of probable cause, and dismissed the criminal cases;
2. the Order dated January 16, 2004 which granted the motion of the respondents for the immediate resolution of the three pending incidents before the court;
3. the Order dated January 21, 2004 which denied the motion to recuse and the urgent supplemental motion for compulsory disqualification;
4. the Order dated January 22, 2004 which denied the motion for reconsideration of the Order dated November 12, 2003; and

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[26] *Mobilia Products, Inc. v. Umezawa*, 493 Phil. 85, 106 (2005).

5. the Order dated January 26, 2004 which denied the motion for reconsideration of the January 16, 2004 Order.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Carpio, J., no part, prior inhibition in related cases.

EN BANC

[G.R. No. 183446. November 13, 2012]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ESTATE OF HANS MENZI (through its Executor, Manuel G. Montecillo), SANDIGANBAYAN (Fourth Division) and SHERIFFS REYNALDO MELQUIADES and ALBERT A. DELA CRUZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; JUDICIAL ADMISSIONS; AN ADMISSION MADE IN THE SAME CASE IN WHICH IT IS OFFERED DOES NOT REQUIRE PROOF UNLESS IT IS SHOWN THAT IT WAS MADE THROUGH PALPABLE MISTAKE OR WHEN NO SUCH ADMISSION WAS MADE.— Pursuant to Section 4, Rule 129 of the *Revised Rules on Evidence*, an admission, verbal or written, made by a party in the course of the proceedings in the same case does not require proof. It may be made: (a) in the pleadings filed by the parties; (b) in the course of the trial either by verbal or written manifestations or stipulations; or (c) in other stages of judicial proceedings, as in the pre-trial of the case. When made in the same case in which it is offered, "no evidence is

needed to prove the same and it cannot be contradicted unless it is shown to have been made through palpable mistake or when no such admission was made." The admission becomes conclusive on him, and all proofs submitted contrary thereto or inconsistent therewith should be ignored, whether an objection is interposed by the adverse party or not.

2. ID.; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; WRIT OF EXECUTION; CANNOT VARY OR GO BEYOND THE TERMS OF THE JUDGMENT AND MUST CONFORM TO THE DISPOSITIVE PORTION THEREOF.— Considering the finality of this Court's 23 November 2005 Decision affirming the Sandiganbayan's 14 March 2002 Decision in Civil Case No. 0022, we find that the Estate and HMHMI correctly argue against the disposition of the proceeds of TDC Nos. 162828 and 162829 in favor of the Republic by means of the writ of execution the latter sought *a quo*. Having been sourced from the disposition of said Liwayway shares, the proceeds of the subject TDCs cannot be released in favor of the Republic without varying the decision sought to be executed which, as admitted, did not make any determination regarding the validity of the ownership of the same shares and/or the legality of the transfer thereof. It is a matter of settled legal principle that a writ of execution must adhere to every essential particular of the judgment sought to be executed. The writ cannot vary or go beyond the terms of the judgment and must conform to the dispositive portion thereof. Time and again, it has been ruled that an order of execution which varies the tenor of the judgment or, for that matter, exceeds the terms thereof is a nullity.

3. ID.; ID.; JUDGMENTS; WHEN A JUDGMENT BECOMES FINAL AND EXECUTORY, IT BECOMES IMMUTABLE AND UNALTERABLE; EXCEPTIONS.— [T]he award of the proceeds of TDC Nos. 162828 and 162829 sought by the Republic would be tantamount to an alteration of the decisions rendered by the Sandiganbayan and this Court, which have already attained finality. Except for clerical errors and in cases of void judgments and *nunc pro tunc* entries which cause no prejudice to any party, nothing is more settled in law than that when a judgment becomes final and executory, it becomes immutable and unalterable. It cannot, therefore, be gainsaid

that such a judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. The reason is grounded on the fundamental considerations of public policy and sound practice that, at the risk of occasional error, the judgments or orders of courts must be final at some definite date fixed by law. "Otherwise, there will be no end to litigations, thus negating the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality."

4. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE BODIES; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT; SEQUESTRATION; MERELY INTENDED TO PREVENT THE DESTRUCTION, CONCEALMENT OR DISSIPATION OF SEQUESTERED PROPERTIES AND TO PRESERVE THEM, PENDING THE JUDICIAL DETERMINATION OF WHETHER THEY ARE IN TRUTH ILL-GOTTEN.— Given the finality of the lifting of the writ of sequestration issued by the PCGG and the long-standing failure of the Republic to allege and prove the illegality of the ownership of the Liwayway shares and the invalidity of the transfers thereof, we find and so hold that the Sandiganbayan cannot be faulted for ordering the release of TDC Nos. 162828 and 162829 in favor of the Estate and HMHMI. An extraordinary measure in the form of a provisional remedy, sequestration is merely "intended to prevent the destruction, concealment or dissipation of sequestered properties and, thereby, to conserve and preserve them, pending the judicial determination in the appropriate proceeding of whether the property was in truth ill-gotten." While it is true that the lifting of a writ of sequestration will not necessarily be fatal to the main case, as it does not *ipso facto* mean that the sequestered property is *not* ill-gotten, it cannot be over-emphasized that there has never been a main case against the Liwayway shares as would justify the Republic's continued claim on the subject TDCs and, for that matter, the prolonged withholding of the proceeds thereof from the Estate and HMHMI. Although jurisprudence recognizes the possibility of a resort to other ancillary remedies since the Sandiganbayan's jurisdiction over sequestration cases

demands that it should also have the authority to preserve the subject matter of the cases or put the same in *custodia legis*, this is unavailing to the Republic since, by its own admission, the Liwayway shares were not litigated in Civil Case No. 0022.

5. ID.; ID.; ID.; ID.; ID.; SUBSISTS ONLY UNTIL OWNERSHIP IS FINALLY JUDICIALLY DETERMINED.— Like the remedies of "freeze order" and "provisional takeover" with which the PCGG has been equipped, sequestration is not meant to deprive the owner or possessor of his title or any right to his property and vest the same in the sequestering agency, the Government or any other person, as these can be done only for the causes and by the processes laid down by law. These remedies "are severe, radical measures taken against apparent, ostensible owners of property, or parties against whom, at the worst, there are merely *prima facie* indications of having amassed 'ill-gotten wealth,' indications which must still be shown to lead towards actual facts in accordance with the judicial procedures of the land." Considering that sequestration is not meant to create a permanent situation as regards the property subject thereof and subsists only until ownership is finally judicially determined, it stands to reason that, upon its dissolution, the property sequestered should likewise be returned to its owner/s. Indeed, sequestration cannot be allowed interminably and forever, if it is to adhere to constitutional due process.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Siguion Reyna Montecillo and Ongsiako for the Estate of Hans Menzi.

D E C I S I O N

PEREZ, *J.*:

In this petition for *certiorari* filed pursuant to Rule 65 of the *1997 Rules of Civil Procedure*, petitioner Republic of the Philippines (the Republic) primarily assails the 17 January 2008

Resolution[1] issued by public respondent *Sandiganbayan*, Fourth Division, in Civil Case No. 0022,[2] the dispositive portion of which states:

WHEREFORE, the plaintiff Republic's motion for execution is GRANTED [IN PART]. The Court hereby ORDERS:

(a) PHILTRUST BANK to deliver to plaintiff Republic of the Philippines the proceeds from the sale of the 198,052.5 Bulletin shares sold by defendant HMHMI to Bulletin Publishing Corporation that is now under Philtrust Bank Time Deposit Certificate No. 136301, in the amount of ₱19,390,156.68, plus interest earned;

(b) Defendant Estate of Hans Menzi, through its executor Manuel G. Montecillo, to surrender for cancellation the original eight (8) Bulletin Certificates of Stock in his possession, *i.e.*, Certificates Nos. 312, 292, 314, 131, 132, 293, and 313, which are part of the 212,425.5 Bulletin shares subject of the Supreme Court's Decision in G.R. No. 79126 dated April 15, 1988; and

(c) Plaintiff Republic of the Philippines, with respect to the 46,626 Bulletin shares in the name of Eduardo Cojuangco, Jr. and pursuant to Alternative 'A' provided for in the Resolution of the Supreme Court dated April 15, 1988, in G.R. No. 79126, to execute the necessary documents in order to effect the transfer of the ownership over these shares to the Bulletin Publishing Corporation in accordance with the agreement it entered into with the latter on June 9, 1998.

Defendants Estate of Hans Menzi and HMHMI's motion is GRANTED. The Court hereby ORDERS PHILTRUST BANK:

To pay the Estate of Hans Menzi, through its Executor, Manuel G. Montecillo and Hans Menzi Holdings and Management, Inc., the amount of ONE HUNDRED FIFTY TWO MILLION EIGHT HUNDRED TWENTY SIX THOUSAND NINE HUNDRED THIRTY

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[1] Penned by Sandiganbayan Associate Justice Gregory S. Ong and concurred in by Associate Justices Jose R. Hernandez and Samuel R. Martires.

[2] *Rollo*, Sandiganbayan's 17 January 2008 Resolution, pp. 39-49.

SEVEN PESOS and 76/100 interests thereon from said date of February 28, 2002, until the whole amount is paid.

SO ORDERED.[3]

The Facts

On 22 April 1986, the Presidential Commission on Good Government (*PCGG*) issued a Writ of Sequestration over the shares of former President Ferdinand Marcos, Emilio Yap (Yap) and Eduardo Cojuangco, Jr. (Cojuangco) in the Bulletin Publishing Corporation (*Bulletin*), together with those of their nominees or agents, among them, Ceasar Zalamea (Zalamea) and Jose Campos (Campos). On 12 February 1987, the PCGG also issued a Writ of Sequestration and Freeze Order over the shares of the U.S. Automotive Co., Inc. (*US Automotive*) and its officers in Liwayway Publishing, Inc. (*Liwayway*) as well as the shares of stock, assets, properties, records and documents of Hans Menzi Holdings and Management, Inc. (HMHMI), the corporation organized by Menzi, Campos, Cojuangco, Zalamea and Rolando Gapud, to serve as holding company for their shares of stock in Liwayway, Menzi and Company, Inc., Menzi Agricultural, Inc., Menzi Development Corporation and M and M Consolidated, Inc. The Writs of Sequestration issued against the Liwayway and Bulletin shares as well as the PCGG's then declared intent to vote the sequestered shares in Bulletin were challenged by Liwayway, US Automotive and Bulletin in the petitions for *certiorari*, prohibition and *mandamus* docketed before this Court as G.R. Nos. 77422 and 79126.[4]

Following Campos' lead in waiving his rights over 46,620 Bulletin shares in favor of the Republic, Zalamea also waived his rights over 121,178 Bulletin shares in favor of the Republic on 15 October 1987. PCGG then sold the shares of Zalamea and Campos in favor of Bulletin, which thereafter appears to have offered a cash deposit in the sum of ₱8,174,470.32 for

[3] *Id.* at 48-49.

[4] *Id.* at 81-84.

Cojuangco's remaining 46,626 Bulletin shares.[5] Together with the interests thereon, the amount was proposed to either: (a) standby as full payment of Cojuangco's shares upon a final judgment declaring the Republic the owner of said shares; or, (b) be returned to Bulletin upon a final judgment declaring Cojuangco as true owner thereof. In the 15 April 1988 Decision in G.R. Nos. 77422 and 79126, this Court directed, among others, the PCGG to accept the cash deposit offered by Bulletin for Cojuangco's shares, subject to the foregoing alternative conditions.[6]

On 29 July 1987, in the meantime, the Republic instituted a complaint for reconveyance, reversion, accounting, restitution and damages against President Marcos, Imelda R. Marcos, Yap, Cojuangco, Zalamea and Atty. Manuel Montecillo (Montecillo). Docketed as Civil Case No. 0022 before the Sandiganbayan, the complaint essentially alleged that Yap acted as the Marcos Spouses' dummy, nominee or agent in the appropriation and concealment of shares of stock of domestic corporations like Bulletin. Cojuangco and Zalamea were likewise alleged to have acted as the Marcos Spouses' dummies, nominees or agents in illegally acquiring Bulletin shares to prevent their disclosure and recovery. In the amended complaint the Republic filed on 10 March 1988, Cojuangco was joined as an actor instead of a mere collaborator of Zalamea who was later dropped as defendant from the case in view of his assignment of his 121,178 Bulletin shares in favor of the Republic as aforesaid. The Republic went on to amend its complaint for a second time on 17 October 1990, to implead as defendant respondent Estate of Hans Menzi (the Estate), through its Executor, Montecillo.[7]

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[5] Collectively referred to as the 214 block of Bulletin shares, consisting of Campos' 46,620.5 shares, Zalamea's 121,178 shares and Cojuangco's 46,626 shares, *id.* at 84 .

[6] *Liwayway Publishing, Inc. v. PCGG*, 243 Phil. 864 (1988).

[7] *Republic of the Phils. v. Estate of Hans Menzi*, 512 Phil. 425, 430 (2005).

On 2 April 1992 the Sandiganbayan issued a Resolution[8] lifting the writ of sequestration issued by the PCGG. This was questioned by the Republic through a petition for *certiorari* docketed before this Court as G.R. No. 107377. In a Resolution dated 16 July 1996, the Court reversed and set aside the assailed resolution and referred the case back to the Sandiganbayan "for resolution of the preliminary question of whether there is *prima facie* factual basis for PCGG's sequestration order."[9] It was pursuant to the foregoing resolution that the Sandiganbayan went on to conduct hearings on the matter and, later, to issue the Resolution dated 13 April 1998, discounting the factual bases for PCGG's sequestration order and granting the Estate's motion to lift the writ of sequestration over the shares of stock, assets, properties, records and documents of HMHMI.[10] Dissatisfied with the Resolution and the Sandiganbayan's 26 August 1998 denial of its motion for reconsideration,[11] the Republic filed the petition for *certiorari* docketed before this Court as G.R. No. 135789.[12]

On 31 January 2002, the Court rendered a decision in G.R. No. 135789, dismissing the Republic's petition on the ground that the Sandiganbayan had the authority to resolve all incidents relative to cases involving ill-gotten wealth and that the court's appellate jurisdiction over the graft court's decisions or final orders is limited to questions of law.[13] On 4 March 2002, Philtrust Bank (Philtrust) filed a motion to intervene in G.R. No. 135789, alleging that the writ of sequestration, which was the subject matter of the case, covered the following time deposits maintained with it by HMHMI, to wit:

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[8] Records, Civil Case No. 0022, Vol. 7, pp. 2700-2708.

[9] *Rollo*, pp. 768-773.

[10] *Id.* at 774-789.

[11] *Id.* at 790-800.

[12] *Republic of the Philippines v. Sandiganbayan (Fourth Division*), 426 Phil. 104 (2002).

[13] *Id.* at 109-110.

Time Deposit Certificate	Date of Certificate	Original Deposit
136301	3/03/86	₱19,390,156.68
162828	4/18/88	24,102,443.85
162829	4/18/88	5,826,683.26

In addition to its being allowed to intervene in the case, Philtrust prayed for the consignation of the proceeds and interests of the foregoing TDCs as well as its release from its obligation pertaining thereto.[14] Alongside the Republic's motion for reconsideration of the 31 January 2002 Decision in G.R. No. 135789, Philtrust's motions were, however, denied for lack of merit in the 20 November 2002 Resolution the Court issued in the case.[15] The motions subsequently filed by the Republic as well as the Estate and HMHMI for the deposit of the Philtrust-tendered sums with, respectively, a government bank or their own account were noted without action in the Court's Resolution dated 22 January 2003.[16]

In the meantime, the following issues were identified for resolution at the pre-trial conducted in Civil Case No. 0022, to wit: (a) whether or not Menzi's sale of his 154,470 Bulletin shares in favor of US Automotive was valid and legal; and, (b) whether or not the Bulletin shares registered in the names of Yap, Cojuangco, Zalamea, Menzi, his Estate or HMHMI were ill-gotten.[17] After a protracted litigation, the Sandiganbayan rendered a Decision dated 14 March 2002,[18] the decretal portion of which states:

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[14] Records, Civil Case No. 0022, Vol. 29, pp. 301-306.

[15] *Rollo*, pp. 685-686.

[16] *Id.* at 687-688.

[17] *Id.* at 595.

[18] Though dated 5 March 2002, the Decision was actually promulgated on 14 March 2002. Records, Civil Case No. 0022, Vol. 27, pp. 25-65.

WHEREFORE, judgment is hereby rendered:

1. Declaring that the following Bulletin shares are the ill-gotten wealth of the defendant Marcos spouses:

   A. The 46,626 Bulletin shares [part of the 214 block] in the name of defendant Eduardo M. Cojuangco, Jr., subject of the Resolution of the Supreme Court dated April 15, 1988 in G.R. No. 79126.

   Pursuant to alternative "A" mentioned therein, plaintiff Republic of the Philippines through the PCGG is hereby declared the legal owner of these shares, and is further directed to execute, in accordance with the Agreement which is entered into with Bulletin Publishing Corporation on June 9, 1988, the necessary documents in order to effect transfer of ownership over these shares to the Bulletin Publishing Corporation.

   B. The 198,052.5 Bulletin shares [198 block] in the names of:

	No. of Shares
Jose Y. Campos	90,866.5
Eduardo M. Cojuangco, Jr.	90,877
Cesar C. Zalamea	16,309
Total	198,052.5

   which they transferred to HM Holdings and Management, Inc. on August 17, 1983, and which the latter sold to Bulletin Publishing Corporation on February 21, 1986. The proceeds from this sale are frozen pursuant to PCGG's Writ of Sequestration dated February 12, 1987, and this writ is the subject of the Decision of the Supreme Court dated January 31, 2002 in G.R. No.135789.

   Accordingly, the proceeds from the sale of these 198,052.5 Bulletin shares, under Philtrust Bank Time Deposit Certificate No. 136301 dated March 3, 1986 in the amount of ₱19,390,156.68 plus interest earned, in the amount of ₱104,967,112.62 as of February 28, 2002, per Philtrust Bank's Motion for Leave to Intervene and to Consign the Proceeds of Time Deposits of HMHMI, filed on February 28, 2002 with the Supreme Court in G.R. No. 135789, are hereby declared forfeited in favor of the plaintiff Republic of the Philippines.

2. Ordering the defendant Estate of Hans M. Menzi through its Executor, Manuel G. Montecillo, to surrender for cancellation the original eight Bulletin certificates of stock in its possession, which were presented in court as Exhibits 1 to 3 and 21 to 25 (Certificate Nos. 312, 292, 314, 131, 132, 291, 293, 313, respectively), which are part of the 214,424.5 Bulletin shares subject of the Resolution of the Supreme Court dated April 15, 1988 in G.R. No. 79126.

3. Declaring that the following Bulletin shares are **not** the ill-gotten wealth of the defendant Marcos spouses:

a. The 154,472 Bulletin shares [154 block] sold by the late Hans M. Menzi to U.S. Automotive Co., Inc., the sale thereof being valid and legal;

b. The 2,617 Bulletin shares in the name of defendant Emilio T. Yap which he owns in his own right; and

c. The 1 Bulletin share in the name of the Estate of Hans M. Menzi which it owns in its own right.

4. Dismissing, for lack of sufficient evidence, plaintiff's claim for damages, and defendants' respective counterclaims.

SO ORDERED.[19]

Dissatisfied with the foregoing decision, the Republic, Cojuangco and the Estate filed the petitions for review on *certiorari* which were respectively docketed and consolidated before this Court as G.R. Nos. 152578, 154487 and 154518. In the 23 November 2005 Decision rendered in said consolidated cases, however, the Court affirmed the Sandiganbayan's 14 March 2002 Decision, upon the following findings and conclusions: (a) as the proven owner thereof, the Estate validly sold the 154 block of Bulletin shares to US Automotive, with the indorsement and delivery of the stock certificate covering the same; and, (b) the evidence on record shows that the 198 block of Bulletin shares as well as the 46,626 shares registered in the name of Cojuangco which formed part of the 214 block of Bulletin shares were ill-gotten.[20]

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[19] *Id.* at 62-64.

[20] *Republic of the Phils. v. Estate of Hans Menzi*, *supra* note 7 at 455-461; 439-441.

Subsequent to the 24 January 2006 denial of its motion for partial reconsideration of the foregoing decision,[21] the Estate, alongside HMHMI, filed a Joint Manifestation dated 28 February 2006. The Joint Manifestation called the Court's attention to the fact, among others, that the motion for the release of the proceeds of the TDCs they filed in G.R. No. 135789 was merely noted without action, on the ground that the matter would be better ventilated and addressed in the consolidated cases. In view of the fact that the issues pertaining to the TDCs were not addressed in the Court's 23 November 2005 Decision,[22] the Estate and HMHMI sought the grant of the following reliefs:

> WHEREFORE, it is respectfully prayed that:
>
> 1. The Clerk of Court be instructed to cause the delivery of the three (3) Certificates of Time Deposit with the attached allonge, on file with the docket of G.R. No. 135789 to the Philtrust Bank or to its counsel of record;
>
> 2. An order be issued requiring the Philtrust Bank to pay to herein Joint Movants the proceeds of the sale in 1984 of 154,472 Bulletin shares to the U.S. Automotive Co., Inc. deposited with the Philtrust Bank admitted to be due as of February 28, 2002 and the proceeds of the sale of Menzi shares in the Liwayway Publishing, Inc. to the Bulletin Publishing Corporation, both covered by Certificates of Time Deposits admitted to be due as of February 28, 2002, plus legal interest thereon from March 1, 2002 until paid.
>
> 3. It is further prayed that such other reliefs be granted as to this Honorable Court may seem just and equitable.[23] (Underscoring supplied)

The Joint Manifestation filed by the Estate and HMHMI was not, however, acted upon by this Court which went on to issue an Entry of Judgment certifying the finality of the 23 November

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[21] Records, Civil Case No. 0022, Vol. 29, p. 178.

[22] Joint Manifestation dated 28 February 2006 filed by the Estate and HMHMI in G.R. Nos. 152578, 154487, 154518, *id.* at 421-426.

[23] *Id.* at 424-425.

2005 Decision in G.R. Nos. 152578, 154487 and 154518.[24] On 29 November 2006, the Republic filed its motion for the execution of the Sandiganbayan's 14 March 2002 Decision and prayed for Philtrust's delivery of the sums covered by the decision as well as the PCGG's 12 February 1987 Freeze Order which included the sums covered by TDC Nos. 162828 and 162829.[25] Claiming that only the proceeds of TDC No. 136301 were declared forfeited in favor of the Republic in the decision sought to be executed, the Estate and HMHMI also filed their motion for execution dated 5 December 2006, praying that Philtrust be ordered to render an accounting of TDC Nos. 162828 and 162829 and, thereafter, to deliver in their favor the principal thereof, together with the stipulated and legal interests they have, in the meantime, earned.[26]

On 16 January 2007, the Republic filed its Comment on the motion for execution filed by the Estate and HMHMI, arguing that said movants' claim of entitlement to the proceeds of TDC Nos. 162828 and 162829 was bereft of any basis. Calling attention to the 28 February 2006 Joint Manifestation that the Estate and HMHMI filed in G.R. No. 135789, the Republic maintained that said TDCs could not have covered the proceeds of the sale of 154,472 Bulletin shares to US Automotive since the same had been already received by the Estate and, per the testimony elicited from Montecillo, were deposited with the Equitable Bank and used to pay estate taxes due the Estate.[27] On 25 January 2007, the Estate and HMHMI also filed their Manifestation with Comment, asserting that only the proceeds of TDC No. 136301 were declared ill-gotten in the decision sought to be executed; hence, it necessarily followed that all the other

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[24] *Rollo*, 9 December 2005 Entry of Judgment, pp. 165-166.

[25] *Id.* at 167-173.

[26] *Id.* at 174-179.

[27] Records, Civil Case No. 0022, Vol. 29, Republic's 3 January 2007 Comment, pp. 412-420.

sequestered HMHMI assets – including the proceeds of TDC Nos. 162828 and 162829 – were not ill-gotten.[28]

On 26 January 2007, Yap filed his comment on the motions for execution filed by the Republic as well as the Estate and HMHMI. Maintaining that the Republic had yet to effect the transfer of ownership of the 46,626 shares in favor of Bulletin pursuant to the 14 March 2002 Decision in Civil Case No. 0022, Yap also averred that the Estate had not yet surrendered for cancellation the original Bulletin certificates of stock in its possession which formed part of the 214 block of Bulletin shares subject of this Court's 15 April 1988 Decision in G.R. Nos. 77422 and 79126. Likewise claiming that TDC Nos. 162828 and 162829 were not covered by the decision sought to be executed, Yap insisted that the Estate had already received the proceeds of TDC No. 130052 covering the sale of the 154 block of Bulletin shares to US Automotive.[29] In support of this assertion, Yap submitted copies of TDC No. 130052 in the sum of ₱24,969,200.09, Montecillo's offer of surrender of said TDC in exchange for full payment of said principal and the interests thereon, as well as the manager's checks and vouchers purportedly evidencing Philtrust's payment thereof in April 1989.[30]

In its 21 February 2007 Reply to Yap's Comment on its Motion for Execution, on the other hand, the Estate disavowed receiving payment of the proceeds of TDC No. 130052 on the ground that, at the time of the supposed payment in April 1989, the assets of HMHMI which consisted of TDC Nos. 136301, 162828 and 162829 had already been frozen. Contending that its continued possession of the original of TDC No. 130052 was ineluctable proof of the non-payment of the proceeds thereof, the Estate argued that Philtrust's attempt to consign the proceeds of TDC Nos. 136301, 162828 and 162829 with this Court in

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[28] The Estate and HMHMI's 18 January 2007 Manifestation with Comment, *id.* at 449-451.

[29] Yap's 19 January 2007 Comment on Motions for Execution, *id.* at 521-526.

[30] *Id.* at 527-530.

G.R. No. 135789 was an admission that its liability therefor remained valid, subsisting and enforceable. While conceding that the delivery of the proceeds of TDC Nos. 162828 and 162829 was not covered in the decision sought to be executed, the Estate asserted that the Sandiganbayan's 18 April 1995 Resolution invalidating the PCGG's Freeze Order of HMHMI's assets was affirmed by this Court in the 31 January 2002 Decision in G.R. No. 135789.[31]

On 17 January 2008, the Sandiganbayan issued the first assailed resolution, partially granting the Republic's motion for execution by ordering Philtrust's delivery of the proceeds of TDC No. 136301 and the Estate's surrender of the original 8 Bulletin certificates of stock which were part of the 212,425.5 shares subject of this Court's 15 April 1988 Decision in G.R. Nos. 77422 and 79126. In accordance with the same decision, the Republic was additionally ordered to effect the transfer of Cojuangco's 46,626 shares in favor of Bulletin, subject to Alternative "A" stated therein. Likewise granting the motion for execution filed by the Estate and HMHMI, the Sandiganbayan directed Philtrust to pay in their favor the proceeds of TDC Nos. 162828 and 162829. Brushing aside the documents attached to Yap's comment for lack of proper authentication and non-presentation at the trial of the case on the merits,[32] the Sandiganbayan ruled as follows:

> x x x. While it is appropriate to order Philtrust Bank to deliver all amounts covered by this Court's March 14, 2002 [D]ecision, the same cannot be said of those covered by the February 12, 1987 sequestration order of the PCGG. The records of this case reveal that the said sequestration was already lifted by this Court on April 13, 1998. This was affirmed by the Supreme Court on January 31, 2002. Plaintiff Republic's motion for reconsideration was denied on the ground that it had been mooted by the Sandiganbayan's decision of March 14, 2002 that declared certain shares as ill-gotten wealth of the Marcoses.

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[31] The Estate's 21 February 2007 Reply to Comment, *id.* at 557-565.

[32] Sandiganbayan's 17 January 2008 Resolution, *id.* at 587-597.

As correctly argued by defendants Estate and HMHMI, the issue of the propriety of the sequestration order was already subsumed in the said Sandiganbayan decision. While it is true that neither the Sandiganbayan decision nor the Supreme Court's of November 23, 2005, affirming this Court's verdict categorically declared the proceeds of CTD Nos. 162828 and 162829 as *not* ill-gotten, the only logical and, to stress, legal conclusion is that said assets came to exist as a result of a legitimate activity or enterprise and, therefore, not ill-gotten at all. Putting it differently, the lifting of the sequestration or freeze order confirmed the legitimacy of these assets.

The presumption of law, albeit disputable, include[s] regularity and fairness of private transactions; adherence to the ordinary course of business; and compliance with pertinent laws. The prosecution had the burden to introduce evidence to overturn said legal presumptions and to prove that the assets under consideration originated from some illicit source if only to sustain the government's claim therefor. This Court and the Supreme Court found the prosecution miserably failed to do so, and their respective rulings, having attained final and executory status, are now, under well-established jurisprudence, "immutable and unalterable." Hence, the assets could not possibly be legally awarded to the State. It is but just then that the funds covered by CTD Nos. 162828 and 162829 be returned to HMHMI under whose name they were deposited. There subsists no rational, legal or equitable basis to further withhold said assets from the evident owner thereof.[33]

Dissatisfied with the foregoing disposition, the Republic filed its motion for partial reconsideration, insisting that the sums covered by TDC Nos. 162828 and 162829 could not have referred to the proceeds of the sale of the 154 block of Bulletin shares which, at the trial of the case on the merits, Montecillo admitted to have deposited with the Equitable Bank and used to pay the estate taxes due from the Estate. The Republic argued that this Court's affirmance of the lifting of the writ of sequestration ordered by the Sandiganbayan was not fatal to its cause and could not be construed as justification for the release of the

[33] *Id.* at 594-595.

proceeds of the TDCs to the Estate and HMHMI.[34] Maintaining that the Republic's motion for partial reconsideration was pro-forma, the Estate and HMHMI also filed their opposition, on the ground that a forfeiture of the proceeds of the subject TDCs in favor of the former would be tantamount to an alteration of a decision that has long attained finality.[35]

In compliance with the Sandiganbayan's 17 January 2008 Resolution, on the other hand, Philtrust filed a manifestation, alleging that, upon the Republic's surrender of the original of TDC No. 136301, it was ready to release three manager's checks in the aggregate sum of ₱162,245,963.71 representing the principal and interests for said TDC.[36] With respect to the proceeds of TDC Nos. 162828 and 162829, however, Philtrust invoked Article 1256 of the *Civil Code of the Philippines* and filed a motion to consign the six manager's checks it issued to cover said TDCs' principals and interests in the aggregate sum of ₱199,391,416.51. Against Philtrust's allegation that it had the original copies of TDC No. 130052, Montecillo's letter and the check vouchers evidencing the payment Yap earlier asserted in his comment on their motion for execution,[37] the Estate and HMHMI filed their comment, contending that said documents were irrelevant and inappropriate to the resolution of the pending motions and incidents. Aside from the fact that Philtrust was not a party to the action, the Estate and HMHMI argued that the bank had already recognized them as the payees of the subject TDCs in the motion to intervene it earlier filed in G.R. No. 135789.[38]

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[34] The Republic's 30 January 2008 Partial Motion for Reconsideration, *id.* at 606-618.

[35] The Estate and HMHMI's 21 February 2008 Opposition, *id*. at 623-629.

[36] Philtrust's 17 March 2008 Manifestation, *id.* at 634-637.

[37] Philtrust's 17 March 2008 Motion to Consign Proceeds of Time Deposit Certificates, *id.* at 641-648.

[38] The Estate and HMHMI's 8 April 2008 Comment, *id.* at 668-672.

While the Republic interposed no objection thereto,[39] Philtrust's motion for consignation was opposed by Montecillo, in view of the fact that the Sandiganbayan's 17 January 2008 Resolution had already directed the payment of the proceeds of TDC Nos. 162828 and 162829 in favor of the Estate and HMHMI.[40] On 22 May 2008, the Sandiganbayan issued the second assailed Resolution, denying the Republic's motion for partial reconsideration for lack of merit, on the ground that the argument raised in support thereof had already been weighed and passed upon in its Resolution of 17 January 2008. Absent any finding that the proceeds of the subject TDCs were ill-gotten, the Sandiganbayan ruled that the lifting of the sequestration or freeze order over the same confirmed the legality of the provenance thereof.[41]

The Issue

On 21 July 2008, the Republic filed the petition at bench[42] which it subsequently amended, in view of Philtrust's 9 July 2009 release of the proceeds of TDC Nos. 162828 and 162829 in favor of the Estate and HMHMI at the instance of respondents Sandiganbayan Sheriffs Reynaldo Melquiades and Albert dela Cruz. In urging the nullification of the assailed Resolutions dated 17 January 2008 and 22 May 2008,[43] the Republic argues that:

THE SANDIGANBAYAN (FOURTH DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ORDERING PHILTRUST BANK TO PAY THE ESTATE OF HANS MENZI, THROUGH ITS EXECUTOR[,] MANUEL G. MONTECILLO[,] AND HANS MENZI HOLDINGS AND MANAGEMENT, INC., THE AMOUNT OF ONE HUNDRED FIFTY TWO MILLION EIGHT HUNDRED

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[39] The Republic's 17 April 2008 Comment, *id.* at 688-691.

[40] Montecillo's 28 April 2008 Opposition, *id.* at 698-702.

[41] Resolution dated 22 May 2008, *id.* at 704-708.

[42] *Rollo*, pp. 5-38.

[43] *Id.* at 417-451.

TWENTY SIX THOUSAND NINE HUNDRED THIRTY SEVEN AND 76/100 (₱156,826,937.76) PESOS, REPRESENTING THE PROCEEDS OF THE TIME DEPOSIT CERTIFICATE NOS. 162828 AND 162829 AND ALL ACCRUED LEGAL INTEREST THEREON.[44]

On 2 September 2008, this Court issued a Resolution, requiring the Estate and HMHMI as well as the Sandiganbayan and respondent Sheriffs to file their comment on the amended petition. In said resolution, the Court also granted the Republic's application for a writ of preliminary mandatory injunction for the return and re-deposit of the proceeds of TDC Nos. 162828 and 162829 which had, in the meantime, been released by Philtrust to the Estate and HMHMI.[45]

The Court's Ruling

We find the petition bereft of merit.

In seeking the reversal of the assailed resolutions, the Republic argues that the Estate and HMHMI's claim of entitlement to the proceeds of TDC Nos. 162828 and 162829 is bereft of factual and legal bases. In support thereof, the Republic once again calls attention to the 28 February 2006 Joint Manifestation filed in G.R. Nos. 152578, 154487 and 154518 in which the Estate and HMHMI supposedly asserted that the proceeds of the subject TDCs were those of "the sale in 1984 of 154,472 Bulletin shares to the U.S. Automotive Co., Inc. deposited with the Philtrust Bank admitted to be due as of February 28, 2002." It is argued that the falsity of this claim is evident from: (a) Montecillo's testimony on record that the proceeds of said sale were deposited with Equitable Bank and used to pay the estate taxes due from the Estate; and (b) Yap's 19 January 2007 Comment on the motions for execution filed *a quo* which showed that the proceeds of the same sale were deposited with Philtrust under TDC No. 130052 which had, in turn, been already paid in April 1989. The Republic ultimately argues that the lifting of

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[44] *Id.* at 427.

[45] *Id.* at 627.

the writ of sequestration over HMHMI's assets does not automatically mean that the Estate and HMHMI are entitled to the proceeds of TDC Nos. 162828 and 162829 since the provenance thereof has yet to be actually litigated before and submitted for judgment by the Sandiganbayan.[46]

At the outset, it bears pointing out that the 28 February 2006 Joint Manifestation the Estate and HMHMI filed in G.R. Nos. 152578, 154487 and 154518 prayed that Philtrust be required to pay them not only the proceeds of the sale of 154,472 Bulletin shares to the US Automotive but also "the proceeds of the sale of Menzi shares in the Liwayway Publishing, Inc. to the Bulletin Publishing Corporation, both covered by the Certificates of Time Deposits admitted to be due as of February 28, 2002, plus legal interest thereon from March 1, 2002 until paid."[47] This Court's 23 November 2005 Decision in G.R. Nos. 152578, 154487 and 154518 affirmed the validity of the sale of said 154,472 Bulletin shares to US Automotive in the following wise:

> x x x. Atty. Montecillo's authority to negotiate the transfer and execute the necessary documents for the sale of the 154 block is found in the General Power of Attorney executed by Menzi on May 23, 1984 which specifically authorizes Atty. Montecillo "[T]o sell, assign, transfer, convey and set over upon such consideration and under such terms and conditions as he may deem proper, any and all stocks or shares of stock, now standing or which may thereafter stand in my name on the books of any and all company or corporation, and for that purpose to make, sign and execute all necessary instruments, contracts, documents or acts of assignment or transfer."
>
> Atty. Montecillo's authority to accept payment of the purchase price for the 154 block sold to US Automotive after Menzi's death springs from the latter's Last will and Testament and the Order of the probate court confirming the sale and authorizing Atty. Montecillo to accept payment therefor. Hence, before and after Menzi's death, Atty. Montecillo was vested with ample authority to effect the sale of the 154 block to US Automotive.

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[46] *Id.* at 427-447.

[47] Records, Civil Case No. 0022, Vol. 29, pp. 424-425.

That the 154 block was not included in the inventory is plausibly explained by the fact that at the time the inventory of the assets of Menzi's estate was taken, the sale of the 154 block had already been consummated. Besides, the non-inclusion of the proceeds of the sale in the inventory does not affect the validity of the legality of the sale itself.[48]

Despite the validity of the sale, however, the Republic correctly argues that the funds deposited under TDC Nos. 162828 and 162829 could not have been sourced from the 1984 sale of 154,472 Bulletin shares to US Automotive, considering that the evidence on record indicates that the proceeds thereof had not been deposited with Philtrust and had already been expended for the estate taxes due from the Estate. No less than its Executor, Montecillo, made the following admissions during the trial of the case on the merits:

ATTY. JASO:

q. And also Atty. Montecillo you sold to U.S. Automotive the 154,472 shares of the Bulletin am I correct?

a. Of the Bulletin, it is owned by Hans M. Menzi and registered in his name.

q. Showing to you a document which is a Re[ceipt] dated May 15, 1985, can you tell the Honorable Court if you had issued that document before?

a. Yes is this Exhibit 1, Yap in the preliminary hearing dated May 15, 1985 I signed for the estate as its executor.

AJ DE LEON:

x x x x x x x x x

q. W[ere] the proceeds of that also deposited in the Phil[t]rust account you just mentioned?

a. No Your Honor that is an estate.

q. No the proceed[s] of the sale of 154,000?

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

a. No Your Honor that was sold in 1985. The account with Phil[t]rust was opened in 1986.

q. The purchase price of 154,476 shares of Hans Menzi sold to U.S. Automotive where was it deposited?

a. As I remember correctly, it was deposited to Equitable Bank Corporation because that was the depository bank of the [E]state, Your Honor.

x x x x x x x x x

AJ DE LEON:

You are saying that the deposit of this purchase price of 154,476 shares of Hans Menzi to U.S. Automotive was deposited at Equitable Bank and was also subject of sequestration?

a. No sir, it was use[d] to pay the estate tax.[49]

Having been made by their executor during the trial of the case on the merits, these declarations are binding, at least insofar as the Estate is concerned. Pursuant to Section 4, Rule 129 of the *Revised Rules on Evidence*, an admission, verbal or written, made by a party in the course of the proceedings in the same case does not require proof. It may be made: (a) in the pleadings filed by the parties; (b) in the course of the trial either by verbal or written manifestations or stipulations; or (c) in other stages of judicial proceedings, as in the pre-trial of the case.[50] When made in the same case in which it is offered,[51] "no evidence is needed to prove the same and it cannot be contradicted unless it is shown to have been made through palpable mistake or when no such admission was made."[52] The admission becomes conclusive on him, and all proofs submitted contrary thereto or inconsistent therewith should be ignored, whether an objection

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[49] TSN, 9 February 1999, pp. 21-23.

[50] *Republic of the Phils. v. Sandiganbayan*, 453 Phil. 1059, 1129 (2003).

[51] *Republic Glass Corporation v. Qua*, 479 Phil. 393, 407 (2004).

[52] *Arroyo, Jr. v. Taduran*, 466 Phil. 173, 180 (2004).

is interposed by the adverse party or not.[53] Absent any showing in the record that the above-quoted declarations were made by Montecillo through palpable mistake, the Republic correctly argues that they are binding upon the Estate which, for said reason, is precluded from claiming that the funds deposited under TDC Nos. 162828 and 162829 came from the 1984 sale of Bulletin shares to US Automotive.

At any rate, it further appears that part of the proceeds of the sale of the subject Bulletin shares to US Automotive which had been deposited with Philtrust, had also been maintained by the Estate under TDC No. 130052 and not TDC Nos. 162828 and 162829. In his Comment on the motions for execution filed *a quo* by the Republic as well as the Estate and HMHMI, Yap claimed as much and submitted copies of: (a) TDC No. 130052; (b) Montecillo's 6 March 1989 letter offering the surrender of said TDC in exchange for the full payment of its principal and interest; and (c) the 7 April 1989 manager's checks issued by Philtrust in payment of the TDC's ₱24,969,200.09 principal and ₱1,776,788.90 interest, the receipt of which was duly acknowledged by Montecillo.[54] Yap's claim, as well as the existence of the foregoing documents was significantly affirmed by Philtrust in its 17 March 2008 motion to consign the proceeds of TDC Nos. 162828 and 162829.[55] Considering that TDC No. 130052 was issued in its name,[56] the Estate was clearly out on a limb in claiming that the payment of the proceeds thereof in 1989 was not possible since supposedly, at the time, HMHMI's assets had already been frozen pursuant to the writ of sequestration issued by the PCGG.[57]

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[53] *Canada v. All Commodities Marketing Corporation*, G.R. No. 146141, 17 October 2008, 569 SCRA 321, 327.

[54] Records, Civil Case No. 0022, Vol. 29, pp. 521-526.

[55] *Id.* at 641-647.

[56] *Id.* at 649.

[57] *Id.* at 559.

While they could not have come from the proceeds of the 1984 sale of 154,472 Bulletin shares to US Automotive, there is, on the other hand, ample showing in the record that the deposits under TDC Nos. 162828 and 162829 were sourced from sale by the Estate and HMHMI of their Liwayway shares. In the amended petition at bench, the Republic very distinctly asserted that the funds covered by the subject TDCs are actually the proceeds from the sale of shares of stock of Liwayway and not of Bulletin.[58] Aside from the proceeds of the sale of 154,472 Bulletin shares to US Automotive, as earlier noted, the Estate and HMHMI had, in turn, prayed for the payment of the proceeds of the Estate's sale of Menzi's shares in Liwayway in the Joint Manifestation they filed in G.R. Nos. 152578, 154487 and 154518.[59] In his 17 July 2006 Comment on the foregoing Joint Manifestation, Yap likewise maintained that TDC No. 162828 covers the proceeds of the sale by HMHMI of its shares in Liwayway in favor of US Automotive and that TDC No. 162829 covers about half of the proceeds of the Estate's sale of its Liwayway shares in favor of Liwayway itself.[60] With Menzi's sale of his Bulletin shares to US Automative already discounted as the origin of the funds deposited under the subject TDCs, this confluence of the parties' assertions and/or admissions lends credence to the Republic's position that they were sourced from the sale by the Estate and HMHMI of their Liwayway shares.

The foregoing disquisition notwithstanding, we find that no grave abuse of discretion is imputable against the Sandiganbayan for denying the Republic's motion for execution, insofar as it related to the delivery in its favor of the proceeds of TDC Nos. 162828 and 162829. By the Republic's own admission, after all, the validity of the transfer and/or legality of ownership of Liwayway shares was not litigated in Civil Case No. 0022[61] since the issues identified for resolution at the pre-trial of the

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[58] *Rollo*, p. 428.

[59] Records, Civil Case No. 0022, Vol. 29, pp. 424-425.

[60] *Rollo*, p. 605.

[61] *Id.* at 428; 436.

case only included the ownership and transfer of the Bulletin shares therein identified.[62] Not having been litigated upon, factual and legal issues concerning said Liwayway shares were, therefore, understandably not determined in the 14 March 2002 Decision subsequently rendered in the case by the Sandiganbayan and, for that matter, in the 23 November 2005 Decision this Court rendered in G.R. Nos. 152578, 154487 and 154518. Unsuccessful in seeking the release of said funds in G.R. No. 135789 after this Court rendered the 31 January 2002 Decision affirming the Sandiganbayan's dissolution of the writ of sequestration issued by the PCGG,[63] the Estate and HMHMI had, in fact, revived the issue of their entitlement to the proceeds of the subject TDCs when they filed their 28 February 2006 Joint Manifestation in said consolidated cases.

Considering the finality of this Court's 23 November 2005 Decision affirming the Sandiganbayan's 14 March 2002 Decision in Civil Case No. 0022, we find that the Estate and HMHMI correctly argue against the disposition of the proceeds of TDC Nos. 162828 and 162829 in favor of the Republic by means of the writ of execution the latter sought *a quo*. Having been sourced from the disposition of said Liwayway shares, the proceeds of the subject TDCs cannot be released in favor of the Republic without varying the decision sought to be executed which, as admitted, did not make any determination regarding the validity of the ownership of the same shares and/or the legality of the transfer thereof. It is a matter of settled legal principle that a

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[62] The 11 November 1991 Pre-Trial Order issued in Civil Case No. 0022 identified the main issues as follows:

(1) whether or not the sale of 154,470 shares of stock of Bulletin Publishing Co., Inc., subject of this case, by the late Hans M. Menzi to the U.S. Automotive Co., Inc., is valid and legal; and

(2) whether or not the shares of stock of Bulletin Publishing Co., Inc. registered and/or issued in the name of defendants Emilio T. Yap, Eduardo Cojuangco, Jr., Cesar Zalamea and the late Hans Menzi (and/or his estate and/or his holding company, HM Holding & Investment Corp.), are ill-gotten wealth of the defendant Marcos spouses. *Id.* at 428-429.

[63] Records, Civil Case No. 0022, Vol. 28, pp. 74-75.

writ of execution must adhere to every essential particular of the judgment sought to be executed.[64] The writ cannot vary or go beyond the terms of the judgment and must conform to the dispositive portion thereof.[65] Time and again, it has been ruled that an order of execution which varies the tenor of the judgment or, for that matter, exceeds the terms thereof is a nullity.[66]

Even more fundamentally, the award of the proceeds of TDC Nos. 162828 and 162829 sought by the Republic would be tantamount to an alteration of the decisions rendered by the Sandiganbayan and this Court, which have already attained finality. Except for clerical errors and in cases of void judgments and *nunc pro tunc* entries which cause no prejudice to any party,[67] nothing is more settled in law than that when a judgment becomes final and executory, it becomes immutable and unalterable.[68] It cannot, therefore, be gainsaid that such a judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.[69] The reason is grounded on the fundamental considerations of public policy and sound practice that, at the risk of occasional error, the judgments or orders of courts must

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[64] *Cabang v. Basay*, G.R. No. 180587, 20 March 2009, 582 SCRA 172, 182.

[65] *Suyat v. Gonzales-Tesoro*, 513 Phil. 85, 95 (2005).

[66] *General Milling Corporation-Independent Labor Union (GMC-ILU) v. General Milling Corporation*, G.R. Nos. 183122 & 183889, 15 June 2011, 652 SCRA 235, 253.

[67] *Filipinas Palmoil Processing, Inc. v. Dejapa*, G.R. No. 167332, 7 February 2011, 641 SCRA 572, 581.

[68] *Estarija v. People*, G.R. No. 173990, 27 October 2009, 604 SCRA 464, 469.

[69] *Manotok Realty, Inc. v. CLT Realty Development Corporation*, 512 Phil. 679, 708 (2005).

be final at some definite date fixed by law.[70] "Otherwise, there will be no end to litigations, thus negating the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality."[71]

Gauged from the procedural antecedents of the case, however, the above-discussed principles do not apply to the Sandiganbayan's grant of the release of the proceeds of TDC Nos. 162828 and 162829 in favor of the Estate and HMHMI. While it is true that the latter filed a motion for execution ostensibly seeking the enforcement of the 14 March 2002 Decision rendered in the case, the release of the proceeds of the subject TDCs in their favor is clearly justified by the earlier lifting of the writ of sequestration issued by the PCGG over the shares of stock, assets, properties, records and documents of HMHMI. In compliance with this Court's 16 July 1996 Resolution in G.R. No. 107377 requiring the determination of the factual basis for the same writ of sequestration,[72] the record shows that the Sandiganbayan conducted hearings on the matter and, based on the evidence presented, issued a Resolution dated 13 April 1998, lifting the writ of sequestration thus issued for lack of factual basis.[73] Together with the 21 August 1998 Resolution denying the Republic's motion for reconsideration thereof, the lifting of the writ of sequestration ordered by the Sandiganbayan was affirmed in the 31 January 2002 Decision rendered by this Court in G.R. No. 135789.[74]

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[70] *Eastland Construction & Development Corporation v. Mortel*, 520 Phil. 76, 91 (2006).

[71] *Dacanay v. Yrastorza, Sr.*, G.R. No. 150664, 3 September 2009, 598 SCRA 20, 25-26.

[72] *Rollo*, pp. 768-773.

[73] *Id.* at 774-789.

[74] *Republic of the Philippines v. Sandiganbayan* (*Fourth Division*), *Supra* note 11 at 106.

Over the years, the Estate and HMHMI had, of course, unsuccessfully prayed for the release of the proceeds of the subject TDCs in their favor. Pursuant to the 24 March 2003 Resolution issued in G.R. No. 135789, HMHMI's motion for the release of the checks Philtrust issued for the principals of and interests on TDC Nos. 162828 and 162829 was noted without action on the ground that the matter "should be ventilated and addressed in G.R. Nos. 152578, 154487 and 154518.[75] Acting on the Urgent Motion and Manifestation to the same effect filed by the Estate and HMHMI in the same case, the Court issued an extended Resolution dated 6 October 2003, reiterating its earlier action on the ground that the resolution of said consolidated cases was "intimately related to the propriety of any disbursement of the funds in the hands of Philtrust Bank."[76] The 3 November 2003 Motion for Issuance of Writ of Execution/ Delivery of Properties Subject of Sequestration which the Estate filed with the Sandiganbayan[77] was, on the other hand, noted without action in said court's Resolution dated 9 March 2004 on the ground of loss of jurisdiction, in view of the pendency of said appeal before this Court.[78]

Despite this Court's 31 January 2002 affirmance of the lifting of the writ of execution of the PCGG's sequestration order, the record shows that the Republic made no move towards the inclusion in Civil Case No. 0022 of the issues pertaining to the legality of the ownership of the Liwayway shares and/or the validity of the transfers thereof. Not having been addressed in the 14 March 2002 Decision rendered in the case, said issues were, consequently, not likewise tackled when said decision was affirmed in the 23 November 2005 Decision this Court subsequently rendered in G.R. Nos. 152578, 154487 and 154518.

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[75] Records, Civil Case No. 0022, Vol. 28, p. 45.

[76] *Id.* at 74-75.

[77] *Id.* at 81-86.

[78] *Id.* at 169-172.

With the issuance of an entry of judgment in said consolidated cases,[79] it further appears that the Court no longer acted on the 28 February 2006 Joint Manifestation filed by the Estate and HMHMI, for the purpose of seeking the release of the proceeds of, among others, TDC Nos. 162828 and 162829.[80] Be that as it may, however, it cannot be gainsaid that, by the time the Republic commenced the petition at bench on 21 July 2008, more than five years had already elapsed since the decision in G.R. No. 135789 attained finality on 13 December 2002.[81]

Given the finality of the lifting of the writ of sequestration issued by the PCGG and the long-standing failure of the Republic to allege and prove the illegality of the ownership of the Liwayway shares and the invalidity of the transfers thereof, we find and so hold that the Sandiganbayan cannot be faulted for ordering the release of TDC Nos. 162828 and 162829 in favor of the Estate and HMHMI. An extraordinary measure in the form of a provisional remedy, sequestration is merely "intended to prevent the destruction, concealment or dissipation of sequestered properties and, thereby, to conserve and preserve them, pending the judicial determination in the appropriate proceeding of whether the property was in truth ill-gotten."[82] While it is true that the lifting of a writ of sequestration will not necessarily be fatal to the main case, as it does not *ipso facto* mean that the sequestered property is *not* ill-gotten,[83] it cannot be over-emphasized that there has never been a main case against the Liwayway shares as would justify the Republic's continued claim on the subject TDCs and, for that matter, the prolonged withholding of the proceeds thereof from the Estate and HMHMI. Although jurisprudence recognizes the possibility of a resort to other

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[79] *Rollo*, pp. 165-166.

[80] Records, Civil Case No. 0022, Vol. 29, pp. 421-426.

[81] Records, Civil Case No. 0022, Vol. 28, pp. 17-19.

[82] *Trans Middle East (Phils.) v. Sandiganbayan*, 524 Phil. 1, 22 (2006).

[83] *Presidential Commission on Good Government v. Sandiganbayan*, 418 Phil. 8, 20 (2001).

ancillary remedies since the Sandiganbayan's jurisdiction over sequestration cases demands that it should also have the authority to preserve the subject matter of the cases or put the same in *custodia legis*,[84] this is unavailing to the Republic since, by its own admission, the Liwayway shares were not litigated in Civil Case No. 0022.

Like the remedies of "freeze order" and "provisional takeover" with which the PCGG has been equipped, sequestration is not meant to deprive the owner or possessor of his title or any right to his property and vest the same in the sequestering agency, the Government or any other person, as these can be done only for the causes and by the processes laid down by law.[85] These remedies "are severe, radical measures taken against apparent, ostensible owners of property, or parties against whom, at the worst, there are merely *prima facie* indications of having amassed 'ill-gotten wealth,' indications which must still be shown to lead towards actual facts in accordance with the judicial procedures of the land."[86] Considering that sequestration is not meant to create a permanent situation as regards the property subject thereof and subsists only until ownership is finally judicially determined,[87] it stands to reason that, upon its dissolution, the property sequestered should likewise be returned to its owner/s. Indeed, sequestration cannot be allowed interminably and forever, if it is to adhere to constitutional due process.[88]

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[84] *Republic of the Philippines v. Sandiganbayan*, 355 Phil. 181, 207 (1998).

[85] *Bataan Shipyard & Engineering Co., Inc. (BASECO) v. PCGG*, 234 Phil. 180, 209 (1987).

[86] *Republic of the Philippines v. Sandiganbayan (First Division)*, 310 Phil. 401, 503 (1995).

[87] *Republic of the Philippines v. Sandiganbayan (Second Division)*, G.R. No. 89425, 25 February 1992, 206 SCRA 506, 518.

[88] *Republic v. Sandiganbayan*, 334 Phil. 472, 486 (1997).

WHEREFORE, the petition is **DENIED** for lack of merit and the Sandiganbayan's assailed Resolutions dated 17 January 2008 and 22 May 2008 are, accordingly, **AFFIRMED *in toto***. The 2 September 2008 writ of preliminary mandatory injunction issued in the case is likewise **DISSOLVED**.

SO ORDERED.

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

Leonardo-de Castro,[*] *Brion,*[**] and *Peralta,*[***] *JJ.,* no part.

EN BANC

[G.R. No. 189689. November 13, 2012]

IN THE MATTER OF THE PETITION FOR THE ISSUANCE OF A WRIT OF *AMPARO* IN FAVOR OF LILIBETH O. LADAGA:

LILIBETH O. LADAGA, *petitioner, vs.* **MAJ. GEN. REYNALDO MAPAGU, COMMANDING GENERAL OF THE PHILIPPINE ARMY'S 10TH INFANTRY DIVISION (ID); COL. LYSANDER SUERTE, CHIEF OF STAFF, 10TH ID, LT. COL. KURT A. DECAPIA, CHIEF, 10TH ID, PUBLIC AFFAIRS OFFICE; COL.**

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[*] Associate Justice Teresita Leonardo-de Castro took part in the Sandiganbayan proceedings.

[**] Associate Justice Arturo D. Brion is a former partner of Respondent's Estate's Counsel.

[***] Associate Justice Diosdado M. Peralta took part in a closely related action.

OSCAR LACTAO, HEAD-TASK FORCE-DAVAO; SR. SUPT. RAMON APOLINARIO, DAVAO CITY POLICE OFFICE DIRECTOR; and SEVERAL OTHER JOHN DOES, *respondents.*

[G.R. No. 189690. November 13, 2012]

IN THE MATTER OF THE PETITION FOR THE ISSUANCE OF A WRIT OF *AMPARO* IN FAVOR OF ANGELA A. LIBRADO-TRINIDAD:

ANGELA A. LIBRADO-TRINIDAD, *petitioner, vs.* **MAJ. GEN. REYNALDO MAPAGU, COMMANDING GENERAL OF THE PHILIPPINE ARMY'S 10TH ID; COL. LYSANDER SUERTE, CHIEF OF STAFF, 10TH ID, LT. COL. KURT A. DECAPIA, CHIEF, 10TH ID, PUBLIC AFFAIRS OFFICE; COL. OSCAR LACTAO, HEAD-TASK FORCE-DAVAO; SR. SUPT. RAMON APOLINARIO, DAVAO CITY POLICE OFFICE DIRECTOR; and SEVERAL OTHER JOHN DOES,** *respondents.*

[G.R. No. 189691. November 13, 2012]

IN THE MATTER OF THE PETITION FOR THE ISSUANCE OF A WRIT OF *AMPARO* IN FAVOR OF CARLOS ISAGANI T. ZARATE:

CARLOS ISAGANI T. ZARATE, *petitioner, vs.* **MAJ. GEN. REYNALDO MAPAGU, COMMANDING GENERAL OF THE PHILIPPINE ARMY'S 10TH ID; COL. LYSANDER SUERTE, CHIEF OF STAFF, 10TH ID, LT. COL. KURT A. DECAPIA, CHIEF, 10TH ID, PUBLIC AFFAIRS OFFICE; COL. OSCAR LACTAO, HEAD-TASK FORCE-DAVAO; SR. SUPT. RAMON APOLINARIO, DAVAO CITY POLICE OFFICE DIRECTOR; and SEVERAL OTHER JOHN DOES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULE ON THE WRIT OF *AMPARO*; WRIT OF *AMPARO*; BEING AN EXTRAORDINARY REMEDY, IT IS NOT ONE TO ISSUE ON UNCERTAIN GROUNDS BUT ONLY UPON REASONABLE CERTAINTY.— The writ of *amparo* was promulgated by the Court pursuant to its rule-making powers in response to the alarming rise in the number of cases of enforced disappearances and extrajudicial killings. It plays the preventive role of breaking the expectation of impunity in the commission of extralegal killings and enforced disappearances, as well as the curative role of facilitating the subsequent punishment of the perpetrators. In *Tapuz v. Del Rosario*, the Court has previously held that the writ of *amparo* is an extraordinary remedy intended to address violations of, or threats to, the rights to life, liberty or security and that, being a remedy of extraordinary character, it is not one to issue on amorphous or uncertain grounds but only upon reasonable certainty. Hence, every petition for the issuance of the writ is required to be supported by justifying allegations of fact on the following matters: "(a) The personal circumstances of the petitioner; (b) The name and personal circumstances of the respondent responsible for the threat, act or omission, or, if the name is unknown or uncertain, the respondent may be described by an assumed appellation; (c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits; (d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report; (e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and (f) The relief prayed for. The petition may include a general prayer for other just and equitable reliefs."

2. ID.; ID.; BURDEN OF PROOF AND STANDARD OF DILIGENCE; SUBSTANTIAL EVIDENCE; DEGREE OF PROOF REQUIRED UNDER THE *AMPARO* RULE.—

Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. It is more than a mere imputation of wrongdoing or violation that would warrant a finding of liability against the person charged. The summary nature of *amparo* proceedings, as well as, the use of substantial evidence as standard of proof shows the intent of the framers of the rule to address situations of enforced disappearance and extrajudicial killings, or threats thereof, with what is akin to administrative proceedings.

3. ID.; ID.; ID.; ID.; FLEXIBILITY IN THE ADMISSIBILITY OF EVIDENCE, APPLIED IN *AMPARO* CASES.— Suitable to, and consistent with this incipiently unique and informal treatment of *amparo* cases, the Court eventually recognized the evidentiary difficulties that beset *amparo* petitioners, arising as they normally would from the fact that the State itself, through its own agents, is involved in the enforced disappearance or extrajudicial killing that it is supposedly tasked by law to investigate. Thus, in *Razon, Jr. v. Tagitis,* the Court laid down a new standard of relaxed admissibility of evidence to enable *amparo* petitioners to meet the required amount of proof showing the State's direct or indirect involvement in the purported violations and found it a fair and proper rule in *amparo* cases "**to consider all the pieces of evidence adduced in their totality**" and "**to consider any evidence otherwise inadmissible under our usual rules to be admissible if it is consistent with the admissible evidence adduced**." Put simply, evidence is not to be rejected outright because it is inadmissible under the rules for as long as it satisfies "**the most basic test of reason – *i.e.*, relevance of the evidence to the issue at hand and its consistency with all other pieces of adduced evidence**." This measure of flexibility in the admissibility of evidence, however, does not do away with the requirement of substantial evidence in showing the State's involvement in the enforced disappearance, extrajudicial killing or threats thereof. It merely permits, in the absence of hard-to-produce direct evidence, a closer look at the relevance and significance of every available evidence, including those that are, strictly speaking, hearsay where the circumstances of the case so require, and allows the consideration of the evidence adduced in terms of their consistency with the totality of the evidence.

4. ID.; ID.; WRIT OF *AMPARO*; ONLY ACTUAL THREATS, AS MAY BE ESTABLISHED FROM ALL THE FACTS AND CIRCUMSTANCES OF THE CASE, CAN QUALIFY AS A VIOLATION THAT MAY BE ADDRESSED UNDER THE RULE.— In the case of *Secretary of National Defense v. Manalo,* the Court ruled that a person's right to security is, in one sense, "freedom from fear" and that any threat to the rights to life, liberty or security is an actionable wrong. The term "any threat," however, cannot be taken to mean every conceivable threat in the mind that may cause one to fear for his life, liberty or security. The Court explicated therein that "[f]ear is a state of mind, a reaction; threat is a stimulus, a cause of action. Fear caused by the same stimulus can range from being baseless to well-founded as people react differently. The degree of fear can vary from one person to another with the variation of the prolificacy of their imagination, strength of character or past experience with the stimulus." Certainly, given the uniqueness of individual psychological mindsets, perceptions of what is fearful will necessarily vary from one person to another. The alleged threat to herein petitioners' rights to life, liberty and security must be actual, and not merely one of supposition or with the likelihood of happening. And, when the evidence adduced establishes the threat to be existent, as opposed to a potential one, then, it goes without saying that the threshold requirement of substantial evidence in *amparo* proceedings has also been met. Thus, in the words of Justice Brion, in the context of the *Amparo* rule, only **actual threats**, as may be established from all the facts and circumstances of the case, can qualify as a violation that may be addressed under the Rule on the Writ of *Amparo*.

APPEARANCES OF COUNSEL

Glocelito C. Jayma for petitioner in G.R. No. 189689.

Free Legal Assistance Group (FLAG), Union of People's Lawyers in Mindanao (UPLM) and *Ateneo Legal Services Office (ALSO*) for petitioner in G.R. Nos. 189689, 189690 & 189691.

D E C I S I O N

PERLAS-BERNABE, *J.*:

The Cases

In each of these three (3) consolidated petitions for review, the Court is tasked to evaluate the substantially similar but separately issued Orders of the Regional Trial Court (RTC) of Davao City, Branch 10, dated August 14, 2009[1] in the three (3) writ of *amparo* cases, as well as, the Order dated September 22, 2009[2] denying the joint motion for reconsideration thereof.

The Facts

Petitioners share the common circumstance of having their names included in what is alleged to be a JCICC "AGILA" 3rd Quarter 2007 Order of Battle Validation Result of the Philippine Army's 10th Infantry Division (10th ID),[3] which is a list containing the names of organizations and personalities in Southern Mindanao, particularly Davao City, supposedly connected to the Communist Party of the Philippines (CPP) and its military arm, the New People's Army (NPA). They perceive that by the inclusion of their names in the said Order of Battle (OB List), they become easy targets of unexplained disappearances or extralegal killings – a real threat to their life, liberty and security.

The petitioner in G.R. No. 189689, ATTY. LILIBETH O. LADAGA (Atty. Ladaga), first came to know of the existence of the OB List from an undisclosed source on May 21, 2009.

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[1] Annex "B" of the Petition, *rollo* (G.R. No. 189689), pp. 50-54; Annex "A" of the Petition, *rollo* (G.R. No. 189690), pp. 49-53; and Annex "A" of the Petition, *rollo* (G.R. No. 189691), pp. 54-57.

[2] Annex "B" of the Petition, *rollo* (G.R. No. 189690), pp. 54-58; and Annex "B" of the Petition, *rollo* (G.R. No. 189691), pp. 58-62.

[3] Annex "J" of the Petition, *rollo* (G.R. No. 189689), pp. 120-125; Annex "A" of Annex "E" of the Petition, *rollo* (G.R. No. 189690), pp. 86-89 and 204-237; and Annex "E" of Annex "E" of the Petition, *rollo* (G.R. No. 189691), pp. 106-139.

This was after the PowerPoint presentation made public by Bayan Muna Party-List Representative Satur Ocampo (Representative Ocampo) on May 18, 2009 during the conclusion of the International Solidarity Mission (ISM) conducted by various organizations. The following entries bearing specific reference to her person were reflected therein:

7. ON 12 NOV 07, MEETING AT SHIMRIC BEACH RESORT, TALOMO, DC PRESIDED BY ATTY LILIBETH LADAGA – SEC GEN, UNION OF PEOPLE'S LAWYER MOVEMENT (UPLM) AND KELLY DELGADO–SEC GEN, KARAPATAN:

   - PRESENTED THE NATL GOAL/THEME WHICH STATES THAT "THE STAGE IS SET, TIME TO UNITE AGAINST ARROYO, STEP UP PROTESTS AND ARMED OFFENSIVE."

   - DISCUSSED THE FOLLOWING ISSUES WHICH WILL BE CAPITALIZED ON THEIR PLANNED ACTIVITIES ON 30 NOV 07:

   ISSUES:

   1. OUTREACH PROGRAMS/ MEDICAL MISSION IN RURAL AREAS;
   2. OUT OF SCHOOL YOUTH RECRUITMENT;
   3. ₱125 DAILY WAGE HIKE OR ₱3,000 ACROSS THE BOARD HIKE;
   4. SCRAP ANTI-TERRORISM BILL;
   5. OIL DE-REGULATION LAW;
   6. ANTI-LARGE SCALE MINING;
   7. CORRUPTION AND ANTI-POVERTY/ZTE ISSUES AND BRIBERY;
   8. ANTI-POLITICAL AND EXTRA JUDICIAL KILLINGS;
   9. CARP ISSUES AND LAND DISPUTES; AND
   10. LATEST GLORIETA BOMBING

   COMPOSITION: CIVIC, RELIGIOUS, TRANSPORT, LABOR AND PEASANT, YOUTH SECTOR, PROGRESSIVE GROUPS, BUSINESS SECTOR, ANTI-PGMA, BLACK AND WHITE MOVEMENT AND ANTI-POVERTY MOVEMENT.

ULTIMATE GOAL: TRY TO OUST PGMA ON 30 NOV 07[4]

In her Affidavit,[5] Atty. Ladaga substantiated the threats against her life, liberty and security by narrating that since 2007, suspicious-looking persons have been visiting her Davao City law office during her absence, posing either as members of the military or falsely claiming to be clients inquiring on the status of their cases. These incidents were attested to by her law office partner, Atty. Michael P. Pito, through an Affidavit[6] dated June 16, 2009.

On the other hand, the petitioner in G.R. No. 189690, Davao City Councilor ATTY. ANGELA LIBRADO-TRINIDAD (Atty. Librado-Trinidad), delivered a Privilege Speech[7] before the members of the *Sangguniang Panglungsod* of Davao City on May 19, 2009 to demand the removal of her name from said OB List. Subsequently, the Davao City Council ordered a formal investigation into the existence of the alleged OB List. The Commission on Human Rights (CHR), for its part, announced the conduct of its own investigation into the matter, having been presented a copy of the PowerPoint presentation during its public hearing in Davao City on May 22, 2009.

According to her, in the course of the performance of her duties and functions as a lawyer, as a member of the *Sangguniang Panglungsod* of Davao, as well as, of Bayan Muna, she has not committed any act against national security that would justify the inclusion of her name in the said OB List. In her Affidavit,[8] she recounted that sometime in May 2008, two suspicious-looking men on a motorcycle tailed her vehicle as she went about her day going to different places. She also recalled that on June 23,

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[4] Annex "J" of the Petition, *rollo* (G.R. No. 189689), p. 123.

[5] Annex "M" of the Petition, *id.* at 128-129.

[6] Annex "N" of the Petition, *id.* at 130-131.

[7] Annex "C" of Annex "E" of the Petition, *rollo* (G.R. No. 189690), p. 96.

[8] Annex "B" of Annex "E" of the Petition, *id.* at 90-93.

2008, while she was away from home, three unidentified men tried to barge into their house and later left on board a plateless, stainless "owner type-vehicle." Both incidents were duly reported to the police.[9]

Meanwhile, the petitioner in G.R. No. 189691, current Secretary General of the Union of Peoples' Lawyers in Mindanao (UPLM) and Davao City Coordinator of the Free Legal Assistance Group (FLAG), ATTY. CARLOS ISAGANI T. ZARATE (Atty. Zarate), was informed sometime in May 2009 that his name was also among those included in the OB List made public by Representative Ocampo at a forum concerning human rights violations in Southern Mindanao. In Atty. Zarate's petition,[10] he alleged that:

5. On May 19, 2009, during a press conference marking the conclusion of an **International Solidarity Mission** (ISM) – attended by both local and international delegates and organized to investigate alleged human rights violations in Southern Mindanao by state's forces – Bayan Muna Party-list Representative Satur Ocampo revealed the existence of a "**watch list**," officially known in military parlance as "**Order of Battle**" prepared by the intelligence arm of Philippine Army's 10th ID, headed by respondent Maj. Gen. Reynaldo Mapagu. x x x;

6. The said "**Order of Battle**" was contained in a [PowerPoint] presentation marked "**SECRET**" and captioned "**3rd Quarter 2007 OB Validation Result**"; it was supposedly prepared by the "**JCICC 'Agila'"** under the [O]ffice of the Assistant Chief of Staff for Intelligence of the 10th Infantry Division of the Philippine Army. It also mentioned a certain "**JTICC 'LAWIN'**" with the following as members: **Task Force Davao – Chairman; Team Leader, SPOT11-3, MIG11, ISAFP, NISU-Davao, NISG-EM, PN, 305th AISS, PAF, TL, ISU 11, PA, S2, RCDG, PA; M2, DCPO; NICA XI; S2, 104th DRC, PA,** and, **WACOM-Researcher/Analyst MIG11, ISAFP**[;]

7. The said [PowerPoint] presentation (which Representative Ocampo said was "leaked" by a "conscientious soldier"), revealed

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[9] Annex "B-1" of Annex "E" of the Petition, *id.* at 94.

[10] Petition for the Writ of *Amparo*, Annex "E" of the Petition, *rollo* (G.R. No. 189691), pp. 89-98.

the names of organizations and personalities in Southern Mindanao, particularly Davao City, supposedly "connected" to the Communist Party of the Philippines (CPP) and its military arm, the New People's Army (NPA);

8. The name of the herein petitioner was listed in the categories of "**human rights**" and "**Broad Alliance"** x x x;[11] (Emphasis in the original)

Asserting that the inclusion of his name in the OB List was due to his advocacies as a public interest or human rights lawyer, Atty. Zarate vehemently and categorically denied that he was fronting for, or connected with, the CPP-NPA.[12]

In fine, petitioners were one in asserting that the OB List is really a military hit-list as allegedly shown by the fact that there have already been three victims of extrajudicial killing whose violent deaths can be linked directly to the OB List, to wit: Celso B. Pojas, who was assassinated in May 2008[13] purportedly because he was Secretary General of the Farmers Association of Davao City[14] and Spokesperson of the Kilusang Magbubukid sa Pilipinas (KMP),[15] which organizations were identified as communist fronts in the subject OB List; Lodenio S. Monzon, who was a victim of a shooting incident in April 2009[16] due to his supposed connection to the known activist party-list group

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[11] *Id.* at 91-92.

[12] *Id.* at 94.

[13] Annex "K" of the Petition, *rollo* (G.R. No. 189689), p. 126; Exhibits "B" and "B-1" of Annex "J" of the Petition, *rollo* (G.R. No. 189690), pp. 238-239; and Exhibits "B" and "B-1" of Annex "J" of the Petition, *rollo* (G.R. No. 189691), pp. 272-273.

[14] See Exhibits "A-8", "A-10-A", and "A-10-B", *rollo* (G.R. No. 189690), pp. 212 and 214.

[15] *Id.* at 212.

[16] Annex "L" of the Petition, *rollo* (G.R. No. 189689), p. 127; Exhibits "C" and "C-1" of Annex "J" of the Petition, *rollo* (G.R. No. 189690), pp. 240-241; and Exhibits "C" and "C-1" of Annex "J" of the Petition, *rollo* (G.R. No. 189691), pp. 274-275.

Bayan Muna[17] as Coordinator in the Municipality of Boston, Davao Oriental; and Dr. Rogelio Peñera, who was shot to death in June 2009 allegedly because he was a member of RX Against Erap (RAGE),[18] a sectoral group also identified in the OB List.

Petitioners further alleged that respondents' inconsistent statements and obvious prevarication sufficiently prove their authorship of the subject OB List. Supposedly sourced from their own Press Releases,[19] respondents have been quoted in several newspapers as saying: 1) that the "10th ID has its Order of Battle, and, it is not for public consumption"; 2) that the Order of Battle "requires thorough confirmation and validation from different law enforcement agencies, and from various sectors and stakeholders who are the ones providing the information about the people and organizations that may in one way or the other, wittingly or unwittingly, become involved in the CPP's grand design"; 3) that an "order of battle does not target individuals; it is mainly an assessment of the general threat to national security"; 4) that Representative Ocampo "utilized the material to disrupt the ongoing government efforts in the area by raising issues and propaganda against the military"; 5) that "[t]he public viewing of the "falsified" document of the OB was a deliberate act of Representative Ocampo x x x to mar the image of the military forces, gain media mileage and regain the support of the masses and local executives"; 6) that Reperesentative Ocampo "'twisted' the data and insinuated names as targets of the AFP/10ID when in fact these are targets (for infiltration) by the CPP/NPA"; and 7) that this "attempt of the CPP to attribute human rights violations to the Philippine government is a cover to mask their record of killing people." According to petitioners, there is no question that these Press Releases came from the 10th ID. Its

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[17] See Exhibits "A-5" and "A-9-A", *rollo* (G.R. No. 189690), pp. 209 and 213.

[18] See Exhibits "A-19" and "A-21-B", *id.* at 223 and 225.

[19] Dated May 19 and 26, 2009. Annexes "D-12" & "D" of Annex "E" of the Petition, *rollo* (G.R. No. 189690), pp. 115-118; and Annexes "K" and "L" of the Petition, *rollo* (G.R. No. 189691), pp. 146-149.

source email address, dpao10id@yahoo.com, has been identified by regular correspondent of the *Philippine Daily Inquirer* Jeffrey Tupas as the same one used by respondent Lt. Col. Decapia in sending to him previous official press statements of the 10th ID, including the Press Release entitled, "CPP/NPA demoralized, ISM on the rescue."[20]

On June 16, 2009, petitioners separately filed before the RTC a Petition for the Issuance of a Writ of *Amparo* with Application for a Production Order,[21] docketed as Special Proceeding Nos. 004-09,[22] 005-09[23] and 006-09.[24] On June 22, 2009, the RTC issued separate Writs of *Amparo*[25] in each of the three (3) cases, directing respondents to file a verified written return within seventy-two (72) hours and setting the case for summary hearing on June 29, 2009.

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[20] Affidavit of Jeffrey Tupas dated July 24, 2009, *rollo* (G.R. No. 189690), p. 199.

[21] Annex "D" of the Petition, *rollo* (G.R. No. 189689), pp. 66-75; Annex "E" of the Petition, *rollo* (G.R. No. 189690), pp. 78-85; and Annex "E" of the Petition, *rollo* (G.R. No.189691), pp. 89-96.

[22] "*In the Matter of the Petition for the Issuance of a Writ of Amparo in Favor of Carlos Isagani T. Zarate: Carlos Isagani T. Zarate v. Maj. Gen. Reynaldo Mapagu, Commanding General of the Philippine Army's 10th Infantry Division (ID); Lt. Col. Kurt A. Decapia, Chief, 10th ID, Public Affairs Office; Col. Oscar Lactao, Head Task Force-Davao; Sr. Supt. Ramon Apolinario, Davao City Police Office Director ; and several other John Does.*" *Rollo* (G.R. No. 189691), p. 89.

[23] "*In the Matter of the Petition for the Issuance of a Writ of Amparo in Favor of Angela A. Librado: Angela A. Librado v. Maj. Gen. Reynaldo Mapagu, Commanding General of the Philippine Army's 10th Infantry Division (ID); Lt. Col. Kurt A. Decapia, Chief, 10th ID, Public Affairs Office; Col. Oscar Lactao, Head Task Force-Davao; Sr. Supt. Ramon Apolinario, Davao City Police Office Director; and several other John Does.*" *Rollo* (G.R. No. 189690), p. 78.

[24] "*In the Matter of the Petition for the Issuance of a Writ of Amparo in favor of Lilibeth O. Ladaga: Lilibeth O. Ladaga v. Maj. Gen. Reynaldo Mapagu, Lt. Col. Kurt A. Decapia, Col. Oscar Lactao, Sr. Supt. Ramon Apolinario, and John Does.*" *Rollo* (G.R. No. 189689), p. 66.

[25] Annex "E" of the Petition, *rollo* (G.R. No. 189689), pp. 76-77; Annex "F" of the Petition, *rollo* (G.R. No. 189690), pp. 119-120; and Annex "F" of the Petition, *rollo* (G.R. No. 189691), pp. 157-158.

In their Returns,[26] respondents denied authorship of the document being adverted to and distributed by Representative Ocampo to the media. They claimed that petitioners miserably failed to show, by substantial evidence, that they were responsible for the alleged threats perceived by petitioners. Instead, they asserted that petitioners' allegations are based solely on hearsay, speculation, beliefs, impression and feelings, which are insufficient to warrant the issuance of the writ and, ultimately, the grant of the privilege of the writ of *amparo*.

In her Reply,[27] Atty. Librado-Trinidad averred that the present petition substantially conformed with the requirements of the *Amparo* Rule, as it alleged ultimate facts on the participation of respondents in the preparation of the OB List, which naturally requires utmost secrecy. The petition likewise alleged how the inclusion of their names in the said OB List substantiates the threat of becoming easy targets of unexplained disappearances and extrajudicial killings. On the other hand, Attys. Zarate and Ladaga commonly asserted[28] that the totality of the events, which consists of respondents' virtual admission to the media of the existence of the OB List, as well as, the fact that known victims of past extrajudicial killings have been likewise labeled as communist fronts in similar orders of battle, more than satisfies the standard required to prove that petitioners' life, liberty and security are at risk.

During the scheduled summary hearing on June 22, 2009, Representative Ocampo's oral testimony on the circumstances surrounding his obtention of the alleged military document was

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[26] Annex "G" of the Petition, *rollo* (G.R. No. 189689), pp. 78-107; Annex "H" of the Petition, *rollo* (G.R. No. 189690), pp. 123-171; Annex "H" of the Petition, *rollo* (G.R. No. 189691), pp. 161-203.

[27] Annex "I" of the Petition, *rollo* (G.R. No. 189690), pp. 172-179.

[28] Annex "H" of the Petition, *rollo* (G.R. No. 189689), pp. 108-119; and Annex "I" of the Petition, *rollo* (G.R. No. 189691), pp. 205-214.

dispensed with and, instead, the Affidavit[29] he executed on June 30, 2009 was presented in the hearing held on July 1, 2009 to form part of the documentary exhibits of petitioners.[30]

After submission of the parties' respective Position Papers,[31] the RTC issued on August 14, 2009 the three separate but similarly-worded Orders finding no substantial evidence to show that the perceived threat to petitioners' life, liberty and security was attributable to the unlawful act or omission of the respondents, thus disposing of each of the three cases in this wise:

> Prescinding therefrom, and in x x x light of all the pieces of evidence presented, this Court is of the considered views [sic] that petitioner failed to prove, by substantial evidence, that indeed, (her/his) perceived threat to (her/his) life, liberty and security is attributable to the unlawful act or omission of the respondents. Accordingly, this Court has no other recourse but to deny the instant petition.
>
> WHEREFORE, the privilege of the Writ is hereby denied.
>
> SO ORDERED.[32]

The RTC rejected the sworn statement of Representative Ocampo for being hearsay, holding that with no direct or personal knowledge of the authenticity of the subject OB List, even an oral testimony from him on the circumstances surrounding its obtention through a "conscientious soldier" would still be of no probative weight. It likewise found that the violent deaths of Celso Pojas, Lodenio Monzon and Dr. Rogelio Peñera, and

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[29] Annex "Q" of the Petition, *rollo* (G.R. No. 189689), pp. 133-136; Exhibits "R" to "R-3" of Annex "J" of the Petition, *rollo* (G.R. No. 189690), pp. 263-266; and Exhibits "R" to "R-3" of Annex "J" of the Petition, *rollo* (G.R. No. 189691), pp. 297-300.

[30] RTC Order dated August 14, 2009. *Rollo* (G.R. No. 189689), p. 52; *rollo* (G.R. No. 189690), p. 50; and *rollo* (G.R. No. 189691), p. 55.

[31] Annex '5" of the Petition, *rollo* (G.R. No. 189689), pp. 238-263, Annex "J" of the Petition, *rollo* (G.R. No. 189690), pp. 180-272; and Annex "J" of the Petition, *rollo* (G.R. No. 189691), pp. 215-302.

[32] *Rollo* (G.R. No. 189689), pp. 53-54; *rollo* (G.R. No. 189690), pp. 52-53; and *rollo* (G.R. No. 189691), p. 57.

other incidents of threat have no direct relation at all to the existence of the present OB List.

In their Joint Motion for Reconsideration,[33] petitioners argued that the existence and veracity of the OB List had already been confirmed by respondents themselves through their statements to the media, hence, respondents' personal authorship thereof need not be proven by substantial evidence, as it is, after all, "not the crux of the issue." Petitioners explicated that since respondents were being impleaded as the responsible officers of the 10th ID – the military unit that supposedly prepared the OB List PowerPoint presentation, their general denials on the existence of the OB List without taking serious steps to find the persons actually responsible for the threat could not discharge respondents from the standard of diligence required of them under the *Amparo* Rule.

The RTC, however, rejected petitioners' arguments in the September 22, 2009 Order, hence, these petitions for review on *certiorari* raising the following issues:

I. THE TRIAL COURT ERRED IN RULING THAT PETITIONER FAILED TO ADDUCE SUBSTANTIAL EVIDENCE TO WARRANT THE GRANT OF THE PRIVILEGE OF THE WRIT, *I.E.*, PROTECTION;

II. THE TRIAL COURT ERRED IN FAILING TO CONSIDER THAT THE RESPONDENTS LIKEWISE FAILED TO DISCHARGE THE DILIGENCE REQUIRED BY THE *AMPARO* RULES BY THEIR SWEEPING AND GENERAL DENIALS; AND

III. THE TRIAL COURT ERRED IN APPRECIATING THE NATURE AND CONCEPT OF THE PRIVILEGE OF THE WRIT.[34]

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[33] Annex "C" of the Petition, *rollo* (G.R. No. 189689), pp. 55-65; Annex "C" of the Petition, *rollo* (G.R. No. 189690), pp. 59-70; and Annex "C" of the Petition, *rollo* (G.R. No. 189691), pp. 63-74.

[34] *Rollo* (G.R. No.189689), pp. 34-44; *rollo* (G.R. No. 189690), pp. 25-42; and *rollo* (G.R. No. 189691), pp. 31-47.

Commenting on the petitions, respondents argue[35] that the purported OB List could not have come from the military because it does not have the "distinctive marks and security classifications" of military documents. They quickly defend the correctness of the RTC's denial of the privilege of the writ and the interim relief of a protection order as petitioners have not presented any adequate and competent evidence, much less substantial evidence, to establish that public respondents are threatening to violate their rights to life, liberty and security or that, at the very least, were involved in the preparation of the OB List.

We deny the petitions.

The writ of *amparo* was promulgated by the Court pursuant to its rule-making powers in response to the alarming rise in the number of cases of enforced disappearances and extrajudicial killings.[36] It plays the preventive role of breaking the expectation of impunity in the commission of extralegal killings and enforced disappearances, as well as the curative role of facilitating the subsequent punishment of the perpetrators.[37] In *Tapuz v. Del Rosario*,[38] the Court has previously held that the writ of *amparo* is an extraordinary remedy intended to address violations of, or threats to, the rights to life, liberty or security and that, being a remedy of extraordinary character, it is not one to issue on amorphous or uncertain grounds but only upon reasonable certainty. Hence, every petition for the issuance of the writ is required to be supported by justifying allegations of fact on the following matters:

(a) The personal circumstances of the petitioner;

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[35] *Rollo* (G.R. No. 189689), pp. 167-263; *rollo* (G.R. No. 189690), pp. 281-389; and *rollo* G.R. No. 189691), pp. 312-400.

[36] *Secretary of National Defense v. Manalo*, G.R. No. 180906, October 7, 2008, 568 SCRA 1, 38.

[37] *Id.* at 43.

[38] G.R. No. 182484, June 17, 2008, 554 SCRA 768, 784.

(b) The name and personal circumstances of the respondent responsible for the threat, act or omission, or, if the name is unknown or uncertain, the respondent may be described by an assumed appellation;

(c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits;

(d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report;

(e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and

(f) The relief prayed for. The petition may include a general prayer for other just and equitable reliefs.[39] (Underscoring supplied)

The sole and common issue presented in these petitions is whether the totality of evidence satisfies the degree of proof required under the *Amparo* Rule. Sections 17 and 18 of the Rule on the Writ of *Amparo* provide as follows:

SEC. 17. *Burden of Proof and Standard of Diligence Required.* – The parties shall establish their claims by **substantial evidence**.

x x x x x x x x x

SEC. 18. *Judgment.* – The court shall render judgment within ten (10) days from the time the petition is submitted for decision. If the allegations in the petition are proven by **substantial evidence**, the court shall grant the privilege of the writ and such reliefs as may be proper and appropriate; otherwise, the privilege shall be denied. (Emphasis supplied)

Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. It is more than a mere imputation of wrongdoing

[39] Rule on the Writ of *Amparo*, SEC. 5.

or violation that would warrant a finding of liability against the person charged.[40] The summary nature of *amparo* proceedings, as well as, the use of substantial evidence as standard of proof shows the intent of the framers of the rule to address situations of enforced disappearance and extrajudicial killings, or threats thereof, with what is akin to administrative proceedings.[41]

Suitable to, and consistent with this incipiently unique and informal treatment of *amparo* cases, the Court eventually recognized the evidentiary difficulties that beset *amparo* petitioners, arising as they normally would from the fact that the State itself, through its own agents, is involved in the enforced disappearance or extrajudicial killing that it is supposedly tasked by law to investigate. Thus, in *Razon, Jr. v. Tagitis*, the Court laid down a new standard of relaxed admissibility of evidence to enable *amparo* petitioners to meet the required amount of proof showing the State's direct or indirect involvement in the purported violations and found it a fair and proper rule in *amparo* cases "**to consider all the pieces of evidence adduced in their totality**" and "**to consider any evidence otherwise inadmissible under our usual rules to be admissible if it is consistent with the admissible evidence adduced**."[42] Put simply, evidence is not to be rejected outright because it is inadmissible under the rules for as long as it satisfies "**the most basic test of reason – *i.e.*, relevance of the evidence to the issue at hand and its consistency with all other pieces of adduced evidence**."[43]

This measure of flexibility in the admissibility of evidence, however, does not do away with the requirement of substantial evidence in showing the State's involvement in the enforced disappearance, extrajudicial killing or threats thereof. It merely

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[40] *Rubrico v. Macapagal-Arroyo*, G.R. No. 183871, February 18, 2010, 613 SCRA 233, 256.

[41] *Razon, Jr. v. Tagitis*, G.R. No. 182498, December 3, 2009, 606 SCRA 598, 687.

[42] *Id.* at 692.

[43] *Id.*

permits, in the absence of hard-to-produce direct evidence, a closer look at the relevance and significance of every available evidence,[44] including those that are, strictly speaking, hearsay where the circumstances of the case so require, and allows the consideration of the evidence adduced in terms of their consistency with the totality of the evidence.[45]

As emphasized by Justice Arturo D. Brion (Justice Brion) during the deliberations on this case, in cases of enforced disappearance, the evidence that would directly establish a violation of the right to life, liberty and security is indubitably in the State's possession. The same is not equally true in cases where the *amparo* petitioner alleges (as in this case) a threatened violation of his/her rights since **the facts, circumstances and the link between these that create an actual threat to his/her life are measurably within the ability of the *amparo* petitioner to prove**. These include, among others, the alleged documented human rights violations by the military in Mindanao; documentary and/or testimonial evidence on the military's counter-insurgency operations; corroborative evidence to support the allegations on the presence of suspicious men; and presumptive evidence linking the deaths of Celso Pojas, Ludenio Monzon and Dr. Rogelio Peñera to their political affiliation and the similarity of their situation to those of petitioners. A mere inclusion of one's name in the OB List, without more, does not suffice to discharge the burden to establish actual threat to one's right to life, liberty and security by substantial evidence.

The statement of Representative Ocampo that the respondents are the real source of the OB List is unquestionably hearsay evidence because, except for the fact that he himself received the OB List from an unnamed source merely described as "a conscientious soldier," he had no personal knowledge concerning its preparation. But even if the Court were to apply the appropriate measure of flexibility in the instant cases by admitting the hearsay testimony of Representative Ocampo, a consideration of this

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[44] *Id.* at 703.

[45] *Id.* at 695.

piece of evidence to the totality of those adduced, namely, the Press Releases issued by the 10th ID admitting the existence of a military-prepared Order of Battle, the affidavits of petitioners attesting to the threatening visits and tailing of their vehicles by menacing strangers, as well as the violent deaths of alleged militant personalities, leads to the conclusion that the threat to petitioners' security has not be adequately proven.

Petitioners sought to prove that the inclusion of their names in the OB List presented a real threat to their security by attributing the violent deaths of known activists Celso Pojas, Lodenio Monzon and Dr. Rogelio Peñera to the inclusion of the latter's names or the names of their militant organizations in the subject OB List. Petitioner Atty. Librado-Trinidad even attributed the alleged tailing of her vehicle by motorcycle-riding men and the attempted entry by suspicious men into her home to the inclusion of her name in the OB List. The RTC, however, correctly dismissed both arguments, holding that the existence of the OB List could not be directly associated with the menacing behavior of suspicious men or the violent deaths of certain personalities, thus:

"Anent petitioner's revelation that sometime in 2008, a number of unidentified men attempted to forcibly enter the premises of her dwelling and that at one occasion, the vehicle she was riding was tailed by motorcycle-riding men, the same could not led [sic] to the conclusion that indeed, those incidents were related to the existence of the "OB List." There appears not even an iota of evidence upon which the same assumption can be anchored on.[46]

This Court likewise sees no direct relation between the violent deaths of Celso Pojas, Ludenio Monzon and Dr. Rogelio Peñera and the subject "OB List." There is no evidence pointing to the claim that they were killed because their names or the organizations they were involved in were mentioned in the same "OB List." More importantly, there is no official finding by the proper authorities that their deaths were precipitated by their involvement in organizations sympathetic to, or connected with, the Communist Party of the Philippines, or its military arm, the New People's Army. Lastly, and more telling, the existence of the subject "OB List" has not

[46] *Rollo* (G.R. No. 189690), p. 51.

been adequately proven, as discussed heretofore, hence, reference to the same finds no basis."[47]

The Court holds that the imputed pattern of targeting militants for execution by way of systematically identifying and listing them in an Order of Battle cannot be inferred simply from the Press Releases admitting the existence of a military document known as an Order of Battle and the fact that activists Celso Pojas, Lodenio Monzon and Dr. Rogelio Peñera have become supposed victims of extralegal killings. The adduced evidence tends to bear strongly against the proposition because, except for Celso Pojas, the names of the supposed victims of extrajudicial killings are manifestly absent in the subject OB List and the supposed connection of the victims to the militant groups explicitly identified in the OB List is nothing short of nebulous.

Moreover, while respondents may have admitted through various statements to the media that the military has its own Order of Battle, such an admission is not equivalent to proof that the subject OB List, which was publicly disclosed by Representative Ocampo by way of a PowerPoint presentation, is one and the same with the Order of Battle that the military has in its keeping. And, assuming that the Press Releases do amount to an admission not only of the existence but also the authenticity of the subject OB List, the inclusion of petitioners' names therein does not, by itself, constitute an actual threat to their rights to life, liberty and security as to warrant the issuance of a writ of *amparo*.

In the case of *Secretary of National Defense v. Manalo*,[48] the Court ruled that a person's right to security is, in one sense, "freedom from fear" and that any threat to the rights to life, liberty or security is an actionable wrong. The term "any threat," however, cannot be taken to mean every conceivable threat in the mind that may cause one to fear for his life, liberty or security. The Court explicated therein that "[f]ear is a state of mind, a reaction; threat is a stimulus, a cause of action. Fear

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[47] *Rollo* (G.R. No. 189689), p. 52; and *rollo* (G.R. No. 189691), p. 56.

[48] *Supra* note 36, at 52 and 54.

caused by the same stimulus can range from being baseless to well-founded as people react differently. The degree of fear can vary from one person to another with the variation of the prolificacy of their imagination, strength of character or past experience with the stimulus." Certainly, given the uniqueness of individual psychological mindsets, perceptions of what is fearful will necessarily vary from one person to another.

The alleged threat to herein petitioners' rights to life, liberty and security must be actual, and not merely one of supposition or with the likelihood of happening. And, when the evidence adduced establishes the threat to be existent, as opposed to a potential one, then, it goes without saying that the threshold requirement of substantial evidence in *amparo* proceedings has also been met. Thus, in the words of Justice Brion, in the context of the *Amparo* rule, only **actual threats**, as may be established from all the facts and circumstances of the case, can qualify as a violation that may be addressed under the Rule on the Writ of *Amparo*.

Petitioners cannot assert that the inclusion of their names in the OB List is as real a threat as that which brought ultimate harm to victims Celso Pojas, Lodenio Monzon and Dr. Rogelio Peñera without corroborative evidence from which it can be presumed that the suspicious deaths of these three people were, in fact, on account of their militant affiliations or that their violent fates had been actually planned out by the military through its Order of Battle.

The Court may be more yielding to the use of circumstantial or indirect evidence and logical inferences, but substantial evidence is still the rule to warrant a finding that the State has violated, is violating, or is threatening to violate, *amparo* petitioners' right to life, liberty or security. No substantial evidence of an actual threat to petitioners' life, liberty and security has been shown to exist in this case. For, even if the existence of the OB List or, indeed, the inclusion of petitioners' names therein, can be properly inferred from the totality of the evidence presented, still, no link has been sufficiently established to relate

the subject OB List either to the threatening visits received by petitioners from unknown men or to the violent deaths of the three (3) mentioned personalities and other known activists, which could strongly suggest that, by some identifiable pattern of military involvement, the inclusion of one's name in an Order of Battle would eventually result to enforced disappearance and murder of those persons tagged therein as militants.

Emphasizing the extraordinary character of the *amparo* remedy, the Court ruled in the cases of *Roxas* and *Razon, Jr.* that an *amparo* petitioner's failure to establish by substantial evidence the involvement of government forces in the alleged violation of rights is never a hindrance for the Court to order the conduct of further investigation where it appears that the government did not observe extraordinary diligence in the performance of its duty to investigate the complained abduction and torture or enforced disappearance. The Court directed further investigation in the case of *Roxas* because the modest efforts of police investigators were effectively putting petitioner's right to security in danger with the delay in identifying and apprehending her abductors. In *Razon, Jr.*, the Court found it necessary to explicitly order the military and police officials to pursue with extraordinary diligence the investigation into the abduction and disappearance of a known activist because not only did the police investigators conduct an incomplete and one-sided investigation but they blamed their ineffectiveness to the reluctance and unwillingness of the relatives to cooperate with the authorities. In both of these cases, the incidents of abduction and torture were undisputed and they provided the evidentiary support for the finding that the right to security was violated and the necessity for further investigation into such violation. Unlike *Roxas* and *Razon, Jr.*, however, the present petitions do not involve actual cases of abduction or disappearance that can be the basis of an investigation. Petitioners would insist that respondents be investigated and directed to produce the Order of Battle that they have admitted to be in their safekeeping and justify the inclusion of petitioners' names therein. However, without substantial evidence of an actual threat to petitioners' rights to life, liberty and security that consists more

than just the inclusion of their names in an OB List, an order for further investigation into, or production of, the military's Order of Battle, would have no concrete basis.

WHEREFORE, premises considered, the petitions are hereby **DENIED**. The assailed Orders dated August 14, 2009 and September 22, 2009 of the Regional Trial Court of Davao City, Branch 10, are **AFFIRMED**.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Reyes, JJ.,* concur.

EN BANC

[G.R. No. 192221. November 13, 2012]

CASIMIRA S. DELA CRUZ, *petitioner, vs.* **COMMISSION ON ELECTIONS and JOHN LLOYD M. PACETE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; TO PROSPER, THERE MUST BE A CLEAR SHOWING OF CAPRICE AND ARBITRARINESS IN THE EXERCISE OF DISCRETION.— The only question that may be raised in a petition for *certiorari* under Section 2, Rule 64 of the Revised Rules of Court is whether or not the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction. For a petition for *certiorari* to prosper, there must be a clear showing of caprice and arbitrariness in the exercise of discretion. There is also grave abuse of discretion when there is a contravention of the Constitution, the law or existing

jurisprudence. COMELEC being a specialized agency tasked with the supervision of elections all over the country, its factual findings, conclusions, rulings and decisions rendered on matters falling within its competence shall not be interfered with by this Court in the absence of grave abuse of discretion or any jurisdictional infirmity or error of law. In this case, Resolution No. 8844 issued by COMELEC clearly contravened existing law and jurisprudence on the legal effect of declaration of a candidate as a nuisance candidate, especially in the case of nuisance candidates who have the same surnames as those of *bona fide* candidates.

2. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; ELIGIBILITY OF CANDIDATES AND CERTIFICATE OF CANDIDACY; A PETITION TO CANCEL OR DENY DUE COURSE TO A CERTIFICATE OF CANDIDACY CANNOT BE TREATED IN THE SAME MANNER AS A PETITION FOR DISQUALIFICATION.— It bears to stress that Sections 211 (24) and 72 applies to all disqualification cases and not to petitions to cancel or deny due course to a certificate of candidacy such as Sections 69 (nuisance candidates) and 78 (material representation shown to be false). Notably, such facts indicating that a certificate of candidacy has been filed "to put the election process in mockery or disrepute, or to cause confusion among the voters by the similarity of the names of the registered candidates, or other circumstances or acts which clearly demonstrate that the candidate has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate" are not among those grounds enumerated in Section 68 (giving money or material consideration to influence or corrupt voters or public officials performing electoral functions, election campaign overspending and soliciting, receiving or making prohibited contributions) of the OEC or Section 40 of Republic Act No. 7160 (Local Government Code of 1991). x x x [A] petition to cancel or deny due course to a COC under Section 69 as in Section 78 cannot be treated in the same manner as a petition to disqualify under Section 68 as what COMELEC did when it applied the rule provided in Section 72 that the votes cast for a disqualified candidate be considered stray, to those registered candidates whose COC's had been cancelled

or denied due course. Strictly speaking, a cancelled certificate cannot give rise to a valid candidacy, and much less to valid votes. Said votes cannot be counted in favor of the candidate whose COC was cancelled as he/she is not treated as a candidate at all, as if he/she never filed a COC.

3. ID.; ID.; ID.; ID.; THE VOTES CAST FOR A NUISANCE CANDIDATE DECLARED AS SUCH IN A FINAL JUDGMENT, PARTICULARLY WHERE SUCH NUISANCE CANDIDATE HAS THE SAME SURNAME AS THAT OF THE LEGITIMATE CANDIDATE SHALL NOT BE CONSIDERED STRAY BUT SHALL BE COUNTED IN FAVOR OF THE LATTER.— Here, Aurelio was declared a nuisance candidate long before the May 10, 2010 elections. On the basis of Resolution No. 4116, the votes cast for him should not have been considered stray but counted in favor of petitioner. COMELEC's changing of the rule on votes cast for nuisance candidates resulted in the invalidation of significant number of votes and the loss of petitioner to private respondent by a slim margin. x x x We hold that the rule in Resolution No. 4116 considering the votes cast for a nuisance candidate declared as such in a final judgment, particularly where such nuisance candidate has the same surname as that of the legitimate candidate, not stray but counted in favor of the latter, remains a good law. x x x [A] petition to cancel or deny a COC under Section 69 of the OEC should be distinguished from a petition to disqualify under Section 68. Hence, the legal effect of such cancellation of a COC of a nuisance candidate cannot be equated with a candidate disqualified on grounds provided in the OEC and Local Government Code.

4. ID.; ID.; LAWS AND STATUTES GOVERNING ELECTION CONTESTS ESPECIALLY APPRECIATION OF BALLOTS MUST BE LIBERALLY CONSTRUED.— [U]pholding the former rule in Resolution No. 4116 is more consistent with the rule well-ensconced in our jurisprudence that laws and statutes governing election contests especially appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities. Indeed, as our electoral experience had demonstrated, such infirmities and delays in the delisting of nuisance candidates from both the Certified List of Candidates and Official Ballots only made possible

the very evil sought to be prevented by the exclusion of nuisance candidates during elections.

APPEARANCES OF COUNSEL

Tayag and Danganan Law Offices for petitioner.
Fortaleza & Alagos Law Office for private respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

With the adoption of automated election system in our country, one of the emerging concerns is the application of the law on nuisance candidates under a new voting system wherein voters indicate their choice of candidates by shading the oval corresponding to the name of their chosen candidate printed on the ballots, instead of writing the candidate's name on the appropriate space provided in the ballots as in previous manual elections. If the name of a nuisance candidate whose certificate of candidacy had been cancelled by the Commission on Elections (COMELEC) was still included or printed in the official ballots on election day, should the votes cast for such nuisance candidate be considered stray or counted in favor of the *bona fide* candidate?

The Case

In this petition for *certiorari* with prayer for injunctive relief/s under Rule 65 in conjunction with Section 2, Rule 64 of the 1997 Rules of Civil Procedure, as amended, filed on May 31, 2010, Casimira S. Dela Cruz (petitioner) assails COMELEC Resolution No. 8844[1] considering as stray the votes cast in favor of certain candidates who were either disqualified or whose COCs had been cancelled/denied due course but whose names still appeared in the official ballots or certified lists of candidates for the May 10, 2010 elections.

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[1] *Rollo*, pp. 83-89. Entitled, "In the Matter of Local Candidates Disqualified/ Cancelled/Denied Due Course/Withdrawn Their Certificates of Candidacy For the May 10, 2010 Automated Elections" promulgated on May 1, 2010.

Petitioner prays for the following reliefs:

1. Upon the filing of the instant Petition, a Temporary Restraining Order and/or Writ of Preliminary Injunction be issued enjoining the taking of oath and assumption into office of Private Respondent John Lloyd Pacete as Vice-Mayor of the Municipality of Bugasong;

2. After the Petition is submitted for resolution, a decision be rendered granting the instant Petition and:

(a) declaring as null and void the portion of COMELEC Resolution No. 8844 considering as stray the votes cast in favor of the disqualified nuisance candidate Aurelio N. Dela Cruz;

(b) ordering that the votes cast in favor of Aurelio N. Dela Cruz be counted and tallied in favor of Petitioner Casimira S. Dela Cruz pursuant to COMELEC Resolution No. 4116; and

(c) requiring the Regional Trial Court of the Province of Antique where the Petitioner's Election Protest is pending to proclaim as Vice-Mayor of the Municipality of Bugasong the candidate who obtained the highest number of votes after the votes in favor of nuisance candidate Aurelio N. Dela Cruz is counted and tallied to the votes garnered by Petitioner Casimira S. Dela Cruz.

3. Permanently enjoining the taking of oath and assumption into office of Private Respondent if Petitioner is proclaimed as the Vice-Mayor of the Municipality of Bugasong, Province of Antique.

Other just and equitable reliefs are likewise prayed for.[2]

Factual Antecedents

In the 2001, 2004 and 2007 elections, petitioner ran for and was elected member of the *Sangguniang Bayan* (SB) of Bugasong, Antique. On November 28, 2009, petitioner filed her certificate of candidacy[3] for the position of Vice-Mayor of the Municipality of Bugasong, Province of Antique under the ticket of the National People's Coalition (NPC). Subsequently, Aurelio N. Dela Cruz

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

[3] *Id.* at 124.

(Aurelio) also filed a certificate of candidacy[4] for the same position.

On December 6, 2009, petitioner filed a petition[5] to declare Aurelio a nuisance candidate on the ground that he filed his certificate of candidacy for the vice-mayoralty position to put the election process in mockery and to cause confusion among voters due to the similarity of his surname with petitioner's surname. Petitioner emphasized that she is considered a very strong candidate for the said position having been elected as member of the SB for three consecutive terms under the ticket of the NPC and obtained the fifth (2001), fourth (2004) and third (2007) highest number of votes. In contrast, Aurelio is an unknown in the political scene with no prior political experience as an elective official and no political party membership. Being a retiree and having no known business, Aurelio has no sufficient source of income but since the 2007 elections petitioner's opponents have been prodding him to run for the same position as petitioner in order to sow confusion and thwart the will of the voters of Bugasong. Petitioner further cited Aurelio's miserable showing in the previous local elections when he ran and garnered only 126 and 6 votes for the positions of SB member (May 2007) and *barangay* captain of Barangay Maray, Bugasong (November 2007), respectively. Citing *Bautista v. COMELEC*,[6] petitioner asserted that these circumstances clearly demonstrate Aurelio's lack of a *bona fide* intention and capability to run for the position of Vice-Mayor, thus preventing a faithful determination of the true will of the electorate.

On January 29, 2010, the COMELEC First Division issued a Resolution[7] declaring Aurelio as a nuisance candidate and cancelling his certificate of candidacy for the vice-mayoralty position in Bugasong.

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[4] *Id.* at 125.

[5] *Id.* at 90-98.

[6] G.R. No. 133840, November 13, 1998, 298 SCRA 480.

[7] *Rollo*, pp. 139-143.

Despite the declaration of Aurelio as a nuisance candidate, however, his name was not deleted in the Certified List of Candidates[8] and Official Sample Ballot[9] issued by the COMELEC. The names of the candidates for Vice-Mayor, including Aurelio and respondent John Lloyd M. Pacete, appeared on the Official Sample Ballot as follows:

VICE-MAYOR Vote for not more than 1			
⬭1. DELA CRUZ, Aurelio N. "REL" (IND.)	⬭2. DELA CRUZ, Casimira S. "MIRAY"(NPC)	⬭3. PACETE, John Lloyd M. "BINGBING" (NP)	

Consequently, petitioner filed on March 23, 2010, an Urgent *Ex-Parte* Omnibus Motion[10] praying, among other things, that COMELEC issue an order directing the deletion of Aurelio's name from the Official List of Candidates for the position of Vice-Mayor, the Official Ballots, and other election paraphernalia to be used in Bugasong for the May 2010 elections. She also prayed that in the event Aurelio's name can no longer be deleted in time for the May 10, 2010 elections, the COMELEC issue an order directing that all votes cast in favor of Aurelio be credited in her favor, in accordance with COMELEC Resolution No. 4116 dated May 7, 2001.

On May 1, 2010, the COMELEC *En Banc* issued Resolution No. 8844[11] listing the names of disqualified candidates, including Aurelio, and disposing as follows:

NOW THEREFORE, the Commission RESOLVED, as it hereby RESOLVES, as follows:

1. to delete the names of the foregoing candidates from the certified list of candidates; and

3. to **consider stray the votes of said candidates, if voted upon**.[12] (Emphasis supplied)

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[8] *Id.* at 144-145.

[9] *Id.* at 146.

[10] *Id.* at 147-155.

[11] *Id.* at 83-89.

[12] *Id.* at 89.

On May 10, 2010, the first automated national and local elections proceeded as scheduled. Aurelio's name remained in the official ballots.

During the canvassing of the votes by the Municipal Board of Canvassers (MBOC) of Bugasong on May 13, 2010, petitioner insisted that the votes cast in favor of Aurelio be counted in her favor. However, the MBOC refused, citing Resolution No. 8844. The Statement of Votes by Precinct for Vice-Mayor of Antique-Bugasong[13] showed the following results of the voting:

	TOTAL	RANK
DELA CRUZ, AURELIO N.	532	3
DELA CRUZ, CASIMIRA S.	6389	2
PACETE, JOHN LLOYD M.	6428	1

Consequently, on May 13, 2010, private respondent John Lloyd M. Pacete was proclaimed Vice-Mayor of Bugasong by the MBOC of Bugasong.[14]

On May 21, 2010, petitioner filed with the Regional Trial Court of the Province of Antique an election protest praying for (1) the tallying in her favor of the 532 votes cast for Aurelio; (2) the annulment of respondent Pacete's proclamation as Vice-Mayor of Bugasong; and (3) her proclamation as winning candidate for the position of Vice-Mayor of Bugasong.

Petitioner's Arguments

Considering that private respondent won by a margin of only thirty-nine (39) votes over petitioner's 6,389 votes, petitioner contends that she would have clearly won the elections for Vice-Mayor of Bugasong had the MBOC properly tallied or added the votes cast for Aurelio to her votes. Thus, petitioner insists she would have garnered a total of 6,921 votes as against the 6,428 votes of private respondent. By issuing a directive to consider the votes cast for Aurelio as stray votes instead of

[13] *Id.* at 164-168.

[14] *Id.* at 169.

counting the same in favor of petitioner in accordance with COMELEC Resolution No. 4116, the COMELEC's First Division gravely abused its discretion.

Petitioner argues that Resolution No. 8844 violates her constitutional right to equal protection of the laws because there is no substantial difference between the previous manual elections and the automated elections conducted in 2010 to justify non-observance of Resolution No. 4116 issued in 2001, particularly on the matter of votes cast for a candidate who was declared a nuisance candidate in a final judgment where such nuisance candidate has the same name with that of the bona fide candidate. Moreover, in contrast to the assailed resolution, COMELEC Resolution No. 4116 properly recognized the substantial distinctions between and among (a) disqualified candidates, (b) nuisance candidates whose names are similar to those of the *bona fide* candidates, (c) nuisance candidates who do not have similar names with those of the *bona fide* candidates, and (d) candidates who had voluntarily withdrawn their certificates of candidacy. As a result of the failure of the COMELEC's First Division to make these important distinctions when it issued Resolution No. 8844 that applies to disqualified candidates, nuisance candidates and all other candidates whose certificates of candidacy had been cancelled or denied course, petitioner's right to due process was clearly violated, and only made possible the very evil that is sought to be corrected by the former rule not to consider the votes cast for the nuisance candidate as stray but count them in favor of the *bona fide* candidate.

Respondents' Arguments

COMELEC maintains that there is a presumption of validity with respect to its exercise of supervisory or regulatory authority in the conduct of elections. Also, the time-honored rule is that a statute is presumed to be constitutional and that the party assailing it must discharge the burden of clearly and convincingly proving its invalidity. Thus, to strike down a law as unconstitutional, there must be a clear and unequivocal showing that what the law prohibits, the statute permits. In

this case, petitioner miserably failed to prove a clear breach of the Constitution; she merely invokes a violation of the equal protection clause and due process of law without any basis.

On the claim of equal protection violation, COMELEC contends that there is a substantial distinction between a manual election where Resolution No. 4116 applies, and an automated election governed by Resolution No. 8844. While the votes for the nuisance candidate were not considered stray but counted in favor of the *bona fide* candidate, this is no longer the rule for automated elections. COMELEC cites the following factors which changed the previous rule: (1) the official ballots in automated elections now contain the full names of the official candidates so that when a voter shaded an oval, it was presumed that he carefully read the name adjacent to it and voted for that candidate, regardless of whether said candidate was later declared disqualified or nuisance; (2) since the names of the candidates are clearly printed on the ballots, unlike in manual elections when these were only listed in a separate sheet of paper attached to the ballot secrecy folder, the voter's intention is clearly to vote for the candidate corresponding to the shaded oval; (3) the rules on appreciation of ballots under Section 211, Article XVIII of the Omnibus Election Code apply only to elections where the names of candidates are handwritten in the ballots; and (4) with the use of the automated election system where the counting of votes is delegated to the Precinct Count Optical Scan (PCOS) machines, pre-proclamation controversies, including complaints regarding the appreciation of ballots and allegations of misreading the names of the candidates written, were flaws which the automation rectified. Aside from being germane to the purpose of our election laws, Resolution No. 8844 is not limited to existing conditions as it is applicable to all persons of the same class even in succeeding elections, and covered all disqualified and nuisance candidates without distinction.

Lastly, COMELEC asserts there is no violation of the right to due process. For public office is not a property right and no one has a vested right to any public office.

On his part, private respondent Pacete asserts that petitioner cannot validly claim the votes cast for Aurelio in view of the rule provided in Section 211 (24) of Batas Pambansa Blg. 881, which cannot be supplanted by Resolution No. 4116. He also cites an annotation on election law,[15] invoking this Court's ruling in *Kare v. COMELEC*[16] that the aforesaid provision when read together with Section 72, are understood to mean that "any vote cast in favor of a candidate, whose disqualification has already been declared final regardless of the ground therefor, shall be considered stray."

Private respondent also points out the fact that on May 4, 2010, COMELEC caused the publication of Resolution No. 8844 in two newspapers of general circulation in the country. There was thus an earnest effort on the part of COMELEC to disseminate the information, especially to the voters in Bugasong, Antique, that the name of Aurelio was printed on the official ballots as one of the candidates for Vice-Mayor. Said voters were amply forewarned about the status of Aurelio's candidacy and the consequences that will obtain should he still be voted for. Additionally, the petitioner and Aurelio bear different first names, female and male, respectively; petitioner and her political party engaged in a massive voter education during the campaign period, emphasizing to her supporters that she was given the corresponding number ("2") in the official ballots, and the voters should be very circumspect in filling up their ballots because in case of error in filling up the same, they will not be given replacement ballots. As to the Judicial Affidavits of those who voted for petitioner attesting to the fact of mistakenly shading the oval beside the name of Aurelio in the ballots, which was attached to the petition, petitioner in effect would want this Court to sit in judgment as trier of facts.

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[15] J. N. Bellosillo, J. M. P. Marquez, and E. L. J. Mapili, *OMNIBUS ELECTION CODE WITH RULES OF PROCEDURE AND JURISPRUDENCE IN ELECTION LAW*, pp. 192-193.

[16] G.R. Nos. 157526 & 157527, April 28, 2004, 428 SCRA 264, 273.

Ruling of the Court

The petition is meritorious.

The only question that may be raised in a petition for *certiorari* under Section 2, Rule 64 of the Revised Rules of Court is whether or not the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction.[17] For a petition for *certiorari* to prosper, there must be a clear showing of caprice and arbitrariness in the exercise of discretion. There is also grave abuse of discretion when there is a contravention of the Constitution, the law or existing jurisprudence.[18]

COMELEC being a specialized agency tasked with the supervision of elections all over the country, its factual findings, conclusions, rulings and decisions rendered on matters falling within its competence shall not be interfered with by this Court in the absence of grave abuse of discretion or any jurisdictional infirmity or error of law.[19] In this case, Resolution No. 8844 issued by COMELEC clearly contravened existing law and jurisprudence on the legal effect of declaration of a candidate as a nuisance candidate, especially in the case of nuisance candidates who have the same surnames as those of *bona fide* candidates.

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[17] *Laurena, Jr. v. COMELEC,* G.R. No. 174499, June 29, 2007, 526 SCRA 230, 237, citing *Manzala v. COMELEC,* G.R. No. 176211, May 8, 2007, 523 SCRA 31, 38.

[18] *Dueñas, Jr. v. House of Representatives Electoral Tribunal,* G.R. No. 185401, July 21, 2009, 593 SCRA 316, 345, citing *Perez v. Court of Appeals,* G.R. No. 162580, January 27, 2006, 480 SCRA 411, 416.

[19] *Punzalan v. COMELEC,* G.R. Nos. 126669, 127900, 128800 and 132435, April 27, 1998, 289 SCRA 702, 716, citing *Mastura v. COMELEC,* G.R. No. 124521, January 29, 1998, 285 SCRA 493, *Bulaong v. COMELEC,* G.R. No. 116206, February 7, 1995, 241 SCRA 180, 190, *Navarro v. COMELEC,* G.R. No. 106019, December 17, 1993, 228 SCRA 596, 600, *Lozano v. Yorac,* G.R. Nos. 94521 & 94626, October 28, 1991, 203 SCRA 256 and *Pimping v. COMELEC,* Nos. 69765-67, 69773-75 & 69846, November 19, 1985, 140 SCRA 192, 222.

Private respondent argues that no grave abuse of discretion can be imputed on COMELEC when it issued Resolution No. 8844 which is simply consistent with the rule laid down in Section 211 (24), Article XVIII and Section 72, Article IX of Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code (OEC). Said provisions state:

SEC. 72. *Effects of Disqualification cases and priority.* – The Commission and the courts shall give priority to cases of disqualification by reason of violation of this Act to the end that a final decision shall be rendered not later than seven days before the election in which the disqualification is sought. Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. Nevertheless, if for any reason, a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, his violation of the provisions of the preceding sections shall not prevent his proclamation and assumption of office.

SEC. 211. *Rules for the appreciation of ballots.* – In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. The board of election inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the expression of the voter's will:

x x x x x x x x x

24. Any vote cast in favor of a candidate who has been disqualified by final judgment shall be considered as stray and shall not be counted but it shall not invalidate the ballot.

Private respondent cites the case of *Kare v. COMELEC*[20] where this Court, construing the above provisions, stated:

According to the Comelec, Section 211 (24) of the OEC is a clear legislative policy that is contrary to the rule that the second placer cannot be declared winner.

We disagree.

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[20] *Supra* note 16.

The provision that served as the basis of Comelec's Decision to declare the second placer as winner in the mayoral race should be read in relation with other provisions of the OEC. Section 72 thereof, as amended by RA 6646, provides as follows:

x x x x x x x x x

When read together, these provisions are understood to mean that any vote cast in favor of a candidate, whose *disqualification has already been declared final* **regardless of the ground therefor, shall be considered stray.** The Comelec misconstrued this provision by limiting it only to disqualification by conviction in a final judgment.

Obviously, the disqualification of a candidate is not only by conviction in a final judgment; the law lists other grounds for disqualification. It escapes us why the Comelec insists that Section 211(24) of the OEC is strictly for those convicted by a final judgment. Such an interpretation is clearly inconsistent with the other provisions of the election code.[21] (Emphasis supplied; italics not ours)

Private respondent thus suggests that regardless of the ground for disqualification, the votes cast for the disqualified candidate should result in considering the votes cast for him as stray as explicitly mandated by Section 211(24) in relation to Section 72 of the OEC.

We disagree.

It bears to stress that Sections 211 (24) and 72 applies to all disqualification cases and not to petitions to cancel or deny due course to a certificate of candidacy such as Sections 69 (nuisance candidates) and 78 (material representation shown to be false). Notably, such facts indicating that a certificate of candidacy has been filed "to put the election process in mockery or disrepute, or to cause confusion among the voters by the similarity of the names of the registered candidates, or other circumstances or acts which clearly demonstrate that the candidate has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate"

[21] *Id.* at 272-273.

are not among those grounds enumerated in Section 68 (giving money or material consideration to influence or corrupt voters or public officials performing electoral functions, election campaign overspending and soliciting, receiving or making prohibited contributions) of the OEC or Section 40[22] of Republic Act No. 7160 (Local Government Code of 1991).

In *Fermin v. COMELEC*,[23] this Court distinguished a petition for disqualification under Section 68 and a petition to cancel or deny due course to a certificate of candidacy (COC) under Section 78. Said proceedings are governed by different rules and have distinct outcomes.

> At this point, we must stress that a "Section 78" petition ought not to be interchanged or confused with a "Section 68" petition. **They are different remedies, based on different grounds, and resulting in different eventualities**. Private respondent's insistence, therefore, that the petition it filed before the COMELEC in SPA No. 07-372 is in the nature of a disqualification case under Section 68, as it is in fact captioned a "Petition for Disqualification," does not persuade the Court.
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> x x x x x x x x x
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> To emphasize, a petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the OEC, or Section 40 of the LGC. On the other hand, a petition to deny due course to or

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[22] Sec. 40. *Disqualifications*. – The following persons are disqualified from running for any elective local position:

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

(b) Those removed from office as a result of an administrative case;

(c) Those convicted by final judgment for violating the oath of allegiance to the Republic;

(d) Those with dual citizenship;

(e) Fugitives from justice in criminal or non-political cases here or abroad;

(f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

(g) The insane or feeble-minded.

[23] G.R. Nos. 179695 and 182369, December 18, 2008, 574 SCRA 782.

cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also have different effects. **While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC.** Thus, in *Miranda v. Abaya,* this Court made the distinction that a candidate who is disqualified under Section 68 can validly be substituted under Section 77 of the OEC because he/she remains a candidate until disqualified; but a person whose CoC has been denied due course or cancelled under Section 78 cannot be substituted because he/she is never considered a candidate.[24] (Additional emphasis supplied)

Clearly, a petition to cancel or deny due course to a COC under Section 69 as in Section 78 cannot be treated in the same manner as a petition to disqualify under Section 68 as what COMELEC did when it applied the rule provided in Section 72 that the votes cast for a disqualified candidate be considered stray, to those registered candidates whose COC's had been cancelled or denied due course. Strictly speaking, a cancelled certificate cannot give rise to a valid candidacy, and much less to valid votes. Said votes cannot be counted in favor of the candidate whose COC was cancelled as he/she is not treated as a candidate at all, as if he/she never filed a COC. But should these votes cast for the candidate whose COC was cancelled or denied due course be considered stray?

COMELEC Resolution No. 4116 issued in relation to the finality of resolutions or decisions in special action cases, provides:

> This pertains to the finality of decisions or resolutions of the Commission *en banc* or division, particularly on Special Actions (Disqualification Cases).
>
> Special Action cases refer to the following:
>
> (a) Petition to deny due course to a certificate of candidacy;
>
> (b) Petition to declare a candidate as a nuisance candidate;

[24] *Id.* at 794, 796.

(c) Petition to disqualify a candidate; and

(d) Petition to postpone or suspend an election.

Considering the foregoing and in order to guide field officials on the finality of decisions or resolutions on special action cases (disqualification cases) the Commission, RESOLVES, as it is hereby RESOLVED, as follows:

(1) the decision or resolution of the *En Banc* of the Commission on disqualification cases shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court;

x x x x x x x x x

(4) the decision or resolution of the *En Banc* on nuisance candidates, particularly whether the nuisance candidate has the same name as the bona fide candidate shall be immediately executory;

(5) ***the decision or resolution of a DIVISION on nuisance candidate, particularly where the nuisance candidate has the same name as the bona fide candidate shall be immediately executory after the lapse of five (5) days*** unless a motion for reconsideration is seasonably filed. In which case, ***the votes cast shall not be considered stray but shall be counted and tallied for the bona fide candidate.***

All resolutions, orders and rules inconsistent herewith are hereby modified or repealed. (Emphasis supplied)[25]

The foregoing rule regarding the votes cast for a nuisance candidate declared as such under a final judgment was applied by this Court in *Bautista v. COMELEC*[26] where the name of the nuisance candidate Edwin Bautista (having the same surname with the *bona fide* candidate) still appeared on the ballots on election day because while the COMELEC rendered its decision to cancel Edwin Bautista's COC on April 30, 1998, it denied his motion for reconsideration only on May 13, 1998 or three days after the election. We said that the votes for candidates for

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[25] Cited in *Martinez III v. House of Representatives Electoral Tribunal*, G.R. No. 189034, January 12, 2010, 610 SCRA 53, 75-76.

[26] *Supra* note 6.

mayor separately tallied on orders of the COMELEC Chairman was for the purpose of later counting the votes and hence are not really stray votes. These separate tallies actually made the will of the electorate determinable despite the apparent confusion caused by a potential nuisance candidate.

But since the COMELEC decision declaring Edwin Bautista a nuisance candidate was not yet final on election day, this Court also considered those factual circumstances showing that the votes mistakenly deemed as "stray votes" refer to only the legitimate candidate (petitioner Efren Bautista) and could not have been intended for Edwin Bautista. We further noted that the voters had constructive as well as actual knowledge of the action of the COMELEC delisting Edwin Bautista as a candidate for mayor.

> A stray vote is invalidated because there is no way of determining the real intention of the voter. This is, however, not the situation in the case at bar. Significantly, it has also been established that by virtue of newspaper releases and other forms of notification, the voters were informed of the COMELEC's decision to declare Edwin Bautista a nuisance candidate.[27]

In the more recent case of *Martinez III v. House of Representatives Electoral Tribunal*,[28] this Court likewise applied the rule in COMELEC Resolution No. 4116 not to consider the votes cast for a nuisance candidate stray but to count them in favor of the *bona fide* candidate notwithstanding that the decision to declare him as such was issued only after the elections.

> As illustrated in *Bautista*, the pendency of proceedings against a nuisance candidate on election day inevitably exposes the *bona fide* candidate to the confusion over the similarity of names that affects the voter's will and frustrates the same. It may be that the factual scenario in *Bautista* is not exactly the same as in this case, mainly because the Comelec resolution declaring Edwin Bautista a nuisance candidate was issued *before* and not after the elections,

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[27] *Id.* at 493-494.

[28] G.R. No. 189034, January 12, 2010, 610 SCRA 53.

with the electorate having been informed thereof through newspaper releases and other forms of notification on the day of election. Undeniably, however, the adverse effect on the voter's will was similarly present in this case, if not worse, considering the substantial number of ballots with only "MARTINEZ" or "C. MARTINEZ" written on the line for Representative – over five thousand – which have been declared as stray votes, the invalidated ballots being more than sufficient to overcome private respondent's lead of only 453 votes after the recount.[29]

Here, Aurelio was declared a nuisance candidate long before the May 10, 2010 elections. On the basis of Resolution No. 4116, the votes cast for him should not have been considered stray but counted in favor of petitioner. COMELEC's changing of the rule on votes cast for nuisance candidates resulted in the invalidation of significant number of votes and the loss of petitioner to private respondent by a slim margin. We observed in *Martinez:*

Bautista upheld the basic rule that the primordial objective of election laws is to give effect to, rather than frustrate, the will of the voter. The inclusion of nuisance candidates turns the electoral exercise into an uneven playing field where the *bona fide* candidate is faced with the prospect of having a significant number of votes cast for him invalidated as stray votes by the mere presence of another candidate with a similar surname. Any delay on the part of the COMELEC increases the probability of votes lost in this manner. While political campaigners try to minimize stray votes by advising the electorate to write the full name of their candidate on the ballot, still, election woes brought by nuisance candidates persist.

The Court will not speculate on whether the new automated voting system to be implemented in the May 2010 elections will lessen the possibility of confusion over the names of candidates. What needs to be stressed at this point is the apparent failure of the HRET to give weight to relevant circumstances that make the will of the electorate *determinable*, following the precedent in *Bautista*. x x x[30]

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[29] *Id.* at 73.

[30] *Id.* at 74.

COMELEC justified the issuance of Resolution No. 8844 to amend the former rule in Resolution No. 4116 by enumerating those changes brought about by the new automated election system to the form of official ballots, manner of voting and counting of votes. It said that the substantial distinctions between manual and automated elections validly altered the rules on considering the votes cast for the disqualified or nuisance candidates. As to the rulings in *Bautista* and *Martinez III*, COMELEC opines that these find no application in the case at bar because the rules on appreciation of ballots apply only to elections where the names of candidates are handwritten in the ballots.

The Court is not persuaded.

In *Martinez III*, we took judicial notice of the reality that, especially in local elections, political rivals or operators benefited from the usually belated decisions by COMELEC on petitions to cancel or deny due course to COCs of potential nuisance candidates. In such instances, political campaigners try to minimize stray votes by advising the electorate to write the full name of their candidate on the ballot, but still, election woes brought by nuisance candidates persist.[31]

As far as COMELEC is concerned, the confusion caused by similarity of surnames of candidates for the same position and putting the electoral process in mockery or disrepute, had already been rectified by the new voting system where the voter simply shades the oval corresponding to the name of their chosen candidate. However, as shown in this case, COMELEC issued Resolution No. 8844 on May 1, 2010, nine days before the elections, with sufficient time to delete the names of disqualified candidates not just from the Certified List of Candidates but also from the Official Ballot. Indeed, what use will it serve if COMELEC orders the names of disqualified candidates to be deleted from list of official candidates if the official ballots still carry their names?

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[31] *Id*.

We hold that the rule in Resolution No. 4116 considering the votes cast for a nuisance candidate declared as such in a final judgment, particularly where such nuisance candidate has the same surname as that of the legitimate candidate, not stray but counted in favor of the latter, remains a good law. As earlier discussed, a petition to cancel or deny a COC under Section 69 of the OEC should be distinguished from a petition to disqualify under Section 68. Hence, the legal effect of such cancellation of a COC of a nuisance candidate cannot be equated with a candidate disqualified on grounds provided in the OEC and Local Government Code.

Moreover, private respondent admits that the voters were properly informed of the cancellation of COC of Aurelio because COMELEC published the same before election day. As we pronounced in *Bautista,* the voters' constructive knowledge of such cancelled candidacy made their will more determinable, as it is then more logical to conclude that the votes cast for Aurelio could have been intended only for the legitimate candidate, petitioner. The possibility of confusion in names of candidates if the names of nuisance candidates remained on the ballots on election day, cannot be discounted or eliminated, even under the automated voting system especially considering that voters who mistakenly shaded the oval beside the name of the nuisance candidate instead of the *bona fide* candidate they intended to vote for could no longer ask for replacement ballots to correct the same.

Finally, upholding the former rule in Resolution No. 4116 is more consistent with the rule well-ensconced in our jurisprudence that laws and statutes governing election contests especially appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities.[32] Indeed, as our electoral experience had demonstrated, such infirmities and delays in the delisting of nuisance candidates from both the Certified List of Candidates and Official Ballots only made

[32] *Id.* at 77.

possible the very evil sought to be prevented by the exclusion of nuisance candidates during elections.

WHEREFORE, the petition is hereby **GIVEN DUE COURSE** and the writ prayed for, accordingly **GRANTED**. COMELEC Resolution No. 8844 dated May 1, 2010 insofar as it orders that the votes cast for candidates listed therein, who were declared nuisance candidates and whose certificates of candidacy have been either cancelled or set aside, be considered stray, is hereby declared **NULL** and **VOID**. Consequently, the 532 votes cast for Aurelio N. Dela Cruz during the elections of May 10, 2010 should have been counted in favor of Casimira S. Dela Cruz and not considered stray votes, making her total garnered votes 6,921 as against the 6,428 votes of private respondent John Lloyd M. Pacete who was the declared winner.

Petitioner Casimira S. Dela Cruz is hereby **DECLARED** the duly elected Vice-Mayor of the Municipality of Bugasong, Province of Antique in the May 10, 2010 elections.

This Decision is immediately executory.

Let a copy of this Decision be served personally upon the parties and the Commission on Elections.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

EN BANC

[G.R. No. 197466. November 13, 2012]

JOEL P. QUIÑO, MARY ANTONETTE C. DANGOY, JOSEPHINE T. ABING, JOY ANN P. CABATINGAN, TESSA P. CANG, WILFREDO T. CALO, HOMER C. CANEN, JOSE L. CAGANG, ALBERTO CABATINGAN and FRANCISCO T. OLIVERIO, *petitioners, vs.* **COMMISSION ON ELECTIONS and RITCHIE R. WAGAS,** *respondents.*

SYLLABUS

REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC CASES; A CASE BECOMES MOOT AND ACADEMIC WHEN THERE NO LONGER EXISTS AN ACTUAL CONTROVERSY BETWEEN THE PARTIES AND RESOLVING THE MERITS OF THE CASE WOULD NO LONGER SERVE ANY USEFUL PURPOSE.— As per the Manifestation dated August 16, 2012 filed by Wagas, the Special Board of Canvassers of Compostela, Cebu already proclaimed the petitioners as the winning candidates for municipal mayor, vice-mayor and councilors. With this development, the reliefs prayed for in the present petition have become moot and academic. Accordingly, there no longer exists an actual controversy between the parties and resolving the merits of this case would no longer serve any useful purpose. As we held in *Ocampo v. House of Representatives Electoral Tribunal*: "x x x In the recent case of *Enrile vs. Senate Electoral Tribunal*, we ruled that **a case becomes moot and academic when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits.** Worth reiterating is our pronouncement in *Gancho-on vs. Secretary of Labor and Employment*, thus: 'It is a rule of universal application, almost, that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and

academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioner would be entitled and which would be negated by the dismissal of the petition.'"

APPEARANCES OF COUNSEL

Raro Trinidad & Cudia for petitioners.
The Solicitor General for public respondent.
George Erwin M. Garcia for private respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

This is a petition for *certiorari* filed under Rule 65 in conjunction with Section 2, Rule 64 of the 1997 Rules of Civil Procedure, as amended, seeking to annul the Resolution[1] dated January 12, 2011 of the Commission on Elections (COMELEC) Second Division and Resolution[2] dated June 13, 2011 of the COMELEC *En Banc*, and to sustain the proclamation by the Municipal Board of Canvassers (MBOC) of petitioners as the duly elected municipal officials of Compostela, Cebu in the May 10, 2010 elections.

The factual antecedents:

Petitioner Joel P. Quiño and private respondent Ritchie R. Wagas both ran for the position of Mayor of Compostela, while petitioner Mary Antonette C. Dangoy was a candidate for vice-mayor, during the May 10, 2010 elections. Petitioners Josephine T. Abing, Joy Ann P. Cabatingan, Tessa P. Cang, Wilfredo T. Calo, Homer C. Canen, Jose L. Cagang, Alberto Cabatingan and Francisco T. Oliverio were candidates for municipal councilors.

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[1] *Rollo,* pp. 49-60.

[2] *Id.* at 61-72.

Results of the canvassing showed that Quiño obtained 11,719 votes as against 9,338 votes garnered by Wagas.[3] Quiño, along with the rest of the petitioners who were the winning candidates for members of the *Sangguniang Bayan*, were proclaimed by the MBOC on May 11, 2010.

On May 14, 2010, Wagas filed an Election Protest[4] against Quiño before the Regional Trial Court (RTC) of Mandaue City.

On May 21, 2010, Wagas also filed a petition[5] for annulment of proclamation in the COMELEC, docketed as SPC No. 10-041. He claimed that after the proclamation, it was discovered that the Audit/Print Logs of the Consolidating Machine of the MBOC did not reflect at least fourteen (14) clustered precincts, and that despite such absence the Consolidating Machine generated, among others, the Certificate of Canvass and Statement of Votes (SOV). As it appears that the electronic election returns (EERs) of 14 precincts were already stored in the Consolidating Machine, the same are therefore falsified ERs. Notably, the EER for Clustered Precinct No. 19 showed that more than 700 votes were cast but the Statement of Votes reflected only 10 votes. Contending that the Certificates of Canvass and Proclamation are without authentic basis, Wagas prayed that the proclamation of the winning candidates be declared null and void.

In his Answer,[6] Quiño denied the allegations of irregularities in the canvassing of votes. He asserted that he had no hand in, or access to the preparation, installation and operation of the Precinct Count Optical Scan (PCOS) machines before and during the elections, nor is he familiar with their intricacies and configurations including security codes, with the result that he was dependent upon the members of the Board of Election Inspectors (BEI) who presided over the elections. Assuming that the PCOS did not have print/audit logs with respect to the

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[3] *Id.* at 99-100.

[4] *Id.* at 106-111.

[5] *Id.* at 114-120.

[6] *Id.* at 124-130.

14 Clustered Precincts, Quiño argued that this does not mean that the PCOS machines were tampered or pre-programmed to cheat; such is pure speculation. He insisted that the few problems or deficiencies encountered, such as the audit/print logs, did not affect the integrity of the elections, and hence the proceedings of the MBOC and the proclamation of the winning candidates were proper and lawful. He moved for the dismissal of the petition on the following grounds: (1) the issues are governed by an election protest, which should have been filed with the RTC; (2) there is no payment of the filing fee and cash deposit; (3) the members of the MBOC are indispensable parties who were not impleaded; (4) he was not served with copy of the petition before its filing; and (5) the petition is barred by prescription, estoppel and laches, and its filing amounts to forum-shopping.

On June 18, 2010, Wagas filed an Extremely Urgent Motion to Suspend the Effect of Proclamation,[7] attaching thereto separate Affidavits[8] executed by Lorenzo D. Almodiel and Alberto Y. Melendres, Vice-Chairman and Member, respectively, of the MBOC stating that:

> 2. x x x most of the [EERs] x x x, were not remotely transmitted but locally or manually transmitted to the consolidating machine;
>
> 3. x x x these locally or manually transmitted [EERs], that were stored in the individual Flash Memory per precinct x x x were merely inserted to the flash reader of the consolidating machine and canvass or consolidated without digital authentication[.] [Thus,] it cannot be ascertained whether the EERs in the flash memory were genuine and the same electronic documents produced by the PCOS on election day x x x;
>
> 4. x x x the Audit Log of the consolidating machine failed to log/record fourteen (14) [EERs] or Flash Memories, as such [it] cannot be determined where these 14 EERs c[a]me from, x x x what [was] the mode of [their] transmission x x x to

[7] *Id.* at 131-134.

[8] *Id.* at 135-136.

the consolidating machine; and how these EERs were canvassed or consolidated by the Consolidating Machine;

5. x x x the election result generated from the x x x fourteen (14) EERs from the Precinct to MBOC were directly consolidated and the Statement of Votes per Precinct included the election result of the fourteen (14) EERs, despite the fact that the Audit Log of the consolidating machine failed to log/record [said] fourteen (14) EERs;

x x x x x x x x x

7. x x x the responsibility of the MBOC was merely to give the pin and thereafter [was] converted to technically a mere bystander or watcher and to proclaim the winners after the consolidating machine produced the printed results without verification or comparison to the printed ERs; and except for physical verification or analog authentication of flash memories; [and]

x x x x x x x x x

9. x x x after the election, the used and valid ballots in the clustered precincts in Barangay Mulao, Compostela were not placed inside the official ballot boxes and instead were placed in two separate cartons/boxes, and were alleged to have been at the Comelec Office in Compostela and the same were found/discovered more than days or weeks after the election; [a]nd the ballot boxes that were left at the Treasurer's Office were empty[.]

A similar report was submitted by Election Officer Desierto N. Hortelano, Jr. to the Provincial Election Officer, Atty. Lionel Marco R. Castillano.[9]

On June 28, 2010, petitioners took their oath of office and immediately assumed office.

On the same day, however, the COMELEC Second Division issued an Order[10] as follows:

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[9] *Id.* at 137.

[10] *Id.* at 151-157. Signed only by Presiding Commissioner Nicodemo T. Ferrer for and in behalf of the Second Division.

WHEREFORE, premises considered, the Commission ORDERS to, as it does hereby, GRANT the "Extremely Urgent Motion to Suspend the Effect of Proclamation" filed by petitioner Ritch[i]e Wagas, hereby immediately suspending the effect of the proclamation of the candidates for mayor, vice-mayor and eight councilors of Compostela, Cebu. In the meantime, said petitioner is hereby give[n] three (3) days from receipt of this Order to amend the instant Petition in order to implead said indispensable parties.

SO ORDERED.[11]

Wagas filed an Amended Petition for Proclamation to which petitioners filed their Answer.

On January 12, 2011, the Second Division citing COMELEC Resolution No. 8989[12] (also cited in the June 28, 2010 Order) issued a Resolution[13] granting the amended petition, thus:

WHEREFORE, premises considered the Commission RESOLVES to, as it hereby:

1. GRANTS the instant Petition to Annul Proclamation;

2. ANNULS the proclamation of the presumptive winning candidates in the Municipality of Compostela, Cebu, in connection with the 10 May 2010 Automated National and Local Elections, namely, the herein respondents, Joel Quiño as the mayor-elect, Mary Antonette Dangoy as the vice-mayor-elect and the eight (8) municipal-councilors-elect Josephine T. Abing, Joy Ann P. Cabatingan, Tessa P. Cang Wilfredo T. Calo, Homer C. Canen, Jose L. Cagang, Alberto Cabatingan and Francisco Oliverio.

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[11] *Id.* at 157.

[12] "IN THE MATTER OF ANNULLING THE PROCLAMATION OF WINNING CANDIDATES WHERE FIELD TESTING AND SEALING RESULTS INSTEAD OF ELECTION DAY RESULTS HAVE BEEN TRANSMITTED TO THE MUNICIPAL/CITY OR PROVINCIAL BOARD OF CANVASSERS", which was expressly made applicable to all candidates similarly situated.

[13] *Rollo*, pp. 49-60.

3. ORDERS the MBOC to CONVENE, CANVASS and thereafter PROCLAIM the rightful winners after it has verified and corrected the EERs and other pertinent documents.

SO ORDERED.[14]

Petitioners filed a motion for reconsideration with the Commission.

In the assailed Resolution[15] dated June 13, 2011, the Commission, by majority vote of four (4) Commissioners, denied the motion for reconsideration, reasoning as follows:

> The Commission has the authority to annul the proclamation of a candidate if it discovers that the proclamation thereof proceeds from invalid and insufficient ground. A proclamation based on invalid canvass is no proclamation at all. Since the results of 14 clustered precincts were not transmitted and therefore were not included in the final canvass of votes, this Commission finds the proclamations of the presumptive winners as invalid. An irregularity also is reflected in the results for clustered precinct no. 19 where only ten votes were reflected in the Statement of Votes while seven hundred (700) votes were said to have cast their votes per election return. The factual circumstances of the case at bar are in all fours with Resolution No. 8989, contrary to the view of the respondents.
>
> To settle the unrest resulting from this controversy and to truly determine the will of the electorate of Compostela Cebu, the Commission deems it necessary to canvass the votes in the clustered precincts subject of this controversy.[16]

Commissioners Augusto C. Lagman and Armando C. Velasco concurred with the dissenting opinion[17] of Commissioner Rene V. Sarmiento who voted to reverse the annulment of proclamation of Quiño and those of the rest of petitioners "only for the reason that it could not be determined from the records whether the

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[14] *Id.* at 59.

[15] *Id.* at 61-72.

[16] *Id.* at 66.

[17] *Id.* at 68-72.

total number of votes in Clustered Precinct No. 19 could not anymore affect the winning margin of votes of the said candidates."[18] The dissent was anchored on the following findings and conclusions:

> Nothing in the records would prove that the results for the 14 clustered precincts were not transmitted and were not included in the final canvass of votes. In fact, a careful scrutiny of the attached copies of the SOV in support of the Certificate of Canvass (COC) would demonstrate that results for clustered precincts 5, 6, 7, 8, 9, 10, 11, 15, 16, 21, 22, 26, 29 and 34 have been duly canvassed. The petitioner however disputes the genuineness and authenticity of the COC and the supporting SOV on the sole basis that the audit logs contain no record that the results for the said 14 precincts have indeed been transmitted. Question: Does such contention reasonably warrant the annulment of one's proclamation?
>
> x x x with the advent of the Automated Election System, the scope of pre-proclamation controversy has now been limited into only two (2) issues, to wit: a) illegal composition of the Board of Canvassers; and b) illegal proceedings, as when there is precipitate canvassing, terrorism, lack of sufficient notice to the members of the Board of Canvassers, and improper venue.
>
> Obviously, the alleged irregularity on the audit logs does not fall within the ambit of the new definition of a pre-proclamation controversy. Further, it bears emphasizing that under Comelec Resolution No. 8809 in relation to Republic Act No. 9369, it was expressly provided that there shall be no pre-proclamation cases on issues/controversies relating to the generation, transmission, receipt and custody and appreciation of election returns or certificates of canvass. (*Emphasis supplied.)*
>
> Assuming *arguendo* that the Commission, in the exercise of its plenary power, may validly rule on that issue raised by petitioner, such contention is still doomed to fail as no strong evidence has been adduced establishing that the COC and its supporting SOV do not reflect the true election results. Jurisprudence dictates that there is a presumption that an election was honestly conducted, and the burden of proof to show otherwise is on the party assailing the

[18] *Id.* at 72.

results. Thus, in the absence of strong evidence to the contrary, the COC and the corresponding SOV are deemed to have been regularly issued.

x x x x x x x x x

While indeed the controversy involving Clustered Precinct No. 19 is similar with Comelec Resolution No. 8989 such that it pertains to an error in the transmission of election results which needs rectification, the undersigned however is of the opinion that annulment of proclamation is not at all times necessary. Similar with the doctrine involved in petitions for correction of manifest errors, there must first be a determination of whether the discrepancy would materially affect the results of the election. If, despite the reconciliation of votes, the previously proclaimed candidate still managed to obtain the plurality of votes, annulment of proclamation is certainly futile.

In the case at bar, a scrutiny of the records reveal that Clustered Precinct No. 19 has a total of Nine Hundred Seventy-Nine (979) registered voters; yet, the margin of votes between petitioner Wagas and respondent Quiño is Two Thousand Three Hundred Eighty[-]One (2,381) votes. Even if we give petitioner Wagas an additional 900 plus votes, there is no doubt that respondent Quiño would still [have] emerged as the winner. Thus, annulment of proclamation is not necessary.

Undersigned could not however say the same to the other respondents considering that the records are silent as to the winning margin of votes for the vice-mayoralty and municipal councilor race.[19]

Meanwhile, on November 18, 2011, the COMELEC *En Banc* granted the request of Wagas to transfer the venue of canvassing from Compostela, Cebu to the COMELEC Main Office in Manila and to constitute a new Board of Canvassers for that purpose. In an order dated December 7, 2011, a new Board of Canvassers was constituted and the date was set for its convening on December 15, 2011.

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[19] *Id.* at 69-72.

On December 8, 2011, Wagas filed a Most Extremely Urgent Motion for Clarification praying for a manual recount of the ballots, due to which the convening of the new board of canvassers was suspended pending resolution of the motion.

On January 26, 2012, the COMELEC *En Banc* issued an order denying Wagas' request for manual recount. The new MBOC was set to convene on February 27, 2012. Wagas, however, filed a petition for *certiorari* before this Court (G.R. No. 200505) assailing the denial of his motion for recount and seeking injunctive relief.

On March 20, 2012, this Court issued a Resolution dismissing G.R. No. 200505 "for failure to sufficiently show that any grave abuse of discretion was committed by the Commission on Elections in rendering the challenged resolution which, on the contrary, appears to be in accord with the facts and applicable law and jurisprudence."

In his Comment, the Solicitor General prayed for the denial of the present petition as the Commission did not gravely abuse its discretion in ordering the suspension of the effect of petitioners' proclamation based on documents which would support the contention of Wagas that the election results generated by the PCOS machines during the May 10, 2010 elections should not be the basis of the proclamation of the elected municipal officials of Compostela, Cebu.[20]

As per the Manifestation[21] dated August 16, 2012 filed by Wagas, the Special Board of Canvassers of Compostela, Cebu already proclaimed the petitioners as the winning candidates for municipal mayor, vice-mayor and councilors. With this development, the reliefs prayed for in the present petition have become moot and academic.

Accordingly, there no longer exists an actual controversy between the parties and resolving the merits of this case would

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[20] *Id.* at 556-577.

[21] *Id.* at 635-636.

no longer serve any useful purpose. As we held in *Ocampo v. House of Representatives Electoral Tribunal*:[22]

> At any rate, the petition has become moot and academic. The Twelfth Congress formally adjourned on June 11, 2004. And on May 17, 2004, the City Board of Canvassers proclaimed Bienvenido Abante the duly elected Congressman of the Sixth District of Manila pursuant to the May 10, 2004 elections.
>
> In the recent case of *Enrile vs. Senate Electoral Tribunal*, we ruled that **a case becomes moot and academic when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits.** Worth reiterating is our pronouncement in *Gancho-on vs. Secretary of Labor and Employment*, thus:
>
> > "It is a rule of universal application, almost, that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioner would be entitled and which would be negated by the dismissal of the petition."[23] (Emphasis supplied)

WHEREFORE, the present petition for *certiorari* is **DISMISSED** on the ground of **MOOTNESS**.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

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[22] G.R. No. 158466, June 15, 2004, 432 SCRA 144.

[23] *Id.* at 150.

EN BANC

[G.R. No. 199433. November 13, 2012]

ISABELITA P. GRAVIDES, *petitioner, vs.* **COMMISSION ON ELECTIONS and PEDRO C. BORJAL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; A.M. NO. 07-4-15-SC (RULES OF PROCEDURE IN ELECTION CONTESTS BEFORE THE COURTS INVOLVING ELECTIVE MUNICIPAL AND *BARANGAY* OFFICIALS); A RELAXATION THEREOF IS JUSTIFIED BY THE PARAMOUNT INTEREST IN DETERMINING THE TRUE WILL OF THE ELECTORATE; CASE AT BAR.— Contrary to petitioner's submissions, we find no grave abuse of discretion in the proper consideration by COMELEC of the attendant circumstances warranting a more reasonable and liberal application of the rules. Foremost of these is the fact that Borjal was misled by the Notice of Preliminary Conference issued by the MeTC which erroneously applied the provision on pre-trial brief under the Rules of Civil Procedure. The mistake committed by Borjal's counsel in complying with the court's directive should not prejudice his cause, as no intent to unduly prolong the resolution of the election protest can be gleaned from his failure to include such manifestation of withdrawal of certain protested precincts and of the procedure to be followed in case the election protest seeks the examination, verification, or re-tabulation of election returns. Another important consideration for the COMELEC was that, unlike in *Cabrera* where petitioner lost by 420 votes to the winning candidate, only **two (2) votes** separated the winning candidate Gravides from Borjal who placed second in the 2010 elections for *Punong Barangay* in Barangay U.P. Campus. There were also only 25 precincts subject of the protest out of the total 36 precincts, in the *barangay*, as against the 142 precincts protested in *Cabrera*. As COMELEC duly noted, the finding of just more than 2 misread or miscounted ballots during the revision or recount would be sufficient to overcome the lead of Gravides. The paramount interest of determining the true will of the

electorate thus justified a relaxation of procedural rules. Indeed, an election protest is imbued with public interest so much so that the need to dispel uncertainties which becloud the real choice of the people is imperative.

2. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); COMELEC RULES OF PROCEDURE; THE COMELEC *EN BANC* HAS THE DISCRETION EITHER TO REFUSE OR TO TAKE ACTION UNTIL THE MOTION FEE IS PAID, OR TO DISMISS THE ACTION.— Rule 40, Section 18 of the COMELEC Rules of Procedure gives discretion to the COMELEC *En Banc* either to refuse or to take action until the motion fee is paid, or to dismiss the action or proceeding.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* PROPER WHERE THE TRIBUNAL OR ADMINISTRATIVE BODY HAS ISSUED THE ASSAILED DECISION IN A CAPRICIOUS OR DESPOTIC MANNER.— [I]n a special civil action for *certiorari*, the petitioner carries the burden of proving not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction, on the part of the public respondent for his issuance of the impugned order. Grave abuse of discretion is present "when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." In other words, the tribunal or administrative body must have issued the assailed decision, order or resolution in a capricious or despotic manner.

APPEARANCES OF COUNSEL

Catherine A. Damian for petitioner.

The Solicitor General for public respondent.

Roderick John P. Gabrillo and Arnel U. Torres for private respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

This Rule 65 petition for *certiorari* seeks to annul and set aside the following issuances by public respondent Commission on Elections (COMELEC): (1) Resolution[1] dated August 25, 2011 of the First Division granting the appeal of private respondent Pedro C. Borjal (Borjal) from the December 7, 2010 Order[2] of the Metropolitan Trial Court (MeTC) of Quezon City, Branch 33 in EPC No. 10-1313; (2) Order[3] dated November 23, 2011 of the Commission *En Banc* denying the motion for reconsideration filed by petitioner Isabelita P. Gravides (Gravides); and (3) Entry of Judgment[4] dated November 24, 2011 declaring that the Resolution dated August 25, 2011 had become final and executory as of September 17, 2011.

Borjal and Gravides both ran for the position of *Punong Barangay* of Barangay U.P. Campus in Diliman, Quezon City during the October 25, 2010 *Barangay* and *Sangguniang Kabataan* (SK) Elections. Results of the elections showed that Gravides garnered a total of 2,322 votes as against Borjal's 2,320 votes. On October 26, 2010, the Barangay Board of Canvassers (BBOC) officially proclaimed Gravides as the winning candidate for the said post.

On November 5, 2010, Borjal filed an Election Protest[5] alleging the following irregularities and violation of election laws:

7.1 Harassment, corruption, and anomalous activities committed by the BET and the Barangay Board of Canvassers.

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[1] *Rollo*, pp. 38-45. Penned by Commissioner Armando C. Velasco and concurred in by Presiding Commissioner Rene V. Sarmiento and Commissioner Christian Robert S. Lim.

[2] *Id.* at 251-254. Penned by Judge Alfredo D. Ampuan.

[3] *Id.* at 46-48.

[4] *Id.* at 49.

[5] *Id.* at 52-57.

7.2 Valid votes cast in favor of protestant were misread and misappreciated by the Board of Election Tellers (BET). For instance, several ballots containing wrong spelling (but with the same sound when read) of protestant's surname were not counted, there being no candidate with the surname when read.

7.3 Valid votes for protestant were erroneously counted/tallied in the election returns and/or erroneously tallied as votes of protestee and other candidates. Such that protestee and other candidates seemed to have received more votes than those actually cast in their favor.

7.4 Falsification, alteration, and manipulation of the votes and related data in the election returns.

7.5 Valid votes in favor of protestant were not counted or were considered stray and rejected. For instance, several ballots containing protestant's registered nickname "Doc" were not counted for protestant, there being no candidate with the same nickname. On the other hand, invalid ballots such as spurious and those containing markings to identify the ballots/voters, or with irrelevant, derogatory writings or drawings were counted in favor of protestee and other winning candidates.

7.6 The use of either fake, spurious ballots or genuine but manufactured ballots to increase protestee's votes.

7.7 Invalid ballots (prepared by persons other than the voters themselves) such as written-by-one person (WBO) and/or individual ballots written-by-two persons (WBT) containing protestee's name were counted as valid votes for protestee and other winning candidates.[6]

Borjal thus asserted that there is a need for revision, re-appreciation of ballots, judicial recount and thorough scrutiny of the election returns and minutes of voting in the protested precincts, the results of which will change the election sufficient to overcome the presumptive lead of the declared winner.

Gravides filed her Answer with Compulsory Counterclaim[7] denying the allegations of fraud, vote manipulation, misreading/misappreciation of ballots and other irregularities in the counting

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[6] *Id.* at 54-55.

[7] *Id.* at 64-78.

and tallying of votes, committed either by her or by the Board of Election Tellers (BET)/BBOC. She pointed out that the protest failed to provide a detailed specification of the acts or omissions complained of, which would show the alleged fraud or irregularities in the protested precincts. Such general and sweeping allegations violate the provisions of A.M. No. 07-4-15-SC[8] or the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials, including non-compliance with the requirement of cash deposit. Neither Borjal nor his watchers filed a challenge or raised any issue with the BET or BBOC on the integrity of the ballots during the voting and counting of votes in accordance with Sections 202 and 203 of Batas Pambansa Blg. 881, as evidenced by the Minutes of Voting and Counting of Votes.

On November 15, 2010, the MeTC issued a Notice of Pre-Trial Conference stating:

> This Court sets the case for preliminary conference on the 18th day of November 2010 at 2:00 o'clock in the morning in the Session Hall of this Branch, Room 312, Third Floor, Hall of Justice, Quezon City.
>
> In order to assist the Court in conducting the Preliminary Conference, parties are enjoined to be ready on that date regarding the following:
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> 1. A statement whether the parties have arrived at an amicable settlement, and if so, the terms thereof;
> 2. Intention to refer the case for mediation;
> 3. A Summary of admitted facts and proposed stipulation of facts;
> 4. The issues to be resolved or a clear specification of material facts which remain controverted;
> 5. Such other matter intended to expedite the disposition of the case.

[8] Promulgated on April 24, 2007 and became effective on May 15, 2007.

The counsel served with this Notice is duty bound to notify the party represented by him of the schedule of Preliminary Conference. Failure of the plaintiff or the defendant to appear in the preliminary conference shall respectively be cause for dismissal of his/her case or a summary judgment based solely on the complaint in accordance with Rule 70, Sec. 8, par[.] 2 & 3 of the Rules of Civil Procedure.[9]

During the preliminary conference, Gravides moved for the dismissal of the election protest for non-compliance with Section 4, Rule 9 of A.M. No. 07-4-15-SC as to the contents of the preliminary conference brief. After considering the movant's arguments and the counter-arguments of the opposing counsel, the MeTC resolved to grant the motion. The Order[10] dated December 7, 2010 thus ordered the dismissal of the election protest in accordance with the aforesaid provisions in relation to Sections 5 and 6 of the same Rule.

Borjal appealed the order of dismissal to the COMELEC arguing that the MeTC erred (1) in applying the Rules of Civil Procedure on the preliminary conference in the election protest and in misinforming him of the contents of a preliminary conference brief in its Notice of Pre-Trial Conference; (2) assuming said notice is not defective, it was issued prematurely, contrary to the mandate of Section 1, Rule 9 of A.M. No. 07-4-15-SC; (3) in applying the ruling in *Cabrera v. COMELEC*[11] considering that the factual circumstances are not foursquare with the present case; and (4) in dismissing the election protest by holding that his Preliminary Conference Brief failed to comply with the required contents under Section 4, Rule 9 of A.M. No. 07-4-15-SC.[12]

In its Resolution dated August 25, 2011, the COMELEC's First Division granted the appeal, annulled the December 7, 2010 Order of the MeTC and remanded the case for further proceedings. In finding for Borjal, the First Division held:

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[9] *Rollo*, p. 79.

[10] *Supra* note 2.

[11] G.R. No. 182084, October 6, 2008, 567 SCRA 686.

[12] *Rollo*, pp. 257-284.

First, the assailed Order of the court *a quo* declared the Preliminary Conference Brief of Borjal non-compliant with Section 4, Rule 9 of A.M. 07-4-15-SC in the following manner:

x x x x x x x x x

The court *a quo*, after stating the antecedent facts of the case, the contentions of each party, and the pertinent provisions of the rules, simply dismissed the election protest without specifying which of the required contents were lacking in Borjal's Preliminary Conference Brief. It would appear, based on the court's Order, that the said brief did not at all contain the contents required in Section 4 of Rule 9.

Examination thereof reveals, however that the same has substantially complied with Section 4, Rule 9 of A.M. No. 07-4-15-SC.

In his Preliminary Conference Brief, Borjal stated a summary of admitted facts and proposed stipulation of facts; the issues to be tried or resolved; documents to be presented; witnesses to be presented; proposed number of revision committees; and a statement of his conformity to discovery procedures or referral to the commissioners to facilitate the speedy disposition of the case.

Apparently, what Borjal failed to include are statements of (1) a manifestation of withdrawal of certain protested precincts, if such is the case; and (2) in case the election protest or counter-protest seeks the examination, verification, or re-tabulation of election returns, the procedure to be followed.

Nonetheless, **these omissions do not warrant the outright dismissal of the election protest.** As explained by Borjal's counsel during the preliminary conference, withdrawal of certain protested precincts will be made either after or during the revision.

Moreover, **Borjal's failure to provide for the procedure to be followed in case the election protest seeks the examination, verification or re-tabulation of election returns is not fatal.** A reading of the election protest shows that Borjal's allegations consist mainly of election irregularities and frauds that resulted to an incorrect number of votes pertaining to each candidate. Hence, Borjal's prayer is for the recount/revision of the ballots to determine the correct number of votes cast in his favor.

Undoubtedly, **Borjal does not seek the examination, verification or re-tabulation of the election returns; therefore, a statement for its procedure is not necessary in the instant case.**

Second, it must be emphasized that Gravidez won by a **lead of merely two (2) votes**. Thus, **should the allegation of Borjal that some votes cast in his favor were misread and misappreciated during the counting of votes appears to be true in at least two (2) ballots, the election result will be different, as the same will result in a tie.** This fact should have been taken into consideration by the court *a quo*.

It bears stressing that blind adherence to a technicality, with the inevitable result of frustrating and nullifying the constitutionally guaranteed right of suffrage, cannot be countenanced. Likewise, it has been held that "on more than one occasion, this Court has recognized the emerging trend towards a liberal construction of procedural rules to serve substantial justice. Courts have the prerogative to relax rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily end litigation and the parties' right to due process." While procedural rules are intended for the expeditious disposition of election cases, this should not impede this Commission from compliance with the established principles of fairness and justice and adjudication of cases not on technicality but on their substantive merits.

Finally, it is worth mentioning that the court *a quo*, in its "Notice of Pre-Trial Conference," required the parties to state in their respective preliminary conference briefs the following:

x x x x x x x x x

Noticeably, **the court *a quo* overlooked the rule applicable in the instant case, *i.e.*, Section 4, Rule 9 of A.M. No. 07-4-15-SC, as it failed to include all the matters required under the said rule.** On the contrary the foregoing notice is more akin to the provision on pre-trial brief under the Rules on Civil Procedure. Notwithstanding this, the court *a quo* hastily dismissed the election protest for non-compliance with Section 4, Rule 9 of A.M. 07-4-15-SC.[13] (Underscoring in the original; additional emphasis supplied)

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[13] *Id.* at 42-44.

Gravides filed a motion for reconsideration which was denied by the Commission *En Banc* in its Order dated November 23, 2011. The denial of the motion was based on the failure to pay the required motion fees prescribed under Section 7(f), Rule 40, COMELEC Rules of Procedure, as amended by COMELEC Minute Resolution No. 02-130 dated September 18, 2002, in relation to Section 18 of the same Rule, to wit:

It [Motion for Reconsideration] should be accompanied by the payment of the correct amount of motion fee and should be paid within the five (5)-day period for the filing of said motion.

There being no valid motion for reconsideration to speak of, the provision of Section 13, paragraph (c) Rule 18, Comelec Rules of Procedure applies, to wit:

Rule 18 – Decisions

x x x x x x x x x

"*Sec. 13. Finality of Decisions or Resolutions. –*

x x x x x x x x x

(c) Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special actions and Special cases and after fifteen (15) days in all other actions or proceedings, following its promulgation."

Hence, the Resolution of the Commission (*First Division*) promulgated on August 25, 2011, copy of which was received by protestee-appellee's counsel on September 1, 2011, per admission in her Motion for Reconsideration filed on September 6, 2011, had become final and executory as of September 17, 2011.[14]

Hence, this petition raising the following issues:

I. WHETHER PUBLIC RESPONDENT COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED ITS RESOLUTION DATED AUGUST 25, 2011 IN CLEAR CONTRAVENTION OF SECTION 4 IN RELATION TO

[14] *Id.* at 46-48.

SECTIONS 5 AND 6, RULE 9 OF A.M. NO. 07-4-15-SC OR THE RULES OF PROCEDURE IN ELECTION CONTESTS BEFORE THE COURTS INVOLVING ELECTIVE MUNICIPAL AND *BARANGAY* OFFICIALS AND THE SUPREME COURT *EN BANC* RULING IN *CABRERA VS. COMELEC* (G.R. NO. 182084, OCTOBER 6, 2008).

II. WHETHER PUBLIC RESPONDENT COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED ITS RESOLUTION DATED AUGUST 25, 2011 REVERSING THE DECISION OF BRANCH 33, METC QUEZON CITY JUDGE ALFREDO AMPUAN, WHICH WAS ISSUED IN ACCORDANCE WITH LAW.

III. WHETHER PUBLIC RESPONDENT COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONSIDERING THE NARROW LEAD OF PETITIONER OVER PRIVATE RESPONDENT IN REVERSING THE ORDER OF JUDGE AMPUAN DATED DECEMBER 7, 2010, DISMISSING THE ELECTION PROTEST OF PRIVATE RESPONDENT IN ACCORDANCE WITH LAW.

IV. WHETHER PUBLIC RESPONDENT COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GIVING THE MANDATORY RULES GOVERNING THE FILING OF PRELIMINARY CONFERENCE BRIEFS AND ITS REQUIRED CONTENTS UNDER SECTION 4, RULE 9 OF A.M. NO. 07-4-15-SC A LIBERAL CONSTRUCTION.

V. WHETHER PUBLIC RESPONDENT COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT BLAMED THE COURT *A QUO* FOR THE ABJECT FAILURE OF COUNSEL FOR PRIVATE RESPONDENT TO BE [COGNIZANT] OF THE MANDATORY REQUISITES UNDER SECTION 4, RULE 9 OF A.M. NO. 07-4-15-SC ON THE REQUIRED CONTENTS OF HIS PRELIMINARY CONFERENCE BRIEF[.]

VI. WHETHER PUBLIC RESPONDENT COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED ITS ORDER DATED NOVEMBER 23, 2011 DENYING THE MOTION FOR RECONSIDERATION OF PETITIONER DESPITE THE PLEA OF THE LATTER FOR A REVERSAL OF ITS RESOLUTION BECAUSE OF THE OPPORTUNITY OF COUNSEL FOR PRIVATE RESPONDENT, ATTY. MICHAEL D. VILLARET, WHO IS CURRENTLY EMPLOYED AS A MEMBER OF THE STAFF OF THE HON. COMELEC COMMISSIONER AUGUSTO LAGMAN, TO EXERCISE UNDUE INFLUENCE IN THE PREPARATION OF THE ASSAILED RESOLUTION, WHICH RENDERS ITS INTEGRITY, VALIDITY AND PROPRIETY DUBIOUS, SUSPECT AND QUESTIONABLE.[15]

The petition has no merit.

The pertinent provisions of Rule 9 of A.M. No. 07-4-15-SC state:

SEC. 4. *Preliminary conference brief.*—The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt at least one day before the date of the preliminary conference, their respective briefs which shall contain the following:

(1) A summary of admitted facts and proposed stipulation of facts;

(2) The issues to be tried or resolved;

(3) The pre-marked documents or exhibits to be presented, stating their purpose;

(4) A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners;

(5) The number and names of the witnesses, their addresses, and the substance of their respective testimonies. The testimonies of the witnesses shall be by affidavits in question and answer form as their direct testimonies, subject to oral cross examination;

[15] *Id.* at 178.

(6) **A manifestation of withdrawal of certain protested or counter-protested precincts, if such is the case;**

(7) The proposed number of revision committees and names of their revisors and alternate revisors; and

(8) **In case the election protest or counter-protest seeks the examination, verification or re-tabulation of election returns, the procedure to be followed**.

SEC. 5. *Failure to file brief*.—**Failure** to file the brief or **to comply with its required contents** shall have the same effect as failure to appear at the preliminary conference.

SEC. 6. *Effect of failure to appear*.—The failure of the protestant or counsel to appear at the preliminary conference **shall be cause for dismissal, *motu proprio*, of the protest or counter-protest**. The failure of the protestee or counsel to appear at the preliminary conference shall have the same effect as provided in Section 4(c), Rule 4 of these Rules, that is, the court may allow the protestant to present evidence *ex parte* and render judgment based on the evidence presented. (Emphasis supplied)

In *Cabrera v. COMELEC*,[16] this Court upheld the nullification by COMELEC of the RTC orders denying the motion to dismiss election protest on the ground that protestant's preliminary conference brief did not contain the following: (1) a manifestation of his having availed or intention to avail of discovery procedures or referral to commissioners; (2) a manifestation of withdrawal of certain protested or counter-protested precincts, if such is the case; and, (3) in the event the protest or counter-protest seeks the examination, verification or re-tabulation of election returns, the procedure to be followed.

Rejecting petitioner's proffered excuse for the foregoing omissions, we held that –

The petitioner's commitment that he does not seek the examination, verification or re-tabulation of election returns is belied by the preliminary conference brief's statement that the protestant shall present the election returns as documentary evidence, and that he will present witnesses who will testify that the entries thereon are

[16] *Supra* note 11 at 693.

erroneous. Clearly, the testimonies of these witnesses will entail the examination or verification of the election returns. Likewise, the petitioner's undertaking that he does not intend to withdraw any of the protested precincts appears inconsistent with the allegation in the preliminary conference brief that protestant will present 22 witnesses (who served as watchers) to give evidence on alleged irregularities in the voting and counting in 22 precincts. Considering that there is a total of 142 precincts in the locality, and in fact, the ballots in 88 precincts had already been revised by the trial court, the probability is great that petitioner may have to withdraw some precincts from his protest.

The Rules should not be taken lightly. The Court has painstakingly crafted A.M. No. 07-4-15-SC precisely to curb the pernicious practice of prolonging election protests, a sizable number of which, in the past, were finally resolved only when the term of office was about to expire, or worse, had already expired. These Rules were purposely adopted to provide an expeditious and inexpensive procedure for the just determination of election cases before the courts. Thus, we emphasize that **the preliminary conference and its governing rules are not mere technicalities which the parties may blithely ignore or trifle with. They are tools meant to expedite the disposition of election cases and must, perforce, be obeyed.**[17] (Emphasis supplied)

Contrary to petitioner's submissions, we find no grave abuse of discretion in the proper consideration by COMELEC of the attendant circumstances warranting a more reasonable and liberal application of the rules. Foremost of these is the fact that Borjal was misled by the Notice of Preliminary Conference issued by the MeTC which erroneously applied the provision on pre-trial brief under the Rules of Civil Procedure. The mistake committed by Borjal's counsel in complying with the court's directive should not prejudice his cause, as no intent to unduly prolong the resolution of the election protest can be gleaned from his failure to include such manifestation of withdrawal of certain protested precincts and of the procedure to be followed in case the election protest seeks the examination, verification, or re-tabulation of election returns.

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[17] *Id.* at 694-695.

Another important consideration for the COMELEC was that, unlike in *Cabrera* where petitioner lost by 420 votes to the winning candidate, only **two (2) votes** separated the winning candidate Gravides from Borjal who placed second in the 2010 elections for *Punong Barangay* in Barangay U.P. Campus. There were also only 25 precincts subject of the protest out of the total 36 precincts, in the *barangay*, as against the 142 precincts protested in *Cabrera*. As COMELEC duly noted, the finding of just more than 2 misread or miscounted ballots during the revision or recount would be sufficient to overcome the lead of Gravides. The paramount interest of determining the true will of the electorate thus justified a relaxation of procedural rules. Indeed, an election protest is imbued with public interest so much so that the need to dispel uncertainties which becloud the real choice of the people is imperative.[18]

We likewise fail to discern whimsicality or arbitrariness in the denial of petitioner's motion for reconsideration. Rule 40, Section 18[19] of the COMELEC Rules of Procedure gives discretion to the COMELEC *En Banc* either to refuse or to take action until the motion fee is paid, or to dismiss the action or proceeding.[20]

We stress that in a special civil action for *certiorari*, the petitioner carries the burden of proving not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction, on the part of the public respondent for his issuance of the impugned order.[21] Grave abuse of discretion is

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[18] *Punzalan v. COMELEC,* 352 Phil. 538, 556 (1998).

[19] Sec. 18, Rule 40 of the COMELEC Rules of Procedure provides:

Sec. 18. ***Non-payment of Prescribed Fees***.—If the fees above prescribed are not paid, the Commission may refuse to take action thereon until they are paid and may dismiss the action or the proceeding.

[20] See *Aguilar v. Commission on Elections,* G.R. No. 185140, June 30, 2009, 591 SCRA 491, 508.

[21] *Duco v. Commission on Elections, First Division,* G.R. No. 183366, August 19, 2009, 596 SCRA 573, 583-584, citing *Suliguin v. Commission on Elections*, G.R. No. 166046, March 23, 2006, 485 SCRA 219, 233.

present "when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."[22] In other words, the tribunal or administrative body must have issued the assailed decision, order or resolution in a capricious or despotic manner.[23] Petitioner failed to discharge that burden and perforce the petition must fail.

WHEREFORE, premises considered, the petition for *certiorari* is **DISMISSED**. The Resolution dated August 25, 2011 of the COMELEC's First Division and Order dated November 23, 2011 of the COMELEC *En Banc* (EAC [BRGY-SK] NO. 32-2010), as well as the Entry of Judgment dated November 24, 2011 declaring that the Resolution dated August 25, 2011 had become final and executory as of September 17, 2011, are all **AFFIRMED**.

With costs against the petitioner.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

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[22] *Id.* at 584, citing *Reyes-Tabujara v. Court of Appeals,* G.R. No. 172813, July 20, 2006, 495 SCRA 844, 857-858.

[23] *Malinias v. COMELEC,* 439 Phil. 319, 330 (2002).

FIRST DIVISION

[Adm. Case No. 9058. November 14, 2012]

ROBERT VICTOR G. SEARES, JR., *complainant, vs.* **ATTY. SANIATA LIWLIWA V. GONZALES-ALZATE,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT OR SUSPENSION; APPROPRIATE ONLY WHEN THERE IS A CLEAR AND SATISFACTORY PROOF OF MISCONDUCT SERIOUSLY AFFECTING THE PROFESSIONAL STANDING AND ETHICS OF RESPONDENT ATTORNEY AS AN OFFICER OF THE COURT AND AS A MEMBER OF THE BAR.— The severity of disbarment or suspension proceedings as the penalty for an attorney's misconduct has always moved the Court to treat the complaint with utmost caution and deliberate circumspection. We have done so because we must wield the power to disbar or suspend on the preservative rather than on the vindictive principle, conformably with our thinking that disbarment or suspension will be condign and appropriate only when there is a clear, convincing, and satisfactory proof of misconduct seriously affecting the professional standing and ethics of respondent attorney as an officer of the Court and as a member of the Bar.

2. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; ADMINISTRATIVE LIABILITY UNDER CANON 18 ATTACHES WHEN THE NEGLIGENT ACT OF THE ATTORNEY IS GROSS AND INEXCUSABLE AS TO LEAD TO A RESULT THAT IS HIGHLY PREJUDICIAL TO THE CLIENT'S INTEREST.— For administrative liability under Canon 18 to attach, the negligent act of the attorney should be gross and inexcusable as to lead to a result that was highly prejudicial to the client's interest. Accordingly, the Court has imposed administrative sanctions on a grossly negligent attorney for unreasonable failure to file a required pleading, or for unreasonable failure to file an appeal, especially when the failure occurred after the attorney moved for several extensions to

file the pleading and offered several excuses for his nonfeasance. The Court has found the attendance of inexcusable negligence when an attorney resorts to a wrong remedy, or belatedly files an appeal, or inordinately delays the filing of a complaint, or fails to attend scheduled court hearings. Gross misconduct on the part of an attorney is determined from the circumstances of the case, the nature of the act done and the motive that induced the attorney to commit the act.

3. ID.; ID.; ID.; PROHIBITION AGAINST REPRESENTING CONFLICTING INTERESTS; CONFLICT OF INTERESTS; WOULD OCCUR ONLY WHERE THE ATTORNEY'S NEW ENGAGEMENT WOULD REQUIRE HER TO USE AGAINST THE FORMER CLIENT ANY CONFIDENTIAL INFORMATION GAINED FROM THE PREVIOUS PROFESSIONAL RELATION.— Canon 15 of the *Code of Professional Responsibility* prohibits an attorney from representing a party in a controversy that is either directly or indirectly related to the subject matter of a previous litigation involving another client. x x x Representing conflicting interests would occur only where the attorney's new engagement would require her to use against a former client any confidential information gained from the previous professional relation. The prohibition did not cover a situation where the subject matter of the present engagement was totally unrelated to the previous engagement of the attorney. To constitute the violation, the attorney should be shown to intentionally use against the former client the confidential information acquired by her during the previous employment. But a mere allegation of professional misconduct would not suffice to establish the charge, because accusation was not synonymous with guilt.

4. ID.; ID.; ID.; ID.; NECESSITATES IDENTITY OF THE PARTIES OR INTERESTS INVOLVED IN THE PREVIOUS AND PRESENT ENGAGEMENTS.— [T]he prohibition against representing conflicting interests further necessitated identity of the parties or interests involved in the previous and present engagements. But such identity was not true here. The adverse party in Seares, Jr.'s election protest in 2007 was Albert Z. Guzman, the newly-elected Municipal Mayor of Dolores, Abra, who was not involved in Turqueza's administrative complaint against Seares, Jr. In fact, Turqueza was not even a mayoral

candidate in Dolores, Abra in the elections held in 2007 and in 2010. The allegation by Seares, Jr. that Atty. Gonzales-Alzate represented his political opponent was not even true because Turqueza was Seares, Jr.'s political ally, as Atty. Gonzales-Alzate stated.

5. ID.; ID.; ENJOY THE PRESUMPTION OF INNOCENCE, AND WHOEVER INITIATES ADMINISTRATIVE PROCEEDINGS AGAINST THEM BEARS THE BURDEN OF PROOF TO ESTABLISH THE ALLEGATION OF PROFESSIONAL MISCONDUCT.— The Court emphasizes that an attorney enjoys the presumption of innocence, and whoever initiates administrative proceedings against the attorney bears the burden of proof to establish the allegation of professional misconduct. When the complainant fails to discharge the burden of proof, the Court has no alternative but to dismiss the charge and absolve the attorney. We find that the administrative complaint against Atty. Gonzales-Alzate was nothing but an attempt to vex, harass and humiliate her as well as to get even with her for representing Turqueza against Seares, Jr. Such an ill-motivated bid to disbar Atty. Gonzales-Alzate trifles with the Court's esteem for the members of the Bar who form one of the solid pillars of Justice in our land. We cannot tolerate it because attorneys are officers of the Court who are placed under our supervision and control due to the law imposing upon them peculiar duties, responsibilities and liabilities. We exist in a symbiotic environment with them where their duty to defend the courts is reciprocated by our shielding them from vindictive individuals who are deterred by nothing just to strip them of their privilege to practice law.

APPEARANCES OF COUNSEL

Ponferrada Ty Law Offices for complainant.

D E C I S I O N

BERSAMIN, *J.*:

Atty. Saniata Liwliwa V. Gonzales-Alzate is charged with incompetence and professional negligence, and a violation of

the prohibition against representing conflicting interests. Complainant Robert Victor G. Seares, Jr. is her former client.

Seares, Jr. alleges that Atty. Gonzales-Alzate was his legal counsel when he ran for the position of Municipal Mayor of Dolores, Abra in the May 2007 elections; that after he lost by a 50-vote margin to Albert Z. Guzman, she filed in his behalf a "Petition Of Protest *Ad Cautelam*"[1] in the Regional Trial Court (RTC) in Bangued, Abra; that the petition was dismissed for being "fatally defective;"[2] that several months later, she insisted on filing a "Petition of Protest" in the RTC, but the petition was also dismissed on the ground that it was already time-barred, and on the further ground of forum shopping because the certification against forum shopping was false; that the RTC declared her as "professionally negligent;"[3] that he again ran for Municipal Mayor of Dolores, Abra in the May 2010 elections, and won; that he later learned that his political opponents retained her as their counsel;[4] that with him barely two months in office, one Carlito Turqueza charged him with abuse of authority, oppression and grave misconduct in the Sangguniang Panlalawigan of Abra;[5] that she represented Turqueza as counsel;[6] and that she intentionally made false and hurtful statements in the memorandum she prepared in that administrative case in order to attack him.[7]

Seares, Jr. asserts that Atty. Gonzales-Alzate thereby violated Canon 15, Canon 17 and Canon 18 of the *Code of Professional Responsibility* for negligently handling his election protest, for prosecuting him, her former client, and for uttering false and hurtful allegations against him. Hence, he prays that she should be disbarred.

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[1] *Rollo*, pp. 20-27.

[2] *Id.* at 9.

[3] *Id.* at 3.

[4] *Id.* at 4.

[5] *Id.* at 44-53.

[6] *Id.* at 5.

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

In her comment,[8] Atty. Gonzales-Alzate denies the charges of professional negligence and incompetence, and of representing conflicting interests. She states that Seares, Jr. solicited her legal services in the last week of May 2007 because his counsel, Atty. Yasser Lumbos, informed him that he could not go to Abra to handle his *ad cautelam* petition;[9] that Seares, Jr. and his parents were themselves the ones who decided not anymore to appeal the dismissal of the *ad cautelam* petition despite her advice that an appeal would likely succeed;[10] that she did not convince Seares, Jr. to file the second petition because he and his parents were the ones who insisted on filing the appeal in disregard of the possibly adverse consequences of doing so;[11] and that the imputation of negligence against her based on the trial judge's declaration that she submitted a false certification against forum shopping was unwarranted, because all that she did was to make superimpositions in the certification against forum shopping in order to write the correct dates as well as the notarial document number and notarial docket page number for the certification against forum shopping.

Atty. Gonzales-Alzate refutes the charge that she represented conflicting interests by explaining that: (*a*) she was engaged as an attorney in the May 2010 elections only by Dominic Valera (a candidate for Municipal Mayor of Bangued, Abra) and by President Aquino, neither of whom was Seares, Jr.'s political opponent;[12] (*b*) Carlito Turqueza used to be a political ally of Seares, Jr.;[13] (*c*) she disclosed to Turqueza her having once acted as a counsel of Seares, Jr.;[14] (*d*) Seares, Jr. did not object to her legal representation of Turqueza;[15] and (*e*) the 2007

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[8] *Id.* at 83-132.

[9] *Id.* at 84-85.

[10] *Id.* at 88.

[11] *Id.* at 90-91.

[12] *Id.* at 105-106.

[13] *Id.* at 121.

[14] *Id.* at 126.

[15] *Id.* at 126-127.

election protest that she handled for Seares, Jr. was unrelated to the administrative complaint that Turqueza brought against Seares, Jr. in 2010.[16]

Issues

To be determined are the following issues, namely:

(*a*) Was Atty. Gonzales-Alzate guilty of professional negligence and incompetence in her handling of Seares, Jr.'s electoral protest in the RTC?

(*b*) Did Atty. Gonzales-Alzate violate the prohibition against representing conflicting interests when she assisted Turqueza in his administrative case against Seares, Jr., her former client?

Ruling

The severity of disbarment or suspension proceedings as the penalty for an attorney's misconduct has always moved the Court to treat the complaint with utmost caution and deliberate circumspection. We have done so because we must wield the power to disbar or suspend on the preservative rather than on the vindictive principle,[17] conformably with our thinking that disbarment or suspension will be condign and appropriate only when there is a clear, convincing, and satisfactory proof of misconduct seriously affecting the professional standing and ethics of respondent attorney as an officer of the Court and as a member of the Bar.[18]

Guided by the foregoing tenets, we dismiss the disbarment complaint against Atty. Gonzales-Alzate.

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[16] *Id.* at 126.

[17] *Gatmaytan, Jr. v. Ilao,* A.C. No. 6086, January 26, 2005, 449 SCRA 269, 270.

[18] *Conlu v. Aredonia, Jr.*, A.C. No. 4955, September 12, 2011, 657 SCRA 367, 377.

I.
Charge of professional negligence and incompetence is unfounded and devoid of substance

Seares, Jr. insists that Atty. Gonzales-Alzate's submission of a "fatally defective" petition in his election protest violated Canon 17[19] and Canon 18[20] of the *Code of Professional Responsibility*, claiming that her attaching a "cut-and-paste" certificate of non-forum shopping to his election protest, which the trial court's decision described as "professional negligence," reflected her lack of diligence and competence as an attorney because it was fatal to his protest.

The complaint against Atty. Gonzales-Alzate is unfounded and devoid of substance.

For administrative liability under Canon 18 to attach, the negligent act of the attorney should be gross[21] and inexcusable[22] as to lead to a result that was highly prejudicial to the client's interest.[23] Accordingly, the Court has imposed administrative sanctions on a grossly negligent attorney for unreasonable failure to file a required pleading,[24] or for unreasonable failure to file an appeal,[25] especially when the failure occurred after the attorney moved for several extensions to file the pleading[26] and offered

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[19] Canon 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

[20] Canon 18 — A lawyer shall serve his client with competence and diligence.

[21] Agpalo, *Legal and Judicial Ethics* (2009), p. 518.

[22] See *Pangasinan Electric Cooperative I (PANELCO I) v. Montemayor*, A.C. No. 5739, September 12, 2007, 533 SCRA 1, 9; *Dizon v. Laurente*, A.C. No. 6597, September 23, 2005, 470 SCRA 595, 601.

[23] Agpalo, *supra*, note 22, citing *In re Atty. C.T. Oliva*, 103 Phil. 312 (1958).

[24] *Conlu v. Aredonia, Jr., supra*; *Heirs of Tiburcio F. Ballesteros, Sr. v. Apiag*, A.C. No. 5760, September 30, 2005, 471 SCRA 111.

[25] *Abiero v. Juanino*, A.C. No. 5302, February 18, 2005, 452 SCRA 1.

[26] *Galen v. Paguirigan*, A.C. No. 5558, March 7, 2002, 378 SCRA 527.

several excuses for his nonfeasance.[27] The Court has found the attendance of inexcusable negligence when an attorney resorts to a wrong remedy,[28] or belatedly files an appeal,[29] or inordinately delays the filing of a complaint,[30] or fails to attend scheduled court hearings.[31] Gross misconduct on the part of an attorney is determined from the circumstances of the case, the nature of the act done and the motive that induced the attorney to commit the act.[32]

Yet, a reading of the June 8, 2007 order of the RTC (Branch I) in Bangued, Abra shows that the true cause of the dismissal of Seares, Jr.'s "Petition For Protest *Ad Cautelam*" was its prematurity in light of the pendency in the Commission on Elections of his "Petition to Suspend Canvass and Proclamation."[33] The RTC cogently held that "(t)he primary objective of this petition is to pray for the issuance of a Preliminary Precaution Order xxx (but) a prayer for the issuance of the protection of ballot boxes, Books and Lists of Voters and other election paraphernalia in the recently concluded elections is well within the power of the Commission on Elections."[34] We see no trace of professional negligence or incompetence on the part of Atty. Gonzales-Alzate in her handling of Seares, Jr.'s protest, especially because she even filed in his behalf a "Motion for Reconsideration,"[35] a "Comment on the Court's Dismissal of the Protest *Ad Cautelam*"[36] and a "Motion to Withdraw Cash

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[27] *Adecer v. Akut*, A.C. No. 4809, May 3, 2006, 489 SCRA 1.

[28] *Garcia v. Bala*, A.C. No. 5039, November 25, 2005, 476 SCRA 85; *Dizon v. Laurente*, A.C. No. 6597, September 23, 2005, 470 SCRA 595.

[29] *Cheng v. Agravante*, A.C. No. 6183, March 23, 2004, 426 SCRA 42.

[30] *Schulz v. Flores*, A.C. No. 4219, December 8, 2003, 417 SCRA 159.

[31] *Santeco v. Avance*, A.C. No. 5834, December 11, 2003, 418 SCRA 6.

[32] Agpalo, *supra* at 520.

[33] *Rollo*, p. 28.

[34] *Id.*

[35] *Id.* at 141-145.

[36] *Id.* at 148-152.

Deposit."[37] Besides, her explanation that it was Seares, Jr. himself who decided not to pursue the appeal and who instead requested her to move for the withdrawal of his cash deposit was very plausible.

Also, we cannot find Atty. Gonzales-Alzate professionally negligent in respect of the filing and eventual dismissal of the subsequent "Petition for Protest." The verification and certification against forum shopping attached to the petition contained handwritten superimpositions by Atty. Gonzales-Alzate, but such superimpositions were apparently made only to reflect the corrections of the dates of subscription and the notarial document number and docket number for the verification and certification. If that was all there was to the superimpositions, then there was nothing to support the trial judge's observation that the "cut and paste" method in preparing the verification and certification for non-forum shopping constituted "professional negligence" that proved fatal to her client's protest.[38] As a matter of policy, a court-bound document or paper prepared in a slipshod manner affects only the form but not the substance of the submission. Such slipshod preparation, even assuming it to be true, would not deserve administrative censure. Not letting form prevail over substance still remains to be the judicial ideal.

The foregoing notwithstanding, we doubt the sincerity of the charge of professional negligence and incompetence. Had Seares, Jr. been prejudiced by Atty. Gonzales-Alzate's negligent and incompetent handling of his election protest, we wonder why he would denounce her only after nearly five years have passed. The motivation for the charge becomes suspect, and the charge is thereby weakened all the more.

II.
Charge of representing conflicting interests is bereft of merit

Seares, Jr. next charges Gonzales-Alzate with violating Canon 15 of the *Code of Professional Responsibility* for

[37] *Id.* at 153.

[38] *Id.* at 39-43.

supposedly representing conflicting interests when she took on the administrative complaint that Turqueza brought against Seares, Jr.

The charge of Seares, Jr. is bereft of merit.

Canon 15 of the *Code of Professional Responsibility* prohibits an attorney from representing a party in a controversy that is either directly or indirectly related to the subject matter of a previous litigation involving another client. Relevantly, Rule 15.01, Rule15.02 and Rule15.03 provide:

> Rule 15.01—A lawyer, in conferring with a prospective client, shall ascertain as soon as practicable whether the matter would involve a conflict with another client or his own interest, and if so, shall forthwith inform the prospective client.
>
> Rule 15.02—A lawyer shall be bound by the rule on privilege communication in respect of matters disclosed to him by a prospective client.
>
> 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.

Atty. Gonzales-Alzate's legal representation of Turqueza neither resulted in her betrayal of the fidelity and loyalty she owed to Seares, Jr. as his former attorney, nor invited the suspicion of unfaithfulness or double dealing while she was performing her duties as an attorney.[39] Representing conflicting interests would occur only where the attorney's new engagement would require her to use against a former client any confidential information gained from the previous professional relation.[40] The prohibition did not cover a situation where the subject matter of the present engagement was totally unrelated to the previous engagement

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[39] *Frias v. Lozada*, A.C. No. 6656, December 13, 2005, 477 SCRA 393, 400.

[40] *Lim-Santiago v. Sagucio*, A.C. No. 6705, March 31, 2006, 486 SCRA 10, 22.

of the attorney.[41] To constitute the violation, the attorney should be shown to intentionally use against the former client the confidential information acquired by her during the previous employment.[42] But a mere allegation of professional misconduct would not suffice to establish the charge, because accusation was not synonymous with guilt.[43]

As it turned out, the charge of representing conflicting interests leveled against Atty. Gonzales-Alzate was imaginary. The charge was immediately unworthy of serious consideration because it was clear from the start that Atty. Gonzales-Alzate did not take advantage of her previous engagement by Seares, Jr. in her legal representation of Turqueza in the latter's administrative charge against Seares, Jr. There was no indication whatsoever of her having gained any confidential information during her previous engagement by Seares, Jr. that could be used against Seares, Jr. Her engagement by Seares, Jr. related only to the election protest in 2007, but Turqueza's complaint involved Seares, Jr.'s supposedly unlawful interference in ousting Turqueza as the president of the Liga ng mga Barangay of Dolores, Abra in 2010. There is no question that both charges were entirely foreign to one another.

Moreover, the prohibition against representing conflicting interests further necessitated identity of the parties or interests involved in the previous and present engagements. But such identity was not true here. The adverse party in Seares, Jr.'s election protest in 2007 was Albert Z. Guzman, the newly-elected Municipal Mayor of Dolores, Abra, who was not involved in Turqueza's administrative complaint against Seares, Jr. In fact, Turqueza was not even a mayoral candidate in Dolores, Abra in the elections held in 2007 and in 2010. The allegation by Seares, Jr. that Atty. Gonzales-Alzate represented his

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[41] *Pormento, Sr. v. Pontevedra*, A.C. No. 5128, March 31, 2005, 454 SCRA 167, 177.

[42] *Id.*

[43] *Boyboy v. Yabut, Jr.*, A.C. No. 5225, April 29, 2003, 401 SCRA 622, 627.

political opponent was not even true because Turqueza was Seares, Jr.'s political ally, as Atty. Gonzales-Alzate stated.

It is notable, too, that Seares, Jr. expressly agreed to Atty. Gonzales-Alzate's legal representation of Turqueza in the latter's administrative case against Seares, Jr. This is borne out by the affidavit of Turqueza that Atty. Gonzales-Alzate submitted,[44] the relevant portion of which follows:

x x x x x x x x x

6. When Mayor Robert Victor Seares arrived, he was with a black shirt and jeans and the Vice Governor started the conference asking us if there is a possibility of amicable settlement. Atty. Ma. Saniata Liwliwa Gonzales-Alzate first talked and she raised the fact that in 2007 Mayor Robert Victor Seares was her client in an election protest and she even said how she represented him, and Mayor Seares said "*wen Attorney* (yes Attorney) and the Atty. Gonzales-Alzate said to all of us in the said room that she was before the lawyer of Jr. Seares (Mayor Robert Victor Seares) and now if Jr. will not oppose it, she will be representing me in the said administrative case and this time, she will now be a lawyer against Jr. Seares. The said lawyer was even smiling when she said that and Jr. Seares (Mayor Robert Victor Seares) was normally giggling and smiling and said "*wen attorney, awan ti kuak dita, iyabogaduam latta a, isuna lang a ni kapitan no nya paylang ti kayatna, nayted la ngarud sueldo nan*" (**Yes, attorney, I have no concern with that, you lawyer for him if that is so, I don't know what the (*barangay*) captain would still want, his salary was already released to him.)** xxx.

x x x x x x x x x

The Court emphasizes that an attorney enjoys the presumption of innocence, and whoever initiates administrative proceedings against the attorney bears the burden of proof to establish the allegation of professional misconduct.[45] When the complainant fails to discharge the burden of proof, the Court has no alternative but to dismiss the charge and absolve the attorney.

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[44] *Rollo*, pp. 252-254.

[45] *Rodica v. Lazaro*, A.C. No. 9259, August 23, 2012; *Aba v. De Guzman, Jr.*, A.C. No. 7649, December 14, 2011, 662 SCRA 361, 371.

We find that the administrative complaint against Atty. Gonzales-Alzate was nothing but an attempt to vex, harass and humiliate her as well as to get even with her for representing Turqueza against Seares, Jr. Such an ill-motivated bid to disbar Atty. Gonzales-Alzate trifles with the Court's esteem for the members of the Bar who form one of the solid pillars of Justice in our land. We cannot tolerate it because attorneys are officers of the Court who are placed under our supervision and control due to the law imposing upon them peculiar duties, responsibilities and liabilities.[46] We exist in a symbiotic environment with them where their duty to defend the courts is reciprocated by our shielding them from vindictive individuals who are deterred by nothing just to strip them of their privilege to practice law.

In *De Leon v. Castelo*,[47] we underscored the need to shield attorneys as officers of the Court from the mindless assaults intended to vex or harass them in their performance of duty, stating:

> According to Justice Cardozo, "xxx the fair fame of a lawyer, however innocent of wrong, is at the mercy of the tongue of ignorance or malice. Reputation in such a calling is a plant of tender growth, and its bloom, once lost, is not easily restored."
>
> A lawyer's reputation is, indeed, a very fragile object. The Court, whose officer every lawyer is, must shield such fragility from mindless assault by the unscrupulous and the malicious. It can do so, firstly, by quickly cutting down any patently frivolous complaint against a lawyer; and, secondly, by demanding good faith from whoever brings any accusation of unethical conduct. A Bar that is insulated from intimidation and harassment is encouraged to be courageous and fearless, which can then best contribute to the efficient delivery and proper administration of justice.[48]

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[46] *Garcia v. Lopez*, A.C. No. 6422, August 28, 2007, 531 SCRA 265, 268.

[47] A.C. No. 8620, January 12, 2011, 639 SCRA 237.

[48] *Id.* at 252.

In *Lim v. Antonio*,[49] we censured the complainant because revenge and bad faith had motivated him into filing a baseless complaint against an attorney, stressing:

> The dignity and honor of the profession require that acts unworthy of membership in the bar should be visited with the appropriate penalty. The charge against respondent is of a serious character. If in fact there was such a violation of the law as charged, he should be duly penalized. It is quite clear, however, that the complaint is unfounded. It was the product of ill-will, the desire of complainant to avenge himself. It certainly was not made in good faith. If it were so, its dismissal would have sufficed. To repeat, such is not the case. As the Report made clear, the complaint arose from a feeling of resentment, even of hate. To allow complainant to trifle with the Court, to make use of the judicial process as an instrument of retaliation, would be a reflection on the rule of law. He should be held to strict accountability, considering that this is his second attempt. Such stubbornness, compounds the gravity of his offense. He appears to be incorrigible. At the very least, therefore, he should be censured.[50]

We have often demonstrated our genuine concern for the members of the Bar, especially those who stand before our courts as ethical advocates of their clients' causes. We definitely do not tolerate unwarranted and malicious assaults against their honor and reputation. The Court issued a stern warning to the complainant attorney in *Dela Victoria v. Orig-Maloloy-on*[51] for filing an unfounded complaint against a clerk of court, and found the complainant attorney in contempt of court and deserving of a ₱2,000.00 fine. But a stiffer penalty of ₱5,000.00 was imposed on the complainant attorneys in *Prieto v. Corpuz*[52] and *Arnado v. Suarin*[53] because their complaints against a judge and a court sheriff, respectively, were found to be baseless.

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[49] A.C. No. 1092, October 27, 1983, 125 SCRA 273.

[50] *Id.* at 277.

[51] A.M. No.P-07-2343, August 14, 2007, 530 SCRA 1.

[52] A.C. No. 6517, December 6, 2006, 510 SCRA 1.

[53] A.M. No.P-05-2059, August 19, 2005, 467 SCRA 402.

Considering the circumstances attendant here, the Court deems it sufficient for now to merely admonish Seares, Jr., but sternly warns him that he shall be dealt with more severely should he commit a similar act against a member of the Bar.

WHEREFORE, the Court **DISMISSES** the administrative complaint against Atty. Saniata Liwliwa V. Gonzales-Alzate for utter lack of merit; and **ADMONISHES** Robert Victor G. Seares, Jr. for filing the malicious complaint, **WITH STERN WARNING** that a repetition shall be dealt with more severely as indirect contempt of the Court.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

THIRD DIVISION

[A.M. No. P-08-2441. November 14, 2012]
(Formerly A.M. No. 08-2-53-MTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **FORMER CLERK OF COURT ANGELITA A. JAMORA and STAFF ASSISTANT II MA. LUISA B. GERONIMO, both of the Municipal Trial Court, Cainta, Rizal,** *respondents.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; NEGLECT OF DUTY; EVEN WHEN THERE IS SUBSEQUENT RESTITUTION OF FUNDS, UNWARRANTED FAILURE TO REMIT FUNDS UPON

DEMAND BY AN AUTHORIZED OFFICER, A CASE OF; CASE AT BAR.— Although Geronimo subsequently restored the cash shortages in full, this constitutes neglect of duty and a violation of the guidelines on the collection and deposit of judiciary funds. Delayed remittance of cash collections deprives the court of interest that may be earned if the amounts were deposited in a bank. In several decisions, the Court ruled that the "failure of a public officer to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that the public officer has put such missing funds or property to personal use." Hence, even when there is restitution of funds, "unwarranted failure to fulfill these responsibilities deserves administrative sanction and not even the full payment of the collection shortages will exempt the accountable officer from liability."

R E S O L U T I O N

MENDOZA, *J.*:

This case arose from the financial audit conducted by the Office of the Court Administrator *(OCA)* on the books of accounts of former Clerk of Court Angelita A. Jamora *(Jamora)* and Officer-in-charge (OIC) Leticia C. Perez *(Perez)*, both of the Municipal Trial Court, Cainta, Rizal. Based on the findings of the audit team stated in a report, dated February 19, 2008,[1] the Court, in a resolution, dated March 12, 2008,[2] resolved to, among others:

1. **DOCKET** this case as an administrative complaint against former Clerk of Court Angelita A. Jamora and Staff Assistant II Ma. Luisa B. Geronimo;

2. **DIRECT** former Clerk of Court Angelita A. Jamora and Staff Assistant II Ma. Luisa B. Geronimo to **EXPLAIN** why no administrative sanction shall be imposed on them for their non-remittance of the subject collections;

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[1] *Rollo*, pp. 3-10.

[2] *Id.* at 32-34.

x x x x x x x x x

3. **DIRECT** Staff Assistant II Ma. Luisa B. Geronimo to:

   a. **RESTITUTE** the amounts of ₱109,000.00, ₱1,507.60 and ₱13,760.00 representing her shortages for Mediation Fund, General Fund, and Legal research Fund, respectively, and **FURNISH** the Fiscal Monitoring Division, Court Management Office, OCA, with copies of the machine validated deposit slips as proof of compliance; and

   b. **ASSIST** Ms. Leticia C. Perez in collecting the uncollected solemnization fees amounting to ₱43,300.00, otherwise **PAY FOR** the same jointly with Ms. Jamora.

x x x x x x x x x

On February 7, 2008, respondent Ma. Luisa B. Geronimo *(Geronimo)* restituted the amount of ₱13,760.00 representing her shortage in the Legal Research Fund. A copy of the machine-validated deposit slip was submitted in a letter, dated February 8, 2008.[3]

In a manifestation and motion, dated November 13, 2009,[4] Geronimo submitted a photocopy of the Land Bank of the Philippines *(LBP)* deposit slip, dated March 31, 2006, as payment for the shortages in the Mediation Fund. As of November 30, 2007, however, the said deposit slip was already considered and included in her deposits, per the Audit Reconciliation Statement of Mediation Fund. Hence, the same was not considered as restitution of her cash shortages in the Mediation Fund Account. Geronimo manifested that she was not yet submitting this case for resolution because she was still in the process of gathering documents that would prove her remittance to the Mediation Fund.

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[3] *Id.* at 78.

[4] *Id.* at 108.

In a resolution, dated January 27, 2010,[5] the Court noted her manifestation and granted her request that she be given ninety (90) days from November 13, 2009, within which to liquidate her accountabilities.

Geronimo, however, failed to liquidate her accountabilities within the period granted her by the Court. In a letter, dated June 4, 2012, Geronimo submitted an undated *Manifestation with Motion to Admit/Accept Payment*.[6] She explained that the delay in the restitution of her shortages was caused by financial difficulties. She was the sole income earner in the family as her husband had a disability and they had four (4) children still studying. With the help of friends and relatives, she was able to raise the amount to settle, in full, the balance of her cash shortage.

On June 1, 2012, Geronimo restituted the amount of ₱109,100.00 representing her shortage in the Mediation Fund,[7] and on June 4, 2012, the amount of ₱22,650.00 representing half of the unaccounted solemnization fees totalling ₱45,300.00 per attached deposit slips.[8] The other half of the unaccounted solemnization fees was already paid by Jamora on September 1, 2008.

Anent her shortages in the General Fund, Geronimo deposited the amount of ₱13,760.00.[9] Finally, on June 16, 2012, she restituted the only remaining accountability of ₱1,507.00 representing the shortage in the Legal Research Fund per attached deposit slip.

Although Geronimo subsequently restored the cash shortages in full, this constitutes neglect of duty and a violation of the guidelines on the collection and deposit of judiciary funds.

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[5] *Id.* at 114-115.

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

[7] *Id.* at 173-176.

[8] *Id.* at 175.

[9] *Id.* at 78-79, Letter dated February 8, 2008.

Delayed remittance of cash collections deprives the court of interest that may be earned if the amounts were deposited in a bank.

In several decisions, the Court ruled that the "failure of a public officer to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that the public officer has put such missing funds or property to personal use."[10] Hence, even when there is restitution of funds, "unwarranted failure to fulfill these responsibilities deserves administrative sanction and not even the full payment of the collection shortages will exempt the accountable officer from liability."[11]

In determining the applicable penalty, the Court had, in the past, mitigated the administrative penalties imposed on erring judicial officers and employees.[12] In this case, the Court takes into consideration the full remittance of the collection, and the fact that Geronimo holds the position of a Staff Assistant II and yet she also performs other important functions in court, like the collection of judiciary funds. Further, this is her first offense.

WHEREFORE, the Court **RESOLVES** to **ADOPT** and **APPROVE** the findings of fact, conclusions of law and recommendation of the Office of the Court Administrator. Accordingly, a **FINE** of Ten Thousand Pesos (₱10,000.00) is imposed on Staff Assistant II Ma. Luisa B. Geronimo, Municipal Trial Court, Cainta, Rizal, with a **STERN WARNING** that a repetition of the same or similar acts shall be dealt with more severely.

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[10] *Re: Financial Report on the Audit Conducted in the MCTC Apalit-San Simon, Pampanga,* A.M. No. 08-1-30-MCTC, April 10, 2008, 551 SCRA 58.

[11] *Judge Misajon, MTC San Jose, Antique v. Clerk of Court Lagrimas A. Feranil,*483 Phil.340 (2004).

[12] *Re: Misappropriation of the Judiciary Fund Collections by Ms. Juliet C. Banag, Clerk of Court, MTC, Plaridel, Bulacan,* 465 Phil. 24 (2004); *In re: Delayed Remittance of Collections of Teresita R. Odtuhan, Officer-in-Charge, Regional Trial Court, Branch 117, Pasay City,* 445 Phil. 220 (2003).

Hon. Gwyn P. Calina, Presiding Judge of the Municipal Trial Court, Cainta, Rizal, is **DIRECTED** to strictly supervise the accountable officer of the court in the proper handling of the judiciary funds pursuant to court circulars and issuances.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Villarama, Jr.,*[*] *JJ.,* concur.

FIRST DIVISION

[A.M. No. RTJ-12-2334. November 14, 2012]

ERNESTO HEBRON, *Complainant, vs.* **JUDGE MATIAS M. GARCIA II, Regional Trial Court, Branch 19, Bacoor City, Cavite,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; A COMPLAINANT'S WITHDRAWAL OF COMPLAINT AGAINST A JUDGE DOES NOT NECESSARILY WARRANT ITS DISMISSAL.— At the outset, we emphasize that Hebron's withdrawal of his complaint against Judge Garcia does not necessarily warrant its dismissal. In *Bayaca v. Ramos*, we explained: "x x x **The withdrawal of complaints cannot divest the Court of its jurisdiction nor strip it of its power to determine the veracity of the charges made and to discipline, such as the results of its investigation may warrant, an erring respondent**. x x x **The Court's interest in the affairs of the judiciary is of paramount concern. x x x."** Given this

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[*] Designated acting member, per Special Order No. 1299-H, dated August 28, 2012.

doctrine, the Court has resolved to allow the administrative case to proceed, especially after taking due consideration of the nature of the offense which, per the evaluation of the OCA, had been committed by Judge Garcia.

2. ID.; ID.; ERRORS ATTRIBUTED TO JUDGES PERTAINING TO THE EXERCISE OF THEIR ADJUDICATIVE FUNCTIONS SHOULD BE ASSAILED IN JUDICIAL PROCEEDINGS.— The Court fully agrees with the OCA's report that Judge Garcia cannot be held administratively liable for the alleged wrongful rulings that he made in Civil Case No. BCV-2005-94 and BSC No. 2009-02. Time and again, we have ruled that the errors attributed to judges pertaining to the exercise of their adjudicative functions should be assailed in judicial proceedings instead of in an administrative case.

3. POLITICAL LAW; JUDICIAL DEPARTMENT; COURTS; ALL CASES AND MATTERS MUST BE RESOLVED WITHIN TWELVE MONTHS FROM DATE OF SUBMISSION BY ALL LOWER COLLEGIATE BODIES WHILE ALL OTHER LOWER COURTS ARE GIVEN A PERIOD OF THREE MONTHS TO DO SO.— Judge Garcia's undue delay in resolving Hebron's motion for reconsideration is a wrong of a different nature which warrants a different treatment. Article VIII, Section 15 of the 1987 Constitution mandates that "[a]ll cases or matters filed after the effectivity of [the] Constitution must be decided or resolved within twenty-four months from date of submission for the [SC], and, unless reduced by the [SC], twelve months for all collegiate courts, and three months for all other courts." In relation thereto, SC Administrative Circular No. 13-87 provides that "[j]udges shall observe scrupulously the periods prescribed by Article VIII, Section 15 of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts. Thus, all cases or matters must be decided or resolved within twelve months from date of submission by all lower collegiate courts while all other lower courts are given a period of three months to do so." Judge Garcia failed to meet this three-month deadline.

4. JUDICIAL ETHICS; JUDGES; DELAY IN RENDERING A DECISION OR ORDER; ESTABLISHED IN CASE AT BAR; PENALTY.— To the Court, the volume of Judge Garcia's pending cases did not justify the delay. x x x The failure to

decide cases and other matters within the reglementary period of ninety (90) days constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring judge. This is not only a blatant transgression of the Constitution but also of the Code of Judicial Conduct, which enshrines the significant duty of magistrates to decide cases promptly. Under Section 9, Rule 140 of the Revised Rules of Court, delay in rendering a decision or order is considered a less serious offense that is punishable by either (1) suspension from office without salary and other benefits for not less than one nor more than three months, or (2) a fine of more than ₱10,000 but not exceeding ₱20,000. The sheer volume of Judge Garcia's work may, at most, only serve to mitigate the penalty to be imposed upon him x x x. In the present case, we deem a fine of ₱2,000.00 sufficient, after considering Judge Garcia's caseload of more than 3,700 pending cases. It is also our view that his delay in resolving Hebron's motion for reconsideration was not prompted by bad faith or malice, that even his complainant had later filed with the OCA a letter that sought the withdrawal of the charges. Finally, we take note of the OCA's observation that the delay committed by Judge Garcia involves a single motion, and that this is his first administrative offense.

R E S O L U T I O N

REYES, *J.*:

This case stems from the administrative complaint[1] dated September 30, 2011 filed with the Office of the Court Administrator (OCA) by complainant Ernesto Hebron (Hebron), charging respondent Judge Matias M. Garcia II (Judge Garcia) with gross ignorance of the law, incompetence, abuse of authority and abuse of discretion.

Hebron was the complainant in Criminal Case No. CC-07-43, a case for falsification of public document which he filed against one Aladin Simundac (Simundac) relative to the latter's application for free patent over a property situated in Carmona, Cavite. When Simundac's motion to suspend proceedings was denied

[1] *Rollo,* pp. 1-10.

by the Municipal Trial Court (MTC) of Carmona, Cavite where the criminal case was pending, Simundac filed with the Regional Trial Court (RTC) of Bacoor, Cavite a petition for *certiorari* with prayer for issuance of temporary restraining order (TRO) and writ of preliminary injunction, docketed as BSC No. 2009-02 and raffled to RTC, Branch 19, presided by respondent Judge Garcia. Hebron filed a motion for Judge Garcia's inhibition, citing his perceived bias and partiality of Judge Garcia, who had earlier dismissed Civil Case No. BCV-2005-94 also filed by Hebron against Simundac.

A hearing on Simundac's application for injunctive writ was conducted by Judge Garcia on April 16, 2009, when he issued the following Order:

> When this case was called for Temporary Restraining Order and/or Writ of Preliminary Injunction, Atty. Frolin Remonquillo filed a Motion to Inhibit which was received by the Court only yesterday. Atty. Bingle B. Talatala, counsel for the petitioner[,] moved that she be given ten (10) days to file her comment. Atty. Remonquillo prayed that he be given the same number of days within which to file his reply, if necessary. After which, the incident [is] submitted for resolution.
>
> Both parties agreed to [maintain] the status [quo] until this Court could have resolved the incident.
>
> **SO ORDERED**.[2]

On June 2, 2009, Judge Garcia set for June 8, 2009 another hearing on the application for TRO. Come June 8, 2009, he issued an Order that states, "[b]y agreement of the parties, let them be given time to file their respective position paper[s]."[3] On September 18, 2009, he finally issued his Order granting Simundac's application for preliminary injunction, which led to the suspension of the proceedings in Criminal Case No. CC-07-43. He denied in the same Order Hebron's motion for inhibition.

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[2] *Id.* at 70.

[3] *Id.* at 74.

Against the foregoing antecedents, Hebron filed the administrative complaint with the OCA, claiming that: (1) Judge Garcia "distorted the facts"[4] to justify his issuance of the writ of preliminary injunction; (2) neither Hebron nor his counsel could have agreed on June 8, 2009 to file a position paper on Simundac's application for injunctive writ, since they were both absent during the hearing on said date; (3) Judge Garcia was guilty of "ignorance of the rule and jurisprudence"[5] for ordering the issuance of a writ of preliminary injunction without first conducting a hearing thereon; (4) Judge Garcia had ignored existing jurisprudence, making his rulings "beyond the permissible margin of error"[6]; and (5) Judge Garcia should have recused himself from Civil Case No. BSC No. 2009-02, given his bias and partiality in favor of Simundac.

Hebron had previously asked the RTC to reconsider the Order dated September 18, 2009, but as stated in his complaint charging Judge Garcia:

> On October 30, 2009, we filed a Motion for Reconsideration of the Order of Judge Matias Garcia [II] dated September 18, 2009. x x x.
>
> On **November 25, 2009**, accused thru counsel filed his comment [on] the motion for reconsideration **which is the last pleading** and the motion was submitted for resolution.
>
> On April 20, 2010, we filed a motion to resolve our motion for reconsideration and set the same for hearing on April 29, 2010. x x x
>
> On **September 7, 2010**, **we filed our second motion to resolve our motion for reconsideration** and set the same for hearing on September 28, 2010. x x x.
>
> Up to the present, after the lapse of one (1) year, nine (9) months and fourteen (14) days[,] no notice of resolution on our Motion for Reconsideration was sent to our counsel or to the undersigned. Any motion, regardless of whether the motions were frivolous or dilatory, and not germane to the pending case x x x respondent judge should

[4] *Id.* at 3.

[5] *Id.* at 4.

[6] *Id.* at 7.

have resolved the same citing the facts and the law on which the order was based within the time prescribed by the rules (***Aries vs. Beldia,* 476 SCRA 298**).[7]

In his Comment, Judge Garcia gave a lengthy discussion of his bases for his past rulings. Particularly on the matter of his failure to immediately resolve Hebron's motion to reconsider the Order dated September 18, 2009, Judge Garcia, explained:

> **The Motion for Reconsideration was inadvertently not acted upon by the Court for an unreasonable length of time. The Court noticed only of the pending Motion for Reconsideration when it conducted its inventory of cases in July 2011 which was further extended to September 2011 due to the program of this Honorable Office entitled "Case Delay and Docket Reduction Project (CDDRP)[")]** wherein this Court was one of the designated pilot courts for its implementation. For about five (5) months, the Court almost literally stopped all its proceedings to give way to the said program. x x x.
>
> **The Court would not be washing its hand for the delay, and admits the lapse but would rather ask the indulgence and understanding of this Honorable Office on its predicament**. **The delay was not deliberately and maliciously motivated. The Court is swamped with thousands of cases and undersigned is just overwhelmed thereof**. As of July 2011[,] the Court [has] about 3,788 pending cases. From January to October 2011[,] about 879 cases were raffled to the Court. The Court is trying its best to comply with the mandate of the law on resolving pending incidents. But with such workload, the Court could not simply comply.
>
> The overload of cases has been brought to the attention of the CDDRP during its meeting with the Supreme Court and Office of the Court Administrator Officials and Personnel. It was explained to us that the said program was to find ways and means [on] how to [unclog] the docket of the Court. Statistics would not help the Courts of Bacoor. What we need is the creation of new salas. For the meantime, we are doing our best and undersigned promised that the same incident would not happen again and if it could not be avoided, promised to file an extension of time to resolve.[8] (Emphasis ours)

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

[8] *Id.* at 110.

The OCA's Report and Recommendation

In its Report[9] dated September 12, 2012, the OCA explained that Judge Garcia could not be disciplined for the charges that pertained to his discharge of adjudicative functions. If Hebron truly believed that the rulings of Judge Garcia were erroneously made, the same could not be corrected through the filing of an administrative complaint.[10]

Nonetheless, the OCA held that Judge Garcia could be held administratively liable for his undue delay in resolving Hebron's motion for reconsideration. It declared:

> Records show that the motion was submitted for resolution on 25 November 2009. However, respondent Judge claimed that the motion was inadvertently not acted upon for an unreasonable length of time because the court only noticed the same when it conducted its inventory of cases in July 2011. **Evidently, respondent Judge failed to resolve the motion within the 90-day reglementary period provided in the Constitution.** "*Reglementary periods fixed by law and the various issuances of the Court are designed not only to protect the rights of all the parties to due process, but also to achieve efficiency and order in the conduct of official business.*" Further, "*[j]udges are enjoined to dispose of the court's business promptly and expeditiously, and to decide cases within the period fixed by law.*"[11] (Citations omitted and emphasis ours)

The OCA then recommended that Judge Garcia be found guilty of undue delay in rendering an order, and accordingly be fined in the amount of ₱5,000.00 with a stern warning that a repetition of the same or similar act shall be dealt with more severely.[12]

Before the Court could have acted upon the OCA's Report, Hebron filed with the OCA a Letter dated October 2, 2012, withdrawing his complaint against Judge Garcia. He claimed to have filed the administrative complaint only upon the prodding

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[9] *Id.* at 238-244.

[10] *Id.* at 242.

[11] *Id.* at 243.

[12] *Id.* at 244.

of his former lawyer, Atty. Frolin H. Remoquillo, and that he signed it without even fully understanding the contents thereof. Furthermore, he reasoned that he was already ailing at 69 years of age, and he already yearned to rectify the mistakes that he had committed, including his loss of trust in the justice system.

The Court re-docketed the administrative complaint as A.M. No. RTJ-12-2334.

This Court's Ruling

At the outset, we emphasize that Hebron's withdrawal of his complaint against Judge Garcia does not necessarily warrant its dismissal. In *Bayaca v. Ramos*,[13] we explained:

> We have repeatedly ruled in a number of cases that mere desistance or recantation by the complainant does not necessarily result in the dismissal of an administrative complaint against any member of the bench. **The withdrawal of complaints cannot divest the Court of its jurisdiction nor strip it of its power to determine the veracity of the charges made and to discipline, such as the results of its investigation may warrant, an erring respondent**. Administrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his own, condone what may be detestable. Neither can the Court be bound by the unilateral act of the complainant in a matter relating to its disciplinary power. **The Court's interest in the affairs of the judiciary is of paramount concern. x x x.**[14] (Citations omitted and emphasis ours)

Given this doctrine, the Court has resolved to allow the administrative case to proceed, especially after taking due consideration of the nature of the offense which, per the evaluation of the OCA, had been committed by Judge Garcia.

The Court fully agrees with the OCA's report that Judge Garcia cannot be held administratively liable for the alleged wrongful rulings that he made in Civil Case No. BCV-2005-94 and BSC No. 2009-02. Time and again, we have ruled that the errors attributed to judges pertaining to the exercise of their

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[13] A.M. No. MTJ-07-1676, January 29, 2009, 577 SCRA 93.

[14] *Id.* at 102.

adjudicative functions should be assailed in judicial proceedings instead of in an administrative case.[15] As the Court held in *Dadula v. Judge Ginete:*[16]

> Even assuming *arguendo* that respondent Judge made an erroneous interpretation of the law, the matter is judicial in nature. Well-entrenched is the rule that **a party's remedy, if prejudiced by the orders of a judge given in the course of a trial, is the proper reviewing court, and not with the OCA by means of an administrative complaint. As a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous**. The Court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased and partial. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.[17] (Citations omitted and emphasis ours)

However, Judge Garcia's undue delay in resolving Hebron's motion for reconsideration is a wrong of a different nature which warrants a different treatment. Article VIII, Section 15 of the 1987 Constitution mandates that "[a]ll cases or matters filed after the effectivity of [the] Constitution must be decided or resolved within twenty-four months from date of submission for the [SC], and, unless reduced by the [SC], twelve months for all collegiate courts, and three months for all other courts." In relation thereto, SC Administrative Circular No. 13-87 provides that "[j]udges shall observe scrupulously the periods prescribed by Article VIII, Section 15 of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts. Thus, all cases or matters must be decided or resolved within twelve months from date of submission by all lower collegiate courts while all other lower courts are given a period of three months to do so."

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[15] *Spouses Chan v. Judge Lantion*, 505 Phil. 159, 164 (2005).

[16] 493 Phil. 700 (2005).

[17] *Id.* at 711-712.

Judge Garcia failed to meet this three-month deadline. He explained his delay by saying that "[t]he Motion for Reconsideration was inadvertently not acted upon by the Court for an unreasonable length of time,"[18] because it noticed its pendency only when it conducted an inventory of its cases in July 2011. Unfortunately for Judge Garcia, such poor excuse merits no weight for his exoneration from the charge. It, in fact, demonstrates serious errors in Judge Garcia's performance of his duties and the management of his court. For such error, even Judge Garcia has admitted that the delay in resolving the motion to reconsider has dragged on for an "unreasonable length of time."[19] Furthermore, we observe that he should have been prompted to take immediate action by the two motions to resolve that were filed by Hebron, yet even these two motions remained unacted upon.

To the Court, the volume of Judge Garcia's pending cases did not justify the delay. In *Angelia v. Grageda*,[20] we held:

> In consonance with the Constitutional mandate that all lower courts decide or resolve cases or matters within three (3) months from their date of submission, the Code of Judicial Conduct in Rule 1.02 of Canon 1 and Rule 3.05 of Canon 3, provide:
>
> Rule 1.02 – A judge should administer justice impartially and without delay.
>
> Rule 3.05 – A judge should dispose of the court's business promptly and decide cases within the required periods.
>
> x x x x x x x x x
>
> The Court, however, finds **no merit in Judge Grageda's explanation that the reason for the delay in resolving the motion was the pressure from equally urgent matters in connection with the 800 pending cases before his sala**. **Firstly, he is duty-bound to comply with the above-cited rules under the Canons in the Code of Judicial Conduct, and the administrative guidelines laid down by this Court. Secondly, as this Court is**

[18] *Rollo*, p. 110.

[19] *Id*.

[20] A.M. No. RTJ-10-2220, February 7, 2011, 641 SCRA 554.

not unmindful of the circumstances that may delay the speedy disposition of cases assigned to judges, respondent Judge Grageda should have seasonably filed a request for an extension to resolve the subject motion. For failing to do so, he cannot evade administrative liability.

Judges must decide cases and resolve matters with dispatch because any delay in the administration of justice deprives litigants of their right to a speedy disposition of their case and undermines the people's faith in the judiciary. Indeed, justice delayed is justice denied.[21] (Emphasis ours)

The failure to decide cases and other matters within the reglementary period of ninety (90) days constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring judge. This is not only a blatant transgression of the Constitution but also of the Code of Judicial Conduct, which enshrines the significant duty of magistrates to decide cases promptly.[22] Under Section 9, Rule 140 of the Revised Rules of Court, delay in rendering a decision or order is considered a less serious offense that is punishable by either (1) suspension from office without salary and other benefits for not less than one nor more than three months, or (2) a fine of more than ₱10,000 but not exceeding ₱20,000. The sheer volume of Judge Garcia's work may, at most, only serve to mitigate the penalty to be imposed upon him, as in the case of *Angelia* where the fine was reduced to ₱5,000.00 given therein respondent judge's 800 pending cases before his sala.

In the present case, we deem a fine of ₱2,000.00 sufficient, after considering Judge Garcia's caseload of more than 3,700 pending cases. It is also our view that his delay in resolving Hebron's motion for reconsideration was not prompted by bad faith or malice, that even his complainant had later filed with the OCA a letter that sought the withdrawal of the charges. Finally, we take note of the OCA's observation that the delay

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[21] *Id.* at 556-557.

[22] *Medina v. Judge Canoy*, A.M. No. RTJ-11-2298, February 22, 2012, 666 SCRA 424, 436.

committed by Judge Garcia involves a single motion, and that this is his first administrative offense.[23]

All told, the Court adopts the OCA's recommendation for the Court to hold Judge Garcia guilty of undue delay in rendering an order, but the recommended fine of ₱5,000.00 is reduced to ₱2,000.00, still with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

WHEREFORE, the Court finds respondent Judge Matias M. Garcia II **GUILTY** of undue delay in rendering an order, and orders him to pay a **FINE** of Two Thousand Pesos (₱2,000.00). He is **STERNLY WARNED** that a repetition of the same or similar act in the future shall be dealt with more severely. The other charges are dismissed.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 167880. November 14, 2012]

JACK ARROYO, *petitioner, vs.* **BOCAGO INLAND DEV'T. CORP. (BIDECO), represented by CARLITO BOCAGO and/or the HEIRS OF THE DECEASED RAMON BOCAGO, namely, BASILISA *VDA. DE* BOCAGO, CARLITO BOCAGO, SANNIE BOCAGO ARRENGO, and INDAY BUENO,** *respondents.*

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[23] *Rollo,* p. 244.

SYLLABUS

1. REMEDIAL LAW; ACTIONS; LACHES; THE APPLICATION THEREOF IS ADDRESSED TO THE SOUND DISCRETION OF THE COURT AS ITS APPLICATION IS CONTROLLED BY EQUITABLE CONSIDERATIONS.— The established rule, as reiterated in *Heirs of Tomas Dolleton vs. Fil-Estate Management, Inc.*, is that "the elements of laches must be proven positively. Laches is evidentiary in nature, a fact that cannot be established by mere allegations in the pleadings x x x." Evidence is of utmost importance in establishing the existence of laches because, as stated in *Department of Education, Division of Albay vs. Oñate*, 'there is "no absolute rule as to what constitutes laches or staleness of demand; **each case is to be determined according to its particular circumstances**." x x x Verily, the application of laches is addressed to the sound discretion of the court as **its application is controlled by equitable considerations**.

2. ID.; ID.; ID.; ELEMENTS.— The Court stressed in *Heirs of Anacleto B. Nieto vs. Municipality of Meycauayan, Bulacan*, that: "x x x **laches is not concerned only with the mere lapse of time. The following elements must be present** in order to constitute laches: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice, of the defendant's conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred."

APPEARANCES OF COUNSEL

Yorac Arroyo Chua Caedo & Coronel for petitioner.
Angelo A. Serdon for respondents.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA) promulgated on November 18, 2004, and its Resolution[2] dated April 14, 2005, denying petitioner's Motion for Reconsideration, be reversed and set aside.

The records reveal the CA's narration of facts to be accurate, to wit:

> The case commenced on February 28, 1997 when herein plaintiff-appellee Jack Arroyo filed with the Regional Trial Court (Branch 56) of Libmanan, Camarines Sur, a complaint (Records, pp. 1-6) for recovery of possession and damages against herein defendants-appellants, Bocago Inland Development Corporation (BIDECO), represented by its President and General Manager Carlito Bocago, Basilisa *Vda. de* Bocago, Sammy Bocago Arringo and Inday Bueno.
>
> In his complaint, plaintiff-appellee averred that he is the owner of the three (3) parcels of land located at Del Gallego, Camarines Sur, which are now covered by TCT No. RT-854 (14007), TCT No. RT-853 (10065) and RT-855 (19085), all under his name. Plaintiff-appellee claimed that since his acquisition thereof in 1972, he has been paying the taxes for the said lands. He likewise claimed that when he bought the properties from the Development Bank of the Philippines, the same were already sixty percent (60%) developed, which was the reason for the purchase and, in addition, the said properties are natural breeding grounds for crabs and prawns.
>
> Later on, plaintiff-appellee discovered that defendants-appellants had been occupying the above-mentioned parcels of land since 1974. Plaintiff-appellee, through counsel, sent demand letters (Records, pp. 14-15) to defendants-appellants to return the peaceful possession of the parcels of land. But despite such demands, defendants-appellants

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[1] Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Perlita J. Tria Tirona and Rebecca De Guia-Salvador, concurring; *rollo*, pp. 12-34.

[2] *Id.* at 40.

never bothered to make a reply. Thus, because of the unlawful occupation by the defendants-appellants of the properties of plaintiff-appellee, the latter was forced to litigate. Plaintiff-appellee claimed for an award of damages in the form of unpaid rentals, attorney's fees of ₱100,000.00 and litigation expenses of ₱100,000.00.

On the other hand, defendants-appellants in their Answer (Records, pp. 24-29) maintained that plaintiff-appellee has no cause of action for he does not possess the said parcels of land nor manage the cultivation of the alleged fishpond. That the truth of the matter remains that the late Ramon Bocago was in possession of the said fishpond as early as 1967 when it was merely a swampy area and was not yet converted into a fishpond. In fact, it was Ramon Bocago, with the assistance of some of his sons, who personally introduced improvements in the area after the original applicant of the land, Mr. Anselmo Delantar, transferred his rights to the deceased Ramon Bocago. And after the death of Ramon Bocago in 1984, it was his heirs who continued the occupation, possession and development of the fishpond. In the year 1974, only about 25% of the area occupied was converted into fishpond until gradually an area of about 154,768 square meters, more or less, was finally developed with dikes enclosing the fishpond in the year 1991, all done at the sole expense of Ramon Bocago and then later on, by his heirs.

Defendants-appellants likewise contended that considering that the subject property is an agricultural land, the relief prayed for in the complaint will eventually result in the ejectment of the defendants-appellants which would clearly violate the agrarian reform laws, thus making the case fall within the exclusive jurisdiction of the DARAB. Furthermore, defendants-appellants also insisted that plaintiff-appellee's cause of action has already been barred by prescription, laches and estoppel. Thus, defendants-appellants not only prayed for the dismissal of the complaint but also for the payment of exemplary, actual and compensatory damages, attorney's fees and reimbursable litigation expenses.

On June 5, 1997, plaintiff-appellee filed a "Reply and Answer to Counterclaim" (Records, pp. 31-32) contending that he, being the owner of the aforesaid properties, has the right to enjoy the possession and enjoyment of the same and definitely has all the right to exclude anybody from their occupancy thereof.

The last pleading having been filed, the case was set for a pre-trial conference on July 21, 1997 (See: Order, Records, p. 34; Notice of Pre-trial Conference, Records, p. 35). Meanwhile, defendants-appellants filed on July 7, 1997 an Urgent Motion for Postponement (Records, pp. 36-37), stating that they cannot attend the July 21, 1997 pre-trial because their counsel has a prior commitment to appear in another hearing.

In an Order (Records, p. 52) dated July 21, 1997, the RTC, on motion of plaintiff-appellee, declared defendants-appellants as in default for failure to appear in the pre-trial and for failure to file a pre-trial brief. Plaintiff-appellee, as early as July 14, 1997 filed his pre-trial brief (Records, pp. 38-41), while defendants-appellants filed their pre-trial brief, through registered mail on July 18, 1997 and received by the RTC only on July 24, 1997 (Records, pp. 44-49).

The case was then reset to August 7, 1997 for the presentation of plaintiff-appellee's evidence (See: Order, Records, p. 52). On August 7, 1997, plaintiff-appellee's counsel failed to attend the scheduled hearing. The RTC reset the presentation of evidence to September 23, 1997 (Records pp. 53-54).

On August 29, 1997, defendants-appellants filed a "Motion to Set Aside Order of Default and to Declare Plaintiff's *Ex-Parte* Presentation of Evidence Made Thereafter Null and Void" (Records, pp. 55-62) stating that they had made a timely motion for postponement and their pre-trial brief was timely filed as it was sent through registered mail on July 18, 1997, three (3) days before the trial date.

On September 22, 1997, defendants-appellants filed a "Motion to Hold in Abeyance the Presentation of Plaintiff's Evidence Scheduled on September 23, 1997" (Records, pp. 65-A to 65-C) insisting to postpone the September 23, 1997 hearing until after the resolution of their motion to set aside the order of default.

The RTC, in an Order (Records, pp. 66-68) dated September 23, 1997 denied the two (2) Motions filed by defendants-appellants. The RTC further ruled that the motion for postponement of the pre-trial did not contain a date of hearing, and hence, it was treated as a mere scrap of paper and does not toll the running of the period to appeal.

On November 20, 1997, plaintiff-appellee filed a Motion to Admit Amended complaint. In his amended Complaint (Records, pp. 74-79), plaintiff-appellee impleaded the heirs of Ramon Bocago as new party defendants. The amended complaint was admitted by the RTC in an Order (Records, p, 80) dated March 5, 1998. On September 15, 1998, defendants-appellants filed a Manifestation and Motion (Records, pp. 90-92), stating that considering the four (4) newly impleaded defendants are actually being charged in the complaint, then the defendant corporation must be dropped as party defendant. This motion was denied by the RTC in an Order (Records, pp. 98-99) dated January 29, 1999. Reconsideration of the said January 29, 1999 Order was likewise denied by the RTC (See: Order, Records, p.108).

Service of summons was effected on the newly impleaded party defendants (Records, p. 111). On January 6, 2000, defendants-appellants, through counsel, filed an "Urgent Motion for Extension of Time to File Memorandum" (Records pp. 113-114). On January 13, 2000, defendants-appellants filed a "Second Urgent Motion for Extension of Time to File Responsive Pleading to the Amended Complaint" (Records, pp. 116-117). Both Motions were denied by the RTC in an Order (Records, p. 119) dated January 19, 2000 for being worthless pieces of paper as they do not contain a notice of hearing. Before defendants-appellants received the said January 19, 2000 Order, they again filed an "Urgent *Ex-Parte* Motion for Final Extension of Time to File Responsive Pleading to the Amended Complaint" (Records, pp. 120-121). On February 18, 2000, defendants-appellants filed a "Motion for Reconsideration of the Order of the court dated January 19, 2000" (Records, pp. 127-130).

On Motion of plaintiff-appellee, the RTC set the case for pre-trial conference on April 12, 2000 (See: Order, Records, p. 125). On February 16, 2000, defendants-appellants filed a "Motion to Hold in Abeyance the Pre-Trial Conference" (Records, pp. 132-133), which was scheduled on April 12, 2000 pending the resolution of the Motion for Reconsideration seeking to allow the filing of a responsive pleading. This Motion was granted in an Order dated March 31, 2000 (Records, p. 135). Meanwhile, in an Order of the RTC dated June 19, 2000, the RTC then considered the answer submitted to the initial complaint as the answer to the amended complaint, as defendants-appellants have not yet filed a responsive pleading. The case was then set for pre-trial on July 28, 2000 (Records, p. 136).

On July 28, 2000, both parties appeared, however, the pre-trial did not push through due to the illness of the Presiding Judge. Pre-trial was reset to September 22, 2000 (Records, p. 139). Two (2) days before the scheduled pre-trial, an Urgent Motion for Postponement was filed by defendants-appellants as the counsel was indisposed, a medical certificate to that effect was attached to the Motion (Records, pp. 141-143). The pre-trial was reset to October 20, 2000. But because defendants-appellants' counsel was stranded due to a typhoon, the pre-trial was reset to December 18, 2000 (Records, p. 148). Defendants-appellants' counsel urgently moved for the postponement of the December 18, 2000 hearing as he was already committed to appear in another case (Records, pp. 149-150). Pre-trial was reset to February 26, 2001 (Records, p. 155). Defendants-appellants' counsel failed to appear. On that same day, one of the parties, Carlito Bocago arrived and informed the Court that their counsel was brought to the hospital. Thus, the pre-trial was reset to May 28, 2001 (Records, p. 158). On May 28, 2001, counsel for both parties appeared but plaintiff-appellee's counsel manifested that his client is out of the country, hence, he prayed for the resetting to July 12, 2001. Both counsels agreed (Records, p. 161).

On July 12, 2001, counsel for defendants-appellants failed to appear. Plaintiff-appellee then prayed that defendants-appellants be declared in default and that he be allowed to present evidence *ex-parte*. On that date, one of the incorporators of defendant-appellant corporation, Divina Bocago-Legaspi arrived and informed the court that defendants-appellants' counsel was ill. But nonetheless, the RTC, in an Order (Records, p. 162) dated July 12, 2001, declared defendants-appellants in default and directed plaintiff-appellee to present evidence *ex-parte* anytime at plaintiff-appellee's convenience. And in an Amended Order (Records, pp. 163-164) dated July 26, 2001, the RTC, corrected itself, deleting the portion declaring defendant in default, but allowing plaintiff-appellee to present evidence *ex-parte*.

After plaintiff-appellee's presentation of evidence *ex-parte*, the RTC, on October 15, 2001, rendered a decision in favor of plaintiff-appellee Jack Arroyo and against defendants-appellants Bocago Inland Development Corporation and all its officers and members, including defendants-appellants Carlito Bocago, Basilisa *Vda. de* Bocago, Sammy Bocago Arringo and Inday Bueno. x x x

On October 26, 2001, plaintiff-appellee filed a "Motion for Partial Reconsideration" (Records, pp. 198-200) alleging that the award of reasonable rental adjudged by the RTC in the amount of ₱2,581,560.00 was insufficient. The proper reasonable rental, after considering the total area occupied by the defendants-appellants, as well as the duration of their stay should be ₱5,887,845.00. On the other hand, defendants-appellants filed on November 20, 2001, a "Motion for Reconsideration and/or to Declare the Decision Null and Void" (Records, pp. 202-214). Defendants-appellants contended that the absence of counsel in the pre-trial was based on a reasonable ground, as the counsel was ill. A medical certificate to prove the contention was attached to the motion. Defendants-appellants likewise prayed that they be allowed to present their own evidence. The RTC, in an Order (Records, p. 234) dated February 8, 2002, denied the two (2) Motions filed by both counsels.[3]

In a Decision[4] dated October 15, 2001, the Regional Trial Court (RTC) of Libmanan, Camarines Sur, Branch 56, ruled in favor of herein petitioner by disposing as follows:

WHEREFORE, on the basis of the evidence presented, decision is rendered in favor of plaintiff, Jack Arroyo, and against defendants, Bocago Inland Development Corporation (BIDECO), and all its officers and members, including defendants Carlito Bocago, Basilisa *Vda*. *de* Bocago, Sunny Bocago Arengo and Inday Bueno. The defendants are directed:

1. To vacate the properties described in the complaint and return the peaceful possession of the same to the plaintiff;

2. To pay plaintiff the amount of ₱2,581,560.00, as reasonable rentals of the property; and

3. To pay plaintiff ₱100,000.00 as attorney's fees.

SO ORDERED.[5]

Respondents appealed to the CA, and in a Decision promulgated on November 18, 2004, the CA upheld the propriety of the

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[3] *Rollo,* pp. 13-23.

[4] *Id.* at 183-189.

[5] *Id.* at 188.

RTC's order allowing herein petitioner (plaintiff-appellee below) to present his evidence *ex-parte*, as said ruling is pursuant to the provisions of Section 5, Rule 18 of the Rules of Court allowing such *ex-parte* presentation of plaintiff's evidence if the defendant fails to appear at the pre-trial; it likewise upheld the RTC finding that herein petitioner is the registered owner of the subject parcels of land being utilized as fishponds. Nevertheless, the CA set aside the RTC judgment and, instead, ordered petitioner's complaint dismissed on the ground of laches. The CA opined that petitioner failed to assert his right over said land for over twenty years, thus, laches had set in. Petitioner filed a motion for reconsideration of said Decision, but the same was denied in a Resolution dated April 14, 2005.

Hence, the present petition, where the main issue for resolution is whether petitioner's complaint should be deemed barred by laches.

The Court cannot agree with the appellate court that the principle of laches is applicable in this case.

The established rule, as reiterated in *Heirs of Tomas Dolleton vs. Fil-Estate Management, Inc.*,[6] is that "the elements of laches must be proven positively. Laches is evidentiary in nature, a fact that cannot be established by mere allegations in the pleadings x x x."[7] Evidence is of utmost importance in establishing the existence of laches because, as stated in *Department of Education, Division of Albay vs. Oñate*,[8] 'there is "no absolute rule as to what constitutes laches or staleness of demand; **each case is to be determined according to its particular circumstances**." x x x Verily, the application of laches is addressed to the sound discretion of the court as **its application is controlled by equitable considerations**.[9]

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[6] G.R. No. 170750, April 7, 2009, 584 SCRA 409.

[7] *Id.* at 430.

[8] G.R. No. 161758, June 8, 2007, 524 SCRA 200; See also *Heirs of Rosa Dumaliang and Cirila Dumaliang, etc. v. Serban*, G.R. No. 155133, February 21, 2007, 516 SCRA 343.

[9] *Id.* at 216-217, 221. (Emphasis supplied)

In this case, respondents (defendants-appellants below) did not present any evidence in support of their defense, as they failed to take advantage of all the opportunities they had to do so. The Court stressed in *Heirs of Anacleto B. Nieto vs. Municipality of Meycauayan, Bulacan*,[10] that:

> x x x **laches is not concerned only with the mere lapse of time. The following elements must be present** in order to constitute laches:
>
> (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made for which the complaint seeks a remedy;
>
> (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice, of the defendant's conduct and having been afforded an opportunity to institute a suit;
>
> (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and
>
> (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred.[11]

In this case, there is no evidence on record to prove the concurrence of all the aforementioned elements of laches. The first element may indeed be established by the admissions of both parties in the Complaint and Answer – *i.e.*, that petitioner is the registered owner of the subject property, but respondents had been occupying it for sometime and refuse to vacate the same – but the crucial circumstances of delay in asserting petitioner's right, lack of knowledge on the part of defendant that complainant would assert his right, and the injury or prejudice that defendant would suffer if the suit is not held to be barred, have not been proven. Therefore, in the absence of positive proof, it is impossible to determine if petitioner is guilty of laches.

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[10] G.R. No. 150654, December 13, 2007, 540 SCRA 100.

[11] *Id.* at 107-108. (Emphasis supplied)

At this juncture, it is best to emphasize the Court's ruling in *Labrador vs. Perlas*,[12] to wit:

x x x As a registered owner, petitioner has a right to eject any person illegally occupying his property. This right is imprescriptible and can never be barred by laches. In *Bishop v. Court of Appeals*, we held, thus:

> As registered owners of the lots in question, the private respondents have a right to eject any person illegally occupying their property. This right is imprescriptible. Even if it be supposed that they were aware of the petitioners' occupation of the property, and regardless of the length of that possession, the lawful owners have a right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all. This right is never barred by laches.

x x x Social justice and equity cannot be used to justify the court's grant of property to one at the expense of another who may have a better right thereto under the law. These principles are not intended to favor the underprivileged while purposely denying another of his right under the law.[13]

To rule that herein petitioner is guilty of laches even in the absence of evidence to that effect would truly run afoul of the principle of justice and equity.

IN VIEW OF THE FOREGOING, the Petition is **GRANTED**. The Decision of the Court of Appeals, dated November 18, 2004, and its Resolution dated April 14, 2005 in CA-G.R. CV No. 74603, are hereby **SET ASIDE**, and the Decision of the Regional Trial Court of Libmanan, Camarines Sur, Branch 56, dated October 15, 2001 in Civil Case No. L-829, is **REINSTATED**.

SO ORDERED.

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

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[12] G.R. No. 173900, August 9, 2010, 627 SCRA 265.

[13] *Id.* at 272.

[*] Designated Acting Member, per Special Order No. 1299 dated August 28, 2012.

THIRD DIVISION

[G.R. No. 171579. November 14, 2012]

LILY SY, *petitioner, vs.* **HON. SECRETARY OF JUSTICE MA. MERCEDITAS N. GUTIERREZ, BENITO FERNANDEZ GO, BERTHOLD LIM, JENNIFER SY, GLENN BEN TIAK SY and MERRY SY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; DEFINED.— Probable cause refers to facts and circumstances that engender a well-founded belief that a crime has been committed and that the respondents are probably guilty thereof and should be held for trial. There is no definitive standard by which probable cause is determined except to consider the attendant conditions.

2. CRIMINAL LAW; ROBBERY; ELEMENTS.— "Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, is guilty of robbery." To constitute robbery, the following elements must be established: "(1) The subject is personal property belonging to another; (2) There is unlawful taking of that property; (3) The taking is with the intent to gain; and (4) There is violence against or intimidation of any person or use of force upon things."

3. ID.; ID.; *ANIMUS LUCRANDI* OR INTENT TO GAIN; THE TAKING SHOULD NOT BE UNDER A CLAIM OF OWNERSHIP.— Taking as an element of robbery means depriving the offended party of ownership of the thing taken with the character of permanency. The taking should not be under a claim of ownership. Thus, one who takes the property openly and avowedly under claim of title offered in good faith is not guilty of robbery even though the claim of ownership is untenable. The intent to gain cannot be established by direct evidence being an internal act. It must, therefore, be deduced from the circumstances surrounding the commission of the offense.

APPEARANCES OF COUNSEL

Tiongco Avecilla Flores & Palarca for petitioner.
Inoturan & Associates for private respondent.

D E C I S I O N

PERALTA, *J.*:

In a Complaint-Affidavit[1] filed on August 7, 2000, petitioner Lily Sy (petitioner) claimed that in the morning of December 16, 1999, respondents Benito Fernandez Go (Benito) and Glenn Ben Tiak Sy (Glenn), together with "Elmo," a security guard of Hawk Security Agency, went to petitioner's residence at the 10th Floor, Fortune Wealth, 612 Elcano St., Binondo, Manila and forcibly opened the door, destroyed and dismantled the door lock then replaced it with a new one, without petitioner's consent.[2] She, likewise, declared that as a diversionary ruse, respondent Jennifer Sy (Jennifer) was at the lobby of the same building who informed petitioner's helper Geralyn Juanites (Geralyn) that the elevator was not working.[3] Glenn and Benito's act of replacing the door lock appeared to be authorized by a resolution of Fortune Wealth Mansion Corporation's Board of Directors, namely, respondents Glenn, Jennifer, William Sy (William), Merlyn Sy (Merlyn), and Merry Sy (Merry).[4]

In the evening of the same date, petitioner supposedly saw Benito, Glenn, Jennifer, Merry and respondent Berthold Lim (Berthold) took from her residence numerous boxes containing her personal belongings without her consent and, with intent to gain, load them inside a family-owned van/truck named "Wheels in Motion."[5] The same incident supposedly happened in January

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[1] OCP records, pp. 127-130.

[2] *Id*. at 129.

[3] *Id*. at 129.

[4] *Id*.

[5] *Id*. at 128.

2000 and the "stolen" boxes allegedly reached 34,[6] the contents of which were valued at ₱10,244,196.00.[7]

Respondents Benito and Berthold denied the accusations against them. They explained that petitioner made the baseless charges simply because she hated their wives Merry and Jennifer due to irreconcilable personal differences on how to go about the estates of their deceased parents then pending before the Regional Trial Court (RTC) of Manila, Branch 51.[8] They also manifested their doubts on petitioner's capability to acquire the personal belongings allegedly stolen by them.[9]

Merry, Glenn, and Jennifer, on the other hand, claimed that petitioner's accusations were brought about by the worsening state of their personal relationship because of misunderstanding on how to divide the estate of their deceased father.[10] They also pointed out that the whole condominium building where the alleged residence of petitioner is located, is owned and registered in the name of the corporation.[11] They explained that the claimed residence was actually the former residence of their family (including petitioner).[12] After their parents' death, the corporation allegedly tolerated petitioner to continuously occupy said unit while they, in turn, stayed in the other vacant units leaving some of their properties and those of the corporation in their former residence.[13] They further stated that petitioner transferred to the ground floor because the 10th floor's electric service was disconnected.[14] They explained that they changed

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[6] *Id*.

[7] *Id*. at 127.

[8] *Id*. at 103.

[9] *Id*. at 102.

[10] *Id*. at 100.

[11] *Id*. at 100.

[12] *Id*.

[13] *Id*.

[14] *Id*. at 99.

the unit's door lock to protect their personal belongings and those of the corporation as petitioner had initially changed the original lock.[15] They supported their authority to do so with a board resolution duly issued by the directors. They questioned petitioner's failure to report the alleged incident to the police, considering that they supposedly witnessed the unlawful taking.[16] They thus contended that petitioner's accusations are based on illusions and wild imaginations, aggravated by her ill motive, greed for money and indiscriminate prosecution.[17]

In the Resolution[18] dated September 28, 2001, Assistant City Prosecutor Jovencio T. Tating (ACP Tating) recommended that respondents Benito, Berthold, Jennifer, Glenn and Merry be charged with Robbery In An Uninhabited Place; and that the charges against William Go[19] (the alleged new owner of the building), and "Elmo Hubio" be dismissed for insufficiency of evidence.[20] ACP Tating found that the subject condominium unit is in fact petitioner's residence and that respondents indeed took the former's personal belongings with intent to gain and without petitioner's consent. He further held that respondents' defenses are not only contradictory but evidentiary in nature.[21] The corresponding Information[22] was filed before the RTC of Manila, docketed as Criminal Case No. 02-199574 and was raffled to Branch 19. On motion of Jennifer, Glenn and Merry, the RTC ordered a reinvestigation on the ground of newly-discovered evidence consisting of an affidavit of the witness.[23] This notwithstanding, the Office of the City Prosecutor (OCP)

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[15] *Id*. 98.

[16] *Id*. at 95.

[17] *Id*.

[18] *Id*. at 145-149.

[19] Also referred to as William Yao in the records.

[20] OCP records, p. 145.

[21] *Id*.

[22] *Id*. at 150-151.

[23] *Id*. at 163.

sustained in a Resolution[24] dated September 23, 2002 its earlier conclusion and recommended the denial of respondents' motion for reconsideration.

When elevated before the Secretary of Justice, then Secretary Simeon A. Datumanong (the Secretary) reversed and set aside[25] the ACP's conclusions and the latter was directed to move for the withdrawal of the Information against respondents.[26] The Secretary stressed that the claimed residence of petitioner is not an uninhabited place under the penal laws, considering her allegation that it is her residence.[27] Neither can it be considered uninhabited under Article 300 of the Revised Penal Code (RPC), since it is located in a populous place.[28] The Secretary opined that the elements of robbery were not present, since there was no violence against or intimidation of persons, or force upon things, as the replacement of the door lock was authorized by a board resolution.[29] It is likewise his conclusion that the element of taking was not adequately established as petitioner and her helper were not able to see the taking of anything of value. If at all there was taking, the Secretary concluded that it was made under a claim of ownership.[30] Petitioner's motion for reconsideration was denied on June 17, 2004.[31]

Aggrieved, petitioner went up to the Court of Appeals (CA) in a special civil action for *certiorari* under Rule 65 of the Rules of Court. On December 20, 2004, the CA rendered a Decision[32] granting the petition and, consequently, setting aside

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[24] *Id.* at 186.

[25] Embodied in a Resolution dated September 24, 2003.

[26] OCP records, p. 189.

[27] *Id.* at 192.

[28] *Id.*

[29] *Id.* at 190.

[30] *Id.* at 188-189.

[31] *Id.* at 196-197.

[32] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Roberto A. Barrios and Amelita G. Tolentino, concurring; *id.* at 138-165.

the assailed Secretary's Resolutions and reinstating the OCP's Resolution with the directive that the Information be amended to reflect the facts as alleged in the complaint that the robbery was committed in an inhabited place and that it was committed through force upon things.[33]

The CA held that petitioner had sufficiently shown that the Secretary gravely abused her discretion in reversing the OCP's decision.[34] While recognizing the mistake in the designation of the offense committed because it should have been robbery in an inhabited place, the CA held that the mistake can be remedied by the amendment of the Information.[35] Indeed, since the element of violence against or intimidation of persons was not established, the same was immaterial as the crime was allegedly committed with force upon things.[36] Thus, it held that petitioner adequately showed that at the time of the commission of the offense, she was in possession of the subject residential unit and that respondents should not have taken the law into their own hands if they indeed had claims over the personal properties inside the subject unit.[37] It also did not give credence to the newly-discovered evidence presented by respondents, because the affidavit was executed two years after the filing of petitioner's complaint.[38] Lastly, the CA held that the element of taking was shown with circumstantial evidence.[39]

On motion of respondents, the CA rendered an Amended Decision[40] dated May 9, 2005, setting aside its earlier decision

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[33] OCP records, p. 156.

[34] *Rollo*, pp. 147-148.

[35] *Id.* at 148.

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

[37] *Id.* at 151-152.

[38] *Id.* at 152.

[39] *Id.* at 153-154.

[40] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Roberto A. Barrios and Amelita G. Tolentino, concurring; *id.* at 159-165.

and reinstating the DOJ Secretaries' Resolutions.[41] It concluded that as part-owner of the entire building and of the articles allegedly stolen from the subject residential unit, the very same properties involved in the pending estate proceedings, respondents cannot, as co-owners, steal what they claim to own and thus cannot be charged with robbery.[42] It continued and held that assuming that the door was forced open, the same cannot be construed as an element of robbery as such was necessary due to petitioner's unjustified refusal to allow the other co-owners to gain access to the premises even for the lawful purpose of allowing prospective buyers to have a look at the building.[43] Petitioner's motion for reconsideration was denied in the assailed Resolution[44] dated February 10, 2006.

Hence, this petition raising the following issues:

I. THE HONORABLE COURT OF APPEALS COMMITTED A GRIEVOUS ERROR WHEN IT RULED THAT A CORPORATION MAY ARBITRARILY TAKE THE LAW INTO THEIR OWN HANDS BY MEANS OF A MERE BOARD RESOLUTION.

II. THE HONORABLE COURT OF APPEALS COMMITTED A GRIEVOUS ERROR WHEN IT RULED THAT THE PETITIONER WAS NO LONGER IN POSSESSION OF THE UNIT SIMPLY BECAUSE THE PETITIONER WAS IN POSSESSION OF ANOTHER UNIT.[45]

We find no merit in the petition.

At the outset, a perusal of the records of Criminal Case No. 02-199574 in *People of the Philippines v. Benito Fernandez Go, et al.*, pending before the RTC where the Information for

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[41] *Rollo*, p. 165.

[42] *Id.* at 163.

[43] *Id.* at 164.

[44] Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Jose C. Mendoza and Arturo G. Tayag, concurring, *id.* at 51-57.

[45] *Rollo*, p. 38.

Robbery was filed, would show that on March 12, 2008, Presiding Judge Zenaida R. Daguna issued an Order[46] granting the Motion to Withdraw Information filed by ACP Armando C. Velasco. The withdrawal of the information was based on the alleged failure of petitioner to take action on the Amended Decision issued by the CA which, in effect, reversed and set aside the finding of probable cause, and in order for the case not to appear pending in the docket of the court. The propriety of the determination of probable cause is, however, the subject of this present petition. Besides, in allowing the withdrawal of the information, the RTC in fact did not make a determination of the existence of probable cause. Thus, the withdrawal of the information does not bar the Court from making a final determination of whether or not probable cause exists to warrant the filing of an Information for Robbery against respondents in order to *write finis* to the issue elevated before us.[47]

From the time the complaint was first lodged with the OCP, the latter, the Secretary of Justice and the CA had been in disagreement as to the existence or absence of probable cause sufficient to indict respondents of the offense charged. After a thorough review of the records of the case, we find no reason to depart from the CA conclusion that the evidence presented was not sufficient to support a finding of probable cause.

Probable cause refers to facts and circumstances that engender a well-founded belief that a crime has been committed and that the respondents are probably guilty thereof and should be held for trial.[48] There is no definitive standard by which probable cause is determined except to consider the attendant conditions.[49]

Respondents were charged with *robbery in an uninhabited place*, which was later amended to reflect the facts as alleged

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[46] RTC records, Vol. II, p. 000255.

[47] See *Torres, Jr. v. Aguinaldo*, G.R. No. 164268, June 28, 2005, 461 SCRA 599.

[48] *Metropolitan Bank and Trust Co. (Metrobank), represented by Rosella A. Santiago v. Antonino O. Tobias III*, G.R. No. 177780, January 25, 2012.

[49] *Id*.

in the complaint that the robbery was committed in an inhabited place and that it was committed through force upon things.[50]

"Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, is guilty of robbery."[51] To constitute robbery, the following elements must be established:

(1) The subject is personal property belonging to another;
(2) There is unlawful taking of that property;
(3) The taking is with the intent to gain; and
(4) There is violence against or intimidation of any person or use of force upon things.[52]

Admittedly, the subject 10th floor unit is owned by the corporation and served as the family residence prior to the death of petitioner and respondents' parents. The 10th floor unit, including the personal properties inside, is the subject of estate proceedings pending in another court and is, therefore, involved in the disputed claims among the siblings (petitioner and respondents). Respondents admitted that armed with a Board Resolution authorizing them to break open the door lock system of said unit and to install a new door lock system, they went up to the subject unit to implement said resolution. The said corporate action was arrived at because petitioner had allegedly prevented prospective buyers from conducting ocular inspection.

Petitioner, however, claims that on December 16, 1999 and sometime in January 2000, respondents brought out from the unit 34 boxes containing her personal belongings worth more than ₱10 million. We cannot, however, fathom why petitioner did not immediately report the first incident and waited for yet another incident after more or less one month. If the value involved is what she claims to be, it is contrary to human nature

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[50] OCP records, p. 156.

[51] *Bernal v. Court of Appeals*, 247-A Phil. 92, 97 (1988).

[52] *De Guzman v. People*, G.R. No. 166502, October 17, 2008, 569 SCRA 452, 457.

to just keep silent and not immediately protect her right. Her general statement that she was intimidated by Benito who was known to be capable of inflicting bodily harm cannot excuse her inaction. Petitioner, therefore, failed to establish that there was unlawful taking.

Assuming that respondents indeed took said boxes containing personal belongings, said properties were taken under claim of ownership which negates the element of intent to gain.

x x x *Animus lucrandi* or intent to gain is an internal act which can be established through the overt acts of the offender. The unlawful taking of another's property gives rise to the presumption that the act was committed with intent to gain. This presumption holds unless special circumstances reveal a different intent on the part of the perpetrator x x x.[53]

Taking as an element of robbery means depriving the offended party of ownership of the thing taken with the character of permanency. The taking should not be under a claim of ownership. Thus, one who takes the property openly and avowedly under claim of title offered in good faith is not guilty of robbery even though the claim of ownership is untenable.[54] The intent to gain cannot be established by direct evidence being an internal act. It must, therefore, be deduced from the circumstances surrounding the commission of the offense.[55]

In this case, it was shown that respondents believed in good faith that they and the corporation own not only the subject unit but also the properties found inside. If at all, they took them openly and avowedly under that claim of ownership.[56] This is bolstered by the fact that at the time of the alleged incident, petitioner had been staying in another unit because the electric service in the 10th floor was disconnected. We quote

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[53] *Id.* at 457.

[54] *Bernal v. Court of Appeals, supra* note 51; *United States v. Manluco,* 28 Phil. 360, 361 (1914).

[55] *Bernal v. Court of Appeals, supra* note 51. at 98.

[56] *United States v. Manluco, supra* note 51, 361.

with approval the CA conclusion in their Amended Decision, thus:

> Indeed, on second look, We note that what is involved here is a dispute between and among members of a family corporation, the Fortune Wealth Mansion Corporation. [Petitioner] Lily Sy and [respondents] Merry, Jennifer, and Glenn, all surnamed Sy, are the owners-incorporators of said corporation, which owns and manages the Fortune Wealth Mansion where [petitioner] allegedly resided and where the crime of robbery was allegedly committed. As part-owners of the entire building and of the articles allegedly stolen from the 10th floor of said building … the very same properties that are involved between the same parties in a pending estate proceeding, the [respondents] cannot, as co-owners, be therefore charged with robbery. The fact of co-ownership negates any intention to gain, as they cannot steal properties which they claim to own.
>
> Hence, even if we are to assume that private respondents took the said personal properties from the 10th floor of the Fortune Wealth Mansion, they cannot be charged with robbery because again, the taking was made under a claim of ownership x x x[57]

Respondents should not be held liable for the alleged unlawful act absent a felonious intent. "*Actus non facit reum, nisi mens sit rea.* A crime is not committed if the mind of the person performing the act complained of is innocent."[58]

The Court adheres to the view that a preliminary investigation serves not only the purposes of the State, but more importantly, it is a significant part of freedom and fair play which every individual is entitled to. It is thus the duty of the prosecutor or the judge, as the case may be, to relieve the accused of going through a trial once it is determined that there is no sufficient evidence to sustain a finding of probable cause to form a sufficient belief that the accused has committed a crime. In this case, absent sufficient evidence to establish probable cause for the prosecution of respondents for the crime of robbery, the filing of information against respondents constitute grave abuse of discretion.[59]

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[57] *Rollo*, pp. 162-163.

[58] *De Guzman v. People*, *supra* note 52, at 458.

[59] *Yupangco Cotton Mills, Inc. v. Mendoza*, 494 Phil. 391, 416 (2005).

WHEREFORE, premises considered, the petition is hereby **DENIED** for lack of merit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 176791. November 14, 2012]

COMMUNITIES CAGAYAN, INC., *petitioner, vs.* **SPOUSES ARSENIO (Deceased) and ANGELES NANOL and ANYBODY CLAIMING RIGHTS UNDER THEM,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; A PARTY WHO DOES NOT APPEAL FROM A JUDGMENT CAN NO LONGER SEEK MODIFICATION OR REVERSAL OF THE SAME.— [W]e must make it clear that the issues raised by respondent Angeles may not be entertained. For failing to file an appeal, she is bound by the Decision of the RTC. Well entrenched is the rule that "a party who does not appeal from a judgment can no longer seek modification or reversal of the same. He may oppose the appeal of the other party only on grounds consistent with the judgment." For this reason, respondent Angeles may no longer question the propriety and

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[*] Designated Acting Member, in lieu of Associate Justice Jose Catral Mendoza, per Raffle dated January 26, 2012.

[**] Designated Acting Member, per Special Order No. 1299 dated August 28, 2012.

correctness of the annulment of the Deed of Absolute Sale, the cancellation of TCT Nos. 105202 and 105203, and the order to vacate the property.

2. CIVIL LAW; SALES; REPUBLIC ACT NO. 6552 (THE MACEDA LAW); CONTRACT TO SELL; WHEN ACTUALLY CANCELLED.— [U]nder the Maceda Law, the actual cancellation of a contract to sell takes place after 30 days from receipt by the buyer of the notarized notice of cancellation, and upon full payment of the cash surrender value to the buyer. In other words, before a contract to sell can be validly and effectively cancelled, the seller has (1) to send a notarized notice of cancellation to the buyer and (2) to refund the cash surrender value. Until and unless the seller complies with these twin mandatory requirements, the contract to sell between the parties remains valid and subsisting. Thus, the buyer has the right to continue occupying the property subject of the contract to sell, and may "still reinstate the contract by updating the account during the grace period and before the actual cancellation" of the contract.

3. ID.; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; RIGHT OF ACCESSION; ARTICLE 448 OF THE CIVIL CODE; APPLIES WHEN THE BUILDER HAS A CLAIM OF TITLE OVER THE PROPERTY; EXCEPTION.— As a general rule, Article 448 on builders in good faith does not apply where there is a contractual relation between the parties, such as in the instant case. x x x Article 448 of the Civil Code applies when the builder believes that he is the owner of the land or that by some title he has the right to build thereon, or that, at least, he has a claim of title thereto. Concededly, this is not present in the instant case. The subject property is covered by a Contract to Sell hence ownership still remains with petitioner being the seller. Nevertheless, there were already instances where this Court applied Article 448 even if the builders do not have a claim of title over the property. x x x [T]he Court applied Article 448 by construing good faith beyond its limited definition. We find no reason not to apply the Court's ruling in *Spouses Macasaet v. Spouses Macasaet* in this case. We thus hold that Article 448 is also applicable to the instant case. First, good faith is presumed on the part of the respondent-spouses. Second, petitioner failed to rebut

this presumption. Third, no evidence was presented to show that petitioner opposed or objected to the improvements introduced by the respondent-spouses. Consequently, we can validly presume that petitioner consented to the improvements being constructed. This presumption is bolstered by the fact that as the subdivision developer, petitioner must have given the respondent-spouses permits to commence and undertake the construction. Under Article 453 of the Civil Code, "[i]t is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part."

4. ID.; ID.; ID.; ID.; ID.; OPTIONS OF THE LANDOWNER.— In *Tuatis,* we ruled that the seller (the owner of the land) has two options under Article 448: (1) he may appropriate the improvements for himself after reimbursing the buyer (the builder in good faith) the necessary and useful expenses under Articles 546 and 548 of the Civil Code; or (2) he may sell the land to the buyer, unless its value is considerably more than that of the improvements, in which case, the buyer shall pay reasonable rent. x x x [W]e hold that petitioner, as landowner, has two options. It may appropriate the new house by reimbursing respondent Angeles the current market value thereof minus the cost of the old house. Under this option, respondent Angeles would have "a right of retention which negates the obligation to pay rent." In the alternative, petitioner may sell the lots to respondent Angeles at a price equivalent to the current fair value thereof. However, if the value of the lots is considerably more than the value of the improvement, respondent Angeles cannot be compelled to purchase the lots. She can only be obliged to pay petitioner reasonable rent.

APPEARANCES OF COUNSEL

Salcedo-Babarin and Babarin Law Office for petitioner.
Rexy Pador for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Laws fill the gap in a contract.

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the December 29, 2006 Decision[2] and the February 12, 2007 Order[3] of the Regional Trial Court (RTC), Cagayan de Oro City, Branch 18, in Civil Case No. 2005-158.

Factual Antecedents

Sometime in 1994, respondent-spouses Arsenio and Angeles Nanol entered into a Contract to Sell[4] with petitioner Communities Cagayan, Inc.,[5] whereby the latter agreed to sell to respondent-spouses a house and Lots 17 and 19[6] located at Block 16, Camella Homes Subdivision, Cagayan de Oro City,[7] for the price of ₱368,000.00.[8] Respondent-spouses, however, did not avail of petitioner's in-house financing due to its high interest rates.[9] Instead, they obtained a loan from Capitol Development Bank, a sister company of petitioner, using the property as collateral.[10] To facilitate the loan, a simulated sale over the property was executed by petitioner in favor of respondent-spouses.[11]

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[1] *Rollo,* pp. 17-29.

[2] *Id.* at 30-35; penned by Presiding Judge Edgardo T. Lloren.

[3] *Id.* at 38.

[4] Only the first page of the Contract to Sell was attached; *id.* at 176.

[5] Formerly Masterplan Properties, Inc.; *id.* at 31.

[6] Covered by Transfer Certificate of Title Nos. T-74947 and T-74949; *id.* at 180 and 182.

[7] *Id.* at 31.

[8] *Id.* at 142-143.

[9] *Id.* at 50.

[10] *Id.* at 31.

[11] *Id.* at 31-32.

Accordingly, titles were transferred in the names of respondent-spouses under Transfer Certificates of Title (TCT) Nos. 105202 and 105203, and submitted to Capitol Development Bank for loan processing.[12] Unfortunately, the bank collapsed and closed before it could release the loan.[13]

Thus, on November 30, 1997, respondent-spouses entered into another Contract to Sell[14] with petitioner over the same property for the same price of ₱368,000.00.[15] This time, respondent-spouses availed of petitioner's in-house financing[16] thus, undertaking to pay the loan over four years, from 1997 to 2001.[17]

Sometime in 2000, respondent Arsenio demolished the original house and constructed a three-story house allegedly valued at ₱3.5 million, more or less.[18]

In July 2001, respondent Arsenio died, leaving his wife, herein respondent Angeles, to pay for the monthly amortizations.[19]

On September 10, 2003, petitioner sent respondent-spouses a notarized Notice of Delinquency and Cancellation of Contract to Sell[20] due to the latter's failure to pay the monthly amortizations.

In December 2003, petitioner filed before Branch 3 of the Municipal Trial Court in Cities of Cagayan de Oro City, an action for unlawful detainer, docketed as C3-Dec-2160, against

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[12] *Id.*

[13] *Id.* at 32.

[14] Both petitioner and respondent-spouses failed to attach a copy of the Contract to Sell in the pleadings they filed before the RTC and the Supreme Court.

[15] *Rollo,* p. 32 and Records, p. 186.

[16] *Rollo,* p. 51.

[17] Records, p. 186.

[18] *Rollo,* p. 145.

[19] *Id.* at 133.

[20] Records, p. 201.

respondent-spouses.[21] When the case was referred for mediation, respondent Angeles offered to pay ₱220,000.00 to settle the case but petitioner refused to accept the payment.[22] The case was later withdrawn and consequently dismissed because the judge found out that the titles were already registered under the names of respondent-spouses.[23]

Unfazed by the unfortunate turn of events, petitioner, on July 27, 2005, filed before Branch 18 of the RTC, Cagayan de Oro City, a Complaint for Cancellation of Title, Recovery of Possession, Reconveyance and Damages, [24] docketed as Civil Case No. 2005-158, against respondent-spouses and all persons claiming rights under them. Petitioner alleged that the transfer of the titles in the names of respondent-spouses was made only in compliance with the requirements of Capitol Development Bank and that respondent-spouses failed to pay their monthly amortizations beginning January 2000.[25] Thus, petitioner prayed that TCT Nos. T-105202 and T-105203 be cancelled, and that respondent Angeles be ordered to vacate the subject property and to pay petitioner reasonable monthly rentals from January 2000 plus damages.[26]

In her Answer,[27] respondent Angeles averred that the Deed of Absolute Sale is valid, and that petitioner is not the proper party to file the complaint because petitioner is different from Masterplan Properties, Inc.[28] She also prayed for damages by way of compulsory counterclaim.[29]

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[21] *Rollo*, p. 133.

[22] *Id.* at 193-194.

[23] *Id.* at 134.

[24] *Id.* at 49-56.

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

[26] *Id.* at 55.

[27] *Id.* at 190-205.

[28] *Id.* at 196-197.

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

In its Reply,[30] petitioner attached a copy of its Certificate of Filing of Amended Articles of Incorporation[31] showing that Masterplan Properties, Inc. and petitioner are one and the same. As to the compulsory counterclaim for damages, petitioner denied the same on the ground of "lack of knowledge sufficient to form a belief as to the truth or falsity of such allegation."[32]

Respondent Angeles then moved for summary judgment and prayed that petitioner be ordered to return the owner's duplicate copies of the TCTs.[33]

Pursuant to Administrative Order No. 59-2005, the case was referred for mediation.[34] But since the parties failed to arrive at an amicable settlement, the case was set for preliminary conference on February 23, 2006.[35]

On July 7, 2006, the parties agreed to submit the case for decision based on the pleadings and exhibits presented during the preliminary conference. [36]

Ruling of the Regional Trial Court

On December 29, 2006, the RTC rendered judgment declaring the Deed of Absolute Sale invalid for lack of consideration.[37] Thus, it disposed of the case in this wise:

WHEREFORE, the Court hereby declares the Deed of Absolute Sale **VOID**. Accordingly, Transfer Certificate[s] of Title Nos. 105202 and 105203 in the names of the [respondents], Arsenio (deceased) and Angeles Nanol, are ordered **CANCELLED**. The [respondents] and any person claiming rights under them are directed to turn-over

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[30] Records, pp. 57-59.

[31] *Id.* at 60.

[32] *Id.* at 58.

[33] *Id.* at 76-84.

[34] *Id.* at 89.

[35] *Id.* at 92.

[36] *Id.* at 160.

[37] *Rollo,* p. 34.

the possession of the house and lot to [petitioner], Communities Cagayan, Inc., subject to the latter's payment of their total monthly installments and the value of the new house minus the cost of the original house.

SO ORDERED.[38]

Not satisfied, petitioner moved for reconsideration of the Decision but the Motion[39] was denied in an Order[40] dated February 12, 2007.

Issue

Instead of appealing the Decision to the Court of Appeals (CA), petitioner opted to file the instant petition directly with this Court on a pure question of law, to wit:

WHETHER X X X THE ACTION [OF] THE [RTC] BRANCH 18 X X X IN ORDERING THE RECOVERY OF POSSESSION BY PETITIONER '*subject to the latter's payment of their total monthly installments and the value of the new house minus the cost of the original house*' IS CONTRARY TO LAW AND JURISPRUDENCE X X X.[41]

Petitioner's Arguments

Petitioner seeks to delete from the dispositive portion the order requiring petitioner to reimburse respondent-spouses the total monthly installments they had paid and the value of the new house minus the cost of the original house.[42] Petitioner claims that there is no legal basis for the RTC to require petitioner to reimburse the cost of the new house because respondent-spouses were in bad faith when they renovated and improved the house, which was not yet their own.[43] Petitioner further

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[38] *Id.* at 35.

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

[40] *Id.* at 38.

[41] *Id.* at 136.

[42] *Id.* at 130.

[43] *Id.* at 137.

contends that instead of ordering mutual restitution by the parties, the RTC should have applied Republic Act No. 6552, otherwise known as the Maceda Law,[44] and that instead of awarding respondent-spouses a refund of all their monthly amortization payments, the RTC should have ordered them to pay petitioner monthly rentals.[45]

Respondent Angeles' Arguments

Instead of answering the legal issue raised by petitioner, respondent Angeles asks for a review of the Decision of the RTC by interposing additional issues.[46] She maintains that the Deed of Absolute Sale is valid.[47] Thus, the RTC erred in cancelling TCT Nos. 105202 and 105203.

Our Ruling

The petition is partly meritorious.

At the outset, we must make it clear that the issues raised by respondent Angeles may not be entertained. For failing to file an appeal, she is bound by the Decision of the RTC. Well entrenched is the rule that "a party who does not appeal from a judgment can no longer seek modification or reversal of the same. He may oppose the appeal of the other party only on grounds consistent with the judgment."[48] For this reason, respondent Angeles may no longer question the propriety and correctness of the annulment of the Deed of Absolute Sale, the cancellation of TCT Nos. 105202 and 105203, and the order to vacate the property.

Hence, the only issue that must be resolved in this case is whether the RTC erred in ordering petitioner to reimburse

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

[45] *Id.* at 136.

[46] *Id.* at 152.

[47] *Id.* at 156.

[48] *Raquel-Santos v. Court of Appeals*, G.R. Nos. 174986, 175071 & 181415, July 7, 2009, 592 SCRA 169, 190-191.

respondent-spouses the "total monthly installments and the value of the new house minus the cost of the original house."[49] Otherwise stated, the issues for our resolution are:

1) Whether petitioner is obliged to refund to respondent-spouses all the monthly installments paid; and

2) Whether petitioner is obliged to reimburse respondent-spouses the value of the new house minus the cost of the original house.

Respondent-spouses are entitled to the cash surrender value of the payments on the property equivalent to 50% of the total payments made.

Considering that this case stemmed from a Contract to Sell executed by the petitioner and the respondent-spouses, we agree with petitioner that the Maceda Law, which governs sales of real estate on installment, should be applied.

Sections 3, 4, and 5 of the Maceda Law provide for the rights of a defaulting buyer, to wit:

Section 3. In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight hundred forty-four, as amended by Republic Act Numbered Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:

(a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him which is hereby fixed at the rate of one month grace period for every one year of installment payments made: Provided, That this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any.

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[49] *Rollo*, p. 35.

(b) **If the contract is canceled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty percent of the total payments made,** and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made: Provided, That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.

Down payments, deposits or options on the contract shall be included in the computation of the total number of installment payments made. (Emphasis supplied.)

Section 4. In case where less than two years of installments were paid, the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due.

If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act.

Section 5. Under Sections 3 and 4, the buyer shall have the right to sell his rights or assign the same to another person or to reinstate the contract by updating the account during the grace period and before actual cancellation of the contract. The deed of sale or assignment shall be done by notarial act.

In this connection, we deem it necessary to point out that, under the Maceda Law, the actual cancellation of a contract to sell takes place after 30 days from receipt by the buyer of the notarized notice of cancellation,[50] and upon full payment of the cash surrender value to the buyer.[51] In other words, before a contract to sell can be validly and effectively cancelled, the seller has (1) to send a notarized notice of cancellation to the

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[50] An action for annulment of contract is a kindred concept of rescission by notarial act (*Pagtalunan v. Dela Cruz Vda. de Manzano*, G.R. No. 147695, September 13, 2007, 533 SCRA 242, 254).

[51] *Id.* at 253.

buyer and (2) to refund the cash surrender value.[52] Until and unless the seller complies with these twin mandatory requirements, the contract to sell between the parties remains valid and subsisting.[53] Thus, the buyer has the right to continue occupying the property subject of the contract to sell,[54] and may "still reinstate the contract by updating the account during the grace period and before the actual cancellation"[55] of the contract.

In this case, petitioner complied only with the first condition by sending a notarized notice of cancellation to the respondent-spouses. It failed, however, to refund the cash surrender value to the respondent-spouses. Thus, the Contract to Sell remains valid and subsisting and supposedly, respondent-spouses have the right to continue occupying the subject property. Unfortunately, we cannot reverse the Decision of the RTC directing respondent-spouses to vacate and turn-over possession of the subject property to petitioner because respondent-spouses never appealed the order. The RTC Decision as to respondent-spouses is therefore considered final.

In addition, in view of respondent-spouses' failure to appeal, they can no longer reinstate the contract by updating the account. Allowing them to do so would be unfair to the other party and is offensive to the rules of fair play, justice, and due process. Thus, based on the factual milieu of the instant case, the most that we can do is to order the return of the cash surrender value. Since respondent-spouses paid at least two years of installment,[56] they are entitled to receive the cash surrender value of the payments they had made which, under Section 3(b) of the Maceda Law, is equivalent to 50% of the total payments made.

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[52] *Active Realty & Development Corp. v. Daroya*, 431 Phil. 753, 761-762 (2002).

[53] *Id.* at 763.

[54] *Pagtalunan v. Dela Cruz Vda. de Manzano*, *supra* at 254-255.

[55] *Leaño v. Court of Appeals*, 420 Phil. 836, 847 (2001).

[56] Records, p. 202.

Respondent-spouses are entitled to reimbursement of the improvements made on the property.

Petitioner posits that Article 448 of the Civil Code does not apply and that respondent-spouses are not entitled to reimbursement of the value of the improvements made on the property because they were builders in bad faith. At the outset, we emphasize that the issue of whether respondent-spouses are builders in good faith or bad faith is a factual question, which is beyond the scope of a petition filed under Rule 45 of the Rules of Court.[57] In fact, petitioner is deemed to have waived all factual issues since it appealed the case directly to this Court,[58] instead of elevating the matter to the CA. It has likewise not escaped our attention that after their failed preliminary conference, the parties agreed to submit the case for resolution based on the pleadings and exhibits presented. No trial was conducted. Thus, it is too late for petitioner to raise at this stage of the proceedings the factual issue of whether respondent-spouses are builders in bad faith. Hence, in view of the special circumstances obtaining in this case, we are constrained to rely on the presumption of good faith on the part of the respondent-spouses which the petitioner failed to rebut. Thus, respondent-spouses being presumed builders in good faith, we now rule on the applicability of Article 448 of the Civil Code.

As a general rule, Article 448 on builders in good faith does not apply where there is a contractual relation between the parties,[59] such as in the instant case. We went over the records of this case and we note that the parties failed to attach a copy of the Contract to Sell. As such, we are constrained to apply Article 448 of the Civil Code, which provides *viz*:

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[57] *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1169 (1997).

[58] *Aballe v. Santiago*, 117 Phil. 936, 938-939 (1963).

[59] Arturo M. Tolentino, *CIVIL CODE OF THE PHILIPPINES*, Vol II, 116 (1998).

ART. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

Article 448 of the Civil Code applies when the builder believes that he is the owner of the land or that by some title he has the right to build thereon,[60] or that, at least, he has a claim of title thereto.[61] Concededly, this is not present in the instant case. The subject property is covered by a Contract to Sell hence ownership still remains with petitioner being the seller. Nevertheless, there were already instances where this Court applied Article 448 even if the builders do not have a claim of title over the property. Thus:

> This Court has ruled that this provision covers only cases in which the builders, sowers or planters believe themselves to be owners of the land or, at least, to have a claim of title thereto. It does not apply when the interest is merely that of a holder, such as a mere tenant, agent or usufructuary. From these pronouncements, good faith is identified by the belief that the land is owned; or that – by some title – one has the right to build, plant, or sow thereon.
>
> However, in some special cases, this Court has used Article 448 by recognizing good faith beyond this limited definition. Thus, in *Del Campo v. Abesia*, this provision was applied to one whose house – despite having been built at the time he was still co-owner – overlapped with the land of another. This article was also applied to cases wherein a builder had constructed improvements with the

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[60] *Rosales v. Castelltort*, 509 Phil. 137, 147 (2005).

[61] *Briones v. Macabagdal*, G.R. No. 150666, August 3, 2010, 626 SCRA 300, 307.

consent of the owner. The Court ruled that the law deemed the builder to be in good faith. In *Sarmiento v. Agana*, the builders were found to be in good faith despite their reliance on the consent of another, whom they had mistakenly believed to be the owner of the land.[62]

The Court likewise applied Article 448 in *Spouses Macasaet v. Spouses Macasaet*[63] notwithstanding the fact that the builders therein knew they were not the owners of the land. In said case, the parents who owned the land allowed their son and his wife to build their residence and business thereon. As found by this Court, their occupation was not by mere tolerance but "upon the invitation of and with the complete approval of (their parents), who desired that their children would occupy the premises. It arose from familial love and a desire for family solidarity x x x."[64] Soon after, conflict between the parties arose. The parents demanded their son and his wife to vacate the premises. The Court thus ruled that as owners of the property, the parents have the right to possession over it. However, they must reimburse their son and his wife for the improvements they had introduced on the property because they were considered builders in good faith even if they knew for a fact that they did not own the property, thus:

> Based on the aforecited special cases, Article 448 applies to the present factual milieu. The established facts of this case show that respondents fully consented to the improvements introduced by petitioners. In fact, because the children occupied the lots upon their invitation, the parents certainly knew and approved of the construction of the improvements introduced thereon. Thus, petitioners may be deemed to have been in good faith when they built the structures on those lots.

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[62] *Spouses Macasaet v. Spouses Macasaet*, 482 Phil. 853, 871-872 (2004).

[63] *Id.*

[64] *Id.* at 865.

The instant case is factually similar to *Javier v. Javier*. In that case, this Court deemed the son to be in good faith for building the improvement (the house) with the knowledge and consent of his father, to whom belonged the land upon which it was built. Thus, Article 448 was applied.[65]

In fine, the Court applied Article 448 by construing good faith beyond its limited definition. We find no reason not to apply the Court's ruling in *Spouses Macasaet v. Spouses Macasaet* in this case. We thus hold that Article 448 is also applicable to the instant case. First, good faith is presumed on the part of the respondent-spouses. Second, petitioner failed to rebut this presumption. Third, no evidence was presented to show that petitioner opposed or objected to the improvements introduced by the respondent-spouses. Consequently, we can validly presume that petitioner consented to the improvements being constructed. This presumption is bolstered by the fact that as the subdivision developer, petitioner must have given the respondent-spouses permits to commence and undertake the construction. Under Article 453 of the Civil Code, "[i]t is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part."

In view of the foregoing, we find no error on the part of the RTC in requiring petitioner to pay respondent-spouses the value of the new house minus the cost of the old house based on Article 448 of the Civil Code, subject to succeeding discussions.

Petitioner has two options under Article 448 and pursuant to the ruling in Tuatis v. Escol.[66]

In *Tuatis*, we ruled that the seller (the owner of the land) has two options under Article 448: (1) he may appropriate the improvements for himself after reimbursing the buyer (the builder in good faith) the necessary and useful expenses under

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[65] *Id.* at 873.

[66] G.R. No. 175399, October 27, 2009, 604 SCRA 471.

Articles 546[67] and 548[68] of the Civil Code; or (2) he may sell the land to the buyer, unless its value is considerably more than that of the improvements, in which case, the buyer shall pay reasonable rent.[69] Quoted below are the pertinent portions of our ruling in that case:

> Taking into consideration the provisions of the Deed of Sale by Installment and Article 448 of the Civil Code, Visminda has the following options:
>
> Under the first option, Visminda **may appropriate for herself the building on the subject property after indemnifying Tuatis for the necessary and useful expenses the latter incurred for said building, as provided in Article 546 of the Civil Code.**
>
> It is worthy to mention that in *Pecson v. Court of Appeals*, the Court pronounced **that the amount to be refunded to the builder under Article 546 of the Civil Code should be the current market value of the improvement,** thus:
>
> x x x x x x x x x
>
> Until Visminda appropriately indemnifies Tuatis for the building constructed by the latter, Tuatis may retain possession of the building and the subject property.
>
> Under the second option, Visminda **may choose not to appropriate the building and, instead, oblige Tuatis to pay the present or current fair value of the land.** The ₱10,000.00 price of the subject

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[67] ART. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

[68] ART. 548. Expenses for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby, and if his successor in the possession does not prefer to refund the amount expended.

[69] *Tuatis v. Escol*, *supra* at 488.

property, as stated in the Deed of Sale on Installment executed in November 1989, shall no longer apply, since Visminda will be obliging Tuatis to pay for the price of the land in the exercise of Visminda's rights under Article 448 of the Civil Code, and not under the said Deed. Tuatis' obligation will then be statutory, and not contractual, arising only when Visminda has chosen her option under Article 448 of the Civil Code.

Still under the second option, **if the present or current value of the land, the subject property herein, turns out to be considerably more than that of the building built thereon, Tuatis cannot be obliged to pay for the subject property, but she must pay Visminda reasonable rent for the same. Visminda and Tuatis must agree on the terms of the lease; otherwise, the court will fix the terms.**

Necessarily, the RTC should conduct additional proceedings before ordering the execution of the judgment in Civil Case No. S-618. Initially, the RTC should determine which of the aforementioned options Visminda will choose. Subsequently, the RTC should ascertain: (a) under the first option, the amount of indemnification Visminda must pay Tuatis; or (b) under the second option, the value of the subject property *vis-à-vis* that of the building, and depending thereon, the price of, or the reasonable rent for, the subject property, which Tuatis must pay Visminda.

The Court highlights that the options under Article 448 are available to Visminda, as the owner of the subject property. There is no basis for Tuatis' demand that, since the value of the building she constructed is considerably higher than the subject property, she may choose between buying the subject property from Visminda and selling the building to Visminda for ₱502,073.00. Again, the choice of options is for Visminda, not Tuatis, to make. And, depending on Visminda's choice, Tuatis' rights as a builder under Article 448 are limited to the following: (a) under the first option, a right to retain the building and subject property until Visminda pays proper indemnity; and (b) under the second option, a right not to be obliged to pay for the price of the subject property, if it is considerably higher than the value of the building, in which case, she can only be obliged to pay reasonable rent for the same.

The rule that the choice under Article 448 of the Civil Code belongs to the owner of the land is in accord with the principle of accession,

i.e., that the accessory follows the principal and not the other way around. Even as the option lies with the landowner, the grant to him, nevertheless, is preclusive. The landowner cannot refuse to exercise either option and compel instead the owner of the building to remove it from the land.

The *raison d'etre* for this provision has been enunciated thus: Where the builder, planter or sower has acted in good faith, a conflict of rights arises between the owners, and it becomes necessary to protect the owner of the improvements without causing injustice to the owner of the land. In view of the impracticability of creating a state of forced co-ownership, the law has provided a just solution by giving the owner of the land the option to acquire the improvements after payment of the proper indemnity, or to oblige the builder or planter to pay for the land and the sower the proper rent. He cannot refuse to exercise either option. It is the owner of the land who is authorized to exercise the option, because his right is older, and because, by the *principle* of accession, he is entitled to the ownership of the accessory thing.

Visminda's Motion for Issuance of Writ of Execution cannot be deemed as an expression of her choice to recover possession of the subject property under the first option, **since the options under Article 448 of the Civil Code and their respective consequences were also not clearly presented to her by the 19 April 1999 Decision of the RTC. She must then be given the opportunity to make a choice between the options available to her after being duly informed herein of her rights and obligations under both**.[70] (Emphasis supplied.)

In conformity with the foregoing pronouncement, we hold that petitioner, as landowner, has two options. It may appropriate the new house by reimbursing respondent Angeles the current market value thereof minus the cost of the old house. Under this option, respondent Angeles would have "a right of retention which negates the obligation to pay rent."[71] In the alternative, petitioner may sell the lots to respondent Angeles at a price

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[70] *Id.* at 492-495.

[71] *Technogas Philippines Manufacturing Corp. v. Court of Appeals*, 335 Phil. 471, 487 (1997).

equivalent to the current fair value thereof. However, if the value of the lots is considerably more than the value of the improvement, respondent Angeles cannot be compelled to purchase the lots. She can only be obliged to pay petitioner reasonable rent.

In view of the foregoing disquisition and in accordance with *Depra v. Dumlao*[72] and *Technogas Philippines Manufacturing Corporation v. Court of Appeals*,[73] we find it necessary to remand this case to the court of origin for the purpose of determining matters necessary for the proper application of Article 448, in relation to Articles 546 and 548 of the Civil Code.

WHEREFORE, the petition is hereby **PARTIALLY GRANTED**. The assailed Decision dated December 29, 2006 and the Order dated February 12, 2007 of the Regional Trial Court, Cagayan de Oro City, Branch 18, in Civil Case No. 2005-158 are hereby **AFFIRMED with MODIFICATION** that petitioner Communities Cagayan, Inc. is hereby ordered to **RETURN** the cash surrender value of the payments made by respondent-spouses on the properties, which is equivalent to 50% of the total payments made, in accordance with Section 3(b) of Republic Act No. 6552, otherwise known as the Maceda Law.

The case is hereby **REMANDED** to the Regional Trial Court, Cagayan de Oro City, Branch 18, for further proceedings consistent with the proper application of Articles 448, 546 and 548 of the Civil Code, as follows:

1. The trial court shall determine:
    a) the present or current fair value of the lots;
    b) the current market value of the new house;
    c) the cost of the old house; and

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[72] 221 Phil. 168 (1985).

[73] *Supra*.

d) whether the value of the lots is considerably more than the current market value of the new house minus the cost of the old house.

2. After said amounts shall have been determined by competent evidence, the trial court shall render judgment as follows:

a) Petitioner shall be granted a period of 15 days within which to exercise its option under the law (Article 448, Civil Code), whether to appropriate the new house by paying to respondent Angeles the current market value of the new house minus the cost of the old house, or to oblige respondent Angeles to pay the price of the lots. The amounts to be respectively paid by the parties, in accordance with the option thus exercised by written notice to the other party and to the court, shall be paid by the obligor within 15 days from such notice of the option by tendering the amount to the trial court in favor of the party entitled to receive it.

b) If petitioner exercises the option to oblige respondent Angeles to pay the price of the lots but the latter rejects such purchase because, as found by the trial court, the value of the lots is considerably more than the value of the new house minus the cost of the old house, respondent Angeles shall give written notice of such rejection to petitioner and to the trial court within 15 days from notice of petitioner's option to sell the land. In that event, the parties shall be given a period of 15 days from such notice of rejection within which to agree upon the terms of the lease, and give the trial court formal written notice of the agreement and its *provisos*. If no agreement is reached by the parties, the trial court, within 15 days from and after the termination of the said period fixed for negotiation, shall then fix the period and terms of the lease, including the monthly rental, which shall be payable within the first five days of each calendar month. Respondent Angeles shall not make any further constructions or improvements on the building. Upon expiration of the period, or upon default by respondent Angeles in the payment of

rentals for two consecutive months, petitioner shall be entitled to terminate the forced lease, to recover its land, and to have the new house removed by respondent Angeles or at the latter's expense.

c) In any event, respondent Angeles shall pay petitioner reasonable compensation for the occupancy of the property for the period counted from the time the Decision dated December 29, 2006 became final as to respondent Angeles or 15 days after she received a copy of the said Decision up to the date petitioner serves notice of its option to appropriate the encroaching structures, otherwise up to the actual transfer of ownership to respondent Angeles or, in case a forced lease has to be imposed, up to the commencement date of the forced lease referred to in the preceding paragraph.

d) The periods to be fixed by the trial court in its decision shall be non-extendible, and upon failure of the party obliged to tender to the trial court the amount due to the obligee, the party entitled to such payment shall be entitled to an order of execution for the enforcement of payment of the amount due and for compliance with such other acts as may be required by the prestation due the obligee.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

THIRD DIVISION

[G.R. No. 178789. November 14, 2012]

NATIVIDAD LIM, *petitioner, vs.* **NATIONAL POWER CORPORATION, SPOUSES ROBERT LL. ARCINUE and ARABELA ARCINUE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; COMPLAINT-IN-INTERVENTION; ANSWER THERETO IS REQUIRED.— Section 4, Rule 19 of the 1997 Rules of Civil Procedure requires the original parties to file an answer to the complaint-in-intervention within 15 days from notice of the order admitting the same, unless a different period is fixed by the court. Thus, Lim's failure to file the required answer can give rise to default.

2. ID.; ID.; SERVICE; MOTION FOR JUDGMENT BY DEFAULT MUST BE BY PERSONAL SERVICE; RESORT TO SERVICE BY REGISTERED MAIL NOT SANCTIONED AS THE OTHER PARTY ADMITTED RECEIPT OF THE MOTION.— Section 11, Rule 13 of the 1997 Rules of Civil Procedure which provides: SECTION 11. *Priorities in modes of service and filing*. — Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation, why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed. But the [rule] does not provide for automatic sanction should a party fail to submit the required explanation. It merely provides for that possibility considering its use of the term "may." x x x [N]otwithstanding that the Arcinues' failed to explain their resort to service by registered mail rather than by personal service, the fact is that Lim's counsel expressly admitted having received a copy of the Arcinues' motion for judgment by default 10 days before its scheduled hearing. This means that the Arcinues were diligent enough to file their motion by registered mail long before the scheduled hearing. Personal service is required precisely because it often

happens that hearings do not push through because, while a copy of the motion may have been served by registered mail before the date of the hearing, such is received by the adverse party already after the hearing. Thus, the rules prefer personal service. But it does not altogether prohibit service by registered mail when such service, when adopted, ensures as in this case receipt by the adverse party.

APPEARANCES OF COUNSEL

Manuel Law Office for petitioner.
The Solicitor General for public respondent.
Ramos Law Office for private respondents.

D E C I S I O N

ABAD, *J.*:

This case is about the consequence of a party's failure to explain in his motion why he served a copy of it on the adverse party by registered mail rather than by personal service.

The Facts and the Case

On February 8, 1995 respondent National Power Corporation (NPC) filed an expropriation suit[1] against petitioner Natividad B. Lim (Lim) before the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 37 in Civil Case 17352 covering Lots 2373 and 2374 that the NPC needed for its Sual Coal-Fired Thermal Power Project. Since Lim was residing in the United States, the court caused the service of summons on her on February 20, 1995 through her tenant, a certain Wilfredo Tabongbong.[2] On March 1, 1995, upon notice to Lim and the deposit of the provisional value of the property, the RTC ordered the issued writ of possession in NPC's favor that would enable it to cause the removal of Lim from the land.[3]

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[1] *Rollo*, pp. 100-103.

[2] *Id.* at 106.

[3] *Id.* at 108.

On April 24, 1995, however, Lim, represented by her husband Delfin, filed an omnibus motion to dismiss the action and to suspend the writ of possession,[4] questioning the RTC's jurisdiction over Lim's person and the nature of the action. She also assailed the failure of the complaint to state a cause of action. The RTC denied the motions.[5]

On December 6, 1996 respondent spouses Roberto and Arabela Arcinue (the Arcinues) filed a motion for leave to admit complaint in intervention,[6] alleging that they owned and were in possession of Lot 2374, one of the two lots subject of the expropriation. On January 7, 1997 the RTC granted the Arcinues' motion and required both the NPC and Lim to answer the complaint-in-intervention within 10 days from receipt of its order.[7]

When Lim and the NPC still did not file their answers to the complaint-in-intervention after 10 months, on December 7, 1998 the Arcinues filed a motion for judgment by default.[8] Lim sought to expunge the motion on the ground that it lacked the requisite explanation why the Arcinues resorted to service by registered mail rather than to personal service. At the scheduled hearing of the motion, Lim's counsel did not appear. The NPC for its part manifested that it did not file an answer since its interest lay in determining who was entitled to just compensation.

On March 1, 1999 the RTC issued an order of default[9] against both Lim and the NPC. The RTC pointed out that the Arcinues' failure to explain their resort to service by registered mail had already been cured by the manifestation of Lim's counsel that he received a copy of the Arcinues' motion on December 7, 1998 or 10 days before its scheduled hearing. Lim filed a

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[4] *Id.* at 109-112.

[5] *Id.* at 114-115.

[6] *Id.* at 116-118.

[7] *Id.* at 119.

[8] *Id.* at 120-121.

[9] *Id.* at 122-123.

motion for reconsideration[10] to lift the default order but the Court denied the motion,[11] prompting Lim to file a petition for *certiorari*[12] before the Court of Appeals (CA) in CA-G.R. SP 52842.

On March 23, 2007 the CA rendered a decision[13] that affirmed the RTC's order of default. Lim filed a motion for reconsideration[14] but the CA denied it,[15] prompting her to file the present petition for review.[16] On September 24, 2007 the Court initially denied Lim's petition[17] but on motion for reconsideration, the Court reinstated the same.[18]

Issue Presented

The only issue presented in this case is whether or not the CA gravely abused its discretion in affirming the order of default that the RTC entered against Lim.

Ruling of the Court

Lim points out that an answer-in-intervention cannot give rise to default since the filing of such an answer is only permissive. But Section 4, Rule 19[19] of the 1997 Rules of Civil Procedure requires the original parties to file an answer to the complaint-in-intervention within 15 days from notice of the order admitting the same, unless a different period is fixed by the court. This

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[10] *Id.* at 124-125.

[11] *Id.* at 127.

[12] *Id.* at 128-131.

[13] *Id.* at 10-20.

[14] CA *rollo*, pp. 130-148.

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

[16] *Id.* at 25-53.

[17] *Id.* at 158.

[18] *Id.* at 218.

[19] **Section 4. Answer to complaint-in-intervention**. — The answer to the complaint-in-intervention shall be filed within fifteen (15) days from notice of the order admitting the same, unless a different period is fixed by the court. (2[d]a, R12)

changes the procedure under the former rule where such an answer was regarded as optional.[20] Thus, Lim's failure to file the required answer can give rise to default.

The trial court had been liberal with Lim. It considered her motion for reconsideration as a motion to lift the order of default and gave her an opportunity to explain her side. The court set her motion for hearing but Lim's counsel did not show up in court. She remained unable to show that her failure to file the required answer was due to fraud, accident, mistake, or excusable negligence. And, although she claimed that she had a meritorious defense, she was unable to specify what constituted such defense.[21]

Lim points out that the RTC should have ordered the Arcinues' motion for judgment by default expunged from the records since it lacked the requisite explanation as to why they resorted to service by registered mail in place of personal service.

There is no question that the Arcinues' motion failed to comply with the requirement of Section 11, Rule 13 of the 1997 Rules of Civil Procedure which provides:

> SECTION 11. *Priorities in modes of service and filing.* — Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation, why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

But the above does not provide for automatic sanction should a party fail to submit the required explanation. It merely provides for that possibility considering its use of the term "may." The question is whether or not the RTC gravely abused its discretion in not going for the sanction of striking out the erring motion.

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[20] *Remedial Law Compendium,* Volume I, Tenth Edition, Florenz D. Regalado.

[21] *David v. Gutierrez-Fruelda*, G.R. No. 170427, January 30, 2009, 577 SCRA 357, 362.

The Court finds no such grave abuse of discretion here. As the RTC pointed out, notwithstanding that the Arcinues' failed to explain their resort to service by registered mail rather than by personal service, the fact is that Lim's counsel expressly admitted having received a copy of the Arcinues' motion for judgment by default on December 7, 1998 or 10 days before its scheduled hearing. This means that the Arcinues were diligent enough to file their motion by registered mail long before the scheduled hearing.

Personal service is required precisely because it often happens that hearings do not push through because, while a copy of the motion may have been served by registered mail before the date of the hearing, such is received by the adverse party already after the hearing. Thus, the rules prefer personal service. But it does not altogether prohibit service by registered mail when such service, when adopted, ensures as in this case receipt by the adverse party.

WHEREFORE, the Court **DENIES** the petition and **AFFIRMS** the Court of Appeals Decision in CA-G.R. SP 52842 dated March 23, 2007 and Resolution dated July 5, 2007 that upheld the orders of the Regional Trial Court in Civil Case 17352. The Court **DIRECTS** the RTC to proceed with its hearing and adjudication of the case.

SO ORDERED.

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

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[*] Designated Acting Member, per Special Order 1299 dated August 28, 2012.

SECOND DIVISION

[G.R. No. 179031. November 14, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENJAMIN SORIA *Y* GOMEZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ANTI-RAPE LAW OF 1997; HOW RAPE IS COMMITTED; THROUGH SEXUAL INTERCOURSE OR BY SEXUAL ASSAULT.— Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, classified the crime of rape as a crime against persons. It also amended Article 335 of the RPC and incorporated therein Article 266-A. x x x Thus, rape can now be committed either through sexual intercourse or by sexual assault. Rape under paragraph 1 of Article 266-A is referred to as rape through sexual intercourse. Carnal knowledge is the central element and it must be proven beyond reasonable doubt. It is commonly denominated as "organ rape" or "penile rape" and must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1. x x x In determining whether appellant is indeed guilty of rape through sexual intercourse under paragraph 1 of Article 266-A, it is essential to establish beyond reasonable doubt that he had carnal knowledge of "AAA." There must be proof that his penis touched the *labia* of "AAA" or slid into her female organ, and not merely stroked the external surface thereof, to ensure his conviction of rape by sexual intercourse. x x x On the other hand, rape under paragraph 2 of Article 266-A is commonly known as rape by sexual assault. The perpetrator, under any of the attendant circumstances mentioned in paragraph 1, commits this kind of rape by inserting his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. It is also called "instrument or object rape," also "gender-free rape."

2. ID.; ID.; ID.; ID.; AMBIGUOUS ALLEGATIONS AS TO THE MANNER OF HOW RAPE WAS COMMITTED WILL NOT INVALIDATE THE INFORMATION.— While the allegations

[in the information] cause ambiguity, they only pertain to the mode or manner of how the rape was committed and the same do not invalidate the Information or result in the automatic dismissal of the case. "[W]here an offense may be committed in any of the different modes and the offense is alleged to have been committed in two or more modes specified, the indictment is sufficient, notwithstanding the fact that the different means of committing the same offense are prohibited by separate sections of the statute. The allegation in the information of the various ways of committing the offense should be regarded as a description of only one offense and the information is not thereby rendered defective on the ground of multifariousness." Any objection from the appellant with respect to the Information is held to have been waived failing any effort to oppose the same before trial. He therefore can be convicted of rape through sexual intercourse or rape by sexual assault, depending on the evidence adduced during trial.

3. ID.; ID.; TESTIMONY OF RAPE VICTIM AGAINST HER FATHER, UPHELD.— It would be highly inconceivable for "AAA" to impute to her own father the crime of raping her unless the imputation is true. In fact, it takes "a certain amount of psychological depravity for a young woman to concoct a story which would put her own father [in] jail for the rest of his remaining life and drag the rest of the family including herself to a lifetime of shame" unless the imputation is true. When a rape victim's testimony on the manner she was defiled is "straightforward and candid, and is corroborated by the medical findings of the examining physician [as in this case], the same is sufficient to support a conviction for rape."

4. ID.; ID.; RAPE BY SEXUAL ASSAULT COMMITTED IN CASE AT BAR; THAT THE VICTIM FAILED TO SPECIFICALLY IDENTIFY THE INSTRUMENT INSERTED INTO HER GENITAL IS INCONSEQUENTIAL.— [W]e find appellant guilty of rape by sexual assault. It cannot be denied that appellant inserted an object into "AAA's" female organ. "AAA" categorically testified that appellant inserted something into her vagina. She claimed to have suffered tremendous pain during the insertion. The insertion even caused her vagina to bleed necessitating her examination at the hospital. Both the trial court and the CA found "AAA's" testimony to be credible.

We find no compelling reason not to lend credence to the same. This defilement constitutes rape under paragraph 2 of Article 266-A of the RPC, which provides that rape by sexual assault is committed "[b]y any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting x x x any instrument or object, into the genital or anal orifice of another person." x x x We find it inconsequential that "AAA" could not specifically identify the particular instrument or object that was inserted into her genital. What is important and relevant is that indeed something was inserted into her vagina. To require "AAA" to identify the instrument or object that was inserted into her vagina would be contrary to the fundamental tenets of due process. It would be akin to requiring "AAA" to establish something that is not even required by law. [Moreover, it might create problems later on in the application of the law if the victim is blind or otherwise unconscious.] Moreover, the prosecution satisfactorily established that appellant accomplished the act of sexual assault through his moral ascendancy and influence over "AAA" which substituted for violence and intimidation. Thus, there is no doubt that appellant raped "AAA" by sexual assault.

5. ID.; ID.; ID.; NOT NEGATED BY THE MEDICAL FINDINGS OF AN INTACT HYMEN.— Hymenal rupture, vaginal laceration or genital injury is not indispensable because the same is not an element of the crime of rape. "An intact hymen does not negate a finding that the victim was raped." Here, the finding of reddish discoloration of the hymen of "AAA" during her medical examination and the intense pain she felt in her vagina during and after the sexual assault sufficiently corroborated her testimony that she was raped.

6. ID.; ID.; ID.; ALLEGATION THAT THE VICTIM WAS MERELY INSTIGATED TO FILE THE RAPE CASE, NOT APPRECIATED.— Likewise undeserving of credence is appellant's contention that his wife merely instigated "AAA" to file the charge of rape against him in retaliation for his having confronted her about her illicit affair with another man. This imputation of ill motive is flimsy considering that it is unnatural for appellant's wife to stoop so low as to subject her own daughter to the hardships and shame concomitant with

a prosecution for rape, just to assuage her hurt feelings. It is also improbable for appellant's wife to have dared encourage their daughter "AAA" to publicly expose the dishonor of the family unless the rape was indeed committed.

7. ID.; ID.; AGGRAVATING CIRCUMSTANCES; RELATIONSHIP AND MINORITY; RELATIONSHIP APPRECIATED WITH THE ADMISSION OF THE ACCUSED BUT MINORITY MUST BE SUFFICIENTLY ESTABLISHED OTHER THAN BY VICTIM'S TESTIMONY, ABSENCE OF DENIAL OF ACCUSED AND THEIR PRE-TRIAL STIPULATION.— It was alleged that appellant is the father of "AAA". During the pre-trial conference, the parties stipulated that "AAA" is the daughter of appellant. During trial, appellant admitted his filial bond with "AAA". "[A]dmission in open court of relationship has been held to be sufficient and, hence, conclusive to prove relationship with the victim." With respect to minority, however, the Information described "AAA" as a 7-year old daughter of appellant. While this also became the subject of stipulation during the pre-trial conference, same is insufficient evidence of "AAA's" age. Her minority must be "proved conclusively and indubitably as the crime itself". "[T]here must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused." Documents such as her original or duly certified birth certificate, baptismal certificate or school records would suffice as competent evidence of her age. Here, there was nothing on record to prove the minority of "AAA" other than her testimony, appellant's absence of denial, and their pre-trial stipulation. The prosecution also failed to establish that the documents referred to above were lost, destroyed, unavailable or otherwise totally absent.

8. ID.; ID.; PENALTY; PROPER PENALTY PRESENT AN AGGRAVATING CIRCUMSTANCE AND APPLYING THE INDETERMINATE SENTENCE LAW, AND PROPER DAMAGES AWARDED.— Under Article 266-B of the RPC, the penalty for rape by sexual assault is *prision mayor*. However, the penalty is increased to *reclusion temporal* "if the rape is committed by any of the 10 aggravating/qualifying circumstances mentioned in this article". The Information alleged the qualifying circumstances of relationship and minority. x x x It is settled that "when either one of the

qualifying circumstances of relationship and minority is omitted or lacking, that which is pleaded in the information and proved by the evidence may be considered as an aggravating circumstance." As such, appellant's relationship with "AAA" may be considered as an aggravating circumstance. In view of these, the imposable penalty is *reclusion temporal* which ranges from twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* which ranges from six (6) years and one (1) day to twelve (12) years. Hence, a penalty of twelve (12) years of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, is imposed upon appellant. In line with prevailing jurisprudence, the awards as civil indemnity, moral damages and exemplary damages are each modified to ₱30,000.00. "AAA" is also entitled to an interest on all the amounts of damages awarded at the legal rate of 6% *per annum* from the date of finality of this judgment until fully paid.

BRION, *J., dissenting opinion*:

1. CRIMINAL LAW; ANTI-RAPE LAW OF 1997; RAPE BY SEXUAL ASSAULT; THAT AN INSTRUMENT WAS INSERTED IN THE VICTIM'S PRIVATE PART, NOT SUFFICIENTLY ESTABLISHED.— Under Article 266-A, paragraph 2 of the Revised Penal Code, as amended, rape through sexual assault is committed "[b]y any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person." In the present case, **there is no admissible evidence to show that the appellant inserted his penis into AAA's mouth or anal orifice, or any instrument or object into the victim's genital or anal orifice**. In her testimony, AAA merely "felt" that something had been inserted in her private part, as a result of which, she felt pain. x x x **At most, AAA merely "assumed" that something had been inserted into her vagina**. [Further,] **Dr. Supe's Medico-Legal Report and court testimony did not support the *ponencia*'s conclusion that the appellant inserted an object or even his penis into AAA's vagina**. x x x [T]here was **no categorical declaration by Dr. Supe that an**

instrument or object had been inserted into the victim's private part. x x x **Dr. Supe found AAA to be in a "virgin state physically"; he also found her hymen to be intact**. I am not unmindful of the oft-repeated doctrine that an intact hymen does not necessarily preclude a finding that the victim had been raped. However, when the prosecution's evidence fails to establish with moral certainty all the elements necessary to consummate the crime of rape, a finding by the medico-legal officer that the victim is in a "virgin state," and that her hymen is intact, suffices to cast doubt on the appellant's culpability. **In rape cases, the prosecution bears the primary duty to present its evidence with clarity and persuasion, to the end that conviction becomes the only logical and inevitable conclusion**.

2. ID.; ACTS OF LASCIVIOUSNESS; ELEMENTS THEREOF ESTABLISHED IN CASE AT BAR.— I take the view that sufficient evidence exists to convict [appellant] of acts of lasciviousness under Article 336 of the Revised Penal Code. A charge of acts of lasciviousness is necessarily included in a complaint for rape. "x x x The evidence in the present case established that the appellant **went on top of AAA**, and **removed her clothes**. The appellant only stopped when the victim told him that she felt pain in her private part. To my mind, the appellant's acts of mounting her *very own daughter*, and then removing her clothes, showed lewdness that constitutes acts of lasciviousness. These acts are clearly indecent and inappropriate; it undeniably demonstrates the appellant's gross moral depravity.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This case involves a father's detestable act of abusing his daughter through rape by sexual assault.

Factual Antecedents

Accused-appellant Benjamin Soria *y* Gomez (appellant) seeks a review of the December 29, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01442 which affirmed with modification the June 30, 2005 Judgment[2] of the Regional Trial Court (RTC) of Quezon City, Branch 94, in Criminal Case No. Q-01-98692. Said RTC Judgment found appellant guilty beyond reasonable doubt of the crime of rape committed against his daughter "AAA",[3] as described in an Information,[4] the relevant portion of which reads:

> That on or about the 26th day of February, 2000, in Quezon City, Philippines, the said accused, who is the father of private complainant "AAA", did then and there willfully, unlawfully, and feloniously with force and intimidation commit an act of sexual assault upon the person of one "AAA", a minor, 7 years of age[,] by then and there inserting his penis into [the] genital of said complainant, all against her will and consent, which act debases, degrades, or demeans the intrinsic worth and dignity of said "AAA", as a human being, in violation of said law.
>
> CONTRARY TO LAW.[5]

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[1] CA *rollo*, pp. 83-96; penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Josefina Guevara Salonga and Apolinario D. Bruselas, Jr.

[2] Records, pp. 76-81; penned by Judge Romeo F. Zamora.

[3] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures for Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 5, 2004." *People v. Dumadag*, G.R. No.176740, June 22, 2011, 652 SCRA 535, 538-539.

[4] Records, p. 1.

[5] *Id.*

Appellant pleaded not guilty to the crime charged. Pre-trial and trial thereafter ensued.

Version of the Prosecution

On February 26, 2000, "AAA" and her siblings enjoyed the spaghetti their father (appellant) brought home for *merienda*. After eating, "AAA" went to the bedroom to rest. Thereafter, appellant also entered the room and positioned himself on top of "AAA," took off her clothes and inserted his penis into her vagina. "AAA" felt intense pain from her breast down to her vagina and thus told her father that it was painful. At that point, appellant apologized to his daughter, stood up, and left the room. This whole incident was witnessed by "AAA's" brother, "BBB."

The pain persisted until "AAA's" vagina started to bleed. She thus told her aunt about it and they proceeded to a hospital for treatment. Her mother was also immediately informed of her ordeal. Subsequently, "AAA" was taken into the custody of the Department of Social Welfare and Development.

On March 15, 2000, Medico-Legal Officer Francisco A. Supe, Jr., M.D. (Dr. Supe) examined "AAA," which examination yielded the following results:

> GENERAL AND EXTRA-GENITAL: Fairly developed, fairly nourished and coherent female child. Breasts are undeveloped. Abdomen is flat and soft.
>
> GENITAL: There is absent growth of pubic hair. *Labia majora* are full, convex, and coaptated with light brown *labia minora* presenting in between. On separating the same, disclosed an elastic, fleshy type, hyperemic and intact hymen. Posterior fourchette is sharp.
>
> CONCLUSION: The subject is in virgin state physically. There are no external signs of application of any form of physical trauma.[6]

Version of the Defense

Appellant admitted that he was at home on the day and time of "AAA's" alleged rape but denied committing the same. Instead,

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[6] *Id.* at 4.

he claimed that the filing of the rape case against him was instigated by his wife, whom he confronted about her illicit affair with a man residing in their community. According to appellant, he could not have molested "AAA" because he treated her well. In fact, he was the only one sending his children to school since his wife already neglected them and seldom comes home.

Ruling of the Regional Trial Court

On June 30, 2005, the trial court rendered its Judgment[7] finding appellant guilty beyond reasonable doubt of the crime of rape against "AAA", his daughter of minor age, as charged in the Information. It ruled that the lack of tenacious resistance on the part of "AAA" is immaterial considering that appellant's moral ascendancy and influence over her substitute for violence and intimidation.[8] It also held that his wife could not have instigated the filing of the rape case since as the mother of "AAA", it would not be natural for her to use her child as a tool to exact revenge especially if it will result in her embarrassment and stigma.[9] The trial court gave credence to the testimony of "AAA" and her positive identification of appellant as her rapist, and rejected the latter's defense of denial. The dispositive portion of the Judgment reads as follows:

> WHEREFORE, premises considered, judgment is hereby rendered finding the herein accused, BENJAMIN SORIA *Y* GOMEZ – GUILTY beyond reasonable doubt of the crime as charged and sentences him to suffer the supreme penalty of DEATH and to indemnify the offended party the amount of ₱75,000.00[,] to pay moral damages in the amount of ₱50,000.00[,] and the amount of ₱25,000.00 as exemplary damages to deter other fathers with perverse proclivities for aberrant sexual behavior for sexually abusing their own daughters.
>
> SO ORDERED.[10]

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[7] *Id.* at 76-81.

[8] *Id.* at 79.

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

[10] *Id.* at 81.

Ruling of the Court of Appeals

In its Decision[11] dated December 29, 2006, the CA found partial merit in the appeal. While the appellate court was convinced that appellant raped "AAA", it nevertheless noted the prosecution's failure to present her birth certificate as competent proof of her minority. Thus, the CA concluded that the crime committed by appellant against his daughter was only simple rape and accordingly modified the penalty imposed by the trial court from death to *reclusion perpetua* and reduced the civil indemnity awarded from ₱75,000.00 to ₱50,000.00. The dispositive portion of the appellate court's Decision reads as follows:

> **WHEREFORE,** premises considered, [the] appeal is hereby **GRANTED** and the June 30, 2005 Decision of the Regional Trial Court of Quezon City, Branch 94, in Criminal Case No. Q-01-98692, is hereby **MODIFIED,** in that, the penalty imposed is reduced to *reclusion perpetua* instead of death and the civil indemnity to be paid by the offender to the victim is hereby reduced to the amount of ₱50,000.00 instead of ₱75,000.00 pursuant to prevailing jurisprudence as explained in this decision.
>
> 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.
>
> **SO ORDERED**.[12]

Still insisting on his innocence, appellant comes to this Court through this appeal.

Assignment of Errors

Appellant adopts the same assignment of errors he raised before the appellate court, *viz*:

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[11] CA *rollo*, pp. 83-96.

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

I. THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME OF RAPE DESPITE THE FAILURE OF THE PROSECUTION TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE X X X.

II. ASSUMING *ARGUENDO* THAT THE ACCUSED IS GUILTY OF THE CRIME CHARGED, THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY UPON HIM.[13]

Appellant asserts that he should be acquitted of the crime of rape since there is no evidence that would establish the fact of sexual intercourse. Aside from the prosecution's failure to prove penile contact, "AAA's" testimony was also wanting in details as to how he took off her underwear or whether she saw his penis during the incident despite leading questions propounded on the matter by the prosecution. The medical report even revealed that "AAA's" hymen remained intact and that there were no notable lacerations or external physical injuries thereon. Appellant therefore surmises that his wife merely instigated "AAA" to file this baseless rape case against him in retaliation for his act of confronting her about her illicit relationship with a neighbor.

Our Ruling

The appeal lacks merit.

The crime of rape under Article 266-A of the Revised Penal Code (RPC).

Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, classified the crime of rape as a crime against persons. It also amended Article 335 of the RPC and incorporated therein Article 266-A which reads:

Article 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:

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[13] *Id.* at 21.

a) Through force, threat or intimidation;
b) When the offended party is deprived of reason or is otherwise unconscious,
c) By means of fraudulent machination or grave abuse of authority;
d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Thus, rape can now be committed either through sexual intercourse or by sexual assault. Rape under paragraph 1 of the above-cited article is referred to as rape through sexual intercourse. Carnal knowledge is the central element and it must be proven beyond reasonable doubt.[14] It is commonly denominated as "organ rape" or "penile rape"[15] and must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1.

On the other hand, rape under paragraph 2 of Article 266-A is commonly known as rape by sexual assault. The perpetrator, under any of the attendant circumstances mentioned in paragraph 1, commits this kind of rape by inserting his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. It is also called "instrument or object rape", also "gender-free rape".[16]

The Information did not specify whether the crime of rape was committed through sexual intercourse or by sexual assault.

The Information in this case did not specify with certainty whether appellant committed the rape through sexual intercourse

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[14] *People v. Brioso*, G.R. No. 182517, March 13, 2009, 581 SCRA 485, 493.

[15] *People v. Abulon*, G.R. No. 174473, August 17, 2007, 530 SCRA 675, 702.

[16] *Id*.

under paragraph 1 of Article 266-A, or rape by sexual assault as described in paragraph 2 thereof. The Information stated that appellant inserted his penis into the genital of "AAA," which constituted rape by sexual intercourse under the first paragraph of Article 266-A. At the same time, the Information alleged that appellant used force and intimidation to commit an act of sexual assault. While these allegations cause ambiguity, they only pertain to the mode or manner of how the rape was committed and the same do not invalidate the Information or result in the automatic dismissal of the case. "[W]here an offense may be committed in any of the different modes and the offense is alleged to have been committed in two or more modes specified, the indictment is sufficient, notwithstanding the fact that the different means of committing the same offense are prohibited by separate sections of the statute. The allegation in the information of the various ways of committing the offense should be regarded as a description of only one offense and the information is not thereby rendered defective on the ground of multifariousness."[17] Any objection from the appellant with respect to the Information is held to have been waived failing any effort to oppose the same before trial.[18] He therefore can be convicted of rape through sexual intercourse or rape by sexual assault, depending on the evidence adduced during trial.

The findings of the RTC and the CA on the credibility of "AAA" deserve respect and great weight.

Both the trial court and the CA held that "AAA" was a credible witness. They ruled that her testimony deserved credence and is sufficient evidence that she was raped by appellant. We find no cogent reason to overturn these findings.

It would be highly inconceivable for "AAA" to impute to her own father the crime of raping her unless the imputation is

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[17] *Jurado v. Suy Yan*, 148 Phil. 677, 686 (1971).

[18] *Provincial Fiscal of Nueva Ecija v. Court of First Instance of Nueva Ecija*, 79 Phil. 165, 168 (1947).

true.[19] In fact, it takes "a certain amount of psychological depravity for a young woman to concoct a story which would put her own father [in] jail for the rest of his remaining life and drag the rest of the family including herself to a lifetime of shame"[20] unless the imputation is true.

When a rape victim's testimony on the manner she was defiled is "straightforward and candid, and is corroborated by the medical findings of the examining physician [as in this case], the same is sufficient to support a conviction for rape."[21]

Appellant is guilty of rape by sexual assault and not through sexual intercourse.

The trial court's conviction of the appellant was for rape through sexual intercourse under paragraph 1(a) of Article 266-A. The CA sustained the trial court's finding that appellant had sexual intercourse with "AAA" against her will.

In determining whether appellant is indeed guilty of rape through sexual intercourse under paragraph 1 of Article 266-A, it is essential to establish beyond reasonable doubt that he had carnal knowledge of "AAA". There must be proof that his penis touched the labia of "AAA" or slid into her female organ, and not merely stroked the external surface thereof, to ensure his conviction of rape by sexual intercourse.[22]

We reviewed the testimony of "AAA" and found nothing therein that would show that she was raped through sexual intercourse. While "AAA" categorically stated that she felt something inserted into her vagina, her testimony was sorely lacking in important details that would convince us with certainty

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[19] *People v. Felan*, G.R. No. 176631, February 2, 2011, 641 SCRA 449, 453-454.

[20] *Id.* at 453-454, citing *People v. Javier*, 370 Phil. 128, 139 (1999).

[21] *People v. Sumingwa*, G.R. No. 183619, October 13, 2009, 603 SCRA 638, 652.

[22] *People v. Brioso, supra* note 14 at 495.

that it was indeed the penis of appellant that was placed into her vagina.

When "AAA" was placed on the witness stand, she narrated that:

Q - The earlier statement which you made when you said that you wanted to explain something about your father, is that true?
A - Yes, sir.

Q - So, you said that you wanted to explain something about your father, what was that?
A - What he did, sir.

Q - What [was] that?
A - I was raped, sir.

Q - What did he do when you said he raped you?
A - He laid on top of me, sir.[23]

x x x x x x x x x

Q - So when you said he laid on top of you, did you feel anything? Did you feel any pain in any part of your body?
A - Yes, sir.

Q - In what part of your body did you feel pain?
A - I felt pain in my breast and my stomach.

Q - What about your private part?
A - Yes, sir.

Q - Did you know why your stomach as well as your body and your private part hurt or become painful?
A - I don't know, sir.

Q - Did you feel something inserted [into] your private part?
A - Yes, sir.

Q - What is that, if you know?
A - The bird of my papa.

Q - Why did you know that?
A - Because my brother, "BBB", told me.

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[23] Records, unpaginated; TSN, February 10, 2003, pp. 3-4.

Q - Why? Was "BBB," your brother, present when your father was on top of you?
A - Yes, sir.

Q - Why do you know that he was there?
A - He told me so, sir.

Q - Who?
A - "BBB."

Q - Okay, when you felt pain as something was inserted [into] your private part, what did you say to your father?
A - He left the room.

Q - Before he went away and left?
A - It was painful, sir.

Q - And what was the answer of your father?
A - He said sorry, sir.

Q - How long was he or how long were you in that position, you [were] lying down and your father was on top of you?
A - I do not know, sir.[24]

x x x x x x x x x

Q - Earlier, you were making reference to your father whom you said abused you. I am asking you now to tell us if your father is around?
A - Yes, sir.

Q - Will you please point x x x to him?
A - Yes, sir. (Witness pointing to a man who is wearing yellow t-shirt and maong pants who when asked identified himself as Benjamin Soria.)

Q - Is he the same person who according to you laid on top of you and inserted something [into] your vagina or private part?
A - Yes, sir.[25]

It is evident from the testimony of "AAA" that she was unsure whether it was indeed appellant's penis which touched her *labia*

[24] *Id.* at 4-5. Emphases supplied.

[25] *Id.* at 8.

and entered her organ since she was pinned down by the latter's weight, her father having positioned himself on top of her while she was lying on her back. "AAA" stated that she only knew that it was the "bird" of her father which was inserted into her vagina after being told by her brother "BBB." Clearly, "AAA" has no personal knowledge that it was appellant's penis which touched her *labia* and inserted into her vagina. Hence, it would be erroneous to conclude that there was penile contact based solely on the declaration of "AAA's" brother, "BBB," which declaration was hearsay due to "BBB's" failure to testify. Based on the foregoing, it was an error on the part of the RTC and the CA to conclude that appellant raped "AAA" through sexual intercourse.

Instead, we find appellant guilty of rape by sexual assault. It cannot be denied that appellant inserted an object into "AAA's" female organ. "AAA" categorically testified that appellant inserted something into her vagina. She claimed to have suffered tremendous pain during the insertion. The insertion even caused her vagina to bleed necessitating her examination at the hospital. Both the trial court and the CA found "AAA's" testimony to be credible. We find no compelling reason not to lend credence to the same.

This defilement constitutes rape under paragraph 2 of Article 266-A of the RPC, which provides that rape by sexual assault is committed "[b]y any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting x x x any instrument or object, into the genital or anal orifice of another person."

Moreover, Dr. Supe corroborated her testimony as follows:

Q - Doctor, with respect to Exhibit A, the Medico-Legal Report pertaining to the entry [into] the genital, which reads: On separating the hymen, disclosed [was] an elastic, fleshy type, hyperemic and intact hymen. Will you please tell us, Doctor, what is this hyperemic hymen?

A - Hyperemic hymen, sir, means that at the time of examination, I found out that it was reddish in color.

Q - Considering the age of the child or the patient, the victim whom you examined at that time [who] was about 6 years old, will you be able to tell us, Doctor, what could have caused this kind of injury, because this is an injury to the hymen?
A - Hyperemic, sir, is observed whenever there is friction applied to an area, such as in the form of scratching.

Q - What about insertion of object, would this result into hyperemic hymen?
A - If the object is being rubbed, sir, there is a possibility.

Q - A finger will produce this kind of injury?
A - Possible, sir.[26]

According to Dr. Supe, it is possible that "AAA's" hyperemic hymen may be the result of the insertion of a finger or object. While Dr. Supe said that the injury could also be attributed to scratching, "AAA's" testimony is bereft of any showing that she scratched her genital organ thus causing the reddening. Appellant would also want to make it appear that the injury of "AAA" was the result of friction from playing or riding a bicycle since the doctor testified that this was also possible. However, there is likewise no evidence that friction was applied on "AAA's" female organ when she played hide and seek with her playmates or that she actually rode a bicycle. On the other hand, "AAA" was categorical in stating that in the afternoon of February 26, 2000, appellant removed her clothes, laid on top of her, and that she felt something being inserted into her vagina and that thereafter she experienced pain in her genitals. The foregoing thus proved that appellant inserted an object into "AAA's" vagina against her will and without consent. Simply put, appellant committed the crime of rape by sexual assault.

The following are the elements of rape by sexual assault:

(1) That the offender commits an act of sexual assault;

(2) That the act of sexual assault is *committed by* any of the following means:

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[26] *Id.;* TSN, July 30, 2002, p. 5.

(a) By inserting his penis into another person's mouth or anal orifice; or
(b) By inserting any instrument or object into the genital or anal orifice of another person;

(3) That the act of sexual assault is accomplished under any of the following circumstances:

(a) By using force and intimidation;
(b) When the woman is deprived of reason or otherwise unconscious; or
(c) By means of fraudulent machination or grave abuse of authority; or
(d) When the woman is under 12 years of age or demented.[27]

In the instant case, it was clearly established that appellant committed an act of sexual assault on "AAA" by inserting an instrument or object into her genital. We find it inconsequential that "AAA" could not specifically identify the particular instrument or object that was inserted into her genital. What is important and relevant is that indeed something was inserted into her vagina. To require "AAA" to identify the instrument or object that was inserted into her vagina would be contrary to the fundamental tenets of due process. It would be akin to requiring "AAA" to establish something that is not even required by law. [Moreover, it might create problems later on in the application of the law if the victim is blind or otherwise unconscious.] Moreover, the prosecution satisfactorily established that appellant accomplished the act of sexual assault through his moral ascendancy and influence over "AAA" which substituted for violence and intimidation. Thus, there is no doubt that appellant raped "AAA" by sexual assault.

Appellant's contentions are untenable.

The failure of "AAA" to mention that her panty was removed prior to the rape does not preclude sexual assault. We cannot likewise give credence to the assertion of appellant that the crime of rape was negated by the medical findings of an intact

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[27] Reyes, Luis B., *The Revised Penal Code,* Book Two, Seventeenth Edition, p. 557.

hymen or absence of lacerations in the vagina of "AAA". Hymenal rupture, vaginal laceration or genital injury is not indispensable because the same is not an element of the crime of rape.[28] "An intact hymen does not negate a finding that the victim was raped."[29] Here, the finding of reddish discoloration of the hymen of "AAA" during her medical examination and the intense pain she felt in her vagina during and after the sexual assault sufficiently corroborated her testimony that she was raped.

Likewise undeserving of credence is appellant's contention that his wife merely instigated "AAA" to file the charge of rape against him in retaliation for his having confronted her about her illicit affair with another man. This imputation of ill motive is flimsy considering that it is unnatural for appellant's wife to stoop so low as to subject her own daughter to the hardships and shame concomitant with a prosecution for rape, just to assuage her hurt feelings.[30] It is also improbable for appellant's wife to have dared encourage their daughter "AAA" to publicly expose the dishonor of the family unless the rape was indeed committed.[31]

Penalty

Under Article 266-B of the RPC, the penalty for rape by sexual assault is *prision mayor*. However, the penalty is increased to *reclusion temporal* "if the rape is committed by any of the 10 aggravating/qualifying circumstances mentioned in this article". The Information alleged the qualifying circumstances of relationship and minority. It was alleged that appellant is the father of "AAA". During the pre-trial conference, the parties stipulated that "AAA" is the daughter of appellant.[32] During trial,

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[28] *People v. Valenzuela*, G.R. No. 182057, February 6, 2009, 578 SCRA 157, 169-170.

[29] *People v. Tampos*, 455 Phil. 844, 858 (2003).

[30] *People v. Palgan*, G.R. No. 186234, December 21, 2009, 608 SCRA 725, 731.

[31] *Id.* at 731-732.

[32] Records, p. 14.

appellant admitted his filial bond with "AAA".[33] "[A]dmission in open court of relationship has been held to be sufficient and, hence, conclusive to prove relationship with the victim."[34]

With respect to minority, however, the Information described "AAA" as a 7-year old daughter of appellant. While this also became the subject of stipulation during the pre-trial conference, same is insufficient evidence of "AAA's" age. Her minority must be "proved conclusively and indubitably as the crime itself".[35] "[T]here must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused."[36] Documents such as her original or duly certified birth certificate, baptismal certificate or school records would suffice as competent evidence of her age.[37] Here, there was nothing on record to prove the minority of "AAA" other than her testimony, appellant's absence of denial, and their pre-trial stipulation.[38] The prosecution also failed to establish that the documents referred to above were lost, destroyed, unavailable or otherwise totally absent.[39]

It is settled that "when either one of the qualifying circumstances of relationship and minority is omitted or lacking, that which is pleaded in the information and proved by the evidence may be considered as an aggravating circumstance."[40] As such, appellant's relationship with "AAA" may be considered as an aggravating circumstance.

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[33] *Id.;* TSN, October 22, 2003, p. 3.

[34] *People v. Padilla*, G.R. No. 167955, September 30, 2009, 601 SCRA 385, 397.

[35] *People v. Albalate, Jr.*, G.R. No. 174480, December 18, 2009, 608 SCRA 535, 546, citing *People v. Manalili*, G.R. No. 184598, June 23, 2009, 590 SCRA 695, 716.

[36] *Id.*, citing *People v. Tabanggay*, 390 Phil. 67, 91 (2000).

[37] *People v. Padilla, supra* at 397-398.

[38] *Id.* at 398.

[39] *Id.*

[40] *People v. Hermocilla*, G.R. No. 175830, July 10, 2007, 527 SCRA 296, 304-305, citing *People v. Esperanza*, 453 Phil. 54, 75-76 (2003).

In view of these, the imposable penalty is *reclusion temporal* which ranges from twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* which ranges from six (6) years and one (1) day to twelve (12) years. Hence, a penalty of twelve (12) years of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, is imposed upon appellant.

Damages

In line with prevailing jurisprudence, the awards of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages are each modified to ₱30,000.00.[41] "AAA" is also entitled to an interest on all the amounts of damages awarded at the legal rate of 6% *per annum* from the date of finality of this judgment until fully paid.[42]

WHEREFORE, the December 29, 2006 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01442 is **AFFIRMED with MODIFICATIONS**. Accused-appellant Benjamin Soria *y* Gomez is found guilty beyond reasonable doubt of the crime of rape by sexual assault and is sentenced to suffer the penalty of twelve (12) years of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum. He is also ordered to pay "AAA" the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages. "AAA" is entitled to an interest on all damages awarded at the legal rate of 6% *per annum* from the date of finality of this judgment until fully paid.

SO ORDERED.

Carpio (Chairperson), Perez, and *Perlas-Bernabe, JJ.*, concur.

Brion, J., see dissenting opinion.

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[41] *People v. Alfonso*, G.R. No. 182094, August 18, 2010, 628 SCRA 431, 452.

[42] *People v. Flores*, G.R. No. 177355, December 15, 2010, 638 SCRA 631, 643.

DISSENTING OPINION

BRION, *J.*:

I DISSENT as I believe that the prosecution ***has not proven beyond reasonable doubt*** that appellant Benjamin Soria is guilty of rape through sexual assault under Article 266-A, paragraph 2 of the Revised Penal Code, as amended.

As my discussions below will show, the appellant should be acquitted of this crime on grounds of reasonable doubt, and should instead be convicted of the lesser crime and included crime of acts of lasciviousness – the crime that, under the available evidence, has been proven beyond reasonable doubt.

The Antecedents:

The evidence for the prosecution showed that in the afternoon of February 26, 2000, AAA[1] and her siblings ate the spaghetti that their father (the appellant) brought home for *merienda*. The records also show that after AAA finished eating, the appellant went on top of her and removed her clothes.[2] **AAA felt pain in her breasts and in her stomach; she also felt that "something" had been inserted into her private part.** When AAA told the appellant that she felt pain in her private part, the latter apologized to her and then left the room. The incident was allegedly witnessed by BBB, who told AAA that it was the appellant's "bird" that had been inserted into her vagina. AAA reported the incident to her aunt, CCC, who told her that the appellant was a bad person. CCC accompanied AAA to the hospital when AAA's vagina started to bleed. AAA also informed her mother what the appellant did to her. Thereafter, AAA was committed to the care and custody of the Department of Social Welfare and Development.

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[1] See our ruling in *People v. Cabalquinto*, 533 Phil. 703 (2006).

[2] **There is nothing in the transcript of stenographic notes that supports the *ponencia*'s narration that AAA went in the bedroom to rest after eating**.

The prosecution charged the appellant with the **crime of rape** under Article 266-A of the Revised Penal Code, as amended, in relation to Republic Act No. 7610, before the Regional Trial Court (*RTC*), Branch 94, Quezon City. In its judgment[3] of June 30, 2005, the RTC found the appellant guilty beyond reasonable doubt of the **crime of rape by sexual intercourse**,[4] and it imposed the death penalty. It also ordered him to pay the victim the amounts of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

On appeal, the Court of Appeals (*CA*) affirmed the RTC judgment with the following modifications: (1) the appellant was found guilty of simple rape only; (2) the death penalty was reduced to *reclusion perpetua*; and (3) the amount of civil indemnity was reduced to ₱50,000.00.[5]

The *ponencia* affirmed the CA decision with the following modifications: (1) the appellant is found guilty of **rape through sexual assault** under Article 266-A, paragraph 2 of the Revised Penal Code, as amended; (2) he is sentenced to suffer the indeterminate penalty of twelve (12) years of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum; and (3) on his liability for damages – (a) the amount of civil indemnity is reduced from ₱50,000.00 to ₱30,000.00; (b) the amount of moral damages is reduced from ₱50,000.00 to ₱30,000.00; (c) the amount of exemplary damages is increased from ₱25,000.00 to ₱30,000.00; and (d) the appellant is ordered to further pay the victim interest on all damages awarded at the legal rate of 6% per annum from the date of finality of the judgment until fully paid.

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[3] Penned by Judge Romeo F. Zamora; CA *rollo*, pp. 39-44.

[4] Qualified by relationship and minority.

[5] Penned by Associate Justice Vicente Q. Roxas, and concurred in by Associate Justices Josefina Guevara Salonga and Apolinario D. Bruselas, Jr.; *rollo*, pp. 2-15.

The Dissent:

I clarify at the outset that I agree with the *ponencia*'s conclusion that the appellant cannot be convicted of **rape by sexual intercourse** under Article 266-A, paragraph 1 of the Revised Penal Code, as amended. The prosecution failed to establish beyond reasonable doubt the element of carnal knowledge.

My opposition stems from the *ponencia*'s finding that the appellant should be convicted of **rape through sexual assault** under Article 266-A, paragraph 2 of the Revised Penal Code, as amended.

Under Article 266-A, paragraph 2 of the Revised Penal Code, as amended, rape through sexual assault is committed "[b]y any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person."[6]

In the present case, **there is no admissible evidence to show that the appellant inserted his penis into AAA's mouth or anal orifice, or any instrument or object into the victim's genital or anal orifice**. In her testimony, AAA merely "felt" that something had been inserted in her private part, as a result of which, she felt pain. To be sure, ***had there been any testimony*** that it was the appellant's "bird" that had been inserted into her vagina, the appellant's conviction for rape by sexual intercourse under Article 266-A, paragraph 1 should have followed. No such testimony, however, was ever given; **AAA merely admitted that her brother BBB told her it was the appellant's bird that had been inserted**. This testimony, of course, is clearly **hearsay**; BBB was never presented in court to testify.

On the basis of this evidence, the *ponencia* holds that while it had not been clearly established that it was the appellant's penis that had been inserted into AAA's vagina, it cannot be denied that the appellant "inserted an object" into the victim's

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[6] Underscoring ours.

female organ. The *ponencia* based its conclusion on the following circumstances: (a) AAA "experienced pain when the appellant inserted something in her vagina";[7] and (b) Dr. Francisco Supe, Jr. testified that the victim's hyperemic hymen could have been caused by an object being "rubbed" on her private part.

I find the *ponencia*'s reasoning and conclusion seriously flawed.

First, it is a dangerous proposition to equate AAA's testimony of pain in her private part with rape; it is the insertion of an instrument or object into the victim's genital or anal orifice, not pain, that constitutes rape through sexual assault. Thus, the victim's testimony should, at the very least, have mentioned that the appellant inserted an object or instrument in her vagina or anal orifice or she should have testified on circumstances that would lead us to reasonably conclude that the appellant inserted an instrument or object into her genital or anal orifice. As earlier stated, **AAA merely felt pain**; it was BBB who told her that it was the appellant's "bird" that had been inserted into her vagina. **At most, AAA merely "assumed" that something had been inserted into her vagina**. This is what the totality of her testimony implied.

Significantly, the records bear out that **the appellant removed only AAA's clothes, and not her underwear**, during the incident. To directly quote from the records:

FISCAL BEN DELA CRUZ:

Q: So you said you wanted to explain something about your father, what was that?

AAA:

A: What he did, sir.

Q: What is that?

A: I was raped, sir.

Q: What did he do when you said he raped you?

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[7] *Ponencia*, p. 11.

A: He laid on top of me, sir.

Q: **Did you have your dress on when he did that?**

A: **Yes, sir.**

Q: **What about your underwear? Did you have your underwear on?**

A: **Yes, sir.**

Q: **He did not remove any of your clothes?**

A: **Only my clothes, sir.**[8] (emphasis ours)

This circumstance makes the insertion of an object or instrument into the victim's genital highly improbable. Considering that AAA also testified that she felt pain in her breasts and stomach when the appellant went on top of her, it is not far-fetched that the pain she felt in her private part could have been caused by the appellant's weight being pressed against her whole body, and it was not due to the insertion of an object into her vagina.

***Second*, Dr. Supe's Medico-Legal Report and court testimony did not support the *ponencia*'s conclusion that the appellant inserted an object or even his penis into AAA's vagina**. Dr. Supe testified that he conducted a medical examination on AAA on March 3, 2000, and made the following findings:

GENERAL AND EXTRA-GENITAL: Fairly developed, fairly nourished and coherent female child. Breasts are undeveloped. Abdomen is flat and soft.

GENITAL: There is absent growth of pubic hair. *Labia majora* are full, convex, and coaptated with light brown *labia minora* presenting in between. On separating the same, disclosed an elastic, fleshy type, hyperemic and intact hymen. Posterior fourchette is sharp.

CONCLUSION: The subject is in virgin state physically. **There are no external signs of application of any form of physical trauma**.[9] (emphasis ours)

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[8] TSN, February 10, 2003, pp. 3-4.

[9] *Ponencia*, p. 3.

According to Dr. Supe, a hyperemic hymen is the result of the application of friction, such as scratching, on the hymen. Dr. Supe further stated that the insertion of an object could result to a hyperemic hymen if this object was "rubbed." For clarity and precision, I quote the relevant portions of Dr. Supe's testimony:

ASSISTANT CITY PROSECUTOR BEN DELA CRUZ:

Q: Doctor, with respect to Exhibit A, the Medico-Legal Report pertaining to the entry on the genital, which reads: On separating the hymen, disclosed an elastic, fleshy-type, **hyperemic and intact hymen**. Will you please tell us, Doctor, what is this hyperemic hymen?

DR. FRANCISCO SUPE, JR.:

A: Hyperemic hymen, sir, means that at the time of the examination, I found out that it was reddish in color.

Q: Considering that the age of the child or the patient, the victim whom you examined at that time which was about 6 years old, will you be able to tell us, Doctor, what could have caused this type of injury, because this is an injury to the hymen?

A: Hyperemic, sir, is observed whenever there is **friction applied to an area, such as in the form of scratching.**

Q: What about insertion of an object, would this result into hyperemic hymen?

A: **If the object is being rubbed, sir, there is a possibility.**

Q: A finger would produce that kind of injury?

A: **Possible**, sir.

x x x x x x x x x

ATTY. JOSEPH SIA:

Q: The friction that caused the hyperemic hymen would be caused by other activities of the child, like for example playing or bicycle riding?

DR. SUPE, JR:

A: If there is a friction, it is **possible**.[10] (emphases ours)

Clearly, there was **no categorical declaration by Dr. Supe that an instrument or object had been inserted into the victim's private part**. Notably, Dr. Supe also declared that the victim's other activities, like playing of riding a bicycle, could lead to a hyperemic hymen if friction had been applied on the area. The prosecution thus failed to establish the medical basis for a finding of rape through sexual assault.

Finally, I point out that **Dr. Supe found AAA to be in a "virgin state physically";**[11] **he also found her hymen to be intact**. I am not unmindful of the oft-repeated doctrine that an intact hymen does not necessarily preclude a finding that the victim had been raped. However, when the prosecution's evidence fails to establish with moral certainty all the elements necessary to consummate the crime of rape, a finding by the medico-legal officer that the victim is in a "virgin state," and that her hymen is intact, suffices to cast doubt on the appellant's culpability.

In rape cases, the prosecution bears the primary duty to present its evidence with clarity and persuasion, to the end that conviction becomes the only logical and inevitable conclusion. "The freedom of the accused is forfeited only if the requisite quantum of proof necessary for conviction be in existence. This, of course, requires the most careful scrutiny of the evidence for the State, both oral and documentary, independent of whatever defense is offered by the accused. 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."[12]

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[10] TSN, July 30, 2002, pp. 5-6.

[11] Records, p. 4.

[12] See *People v. Fabito*, G.R. No. 179933, April 16, 2009, 585 SCRA 591, 614.

Lewd or Lascivious Conduct Proven

Notwithstanding the prosecution's failure to prove the appellant's guilt for rape, I take the view that sufficient evidence exists to convict him of acts of lasciviousness under Article 336 of the Revised Penal Code. A charge of acts of lasciviousness is necessarily included in a complaint for rape. "The elements of acts of lasciviousness are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done under any of the following circumstances: (a) by using force or intimidation, (b) when the offended woman is deprived of reason or otherwise unconscious; or (c) when the offended party is under twelve (12) years of age; and (3) that the offended party is another person of either sex."[13]

"'*Lewd*' is defined as obscene, lustful, indecent, or lecherous. It signifies that form of immorality related to moral impurity, or that which is carried on a wanton manner."[14] In *Sombilon, Jr. v. People*,[15] the Court explained this concept as follows:

> The term "lewd" is commonly defined as something indecent or obscene; it is characterized by or intended to excite crude sexual desire. That an accused is entertaining a lewd or unchaste design is necessarily a mental process the existence of which can be inferred by overt acts carrying out such intention, *i.e.*, by conduct that can only be interpreted as lewd or lascivious. The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances.

The evidence in the present case established that the appellant **went on top of AAA**, and **removed her clothes**. The appellant only stopped when the victim told him that she felt pain in her private part. To my mind, the appellant's acts of mounting her *very own daughter*, and then removing her clothes, showed lewdness

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[13] *People v. Poras*, G.R. No. 177747, February 16, 2010, 612 SCRA 624, 645, citing *People v. Mingming*, G.R. No. 174195, December 10, 2008, 573 SCRA 509, 534-535.

[14] *Ibid.*, citing *People v. Lizada*, 444 Phil. 67 (2003).

[15] G.R. No. 175528, September 30, 2009, 601 SCRA 405, 414.

that constitutes acts of lasciviousness. These acts are clearly indecent and inappropriate; it undeniably demonstrates the appellant's gross moral depravity.

In light of these considerations, **I maintain that – on grounds of reasonable doubt – the appellant should be acquitted of the crime of rape through sexual assault under Article 266-A, paragraph 2 of the Revised Penal Code, as amended.** He should instead be convicted of the **lesser and included crime of acts of lasciviousness** as the evidence on record shows the presence of all the elements of this crime.

THIRD DIVISION

[G.R. No. 181052. November 14, 2012]

RODOLFO BELBIS, JR. *Y* COMPETENTE and ALBERTO BRUCALES, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED; EXCEPTION IS WHEN THERE IS CONFLICT IN FACTUAL FINDINGS.— In a criminal case, factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record. This rule, however, is not without exceptions, one of which is when there is a conflict between the factual findings of the Court of Appeals and the trial court which necessitates a review of such factual findings.

2. ID.; EVIDENCE; RULE OF ADMISSIBILITY; DYING DECLARATION; REQUISITES.— As an exception to the

hearsay rule, the requisites for its admissibility are as follows: (1) the declaration is made by the deceased under the consciousness of his impending death; (2) the deceased was at the time competent as a witness; (3) the declaration concerns the cause and surrounding circumstances of the declarant's death; and (4) the declaration is offered in a criminal case wherein the declarant's death is the subject of inquiry.

3. ID.; ID.; ID.; ID.; VICTIM'S BELIEF IN IMPENDING DEATH, NOT THE RAPID SUCCESSION OF DEATH IN POINT OF FACT, RENDERS DYING DECLARATION ADMISSIBLE. — The fact that the victim was stabbed on December 9, 1997 and died only on January 8, 1998 does not prove that the victim made the statement or declaration under the consciousness of an impending death. The rule is that, in order to make a dying declaration admissible, a fixed belief in inevitable and imminent death must be entered by the declarant. It is the belief in impending death and not the rapid succession of death in point of fact that renders the dying declaration admissible. It is not necessary that the approaching death be presaged by the personal feelings of the deceased. The test is whether the declarant has abandoned all hopes of survival and looked on death as certainly impending.

4. ID.; ID.; ID.; STATEMENT AS PART OF *RES GESTAE*; ELEMENT OF SPONTANEITY; DETERMINING FACTORS.— All that is required for the admissibility of a given statement as part of the *res gestae*, is that it be made under the influence of a startling event witnessed by the person who made the declaration before he had time to think and make up a story, or to concoct or contrive a falsehood, or to fabricate an account, and without any undue influence in obtaining it, aside from referring to the event in question or its immediate attending circumstances. x x x It goes without saying that the element of spontaneity is critical. The following factors are then considered in determining whether statements offered in evidence as part of the *res gestae* have been made spontaneously, *viz*., (1) the time that lapsed between the occurrence of the act or transaction and the making of the statement; (2) the place where the statement was made; (3) the condition of the declarant when he made the statement; (4) the presence or absence of

intervening events between the occurrence and the statement relative thereto; and (5) the nature and circumstances of the statement itself.

5. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELUCIDATED.— It is settled that when an accused admits killing the victim but invokes self-defense to escape criminal liability, the accused assumes the burden to establish his plea by credible, clear and convincing evidence; otherwise, conviction would follow from his admission that he killed the victim. Self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself. Indeed, in invoking self-defense, the burden of evidence is shifted and the accused claiming self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution. x x x Verily, to invoke self-defense successfully, there must have been an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict severe wounds upon the assailant by employing reasonable means to resist the attack.

6. ID.; ID.; ID.; RETALIATION IS NOT THE SAME AS SELF-DEFENSE; CASE AT BAR.— [T]he unlawful aggression on the part of the victim ceased when petitioner Rodolfo was able to get hold of the bladed weapon. Although there was still some struggle involved between the victim and petitioner Rodolfo, there is no doubt that the latter, who was in possession of the same weapon, already became the unlawful aggressor. Retaliation is not the same as self-defense. x x x The means employed by a person claiming self-defense must be commensurate to the nature and the extent of the attack sought to be averted, and must be rationally necessary to prevent or repel an unlawful aggression. In the present case, four stab wounds that are the product of direct thrusting of the bladed weapon are not necessary to prevent what the petitioners claim to be the continuous unlawful aggression from the victim as the latter was already without any weapon.

7. ID.; HOMICIDE; WHAT NEEDS TO BE DETERMINED IS THE PROXIMATE CAUSE OF DEATH.— What really needs to be proven in a case when the victim dies is the proximate

cause of his death. Proximate cause has been defined as "that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred." The autopsy report indicated that the cause of the victim's death is multiple organ failure. Thus, it can be concluded that without the stab wounds, the victim could not have been afflicted with an infection which later on caused multiple organ failure that caused his death. The offender is criminally liable for the death of the victim if his delictual act caused, accelerated or contributed to the death of the victim.

8. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; NOT APPRECIATED IN CASE AT BAR. — For voluntary surrender to be appreciated, the following requisites should be present: (1) the offender has not been actually arrested; (2) the offender surrendered himself to a person in authority or the latter's agent; and (3) the surrender was voluntary. The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture. Without these elements, and where the clear reasons for the supposed surrender are the inevitability of arrest and the need to ensure his safety, the surrender is not spontaneous and, therefore, cannot be characterized as "voluntary surrender" to serve as a mitigating circumstance. In the present case, when the petitioners reported the incident and allegedly surrendered the bladed weapon used in the stabbing, such cannot be considered as voluntary surrender within the contemplation of the law. Besides, there was no spontaneity, because they only surrendered after a warrant of their arrest had already been issued.

APPEARANCES OF COUNSEL

Law Firm of Contacto Nieales & Associates for petitioners.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, ***J.*:**

This is a Petition for Review on *Certiorari*[1] under Rule 45, dated February 22, 2008, of Rodolfo Belbis, Jr. and Alberto Brucales that seeks to reverse and set aside the Decision[2] of the Court of Appeals (CA), dated August 17, 2007, and its Resolution dated January 4, 2008, affirming with modification the Decision[3] dated December 23, 2004 of the Regional Trial Court (RTC), Tabaco City, Albay, Branch 17, finding petitioner guilty beyond reasonable doubt of the crime of Homicide.

The factual antecedents follow.

Jose Bahillo (Jose), the victim, was a Barangay Tanod of Sitio Bano, Barangay Naga, Tiwi, Albay. Around 9:00 p.m. of December 9, 1997, Jose left his house and proceeded to the area assigned to him. Later on, around 10:00 p.m., Veronica Dacir (Veronica), Jose's live-in partner, heard Jose shouting and calling her name and went to where Jose was and saw blood at his back and shorts. It was there that Jose told Veronica that he was held by Boboy (petitioner Alberto Brucales), while Paul (petitioner Rodolfo Belbis, Jr.) stabbed him. Jose was taken to St. Claire Medical Clinic at Tiwi, Albay, about four kilometers from Barangay Naga where he was initially attended by Dr. Bernardo Corral (Dr. Corral). Jose was later referred to Ziga Memorial District Hospital at Tabaco, Albay and, thereafter, was referred to Albay Provincial Hospital on December 10, 1997 at 2:00 a.m. He was confined therein for six (6) days. Dr. Sancho Reduta (Dr. Reduta), his attending physician, issued a medical certificate, which stated the following wounds found on Jose's body: (1) stab wound, 3 cm., lumbar area, right; (2) stab wound, 3 cm., lumbar area, left; (3) stab wound, 3 cm.,

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[1] *Rollo,* pp. 10-86.

[2] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso concurring.

[3] Penned by Judge Virginia G. Almonte; records, pp. 392-414.

left buttock, medial aspect; and (4) stab wound, 3 cm., left buttock, lateral aspect. He was also found positive for alcoholic breath, his blood level was monitored and was given I.V. (intravenous) fluids and antibiotics. He was finally discharged on December 15, 1997. Dr. Reduta issued Jose prescriptions and instructed the latter to go back to the hospital after the medicines prescribed are consumed. Jose remained bedridden and should have returned to the hospital on December 22, 1997, but failed to do so due to financial constraints. During that time, the wounds of Jose were not yet fully healed.

Veronica brought Jose back to St. Claire Medical Clinic on January 1, 1998, because the latter was complaining of urinary retention and pains in his left and right lumbar regions. Dr. Corral suspected that Jose had septicemia; thus, he was given I.V. fluids, antibiotics and diuretics, and a catheter was used to relieve Jose of urinary retention. Upon Jose's request, he was discharged on January 3, 1998. He was brought back to the same hospital on January 7, 1998 and was diagnosed by Dr. Corral as having advanced Pyelonephritis, his kidney was inflamed and with pus formation and scarring. Around 10:30 a.m. on January 8, 1998, SPO1 Lerma Bataller of the Philippine National Police-Tiwi went to the hospital to secure Jose's ante-mortem statement. Later, in the afternoon of the same day, Jose was brought to the clinic of Dr. Marilou Compuesto upon the advice of Dr. Corral where he underwent ultrasound scanning. It was found that Jose's kidney had acute inflammation due to infection. He was returned to St. Claire Medical Clinic and was advised to go to Manila. However, Jose died at 10:00 p.m. of the same day.

Dr. Corral issued a Death Certificate which shows the following:

a) Immediate cause – Uremia, secondary to renal shutdown
b) Antecedent cause – Septicemia, renal inflammatory disease.

Dr. Wilson Moll Lee, Medical Officer III of the National Bureau of Investigation (NBI) of Naga City, Region V, conducted an autopsy on the victim's cadaver on January 14, 1998 and issued Autopsy Report No. BRO No. 98-02, which indicated

multiple organ failure as the cause of the victim's death. Thus, petitioners were charged with the crime of homicide. The Information reads:

> That on or about the 9th day of December 1997, at about 10:30 o'clock in the evening, more or less, at Barangay Naga, Municipality of Tiwi, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, conspiring, confederating and helping one another, did then and there willfully, unlawfully, and feloniously assault, attack, and stab JOSE BAHILLO, thereby inflicting upon the latter stab wounds which caused his death on January 8, 1998, to the damage and prejudice of the latter's heirs.
>
> CONTRARY TO LAW.

On February 17, 1999, petitioners entered a plea of not guilty. Thereafter, trial on the merits ensued.

The prosecution presented documentary evidence as well as the testimonies of Dr. Marilou Compuesto, Dr. Sancho Reduta, Dr. Bernardo Corral, Dr. Wilson Moll Lee, SPO1 Lerma Bataller and Calixto Dacullo.

Petitioners claimed that they are entitled to the justifying circumstance of self-defense. Through the testimonies of petitioners, Dr. Olga Bausa and Dr. Edwin Lino Romano, their version of the incident is as follows:

Around 10:00 p.m. of December 9, 1997, petitioners were outside a store in Naga, Tiwi, Albay, engaged in a conversation with other people when Jose went to them and told them to go home. While on their way home, they heard Jose's whistle go off as the latter was following them. Petitioner Rodolfo asked Jose what is the matter and the latter replied, "What about?" Suddenly, Jose thrust a nightstick on petitioner Rodolfo, but the latter was able to evade it. Afterwards, Jose held the nightstick horizontally with both hands and tried to hit petitioner Rodolfo's forehead. Petitioner Rodolfo held the nightstick which was in reality, a bolo sheathed on a scabbard. Jose pulled the bolo inside and the wooden scabbard was detached from it, thus,

the blade thereof injured his left hand. Petitioner Rodolfo kept holding the wooden scabbard and when Jose thrust the bolo to petitioner Rodolfo, the latter parried it with the wooden scabbard he was holding. Petitioner Rodolfo managed to take the bolo away from Jose and, thereafter, the latter embraced petitioner Rodolfo while trying to get the bolo back. Petitioner Rodolfo held the bolo with his right hand and swung it away from Jose. Thereafter, Jose pushed petitioner Rodolfo causing the bolo to slip from the latter's hand. Jose tried to pick the bolo up, but petitioner Rodolfo was able to hold it first, thus, Jose stepped back. During that commotion, petitioner Alberto was only watching and told Jose and petitioner Rodolfo to stop fighting.

Thereafter, petitioner Alberto accompanied petitioner Rodolfo to the latter's house because he suffered a hand injury. Petitioner Rodolfo was then brought to Tabaco General Hospital before he was referred to Albay Provincial Hospital. Dr. Reduta sutured the top layer of his wound and the following day, he went back to Tabaco General Hospital where he was operated on his left hand injury by Dr. Romano.

Petitioner Rodolfo brought the bolo used in the incident with him in his house and reported the matter to the police station of Tiwi and surrendered the same bolo to the police authorities.

The RTC convicted the petitioners of the crime charged against them, but appreciated the mitigating circumstance of incomplete self-defense. The dispositive portion of the decision follows:

> WHEREFORE, premises considered, the accused Rodolfo Belbis, Jr. and Alberto Brucales are found guilty beyond reasonable doubt for the death of Jose Bahillo. Considering the privileged mitigating circumstance of incomplete self-defense in their favor, and applying the Indeterminate Sentence Law, they are hereby sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum, and to pay the heirs of Jose Bahillo the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

Costs against the accused.

SO ORDERED.[4]

After the denial of their motion for reconsideration, the petitioners elevated the case to the CA. However, the latter denied their appeal and affirmed the RTC decision with modification that there was no mitigating circumstance of incomplete self-defense. The decretal portion of the decision reads:

WHEREFORE, the decision dated 23 December 2004 of the Regional Trial Court of Tabaco City, Albay, Branch 17 is hereby AFFIRMED with MODIFICATION as to the penalty imposed. Accused-appellants Rodolfo C. Belbis, Jr. and Alberto Brucales are sentenced to suffer the indeterminate sentence of six (6) years and one (1) day of *prision mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum.

Costs *de oficio*.

SO ORDERED.[5]

Petitioners' motion for reconsideration was denied. Hence, the present petition.

Raised are the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT THE STATEMENTS MADE BY THE VICTIM TO VERONICA DACIR, ONE MONTH PRIOR TO THE VICTIM'S DEATH. CONSTITUTES A DYING DECLARATION WITHIN THE CONTEMPLATION OF SECTION 37, RULE 130 OF THE RULES OF COURT?

II

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT PETITIONERS-APPELLANTS ARE NOT ENTITLED

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[4] Records, p. 414.

[5] *Rollo*, p. 81.

TO THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE AND THE MITIGATING CIRCUMSTANCE OF INCOMPLETE SELF-DEFENSE?

III

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT THE STAB WOUNDS WERE THE PROXIMATE CAUSE OF THE VICTIM'S DEATH?

IV

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER IS NOT PRESENT IN THE CASE AT BAR?[6]

The petition lacks merit.

In a criminal case, factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record.[7] This rule, however, is not without exceptions, one of which is when there is a conflict between the factual findings of the Court of Appeals and the trial court which necessitates a review of such factual findings.[8]

Petitioners claim that there is discrepancy in the findings of the RTC and the CA. According to them, the RTC never mentioned about a dying declaration which the CA discussed in its decision. They then argue that the CA erred in ruling that the statements made by the victim in the presence of witnesses Veronica Dacir right after being stabbed, and SPO1 Lerma Bataller before he died, are dying declarations within the contemplation of the law as the victim still lived for one month after the said dying declaration was made.

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[6] *Id.* at 11-12.

[7] *People v. Narca*, 341 Phil. 696, 713-714 (1997).

[8] *Co v. Court of Appeals*, August 11, 1995, 247 SCRA 195, 200.

A dying declaration is a statement made by the victim of homicide, referring to the material facts which concern the cause and circumstances of the killing and which is uttered under a fixed belief that death is impending and is certain to follow immediately, or in a very short time, without an opportunity of retraction and in the absence of all hopes of recovery. In other words, it is a statement made by a person after a mortal wound has been inflicted, under a belief that death is certain, stating the facts concerning the cause and circumstances surrounding his/her death.[9]

As an exception to the hearsay rule, the requisites for its admissibility are as follows: (1) the declaration is made by the deceased under the consciousness of his impending death; (2) the deceased was at the time competent as a witness; (3) the declaration concerns the cause and surrounding circumstances of the declarant's death; and (4) the declaration is offered in a criminal case wherein the declarant's death is the subject of inquiry.[10]

The fact that the victim was stabbed on December 9, 1997 and died only on January 8, 1998 does not prove that the victim made the statement or declaration under the consciousness of an impending death. The rule is that, in order to make a dying declaration admissible, a fixed belief in inevitable and imminent death must be entered by the declarant. It is the belief in impending death and not the rapid succession of death in point of fact that renders the dying declaration admissible. It is not necessary that the approaching death be presaged by the personal feelings of the deceased. The test is whether the declarant has abandoned all hopes of survival and looked on

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[9] *People v. Cerilla*, G.R. No. 177147, November 28, 2007, 539 SCRA 251, 261-262, citing R.J. Francisco, *Evidence Rules* 128-134, 3rd ed., 1996, p. 257.

[10] *People v. Hernandez*, G.R. Nos. 67690-91, January 21, 1992, 205 SCRA 213, 220-221; *People v. Israel*, G.R. No. 97027, March 11, 1994, 231 SCRA 155, 161-162; *People v. Apa-ap, Jr.*, G.R. No. 110993, August 17, 1994, 235 SCRA 468, 473; *People v. Pama*, G.R. Nos. 90297-98, December 11, 1992, 216 SCRA 385, 403.

death as certainly impending.[11] As such, the CA incorrectly ruled that there were dying declarations.

The CA should have admitted the statement made by the victim to Veronica Dacir right after he was stabbed as part of the *res gestae* and not a dying declaration. Section 42 of Rule 130 of the Rules of Court, reads as follows:

> Sec. 42. *Part of the res gestae*. – Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. So also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*.

All that is required for the admissibility of a given statement as part of the *res gestae*, is that it be made under the influence of a startling event witnessed by the person who made the declaration before he had time to think and make up a story, or to concoct or contrive a falsehood, or to fabricate an account, and without any undue influence in obtaining it, aside from referring to the event in question or its immediate attending circumstances. In sum, there are three requisites to admit evidence as part of the *res gestae*: (1) that the principal act, the *res gestae*, be a startling occurrence; (2) the statements were made before the declarant had the time to contrive or devise a falsehood; and (3) that the statements must concern the occurrence in question and its immediate attending circumstances.[12]

It goes without saying that the element of spontaneity is critical. The following factors are then considered in determining whether statements offered in evidence as part of the *res gestae* have been made spontaneously, *viz*., (1) the time that lapsed between

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[11] *People v. Cerilla, supra* note 6, at 263, citing *People v. Almeda*, 209 Phil. 393, 398 (1983); See also *People v. Devaras*, 147 Phil. 664, 673 (1971).

[12] *People v. Sanchez*, G.R. No. 74740, August 28, 1992, 213 SCRA 70, 79; See also *People v. Taneo*, G.R. No. 87236, February 8, 1993, 218 SCRA 494, 506; *Anciro v. People*, G.R. No. 107819, December 17, 1993, 228 SCRA 629, 642.

the occurrence of the act or transaction and the making of the statement; (2) the place where the statement was made; (3) the condition of the declarant when he made the statement; (4) the presence or absence of intervening events between the occurrence and the statement relative thereto; and (5) the nature and circumstances of the statement itself.[13]

Clearly, the statement made by the victim identifying his assailants was made immediately after a startling occurrence which is his being stabbed, precluding any chance to concoct a lie. As shown in the testimony of Veronica:

Q What time did you sleep that night?

x x x x x x x x x

A I was not able to sleep that night because I already heard my husband.

Q What did you hear?
A He was shouting.

Q What was he shouting?
A He was calling my name, "Bonic."

Q How did you come to know that it was the voice of your live-in partner?
A Because upon hearing his call "Bonic," I went to the side of the road and I saw him on the road walking towards our house.

Q More or less what time was that?
A 10:00 p.m.

Q What did you do?
A I approached him.

Q What particular place did you approach him?
A Near the store of Susan Galica.

Q What happened when you approached him?
A I asked him what happened.

Q What was the answer?
A He said that he was stabbed by Paul.

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[13] Francisco 315-317.

Q What else?
A: He was held by Boboy.

x x x x x x x x x

Q What did you observe from Jose Bahillo your live-in partner before you brought him to the hospital?
A He was bloody and he was weak.

Q Could you tell us where did you see the blood?
A At his back and on his shorts.[14]

Be that as it may, the CA need have discussed in its decision the presence of a dying declaration or a statement as part of the *res gestae*, because petitioner Rodolfo admitted stabbing the victim but insists that he had done the deed to defend himself. It is settled that when an accused admits killing the victim but invokes self-defense to escape criminal liability, the accused assumes the burden to establish his plea by credible, clear and convincing evidence; otherwise, conviction would follow from his admission that he killed the victim.[15] Self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself.[16] Indeed, in invoking self-defense, the burden of evidence is shifted and the accused claiming self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution.[17]

The essential requisites of self-defense are the following: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of

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[14] TSN, April 25, 2001, pp. 6-10.

[15] *People v. Tagana*, G.R. No. 133027, March 4, 2004, 424 SCRA 620, 634; 468 Phil. 784, 800 (2004).

[16] *Marzonia v. People*, G.R No. 153794, June 26, 2006, 492 SCRA 627, 634.

[17] *People v. Tagana, supra* note 15.

the person resorting to self-defense.[18] Verily, to invoke self-defense successfully, there must have been an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict severe wounds upon the assailant by employing reasonable means to resist the attack.[19]

Petitioners argue that the unlawful aggression that was started by the victim continued even if petitioner Rodolfo was already in possession of the bladed weapon used in the victim's stabbing. Petitioner Alberto narrated the event as follows:

Q: What happened?
A: Rodolfo Belbis Jr. was able to fend off or parry the blow.

Q: Then what happened again?
A: The next action of Jose Bahillo was to hold the wood horizontally and push it towards Rodolfo Belbis, Jr. and Rodolfo Belbis, Jr. was able to get hold of it.

Q: Then what happened after Rodolfo Belbis, Jr. was able to get hold of this stick?
A: The piece of wood was detached. The one Rodolfo Belbis, Jr. was holding was the scabbard, while the one with the sharp instrument was held by Jose Bahillo.

Q: Then what happened after this?
A: Jose Bahillo embraced Rodolfo Belbis, Jr.

Q: Then?
A: Wanting to get hold of that sharp instrument.

Q: Then what did Rodolfo Belbis, Jr. do when Jose Bahillo embraced him and tried to wrest the sharp instrument from him?
A: While this Jose Bahillo was embracing this Rodolfo Belbis, Jr., Rodolfo Belbis. Jr. was moving his hands while holding

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[18] *People v. Silvano*, G.R. No. 125923, January 31, 2001, 350 SCRA 650, 657; 403 Phil. 598, 606 (2001); *People v. Plazo*, G.R. No. 120547, January 29, 2001, 350 SCRA 433, 442-443; *Roca v. Court of Appeals*, G.R. No. 114917, January 29, 2001, 350 SCRA 414, 422.

[19] *People v. Sarmiento*, G.R. No. 126145, April 30, 2001, 357 SCRA 447, 457; 409 Phil. 515, 528 (2001).

the sharp instrument, holding it away and thrusting it towards the back of Jose Bahillo, near the waistline at the back.

Q: Then what happened when you saw this?
A: When Jose Bahillo was not able to get hold of that sharp instrument, this Jose Bahillo pushed the body of Rodolfo Belbis, Jr. away from him and Rodolfo Belbis, Jr. fell down.

Q: Then what happened to the sharp instrument which Rodolfo Belbis, Jr. was holding when Rodolfo Belbis, Jr. fell down?
A: That sharp instrument got loose from his hand but it was situated just near him.

Q: Who are you referring as "him?"
A: Rodolfo Belbis, Jr.

Q: Then after this sharp instrument was loosened from the hand of Rodolfo Belbis, Jr. after he fell down, would you kindly inform this Court what happened next?
A: At that point, this Jose Bahillo again tried to get the sharp instrument but Rodolfo Belbis, Jr. was faster and he got hold of that instrument and [thrust] it towards Jose Bahillo.[20]

From the above testimony, it is apparent that the unlawful aggression on the part of the victim ceased when petitioner Rodolfo was able to get hold of the bladed weapon. Although there was still some struggle involved between the victim and petitioner Rodolfo, there is no doubt that the latter, who was in possession of the same weapon, already became the unlawful aggressor. Retaliation is not the same as self-defense. In retaliation, the aggression that was begun by the injured party already ceased when the accused attacked him, while in self-defense the aggression still existed when the aggressor was injured by the accused.[21] Such an aggression can also be surmised on the four stab wounds sustained by the victim on his back. It is hard to believe based on the location of the stab wounds, all at the back portion of the body (right lumbar area, left lumbar area, left buttock, medial aspect and left buttock, lateral aspect),

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[20] TSN, February 19, 2004, pp. 9-12.

[21] *People v. Vicente*, 452 Phil. 986, 998 (2003).

that petitioner Rodolfo was defending himself. It would have been different if the wounds inflicted were located in the front portion of the victim's body. The CA is, therefore, correct in agreeing with the observation of the RTC when it found that:

> x x x The Court is not convinced on how Bahillo sustained the four stab wounds as narrated by Belbis. If it is true that Bahillo embraced him when he was able to wrest possession of the bolo, trying to get it back; that he held it away from his reach and swung it at Bahillo's back; that he felt the blade touch the body, the nature of the wounds inflicted would be different. It would be a laceration, slash or abrasion since it was the sharp blade that hit the back and not the pointed end of the bolo. **The location and nature of the injuries which were stab wounds clearly showed that they were not caused by swinging thrust. They were caused by direct thrust. It was the pointed end of the bolo that caused the injuries which hit the same spot – the lumbar area and the buttock.**[22]

The means employed by a person claiming self-defense must be commensurate to the nature and the extent of the attack sought to be averted, and must be rationally necessary to prevent or repel an unlawful aggression.[23] In the present case, four stab wounds that are the product of direct thrusting of the bladed weapon are not necessary to prevent what the petitioners claim to be the continuous unlawful aggression from the victim as the latter was already without any weapon. In connection therewith, having established that there was no unlawful aggression on the part of the victim when he was stabbed, petitioners cannot avail of the mitigating circumstance of incomplete self-defense.

Anent the contention of petitioners that the CA failed to consider the testimony of the doctor who performed the autopsy in its entirety, the same is without any merit. What really needs to be proven in a case when the victim dies is the proximate cause of his death. Proximate cause has been defined as "that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without

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[22] *Rollo,* p. 74. (Emphasis supplied)

[23] See *People v. Escarlos,* 457 Phil. 580, 598 (2003).

which the result would not have occurred."[24] The autopsy report indicated that the cause of the victim's death is multiple organ failure. According to Dr. Wilson Moll Lee, the doctor who conducted the autopsy, the kidneys suffered the most serious damage. Although he admitted that autopsy alone cannot show the real culprit, he stated that by having a long standing infection caused by an open wound, it can be surmised that multiple organ failure was secondary to a long standing infection secondary to stab wound which the victim allegedly sustained.[25] What is important is that the other doctors who attended to the wounds sustained by the victim, specially those on the left and right lumbar area, opined that they affected the kidneys and that the wounds were deep enough to have caused trauma on both kidneys. On that point, the Office of the Solicitor General (OSG), in its Comment,[26] is correct in stating the following:

> 9.3.1 Petitioners-appellants contend that the Court of Appeals failed to consider the testimony of Dr. Lee for the defense. Dr. Lee opines on cross-examination that the stab wounds sustained by Bahillo are not the cause of his death because he lived for quite sometime and that there was no direct injury on his vital organs. There was, however, a qualification to Dr. Lee's statement on cross-examination. He opines that he could only connect the stab wounds with the infection and death of Bahillo if he has knowledge of the past medical records of the patient. Petitioners-appellants' reliance of the said statement of Dr. Lee is misplaced because the doctor only examined the cadaver of Bahillo. This explains why he has no direct knowledge of Bahillo's medical records. The opinions of the other doctors who testified for the prosecution and who examined Bahillo while *he was still alive* are more conclusive than those of Dr. Lee. They had direct knowledge of the causal relation between the stab wounds, the kidney failure and the death of Bahillo.[27]

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[24] *People v. Villacorta,* G.R. No. 186412, September 7, 2011, 657 SCRA 270, 279, citing *Calimutan v. People*, 517 Phil. 272, 284 (2006).

[25] *Rollo*, p. 78.

[26] *Id*. at 94-111.

[27] *Id.* at 106. (Italics supplied*)*

Thus, it can be concluded that without the stab wounds, the victim could not have been afflicted with an infection which later on caused multiple organ failure that caused his death. The offender is criminally liable for the death of the victim if his delictual act caused, accelerated or contributed to the death of the victim.[28]

As to the claim of petitioners that they are entitled to the mitigating circumstance of voluntary surrender, the same does not deserve merit. For voluntary surrender to be appreciated, the following requisites should be present: (1) the offender has not been actually arrested; (2) the offender surrendered himself to a person in authority or the latter's agent; and (3) the surrender was voluntary.[29] The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture.[30] Without these elements, and where the clear reasons for the supposed surrender are the inevitability of arrest and the need to ensure his safety, the surrender is not spontaneous and, therefore, cannot be characterized as "voluntary surrender" to serve as a mitigating circumstance.[31] In the present case, when the petitioners reported the incident and allegedly surrendered the bladed weapon used in the stabbing, such cannot be considered as voluntary surrender within the contemplation of the law. Besides, there was no spontaneity, because they only surrendered after a warrant of their arrest had already been issued.

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[28] *People v. Cutura*, G.R. No. L-12702, March 30, 1962, 4 SCRA 663.

[29] *De Vera v. De Vera*, G.R. No. 172832, April 6, 2009, 584 SCRA 506, 515, citing *People v. Oco*, 458 Phil. 815, 851 (2003).

[30] *Id.*, citing *People v. Garcia*, G.R. No. 174479, June 17, 2008, 554 SCRA 616, 637; *Mendoza v. People*, G.R. No. 173551, October 4, 2007, 534 SCRA 668, 697-698.

[31] *Id.* at 515-516, citing *People v. Garcia*, *supra*, at 637-638.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45, dated February 22, 2008, of Rodolfo Belbis, Jr. and Alberto Brucales, is hereby **DENIED**. Consequently, the Decision of the Court of Appeals, dated August 17, 2007, and its Resolution dated January 4, 2008, affirming with modification the Decision dated December 23, 2004 of the Regional Trial Court, Tabaco City, Albay, Branch 17, finding petitioner guilty beyond reasonable doubt of the crime of Homicide are hereby **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 181664. November 14, 2012]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **CRISPIN D. RAMOS and DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT.— A question of law arises when there is doubt as to what law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged

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[*] Designated Acting Member, per Special Order No. 1299 dated August 28, 2012.

facts. x x x Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.

2. ID., ID.; ID.; APPEAL THAT RAISED MIXED QUESTIONS OF LAW AND FACT SHOULD BE MAINTAINED.— Petitioner assailed not just the trial court's alleged error in applying the law on the nature of relation of the parties, particularly on the rights of DPWH to request withholding of release of payment and of petitioner as depositary bank to comply such request, but also on the factual basis for the grant of damages (litigation and attorney's fees) in favor of respondent. The discretion of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture. Since the appeal raised mixed questions of law and fact, the CA clearly erred in dismissing the case on the ground of lack of jurisdiction.

APPEARANCES OF COUNSEL

Eugenio F. Manaois for respondent C.D. Ramos.
The Solicitor General for public respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

This petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeks to reverse and set aside the Resolution[1] dated January 31, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 82916 dismissing the appeal for lack of jurisdiction.

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[1] *Rollo*, pp. 25-36. Penned by Associate Justice Marina L. Buzon with Associate Justices Rosmari D. Carandang and Mariflor P. Punzalan Castillo concurring.

In January 2000, the Department of Public Works and Highways (DPWH) and respondent Crispin D. Ramos (respondent) entered into a contract of sale over a portion of land affected by a bridge construction project. As per the recitals of the Deed of Absolute Sale,[2] the property sold is co-owned but respondent was the sole vendee, thus:

> WHEREAS, the PARTY OF THE FIRST PART is to construct the New Gayaman Bridge, Binmaley, Pangasinan and such construction affects and passes through a portion of the hereunto described property under Tax Declaration No. 573 still in the name of the late Maximo Diaz who is the predecessor-in-interest of the PARTY OF THE SECOND PART [Crispin D. Ramos];
>
> WHEREAS, the PARTY OF THE SECOND PART and FLORA D. RAMOS-REYES, GOMERCINDO D. RAMOS and JOSE ADVITO D. RAMOS are the compulsory heirs of the late Matea D. Ramos, the latter, together with the Late Maximo Diaz, being the only compulsory heirs of the late Mariano Diaz;
>
> WHEREAS, the heirs of the Late Matea Diaz-Ramos and the heirs of the Late Maximo Diaz are the co-owners of the parcel of land hereunto described property, but the latter's share was alienated, conveyed and ceded to Eduardo Concepcion by the heirs of the late Maximo Diaz;
>
> WHEREAS, only the PARTY OF THE SECOND PART voluntarily and spontaneously agrees and assents to alienate, convey and cede such a portion from their share of inheritance in the estate of the Late Mariano Diaz as transferred to the Late Matea D. Ramos which such said portion to be affected by the construction of the New Concrete Gayaman Bridge shall be deducted from his inheritance share on the said one-half portion of the estate of the Late Mariano Diaz as hereunto described;
>
> WHEREAS, the PARTY OF THE SECOND PART, being a co-owner of that property hereunto described covered and embodied under Tax declaration No. 573 as declared for taxation purposes consents to cede and convey for consideration **a portion from his share in inheritance in the estate** of the Late Matea Diaz Ramos affected thereby by way of this Deed of Absolute Sale to the herein

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

PARTY OF THE FIRST PART, such portion being more particularly described and bounded on the North, by the National Road and the property of Marcelo Senting, on the East, by the river; on the South, by the river; and on the West, by the property of Isidro Menera and Inocencio Cerezo, containing an area of One Thousand One Hundred Forty Square Meters (1,140 sq.m.)[.][3] (Emphasis supplied)

Accordingly, the agreed consideration of ₱570,000.00 was paid by DPWH to respondent by debiting the said amount from the latter's account with petitioner Land Bank of the Philippines (LBP) which credited such fund to the deposit/account of respondent.[4]

Respondent was able to withdraw from the aforesaid account ₱100,000.00 on March 26, 2001. In a letter[5] dated April 10, 2001, DPWH requested petitioner to hold in abeyance the release of payment to respondent while it sought a legal opinion from the DPWH Central Office in Manila. It appears that earlier, Jose Advito D. Ramos, a brother of respondent, wrote the DPWH saying that as co-owner of the property bought by DPWH, he is also entitled to his share in the proceeds of the sale.

Under 1st Indorsement dated June 22, 2001, DPWH Legal Services Director Oscar D. Abundo opined that:

x x x x x x x x x

It is worthy to mention that until now the property is still owned in common by the heirs, therefore, all should participate or share in the proceeds of the payment.

For equity and justice, a Deed of Partition should be submitted/demanded in order to determine the Degree of Participation for every heir.

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[3] *Id.* at 37.

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

[5] *Id.* at 40.

In view of the foregoing, no release/payment should be made until such time that the issue is settled.[6]

On March 4, 2002, respondent filed a Complaint[7] for "Recovery of Bank Deposit With Damages" in the Regional Trial Court (RTC) of Lingayen, Pangasinan against petitioner, its Branch Manager Ms. Kathleen Fernandez, and Field Attorney Atty. Jose L. Lopez, Jr.

Petitioner filed its Answer[8] asserting that it was forced to litigate in a baseless suit which did not implead DPWH as the real party defendant. With leave of court, it filed a Third-Party Complaint[9] against DPWH.

In its Answer,[10] DPWH contended that it was well within its right to request that payment to respondent be held in abeyance. Absent any actual partition, respondent cannot appropriate as his own, that portion of Lot 7382 sought to be acquired by DPWH, which is owned *pro-indiviso* by all the co-owners who are also entitled to receive their equal share of the payment. Hence, DPWH asserted that it does not incur any liability for its action, the same being legal and justifiable under the circumstances.

The parties agreed to submit the case for a judgment on the pleadings.

On November 27, 2003, the trial court rendered its decision[11], the dispositive portion of which reads:

WHEREFORE, premises well-considered, judgment is hereby rendered as follows:

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[6] *Id.* at 41.

[7] *Id.* at 42-46.

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

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

[10] *Id.* at 55-62.

[11] *Id.* at 63-66.

1. ordering the Land Bank of the Philippines, Dagupan City Extension Office in Caranglaan District, through its authorized officer(s) to allow the plaintiff to withdraw his deposit with interest from Saving's Account No. 2641-0235-50 with aforesaid bank;

2. ordering the Land Bank of the Philippines to pay the plaintiff litigation expenses in the amount of Ten Thousand (₱10,000.00) pesos and attorney's fees in the amount of Thirty Thousand (₱30,000.00) pesos;

3. dismissing the third party complaint of Land Bank of the Philippines against the third party defendant Department of Public Works and Highways.

SO ORDERED.[12]

Petitioner filed a motion for reconsideration but it was denied by the trial court in its Order dated February 16, 2004.[13] DPWH had separately filed a notice of appeal but subsequently filed a motion to withdraw appeal which was granted by the CA.

Before the CA, petitioner presented the following assignment of errors:

First Assignment of Error

THE LOWER COURT ERRED WHEN IT ORDERED DEFENDANT/THIRD-PARTY PLAINTIFF-APPELLANT TO ALLOW PLAINTIFF-APPELLEE TO WITHDRAW HIS DEPOSIT WITH INTEREST FROM SAVINGS ACCOUNT NO. 2641-0235-50.

Second Assignment of Error

THE LOWER COURT ERRED IN ORDERING DEFENDANTS/THIRD PARTY PLAINTIFFS-APPELLANTS TO PAY THE PLAINTIFF-APPELLEE LITIGATION EXPENSES IN THE AMOUNT OF ₱10,000.00 AND ATTORNEY'S FEES IN THE AMOUNT OF ₱3,000.00.

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

[13] *Id.* at 67-77.

Third Assignment of Error

THE LOWER COURT ERRED IN ORDERING THE … DISMISSAL OF DEFENDANTS/THIRD-PARTY PLAINTIFFS-APPELLANTS' THIRD-PARTY COMPLAINT AGAINST THIRD-PARTY DEFENDANT-APPELLEE (DPWH).[14]

However, in its assailed Resolution dated January 31, 2008, the CA dismissed the appeal after finding that it raised only pure questions of law, thus:

> It is clear from the arguments of the Bank that it is assailing the correctness of the conclusion of the court *a quo* that it is not an agent of DPWH with respect to the amount deposited in the savings account of Crispin and that its act of withholding the release of said amount to Crispin was not valid. It has been held that when there is no dispute as to the facts, the question of whether or not the conclusion drawn therefrom is correct is a question of law. x x x.
>
> Worthy of note that during the pre-trial conference, the parties agreed to have the case resolved by judgment on the pleadings, there being only legal issues involved. Thus, the court *a quo* did not make any findings of fact nor did it evaluate the parties' respective evidence, as none was presented, nor pass upon the truth or falsity of the parties' allegations. What the court *a quo* did was simply to apply the law as to the facts borne out by the allegations in the pleadings, and whatever conclusions it arrived at evidently involved questions of law. Consequently, a review of the propriety of the judgment on the pleadings rendered by the court *a quo* would not involve an evaluation of the probative value of any evidence, as none was presented, but would be limited to the inquiry of whether the law was properly applied given the facts of the case. Therefore, what would inevitably arise from such a review are pure questions of law, and not questions of fact, which are not proper in an ordinary appeal under Rule 41, but should be raised by way of a petition for review on *certiorari* before the Supreme Court under Rule 45, of the Rules of Court.[15]

Hence, this petition assailing mainly the dismissal of petitioner's appeal.

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[14] *Id.* at 31.

[15] *Id.* at 34-35.

In *Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals*,[16] we summarized the rule on appeals as follows[17]:

(1) In all cases decided by the RTC in the exercise of its original jurisdiction, appeal may be made to the Court of Appeals by mere notice of appeal where the appellant raises questions of fact or mixed questions of fact and law;

(2) In all cases decided by the RTC in the exercise of its original jurisdiction where the appellant raises only questions of law, the appeal must be taken to the Supreme Court on a petition for review on *certiorari* under Rule 45.

(3) All appeals from judgments rendered by the RTC in the exercise of its appellate jurisdiction, regardless of whether the appellant raises questions of fact, questions of law, or mixed questions of fact and law, shall be brought to the Court of Appeals by filing a petition for review under Rule 42.

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[18]

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[16] G.R. No. 115104, October 12, 1998, 297 SCRA 602, 615.

[17] As cited in *Sevilleno v. Carilo,* G.R. No. 146454, September 14, 2007, 533 SCRA 385, 388.

[18] *Republic v. Malabanan,* G.R. No. 169067, October 6, 2010, 632 SCRA 338, 345, citing *Leoncio v. De Vera,* G.R. No. 176842, February 18, 2008, 546 SCRA 180, 184.

In this case, petitioner's appeal did not raise only questions of law but also questions of fact. Petitioner assailed not just the trial court's alleged error in applying the law on the nature of relation of the parties, particularly on the rights of DPWH to request withholding of release of payment and of petitioner as depositary bank to comply with such request, but also on the factual basis for the grant of damages (litigation and attorney's fees) in favor of respondent. The discretion of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture.[19]

Since the appeal raised mixed questions of law and fact, the CA clearly erred in dismissing the case on the ground of lack of jurisdiction.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The Resolution dated January 31, 2008 of the Court of Appeals in CA-G.R. CV No. 82916 is **SET ASIDE**.

The case is hereby **REMANDED** to the Court of Appeals which shall decide CA-G.R. CV No. 82916 on the merits with deliberate dispatch.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Reyes, JJ.*, concur.

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[19] *Delos Santos v. Papa*, G.R. No. 154427, May 8, 2009, 587 SCRA 385, 397.

FIRST DIVISION

[G.R. No. 183026. November 14, 2012]

NESTOR N. PADALHIN and ANNIE PADALHIN, *petitioners, vs.* **NELSON D. LAVIÑA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING MUST BE PERSONALLY SIGNED BY ALL CO-PETITIONERS.— Verification is required to secure an assurance that the allegations of the petition have been made in good faith, or are true and correct and not merely speculative. The attestation on non-forum shopping requires personal knowledge by the party executing the same, and the lone signing petitioner cannot be presumed to have personal knowledge of the filing or non-filing by his co-petitioners of any action or claim the same as similar to the current petition.

2. ID.; ID.; APPEALS; ONLY QUESTIONS OF LAW ALLOWED. — Specifically, the instant petition challenges the existence of clear and substantial evidence warranting the award of damages and attorney's fees in Laviña's favor. Further, the instant petition prays for the grant of the Spouses Padalhin's counterclaims on the supposed showing that the complaint filed by Laviña before the RTC was groundless. Undoubtedly, the questions now raised before us are factual and not legal in character, hence, beyond the contemplation of a petition filed under Rule 45 of the Rules of Civil Procedure.

3. CIVIL LAW; DAMAGES; PROPER IN VIOLATING PRIVACY OF ONE'S RESIDENCE.— Nestor himself admitted that he caused the taking of the pictures of Laviña's residence without the latter's knowledge and consent. x x x Nestor violated the New Civil Code prescriptions concerning the privacy of one's residence and he cannot hide behind the cloak of his supposed benevolent intentions (to expose that Lavina is keeping ivories in his diplomatic residence) to justify the invasion. Hence, the award of damages and attorney's fees in Laviña's favor is proper.

APPEARANCES OF COUNSEL

Allan Rufo L. Yao for petitioners.
Manuel V. Albano for respondent.

R E S O L U T I O N

REYES, *J.*:

For review is the Decision[1] rendered on February 14, 2008 and Resolution[2] issued on May 20, 2008 by the Court of Appeals (CA) in CA- G.R. CV No. 81810. The CA affirmed, albeit with modification relative to the award of attorney's fees, the Decision[3] rendered on October 3, 2003 by the Regional Trial Court (RTC), Pasig City, Branch 165, which ordered herein petitioner Nestor Padalhin (Nestor), to pay herein respondent Nelson D. Laviña (Laviña) the total amount of ₱775,000.00 as damages.

Antecedent Facts

Laviña and Nestor were both Filipino diplomats assigned in Kenya as Ambassador and Consul General, respectively.

In the course of their stay in Kenya, the residence of Laviña was raided twice. Prior to the raids, Bienvenido Pasturan[4] (Pasturan) delivered messages to the Filipino household helpers in the ambassador's residence instructing them to allow the entry of an officer who would come to take photographs of the ivory souvenirs kept therein.

The first raid on April 18, 1996 was conducted while Laviña and his wife were attending a diplomatic dinner hosted by the Indian High Commission. Lucy Ercolano Muthua, who was

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[1] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Andres B. Reyes, Jr. (now Presiding Justice of the CA) and Jose C. Mendoza (now a member of this Court); *rollo*, pp. 35-48.

[2] *Rollo*, pp. 50-51.

[3] Penned by Judge Marietta A. Legaspi; *id.* at 54-81.

[4] Assistant and driver in the Philippine Embassy in Nairobi.

connected with the Criminal Investigation Division's Intelligence Office of Kenya and David Menza, an officer in the Digirie Police Station in Nairobi, participated in the raid. Photographs of the first and second floors of Laviña's residence were taken with the aid of James Mbatia,[5] Juma Kalama,[6] Zenaida Cabando[7] (Cabando), and Edna Palao[8] (Palao). The second raid was conducted on April 23, 1996 during which occasion, the ambassador and his spouse were once again not present and additional photographs of the residence were taken.

On September 27, 1996, Laviña received an information from the Department of Foreign Affairs (DFA) in Manila that an investigating team was to be sent to Nairobi to inquire into the complaints filed against him by the employees of the Philippine Embassy in Kenya, on one hand, and his own complaint against the spouses Padalhin, on the other. The investigating team was led by Rosario G. Manalo (Manalo) and had Franklin M. Ebdalin (Ebdalin) and Maria Theresa Dizon (Dizon) as members. The team stayed in Kenya from April 20, 1997 to April 30, 1997. On April 29, 1997, the team entered Laviña's residence unarmed with a search warrant, court order or letter from the DFA Secretary. Laviña alleged that in the course of the inspection, the team destroyed cabinet locks, damaged furnitures and took three sets of carved ivory tusks.

Subsequently, both Nestor and Laviña were recalled from their posts in Kenya.

On November 17, 1997, Laviña filed before the RTC a complaint for damages against Nestor and his wife, petitioner Annie Padalhin (Annie), Palao, Cabando, Manalo, Ebdalin and Dizon. On July 6, 1998, Laviña amended his complaint to include Pasturan as a defendant.

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[5] Personal driver of Padalhin.

[6] Laviña's gardener.

[7] Household helper in Laviña's residence.

[8] Likewise a household helper in Laviña's residence.

Laviña's complaint alleged the following causes of action, to wit: (a) affront against his privacy and the sanctity and inviolability of his diplomatic residence during the two raids conducted by the Kenyan officials, supposedly instigated by Padalhin and participated by all the defendants as conspirators; (b) infringement of his constitutional rights against illegal searches and seizures when the investigating team sent by the DFA entered into his residence without a warrant, court order or letter from the DFA Secretary and confiscated some of his personal belongings; and (c) bad faith, malice and deceit exhibited by the defendants, including Padalhin, in conspiring on the conduct of the raids, engaging in a smear campaign against him, and seizing without authority his personal effects. Laviña sought payment of actual, moral, exemplary and nominal damages, attorney's fees and costs of suits.

In the course of the trial, Nestor denied any involvement in the raids conducted on Laviña's residence. As counterclaims, he alleged that the suit filed by Laviña caused him embarassment and sleepless nights, as well as unnecessary expenses which he incurred to defend himself against the charges. On the other hand, Annie denied prior knowledge of and participation in the raids.

On February 24, 2000, the RTC, upon oral motion of Laviña's counsel informing the court that a settlement had been reached, dismissed the charges against Palao, Cabando, Manalo, Ebdalin and Dizon. As a consequence, the RTC deemed it proper to no longer resolve the claims of Laviña relative to the alleged seizure of his personal effects by the DFA investigating team. Laviña pursued his charges against Nestor, Annie and Pasturan.

The Ruling of the RTC

On October 3, 2003, the RTC rendered a Decision[9] ordering Nestor to pay Laviña ₱500,000.00 as moral damages, ₱50,000.00 as nominal damages, ₱75,000.00 as exemplary damages, ₱150,000.00 as attorney's fees and litigation expenses, and costs

[9] *Rollo,* pp. 54–81.

of suit for the former's participation in the raid conducted in the Ambassador's residence on April 18, 1996. The RTC ruled that:

[D]efendant Nestor N. Padalhin admitted in his sworn statement dated October 10, 1997 which was subscribed and sworn to on October 13, 1997 before the Executive Director Benito B. Valeriano, Office of Personnel and Administrative Services of the Department of Foreign Affairs, that he caused the taking of pictures of the raw elephant tusks in the official residence of the ambassador (Exh. "B"). x x x[.]

x x x x x x x x x

The said affidavit was submitted by Nestor Padalhin in answer to the administrative charge filed against him by then Secretary of the Department of Foreign Affairs Domingo L. Siazon, Jr. in connection with the violation of the diplomatic immunity of the residence of the Philippine Ambassador to Kenya on April 18, 1996. x x x[.]

x x x x x x x x x

When Nestor Padalhin was presented by the plaintiff as hostile witness, he affirmed the truth of the contents of his affidavit marked as Exhibit "B". x x x.

It is therefore clear that the taking of the pictures of the elephant tusks inside the residence of Ambassador Nelson Laviña while the latter and his wife were out and attending a diplomatic function, was upon order of Nestor Padalhin to his driver James Mbatia with the cooperation of Juma Kalama, a gardener in the ambassador's residence. The admission of defendant Nestor Padalhin that he was the one who caused the taking of the pictures of the elephant tusks in the official residence of Ambassador Laviña in effect corroborates the latter's testimony that it was Nestor Padalhin who masterminded the invasion and violation of the privacy and inviolability of his diplomatic residence in Kenya on April 18, 1996.

The invasion of the diplomatic residence of the plaintiff in Kenya and the taking of photographs of the premises and the elephant tusks inside the residence upon order of defendant Nestor Padalhin without the knowledge and consent of the plaintiff were done by the said defendant in bad faith. The intention to malign the plaintiff is shown by the fact that Nestor Padalhin even went to the Kenyan

Ministry of Foreign Affairs and reported the raw elephant tusks of Ambassador Laviña as admitted in paragraph 2.a of his affidavit marked as Exhibit "B".

This incident reached not only the Ministry of Foreign Affairs of Kenya but also the Filipino community in Kenya, the Department of Foreign Affairs in Manila and the circle of friends of plaintiff. As a result, plaintiff felt insulted, betrayed, depressed and even feared for his life because the intelligence and local police were involved in this incident. Plaintiff suffered humiliation, sleepless nights, serious anxiety, besmirched reputation and wounded feeling.

The admission of defendant Nestor Padalhin in his affidavit (Exh. "B") regarding the first cause of action is binding upon him only but cannot bind his co-defendants Annie Padalhin and Bienvenido Pasturan who were not included in the administrative case where the affidavit of Nestor Padalhin was submitted.

The affidavits of plaintiff's maids Zenaida Cabando and Edna Palao who implicated Annie Padalhin and Bienvenido Pasturan in this case is hearsay evidence because the said househelpers did not appear to testify in this case and to identify their affidavits although the record will show that plaintiff exerted all efforts to present them as witnesses but failed because their address/whereabouts could not be traced and/or ascertained. In view of this, defendants Annie Padalhin and Bienvenido Pasturan did not have the opportunity to cross-examine the said affiants.[10] (Italics ours)

The RTC was, however, not convinced of Nestor's involvement in the raid staged on April 23, 1996. Laviña's testimony relative to the raid was not based on his own personal knowledge as it was only derived from the affidavits subscribed and sworn to before him by Cabando, Palao, Helen Tadifa,[11] John Ochieng[12] and Leonidas Peter Logarta.[13] During the trial before the RTC and even in the proceedings before the DFA, Laviña had not

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[10] *Id.* at 76-79.

[11] Finance Officer in the Philippine Embassy in Nairobi.

[12] A Kenyan national hired locally to work in the Philippine Embassy in Nairobi.

[13] Administrative Officer in the Philippine Embassy in Nairobi.

presented the aforementioned persons as witnesses. Their affidavits were thus considered as hearsay evidence since the witnesses were not subjected to cross-examination. The RTC likewise found no sufficient evidence to render Annie and Pasturan liable and to grant Nestor's counterclaims.

Both Laviña and Nestor filed their respective appeals to assail the RTC decision. Laviña ascribed error on the part of the RTC when it absolved Annie and Pasturan from liability anent their supposed participation in the raid conducted on April 18, 1996. Laviña likewise assailed as insufficient the amount of exemplary and nominal damages imposed on Nestor by the RTC. Laviña also challenged the propriety of the RTC's dismissal of his claims relative to the conduct of the second raid on April 23, 1996. On the other hand, Nestor lamented that his participation in the April 18, 1996 raid was not proven by clear and substantial evidence, hence, the award of damages made by the RTC in favor of Laviña lacked basis.

The Ruling of the CA

On February 14, 2008, the CA rendered a Decision[14] denying the appeals of both Laviña and Nestor. The CA, however, reduced to ₱75,000.00 the award of attorney's fees and litigation expenses made in Laviña's favor. In affirming, albeit with modification, the RTC's disquisition, the CA explained:

> *There is no doubt in our mind that defendant-appellant indeed participated in the first raid that happened on April 18, 1997 [sic]. This conclusion of ours is based on the admission made by the defendant- appellant himself in his affidavit dated October 10, 1997.* x x x[.]
>
> x x x x x x x x x
>
> *Defendat-appellant's affidavit constitute[s] as [sic] an admission against his interest.* Being an admission against interest, the affidavit is the best evidence which affords the greatest certainty of the facts in dispute. The rationale for the rule is based on the presumption that *no man would declare anything against himself*

[14] *Rollo*, pp. 35-48.

unless such declaration was true. Thus, it is fair to presume that the declaration corresponds with the truth, and it is his fault if it does not. As a Consul General of the Republic of the Philippines, defendant-appellant cannot pretend that the plain meaning of his admission eluded his mind. On the witness stand, he testified that he was the one who voluntarily and freely prepared his affidavit. He further stated that the contents thereof are true. *His affidavit likewise contained an apology for his lack of judgment and discretion regarding the April 18, 1996 raid.*

Anent plaintiff-appellant's second cause of action, the court *a quo* correctly ruled that plaintiff-appellant was not able to prove defendant- appellant's participation in the second raid that happened on April 26, 1996 [sic]. Basic is the rule in evidence that the burden of proof is on the part of the party who makes the allegations x x x. *Plaintiff-appellant's testimony regarding the second raid was not of his own personal knowledge. Neither does the affidavit of defendant-appellant admit that he had anything to do with the second raid.* Plaintiff-appellant came to know of the second raid only from the stories told to him by his household helps and employees of the Philippine Embassy in Nairobi, Kenya. Inasmuch as these people were not presented as witnesses in the instant case, their affidavits are considered hearsay and without probative value. x x x.

Next, plaintiff-appellant bewails the dismissal of the complaint against Annie Padalhin and Bienvenido Pasturan. He contends that the affidavits of Cabando and Palao, which were executed and sworn to before him, linking defendant Annie Padalhin and B[ie]nvenido Pasturan to the two raids are binding upon the latter two.

Such a contention by the plaintiff-appellant must fail. *The failure of the plaintiff-appellant to put Cabando and Palao on the witness stand is fatal to his case. Even if defendants Annie Padalhin and Bienvenido Pasturan failed to object to the hearsay evidence presented by the plaintiff-appellant, it would only mean that they have waived their right of confrontation and cross-examination, and the affidavits then are admissible. But admissibility of evidence should not be equated with weight of evidence. Hearsay evidence, whether objected to or not, has no probative value.*

x x x x x x x x x

Defendant-appellant contends that there is no factual basis to conclude that he was motivated by malice, bad faith or deceit, which would warrant the award of damages in favor of the plaintiff-appellant.

x x x Plaintiff-appellant's complaint is mainly anchored on Article 19 in relation to Articles 21 and 26 of the New Civil Code. These provisions of the law state thus:

> "Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."
>
> "Article 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage."
>
> "Article 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:
>
> (1) Prying into the privacy of another's residence: (2) Meddling with or disturbing the private life or family relations off [sic] another;
> (3) Intriguing to cause another to be alienated from his friends;
> (4) Vexing or humiliating another on account of his beliefs, lowly station in life, place of birth, physical defect, or other personal condition."

The Comment of Tolentino on what constitute an abuse of rights under Article 19 of the New Civil Code is pertinent:

> "**Test of Abuse of Right**. – *Modern jurisprudence does not permit acts which, although not unlawful, are anti-social. There is undoubtedly an abuse of right when it is exercised for the only purpose of prejudicing or injuring another. When the objective of the actor is illegitimate, the illicit act cannot be concealed under the guise of exercising a right.* The principle does not permit acts which, without utility or legitimate purpose cause damage to another, because they violate the concept of social solidarity which considers law as rational and just. x x x."

The question, therefore, is whether defendant-appellant intended to prejudice or injure plaintiff-appellant when he did the acts as embodied in his affidavit.

We rule in the affirmative. *Defendant-appellant's participation in the invasion of plaintiff-appellant's diplomatic residence and his act of ordering an employee to take photographs of what was inside the diplomatic residence without the consent of the plaintiff-appellant were clearly done to prejudice the latter.* Moreover, we find that defendant- appellant was not driven by legitimate reasons when he did the questioned acts. As pointed out by the court *a quo*, defendant-appellant made sure that the Kenyan Minister of Foreign Affairs and the Filipino community in Kenya knew about the alleged illegal items in plaintiff-appellant's diplomatic residence.

x x x x x x x x x

Basic is the rule that trial courts are given the discretion to determine the amount of damages, and the appellate court can modify or change the amount awarded only when it is inordinate. x x x [W]e reduce the amount of attorney's fees and expenses of litigation from [₱]150,000.00 to [₱]75,000.00 considering that the instant suit is merely for damages.

With regard to plaintiff-appellant's contention that his prayer for "other reliefs which are just and equitable", consisting of his remuneration, salaries and allowances which should have been paid to him in Nairobi if it were not for his illegal recall to Manila, the same must likewise fail. First of all, *it is not within our powers to determine whether or not plaintiff-appellant's recall to Manila following the two raids was illegal or not*. Second, the "other reliefs" prayed for by the plaintiff- appellant are in the nature of actual or compensatory damages which must be duly proved with reasonable degree of certainty. *A court cannot rely on speculation, conjecture or guesswork as to the amount of damages, but must depend upon competent proof and on evidence of the actual amount thereof. Here, plaintiff-appellant failed to present proof of his salary and allowances*. x x x.[15] (Citations omitted and italics ours)

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[15] *Id.* at 42-48.

The Resolution[16] issued by the CA on May 20, 2008 denied the respective motions for reconsideration filed by Laviña and Nestor.

Hence, Nestor filed before us the instant Petition for Review on *Certiorari*[17] anchored on the following issues:

I. WHETHER OR NOT NESTOR'S PARTICIPATION IN THE RAID CONDUCTED ON LAVIÑA'S RESIDENCE WAS PROVEN BY CLEAR AND SUBSTANTIAL EVIDENCE AS TO WARRANT THE AWARD OF MORAL, EXEMPLARY AND NOMINAL DAMAGES AND ATTORNEY'S FEES IN THE LATTER'S FAVOR.

II. WHETHER OR NOT NESTOR'S COUNTERCLAIMS SHOULD HAVE BEEN GRANTED CONSIDERING A CLEAR SHOWING THAT LAVIÑA'S SUIT WAS GROUNDLESS.

The Arguments in Support of the Petition

Nestor reiterates that his admission of having caused the taking of photographs in Laviña's residence was subject to the qualification that he did so *sans* malice or bad faith. Padalhin insists that he did nothing unlawful. He merely intended to verify the complaints of some embassy personnel against Laviña, with the end in mind of protecting and upholding the image of the Philippine diplomatic corps in Kenya. He may have committed a lapse in the exercise of his discretion, but he never meant to cause Laviña harm, damage or embarassment.

Nestor avers that Laviña kept grudges against him based on a mistaken sentiment that the former intended to oust the latter from his post. This, however, did not justify Laviña's filing of a suit for damages against Nestor.

Laviña's Contentions

In his Comment,[18] Laviña seeks the dismissal of the instant petition on both procedural and substantive grounds. He alleges

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

[17] *Id.* at 9-33.

[18] *Id.* at 93-110.

that the verification and certification of non-forum-shopping attached to the petition was signed not by Spouses Padalhin but by their son, Norman Padalhin (Norman). Such being the case, it is as if the said verification and certification was not signed at all, hence, legally inexistent, rendering the petition defective. Besides, even if the Special Power of Attorney[19] (SPA) signed by Nestor were to be considered as the source of Norman's authority to sign the said verification and certification of non-forum-shopping, still, the instrument is wanting as Annie, a co-petitioner in the case at bar, had no participation in its execution.

Laviña likewise emphasizes that since factual and not legal issues are raised, resort to a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure is erroneous.

In challenging the substantial merits of the instant petition, Laviña reiterates the arguments he proffered in the proceedings below. He also made affirmative references to the portions of rulings of both the RTC and the CA, relative to the binding effect of the affidavits submitted by some of the defendants either with the DFA or the RTC, to render all of them liable for damages for their participation in the conduct of the supposed raids.

Our Disquisition

The instant petition is procedurally flawed.

We deem it proper to first resolve the procedural issues raised by Laviña relative to the (a) alleged defective verification and certification of non-forum shopping attached to the instant petition, and (b) the circumstance that factual and not legal issues are presented before us, hence, beyond the ambit of a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure.

Sections 4 and 5 of Rule 7 of the Rules of Civil Procedure provide:

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[19] *Id.* at 83.

Sec. 4. *Verification*. – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleadings and that the allegations therein are true and correct of *his personal knowledge or based on authentic records*.

A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief" or lacks a proper verification, shall be treated as an unsigned pleading.

Sec. 5. *Certification against forum shopping*. – The *plaintiff or principal party shall certify under oath* in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum-shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (Italics ours)

Obedience to the requirements of procedural rules is needed if we are to expect fair results therefrom, and utter disregard of the rules cannot justly be rationalized by harking on the policy

of liberal construction.[20] Time and again, this Court has strictly enforced the requirement of verification and certification of non-forum shopping under the Rules of Court.[21] Verification is required to secure an assurance that the allegations of the petition have been made in good faith, or are true and correct and not merely speculative.[22] The attestation on non-forum shopping requires personal knowledge by the party executing the same, and the lone signing petitioner cannot be presumed to have personal knowledge of the filing or non-filing by his co-petitioners of any action or claim the same as similar to the current petition.[23]

The circumstances surrounding the case at bar do not qualify to exempt compliance with the rules and justify our exercise of leniency. The verification and certification of non-forum shopping[24] attached to the instant petition was not signed personally by the petitioners themselves. Even if we were to admit as valid the SPA executed in Norman's favor allowing him to sign the verification and certification of non-forum shopping attached to the instant petition, still, his authority is wanting. Petitioner Annie did not participate in the execution of the said SPA. *In the pleadings filed with us, there is nary an explanation regarding the foregoing omissions. The petitioner spouses took procedural rules for granted and simply assumed that the Court will accord them leniency.* It bears stressing that procedural rules are crafted towards the orderly administration of justice and they cannot be haphazardly ignored at the convenience of the party litigants.

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[20] *Cosco Philippines Shipping, Inc. v. Kemper Insurance Company*, G.R. No. 179488, April 23, 2012.

[21] *Clavecilla v. Quitain*, 518 Phil. 53, 62 (2006).

[22] *Id.*

[23] *Vda. De Formoso v. Philippine National Bank*, G.R. No. 154704, June 1, 2011, 650 SCRA 35, 46, citing *Athena Computers, Inc. and Joselito R. Jimenez v. Wesnu A. Reyes*, G.R. No. 156905, September 5, 2007, 532 SCRA 343, 350.

[24] *Rollo*, p. 32.

Laviña also seeks the dismissal of the instant petition on the ground of being supposedly anchored on factual and not legal issues.

The case of *Vda. De Formoso v. Philippine National Bank*[25] is emphatic on what issues can be resolved in a petition for review on *certiorari* filed under Rule 45 of the Rules of Procedure, to wit:

> *Primarily*, Section 1, Rule 45 of the Rules of Court categorically states that *the petition filed shall raise only questions of law*, which must be distinctly set forth. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. *For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them.* The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.
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> x x x *[T]he substantive issue of whether or not the petitioners are entitled to moral and exemplary damages as well as attorney's fees is a factual issue which is beyond the province of a petition for review on certiorari.*[26] (Citation omitted and italics ours)

In the case at bar, the petitioner spouses present to us issues with an intent to subject to review the uniform factual findings of the RTC and the CA. Specifically, the instant petition challenges the existence of clear and substantial evidence warranting the award of damages and attorney's fees in Laviña's favor. Further, the instant petition prays for the grant of the Spouses Padalhin's counterclaims on the supposed showing that the complaint filed by Laviña before the RTC was groundless. It bears stressing that we are not a trier of facts. Undoubtedly, the questions now raised before us are factual and not legal in character, hence, beyond the contemplation of a petition filed under Rule 45 of the Rules of Civil Procedure.

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[25] *Supra* note 23.

[26] *Id.* at 48-49.

Even if we were to overlook the aforecited procedural defects of the instant petition, still, the reliefs prayed for by the petitioner spouses cannot be granted.

As already exhaustively discussed by both the RTC and the CA, Nestor himself admitted that he caused the taking of the pictures of Laviña's residence without the latter's knowledge and consent. Nestor reiterates that he did so *sans* bad faith or malice. However, *Nestor's surreptitious acts negate his allegation of good faith*. If it were true that Laviña kept ivories in his diplomatic residence, then, his behavior deserves condemnation. However, that is not the issue in the case at bar. Nestor violated the New Civil Code prescriptions concerning the privacy of one's residence and he cannot hide behind the cloak of his supposed benevolent intentions to justify the invasion. Hence, the award of damages and attorney's fees in Laviña's favor is proper.

WHEREFORE, IN VIEW OF THE FOREGOING, the instant petition is **DENIED**. The Decision dated February 14, 2008 and Resolution dated May 20, 2008 by the Court of Appeals in CA-G.R. CV No. 81810 are **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 183774. November 14, 2012]

PHILIPPINE BANKING CORPORATION, *petitioner, vs.* **ARTURO DY, BERNARDO DY, JOSE DELGADO and CIPRIANA DELGADO,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; BANKS; ON MORTGAGES; GREATER CARE AND DUE DILIGENCE REQUIRED THAT OCULAR INSPECTION OF PROPERTY MORTGAGED MUST BE CONDUCTED.— [T]he doctrine of "mortgagee in good faith" is based on the rule that all persons dealing with property covered by a Torrens Certificate of Title are not required to go beyond what appears on the face of the title. This is in deference to the public interest in upholding the indefeasibility of a certificate of title as evidence of lawful ownership of the land or of any encumbrance thereon. In the case of banks and other financial institutions, however, greater care and due diligence are required since they are imbued with public interest, failing which renders the mortgagees in bad faith. Thus, before approving a loan application, it is a standard operating practice for these institutions to conduct an ocular inspection of the property offered for mortgage and to verify the genuineness of the title to determine the real owner(s) thereof. The apparent purpose of an ocular inspection is to protect the "true owner" of the property as well as innocent third parties with a right, interest or claim thereon from a usurper who may have acquired a fraudulent certificate of title thereto.

2. ID.; ID.; ID.; ID.; BANK'S FAILURE TO EXERCISE THE EXTRAORDINARY DILIGENCE REQUIRED BY LAW SET ASIDE WHERE THE SAME DID NOT PREJUDICE INNOCENT THIRD PARTIES ALTHOUGH IT PREJUDICED PARTIES WHO ACTED IN BAD FAITH; CASE AT BAR.— In this case, while Philbank failed to exercise greater care in conducting the ocular inspection of the properties offered for mortgage, its omission did not prejudice

any innocent third parties. x x x Sps. Delgado ((home owners of property) were parties to the simulated sale in favor of the Dys (mortgagors) to mislead Philbank into granting the loan application. Thus, no amount of diligence in the conduct of the ocular inspection could have led to the discovery of the complicity between the ostensible mortgagors and the true owners. In fine, Philbank can hardly be deemed negligent under the premises since the ultimate cause of the mortgagors' defective title was the simulated sale to which Sps. Delgado were privies. Indeed, a finding of negligence must always be contextualized in line with the attendant circumstances of a particular case. As aptly held in *Philippine National Bank v. Heirs of Estanislao Militar*, "the diligence with which the law requires the individual or a corporation at all times to govern a particular conduct varies with the nature of the situation in which one is placed, and the importance of the act which is to be performed." Thus, without diminishing the time-honored principle that nothing short of extraordinary diligence is required of banks whose business is impressed with public interest, Philbank's inconsequential oversight should not and cannot serve as a bastion for fraud and deceit.

APPEARANCES OF COUNSEL

E.F. Rosello & Associates Law Offices for petitioner.
Mario Ortiz for respondents Delgado.
Alentajan Law Office for respondents Dy.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This Petition for Review on *Certiorari* assails the January 30, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 51672, which set aside the October 5, 1994 Decision[2] of the Regional Trial Court of Cebu City, Branch 22 (RTC) and

[1] *Rollo*, pp. 28-43. Penned by Associate Justice Antonio L. Villamor, with Associate Justices Stephen C. Cruz and Amy C. Lazaro-Javier, concurring.

[2] *Id.* at 45-55. Penned by Judge Pampio A. Abarintos.

directed the Register of Deeds of Cebu City to cancel Transfer Certificate of Title (TCT) Nos. 51768[3] and 51901[4] in the names of respondents Arturo Dy and Bernardo Dy (Dys) and to issue the corresponding TCTs in the name of respondent Cipriana Delgado (Cipriana).

The Factual Antecedents

Cipriana was the registered owner of a 58,129-square meter (sq.m.) lot, denominated as Lot No. 6966, situated in Barrio Tongkil, Minglanilla, Cebu, covered by TCT No. 18568. She and her husband, respondent Jose Delgado (Jose), entered into an agreement with a certain Cecilia Tan (buyer) for the sale of the said property for a consideration of ₱10.00/sq.m. It was agreed that the buyer shall make partial payments from time to time and pay the balance when Cipriana and Jose (Sps. Delgado) are ready to execute the deed of sale and transfer the title to her.

At the time of sale, the buyer was already occupying a portion of the property where she operates a noodle (bihon) factory while the rest was occupied by tenants which Sps. Delgado undertook to clear prior to full payment. After paying the total sum of ₱147,000.00 and being then ready to pay the balance, the buyer demanded the execution of the deed, which was refused. Eventually, the buyer learned of the sale of the property to the Dys and its subsequent mortgage to petitioner Philippine Banking Corporation (Philbank), prompting the filing of the Complaint[5] for annulment of certificate of title, specific performance and/or reconveyance with damages against Sps. Delgado, the Dys and Philbank.

In their Answer, Sps. Delgado, while admitting receipt of the partial payments made by the buyer, claimed that there was no perfected sale because the latter was not willing to pay their asking price of ₱17.00/sq.m. They also interposed a cross-claim

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[3] *Id.* at 62.

[4] *Id.* at 63.

[5] *Id.* at 82-87.

against the Dys averring that the deeds of absolute sale in their favor dated June 28, 1982[6] and June 30, 1982[7] covering Lot No. 6966 and the adjoining Lot No. 4100-A (on which Sps. Delgado's house stands), were fictitious and merely intended to enable them (the Dys) to use the said properties as collateral for their loan application with Philbank and thereafter, pay the true consideration of ₱17.00/sq.m. for Lot No. 6966. However, after receiving the loan proceeds, the Dys reneged on their agreement, prompting Sps. Delgado to cause the annotation of an adverse claim on the Dys' titles and to inform Philbank of the simulation of the sale. Sps. Delgado, thus, prayed for the dismissal of the complaint, with a counterclaim for damages and a cross-claim against the Dys for the payment of the balance of the purchase price plus damages.

For their part, the Dys denied knowledge of the alleged transaction between cross-claimants Sps. Delgado and buyer. They claimed to have validly acquired the subject property from Sps. Delgado and paid the full consideration therefor as the latter even withdrew their adverse claim and never demanded for the payment of any unpaid balance.

On the other hand, Philbank filed its Answer[8] asserting that it is an innocent mortgagee for value without notice of the defect in the title of the Dys. It filed a cross-claim against Sps. Delgado and the Dys for all the damages that may be adjudged against it in the event they are declared seller and purchaser in bad faith, respectively.

In answer to the cross-claim, Sps. Delgado insisted that Philbank was not a mortgagee in good faith for having granted the loan and accepted the mortgage despite knowledge of the simulation of the sale to the Dys and for failure to verify the nature of the buyer's physical possession of a portion of Lot No. 6966. They thereby prayed for the cancellation of the mortgage in Philbank's favor.

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[6] *Id.* at 60-61.

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

[8] *Id.* at 88-92.

Subsequently, Sps. Delgado amended their cross-claim against the Dys to include a prayer for the nullification of the deeds of absolute sale in the latter's favor and the corresponding certificates of title, and for the consequent reinstatement of Cipriana's title.[9]

The complaints against the Dys and Philbank were subsequently withdrawn. On the other hand, both the buyer and Sps. Delgado never presented any evidence in support of their respective claims. Hence, the RTC limited itself to the resolution of the claims of Sps. Delgado, Philbank and the Dys against one another.

The RTC Ruling

In the Decision[10] dated October 5, 1994, the RTC dismissed the cross-claims of Sps. Delgado against the Dys and Philbank. It noted that other than Sps. Delgado's bare allegation of the Dys' supposed non-payment of the full consideration for Lot Nos. 6966 and 4100-A, they failed to adduce competent evidence to support their claim. On the other hand, the Dys presented a cash voucher[11] dated April 6, 1983 duly signed by Sps. Delgado acknowledging receipt of the total consideration for the two lots.

The RTC also observed that Sps. Delgado notified Philbank of the purported simulation of the sale to the Dys only after the execution of the loan and mortgage documents and the release of the loan proceeds to the latter, negating their claim of bad faith. Moreover, they subsequently notified the bank of the Dys' full payment for the two lots mortgaged to it.

The CA Ruling

However, on appeal, the CA set aside[12] the RTC's decision and ordered the cancellation of the Dys' certificates of title and the reinstatement of Cipriana's title. It ruled that there were no

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[9] *Id.* at 94-99.

[10] *Supra* note 3.

[11] "Exhibit 7", List of Exhibits for the Defendants, RTC Records, p. 537.

[12] *Supra* note 1.

perfected contracts of sale between Sps. Delgado and the Dys in view of the latter's admission that the deeds of sale were purposely executed to facilitate the latter's loan application with Philbank and that the prices indicated therein were not the true consideration. Being merely simulated, the contracts of sale were, thus, null and void, rendering the subsequent mortgage of the lots likewise void.

The CA also declared Philbank not to be a mortgagee in good faith for its failure to ascertain how the Dys acquired the properties and to exercise greater care when it conducted an ocular inspection thereof. It thereby canceled the mortgage over the two lots.

The Petition

In the present petition, Philbank insists that it is a mortgagee in good faith. It further contends that Sps. Delgado are estopped from denying the validity of the mortgage constituted over the two lots since they participated in inducing Philbank to grant a loan to the Dys.

On the other hand, Sps. Delgado maintain that Philbank was not an innocent mortgagee for value for failure to exercise due diligence in transacting with the Dys and may not invoke the equitable doctrine of estoppel to conceal its own lack of diligence.

For his part, Arturo Dy filed a Petition-in-Intervention[13] arguing that while the deeds of absolute sale over the two properties were admittedly simulated, the simulation was only a relative one involving a false statement of the price. Hence, the parties are still bound by their true agreement. The same was opposed/objected to by both Philbank[14] and Sps. Delgado[15] as improper, considering that the CA judgment had long become final and executory as to the Dys who neither moved for reconsideration nor appealed the CA Decision.

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[13] *Rollo*, pp. 238-253.

[14] *Id.* at 258-260.

[15] *Id.* at 330-332.

The Ruling of the Court

The petition is meritorious.

At the outset, the Court takes note of the fact that the CA Decision nullifying the questioned contracts of sale between Sps. Delgado and the Dys had become final and executory. Accordingly, the Petition-in-Intervention filed by Arturo Dy, which seeks to maintain the subject contracts' validity, can no longer be entertained. The cancellation of the Dys' certificates of title over the disputed properties and the issuance of new TCTs in favor of Cipriana must therefore be upheld.

However, Philbank's mortgage rights over the subject properties shall be maintained. While it is settled that a simulated deed of sale is null and void and therefore, does not convey any right that could ripen into a valid title,[16] it has been equally ruled that, for reasons of public policy,[17] the subsequent nullification of title to a property is not a ground to annul the contractual right which may have been derived by a purchaser, mortgagee or other transferee who acted in good faith.[18]

The ascertainment of good faith or lack of it, and the determination of whether due diligence and prudence were exercised or not, are questions of fact[19] which are generally improper in a petition for review on *certiorari* under Rule 45 of the Rules of Court (Rules) where only questions of law may be raised. A recognized exception to the rule is when there are

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[16] *Cruz v. Bancom Finance Corporation*, G.R. No. 147788, March 19, 2002, 379 SCRA 490, 509.

[17] *Ereña v. Querrer-Kauffman*, G.R. No. 165853, June 22, 2006, 492 SCRA 298, 319, citing *Cavite Development Bank v. Lim*, 324 SCRA 346, 358 (2000).

[18] *Premiere Development Bank v. Court of Appeals*, G.R. Nos. 128122, 128184 & 128229, March 18, 2005, 453 SCRA 630, 654.

[19] *Vide Philippine National Bank v. Heirs of Estanislao Militar*, G.R. Nos. 164801 & 165165, June 30, 2006, 494 SCRA 308, 319.

conflicting findings of fact by the CA and the RTC,[20] as in this case.

Primarily, it bears noting that the doctrine of "mortgagee in good faith" is based on the rule that all persons dealing with property covered by a Torrens Certificate of Title are not required to go beyond what appears on the face of the title. This is in deference to the public interest in upholding the indefeasibility of a certificate of title as evidence of lawful ownership of the land or of any encumbrance thereon.[21] In the case of banks and other financial institutions, however, greater care and due diligence are required since they are imbued with public interest, failing which renders the mortgagees in bad faith. Thus, before approving a loan application, it is a standard operating practice for these institutions to conduct an ocular inspection of the property offered for mortgage and to verify the genuineness of the title to determine the real owner(s) thereof.[22] The apparent purpose of an ocular inspection is to protect the "true owner" of the property as well as innocent third parties with a right, interest or claim thereon from a usurper who may have acquired a fraudulent certificate of title thereto.[23]

In this case, while Philbank failed to exercise greater care in conducting the ocular inspection of the properties offered for mortgage,[24] its omission did not prejudice any innocent third parties. In particular, the buyer did not pursue her cause and abandoned her claim on the property. On the other hand, Sps.

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[20] *Canadian Opportunities Unlimited, Inc. v. Dalangin, Jr.*, G.R. No. 172223, February 6, 2012, 665 SCRA 21, 31.

[21] *Ereña v. Querrer-Kauffman*, *supra* note 17.

[22] *Alano v. Planter's Development Bank*, G.R. No. 171628, June 13, 2011, 651 SCRA 766, 774.

[23] The fact that petitioners were able to secure titles in their names did not operate to vest upon them ownership over the subject properties. Registration under the Torrens system does not create or vest title, but only confirms and records title already existing and vested. It does not protect a usurper from the true owner, and cannot be a shield for the commission of fraud. See *Campos v. Pastrana*, G.R. No. 175994, December 8, 2009, 608 SCRA 55, 68.

[24] Assailed January 30, 2008 Decision, *rollo*, p. 40.

Delgado were parties to the simulated sale in favor of the Dys which was intended to mislead Philbank into granting the loan application. Thus, no amount of diligence in the conduct of the ocular inspection could have led to the discovery of the complicity between the ostensible mortgagors (the Dys) and the true owners (Sps. Delgado). In fine, Philbank can hardly be deemed negligent under the premises since the ultimate cause of the mortgagors' (the Dys') defective title was the simulated sale to which Sps. Delgado were privies.

Indeed, a finding of negligence must always be contextualized in line with the attendant circumstances of a particular case. As aptly held in *Philippine National Bank v. Heirs of Estanislao Militar*,[25] "the diligence with which the law requires the individual or a corporation at all times to govern a particular conduct varies with the nature of the situation in which one is placed, and the importance of the act which is to be performed."[26] Thus, without diminishing the time-honored principle that nothing short of extraordinary diligence is required of banks whose business is impressed with public interest, Philbank's inconsequential oversight should not and cannot serve as a bastion for fraud and deceit.

To be sure, fraud comprises "anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal duty or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another."[27] In this light, the Dys' and Sps. Delgado's deliberate simulation of the sale intended to obtain loan proceeds from and to prejudice Philbank clearly constitutes fraudulent conduct. As such, Sps. Delgado cannot now be allowed to deny the validity of the mortgage executed by the Dys in favor of Philbank as to hold otherwise would effectively sanction their blatant bad faith to Philbank's detriment.

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[25] *Supra* note 19.

[26] *Id.* at 317.

[27] *Galvez v. Court of Appeals*, G.R. Nos. 187919, 187979 & 188030, April 25, 2012.

Accordingly, in the interest of public policy, fair dealing, good faith and justice, the Court accords Philbank the rights of a mortgagee in good faith whose lien to the securities posted must be respected and protected. In this regard, Philbank is entitled to have its mortgage carried over or annotated on the titles of Cipriana Delgado over the said properties.

WHEREFORE, the assailed January 30, 2008 Decision of the Court of Appeals in CA-G.R. CV No. 51672 is hereby **AFFIRMED** with **MODIFICATION** upholding the mortgage rights of petitioner Philippine Banking Corporation over the subject properties.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 186463. November 14, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILLIAM MANGUNE *Y* DEL ROSARIO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; NOT NEGATED BY ABSENCE OF EXTERNAL INJURIES.— In *People v. Paringit*, this Court has declared that "[n]ot all blows leave marks." Thus, the fact that the medico-legal officer found no signs of external injuries on AAA, especially on her face, which supposedly had been slapped several times, does not invalidate her statement that Mangune slapped her to silence her. x x x This Court, in a long line of cases, has ruled that "the absence of external signs of physical injuries does not negate rape."

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED. — This Court finds no valid reason to depart from the time-honored doctrine that where the issue is one of credibility of witnesses, and in this case their testimonies as well, the findings of the trial court are not to be disturbed unless the consideration of certain facts of substance and value, which have been plainly overlooked, might affect the result of the case.

3. ID.; ID.; ID.; TESTIMONY OF PROSECUTION WITNESS UPHELD IN THE ABSENCE OF ILL MOTIVE AND AS AGAINST DEFENSE OF DENIAL.— "[A]bsent evidence showing any reason or motive for a witness to falsely testify against the accused, [as in case at bar,] the logical conclusion is that no such improper motive exists and the testimony should be accorded full faith and credit. It is also worthy to note that Mangune proffered no other defense than that of denial.

4. CRIMINAL LAW; RAPE; PENALTY AND CIVIL DAMAGES. — [Appellant] is sentenced to *reclusion perpetua*, in lieu of death, without the possibility of parole. He is **ORDERED** to pay the [rape] victim, AAA, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages, all with interest at the rate of 6% *per annum* from the date of finality of this judgment until fully paid.

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.*:

Accused-appellant William Mangune *y* del Rosario, also known as Earl William Mangune or Earl Mangune (Mangune), is now before Us on review after the Court of Appeals, in its August 29, 2008 Decision[1] in CA-G.R. CR.-H.C. No. 02596, affirmed, in

[1] *Rollo*, pp. 2-7; penned by Associate Justice Sixto C. Marella, Jr. with Associate Justices Amelita G. Tolentino and Japar B. Dimaampao, concurring.

its entirety, the August 31, 2006 Decision[2] of the Regional Trial Court (RTC) of Muntinlupa City, Branch 207, in Criminal Case No. 03-317. The RTC found Mangune guilty beyond reasonable doubt of the crime of rape under Article 266-A, paragraph 1(a) as qualified by his relationship to the minor victim under Article 266-B, paragraph 2, no. 1 of the Revised Penal Code.[3]

On May 12, 2003, an Information[4] was filed before the RTC, charging Mangune with the crime of rape under Article 266-A, paragraph 1, in relation to Article 266-B, paragraph 2, no. 1, of the Revised Penal Code. The accusatory portion of the Information reads:

> That on or about the 7th *day of May*, *2003*, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being a man and the biological father of one [AAA],[5] a 17-year[-]old girl, and by means of force, threat or intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of said child, [AAA], against her will and consent.[6]

Mangune pleaded not guilty to the charge upon his arraignment on October 17, 2003.[7]

On February 11, 2004, the parties met for their pre-trial conference and agreed on the following stipulations:

1. That the accused is the biological father of the private complainant; and

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[2] CA *rollo*, pp. 31-35.

[3] As amended by Republic Act No. 8353.

[4] Records, pp. 1-2.

[5] Under Republic Act No. 9262 also known as "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

[6] Records, p. 1.

[7] *Id.* at 69.

2. That at the time of the commission of the alleged crime of rape, the private complainant was then a minor, who was 17 years of age.[8]

Faced with the lone issue of whether Mangune was guilty of the crime as charged in the Information, the RTC proceeded with the trial on the merits.

The prosecution first presented AAA, who, in her Sworn Statements[9] and testimony, accused her father, Mangune, whom she identified in open court, of raping her on May 7, 2003, in his house in Muntinlupa. AAA alleged that Mangune started raping her when she was just a little girl. She said that since she was so young when the first rape occurred, her first clear memory of her father raping her was in 1994, when she was in Grade III. AAA narrated how her father called her then, asking for a massage. However, she continued, her father apparently did not really want a massage because he took off her shorts and tried to insert his penis into her vagina. AAA claimed that since his penis could not fit into her vagina, Mangune inserted his finger instead, with a threat that if she told her mother of what had just transpired, he would kill them both. AAA said that throughout the years, her father continued raping her and eventually succeeded in inserting his penis into her vagina. On May 7, 2003, AAA finally told her mother about the rapes, the last of which occurred that same morning. AAA averred that at around 5:30 in the morning, while she was sleeping inside her room, she felt her shorts being removed and something heavy go on top of her. Realizing it was her father, AAA testified that she tried to fight back but was overpowered, at which point, Mangune was able to insert his penis into her vagina. AAA stated that her shouts and pleas were met with slaps on the face and a scary look from her father, prompting her to simply keep quiet. When her mother and aunt fetched her at around noon later that day, she told them about the rapes, and

[8] *Id.* at 76.

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

her mother immediately brought her to Camp Crame to be medically examined.[10]

Upon cross-examination, AAA testified that her parents lived in separate houses because her mother's office was far from her father's house. She also claimed that she knew of no untoward incident between her parents prior to May 7, 2003, and described her father as good and caring.[11]

Police Chief Inspector Pierre Paul Figueroa Carpio (Carpio), a Doctor of Medicine and a Philippine National Police (PNP) Medico-Legal Officer,[12] testified that he had examined AAA on May 7, 2003, and identified the initial Medico-Legal Report he subsequently issued,[13] wherein he had indicated the following:

FINDINGS:

Hymen: Deep healed lacerations at 4, 6, 7 and 9 o'clock positions.

Physical Injuries. No external signs of application of any form of trauma.

CONCLUSION: ————————x————————

Subject is non-virgin state physically.
There are no external signs
of application of any form of trauma.[14]

Explaining the finding that there were "[n]o external signs of application of any form of trauma," Carpio said it meant that aside from the genital organ, there were no injuries noted in the other parts of the body.[15] Upon cross-examination, Carpio stated that his findings were consistent with AAA's allegations in the sense that the findings of healed deep lacerations in the hymen

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[10] TSN, April 14, 2004, pp. 7-12.

[11] TSN, November 17, 2004, pp. 10-11.

[12] TSN, July 13, 2005, pp. 6-7.

[13] *Id.* at 11.

[14] Records, p. 18.

[15] TSN, July 13, 2005, p. 11.

were compatible with the allegation of several incidents of sexual abuse.[16]

Mangune, who testified in his own defense, denied raping his daughter, AAA, and said that the charge caught him by surprise. He stated that he had six children, all of whom he loved and treated equally. He said that before May 7, 2003, his relationship with his wife, AAA's mother, was fine, with the occasional bickering between spouses. When asked where he was at around 5:30 in the morning on May 7, 2003, Mangune claimed that he was sleeping in his house with his daughter AAA, his other children being then in their mother's house. Mangune then averred that at around 1:00 in the afternoon, AAA, with his permission, left for the mall with her friends and came back at midnight. At around 11:00 in the evening, his wife called out to him to get out of the house, at which point he was arrested and brought to Camp Crame, where he learned of the complaint filed against him. He said that he did not know of any reason why AAA would accuse him of such a crime.[17]

On August 31, 2006, the RTC handed down a guilty verdict against Mangune and sentenced him to *reclusion perpetua* without the benefit of parole, in this manner:

WHEREFORE, accused William Mangune *y* del Rosario @ Earl William Mangune or @ Earl Mangune, is found guilty beyond reasonable doubt of the crime of rape under Article 266-A, paragraph 1(a) in relation to Article 266-B, paragraph 2, no. 1 of the Revised Penal Code, as amended by R.A. 8353, and is sentenced to suffer the penalty of *reclusion perpetua* without benefit of parole, in accordance with R.A. 9346, "An Act Prohibiting the Imposition of Death Penalty in the Philippines", and is ordered to pay the private complainant [AAA], his biological daughter, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱25,000.00 as exemplary damages.[18]

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[16] *Id.* at 16.

[17] TSN, December 7, 2005, pp. 4-10.

[18] CA *rollo*, p. 35.

In its Decision, the RTC stated that the prosecution was able to prove the following:

> (1) [T]hat the accused had carnal knowledge of the offended party, his biological daughter, (2) that the crime was done through intimidation, threat and force, (3) that the private complainant was a minor at the time of the commission of the crime, and (4) that the accused is her biological father.[19]

The RTC found AAA's testimony sufficient to be able to stand on its ground and convict Mangune. Moreover, the RTC said, Mangune's "barefaced denial x x x [could] not prevail over the positive, spontaneous, straightforward and detailed testimony of [AAA]." The RTC explained that it gave AAA's testimony "full faith and credence" as there was no showing that she was actuated by improper motive against her father.[20]

Mangune appealed[21] to the Court of Appeals, arguing that his guilt had not been proven beyond reasonable doubt as the prosecution witnesses' testimonies were materially unreliable; thus, should not have been given full weight and credence.[22]

On August 29, 2008, the Court of Appeals affirmed the RTC's Decision in its entirety.

The Court of Appeals said that Mangune cited only one reason to support the errors he assigned against the RTC: that AAA sustained no external signs of any form of trauma despite her declaration that Mangune allegedly slapped her many times on the face.[23]

Addressing such reasoning, the Court of Appeals stated that Mangune's claim was untenable, and quoting this Court in *People v. Napud, Jr.*,[24] said:

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[19] *Id.* at 34-35.

[20] *Id.* at 34.

[21] *Id.* at 36.

[22] *Id.* at 52.

[23] *Rollo*, pp. 5-6.

[24] 418 Phil. 268, 279-280 (2001).

[T]he absence of external injuries does not negate rape. This is because in rape, the important consideration is not the presence of injuries on the victim's body, but penile contact with the female genitalia without the woman's consent." (Citation omitted.)

Undaunted, Mangune is now before this Court,[25] with the same assignment of errors he presented before the Court of Appeals, *viz*:

I

THE COURT *A QUO* GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION WITNESSES' MATERIALLY UNRELIABLE TESTIMONY.

II

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE GUILT OF ACCUSED-APPELLANT MANGUNE HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[26]

Ruling and Discussion

Mangune was charged with Rape under Article 266-A, paragraph 1, in relation to Article 266-B, paragraph 2, of the Revised Penal Code, as amended by Republic Act No. 8353. Said provisions read:

Article 266-A. *Rape, When and How Committed*. – Rape is committed:

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

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or is otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority;

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[25] *Rollo*, pp. 8-10.

[26] CA *rollo*, p. 52.

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

ART. 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

Mangune, from the very beginning of the case, admitted that AAA is his biological daughter and was still a minor on May 7, 2003, the time the last rape allegedly occurred. Thus, in essence, Mangune's bone of contention in this case, is the credibility of AAA's testimony *vis-à-vis* the findings contained in the Initial Medico-Legal Report.

Mangune asseverates that the lower courts should have acquitted him based on reasonable doubt as AAA's testimony is not worthy of belief for having been fabricated. He supports such assertion by making much of the fact that AAA did not sustain any external physical marks, as shown by the medico-legal findings, despite her testimony that he slapped her many times on the face. This, Mangune insists, makes AAA's testimony incredible.

In *People v. Paringit*,[27] this Court has declared that "[n]ot all blows leave marks."[28] Thus, the fact that the medico-legal officer found no signs of external injuries on AAA, especially on her face, which supposedly had been slapped several times, does not invalidate her statement that Mangune slapped her to silence her.

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[27] G.R. No. 83947, September 13, 1990, 189 SCRA 478.

[28] *Id.* at 487.

In *People v. Rabanes*,[29] the accused similarly assailed the victim's testimony by saying that if her claim that she was slapped several times were true, then there would have been visible marks or injuries on her face, which would have been reported in the medical certificate. This Court, in response to therein accused's argument, held:

> While the victim testified that she was slapped many times by the accused-appellant, which caused her to become unconscious, the doctor found no trace or injury on her face. **The absence of any injury or hematoma on the face of the victim does not negate her claim that she was slapped.** Dr. Lao also testified that if the force was not strong enough or if the patient's skin is normal, as compared to other patients where even a slight rubbing of their skin would cause a blood mark, no hematoma will result. But, even granting that there were no extra-genital injuries on the victim, **it had been held that the absence of external signs or physical injuries does not negate the commission of the crime of rape.** The same rule applies even though no medical certificate is presented in evidence. **Proof of injuries is not necessary because this is not an essential element of the crime**.[30] (Citations omitted, emphases added.)

This Court, in a long line of cases,[31] has ruled that "the absence of external signs of physical injuries does not negate rape."[32] The doctrine is thus well-entrenched in our jurisprudence, and the Court of Appeals correctly applied it.[33]

Mangune's attempt to discredit AAA's testimony that he raped her on May 7, 2003, must ultimately fail as he has shown no

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[29] G.R. No. 93709, May 8, 1992, 208 SCRA 768.

[30] *Id.* at 776-777.

[31] *People v. Casipit*, G.R. No. 88229, May 31, 1994, 232 SCRA 638, 642; *People v. Barcelona*, G.R. No. 82589, October 31, 1990, 191 SCRA 100, 106; *People v. Abonada*, 251 Phil. 482, 494 (1989); *People v. Alfonso*, 237 Phil. 467, 479 (1987); *People v. Juntilla*, 373 Phil. 351, 365 (1999); *People v. Davatos*, G.R. No. 93322, February 4, 1994, 229 SCRA 647, 652; *People v. Managaytay*, 364 Phil. 800, 807 (1999).

[32] *People v. Arnan*, G.R. No. 72608, June 30, 1993, 224 SCRA 37, 43.

[33] *Rollo*, p. 6.

solid grounds to impeach it. Explaining how testimonial evidence is considered and weighed in court, this Court has said:

> Credible witness and credible testimony are the two essential elements for the determination of the weight of a particular testimony. This principle could not ring any truer where the prosecution relies mainly on the testimony of the complainant, corroborated by the medico-legal findings of a physician. Be that as it may, the accused may be convicted on the basis of the lone uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing and otherwise consistent with human nature.[34] (Citation omitted.)

The RTC, which had the opportunity to hear the testimonies live, and observe the witnesses in person, found not only AAA credible, but her testimony as well. It even declared that AAA's testimony alone can justify the conviction of Mangune.

The foregoing were subscribed to by the Court of Appeals as well when it affirmed the RTC's Decision "in its entirety."[35]

This Court finds no valid reason to depart from the time-honored doctrine that where the issue is one of credibility of witnesses, and in this case their testimonies as well, the findings of the trial court are not to be disturbed unless the consideration of certain facts of substance and value, which have been plainly overlooked, might affect the result of the case.[36]

Expounding on the matter, this Court, in *People v. Dion*,[37] said:

> Due to its intimate nature, rape is usually a crime bereft of witnesses, and, more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration. It is settled that when the victim's testimony is straightforward, convincing, and consistent

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[34] *People v. Sorongon*, 445 Phil. 273, 278 (2003).

[35] *Rollo*, p. 7.

[36] *People v. Lardizabal*, G.R. No. 89113, November 29, 1991, 204 SCRA 320, 329.

[37] G.R. No. 181035, July 4, 2011, 653 SCRA 117, 133.

with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof. Inconsistencies in the victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission of rape. The trial court's assessment of the witnesses' credibility is given great weight and is even conclusive and binding. x x x. (Citations omitted.)

Quoting *People v. Sapigao, Jr.*,[38] this Court, in the same case, explained the rationale for the above practice:

It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court." (Citations omitted.)

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[38] G.R. No. 178485, September 4, 2009, 598 SCRA 416, 425-426, cited in *People v. Dion*, *id.* at 133-134.

Furthermore, Mangune could not impute any ill motive on AAA or his wife that would explain why he was charged with such a heinous crime. We have ruled that "[a]bsent evidence showing any reason or motive for a witness to falsely testify against the accused, the logical conclusion is that no such improper motive exists and the testimony should be accorded full faith and credit."[39]

It is also worthy to note that Mangune proffered no other defense than that of denial. In *People v. Espinosa*,[40] we held that:

> It is well-settled that denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law. Denial cannot prevail over the positive, candid and categorical testimony of the complainant, and as between the positive declaration of the complainant and the negative statement of the appellant, the former deserves more credence. (Citations omitted.)

While the Court affirms the award of civil indemnity in the amount of ₱75,000.00; and moral damages in the amount of ₱75,000.00; the Court increases the award of exemplary damages from ₱25,000.00 to ₱30,000.00 in line with prevailing jurisprudence.[41]

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02596 is hereby **AFFIRMED with MODIFICATION**. William Mangune *y* del Rosario, also known as Earl William Mangune or Earl Mangune, is sentenced to *reclusion perpetua*, in lieu of death, without the possibility of parole. He is **ORDERED** to pay the victim, AAA, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages, all with interest at the rate of 6% *per annum* from the date of finality of this judgment until fully paid.

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[39] *People v. Bulan*, 498 Phil. 586, 599 (2005).

[40] 476 Phil. 42, 62 (2004).

[41] *People v. Miranda*, G.R. No. 176634, April 5, 2010, 617 SCRA 298, 316-317.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 191193. November 14, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GODOFREDO MARIANO *Y* FELICIANO and ALLAN DORINGO *Y* GUNAN,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT; ILLEGAL SALE OF DRUGS; ELEMENTS.— Under Section 5, Article II of Republic Act No. 9165, the elements necessary for the prosecution of illegal sale of drugs are: (1) the identities of the buyer and the seller, the 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 *corpus delicti.*

2. ID.; ID.; ILLEGAL POSSESSION OF DRUG PARAPHERNALIA; ELEMENTS.— Godofredo was further charged and convicted of illegal possession of drug paraphernalia. The elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12, Article II, Republic Act No. 9165 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.

3. REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONIES THAT WERE NOT ILL-MOTIVATED.— The defense of denial, like *alibi*, has been viewed by the court with disfavor for it can just as easily be concocted. Denial in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties. Bare denials of appellants cannot prevail over the positive testimonies of the three police officers. Moreover, there is no evidence of any improper motive on the part of the police officers who conducted the buy-bust operation to falsely testify against appellants.

4. ID.; CRIMINAL PROCEDURE; ARREST WITHOUT WARRANT, WHEN LAWFUL; WHEN PERSON ARRESTED IS IN THE ACT OF COMMITTING AN OFFENSE; CASE AT BAR.— Section 5, Rule 113 of the Rules of Court allows a warrantless arrest. x x x In the instant case, the warrantless arrest was effected under the first mode or aptly termed as in *flagrante delicto*. PO1 Olleres and PO3 Razo personally witnessed and were in fact participants to the buy-bust operation. After laboratory examination, the white crystalline substances placed inside the four (4) separate plastic sachets were found positive for *methamphetamine hydrochloride or shabu*, a dangerous drug. Under these circumstances, it is beyond doubt that appellants were arrested in *flagrante delicto* while committing a crime, in full view of the arresting team.

5. CRIMINAL LAW; DANGEROUS DRUGS ACT; THE INVENTORY RECEIPT EXECUTED IN THE ABSENCE OF COUNSEL WAS INADMISSIBLE; TRIFLING AS GUILT OF ACCUSED WAS SUFFICIENTLY PROVEN.— Anent the absence of counsel during the execution of an inventory receipt, we agree with the conclusion of the appellate court that notwithstanding the inadmissibility of the inventory receipt, the prosecution has sufficiently proven the guilt of appellants, thus: x x x In the case at bar, the evidentiary value of the Receipt of Property Seized is irrelevant in light of the ample evidence proving appellants' guilt beyond reasonable doubt. The prosecution was able to prove that a valid buy-bust operation was conducted to entrap appellants. The testimony of the poseur-

buyer clearly established that the sale of *shabu* by appellant was consummated. The *corpus delicti*, which is the *shabu*, was presented in court and confirmed by the other members of the buy-bust team. They acknowledged that they were the same drugs placed in four (4) plastic sachets seized from appellants.

6. ID.; ID.; ILLEGAL SALE OF DRUGS; PROPER PENALTY. — Under Section 5, Article II of Republic Act No. 9165, the penalty of life imprisonment to death and fine ranging from ₱500,000.00 to ₱1,000,000.00 shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved. Hence, the trial court, as affirmed by the Court of Appeals, correctly imposed the penalty of life imprisonment and a fine of ₱500,000.00.

7. ID.; ID.; ILLEGAL POSSESSION OF DRUG PARAPHERNALIA; PROPER PENALTY.— As to Godofredo who was further convicted of illegal possession of drug paraphernalia, Section 12, Article II of Republic Act No. 9165 imposes the penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) upon any person, who unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and any other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

Assailed in this appeal is the Decision[1] of the Court of Appeals dated 9 November 2009 in CA-G.R. CR-H.C. No. 03343 affirming the 5 March 2008 Decision[2] of the Regional Trial Court of Sorsogon City, Branch 65, finding appellants Godofredo Mariano *y* Feliciano (Godofredo) guilty of the crimes of illegal sale of *shabu* and illegal possession of drug paraphernalia, and Allan Doringo *y* Gunan[3] (Allan) guilty of the illegal sale of *shabu.*

On the one hand, Godofredo was charged with the offenses of violation of Sections 5 and 12, Article II of Republic Act No. 9165 in two (2) separate Informations, which read:

Criminal Case No. 04-706

That on or about the 17th day of October, 2004, at around 10:45 o'clock in the morning, at Zone 2, Municipality of Bulan, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there, willfully, unlawfully and feloniously sell, deliver, dispose, distribute and/or give away for value two (2) transparent plastic sachets containing methamphetamine hydrochloride locally known as "*Shabu*", a prohibited drugs (sic), containing 0.5680 gram to a poseur-buyer in exchange of One Thousand Peso Bill.[4]

Criminal Case No. 04-707

That on or about the 17th day of October, 2004, at around 10:45 o'clock in the morning, at Zone 2, Municipality of Bulan, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there,

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[1] Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Arcangelita M. Romilla-Lontok and Sixto C. Marella, Jr, concurring. *Rollo*, pp. 2-23.

[2] Presided by Judge Adolfo G. Fajardo. CA *rollo*, pp. 23-47.

[3] In some parts of the Records, it is also spelled as "Guban."

[4] Records, p. 1.

willfully, unlawfully and feloniously, have in his possession, custody and control one (1) aluminum foil, one (1) aluminum tooter and one (1) lighter which are used and intended to be used for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body, without any authority of law.[5]

Allan, on the other hand, was charged with violation of Section 5, Article II of Republic Act No. 9165. The accusatory portion of the Information reads:

That on or about the 17th day of October, 2004, at around 10:45 o'clock in the morning, at Zone 2, Municipality of Bulan, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there, willfully, unlawfully and feloniously, sell, deliver, dispose, distribute and/or give away for value two (2) transparent plastic sachets containing methamphetamine hydrochloride locally known as "*Shabu*", a prohibited drugs (sic), containing 0.1996 gram to a poseur-buyer in exchange of Six Hundred Peso Bill.[6]

The facts, according to the evidence for the prosecution, follow.

Acting on an informant's tip, a buy-bust team was formed composed of SPO1 Reginal Goñez (SPO1 Goñez), the team leader, with PO1 David Olleres, Jr. (PO1 Olleres) as the *poseur*-buyer, and police back-ups, PO3 Virgilio Razo (PO3 Razo), and a certain PO1 Pabrigas, and an unidentified member of the Philippine Drug Enforcement Agency (PDEA).[7] SPO1 Goñez produced the marked money consisting of one (1) One Thousand Peso bill and six (6) One Hundred Peso bills. PO1 Olleres placed his initials on the marked bills.[8] On 17 October 2004, the team conducted a buy-bust operation in the house of a

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[5] *Id.* at 159-160.

[6] *Id.* at 161.

[7] TSN, 20 September 2005, pp. 16-17.

[8] *Id.* at 20.

certain Gerry Angustia located at Pier Uno, Zone 2, Bulan, Sorsogon. PO1 Olleres, PO3 Razo and the asset proceeded to the target house and they witnessed an ongoing pot session. They looked for "Galog" and they were introduced to Godofredo. They asked Godofredo if they can "score." Godofredo immediately left the house and went to a street at the back of the house. He returned carrying two (2) sachets of *shabu*, which he handed to PO1 Ollares. In exchange, PO1 Olleres paid him the One Thousand Peso marked bill. Allan also offered PO3 Razo two (2) more sachets of *shabu*. The latter asked for the Six Hundred Peso marked bills from PO1 Olleres and handed them to Allan as payment for the *shabu*. After these exchanges, they requested appellants for an actual test of *shabu*. Godofredo provided them with a *tooter* and aluminum foil. While they were testing said *shabu*, they declared an arrest.[9] PO1 Olleres and PO3 Razo identified the appellants in open court.[10]

An Affidavit of Arrest was prepared and signed by PO1 Olleres and PO3 Razo.[11] PO1 Olleres also prepared a receipt of the property seized containing his and appellants' signatures.[12] The buy-bust team marked the plastic sachets containing *shabu* at the crime scene and PO1 Olleres brought the seized items to the Philippine National Police (PNP) Crime Laboratory.[13] They also took photographs of the items confiscated and of appellants.

In Chemistry Report No. D-174-04 dated 18 October 2004, Police Inspector Josephine Macura Clemen, a forensic chemist, found that the specimen submitted to her was *Methamphetamine Hydrochloride*, otherwise known as *shabu*.[14]

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[9] *Id.* at 4-6; TSN, 8 November 2005, pp. 3-5.

[10] *Id.* at 6-7; *Id.* at 6.

[11] TSN, 20 September 2005, p. 9.

[12] Records, p. 132.

[13] TSN, 20 September 2005, p. 12.

[14] Records, p. 11.

A different version of the incident was presented by the defense. Allan claimed that on 17 October 2004 at around 10:45 a.m., he was near the fence of Jessie Angustia's house waiting for a pumpboat coming from Masbate. He heard someone from inside the house saying "*tadihan ta ini*" or "let's taste it." Allan thought that there was food being cooked so he went inside the house. He then saw *shabu* scattered on the table while a certain Ludy Gubat (Ludy) was holding an aluminum foil. He also saw Godofredo and PO1 Ollares. Allan tried to leave but Ludy poked a knife on the left side of his stomach and held him in the collar. Ludy apparently threatened to stab Allan if the latter did not go with him. Allan was brought by police officers to the 509th Mobile Group where he was forced to sign a document without reading its contents. He was eventually transferred to the PNP Station of Bulan, Sorsogon.[15]

Godofredo admitted that he was a drug user and that he went to the house of Jessie Angustia to "score" *shabu*. Thereat, he saw Ludy and PO1 Olleres sniffing *shabu*. When Allan arrived, Ludy cursed him and held him on his shoulders. Ludy pulled out a knife and poked it at Allan. Thereafter, PO1 Olleres arrested Godofredo. He was boarded in a tricycle and brought to Camp Crame.[16]

On 5 March 2008, the RTC rendered judgment finding appellants guilty. The dispositive portion reads:

> WHEREFORE, premises considered, accused Godofredo Mariano *y* Feliciano and Allan Doringo *y* Guban, having been found GUILTY beyond reasonable doubt of Violation of Sections 5 and 12, Article II of RA 9165 (Comprehensive Dangerous Drugs Act of 2002), respectively, are hereby sentenced as follows:
>
> a) In Criminal Case No. 04-706 (Violation of Section 5, Article II, RA 9165) accused Godofredo Mariano *y* Feliciano is sentenced to suffer the indivisible penalty of LIFE IMPRISONMENT and a fine of Five Hundred Thousand Pesos (Php500,000.00);

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[15] TSN, 4 June 2007, pp. 4-12.

[16] TSN, 11 September 2007, pp. 5-7.

b) In Criminal Case No. 04-707 (Violation of Section 12, Article II, RA 9165) accused Godofredo Mariano *y* Feliciano is sentenced to suffer the indeterminate penalty of Six (6) months and one (1) day to four years and a fine of Ten Thousand Pesos (Php10,000.00);

c) In Criminal Case No. 04-708 (Violation of Section 5, Article II, RA 9165) accused Allan Doringo *y* Guban is sentenced to suffer the indivisible penalty of LIFE IMPRISONMENT and a fine of Five Hundred Thousand Pesos (Php500,000.00).

The dangerous drugs as well as the drug paraphernalia subject matter of the three (3) instant cases are hereby ordered confiscated and forfeited in favor of the government (Sec. 20, RA 9165) to be disposed in accordance with the provisions of Section 21 of the same Act.[17]

The trial court held that the prosecution was able to establish that the buy-bust operation was successfully conducted when appellants were caught in *flagrante delicto* selling drugs, resulting in their apprehension. The trial court dismissed the defense of *alibi* and denial over the positive testimonies of prosecution witnesses.

On appeal, the Court of Appeals on 9 November 2009 issued the challenged Decision denying the appeal and affirming appellants' conviction.

Failing to secure a favorable decision, appellants filed a notice of appeal before this Court.[18]

On 22 March 2010, the Court required the parties to simultaneously file their supplemental briefs.[19] In two separate manifestations, both parties expressed their intention not to file any supplemental brief since all the issues and arguments have already been raised in their respective Briefs.[20]

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[17] CA *rollo*, pp. 100-101.

[18] *Rollo*, p. 24.

[19] *Id.* at 29.

[20] *Id.* at 31 and 35.

Appellants maintain that the trial court erred in admitting the seized dangerous drugs and drug paraphernalia as evidences against them. They assail the validity of their warrantless arrest by stating that the arresting officers should have secured a warrant because they were already in possession of pertinent information, such as the identity of their target, upon which an application for a warrant could be based. Thus, the alleged *shabu* obtained by virtue of an invalid warrantless arrest is inadmissible. In addition, appellants question the validity of the inventory receipt in that the signing was done without the assistance of counsel.

In its appellee's brief, the Office of the Solicitor General (OSG) supports the convictions of the appellants. It justifies the legality of the warrantless arrest of appellants as they were caught in *flagrante delicto*. Moreover, the OSG avers that appellants are estopped from questioning the legality of their arrest having raised them only on appeal.

We deny the appeal.

Appellants were charged and convicted of the crime of illegal sale of dangerous drugs.

Under Section 5, Article II of Republic Act No. 9165, the elements necessary for the prosecution of illegal sale of drugs are: (1) the identities of the buyer and the seller, the 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 *corpus delicti*.[21]

All these elements were duly established by the prosecution. Appellants were caught in *flagrante delicto* selling *shabu* during a buy-bust operation conducted by the buy-bust team. The *poseur*-buyer, PO1 Olleres, positively testified that the sale took place and that appellants sold the *shabu*, thus:

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[21] *People v. Abedin*, G.R. No. 179936, 11 April 2012 citing *People v. Serrano*, G.R. No. 179038, 6 May 2010, 620 SCRA 327, 340; *People v. De Leon*, G.R. No. 186471, 25 January 2010, 611 SCRA 118, 128 citing *People v. Del Mundo*, 539 Phil. 609, 617 (2006).

A: At about 10:30 in the morning of that day our team leader instructed me to be with them in conducting a buy bust operation.

Q: And who was with you at that time?

A: PO3 Razo and an asset.

Q: Where is the venue of the buy bust operation?

A: In the house of a certain Gerry Angustia (sic).

Q: At what time did you proceed to said place more or less?

A: About 10:00 o'clock in the morning, Ma'am, we proceeded to the house of Gerry Angustia (sic). As per information of our asset, Galog was already on that house.

Q: Who is that Galog that you are referring to?

A: Godofredo Mariano.

Q: When you reached the place of Gerry Angustia (sic), what happened?

A: When we arrived at the scene there was an ongoing pot session but we did not disturb them because the subject of our operation for the day is Godofredo Mariano and when we arrived we asked who is Galog and he was introduced to us and so we asked him if we can buy some items from him.

Q: The place where you proceeded to, Mr. Witness, is it a house?

A: It is just a small house and to our knowledge it was being occupied by Gerry Angustia (sic).

Q: Mr. Witness, what happened when you were there and being introduced to Galog?

A: We talked with him and asked him if we can score and Godofredo Mariano left the house and went to a street at the back of the house and when he came back he has already with him two (2) sachets of *shabu*.

Q: Now, what happened when he returned with two (2) sachets of *shabu*?

A: Upon arrival of Godofredo Mariano with those two (2) sachets of *shabu*, we paid him one thousand (Php1,000.00) pesos and right then and there Allan Doringo approached us and offered to us to buy also two (2) sachets of *shabu*.

Q: Did you likewise buy the *shabu* offered by Allan Doringo?

A: Yes, Ma'am, Police Officer Razo gave Allan Doringo six hundred (Php600.00) pesos.

Q: Afterwards, what happened?

A: And right after the exchanged of items we requested the two (2) of them to have the actual test of *shabu* and while they were testing the *shabu* we declared arrest.

Q: What do you mean when you say they were actually testing the *shabu*?

A: They tested the *shabu* by providing us the totter and aluminum foil and while we were testing the said *shabu* we declared arrest.

Q: Is accused Godofredo Mariano present today in court?

A: Yes, Ma'am.

Q: Please identify him to us?

A: (Witness pointed to a man in a blue strife sweet shirt (sic) who identified himself as Godofredo Mariano.)

Q: What about accused Allan Doringo (sic), is he present today in court?

A: Yes, Ma'am.

Q: If you are required to identify him, will you be able to do so?

A: Yes, Ma'am.

Q: Please go down and identify him?

A: (Witness pointed to a man in black shirt and identified as Allan Doringo when asked.)[22]

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[22] TSN, 20 September 2005, pp. 4-7.

Simply put, Godofredo produced two (2) plastic sachets containing *shabu* and gave it to PO1 Olleres in exchange for ₱1,000.00. Also, Allan had offered and given two (2) more sachets containing *shabu* to PO3 Razo, who in turn, handed him ₱600.00. PO3 Razo corroborated the account of PO1 Olleres, to wit:

Q: Mr. Witness, on October 17, 2004 at more or less 10:45 in the morning do you still recall your whereabouts?

A: Yes, Ma'am.

Q: Will you please tell us where?

A: On October 17, 2004 at 10:45 a.m. from the camp we proceeded to the house of Gerry Angustia (sic).

Q: And what was your purpose in going to the house of Gerry Angustia (sic)?

A: To conduct a buy bust operation.

Q: By the way, where is that house of Gerry Angustia (sic) located?

A: At pier Uno of Zone 2, Bulan, Sorsogon just in front of the Coast Guard.

Q: Okay, when you proceeded to the house of Gerry Angustia (sic) to conduct buy bust operation, who was with you at that time?

A: PO3 David F. Olleres, Jr. and our asset.

Q: When you proceeded to the house of Gerry Angustia (sic) and when you arrived at the house of Gerry Angustia (sic) what happened next?

A: While at the house of Gerry Angustia (sic), Godofredo Mariano offered to our asset to taste the *shabu* and he also offered two (2) sachets of *shabu* worth Php1,000.00 to PO3 David Olleres, Jr. while this Allan Doringo persuaded us to buy also two (2) sachets of *shabu* which was offered to PO3 Olleres who gave him also Php600.00 pesos.

Q: What did Olleres do when he was offered this *shabu* by Godofredo Mariano?

A: He received the two (2) sachets of *shabu* from Godofredo Mariano and gave Godofredo Mariano the Php1,000.00 bill then PO3 David Olleres identified himself to Godofredo Mariano.

Q: Now, before Olleres identified himself as a police officer, did you already buy the *shabu* from Allan Doringo?

A: Godofredo Mariano sold his *shabu* to PO3 David Olleres while this Allan Doringo insisted to me to buy his *shabu* for Php600.00 pesos.

Q: And what did you do when Allan Doringo offered you this *shabu* in the amount of Php600.00.

A: I get Php600.00 from David Olleres and paid Allan Doringo the same amount after I received from him the *shabu*.

Q: Then what happened afterwards?

A: Then after that we introduced ourselves as police officers and we brought them to the camp for police investigation.

Q: Are accused Allan Doringo and Godofredo Mariano present today in court?

A: Yes, Ma'am.

Q: If you are required to identify them, will you be able to do so?

A: Yes, Ma'am.

Q: Please point at them?

A: (The witness pointed to a man in yellow shirt who identified himself as Allan Doringo when asked and also the witness pointed to a man in black shirt and identified himself as Godofredo Mariano when asked.)[23]

The result of the laboratory examination confirmed the presence of *methamphetamine hydrochloride* on the white crystalline substances inside the four (4) plastic sachets confiscated from appellants. The marked money was presented in evidence. Thus, the delivery of the illicit drug to PO1 Olleres

[23] TSN, 8 November 2005, pp. 3-6.

and PO3 Razo and the receipt by appellants of the marked money successfully consummated the buy-bust transaction.

Godofredo was further charged and convicted of illegal possession of drug paraphernalia. The elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12, Article II, Republic Act No. 9165 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.[24]

The prosecution has convincingly established that Godofredo was in possession of drug paraphernalia such as aluminum foil, aluminum *tooter* and lighter, all of which were offered in evidence.[25] The corresponding receipt and inventory of the seized *shabu* and other drug paraphernalia were likewise presented in evidence.[26] Police Superintendent Leonidas Diaz Castillo attested to the veracity of the contents of these documents.[27]

While both appellants admitted their presence in the scene of the crime, they both denied the existence of a buy-bust operation.

The defense of denial, like *alibi*, has been viewed by the court with disfavor for it can just as easily be concocted. Denial in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties. Bare denials of appellants cannot prevail over the positive testimonies of the three police officers. Moreover, there is no evidence of any

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[24] *Zalameda v. People*, G.R. No. 183656, 4 September 2009, 598 SCRA 537, 549.

[25] Records, p. 130.

[26] *Id.* at 16-17.

[27] TSN, 15 August 2006, pp. 7-8.

improper motive on the part of the police officers who conducted the buy-bust operation to falsely testify against appellants.[28]

Appellants' insistence on the illegality of their warrantless arrest equally lacks merit. Section 5, Rule 113 of the Rules of Court allows a warrantless arrest under any of the following circumstances:

> **Sec 5. Arrest without warrant, when lawful** – A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In the instant case, the warrantless arrest was effected under the first mode or aptly termed as in *flagrante delicto*. PO1 Olleres and PO3 Razo personally witnessed and were in fact participants to the buy-bust operation. After laboratory examination, the white crystalline substances placed inside the four (4) separate plastic sachets were found positive for *methamphetamine hydrochloride* or *shabu*, a dangerous drug. Under these circumstances, it is beyond doubt that appellants were arrested in *flagrante delicto* while committing a crime, in full view of the arresting team.

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[28] *People v. Soriano*, G.R. No. 173795, 3 April 2007, 520 SCRA 458, 468 citing *People v. Dulay*, 468 Phil. 56, 65 (2004) citing further *People v. Barita*, 381 Phil. 832, 846-847 (2000); *People v. Vinecario*, 465 Phil. 192, 215 (2004); *People v. Ahmad*, 464 Phil. 848, 869-870 (2004); *People v. Chua Uy*, 384 Phil. 70, 85-86 (2000) citing *People v. Dichoso*, G.R. Nos. 101216-18, 4 June 1993, 223 SCRA 174, 187; *People v. Constantino*, G.R. No. 109119, 16 August 1994, 235 SCRA 384, 391; *People v. Tranca*, G.R. No. 110357, 17 August 1994, 235 SCRA 455, 462-463; *People v. Lee Hoi Ming*, 459 Phil. 187, 194 (2003); *People v. Saludes*, 451 Phil. 719, 726-727 (2003).

Anent the absence of counsel during the execution of an inventory receipt, we agree with the conclusion of the appellate court that notwithstanding the inadmissibility of the inventory receipt, the prosecution has sufficiently proven the guilt of appellants, thus:

> Admittedly, it is settled that the signature of the accused in the "Receipt of Property Seized" is inadmissible in evidence if it was obtained without the assistance of counsel. The signature of the accused on such a receipt is a declaration against his interest and a tacit admission of the crime charged. However, while it is true that appellants signed receipt of the property seized unassisted by counsel, this only renders inadmissible the receipt itself.
>
> In fact, in the case at bar, the evidentiary value of the Receipt of Property Seized is irrelevant in light of the ample evidence proving appellants' guilt beyond reasonable doubt. The prosecution was able to prove that a valid buy-bust operation was conducted to entrap appellants. The testimony of the poseur-buyer clearly established that the sale of shabu by appellant was consummated. The *corpus delicti*, which is the shabu, was presented in court and confirmed by the other members of the buy-bust team. They acknowledged that they were the same drugs placed in four (4) plastic sachets seized from appellants.[29]

In fine, it has been established by proof beyond reasonable doubt that appellants sold *shabu*. Under Section 5, Article II of Republic Act No. 9165, the penalty of life imprisonment to death and fine ranging from ₱500,000.00 to ₱1,000,000.00 shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved. Hence, the trial court, as affirmed by the Court of Appeals, correctly imposed the penalty of life imprisonment and a fine of ₱500,000.00. As to Godofredo who was further convicted of illegal possession of drug paraphernalia, Section 12, Article II of Republic Act No. 9165 imposes the penalty of imprisonment ranging from

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[29] *Rollo*, pp. 20-21.

six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) upon any person, who unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and any other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body.

Based on the foregoing rules, we also affirm the imposition of penalties by the trial court.

WHEREFORE, premises considered, the Decision dated 9 November 2009 of the Court of Appeals in CA-G.R. CR-H.C. No. 03343 which, in turn, affirmed the Decision dated 5 March 2008 of the Regional Trial Court, Branch 65, Sorsogon City, in Criminal Cases Nos. 04-706, 04-707, and 04-708, is **AFFIRMED** *in toto*.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 191761. November 14, 2012]

CAGAYAN ELECTRIC POWER AND LIGHT CO., INC., *petitioner, vs.* **CITY OF CAGAYAN DE ORO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL REVENUE MEASURES; APPEAL THEREOF MUST BE FILED TO THE SECRETARY OF JUSTICE WITHIN THIRTY DAYS FROM

EFFECTIVITY; APPLICATION RELAXED FOR MORE SUBSTANTIVE MATTERS.— Ordinance No. 9503-2005 is a local revenue measure. As such, the Local Government Code applies. [Thus,] 'Sec. 187. x x x That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal.' x x x CEPALCO's failure to appeal to the Secretary of Justice within the statutory period of 30 days from the effectivity of the ordinance should have been fatal to its cause. However, we relax the application of the rules in view of the more substantive matters.

2. ID.; ID.; ID.; TAX ON BUSINESS; ORDINANCE 9503-2005 IS A LOCAL REVENUE MEASURE APT AS SUCH TAX ON BUSINESS.— CEPALCO insists that Ordinance No. 9503-2005 is an imposition of an income tax which is prohibited by Section 133 (a) of the Local Government Code. Unfortunately for CEPALCO, we agree with the ruling of the trial and appellate courts that Ordinance No. 9503-2005 is a tax on business. CEPALCO's act of leasing for a consideration the use of its posts, poles or towers to other pole users falls under the Local Government Code's definition of business. Business is defined by Section 131 (d) of the Local Government Code as "trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit." In relation to Section 131 (d), Section 143 (h) of the Local Government Code provides that the city may impose taxes, fees, and charges on any business which is not specified in Section 143 (a) to (g) and which the *sanggunian* concerned may deem proper to tax.

3. TAXATION; TAX EXEMPTIONS; STRICTLY CONSTRUED. — It is hornbook doctrine that tax exemptions are strictly construed against the claimant. x x x Tax exemptions cannot arise by mere implication, much less by an implied re-enactment of a repealed tax exemption clause. CEPALCO's claim of exemption under the "in lieu of all taxes" clause must fail in light of Section 193 (withdrawal of Tax Exemption Priviledges) of the Local Government Code as well as Section 9 (Tax Provisions) of its own franchise.

4. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; SECTION 151 ON TAX RATES. — Section 151 of the Local Government Code states that, subject to certain exceptions, a city may exceed by "not more than 50%" the tax rates allowed to provinces and municipalities. A province may impose a franchise tax at a rate "not exceeding 50% of 1% of the gross annual receipts." Following Section 151, a city may impose a franchise tax of up to 0.0075 (or 0.75%) of a business' gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction. A municipality may impose a business tax at a rate not exceeding "two percent of gross sales or receipts." Following Section 151, a city may impose a business tax of up to 0.03 (or 3%) of a business' gross sales or receipts of the preceding calendar year.

5. ID.; ID.; ID.; ORDINANCE 9503-2005 IS SUBJECT TO THE LIMITS IMPOSED BY SECTION 143 AND 151; CASE AT BAR.— Ordinance No. 9503-2005 is subject to the limits imposed by Sections 143 (Tax on Business) of the Local Government Code. x x x The City of Cagayan de Oro's imposition of a tax on the lease of poles [of CEPALCO] falls under Section 143 (h). x x x Section 143 (h) states that **"on any business subject to x x x value-added x x x tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year"** from the lease of goods or properties. Hence, the 10% tax rate imposed by Ordinance No. 9503-2005 clearly violates Section 143 (h) of the Local Government Code. In view of the lack of a separability clause, we declare void the entirety of Ordinance No. 9503-2005. Any payment made by reason of the tax imposed by Ordinance No. 9503-2005 should, therefore, be refunded to CEPALCO. Our ruling, however, is made without prejudice to the enactment by the City of Cagayan de Oro of a tax ordinance that complies with the limits set by the Local Government Code.

APPEARANCES OF COUNSEL

Atencia & Associates Law Offices for petitioner.
Maryanne Chaves-Enteria for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

G.R. No. 191761 is a petition for review[1] assailing the Decision[2] promulgated on 28 May 2009 as well as the Resolution[3] promulgated on 24 March 2010 by the Court of Appeals (appellate court) in CA-G.R. CV No. 01105-Min. The appellate court affirmed the 8 January 2007 Decision[4] of Branch 18 of the Regional Trial Court of Misamis Oriental (trial court) in Civil Case No. 2005-207.

The trial court upheld the validity of the City of Cagayan de Oro's Ordinance No. 9503-2005 and denied Cagayan Electric Power and Light Co., Inc.'s (CEPALCO) claim of exemption from the said ordinance.

The Facts

The appellate court narrated the facts as follows:

On January 10, 2005, the *Sangguniang Panlungsod* of Cagayan de Oro (City Council) passed Ordinance No. 9503-2005 imposing a tax on the lease or rental of electric and/or telecommunication posts, poles or towers by pole owners to other pole users at ten percent (10%) of the annual rental income derived from such lease or rental.

The City Council, in a letter dated 15 March 2005, informed appellant Cagayan Electric Power and Light Company, Inc. (CEPALCO), through its President and Chief Operation Manager, Ms. Consuelo G. Tion, of the passage of the subject ordinance.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 34-47. Penned by Associate Justice Edgardo A. Camello, with Associate Justices Michael P. Elbinias and Ruben C. Ayson, concurring.

[3] *Id.* at 48-49. Penned by Associate Justice Edgardo A. Camello, with Associate Justices Danton Q. Bueser and Angelita A. Gacutan, concurring.

[4] *Id.* at 70-77. Penned by Judge Edgardo T. Lloren.

On September 30, 2005, appellant CEPALCO, purportedly on pure question of law, filed a petition for declaratory relief assailing the validity of Ordinance No. 9503-2005 before the Regional Trial Court of Cagayan de Oro City, Branch 18, on the ground that the tax imposed by the disputed ordinance is in reality a tax on income which appellee City of Cagayan de Oro may not impose, the same being expressly prohibited by Section 133(a) of Republic Act No. 7160 (R.A. 7160) otherwise known as the Local Government Code (LGC) of 1991. CEPALCO argues that, assuming the City Council can enact the assailed ordinance, it is nevertheless exempt from the imposition by virtue of Republic Act No. 9284 (R.A. 9284) providing for its franchise. CEPALCO further claims exemplary damages of PhP200,000.00 alleging that the passage of the ordinance manifests malice and bad faith of the respondent-appellee towards it.

In its Answer, appellee raised the following affirmative defenses: (a) the enactment and implementation of the subject ordinance was a valid and lawful exercise of its powers pursuant to the 1987 Constitution, the Local Government Code, other applicable provisions of law, and pertinent jurisprudence; (b) non-exemption of CEPALCO because of the express withdrawal of the exemption provided by Section 193 of the LGC; (c) the subject ordinance is legally presumed valid and constitutional; (d) prescription of respondent-appellee's action pursuant to Section 187 of the LGC; (e) failure of respondent-appellee to exhaust administrative remedies under the Local Government Code; (f) CEPALCO's action for declaratory relief cannot prosper since no breach or violation of the subject ordinance was yet committed by the City.[5]

Ordinance No. 9503-2005 reads:

ORDINANCE IMPOSING A TAX ON THE LEASE OR RENTAL OF ELECTRIC AND/OR TELECOMMUNICATION POSTS, POLES OR TOWERS BY POLE OWNERS TO OTHER POLE USERS AT THE RATE OF TEN (10) PERCENT OF THE ANNUAL RENTAL INCOME DERIVED THEREFROM AND FOR OTHER PURPOSES

BE IT ORDAINED by the City Council (*Sangguniang Panlungsod*) of the City of Cagayan de Oro in session assembled that:

SECTION 1. – Whenever used in this Ordinance, the following terms shall be construed as:

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[5] *Id.* at 34-35.

a. Electric companies include all public utility companies whether corporation or cooperative engaged in the distribution and sale of electricity;
b. Telecommunication companies refer to establishments or entities that are holders of franchise through an Act of Congress to engage, maintain, and operate telecommunications, voice and data services, under existing Philippine laws, rules and regulations;
c. Pole User includes any person, natural or juridical, including government agencies and entities that use and rent poles and towers for the installation of any cable, wires, service drops and other attachments[;]
d. Pole Owner includes electric and telecommunication company or corporation that owns poles, towers and other accessories thereof.

SECTION 2. – There shall be imposed a tax on the lease or rental of electric and/or telecommunication posts, poles or towers by pole owners to other pole users at the rate of ten (10) percent of the annual rental income derived therefrom.

SECTION 3. – The tax imposed herein shall not be passed on by pole owners to the bills of pole users in the form of added rental rates.

SECTION 4. (a) Pole owners herein defined engaged in the business of renting their posts, poles and/or towers shall secure a separate business permit therefor as provided under Article (P), Section 62(a) of Ordinance No. 8847-2003, otherwise known as the Cagayan de Oro City Revenue Code of 2003.

(b) Pertinent provisions of Ordinance No. 8847-2003, covering situs of the tax, payment of taxes and administrative provisions shall apply in the imposition of the tax under this Ordinance.

SECTION 5. – This Ordinance shall take effect after 15 days following its publication in a local newspaper of general circulation for at least three (3) consecutive issues.

UNANIMOUSLY APPROVED.[6]

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[6] *Id.* at 50.

Ordinance No. 9503-2005 was unanimously approved by the City Council of Cagayan de Oro on 10 January 2005.

The Trial Court's Ruling

On 8 January 2007, the trial court rendered its Decision[7] in favor of the City of Cagayan de Oro. The trial court identified three issues for its resolution: (1) whether Ordinance No. 9503-2005 is valid; (2) whether CEPALCO should be exempted from tax; and (3) whether CEPALCO's action is barred for non-exhaustion of administrative remedies and for prescription.

In ruling for the validity of Ordinance No. 9503-2005, the trial court rejected CEPALCO's claim that the ordinance is an imposition of income tax prohibited by Section 133(a) of the Local Government Code.[8] The trial court reasoned that since CEPALCO's business of leasing its posts to pole users is what is directly taxed, the tax is not upon the income but upon the privilege to engage in business. Moreover, Section 143(h), in relation to Section 151, of the Local Government Code authorizes a city to impose taxes, fees and charges on any business which is not specified as prohibited under Section 143(a) to (g) and which the city council may deem proper to tax.

The trial court also rejected CEPALCO's claim of exemption from tax. The trial court noted that Republic Act (R.A.) Nos. 3247,[9]

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[7] *Id.* at 70-77.

[8] Republic Act No. 7160. Took effect on 1 January 1992.

[9] SEC. 3. In consideration of the franchise and rights hereby granted, the grantee shall pay a franchise tax equal to three *per centum* of the gross earnings for electric current sold under this franchise, of which two *per centum* goes into the National Treasury and one *per centum* goes into the city treasury of Cagayan de Oro: *Provided*, That the said franchise tax of three *per centum* of the gross earnings shall be in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted.

3570[10] and 6020,[11] which previously granted CEPALCO's franchise, expressly stated that CEPALCO would pay a three percent franchise tax in lieu of all assessments of whatever authority. However, there is no similar provision in R.A. No. 9284, which gave CEPALCO its current franchise.

Finally, the trial court found that CEPALCO's action is barred by prescription as it failed to raise an appeal to the Secretary of Justice within the thirty-day period provided in Section 187 of the Local Government Code.

The dispositive portion of the trial court's decision reads:

WHEREFORE, it is crystal clear that Petitioner CEPALCO failed not only in proving its allegations that City Ordinance 9503-2005 is illegal and contrary to law, and that [it] is exempted from the imposition of tax, but also in convincing the Court that its action is not barred for non-exhaustion of administrative remedy [sic] and by prescription. Hence, the instant petition is DENIED.

SO ORDERED.[12]

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[10] SEC. 3. In consideration of the franchise and rights hereby granted, the grantee shall pay a franchise tax equal to three *per centum* of the gross earnings for electric current sold under this franchise, of which two *per centum* goes into the National Treasury and one *per centum* goes into the treasury of the Municipality of Tagoloan, the Municipality of Opol, and Cagayan de Oro City, as the case may be: *Provided*, That the said franchise tax of three *per centum* of the gross earnings shall be in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee from which taxes and assessments the grantee is expressly exempted.

[11] SEC. 3. In consideration of the franchise and rights hereby granted, the grantee shall pay a franchise tax equal to three *per centum* of the gross earnings for electric current sold under this franchise, of which two *per centum* goes into the National Treasury and one *per centum* goes into the treasury of the Municipalities of Tagoloan, Opol, Villanueva and Jasaan and Cagayan de Oro City, as the case may be: *Provided*, That the said franchise tax of three *per centum* of the gross earnings shall be in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee from which taxes and assessments the grantee is expressly exempted.

[12] *Rollo*, pp. 76-77.

CEPALCO filed a brief with the appellate court and raised the following errors of the trial court:

A. The lower court manifestly erred in concluding that the instant action is barred for non-exhaustion of administrative remedies and by prescription.

B. The lower court gravely erred in finding that Ordinance No. 9503-2005 of the City of Cagayan de Oro does not partake of the nature of an income tax.

C. The lower court gravely erred in finding that Ordinance No. 9503-2005 of the City of Cagayan de Oro is valid.

D. The lower court seriously erred in finding that herein appellant is not exempted from payment of said tax.[13]

The Appellate Court's Ruling

On 28 May 2009, the appellate court rendered its Decision[14] and affirmed the trial court's decision.

The appellate court stated that CEPALCO failed to file a timely appeal to the Secretary of Justice, and did not exhaust its administrative remedies. The appellate court agreed with the trial court's ruling that the assailed ordinance is valid and declared that the subject tax is a license tax for the regulation of business in which CEPALCO is engaged. Finally, the appellate court found that CEPALCO's claim of tax exemption rests on a strained interpretation of R.A. No. 9284.

In a Resolution[15] dated 24 March 2010, the appellate court denied CEPALCO's motion for reconsideration for lack of merit. The resolution also denied CEPALCO's 3 August 2009 supplemental motion for reconsideration for being filed out of time.

CEPALCO filed the present petition for review before this Court on 27 May 2010.

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[13] *Id.* at 85-86.

[14] *Id.* at 34-47.

[15] *Id.* at 48-49.

The Issues

CEPALCO enumerated the following reasons for warranting review:

1. In spite of its patent illegality, a City Ordinance passed in violation or in excess of the city's delegated power to tax was upheld;

2. In a case involving pure questions of law, the Court of Appeals still insisted on a useless administrative remedy before resort to the court may be made; and

3. Recent legislation affirming [CEPALCO's] tax exemptions was disregarded.[16]

In a Resolution dated 6 July 2011,[17] this Court required both parties to discuss whether the amount of tax imposed by Section 2 of Ordinance No. 9503-2005 complies with or violates, as the case may be, the limitation set by Section 151, in relation to Sections 137 and 143(h), of the Local Government Code.

The Court's Ruling

Failure to Exhaust Administrative Remedies

Ordinance No. 9503-2005 is a local revenue measure. As such, the Local Government Code applies.

SEC. 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings.* – The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: *Provided,* That public hearings shall be conducted for the purpose prior to the enactment thereof: *Provided, further,* That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: *Provided, however,* That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: *Provided, finally,* That

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

[17] *Id.* at 190-191.

within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

SEC. 188. *Publication of Tax Ordinances and Revenue Measures.* Within ten (10) days after their approval, certified true copies of all provincial, city, and municipal tax ordinances or revenue measures shall be published in full for three (3) consecutive days in a newspaper of local circulation: *Provided, however,* That in provinces, cities and municipalities where there are no newspapers of local circulation, the same may be posted in at least two (2) conspicuous and publicly accessible places.

The *Sangguniang Panlungsod* of Cagayan de Oro approved Ordinance No. 9503-2005 on 10 January 2005. Section 5 of said ordinance provided that the "Ordinance shall take effect after 15 days following its publication in a local newspaper of general circulation for at least three (3) consecutive issues." Gold Star Daily published Ordinance No. 9503-2005 on 1 to 3 February 2005. Ordinance No. 9503-2005 thus took effect on 19 February 2005. CEPALCO filed its petition for declaratory relief before the Regional Trial Court on 30 September 2005, clearly beyond the 30-day period provided in Section 187. CEPALCO did not file anything before the Secretary of Justice. CEPALCO ignored our ruling in *Reyes v. Court of Appeals*[18] on the mandatory nature of the statutory periods:

> Clearly, the law requires that the dissatisfied taxpayer who questions the validity or legality of a tax ordinance must file his appeal to the Secretary of Justice, within 30 days from effectivity thereof. In case the Secretary decides the appeal, a period also of 30 days is allowed for an aggrieved party to go to court. But if the Secretary does not act thereon, after the lapse of 60 days, a party could already proceed to seek relief in court. These three separate periods are clearly given for compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions. For this reason the courts construe these provisions of statutes as mandatory.

[18] 378 Phil. 232, 237-238 (1999). Citations omitted.

A municipal tax ordinance empowers a local government unit to impose taxes. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of local government units for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people. Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that protests over tax ordinances are required to be done within certain time frames. In the instant case, it is our view that the failure of petitioners to appeal to the Secretary of Justice within 30 days as required by Sec. 187 of R.A. 7160 is fatal to their cause.

As in *Reyes*, CEPALCO's failure to appeal to the Secretary of Justice within the statutory period of 30 days from the effectivity of the ordinance should have been fatal to its cause. However, we relax the application of the rules in view of the more substantive matters.

City of Cagayan de Oro's Power to Create Sources of Revenue vis-a-vis CEPALCO's Claim of Exemption

Section 5, Article X of the 1987 Constitution provides that "[e]ach local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government." The Local Government Code supplements the Constitution with Sections 151 and 186:

SEC. 151. *Scope of Taxing Powers.* – Except as otherwise provided in this Code, the city may levy the taxes, fees and charges which the province or municipality may impose: *Provided, however,* That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

SEC. 186. *Power to Levy Other Taxes, Fees or Charges*. – Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: *Provided*, That the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: *Provided, further*, That the ordinance levying such taxes, fees, or charges shall not be enacted without any prior public hearing conducted for the purpose.

Although CEPALCO does not question the authority of the *Sangguniang Panlungsod* of Cagayan de Oro to impose a tax or to enact a revenue measure, CEPALCO insists that Ordinance No. 9503-2005 is an imposition of an income tax which is prohibited by Section 133(a)[19] of the Local Government Code. Unfortunately for CEPALCO, we agree with the ruling of the trial and appellate courts that Ordinance No. 9503-2005 is a tax on business. CEPALCO's act of leasing for a consideration the use of its posts, poles or towers to other pole users falls under the Local Government Code's definition of business. Business is defined by Section 131(d) of the Local Government Code as "trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit." In relation to Section 131(d),[20] Section 143(h)[21] of the Local Government

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[19] SEC. 133. *Common Limitations on the Taxing Powers of Local Government Units*.– Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities and *barangays* shall not extend to the levy of the following:

(a) Income tax, except when levied on banks and other financial institutions;

x x x x x x x x x

[20] SEC. 131. *Definition of Terms*.– When used in this Title, the term:

x x x x x x x x x

(d) "Business" means trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit;

x x x x x x x x x

[21] SEC. 143. *Tax on Business*.– The municipality may impose taxes on the following businesses:

x x x x x x x x x

Code provides that the city may impose taxes, fees, and charges on any business which is not specified in Section 143(a) to (g)[22] and which the *sanggunian* concerned may deem proper to tax.

(h) On any business, not otherwise specified in the preceding paragraphs, which the *sanggunian* concerned may deem proper to tax: *Provided*, That on any business subject to the excise, value- added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.

x x x x x x x x x

[22] SEC. 143. *Tax on Business*. – The municipality may impose taxes on the following businesses:

(a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule:

With gross sales or receipts for the preceding calendar year in the amount of:		Amount of Tax Per Annum
Less than ₱10,000.00		165.00
₱ 10,000.00 or more but less than	15,000.00	220.00
15,000.00 or more but less than	20,000.00	302.00
20,000.00 or more but less than	30,000.00	440.00
30,000.00 or more but less than	40,000.00	660.00
40,000.00 or more but less than	50,000.00	825.00
50,000.00 or more but less than	75,000.00	1,320.00
75,000.00 or more but less than	100,000.00	1,650.00
100,000.00 or more but less than	150,000.00	2,200.00
150,000.00 or more but less than	200,000.00	2,750.00
200,000.00 or more but less than	300,000.00	3,850.00
300,000.00 or more but less than	500,000.00	5,500.00
500,000.00 or more but less than	750,000.00	8,000.00
750,000.00 or more but less than	1,000,000.00	10,000.00
1,000,000.00 or more but less than	2,000,000.00	13,750.00
2,000,000.00 or more but less than	3,000,000.00	16,500.00
3,000,000.00 or more but less than	4,000,000.00	19,800.00
4,000,000.00 or more but less than	5,000,000.00	23,100.00
5,000,000.00 or more but less than	6,500,000.00	24,375.00
6,500,000.00 or more		at a rate not exceeding thirty-seven and a half percent (37 1/2%) of one percent (1%)

(b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:

With gross sales or receipts for the preceding calendar year in the amount of:		Amount of Tax Per Annum
Less than ₱1,000.00		18.00
₱ 1,000.00 or more but less than	2,000.00	33.00
2,000.00 or more but less than	3,000.00	50.00
3,000.00 or more but less than	4,000.00	72.00
4,000.00 or more but less than	5,000.00	100.00
5,000.00 or more but less than	6,000.00	121.00
6,000.00 or more but less than	7,000.00	143.00
7,000.00 or more but less than	8,000.00	165.00
8,000.00 or more but less than	10,000.00	187.00
10,000.00 or more but less than	15,000.00	220.00
15,000.00 or more but less than	20,000.00	275.00
20,000.00 or more but less than	30,000.00	330.00
30,000.00 or more but less than	40,000.00	440.00
40,000.00 or more but less than	50,000.00	660.00
50,000.00 or more but less than	75,000.00	990.00
75,000.00 or more but less than	100,000.00	1,320.00
100,000.00 or more but less than	150,000.00	1,870.00
150,000.00 or more but less than	200,000.00	2,420.00
200,000.00 or more but less than	300,000.00	3,300.00
300,000.00 or more but less than	500,000.00	4,400.00
500,000.00 or more but less than	750,000.00	6,600.00
750,000.00 or more but less than	1,000,000.00	8,800.00
1,000,000.00 or more but less than	2,000,000.00	10,000.00
2,000,000.00 or more		at a rate not exceeding fifty percent (50%) of one percent (1%).

(c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (½) of the rates prescribed under subsections (a), (b) and (d) of this Section:

(1) Rice and corn;

(2) Wheat or cassava flour, meat, dairy products, locally manufactured, processed or preserved food, sugar, salt and other agricultural, marine, and fresh water products, whether in their original state or not;

(3) Cooking oil and cooking gas;

(4) Laundry soap, detergents, and medicine;

(5) Agricultural implements, equipment and post-harvest facilities, fertilizers, pesticides, insecticides, herbicides and other farm inputs;

(6) Poultry feeds and other animal feeds;

(7) School supplies; and

(8) Cement.

(d) On retailers,

With gross sales or receipts for the preceding calendar year of:	Rate of Tax Per Annum
₱400,000.00 or less	2%
more than ₱400,000.00	1%

Provided, however, That *barangays* shall have the exclusive power to levy taxes, as provided under Section 152 hereof, on gross sales or receipts of the preceding calendar year of Fifty thousand pesos (₱50,000.00) or less, in the case of cities, and Thirty thousand pesos (₱30,000.00) or less, in the case of municipalities.

(e) On contractors and other independent contractors, in accordance with the following schedule:

With gross receipts for the preceding calendar year in the amount of:		Amount of Tax Per Annum
Less than ₱5,000.00		27.50
₱ 5,000.00 or more but less than	10,000.00	61.60
10,000.00 or more but less than	15,000.00	104.50
15,000.00 or more but less than	20,000.00	165.00
20,000.00 or more but less than	30,000.00	275.00
30,000.00 or more but less than	40,000.00	385.00
40,000.00 or more but less than	50,000.00	550.00
50,000.00 or more but less than	75,000.00	880.00
75,000.00 or more but less than	100,000.00	1,320.00
100,000.00 or more but less than	150,000.00	1,980.00
150,000.00 or more but less than	200,000.00	2,640.00
200,000.00 or more but less than	250,000.00	3,630.00
250,000.00 or more but less than	300,000.00	4,620.00
300,000.00 or more but less than	400,000.00	6,160.00
400,000.00 or more but less than	500,000.00	8,250.00
500,000.00 or more but less than	750,000.00	9,250.00
750,000.00 or more but less than	1,000,000.00	10,250.00
1,000,000.00 or more but less than	2,000,000.00	11,500.00
2,000,000.00 or more		at a rate not exceeding fifty percent (50%) of one percent (1%)

(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.

(g) On peddlers engaged in the sale of any merchandise or article of commerce, at a rate not exceeding Fifty pesos (₱50.00) per peddler annually.

x x x x x x x x x

In contrast to the express statutory provisions on the City of Cagayan de Oro's power to tax, CEPALCO's claim of tax exemption of the income from its poles relies on a strained interpretation.[23] Section 1 of R.A. No. 9284 added Section 9 to R.A. No. 3247, CEPALCO's franchise:

> SEC. 9. *Tax Provisions.* – The grantee, its successors or assigns, shall be subject to the payment of all taxes, duties, fees or charges and other impositions applicable to private electric utilities under the National Internal Revenue Code (NIRC) of 1997, as amended, the Local Government Code and other applicable laws: *Provided*, That nothing herein shall be construed as repealing any specific tax exemptions, incentives, or privileges granted under any relevant law: *Provided, further*, That all rights, privileges, benefits and exemptions accorded to existing and future private electric utilities by their respective franchises shall likewise be extended to the grantee.
>
> The grantee shall file the return with the city or province where its facility is located and pay the taxes due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the NIRC and the return shall be subject to audit by the Bureau of Internal Revenue.

The Local Government Code withdrew tax exemption privileges previously given to natural or juridical persons, and granted local government units the power to impose franchise tax,[24] thus:

> SEC. 137. *Franchise Tax.* – Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.
>
> x x x x x x x x x

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[23] *Supra* notes 9 to 11.

[24] See *National Power Corp. v. City of Cabanatuan*, 449 Phil. 233 (2003); *MERALCO v. Province of Laguna*, 366 Phil. 428 (1999); *City Gov't. of San Pablo, Laguna v. Hon. Reyes*, 364 Phil. 842 (1999).

SEC. 193. *Withdrawal of Tax Exemption Privileges.* – Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

SEC. 534. *Repealing Clause.* – x x x.

(f) All general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations, or part or parts thereof which are inconsistent with any of the provisions of this Code are hereby repealed or modified accordingly.

It is hornbook doctrine that tax exemptions are strictly construed against the claimant. For this reason, tax exemptions must be based on clear legal provisions. The separate opinion in *PLDT v. City of Davao*[25] is applicable to the present case, thus:

> Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer. Tax exemptions cannot arise by mere implication, much less by an implied re-enactment of a repealed tax exemption clause.

CEPALCO's claim of exemption under the "in lieu of all taxes" clause must fail in light of Section 193 of the Local Government Code as well as Section 9 of its own franchise.

Ordinance No. 9503-2005's Compliance with the Local Government Code

In our Resolution dated 6 July 2011,[26] we asked both parties to discuss whether the amount of tax imposed by Section 2 of Ordinance No. 9503-2005 complies with or violates, as the case may be, the limitation set by Section 151, in relation to Sections 137 and 143(h), of the Local Government Code.

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[25] 447 Phil. 571, 591-592 (2003).

[26] *Rollo*, pp. 190-191.

CEPALCO argues that Ordinance No. 9503-2005 should be invalidated because the City of Cagayan de Oro exceeded its authority in enacting it. CEPALCO argued thus:

5. Thus, the taxes imposable under either Section 137 or Section 143(h) are not unbridled but are restricted as to the amount which may be imposed. This is the **first limitation**. Furthermore, if it is a city which imposes the same, it can impose only up to one-half of what the province or municipality may impose. This is the **second limitation**.

6. Let us now examine Ordinance No. 9503-2005 of the respondent City of Cagayan de Oro in the light of the twin limitations mentioned above.

7. Ordinance No. 9503-2005 of the respondent City of Cagayan de Oro imposes a tax on the lease or rental of electric and/or telecommunication posts, poles or towers by pole owners to other pole users "at the rate of ten (10) percent of the annual rental income derived therefrom."

8. With respect to Section 137, considering that the tax allowed provinces "shall not exceed fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction," the tax imposed by Ordinance No. 9503-2005 "at the rate of ten (10) percent of the annual rental income derived therefrom" is too much. There is a whale of a difference between the allowable 50% of 1% and the 10% tax imposed by the respondent. To illustrate: assuming that the gross annual receipt is Php100, the maximum tax that a province may impose under Section 137 (50% of 1%) shall be Php0.5 or only fifty centavos. Therefore, the maximum tax that the City may impose shall only be one-half of this, which is Php0.25 or only twenty-five centavos. But the questioned Ordinance imposes a tax amounting to 10% of the gross annual receipt of Php100, which is Php10, or Ten Pesos. This a whooping [sic] **40 times more** than that allowed for the province! The violation made by respondent city of its delegated taxing authority is all too patent.

9. With respect to Section 143(h), the rate of tax which the municipality may impose "shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year." On the other hand, the tax imposed by Ordinance No. 9503-2005 is "at the rate

of ten (10) percent of the annual rental income derived therefrom." Again, it is obvious that the respondent City's questioned tax ordinance is way too much. Using the same tax base of Php100 to illustrate, let us compute: Under Section 143(h), the maximum tax that a municipality may impose is 2% of Php100, which is Php2 or Two Pesos. Therefore, the maximum tax that the City may impose shall be one-half of this, which is Php1 or One Peso. But the tax under Ordinance No. 9503-2005 is Php10, or Ten Pesos. This is a whooping [sic] **10 times more** than that allowed for the municipality! As in the earlier instance discussed above, the violation made by the respondent city of its delegated taxing authority is all too patent.[27] (Boldfacing and underscoring in the original)

The interpretation of the City of Cagayan de Oro is diametrically opposed to that of CEPALCO. The City of Cagayan de Oro points out that under Section 151 of the Local Government Code, cities not only have the power to levy taxes, fees and charges which the provinces or municipalities may impose, but the maximum rate of taxes imposable by cities may exceed the maximum rate of taxes imposable by provinces or municipalities by as much as 50%. The City of Cagayan de Oro goes on to state:

6. Thus, Section 30 of [City of Cagayan de Oro's] Ordinance No. 8847-2003, otherwise known as the Revenue Code of Cagayan de Oro, imposes a franchise tax on the gross receipts realized from the preceding year by a business enjoying a franchise, at the rate of 75% of 1%. The increase of 25% over that which is prescribed under Section 137 of the LGC is in accordance with Section 151 thereof prescribing the allowable increase on the rate of tax on the businesses duly identified and enumerated under Section 143 of the LGC or those defined and categorized in the preceding sections thereof;

7. Section 143 of the LGC prescribes the rate of taxes on the identified categories of business enumerated therein which were determined to be existing at the time of its enactment. On the other hand, Section 151 of the LGC prescribes the allowable rate of increase over the rate of taxes imposed on businesses identified under Section 143 and the preceding sections thereof. It is [City of Cagayan

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

de Oro's] humble opinion that the allowable rate of increase provided under Section 151 of the LGC applies only to those businesses identified and enumerated under Section 143 thereof. Thus, it is respectfully submitted by [City of Cagayan de Oro] that the 2% limitation prescribed under Section 143(h) applies only to the tax rates on the businesses identified thereunder and does not apply to those that may thereafter be deemed taxable under Section 186 of the LGC, such as the herein assailed Ordinance No. 9503-2005. On the same vein, it is the respectful submission of [City of Cagayan de Oro] that the limitation under Section 151 of the LGC likewise does not apply in our particular instance, otherwise it will run counter to the intent and purpose of Section 186 of the LGC;

8. Be it strongly emphasized here that [CEPALCO] is differently situated *vis-á-vis* the rest of the businesses identified under Section 143 of the LGC. The imposition of a tax "xxx on the lease or rental of electric and/or telecommunications posts, poles or towers by pole owners to other pole users at the rate of ten (10%) of the annual rental income derived therefrom" as provided under Section 2 of the questioned Ordinance No. 9503-2005 is based on a reasonable classification, to wit: (a) It is based on substantial distinctions which make a real difference; (b) these are germane to the purpose of the law; (c) the classification applies not only to the present conditions but also to future conditions which are substantially identical to those of the present; and (d) the classification applies only to those belonging to the same class;

9. Furthermore, Section 186 of the LGC allow [sic] local government units to exercise their taxing power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated in the preceding sections, more particularly Section 143 thereof, or under the provisions of the National Internal Revenue Code, as long as they are not unjust, excessive, oppressive, confiscatory or contrary to declared national policy. Moreover, a public hearing is required before the Ordinance levying such taxes, fees or charges can be enacted;

10. It is respectfully submitted by [City of Cagayan de Oro] that the tax rate imposed under Section 2 of the herein assailed Ordinance is not unjust, excessive, oppressive, confiscatory or contrary to a declared national policy;

11. A reading of Section 143 of the LGC reveals that it has neither identified the operation of a business engaged in leasing nor prescribed its tax rate. Moreover, a Lessor, in any manner, is not included among those defined as Contractor under Section 131(h) of the LGC. However, a Lessor, in its intended general application in [City of Cagayan de Oro] (one who rents out real estate properties), was identified, categorized and included as one of the existing businesses operating in the city, and thus falling under the provisions of Ordinance No. 8847-2003 (the Revenue Code of Cagayan de Oro) and, therefore, imposed only a tax rate of 2% on their gross annual receipts;

12. While the herein assailed Ordinance similarly identifies that the base of the tax imposed therein are receipts and/or revenue derived from rentals of poles and posts, [CEPALCO] cannot be considered under the definition of Lessor under the spirit, essence and intent of Section 58(h) of the Revenue Code of Cagayan de Oro, because the same refers only to "Real Estate Lessors, Real Estate Dealers and Real Estate Developers." Thus, [CEPALCO] should be, as it has been, categorized as a (Distinct) Lessor where it enjoys not only a tremendous and substantial edge but also an absolute advantage in the rental of poles, posts and/or towers to other telecommunication and cable TV companies and the like over and above all others in view of its apparent monopoly by allowing the use of their poles, posts and/or towers by, leasing them out to, telecommunication and cable TV companies operating within the city and suburbs. Furthermore, [CEPALCO] has neither competition in this field nor does it expect one since there are no other persons or entities who are engaged in this particular business activity;

x x x x x x x x x[28]

CEPALCO is mistaken when it states that a city can impose a tax up to only one-half of what the province or city may impose. A more circumspect reading of the Local Government Code could have prevented this error. Section 151 of the Local Government Code states that, subject to certain exceptions, a city may exceed by "not more than 50%" the tax rates allowed to provinces and municipalities.[29] A province may impose a

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[28] *Id.* at 216-219.

[29] SEC. 151. *Scope of Taxing Powers.* – Except as otherwise provided in this Code, the city may levy the taxes, fees and charges which the province

franchise tax at a rate "not exceeding 50% of 1% of the gross annual receipts."[30] Following Section 151, a city may impose a franchise tax of up to 0.0075 (or 0.75%) of a business' gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction. A municipality may impose a business tax at a rate not exceeding "two percent of gross sales or receipts."[31] Following Section 151, a city may impose a business tax of up to 0.03 (or 3%) of a business' gross sales or receipts of the preceding calendar year.

CEPALCO also erred when it equates Section 137's "gross annual receipts" with Ordinance No. 9503-2005's "annual rental income." Section 2 of Ordinance No. 9503-2005 imposes "a tax on the lease or rental of electric and/or telecommunication posts, poles or towers by pole owners to other pole users at the

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or municipality may impose: *Provided, however*, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

[30] SEC. 137. *Franchise Tax.* – Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.

x x x x x x x x x

[31] SEC. 143. *Tax on Business.* – The municipality may impose taxes on the following businesses:

x x x x x x x x x

(h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: *Provided*, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.

x x x x x x x x x

rate of ten (10) percent of the annual rental income derived therefrom," and not on CEPALCO's gross annual receipts. Thus, although the tax rate of 10% is definitely higher than that imposable by cities as franchise or business tax, the tax base of annual rental income of "electric and/or telecommunication posts, poles or towers by pole owners to other pole users" is definitely smaller than that used by cities in the computation of franchise or business tax. In effect, Ordinance No. 9503-2005 wants a slice of a smaller pie.

However, we disagree with the City of Cagayan de Oro's submission that Ordinance No. 9503-2005 is not subject to the limits imposed by Sections 143 and 151 of the Local Government Code. On the contrary, Ordinance No. 9503-2005 is subject to the limitation set by Section 143(h). Section 143 recognizes separate lines of business and imposes different tax rates for different lines of business. Let us suppose that one is a brewer of liquor and, at the same time, a distributor of articles of commerce. The brewery business is subject to the rates established in Section 143(a) while the distribution business is subject to the rates established in Section 143(b). The City of Cagayan de Oro's imposition of a tax on the lease of poles falls under Section 143(h), as the lease of poles is CEPALCO's separate line of business which is not covered by paragraphs (a) to (g) of Section 143. The treatment of the lease of poles as a separate line of business is evident in Section 4(a) of Ordinance No. 9503-2005. The City of Cagayan de Oro required CEPALCO to apply for a separate business permit.

More importantly, because "any person, who in the course of trade or business x x x leases goods or properties x x x shall be subject to the value-added tax,"[32] the imposable tax rate

[32] Section 105, Republic Act No. 8424 (1997) reads:

Persons Liable. – Any person who, in the course of trade or business, sells barters, exchanges, **leases goods or properties**, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

should not exceed two percent of gross receipts of the lease of poles of the preceding calendar year. Section 143(h) states that "**on any business subject to x x x value-added x x x tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year**" from the lease of goods or properties. Hence, the 10% tax rate imposed by Ordinance No. 9503-2005 clearly violates Section 143(h) of the Local Government Code.

Finally, in view of the lack of a separability clause, we declare void the entirety of Ordinance No. 9503-2005. Any payment made by reason of the tax imposed by Ordinance No. 9503-2005 should, therefore, be refunded to CEPALCO. Our ruling, however, is made without prejudice to the enactment by the City of Cagayan de Oro of a tax ordinance that complies with the limits set by the Local Government Code.

WHEREFORE, we **GRANT** the petition. The Decision of the Court of Appeals in CA-G.R. CV No. 01105-Min promulgated on 28 May 2009 and the Resolution promulgated on 24 March 2010 are **REVERSED** and **SET ASIDE**. Ordinance No. 9503-2005 is declared void.

SO ORDERED.

Brion, del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being in the course of trade or business. (Emphasis supplied)

THIRD DIVISION

[G.R. No. 192330. November 14, 2012]

ARNOLD JAMES M. YSIDORO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; TECHNICAL MALVERSATION; ELEMENTS. — The crime of technical malversation as penalized under Article 220 of the Revised Penal Code has three elements: a) that the offender is an accountable public officer; b) that he applies public funds or property under his administration to some public use; and c) that the public use for which such funds or property were applied is different from the purpose for which they were originally appropriated by law or ordinance.

2. ID.; ID.; COMMITTED IN CASE AT BAR.— [T]he Sangguniang Bayan of Leyte enacted Resolution 00-133 appropriating the annual general fund for 2001. ₱100,000.00 [was allocated] for the Supplemental Feeding Program (SFP) and ₱113,957.64 for the Comprehensive and Integrated Delivery of Social Services which covers the Core Shelter Assistance Program (CSAP) housing projects. x x x Ysidoro disregarded the guidelines when he approved the distribution of the goods [intended for the SFP] to those providing free labor for the rebuilding of their own homes (CSAP beneficiaries). This is technical malversation.

3. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; FUNDS ALREADY APPROPRIATED FOR A DETERMINED PURPOSE APPLIED TO SOME OTHER PURPOSE, REQUIRES AN ORDINANCE ENACTED THEREFOR.— [Sec. 336 of] the Local Government Code provides that an ordinance has to be enacted to validly apply funds, already appropriated for a determined public purpose, to some other purpose. x x x [T]he law gives the Sanggunian the power to determine whether savings have accrued and to authorize the augmentation of other items on the budget with those savings.

4. CRIMINAL LAW; TECHNICAL MALVERSATION; CRIMINAL INTENT IS NOT RELEVANT.— [C]riminal intent is not an element of technical malversation. The law punishes the act of diverting public property earmarked by law or ordinance for a particular public purpose to another public purpose. The offense is *mala prohibita*, meaning that the prohibited act is not inherently immoral but becomes a criminal offense because positive law forbids its commission based on considerations of public policy, order, and convenience. x x x The law and this Court, however, recognize that his offense is not grave, warranting a mere fine.

APPEARANCES OF COUNSEL

Jose Ventura Aspiras, Warlito Galisanao and Jovito A. Coresis, Jr. for petitioner.

D E C I S I O N

ABAD, *J.*:

This case is about a municipal mayor charged with illegal diversion of food intended for those suffering from malnutrition to the beneficiaries of reconstruction projects affecting the homes of victims of calamities.

The Facts and the Case

The Office of the Ombudsman for the Visayas accused Arnold James M. Ysidoro before the Sandiganbayan in Criminal Case 28228 of violation of illegal use of public property (technical malversation) under Article 220 of the Revised Penal Code.[1]

The facts show that the Municipal Social Welfare and Development Office (MSWDO) of Leyte, Leyte, operated a Core Shelter Assistance Program (CSAP) that provided construction materials to indigent calamity victims with which to rebuild their homes. The beneficiaries provided the labor needed for construction.

[1] Records, p. 1.

On June 15, 2001 when construction for calamity victims in *Sitio* Luy-a, *Barangay* Tinugtogan, was 70% done, the beneficiaries stopped reporting for work for the reason that they had to find food for their families. This worried Lolita Garcia (Garcia), the CSAP Officer-in-Charge, for such construction stoppage could result in the loss of construction materials particularly the cement. Thus, she sought the help of Cristina Polinio (Polinio), an officer of the MSWDO in charge of the municipality's Supplemental Feeding Program (SFP) that rationed food to malnourished children. Polinio told Garcia that the SFP still had sacks of rice and boxes of sardines in its storeroom. And since she had already distributed food to the mother volunteers, what remained could be given to the CSAP beneficiaries.

Garcia and Polinio went to petitioner Arnold James M. Ysidoro, the Leyte Municipal Mayor, to seek his approval. After explaining the situation to him, Ysidoro approved the release and signed the withdrawal slip for four sacks of rice and two boxes of sardines worth ₱3,396.00 to CSAP.[2] Mayor Ysidoro instructed Garcia and Polinio, however, to consult the accounting department regarding the matter. On being consulted, Eldelissa Elises, the supervising clerk of the Municipal Accountant's Office, signed the withdrawal slip based on her view that it was an emergency situation justifying the release of the goods. Subsequently, CSAP delivered those goods to its beneficiaries. Afterwards, Garcia reported the matter to the MSWDO and to the municipal auditor as per auditing rules.

On August 27, 2001 Alfredo Doller, former member of the Sangguniang Bayan of Leyte, filed the present complaint against Ysidoro. Nierna Doller, Alfredo's wife and former MSWDO head, testified that the subject SFP goods were intended for its target beneficiaries, Leyte's malnourished children. She also pointed out that the Supplemental Feeding Implementation Guidelines for Local Government Units governed the distribution of SFP goods.[3] Thus, Ysidoro committed technical malversation

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[2] *Id.* at 250.

[3] *Id.* at 260-329.

when he approved the distribution of SFP goods to the CSAP beneficiaries.

In his defense, Ysidoro claims that the diversion of the subject goods to a project also meant for the poor of the municipality was valid since they came from the savings of the SFP and the Calamity Fund. Ysidoro also claims good faith, believing that the municipality's poor CSAP beneficiaries were also in urgent need of food. Furthermore, Ysidoro pointed out that the COA Municipal Auditor conducted a comprehensive audit of their municipality in 2001 and found nothing irregular in its transactions.

On February 8, 2010 the Sandiganbayan found Ysidoro guilty beyond reasonable doubt of technical malversation. But, since his action caused no damage or embarrassment to public service, it only fined him ₱1,698.00 or 50% of the sum misapplied. The Sandiganbayan held that Ysidoro applied public property to a pubic purpose other than that for which it has been appropriated by law or ordinance. On May 12, 2010 the Sandiganbayan denied Ysidoro's motion for reconsideration. On June 8, 2010 Ysidoro appealed the Sandiganbayan Decision to this Court.

The Questions Presented

In essence, Ysidoro questions the Sandiganbayan's finding that he committed technical malversation. He particularly raises the following questions:

1. Whether or not he approved the diversion of the subject goods to a public purpose different from their originally intended purpose;

2. Whether or not the goods he approved for diversion were in the nature of savings that could be used to augment the other authorized expenditures of the municipality;

3. Whether or not his failure to present the municipal auditor can be taken against him; and

4. Whether or not good faith is a valid defense for technical malversation.

The Court's Rulings

One. The crime of technical malversation as penalized under Article 220 of the Revised Penal Code[4] has three elements: a) that the offender is an accountable public officer; b) that he applies public funds or property under his administration to some public use; and c) that the public use for which such funds or property were applied is different from the purpose for which they were originally appropriated by law or ordinance.[5] Ysidoro claims that he could not be held liable for the offense under its third element because the four sacks of rice and two boxes of sardines he gave the CSAP beneficiaries were not appropriated by law or ordinance for a specific purpose.

But the evidence shows that on November 8, 2000 the Sangguniang Bayan of Leyte enacted Resolution 00-133 appropriating the annual general fund for 2001.[6] This appropriation was based on the executive budget[7] which

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[4] Art. 220. *Illegal use of public funds or property.* — Any public officer who shall apply any public fund or property under his administration to any public use other than for which such fund or property were appropriated by law or ordinance shall suffer the penalty of *prision correccional* in its minimum period or a fine ranging from one-half to the total of the sum misapplied, if by reason of such misapplication, any damages or embarrassment shall have resulted to the public service. In either case, the offender shall also suffer the penalty of temporary special disqualification.

If no damage or embarrassment to the public service has resulted, the penalty shall be a fine from 5 to 50 per cent of the sum misapplied.

[5] *Parungao v. Sandiganbayan*, 274 Phil. 451, 460 (1991).

[6] Records, pp. 258-259.

[7] SEC. 318. *Preparation of the Budget by the Local Chief Executive.* – Upon receipt of the statements of income and expenditures from the treasurer, the budget proposals of the heads of departments and offices, and the estimates of income and budgetary ceilings from the local finance committee, **the local chief executive shall prepare the executive budget for the ensuing fiscal year in accordance with the provisions of this Title. The local chief executive shall submit the said executive budget to the sanggunian concerned** not later than the sixteenth (16th) of October of the current fiscal year. Failure to submit such budget on the date prescribed herein shall subject the local chief executive to such criminal and administrative penalties as provided for under this Code and other applicable laws. (Emphasis supplied)

allocated ₱100,000.00 for the SFP and ₱113,957.64 for the Comprehensive and Integrated Delivery of Social Services[8] which covers the CSAP housing projects.[9] The creation of the two items shows the Sanggunian's intention to appropriate separate funds for SFP and the CSAP in the annual budget.

Since the municipality bought the subject goods using SFP funds, then those goods should be used for SFP's needs, observing the rules prescribed for identifying the qualified beneficiaries of its feeding programs. The target clientele of the SFP according to its manual[10] are: 1) the moderately and severely underweight pre-school children aged 36 months to 72 months; and 2) the families of six members whose total monthly income is ₱3,675.00 and below.[11] This rule provides assurance that the SFP would cater only to the malnourished among its people who are in urgent need of the government's limited resources.

Ysidoro disregarded the guidelines when he approved the distribution of the goods to those providing free labor for the rebuilding of their own homes. This is technical malversation. If Ysidoro could not legally distribute the construction materials appropriated for the CSAP housing beneficiaries to the SFP malnourished clients neither could he distribute the food intended for the latter to CSAP beneficiaries.

Two. Ysidoro claims that the subject goods already constituted savings of the SFP and that, therefore, the same could already

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SEC. 319. *Legislative Authorization of the Budget*. – On or before the end of the current fiscal year, the sanggunian concerned shall enact, through an ordinance, the annual budget of the local government unit for the ensuing fiscal year on the basis of the estimates of income and expenditures submitted by the local chief executive.

[8] Records, p. 254.

[9] TSN, May 23, 2006, p. 15 (*rollo*, pp. 127-128) and TSN, August 2, 2007, pp. 15-16 (*rollo*, p. 130).

[10] Guidelines on the Management of CRS Supported Supplemental Feeding Program Implemented by the Local Government Units; Sandiganbayan *rollo*, Vol. I, pp. 260-329.

[11] *Id.* at 263.

be diverted to the CSAP beneficiaries. He relies on *Abdulla v. People*[12] which states that funds classified as savings are not considered appropriated by law or ordinance and can be used for other public purposes. The Court cannot accept Ysidoro's argument.

The subject goods could not be regarded as savings. The SFP is a continuing program that ran throughout the year. Consequently, no one could say in mid-June 2001 that SFP had already finished its project, leaving funds or goods that it no longer needed. The fact that Polinio had already distributed the food items needed by the SFP beneficiaries for the second quarter of 2001 does not mean that the remaining food items in its storeroom constituted unneeded savings. Since the requirements of hungry mouths are hard to predict to the last sack of rice or can of sardines, the view that the subject goods were no longer needed for the remainder of the year was quite premature.

In any case, the Local Government Code provides that an ordinance has to be enacted to validly apply funds, already appropriated for a determined public purpose, to some other purpose. Thus:

> SEC. 336. *Use of Appropriated Funds and Savings*. – Funds shall be available exclusively for the specific purpose for which they have been appropriated. No ordinance shall be passed authorizing any transfer of appropriations from one item to another. However, the local chief executive or the presiding officer of the sanggunian concerned may, by ordinance, be authorized to augment any item in the approved annual budget for their respective offices from savings in other items within the same expense class of their respective appropriations.

The power of the purse is vested in the local legislative body. By requiring an ordinance, the law gives the Sanggunian the power to determine whether savings have accrued and to authorize the augmentation of other items on the budget with those savings.

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[12] 495 Phil. 70 (2005).

Three. Ysidoro claims that, since the municipal auditor found nothing irregular in the diversion of the subject goods, such finding should be respected. The SB ruled, however, that since Ysidoro failed to present the municipal auditor at the trial, the presumption is that his testimony would have been adverse if produced. Ysidoro argues that this goes against the rule on the presumption of innocence and the presumption of regularity in the performance of official functions.

Ysidoro may be right in that there is no basis for assuming that had the municipal auditor testified, his testimony would have been adverse to the mayor. The municipal auditor's view regarding the transaction is not conclusive to the case and will not necessarily negate the mayor's liability if it happened to be favorable to him. The Court will not, therefore, be drawn into speculations regarding what the municipal auditor would have said had he appeared and testified.

Four. Ysidoro insists that he acted in good faith since, first, the idea of using the SFP goods for the CSAP beneficiaries came, not from him, but from Garcia and Polinio; and, second, he consulted the accounting department if the goods could be distributed to those beneficiaries. Having no criminal intent, he argues that he cannot be convicted of the crime.

But criminal intent is not an element of technical malversation. The law punishes the act of diverting public property earmarked by law or ordinance for a particular public purpose to another public purpose. The offense is *mala prohibita*, meaning that the prohibited act is not inherently immoral but becomes a criminal offense because positive law forbids its commission based on considerations of public policy, order, and convenience.[13] It is the commission of an act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated. Hence, malice or criminal intent is completely irrelevant.[14]

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[13] FLORENZ REGALADO, *CRIMINAL LAW CONSPECTUS* (2003 rev. ed), citing *People v. Pavlic*, 227 Mich., 563, N.W. 371, 35 ALR.

[14] *Luciano v. Estrella*, 145 Phil. 454, 464-465 (1970).

Dura lex sed lex. Ysidoro's act, no matter how noble or miniscule the amount diverted, constitutes the crime of technical malversation. The law and this Court, however, recognize that his offense is not grave, warranting a mere fine.

WHEREFORE, this Court **AFFIRMS** in its entirety the assailed Decision of the Sandiganbayan in Criminal Case 28228 dated February 8, 2010.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 192951. November 14, 2012]

ALDERSGATE COLLEGE, INC., ARSENIO L. MENDOZA, IGNACIO A. GALINDEZ, WILSON E. SAGADRACA, and FILIPINAS MENZEN, *petitioners, vs.* **JUNIFEN F. GAUUAN, ARTEMIO M. VILLALUZ, SR., TERESITA ARREOLA, FORTUNATA ANDAYA, SALVADOR C. AQUINO, ROBERTO M. TUGAWIN and JOSE O. RUPAC,** *respondents,* **and ALDERSGATE COLLEGE, INC., DR. WILLIE A. DAMASCO, REV. ELMER V. LUNA, JEMZ R. LUDAN, SAMUEL V. FULGENCIO, REV. ISMAEL A. DAMASCO, VICENTE V. RAMEL, SALVADOR C. AQUINO, CAMILO V. GALLARDO, NORMALITA C. ORDOÑEZ, and ARSENIO L. SOLIMEN,** *respondents-intervenors.*

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[*] Designated Acting Member, per Special Order 1299 dated August 28, 2012.

SYLLABUS

COMMERCIAL LAW; CORPORATION LAW; INTRA-CORPORATE CONTROVERSIES; MOTION TO DISMISS IS A PROHIBITED PLEADING; CASE AT BAR.— As this case involves an intra-corporate dispute, the motion to dismiss is undeniably a prohibited pleading. (Per Section 8, Rule 1 of the Interim Rules of Procedure for Intra-Corporate controversies). Moreover, the Court finds no justification for the dismissal of the case based on the mere issuance of a board resolution by the incumbent members of the Board of Trustees of petitioner corporation recommending its dismissal, especially considering the various issues raised by the parties before the court *a quo*.

APPEARANCES OF COUNSEL

Law Firm of Omar D. Virgilia for petitioners.
Basilio Rupisan for respondents.
Epifanio LD. Galima, Jr. for respondents-intervenors.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This petition for review assails the March 30, 2010 Resolution[1] and June 29, 2010 Order[2] of the Regional Trial Court (RTC), Branch 28, Nueva Vizcaya in SEC Case No. 3972 which granted the Motion to Withdraw and/or to Dismiss Case filed by the respondents-intervenors composed of the incumbent members of the Board of Trustees of petitioner Aldersgate College, Inc.

The Factual Antecedents

Sometime in March 1991, petitioners Aldersgate College, Inc., Arsenio L. Mendoza, Ignacio A. Galindez, Wilson E. Sagadraca, and Filipinas Menzen, together with now deceased

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[1] Penned by Judge Fernando F. Flor, Jr., *rollo*, p. 29.

[2] *Id.* at 30.

Justino R. Vigilia, Castulo Villanueva, Samuel F. Erana and Socorro Cabanilla, filed a case against the respondents before the Securities and Exchange Commission (SEC).[3] When the SEC was reorganized pursuant to Republic Act 8799,[4] the case was transferred to the RTC of Nueva Vizcaya for further proceedings.[5] Pre-trial thereafter ensued and a Pre-Trial Order was issued enumerating the following issues:

> [a] which of the contending trustees and officers are legally elected in accordance with the 1970 By-Laws;
> [b] whether the withdrawals and disbursements are in accordance with the By-Laws;
> [c] whether there was a complete, audited report and accounting of all the corporate funds;
> [d] whether respondents Gauuan, Villaluz, Arreola and the banks, are jointly and severally liable to indemnify the school for all sums of money withdrawn, disbursed, paid, diverted and unaccounted for without the approval and counter-signature of the chairman;
> [e] whether there was a demand of a right of inspection and a refusal to allow inspection, and
> [f] whether respondents are liable for damages.[6]

In a motion[7] dated August 10, 2003, respondents sought the dismissal of the complaint or the issuance of a summary judgment

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[3] *Id.* at 72.

[4] Sec. 5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: ***Provided***, that the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed. (Emphasis supplied)

[5] *Id.*

[6] *Rollo*, pp. 41-42. See also the February 16, 2004 Order which mentions the issues raised in the Pre-Trial Order; *Id.* at 47.

[7] *Id.* at 31-35.

dismissing the case. On February 16, 2004, the RTC denied[8] the motion on the ground that "there are several issues raised which would still need the presentation of evidence to determine the rights of the parties." A few years later, respondents-intervenors also sought the dismissal of the complaint in their Answer-in-Intervention with Motion to Dismiss[9] dated February 27, 2008 raising the lack of capacity, personality or authority to sue the individual petitioners in behalf of Aldersgate College, Inc. The RTC, in its February 6, 2009 Order, once more brushed aside the attempt to have the case dismissed.[10] Unfazed, the respondents-intervenors again filed in February 2010 a Motion to Withdraw and/or to Dismiss Case,[11] alleging that the case was instituted without any board resolution authorizing its filing and that the incumbent members of the Board of Trustees of petitioner Aldersgate College, Inc. had recently passed a resolution which sought the dismissal and/or withdrawal of the case.

The RTC's Ruling

On March 30, 2010, the RTC granted[12] the motion despite the opposition of the petitioners, and dismissed the case on the basis of the Resolution passed by the members of the Board of Trustees of petitioner Aldersgate College dated December 14, 2009 recommending the dismissal of the case.

Petitioners' motion for reconsideration was denied in the RTC's June 29, 2010 Order.[13]

Hence the instant petition.

Issue Before The Court

Petitioners raise the issue of whether or not the RTC erred in dismissing the case.

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

[9] *Id.* at 48-50.

[10] *Id.* at 52.

[11] *Id.* at 57-64.

[12] *Id.* at 29.

[13] *Id.* at 30.

The Court's Ruling

The petition is meritorious.

In an ordinary civil action, a motion to dismiss must generally be filed "within the time for but before filing the answer to the complaint"[14] and on the grounds enumerated in Section 1, Rule 16 of the Rules of Court, to wit:

(a) That the court has no jurisdiction over the person of the defending party;
(b) That the court has no jurisdiction over the subject matter of the claim;
(c) That venue is improperly laid;
(d) That the plaintiff has no legal capacity to sue;
(e) That there is another action pending between the same parties for the same cause;
(f) That the cause of action is barred by a prior judgment or by the statute of limitations;
(g) That the pleading asserting the claim states no cause of action;
(h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;
(i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds; and
(j) That a condition precedent for filing the claim has not been complied with.[15]

The rule is, however, different with respect to intra-corporate controversies. Under Section 8, Rule 1 of the Interim Rules of Procedure for Intra-Corporate Controversies,[16] a motion to dismiss is a prohibited pleading.

As this case involves an intra-corporate dispute, the motion to dismiss is undeniably a prohibited pleading. Moreover, the

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[14] RULES OF COURT, RULE 16, Sec. 1.

[15] *Id.*

[16] Sec. 8. Prohibited Pleadings. – The following pleadings are prohibited:

(1) Motion to dismiss;
(2) x x x x x x x x x

Court finds no justification for the dismissal of the case based on the mere issuance of a board resolution by the incumbent members of the Board of Trustees of petitioner corporation recommending its dismissal, especially considering the various issues raised by the parties before the court *a quo*. Hence, the RTC should not have entertained, let alone have granted the subject motion to dismiss.

WHEREFORE, the petition is **GRANTED**. The assailed March 30, 2010 Resolution and June 29, 2010 Order of the Regional Trial Court, Branch 28, Nueva Vizcaya in SEC Case No. 3972 are **REVERSED** and **SET ASIDE**. The RTC is **DIRECTED** to proceed with the trial and to decide the case with dispatch.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 198050. November 14, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOEL ARTAJO *Y* ALIMANGOHAN,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; REQUISITES.— By invoking self-defense, accused Joel needed to prove by clear and convincing evidence the following requisites: (a) unlawful aggression; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself.

2. ID.; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; ABSENCE THEREOF MAKES THE CRIME ONLY THAT OF HOMICIDE.— Dolor's testimony contains nothing that hints upon treachery being employed. x x x On the other hand, Enrique, a neighbor, testified that x x x it was only when Clarence fell to the ground flat on his face that Joel sat astride on him and stabbed him on the back. Those back wounds were not treacherously delivered at the beginning with the victim having no premonition of their coming. For the above reasons, the Court must conclude that, although Joel killed Clarence, the killing was not accompanied by the qualifying circumstance of treachery. Accused Joel is guilty only of homicide.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ABAD, *J.*:

This case is about an accused who claims self-defense in killing the victim but is convicted of murder qualified by treachery of a somewhat dubious kind.

The Facts and the Case

On November 26, 2002 the public prosecutor charged accused Joel Artajo *y* Alimangohan (Joel) with murder qualified by treachery before the Regional Trial Court (RTC) of Butuan City in Criminal Case 9683.[1]

Edgardo Hanopol Herana (Edgardo) testified that at about 1:00 p.m. on November 6, 2002 he passed time at a store in Barangay Pianing, Butuan City, drinking liquor with accused Joel, Liklik Degorio (Liklik), and Joel Degorio.[2] They were still

[1] Records, p. 1.

[2] *Id.* at 131.

at it at 3:00 p.m. when Clarence Galvez (Clarence), the victim, passed by, carrying a wild fox or "*milo*" that he caught. Accused Joel suggested that the group transfer to Clarence's house.

After Joel bought a jumbo size *Kulafu*, they proceeded to Clarence's house. Joel Degorio did not, however, join them. While enjoying their drinks there, Edgardo observed that Joel who was shirtless had a knife tucked on his waist. Clarence cooked and served the wild fox, then joined the accused Joel, Edgardo, and Liklik in their drinking. At about 5:00 p.m. Edgardo left intoxicated.[3]

Dolor G. Bacarat (Dolor), Clarence's daughter, testified that she briefly entered her father's house at around 3:00 p.m. and found him drinking and partaking of the cooked fox with accused Joel, Edgardo, and Liklik. Dolor was staying in an adjacent house. When she returned to her father's house three hours later at 6:00 p.m., she noticed that only accused Joel remained among his father's guests. Clarence crossed over to Dolor's house briefly and brought back the latter's four-year-old daughter. For her part, Dolor returned to her house.

Shortly after, Dolor heard her daughter cry. As she went out to see what had happened, she saw accused Joel stabbing his father who was trying to fight back. But Joel repeatedly stabbed him on the neck and shoulder, causing him to fall. Joel stopped and fled on seeing Dolor. The latter sought help and they brought her father to the Butuan City Medical Center where he was declared dead on arrival.[4]

A neighbor of Clarence, Enrique Petilo (Enrique) testified that he saw Clarence and Joel at around 6:00 p.m., coming out of Clarence's house by the back door. Enrique watched as Joel drew a knife from his waist and stabbed Clarence three times. Clarence tried to hold on to Joel but he fell on the ground flat on his face. Joel sat astride Clarence and stabbed him

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[3] *Id.*

[4] *Id.* at 130-131.

for about ten more times. When Joel left, Enrique approached Clarence and helped bring him to the hospital.[5]

Dr. Edgar S. Savella, a medico-legal expert of the National Bureau of Investigation conducted an autopsy of Clarence. The doctor found 7 stab wounds and 11 incised wounds. Four of the stab wounds were on the victim's chest, which he described as fatal, while three other stab wounds were on his back. The rest of the wounds were inflicted on the different parts of the victim's body.[6]

Accused Joel admitted killing Clarence but pleaded self-defense. He claimed that he went to a nearby store after supper to buy cigarettes when he met Clarence and Edgardo. The two invited Joel to come to Clarence's house for drinks and requested him to bring a bottle of *Kulafu*. Joel accepted the invitation.[7]

Joel further claimed that at about 7:30 p.m., after they consumed the liquor they had, Clarence demanded that Joel go out and get more liquor to drink. Joel refused since he had no money left. This angered Clarence, who grabbed Joel's glass and banged it on the table. To avoid trouble, Joel tried to leave. As he passed Clarence's videoke house, however, Clarence, holding a knife, approached and shouted at him to stop. As he grappled with Clarence for the knife, Joel suffered cuts on his arm and elbow. Joel wrestled the knife from Clarence and stabbed him out of fear for his own life. Joel fled but surrendered to the authorities three days later.[8]

On December 18, 2008 the RTC rendered a decision finding accused Joel guilty of murder qualified by treachery. The RTC ruled that Joel appeared determined to kill Clarence because even as the latter lay prostrate, he continued to stab him, evidenced by the many wounds on his body. The autopsy

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[5] *Id.* at 129.

[6] *Id.* at 131-132; TSN, January 18, 2005, pp. 9-12.

[7] *Id.* at 133.

[8] *Id.*

showed the nature, character, and location of the wounds. These substantiate a determination to kill the victim. The RTC held that the mode of attack rendered the victim incapable of defending himself, thus treachery was present.

Appreciating the mitigating circumstance of voluntary surrender, the trial court imposed on Joel the penalty of *reclusion perpetua*. It also awarded Clarence's heirs with actual damages of ₱8,000.00, temperate damages of ₱25,000.00, moral damages of ₱50,000.00, and death indemnity of ₱50,000.00. The accused appealed to the Court of Appeals (CA) but on April 29, 2011 the latter court affirmed *in toto* the RTC decision.[9] The case is before this Court on automatic appeal.

The Issues Presented

The case presents two issues:

1. Whether or not accused Joel killed Clarence in self-defense; and

2. Whether or not treachery attended the killing.

The Court's Rulings

The Court will address the two issues one after the other.

One. By invoking self-defense, accused Joel needed to prove by clear and convincing evidence the following requisites: (*a*) unlawful aggression; (*b*) reasonable necessity of the means employed to prevent or repel it; and (*c*) lack of sufficient provocation on the part of the person defending himself.[10]

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[9] Docketed as CA-G.R. CR-HC 00683-MIN, penned by Justice Edgardo A. Camello and concurred in by Justices Rodrigo F. Lim, Jr. and Edgardo T. Lloren.

[10] REVISED PENAL CODE, Article 11, par. 1.

Here, the testimonies of Dolor and Enrique, accepted as credible by both the trial court and the CA, show that accused Joel, not Clarence, was the armed aggressor. Enrique saw Joel draw a knife from his waist and proceed to stab Clarence. Indeed, both witnesses testified that it was Clarence who was trying to put up a futile defense against Joel's continued thrusts. The location of the wounds on the victim's body corroborates such testimonies.

For his part, accused Joel did not bother to offer any corroborative evidence, such as a medical report establishing the wounds he allegedly sustained in his struggle to seize Clarence's knife from him or someone who saw those wounds around the time they were supposedly inflicted. Joel's claim of self-defense is hallow.

Two. As to the issue of treachery, the Court finds difficulty in concurring with the findings of the RTC and the CA that accused Joel resorted to treachery in killing Clarence. There is treachery, according to Article 14, paragraph 16 of the Revised Penal Code, when the offender employs means, methods, or forms in attacking his victim which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

Here, Dolor's testimony contains nothing that hints upon treachery being employed. She did not see how the attack began. As she went outside and looked, accused Joel was already attacking his father. Quite curiously, what she further saw was that his father was trying to "fight back," not just trying to parry Joel's blows, indicating that the latter had not employed means that would eliminate any risk to him arising from the defense which Clarence might make. If he employed treachery, Joel could very well have aimed his first blow to immediately disable Clarence.

On the other hand, Enrique, a neighbor, testified that he saw Clarence and Joel come out of the back door of the house together. Clearly then Joel did not lie in ambush. Since they came out together, Clarence must have perceived the attack

for he even tried to keep his grip on his assailant after it started. And the evidence is clear that Joel did not purposely stab Clarence on the back. Enrique testified that it was only when Clarence fell to the ground flat on his face that Joel sat astride on him and stabbed him on the back. Those back wounds were not treacherously delivered at the beginning with the victim having no premonition of their coming.

For the above reasons, the Court must conclude that, although Joel killed Clarence, the killing was not accompanied by the qualifying circumstance of treachery. Accused Joel is guilty only of homicide.

WHEREFORE, the Court **SETS ASIDE** the Decision of the Court of Appeals in CA-G.R. CR-HC 00683-MIN dated April 29, 2011 and the Decision of the Regional Trial Court of Butuan City in Criminal Case 9683 dated December 18, 2008 and, in place of those decisions, **RENDERS** judgment finding accused Joel Artajo *y* Alimangohan guilty of the crime of homicide, mitigated by voluntary surrender, and **IMPOSES** on him the penalty of 10 years of *prision mayor*, as minimum, to 12 years and 1 day of *reclusion temporal*, as maximum. In addition, the Court **ORDERS** him to pay the heirs of Clarence Galvez actual damages of ₱8,000.00, moral damages of ₱50,000.00, and death indemnity of ₱50,000.00.

SO ORDERED.

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

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[*] Designated Acting Member, per Special Order 1299 dated August 28, 2012.

FIRST DIVISION

[G.R. No. 200792. November 14, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NEIL B. COLORADO,** *accused-appellant*.

SYLLABUS

1. CRIMINAL LAW; QUALIFIED RAPE; ELEMENTS.— Colorado was charged with the crime of rape, qualified by the victim's minority and her relationship to her ravisher, as defined and penalized under Article 266-A, in relation to Article 266-B, of the Revised Penal Code (RPC). x x x [T]he concurrence of the following elements of qualified rape was established: (1) that the victim is a female over 12 years but under 18 years of age; (2) that the **offender** is a parent, ascendant, stepparent, guardian or **relative by consanguinity or affinity within the third civil degree**, or the common-law spouse of the parent of the victim; and (3) that the offender has carnal knowledge of the victim either through force, threat or intimidation; or when she is deprived of reason or is otherwise unconscious; or by means of fraudulent machinations or grave abuse of authority.

2. ID.; ID.; ID.; THAT THE VICTIM IS A FEMALE OVER 12 YEARS BUT UNDER 18 YEARS OF AGE; ALLEGED IN THE INFORMATION AND ESTABLISHED BY THE VICTIM'S BIRTH CERTIFICATE.— The age of the victim at the time of the crime's commission is undisputed. During the pre-trial, the parties agreed on the existence of AAA's Certificate of Live Birth, a "certified true/xerox copy" of which forms part of the records and provides that AAA was born on October 10, 1990. AAA was then only 12 years old in December 2002, a significant fact that was sufficiently alleged in the Information. In *People v. Pruna*, we held that the best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.— [S]ettled is the rule that the findings of the trial court on the credibility

of a witness deserve great weight, given the clear advantage of a trial judge in the appreciation of testimonial evidence. We have repeatedly recognized that the trial court is in the best position to assess the credibility of witnesses and their testimonies, because of its unique opportunity to observe the witnesses first hand and to note their demeanor, conduct, and attitude under grueling examination. These are significant factors in evaluating the sincerity of witnesses, in the process of unearthing the truth. The rule finds even more stringent application where the said findings are sustained by the CA. Thus, except for compelling reasons, we are doctrinally bound by the trial court's assessment of the credibility of witnesses.

4. CRIMINAL LAW; RAPE; DATE OF COMMISSION, NOT MATERIAL.— [T]he failure of AAA to identify the exact date of the crime's commission is inconsequential to Colorado's conviction. In rape cases, the date of commission is not an essential element of the offense; what is material is its occurrence, a fact that was sufficiently established given AAA's and her testimony's credibility.

5. ID.; ID.; NOT NEGATED BY THE PRESENCE OF SIBLINGS AT THE PLACE OF RAPE AT THE TIME OF RAPE.— AAA's claim that two other siblings were sleeping in the same room where she was raped did not render her statements incredible. Time and again, we have taken into consideration how rapists are not deterred by the presence of people nearby, such as the members of their own family inside the same room, with the likelihood of being discovered, since lust respects no time, locale or circumstance.

6. REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONY.— His defense that he was in Osmeña, Dasol at the time of the crime's commission was even uncorroborated by any other witness. By jurisprudence, denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility. Mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of the appellant and his involvement in the crime attributed to him.

7. ID.; ID.; ALIBI; REQUISITES.— [F]or the defense of alibi to prosper, two requisites must concur: first, the appellant was

at a different place at the time the crime was committed; and second, it was physically impossible for him to be at the crime scene at the time of its commission. The defense failed to establish these requisites. On the contrary, Colorado testified that from Osmeña, where he claimed to have lived with an older sister, he could normally reach his parents' house by a three-hour walk. There were also other means of transportation in these two places, which then could have allowed Colorado to travel the distance over a shorter period of time.

8. CRIMINAL LAW; RAPE; MEDICAL EXAMINATION, NOT REQUIRED.— As explained by the Court in *People v. Balonzo*, a medical certificate is not necessary to prove the commission of rape, as even a medical examination of the victim is not indispensable in a prosecution for rape. Expert testimony is merely corroborative in character and not essential to conviction. An accused can still be convicted of rape on the basis of the sole testimony of the private complainant. Furthermore, laceration of the hymen, even if considered the most telling and irrefutable physical evidence of sexual assault, is not always essential to establish the consummation of the crime of rape. In the context that is used in the RPC, "carnal knowledge," unlike its ordinary connotation of sexual intercourse, does not necessarily require that the vagina be penetrated or that the hymen be ruptured. Thus, even granting that AAA's lacerations were not caused by Colorado, the latter could still be declared guilty of rape, after it was established that he succeeded in having carnal knowledge of the victim.

9. ID.; ID.; PROPER PENALTY AND CIVIL DAMAGES.— The crime is qualified by the victim's minority and her relationship to Colorado, yet the appellate court correctly explained that the imposable penalty is *reclusion perpetua*, in lieu of death, taking into account the provisions of Republic Act (R.A.) No. 9346 that prohibit the imposition of death penalty in criminal cases. We however clarify that Colorado shall be ineligible for parole, a requirement under Section 3 of R.A. No. 9346. The civil indemnity, moral damages and exemplary damages, as modified and awarded by the CA, conform to prevailing jurisprudence. x x x The accused is likewise ordered to pay legal interest on all damages awarded at the legal rate of 6% from the date of finality of this Decision until fully satisfied.

APPEARANCES OF COUNSEL

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

D E C I S I O N

REYES, *J.*:

For the Court's review is the Decision[1] dated August 19, 2011 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03767, which affirmed with modification the Decision[2] dated June 19, 2008 in Criminal Case No. B-390 of the Regional Trial Court (RTC), Burgos, Pangasinan, Branch 70 finding herein accused-appellant Neil B. Colorado (Colorado) guilty beyond reasonable doubt of the crime of rape.

The Facts

Accused-appellant Colorado was charged with the crime of rape in an Information that reads:

> That sometime in December, 2002 in the evening in Sitio x x x, Brgy. Iliw-Iliw, Burgos, Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the brother of [AAA],[3] inside their house, by means of force, threats and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA], a twelve (12) years (sic) old girl, against her will and consent, to her damage and prejudice.[4]

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[1] Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Hakim S. Abdulwahid and Ramon A. Cruz, concurring; *rollo*, pp. 2-14.

[2] Under the sala of Executive Judge Ma. Ellen M. Aguilar; records, pp. 266-273.

[3] Under Republic Act No. 9262, also known as the "Anti-Violence Against Women and their Children Act of 2004", and its implementing rules, the real name of the victim and those of her immediate family members are withheld; fictitious initials are instead used to protect the victim's identity.

[4] Records, p. 266.

Colorado pleaded "not guilty" upon arraignment. During the pre-trial, the parties stipulated on the following: (1) the existence of the Medico Legal Certificate and the Birth Certificate of AAA; (2) that Colorado is a full-blood brother of AAA; and (3) that Colorado and AAA lived under the same roof.[5] After pre-trial, trial on the merits ensued.

Records indicate that AAA was born on October 10, 1990. She was the second to the youngest in a family of twelve siblings. Colorado was an older brother who lived with her, their parents and two other brothers, BBB and CCC, in Burgos, Pangasinan.

AAA testified that sometime in December 2002, her parents attended a wedding celebration somewhere in Hermosa, Dasol, Pangasinan, leaving behind AAA, Colorado and their two other brothers in the house. When their parents had not yet arrived in the evening, Colorado committed the dastardly act against AAA. She was twelve (12) years old at that time, while Colorado was already twenty-four (24) years old. He approached AAA, held her two hands, even threatened her with a knife and covered her mouth with a handkerchief. He then removed AAA's shorts and panty, inserted his penis into the young girl's vagina, then made a push and pull movement. AAA tried to resist her brother's sexual aggression, but miserably failed despite her efforts because of her brother's greater strength. Colorado later left AAA, who put back her shorts and underwear, but remained awake because of fear and trauma with what she had gone through.

On that same night, Colorado raped AAA twice more, unmindful of the presence of their two other brothers who were then sleeping inside the room where Colorado ravished AAA. In both instances, Colorado still threatened AAA with a knife, removed her shorts and panty, inserted his penis into his sister's vagina, then performed the push and pull movement. Colorado warned AAA that he would stab her should she report to anyone what he had done. AAA then did not dare reveal these incidents to anybody, until she had the courage to report them to their mother.

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[5] *Id.* at 47.

Also in her testimony before the trial court, AAA disclosed that she had been raped by Colorado when she was just nine (9) years old. She also revealed having been ravished on different dates by another brother, DDD, and a brother-in-law.

A Medico-Legal Certificate[6] prepared by Dr. Ma. Teresa Sanchez (Dr. Sanchez), Medical Officer III of the Western Pangasinan District Hospital who examined AAA on January 10, 2003, contained the following findings:

> =INTERNAL EXAM FINDINGS:
> -Nonparous Introitus-
> -Hymenal laceration at 6 o'clock position with bleeding-
> -Vagina admits 2 fingers with slight resistance-
> -Uterus small-
> -(+) bleeding-
> x x x x x x x x x[7]

Colorado testified for his defense. He denied having raped AAA, arguing that he was not living with AAA in their parents' house in December 2002. Allegedly, he was at that time staying with an older sister in Osmeña, Dasol. Colorado claimed that on the night of the alleged incident, he was fishing with his brother-in-law, and that they returned to Osmeña, Dasol in the morning of the following day.

The Ruling of the RTC

On June 19, 2008, the RTC rendered its decision finding Colorado guilty beyond reasonable doubt of the crime of qualified rape, and sentencing him to suffer the penalty of *reclusion perpetua.* He was also ordered to pay AAA the amount of ₱50,000.00 as moral damages and ₱75,000.00 as civil indemnity. The dispositive portion of its decision reads:

> **WHEREFORE**, in view of the foregoing, this Court finds accused NEIL B. COLORADO, GUILTY beyond reasonable doubt of the crime of rape. In view of the enactment of Republic Act [No.] 9346

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[6] *Id.* at 296.

[7] *Id.*

prohibiting the imposition of death penalty – this Court sentences the accused to suffer the penalty of *RECLUSION PERPETUA*.

Further, accused shall indemnify [AAA] the amount of Php 50,000.00 as moral damages and Php 75,000.00 as civil indemnity. (*People vs. Ambray*, 303 SCRA 709).

SO ORDERED.[8]

Feeling aggrieved, Colorado appealed from the RTC's decision to the CA, reiterating in his appeal the defenses of denial and *alibi*. He further sought his acquittal by arguing that the hymenal lacerations discovered by AAA's examining doctor, and considered by the trial court in determining his culpability, could have been caused not by him, but by the sexual aggressions committed by their brother DDD or their brother-in-law unto AAA.

The Ruling of the CA

The CA affirmed Colorado's conviction, but modified his civil liability. The decretal portion of its Decision dated August 19, 2011 reads:

WHEREFORE, the appealed Decision of the Regional Trial Court of Burgos, Pangasinan (Branch 70), dated 19 June 2008, is **AFFIRMED** with the **MODIFICATION** that, in addition to the civil indemnity of Seventy-Five Thousand Pesos ([₱]75,000.00), appellant is ordered to pay the victim moral damages of Seventy-Five Thousand Pesos ([₱]75,000.00) instead of Fifty Thousand Pesos ([₱]50,000.00), and to pay exemplary damages of Thirty Thousand Pesos ([₱]30,000.00).

SO ORDERED.[9]

Hence, this appeal. Both Colorado and the Office of the Solicitor General, as counsel for plaintiff-appellee People of the Philippines, dispensed with the filing with the Court of supplemental briefs, and adopted instead their respective briefs with the CA.

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[8] *Id.* at 273.

[9] *Rollo*, p. 13.

This Court's Ruling

The appeal lacks merit.

Colorado was charged with the crime of rape, qualified by the victim's minority and her relationship to her ravisher, as defined and penalized under Article 266-A, in relation to Article 266-B, of the Revised Penal Code (RPC), 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;
>
> b. When the offended party is deprived of reason or otherwise unconscious;
>
> c. By means of fraudulent machination or grave abuse of authority; and
>
> d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
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> x x x x x x x x x
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> Art. 266-B. *Penalties.* – x x x.
>
> x x x x x x x x x
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> 1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;
>
> x x x x x x x x x

Both the RTC and the CA correctly ruled on the concurrence of the following elements of qualified rape, as defined in the aforequoted provisions of the RPC: (1) that the victim is a

female over 12 years but under 18 years of age; (2) that the **offender** is a parent, ascendant, stepparent, guardian or **relative by consanguinity or affinity within the third civil degree**, or the common-law spouse of the parent of the victim; and (3) that the offender has carnal knowledge of the victim either through force, threat or intimidation; or when she is deprived of reason or is otherwise unconscious; or by means of fraudulent machinations or grave abuse of authority.[10]

The age of the victim at the time of the crime's commission is undisputed. During the pre-trial, the parties agreed on the existence of AAA's Certificate of Live Birth,[11] a "certified true/ xerox copy" of which forms part of the records and provides that AAA was born on October 10, 1990. AAA was then only 12 years old in December 2002, a significant fact that was sufficiently alleged in the Information. In *People v. Pruna*,[12] we held that the best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

As to the second element, there is no dispute that Colorado is a full-blood brother of AAA, as this was also among the parties' stipulated facts during the case's pre-trial.

The grounds now being raised by Colorado to justify his exoneration delve mainly on the alleged absence of the crime's third element. He denies AAA's claim that he had ravished her, raising the defense of *alibi* and the alleged doubt and suspicion that should be ascribed to AAA's accusations. On this matter, settled is the rule that the findings of the trial court on the credibility of a witness deserve great weight, given the clear advantage of a trial judge in the appreciation of testimonial evidence. We have repeatedly recognized that the trial court is in the best position to assess the credibility of witnesses and their testimonies, because of its unique opportunity to observe

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[10] *People v. Arcillas*, G.R. No. 181491, July 30, 2012.

[11] Records, p. 72.

[12] 439 Phil. 440, 470 (2002).

the witnesses first hand and to note their demeanor, conduct, and attitude under grueling examination. These are significant factors in evaluating the sincerity of witnesses, in the process of unearthing the truth. The rule finds even more stringent application where the said findings are sustained by the CA. Thus, except for compelling reasons, we are doctrinally bound by the trial court's assessment of the credibility of witnesses.[13]

We then take due consideration of the trial court's findings of fact, its assessment of AAA's credibility, her testimony and the manner by which her statements were relayed, as discussed in the RTC's Decision convicting Colorado and which reads in part:

> **[AAA] testified directly and categorically how she was raped by the accused** Neil Colorado who is her full[-]blood brother sometime in the night of December 2002.
>
> That while [AAA] was sleeping with her older brother [BBB] and her younger brother [CCC]**, accused went near her and held her two (2) hands, covered her mouth with handkerchief. Thereafter, accused removed her short pants and underwear, and inserted his penis into her vagina.** After removing his penis[,] accused went back to sleep. [AAA] however could no longer sleep because she was already afraid that the accused will return which the accused did. For the second time, accused raped [AAA]. Accused covered her mouth with a handkerchief, inserted his penis into her vagina and accused did the push and pull movement.
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> x x x x x x x x x
>
> When [AAA] declares that she has been raped, she says in effect all that would be necessary to show that rape did take place (*PP. vs. Maglantay*, 304 SCRA 272), for as long as the testimony of [AAA] is free from serious or major incongruence and unbridled by suspicion or doubt. **The testimony of [AAA] is simple, candid, straightforward and consistent on material points detailing every single bestial act of her brother in ravishing her. Moreover, [AAA] on several occasions** (August 1, 2006 and September 19,

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[13] *People v. Salazar*, G.R. No. 181900, October 20, 2010, 634 SCRA 307, 319-320, citing *People v. Ducabo*, G.R. No. 175594, September 28, 2007, 534 SCRA 458, 467.

2006) **was on the verge of crying and in fact shed tears during her direct examination. Crying of the victim during her testimony is evidence of the credibility of the rape charge with the verity born out of human nature and experience** (*PP. vs. Agustin*, 365 SCRA 167; *PP vs. Garcia*, *supra*). Though a medical certificate is not necessary to prove the commission of rape (*PP. vs. Bares*, 355 SCRA 435), but when the victim's testimony is corroborated by the physician's findings of penetration (Exh. "A") or hymenal laceration as when the hymen is no longer intact, there is sufficient foundation to find the existence of the essential requisite of carnal knowledge (*PP. vs. Montejo*, 355 SCRA 210; *PP. [vs.] Bation*, 305 SCRA 253). Further, **no young and decent woman in her right mind especially of tender age as that of [AAA] who is fifteen (15) years old would concoct a story of defloration, allow [an] examination of her private parts and thereafter pervert herself by being subjected to a public trial, if she was not motivated solely by he[r] desire to obtain justice for the wrong committed against her.** (*PP. vs. Albior*, 352 SCRA 35; *PP. [vs.] Vidal*, 353 SCRA 194).[14] (Emphasis ours)

These observations were affirmed by the CA on appeal, as it held:

A conscientious review of the records shows that **AAA's testimonies in this case bear the marks of truthfulness, spontaneity and sincerity.** She was crying while answering questions about the rape incident. Obviously, the process called to her mind not only the mere details of the sexual abuse but the lingering hurt and pain that come with it. Her tears were unimpeachable testaments to the truth of her allegations.

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During cross-examination, AAA remained steadfast, unwavering and spontaneous. Significantly also, her testimony is supported by the medical evidence on record, which showed that she had a laceration in her hymen and was thus in a non-virgin state.[15] (Citations omitted and emphasis ours)

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[14] Records, p. 271.

[15] *Rollo*, pp. 10-11.

The Court finds no cogent reasons to overturn these findings. Indeed, it was established that Colorado succeeded in having carnal knowledge of the victim, employing force, threat and intimidation that allowed him to consummate his bestial act. AAA had positively identified Colorado as her rapist. Such identification of Colorado could not have been difficult for AAA considering that Colorado was a brother who lived with her in their parents' house. Even the failure of AAA to identify the exact date of the crime's commission is inconsequential to Colorado's conviction. In rape cases, the date of commission is not an essential element of the offense; what is material is its occurrence,[16] a fact that was sufficiently established given AAA's and her testimony's credibility.

Contrary to Colorado's contention, AAA's claim that two other siblings were sleeping in the same room where she was raped did not render her statements incredible. Time and again, we have taken into consideration how rapists are not deterred by the presence of people nearby, such as the members of their own family inside the same room, with the likelihood of being discovered, since lust respects no time, locale or circumstance.[17]

As against AAA's credible testimony, Colorado's defenses lack persuasion. While Colorado denied in his testimony that he lived with AAA, such fact was already admitted by the parties during the pre-trial. His defense that he was in Osmeña, Dasol at the time of the crime's commission was even uncorroborated by any other witness. By jurisprudence, denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility. Mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of the appellant and his involvement in the crime attributed to him.[18] Moreover,

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[16] *People v. Pangilinan*, G.R. No. 183090, November 14, 2011, 660 SCRA 16, 32; see also *People v. Dollano, Jr.*, G.R. No. 188851, October 19, 2011, 659 SCRA 740, 753-754.

[17] *People v. Platilla*, 428 Phil. 520, 531 (2002), citing *People v. Lapiz*, 394 Phil. 160, 173 (2000) and *People v. Watimar*, 392 Phil. 711, 724 (2000).

[18] *People v. Espino, Jr.*, G.R. No. 176742, June 17, 2008, 554 SCRA 682, 702.

for the defense of *alibi* to prosper, two requisites must concur: first, the appellant was at a different place at the time the crime was committed; and second, it was physically impossible for him to be at the crime scene at the time of its commission.[19] The defense failed to establish these requisites. On the contrary, Colorado testified that from Osmeña, where he claimed to have lived with an older sister, he could normally reach his parents' house by a three-hour walk. There were also other means of transportation in these two places,[20] which then could have allowed Colorado to travel the distance over a shorter period of time.

Colorado also questions the weight of Dr. Sanchez's medico-legal certificate, arguing that AAA's hymenal lacerations could have resulted from the sexual aggressions allegedly committed against her by DDD and their brother-in-law. Such contention, however, deserves no consideration, given that results of an offended party's medical examination are merely corroborative in character. As explained by the Court in *People v. Balonzo*,[21] a medical certificate is not necessary to prove the commission of rape, as even a medical examination of the victim is not indispensable in a prosecution for rape. Expert testimony is merely corroborative in character and not essential to conviction. An accused can still be convicted of rape on the basis of the sole testimony of the private complainant.[22] Furthermore, laceration of the hymen, even if considered the most telling and irrefutable physical evidence of sexual assault, is not always essential to establish the consummation of the crime of rape. In the context that is used in the RPC, "carnal knowledge," unlike its ordinary connotation of sexual intercourse, does not necessarily require that the vagina be penetrated or that the

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[19] *People v. Estrada*, G.R. No. 178318, January 15, 2010, 610 SCRA 222, 233.

[20] TSN, November 28, 2007, p. 6; Records, p. 230.

[21] G.R. No. 176153, September 21, 2007, 533 SCRA 760.

[22] *Id.* at 774.

hymen be ruptured.[23] Thus, even granting that AAA's lacerations were not caused by Colorado, the latter could still be declared guilty of rape, after it was established that he succeeded in having carnal knowledge of the victim.

Given the foregoing, the CA did not err in affirming the trial court's conviction of Colorado. The crime is qualified by the victim's minority and her relationship to Colorado, yet the appellate court correctly explained that the imposable penalty is *reclusion perpetua*, in lieu of death, taking into account the provisions of Republic Act (R.A.) No. 9346 that prohibit the imposition of death penalty in criminal cases. We however clarify that Colorado shall be ineligible for parole, a requirement under Section 3 of R.A. No. 9346 that was not mentioned in the assailed CA decision and which, must then be rectified by this Decision.[24] The civil indemnity, moral damages and exemplary damages, as modified and awarded by the CA, conform to prevailing jurisprudence.

WHEREFORE, in view of the foregoing, the Decision dated August 19, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 03767 is **AFFIRMED** with **MODIFICATION** in that accused-appellant Neil B. Colorado is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole. The accused is likewise ordered to pay legal interest on all damages awarded at the legal rate of 6% from the date of finality of this Decision until fully satisfied.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[23] *People v. Tagun*, 427 Phil. 389, 403-404 (2002).

[24] See *People v. Bodoso*, G.R. No. 188129, July 5, 2010, 623 SCRA 580, 605-606.

FIRST DIVISION

[G.R. No. 201587. November 14, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VICTOR LANSANGAN,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF RAPE VICTIM; FACTUAL FINDINGS OF THE REGIONAL TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.—** [F]actual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal. x x x The clear, consistent and spontaneous testimony of XXX unrelentingly established that Lansangan inserted his penis and his index finger into her vagina while she was in his custody. Being a child of tender years, her failure to resist or struggle while Lansangan molested her would all the more prove how she felt intimidated by her "*Tatay*."

2. **CRIMINAL LAW; RAPE; PHYSICAL RESISTANCE; DISPENSABLE IN THE PRESENCE OF INTIMIDATION. —** [I]n rape cases, physical resistance need not be established when intimidation is exercised upon the victim and the latter submits herself out of fear. Intimidation is addressed to the mind of the victim and is therefore subjective.

3. **REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONY THAT IS NOT ILL-MOTIVATED.—** 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 crime attributed to him. Apparently, in the instant case, Lansangan failed to impute any ill motive on the part of the prosecution witnesses, particularly XXX, that would have impelled her to testify falsely against him.

4. **CRIMINAL LAW; RAPE; PENALTY.—** As to the imposed sentence, the RTC and CA correctly imposed *reclusion perpetua* in view of Republic Act No. 9346 although it should

likewise be emphasized that the same law considers the accused ineligible for parole. As to the civil indemnities, x x x [A]ccused-appellant is ordered to indemnify the herein victim the amounts of Seventy-Five Thousand (Php75,000.00) Pesos as moral damages, Seventy Five Thousand (Php75,000.00) Pesos as civil indemnity and Thirty Thousand (Php30,000.00) Pesos as exemplary damages.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

REYES, *J.*:

This is an appeal filed by Victor Lansangan (Lansangan) from the Decision[1] dated December 5, 2011 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04036. The CA Decision affirmed the Decision[2] dated June 30, 2009 of the Regional Trial Court (RTC), Agoo, La Union, Branch 32 finding Lansangan guilty beyond reasonable doubt of statutory rape, with modification, however, as to the amounts of civil indemnity, moral and exemplary damages.

In the instant appeal, Lansangan was accused of raping XXX,[3] the grandchild of his live-in partner, AAA.

At the trial, the prosecution presented the testimonies of XXX; her grandmother, AAA; a DSWD social worker named Grenaflor

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[1] Penned by Associate Justice Rodil V. Zalameda, with Associate Justices Rebecca De Guia-Salvador and Normandie B. Pizarro, concurring; *rollo*, pp. 2-14.

[2] CA *rollo*, pp. 13-21.

[3] Under Republic Act No. 9262, also known as the "Anti-Violence Against Women and their Children Act of 2004", and its implementing rules, the real name of the victim and those of her immediate family members are withheld; fictitious initials are instead used to protect the victim's identity.

Magsacay; and a police officer named PO3 Susan Abril. The defense, on the other hand, presented the testimonies of accused-appellant Lansangan and Victorino Mangaoang, the BJMP jail guard, as evidence.

Being a relative of the victim, AAA testified in court that:

> [S]he is the grandmother of the child victim, XXX, and a live-in partner of accused-appellant. She and accused-appellant had lived together from 1995 to 1997 and then from 2003 to 28 July 2005 in the Nagtagaan, Rosario, La Union. Her adopted child, Jojo Rivera, and XXX stayed with them in their house. In August 2005, after accused-appellant left her due to financial problems, she came to know that XXX was sexually molested by accused-appellant. According to her, as she was bathing XXX, the child told her that her vagina was painful. Thinking that it was probably caused by the soap which she used, she just ignored what XXX told her. However, the following day, XXX again told her that her vagina was painful. It was then that XXX told her that every time the accused-appellant would bathe XXX, accused-appellant would insert his finger into XXX's vagina. Also, on three (3) occasions when she was not around, the accused-appellant went on top of XXX, rubbed his penis on her vagina, mashed her breasts. After the said revelations, she sought help from their *Barangay* Captain who went with them to the Department of Social Welfare and Development in Rosario, La Union to report the matter. She identified her sworn statement dated 31 August 2005 and the Certificate of Live Birth of XXX.
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> On cross-examination, AAA further testified that she discovered that XXX was sexually molested by the accused-appellant sometime in August 2005 when the child told her about it. She admitted having visited accused-appellant in jail several times. She identified the letter which she sent to accused-appellant asking for money.[4] (Citations omitted)

XXX, for her part, candidly testified the sexual ordeal she had gone through with Lansangan, to wit:

> The child victim, XXX, eight (8) years old and a Grade III pupil testified that she used to live in Nagtagaan, Rosario, La Union with her grandmother (AAA), her brother, *Kuya* Jojo, and the accused-

[4] *Rollo,* pp. 3-4.

appellant whom she called "*Tatay*." On 31 August 2005, she and her grandmother, accompanied by Jean Flor Magsacay of the DSWD, went to the police station of Rosario, La Union to report that accused-appellant inserted his finger and penis into her vagina, among others, on three (3) occasions while her grandmother was in the market. The child said she felt pain everytime the accused-appellant did this to her. She said that she revealed everything to her grandmother when she felt pain in her vagina at one time the latter was giving her a bath. She did not tell her grandmother about it at once for fear that accused-appellant would hurt the latter.[5] (Citation omitted)

Lansangan, on the other hand, denied having committed the crime. His version of the facts is, as follows:

AAA was his live-in partner from 1994 to 2005. According to him, the house in Nagtagaan, Rosario, La Union where he used to live with AAA, was built by him out of the money he earned as an overseas worker in the Middle East from 2000-2005. The reason why he left AAA was that the latter's failure to pay their debts despite him regularly sending his income. After their separation in fact on 27 July 2005, he went back to his hometown in Tarlac and stayed there until 05 April 2006. From 27 July 2005 to 05 April 2006, AAA sent text messages asking him for money, but he just ignored the messages. AAA thereafter sent him a text message threatening him with revenge, but he just ignored it. On 06 April 2006, he went back to Nagtagaan, Rosario, La Union to sign a deed of sale for their house in Nagtagaan to help solve AAA's financial problems. He was not able to sign the deed of sale as he was arrested by the police officers at 10:00 o'clock in the morning of the same day.

While in jail, accused-appellant was visited by AAA five (5) times. In one of those visits, AAA told him to just wait for some time because XXX will withdraw the case. AAA also wrote him a letter stating that the money she borrowed from one of accused-appellant's "*kumares*" for his release was instead used by her to buy medicine.

On cross-examination, accused-appellant insisted on the impossibility of committing the alleged crime as there was never an instance that XXX was left with him alone in the house. According to him, the testimonies of XXX were all fabricated as she was not close to the child. Furthermore, accused-appellant testified that

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

when AAA visited him in jail two (2) months after he was arrested, he instructed her to go to his "*kumpare*" Boy to borrow money. The money was supposed to be spent in the preparation of the affidavit of desistance to be filed by AAA, as the latter told him that she is going to withdraw the case.[6] (Citation omitted)

Lansangan also added XXX and AAA find him very strict so its impossible for him to commit the allegations thrown against him.[7]

The Decision of the RTC

On June 30, 2009, the RTC convicted Lansangan of statutory rape. The trial court stressed that the testimony of XXX deserves full credit despite her tender age. It further explained that her clear, candid and straightforward testimony categorically narrated how Lansangan successfully ravished her innocence when he inserted his penis into her vagina and the fact that he even repeated his bestial desire when he inserted his index finger into her *pudendum* that caused her to feel pain in her genital parts. Indeed, XXX's positive identification of Lansangan as her molester convinced the trial court to believe her version of what indeed transpired between them.

The RTC brushed aside Lansangan's denial of the charge against him, it being intrinsically weak. Thus, having been found guilty for the crime of statutory rape, the RTC sentenced Lansangan to *reclusion perpetua* and to pay XXX the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.[8]

The *fallo* of the RTC Decision reads:

WHEREFORE, the foregoing considered, the Court hereby renders judgment finding accused Victor Lansangan **guilty beyond reasonable doubt** of the crime of statutory rape, and hereby sentences him to suffer the penalty of ***reclusion perpetua***.

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

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

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

Further, the accused is ordered to pay the victim [XXX] the amount of [₱]50,000.00 as moral damages, [₱]50,000.00 as civil indemnity and [₱]25,000.00 exemplary damages.

SO ORDERED.[9]

The Decision of the CA

On December 5, 2011, the CA rendered a Decision affirming that of the RTC. The CA ratiocinated that the elements of statutory rape were duly proved. The presentation of the birth certificate of XXX sufficiently established her minority for being only nine (9) years old at the time when the crime was committed. The CA, moreover, was convinced that XXX's "clear, frank and definite"[10] testimony positively identifying Lansangan as her perpetrator remained undisputed. Lansangan's defense of denial was also brushed aside while his self-serving claim that AAA coached her granddaughter, XXX, to testify against him in order to get even with him in view of his refusal to provide her with financial support was also disregarded. According to the CA, even the non-presentation of the doctor who examined XXX as witness is not fatal to the prosecution of rape cases because it is merely corroborative[11] in nature and not indispensable in the prosecution of rape cases.

Lastly, in view of prevailing jurisprudence in rape cases, the CA increased the amount of damages and civil indemnity awarded by the RTC. Thus, it decreed, as follows:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**. The Decision dated 30 June 2009 of Branch 32 of the Regional Trial Court, Agoo, La Union is **AFFIRMED with MODIFICATION** that accused-appellant is ordered to indemnify the herein victim the amounts of Seventy-Five Thousand (Php75,000.00) Pesos as moral damages, Seventy Five Thousand

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

[10] *Rollo,* p. 11.

[11] *Id.* at 13.

(Php75,000.00) Pesos as civil indemnity and Thirty Thousand (Php30,000.00) Pesos as exemplary damages.

SO ORDERED.[12]

Our Ruling

We dismiss the appeal.

The Court finds no cogent reason to disturb the factual findings of the RTC, as affirmed by the CA. It is well-settled that factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal.[13] In its assessment of the instant case, this Court is convinced that the testimony of XXX positively identifying Lansangan as her perpetrator is worthy of belief. The clear, consistent and spontaneous testimony of XXX unrelentingly established that Lansangan inserted his penis and his index finger into her vagina while she was in his custody. Being a child of tender years, her failure to resist or struggle while Lansangan molested her would all the more prove how she felt intimidated by her "*Tatay.*" It has been held that:

> [W]hen the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true. A young girl would not usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her. Moreover, the Court has repeatedly held that the lone testimony of the victim in a rape case, if credible, is enough to sustain a conviction.[14]

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[12] *Id.* at 14.

[13] *People v. Ramos*, G.R. No. 198017, June 13, 2012.

[14] *People v. Tejero*, G.R. No. 187744, June 20, 2012.

Besides, in rape cases, physical resistance need not be established when intimidation is exercised upon the victim and the latter submits herself out of fear. Intimidation is addressed to the mind of the victim and is therefore subjective.[15]

The denial of Lansangan cannot exculpate him from the criminal charge. It is well-settled that denial, just like *alibi*, cannot prevail over the positive and categorical testimony and identification of an accused by the complainant.[16] 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 crime attributed to him.[17] Apparently, in the instant case, Lansangan failed to impute any ill motive on the part of the prosecution witnesses, particularly XXX, that would have impelled her to testify falsely against him. Thus, it was held in *People v. Agcanas*:[18]

> Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.[19]

As to the imposed sentence, the RTC and CA correctly imposed *reclusion perpetua* in view of Republic Act No. 9346 although it should likewise be emphasized that the same law considers the accused ineligible for parole.

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[15] *Id*.

[16] *People v. Malate*, G.R. No. 185724, June 5, 2009, 588 SCRA 817, 829, citing *People v. Gingos*, G.R. No. 176632, September 11, 2007, 532 SCRA 670, 683.

[17] *People of the Philippines v. Melecio de los Santos, Jr.*, G.R. No. 186499, March 21, 2012.

[18] G.R No. 174476, October 11, 2011, 658 SCRA 842.

[19] *Id.* at 847, citing *People v. Caisip*, 352 Phil. 1058, 1065 (1998).

As to the civil indemnities, the CA correctly increased the amounts awarded by the lower court in view of the prevailing jurisprudence on the matter.

WHEREFORE, in view of the foregoing premises, the appeal is **DENIED**. Accordingly, the Decision dated December 5, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 04036 sentencing Victor Lansangan to *reclusion perpetua* is **AFFIRMED with MODIFICATION** that he is ineligible for parole. The accused is likewise ordered to pay legal interest on all damages awarded at the legal rate of 6% from the date of finality of this Decision until fully satisfied.

No costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

INDEX

INDEX

ABUSE OF SUPERIOR STRENGTH

As an aggravating circumstance — There is abuse of superior strength when the aggressors purposely use excessive force rendering the victim unable to defend himself. (People of the Phils. *vs*. Nazareno, G.R. No. 196434, Oct. 24, 2012) p. 187

ACCRETION

Concept — All river beds remain property of public dominion and cannot be acquired by acquisitive prescription unless declared by the government to be alienable and disposable. (Rep. of the Phils. *vs*. Santos III, G.R. No. 160453, Nov. 12, 2012) p. 275

— Dried-up river beds belong to the State as its property of public dominion unless there is an express law providing that they should belong to some other person. *(Id.)*

— The process of drying up of a river to form dry land involved the recession of the water level from the river banks, and the dried-up land did not equate to accretion, which was the gradual and imperceptible deposition of soil on the river banks through the effects of the current. *(Id.)*

— The process whereby the soil is deposited along the banks of rivers; the deposit of soil must be: a) gradual and imperceptible; b) made through the effects of the current of the water; and c) taking place on land adjacent to the banks of rivers. *(Id.)*

ACTIONS

Dismissal of action — Under Section 1, Rule 9 of the Rules of Court, the Court may *motu proprio* dismiss a case when any of the four (4) grounds referred to therein is present; these are: (a) lack of jurisdiction over the subject matter;

(b) *litis pendentia*; (c) *res judicata*; and (d) prescription of action. (P.L. Uy Realty Corp. *vs*. Als Management and Development Corp., G.R. No. 166462, Oct. 24, 2012) p. 47

Moot and academic case — A case becomes moot and academic when there no longer exists an actual controversy between the parties and resolving the merits of the case would no longer serve any useful purpose. (Quiño *vs*. COMELEC, G.R. No. 197466, Nov. 13, 2012) p. 570

ACTS OF LASCIVIOUSNESS

Commission of — Charge of acts of lasciviousness is necessarily included in a complaint for rape. (People of the Phils. *vs*. Soria *y* Gomez, G.R. No. 179031, Nov. 14, 2012; *Brion, J., dissenting opinion*) p. 676

— Elements. *(Id.)*

AGRARIAN REFORM

Abandonment — A ground for cancellation by the Department of Agrarian Reform Adjudication Board (DARAB) of an award to the agrarian reform beneficiary. (Gua-an *vs.* Quirino, G.R. No. 198770, Nov. 12, 2012) p. 446

AGRICULTURAL LAND REFORM CODE OF 1963 (R.A. NO. 3844)

Jurisdiction of Department of Agrarian Reform Adjudication Board (DARAB) — For DARAB to acquire jurisdiction over the case, there must be a tenancy relationship between the parties. (Ladano *vs*. Neri, G.R. No. 178622, Nov. 12, 2012) p. 354

AGRICULTURAL TENANCY ACT (R.A. NO. 1199)

Tenancy relationship — One's occupancy and cultivation of an agricultural land, no matter how long, will not *ipso facto* make him a *de jure* tenant. (Ladano *vs*. Neri, G.R. No. 178622, Nov. 12, 2012) p. 354

— The following requisites must be present: 1) the parties must be landowner and tenant or agricultural lessee; 2) the subject matter is agricultural land; 3) there is consent by the landowner; 4) the purpose is agricultural production;

5) there is personal cultivation by the tenant; and 6) there is sharing of harvests between the landowner and the tenant. *(Id.)*

ALIBI

Defense of — The rule is well settled that in order for alibi to prosper, it must be demonstrated that the person charged with the crime was not only somewhere else when the offense was committed, but was so far away that it would have been physically impossible to have been at the place of the crime or its immediate vicinity at the time of its commission. (People of the Phils. *vs*. Colorado, G.R. No. 200792, Nov. 14, 2012) p. 833

(People of the Phils. *vs*. Ending *y* Onyong, G.R. No. 183827, Nov. 12, 2012) p. 396

(People of the Phils. *vs*. Musa *y* Pinasilo, G.R. No. 199735, Oct. 24, 2012) p. 204

(People of the Phils. *vs*. Nazareno, G.R. No. 196434, Oct. 24, 2012) p. 187

ALIBI AND DENIAL

Defenses of — Inherently weak and must be rejected when the identity of the accused is satisfactorily and categorically established by the eyewitness to the offense, especially when such eyewitness has no ill motive to testify falsely. (People of the Phils. *vs*. Laurino, G.R. No. 199264, Oct. 24, 2012) p. 195

AMPARO AND HABEAS DATA, WRITS OF

Admissibility of evidence, flexibility in — Evidence not to be rejected outright as long as it satisfies the most basic test of reason — i.e., relevance of the evidence to the issue at hand and its consistency with all other pieces of adduced evidence. (In the Matter of the Petition for the Issuance of a Writ of Amparo in Favor of Lilibeth O. Ladaga *vs*. Maj. Gen. Reynaldo Mapagu, G.R. No. 189689, Nov. 13, 2012) p. 525

Rule — Being an extraordinary remedy, it is not one to issue on uncertain grounds but only upon reasonable certainty. (In the Matter of the Petition for the Issuance of a Writ of *Amparo* in Favor of Lilibeth O. Ladaga *vs*. Maj. Gen. Reynaldo Mapagu, G.R. No. 189689, Nov. 13, 2012) p. 525

— Only actual threats, as may be established from all the facts and circumstances of the case, qualify as a violation that may be addressed under the Rule. *(Id.)*

Substantial evidence — Use thereof as standard of proof shows the intent of the framers of the rule to address situations of enforced disappearance and extrajudicial killings, or threats thereof, with what is akin to administrative proceedings. (In the Matter of the Petition for the Issuance of a Writ of *Amparo* in Favor of Lilibeth O. Ladaga *vs*. Maj. Gen. Reynaldo Mapagu, G.R. No. 189689, Nov. 13, 2012) p. 525

ANTI-RAPE LAW OF 1997 (R.A. NO. 8353)

Commission of — Rape can now be committed either through sexual intercourse or by sexual assault. (People of the Phils. *vs*. Soria *y* Gomez, G.R. No. 179031, Nov. 14, 2012) p. 676

APPEALS

Appropriate remedy —An appeal is a sufficient and adequate remedy unless the party proves otherwise. (V.C. Ponce Co., Inc. *vs*. Mun. of Parañaque, G.R. No. 178431, Nov. 12, 2012) p. 338

Factual findings of quasi-judicial bodies — Findings of fact of quasi-judicial bodies like the NLRC, as affirmed by the Court of Appeals, are generally conclusive except when there is insufficient or insubstantial evidence to support the findings of the tribunal or the court below, or when too much is concluded, inferred or deduced from the bare or incomplete facts submitted by the parties or, where the Labor Arbiter and the NLRC came up with conflicting

positions. (Andrada *vs*. Agemar Manning Agency, Inc., and/or Sonnet Shipping Ltd./Malta, G.R. No. 194758, Oct. 24, 2012) p. 170

Factual findings of trial court — Binding and conclusive upon the Supreme Court, especially when affirmed by the CA; exceptions: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) 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; (7) when the findings of fact are conclusions without citation of specific evidence on which they are based; (8) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (9) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record. (Tom Tan *vs*. Heirs of Antonio F. Yamson, G.R. No. 163182, Oct. 24, 2012) p. 35

— In a criminal case, factual findings of the trial court are generally accorded great weight and respected on appeal, especially when such findings are supported by substantial evidence on record; exception is when there is conflict in factual findings. (Belbis, Jr. *y* Competente *vs*. People of the Phils., G.R. No. 181052, Nov. 14, 2012) p. 706

Fresh-period rule — Where the accused files from a judgment of conviction a motion for new trial or reconsideration which is denied by the trial court, he or she will have a fresh 15-day period counted from receipt of such denial within which to file his or her notice of appeal. (Rodriguez *y* Olayres *vs*. People of the Phils., G.R. No. 192799, Oct. 24, 2012) p. 165

Mixed questions of law and fact — The Court of Appeals clearly erred in dismissing the appeal, that raised mixed questions of law and fact, on the ground of lack of jurisdiction. (Land Bank of the Phils. *vs*. Ramos, G.R. No. 181664, Nov. 14, 2012) p. 725

Points of law, issues, theories and arguments — A party who does not appeal from a judgment can no longer seek modification or reversal of the same; may oppose the appeal of the other party only on grounds consistent with the judgment. (Communities Cagayan, Inc. *vs*. Sps. Nanol, G.R. No. 176791, Nov. 14, 2012) p. 648

— The existence of clear and substantial evidence warranting the award of damages and attorney's fees is a factual matter beyond the contemplation of a petition filed under Rule 45. (Padalhin *vs.* Laviña, G.R. No. 183026, Nov. 14, 2012) p. 734

Question of law and question of fact, distinguished — A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. (Land Bank of the Phils. *vs*. Ramos, G.R. No. 181664, Nov. 14, 2012) p. 725

(Tom Tan *vs.* Heirs of Antonio F. Yamson, G.R. No. 163182, Oct. 24, 2012) p. 35

ARREST

Arrest in flagrante delicto — Appellants were arrested while committing a crime, in full view of the arresting team. (People of the Phils. *vs*. Mariano *y* Feliciano, G.R. No. 191193, Nov. 14, 2012) p. 772

ATTORNEYS

Administrative liability — Attaches when the negligent act of the attorney is gross and inexcusable as to lead to a result that is highly prejudicial to the client's interest. (Seares, Jr. *vs*. Atty. Gonzales-Alzate, Adm. Case No. 9058, Nov. 14, 2012) p. 596

Administrative proceedings against lawyers — Attorneys enjoy the presumption of innocence; whoever initiates administrative proceedings against them bears the burden of proof to establish the allegation of professional misconduct. (Seares, Jr. *vs*. Atty. Gonzales-Alzate, Adm. Case No. 9058, Nov. 14, 2012) p. 596

Attorney-client relationship — A client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique; exceptions: (1) where reckless or gross negligence of counsel deprives the client of due process of law; (2) when its application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require. (Mortel *vs*. Kerr, G.R. No. 156296, Nov. 12, 2012) p. 228

Conflict of interests — Necessitates identity of the parties or interests involved in the previous and present engagements. (Seares, Jr. *vs*. Atty. Gonzales-Alzate, Adm. Case No. 9058, Nov. 14, 2012) p. 596

— Occurs only where the attorney's new engagement would require her to use against a former client any confidential information gained from the previous professional relation; intentional use should be shown. *(Id.)*

Disbarment or suspension — Appropriate only when there is a clear and satisfactory proof of misconduct seriously affecting the professional standing and ethics of respondent attorney as an officer of the Court and as a member of the Bar. (Seares, Jr. *vs*. Atty. Gonzales-Alzate, A.C. No. 9058, Nov. 14, 2012) p. 596

ATTORNEY'S FEES

Requirement for the grant of — The power of courts to grant attorney's fees demands factual, legal and equitable justification; its basis cannot be left to speculation or conjecture. (VSD Realty & Development Corp. *vs.* Uniwide Sales, Inc., G.R. No. 170677, Oct. 24, 2012) p. 62

BANKS

Liability of — A bank's liability as an obligor is not merely vicarious, but primary since it is expected to observe an equally high degree of diligence, not only in the selection, but also in the supervision of its employees. (Westmont Bank *vs*. Dela Rosa-Ramos, G.R. No. 160260, Oct. 24, 2012) p. 23

Nature of relationship between the bank and its clients/depositors — The fiduciary nature of every bank's relationship with its clients/depositors impels it to exercise the highest degree of care, definitely more than that of a reasonable man or a good father of a family, hence, required to treat the accounts and deposits of these indispensable individuals with meticulous care. (Westmont Bank *vs*. Dela Rosa-Ramos, G.R. No. 160260, Oct. 24, 2012) p. 23

Rule in case of mortgages — Standard operating practice for banks and financial institutions to conduct an ocular inspection of the property offered for mortgage and to verify the genuineness of the title to determine the real owner thereof. (Phil. Banking Corp. *vs.* Dy, G.R. No. 183774, Nov. 14, 2012) p. 750

Standard of diligence — Although the bank failed to exercise greater care in conducting the ocular inspection of the properties, its omission did not prejudice any innocent third parties. (Phil. Banking Corp. *vs.* Dy, G.R. No. 183774, Nov. 14, 2012) p. 750

CERTIORARI

Concept — Expounded. (Sps. Delos Santos *vs*. Metropolitan Bank and Trust Co., G.R. No. 153852, Oct. 24, 2012) p. 1

Petition for — To prosper, there must be a clear showing of caprice and arbitrariness in the exercise of discretion. (Gravides *vs*. COMELEC, G.R. No. 199433, Nov. 13, 2012) p. 581

(Dela Cruz *vs*. COMELEC, G.R. No. 192221, Nov. 13, 2012) p. 548

COMMISSION ON ELECTIONS

Rules of procedure — The COMELEC En Banc has discretion either to refuse or to take action until the motion fee is paid, or to dismiss the action. (Gravides *vs*. COMELEC, G.R. No. 199433, Nov. 13, 2012) p. 581

COMPREHENSIVE AGRARIAN REFORM LAW (R.A. NO. 6657)

Just compensation — Determine whether on the effectivity date of R.A. No. 6657, there has already been payment of just compensation; if unpaid, the agrarian reform process remains incomplete even if started under P.D. No. 27; under R.A. No. 6657, just compensation will have to be computed in accordance with Section 17 in relation to the formula under A.O. No. 5, Series of 1998. (Land Bank of the Phils. *vs*. Sps. Bona, G.R. No. 180804, Nov. 12, 2012) p. 372

Land valuation — The Special Agrarian Court cannot take judicial notice of the nature of the subject land without the requisite hearing. (Land Bank of the Phils. *vs*. Honeycomb Farms Corp., G.R. No. 166259, Nov. 12, 2012) p. 298

Special Agrarian Court — The RTC, sitting as a Special Agrarian Court, has jurisdiction over the action for the determination of just compensation even during the pendency of the DARAB proceedings; judicial function vested with the courts and not with administrative agencies. (Land Bank of the Phils. *vs*. Honeycomb Farms Corp., G.R. No. 166259, Nov. 12, 2012) p. 298

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Illegal possession of drug paraphernalia — Elements are: 1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and 2)

such possession is not authorized by law. (People of the Phils. *vs*. Mariano *y* Feliciano, G.R. No. 191193, Nov. 14, 2012) p. 772

Illegal sale of dangerous drugs — The requisites for illegal sale of shabu are: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; (b) the delivery of the thing sold and the payment for the thing; and (c) the presentation in court of the *corpus delicti* as evidence. (People of the Phils. *vs*. Mariano *y* Feliciano, G.R. No. 191193, Nov. 14, 2012) p. 772

Offense committed by an organized/syndicated group — A drug syndicate is any organized group of two (2) or more persons forming or joining together with the intention of committing any offense prescribed under R.A. No. 9165. (People of the Phils. *vs*. Musa *y* Pinasilo, G.R. No. 199735, Oct. 24, 2012) p. 204

CONSPIRACY

Existence of — There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. (People of the Phils. *vs*. Nazareno, G.R. No. 196434, Oct. 24, 2012) p. 187

CONTEMPT

Indirect contempt — A charge for indirect contempt is initiated either *motu proprio* by order of or a formal charge by the offended court, or by a verified petition with supporting particulars and certified true copies of documents; cannot be initiated by a mere motion. (Ladano *vs*. Neri, G.R. No. 178622, Nov. 12, 2012) p. 354

CONTRACTS

Escalation clauses — Escalation clauses are not void per se and an increase in the interest rate pursuant to such clauses are not necessarily void provided it is the result of an agreement between the parties. (Sps. Delos Santos *vs*. Metropolitan Bank and Trust Co., G.R. No. 153852, Oct. 24, 2012) p. 1

Obligatory force of contracts — When the provisions of a contract are valid, the parties are bound by such terms under the principle that a contract is the law between the parties. (P.L. Uy Realty Corp. *vs.* Als Management and Development Corp., G.R. No. 166462, Oct. 24, 2012) p. 47

CORPORATIONS

Intra-corporate controversies — Motion to dismiss is a prohibited pleading; no justification for the dismissal of the case based on the mere issuance of a board resolution by the incumbent members of the Board of Trustees of petitioner corporation. (Aldersgate College, Inc. *vs*. Gauuan, G.R. No. 192951, Nov. 14, 2012) p. 821

COURT PERSONNEL

Neglect of duty — Committed by unwarranted failure to remit funds upon demand by an authorized officer; subsequent restitution will not exempt the accountable officer from liability. (OCA *vs*. Former Clerk of Court Angelita A. Jamora, A.M. No. P-08-2441, [Formerly A.M. No. 08-2-53-MTC], Nov. 14, 2012) p. 610

COURTS

Doctrine of hierarchy of courts — The immense public interest in these cases, the considerable length of time that has passed since the crime took place, and numerous times these cases have come before the Court warrant a waiver of such procedural lapse. (People of the Phils. *vs*. Hon. Dela Torre-Yadao, G.R. Nos. 162144-54, Nov. 13, 2012) p. 471

Powers and duties — The trial court is given ample inherent and administrative powers to effectively control the conduct of its proceedings. (People of the Phils. *vs*. Hon. Dela Torre-Yadao, G.R. Nos. 162144-54, Nov. 13, 2012) p. 471

Resolution of cases — Must be resolved within twelve months from date of submission by all lower collegiate bodies while all other lower courts are given a period of three months to do so. (Hebron *vs*. Judge Garcia II, A.M. No. RTJ-12-2334, Nov. 14, 2012) p. 615

DAMAGES

Violation of privacy of one's residence — Taking pictures of one's residence without the owner's knowledge and consent violates the privacy of one's residence; the award of damages is proper. (Padalhin *vs*. Laviña, G.R. No. 183026, Nov. 14, 2012) p. 734

DANGEROUS DRUGS ACT OF 1972 (R.A. NO. 6425)

Chain of custody rule — In drug-related cases, the prosecution should prove not only the acquisition of the subject specimens through a legitimate buy-bust operation, but likewise the identity and integrity of the corpus delicti by a substantially unbroken chain in the custody of said specimens from their acquisition to the necessary laboratory examination. (People of the Phils. *vs*. Guru *y* Kazan, G.R. No. 189808, Oct. 24, 2012) p. 131

— The essence of the chain of custody rule is to ensure that the dangerous drug presented in court as evidence against the accused is the same dangerous drug recovered from his or her possession. (People of the Phils. *vs*. Musa *y* Pinasilo, G.R. No. 199735, October 24, 2012) p. 204

Illegal possession of dangerous drugs — As regards the prosecution therefor, the elements to be proven are the following: (1) the accused is in possession of an item or an object identified to be a prohibited or a regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. (People of the Phils. *vs*. Guru *y* Kazan, G.R. No. 189808, Oct. 24, 2012) p. 131

Illegal sale of — In the prosecution of illegal sale of drugs, the elements that should be proven are the following: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor, the prosecution must (a) prove that the transaction or sale actually took place, and (b) present in court evidence of the *corpus delicti*. (People of the Phils. *vs*. Musa *y* Pinasilo, G.R. No. 199735, Oct. 24, 2012) p. 204

(People of the Phils. *vs*. Guru *y* Kazan, G.R. No. 189808, Oct. 24, 2012) p. 131

DEMURRER TO EVIDENCE

Motion for leave of court to file demurrer to evidence — Effect of filing thereof, with or without leave of court; explained. (Bautista *vs*. Cuneta-Pangilinan, G.R. No. 189754, Oct. 24, 2012) p. 110

DENIAL OF THE ACCUSED

Defense of — An intrinsically weak defense; without any strong evidence to support it, cannot prevail over positive declaration. (People of the Phils. *vs*. Colorado, G.R. No. 200792, Nov. 14, 2012) p. 833

— Mere denial, if unsubstantiated by clear and convincing evidence, has no weight in law and cannot be given greater evidentiary value than the positive testimony of a rape victim. (People of the Phils. *vs*. Ending *y* Onyong, G.R. No. 183827, Nov. 12, 2012) p. 396

— Mere denial, without any strong evidence to support it, can scarcely overcome positive declaration that is not ill-motivated. (People of the Phils. *vs*. Lansangan, G.R. No. 201587, Nov. 14, 2012) p. 847

DENIAL AND FRAME-UP

Defenses of — The defenses of denial and frame-up are invariably viewed with disfavor because such defenses can easily be fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs unless the defense could show with clear and convincing evidence that the members of the buy-bust team were inspired with ill motives or that they were not properly performing their duties. (People of the Phils. *vs*. Musa *y* Pinasilo, G.R. No. 199735, Oct. 24, 2012) p. 204

ELECTION LAWS

Construction — Laws and statutes governing election contests especially appreciation of ballots liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities. (Dela Cruz *vs*. COMELEC, G.R. No. 192221, Nov. 13, 2012) p. 548

EVIDENCE

Admissions — An admission made in the same case in which it is offered does not require proof unless it is shown that it was made through palpable mistake or when no such admission was made. (Rep. of the Phils. *vs*. Estate of Hans Menzi, G.R. No. 183446, Nov. 13, 2012) p. 495

Burden of proof — In a civil case, burden of proof means each party must establish his own case. (VSD Realty & Development Corp. *vs*. Uniwide Sales, Inc., G.R. No. 170677, Oct. 24, 2012) p. 62

Demurrer to evidence — Effect of filing thereof, with or without leave of court; explained. (Bautista *vs*. Cuneta-Pangilinan, G.R. No. 189754, Oct. 24, 2012) p. 110

Denial in drug cases — Cannot prevail over positive testimonies that were not ill-motivated. (People of the Phils. *vs*. Mariano *y* Feliciano, G.R. No. 191193, Nov. 14, 2012) p. 772

Expert witness — The expert evidence presented in cases of declaration of nullity of marriage based on psychological incapacity pressuposes a thorough and in-depth assessment of the parties by the psychologist or expert. (Rep. of the Phils. *vs*. Hon. CA, [Ninth Div.], G.R. No. 159594, Nov. 12, 2012) p. 257

— The Supreme Court refused to accord credence and weight to the testimony of an expert witness on these grounds: ill-feelings harbored by the witness towards respondent; respondent not subjected to an actual psychiatric evaluation by petitioner's expert; respondent did not

participate in the proceedings and the findings and conclusions of the expert were based on self-serving testimonies. (Mendoza *vs.* Rep. of the Phils., G.R. No. 157649, Nov. 12, 2012) p. 241

EXCISE TAXES

Definition — Partake of the nature of indirect taxes; when the seller passes on the tax to his buyer, he shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered. (Diageo Phils. *vs.* Commissioner of Internal Rev., G.R. No. 183553, Nov. 12, 2012) p. 385

Refund of — The proper party to claim refund of excise taxes is the statutory taxpayer or the person liable for or subject to tax; this right cannot be transferred to another without any clear provision of law allowing the same. (Diageo Phils. *vs.* Commissioner of Internal Rev., G.R. No. 183553, Nov. 12, 2012) p. 385

FAMILY COURTS

Jurisdiction — In vesting in family courts exclusive original jurisdiction over criminal cases involving minors, the law seeks to protect their welfare and best interests. (People of the Phils. *vs.* Hon. Dela Torre-Yadao, G.R. Nos. 162144-54, Nov. 13, 2012) p. 471

FILIATION

Open and continuous possession of status of illegitimate child — A single instance in which the father allegedly hugged his illegitimate son and promised to support him is not an indication of an open and continuous possession of the status of an illegitimate child. (Perla *vs.* Mirasol Baring and Randy Perla, G.R. No. 172471, Nov. 12, 2012) p. 323

Proof of filiation — A baptismal certificate is a public document that serves as evidence of the administration of the sacrament on the date specified; it is per se inadmissible in evidence as proof of filiation and cannot be admitted

indirectly as circumstantial evidence to prove the same. (Perla *vs*. Mirasol Baring and Randy Perla, G.R. No. 172471, Nov. 12, 2012) p. 323

Proof of illegitimate filiation — A Certificate of Live Birth cannot be considered as a proof of illegitimate filiation if not signed by the putative father. (Perla *vs*. Mirasol Baring and Randy Perla, G.R. No. 172471, Nov. 12, 2012) p. 323

FORUM SHOPPING

Concept — Filing of a case for determination of just compensation before the Special Agrarian Court while there is a pending Department of Agrarian Reform Adjudication Board (DARAB) proceeding does not constitute forum shopping; the third element of *litis pendentia* is lacking; DARAB determination merely preliminary and not binding on the parties. (Land Bank of the Phils. *vs*. Honeycomb Farms Corp., G.R. No. 166259, Nov. 12, 212) p. 298

— The act of litigants who repetitively avail themselves of multiple judicial remedies in different fora, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances; raising substantially similar issues either pending in or already resolved adversely by some other court or for the purpose of increasing their chances of obtaining a favorable decision, if not in one court, then in another. *(Id.)*

Elements — The most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought. (Land Bank of the Phils. *vs*. Honeycomb Farms Corp., G.R. No. 166259, Nov. 12, 2012) p. 298

Rule against forum shopping — To do so would constitute abuse of court processes which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily

burdened dockets of the courts. (Land Bank of the Phils. *vs*. Honeycomb Farms Corp., G.R. No. 166259, Nov. 12, 2012) p. 298

GRAVE ABUSE OF DISCRETION

Concept — The abuse of discretion must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction. (Sps. Delos Santos *vs*. Metropolitan Bank and Trust Co., G.R. No. 153852, Oct. 24, 2012) p. 1

HEARSAY RULE, EXCEPTIONS TO

Dying declaration — Requisites: 1) the declaration is made by the deceased under the consciousness of his impending death; 2) the deceased was at the time competent as a witness; 3) the declaration concerns the cause and surrounding circumstances of the declarant's death; and 4) the declaration is offered in a criminal case wherein the declarant's death is the subject of inquiry. (Belbis, Jr. *y* Competente *vs*. People of the Phils., G.R. No. 181052, Nov. 14, 2012) p. 706

— Victim's belief in impending death, not the rapid succession of death in point of fact, renders the dying declaration admissible. *(Id.)*

HOMICIDE

Commission of — What needs to be proven when the victim dies is the proximate cause of his death. (Belbis, Jr. *y* Competente *vs*. People of the Phils., G.R. No. 181052, Nov. 14, 2012) p. 706

INJUNCTION

Preliminary injunction — 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. (Sps. Delos Santos *vs*. Metropolitan Bank and Trust Co., G.R. No. 153852, Oct. 24, 2012) p. 1

Writ of — An injunction will not issue to enjoin the extrajudicial foreclosure of a mortgage where the parties have stipulated in their contract that the mortgagee is authorized to foreclose the mortgage upon the mortgagor's default except upon a clear showing of a violation of the mortgagor's unmistakable right to it. (Sps. Humberto P. Delos Santos and Carmencita M. Delos Santos *vs*. Metropolitan Bank and Trust Co., G.R. No. 153852, Oct. 24, 2012) p. 1

— Injunction will not be issued to protect a right not in esse and which may never arise, or to restrain an act which does not give rise to a cause of action. *(Id.)*

JUDGES

Administrative complaint against a judge — The withdrawal of complaint against a judge does not necessarily warrant its dismissal. (Hebron *vs*. Judge Garcia II, A.M. No. RTJ-12-2334, Nov. 14, 2012) p. 615

Errors committed in the exercise of their adjudicative function — Should be assailed in judicial proceedings, not in an administrative case. (Hebron *vs*. Judge Garcia II, A.M. No. RTJ-12-2334, Nov. 14, 2012) p. 615

Undue delay in the disposition of cases — Heavy caseload and demanding workload, not valid reasons to fall beyond the mandatory period for disposition of cases. (Hebron *vs*. Judge Garcia II, A.M. No. RTJ-12-2334, Nov. 14, 2012) p. 615

Voluntary inhibition — Primarily a matter of conscience and sound discretion on the part of the judge since he is in a better position to determine whether a given situation would unfairly affect his attitude towards the parties or their cases. (People of the Phils. *vs*. Hon. Dela Torre-Yadao, G.R. Nos. 162144-54, Nov. 13, 2012) p. 471

JUDGMENTS

Immutability of final judgment — A decision that has attained finality becomes immutable and unalterable and cannot be modified in any respect; exceptions, among them: (a) the correction of clerical errors; (b) the so-called *nunc pro tunc* entries that cause no prejudice to any party; (c) void judgments; and (d) whenever circumstances transpire after the finality of the decision that render its execution unjust and inequitable. (Rep. of the Phils. *vs.* Estate of Hans Menzi, G.R. No. 183446, Nov. 13, 2012) p. 495

JUDGMENTS, EXECUTION OF

Writ of execution — Cannot vary or go beyond the terms of the judgment and must conform to the dispositive portion thereof. (Rep. of the Phils. *vs*. Estate of Hans Menzi, G.R. No. 183446, Nov. 13, 2012) p. 495

JUSTIFYING CIRCUMSTANCES

Self-defense — Elements: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense; burden of proof on person who invokes it; unlawful aggression as the most important element. (People of the Phils. *vs*. Artajo *y* Alimangohan, G.R. No. 198050, Nov. 14, 2012) p. 826

— Unlawful aggression must be proved first in order to successfully plead self-defense; records were bereft of any indication that the attack on the victim was not a mere threat or just imaginary. (People of the Phils. *vs*. Malicdem *y* Molina, G.R. No. 184601, Nov. 12, 2012) p. 408

LACHES

Application — The application of laches is addressed to the sound discretion of the court as its application is controlled by equitable considerations. (Arroyo *vs*. Bocago Inland Dev't. Corp. (BIDECO), G.R. No. 167880, Nov. 14, 2012) p. 626

Doctrine of — The following elements must be present: 1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made for which the complaint seeks a remedy; 2) delay in asserting the complainant's rights, the complainant having had knowledge or notice, of the defendant's conduct and having been afforded an opportunity to institute a suit; 3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and 4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred. (Arroyo *vs*. Bocago Inland Dev't. Corp. [BIDECO], G.R. No. 167880, Nov. 14, 2012) p. 626

LAND REGISTRATION

Proof required — Conclusive proof is required to prove that the land subject of an application for registration is alienable; notation on the survey plan not considered as conclusive proof. (Rep. of the Phils. *vs*. Santos III, G.R. No. 160453, Nov. 12, 2012) p. 275

LEASE

Rights of a lessee — A lessee under a rental contract cannot avail of the rights of a builder in good faith. (VSD Realty & Development Corp. *vs*. Uniwide Sales, Inc., G.R. No. 170677, Oct. 24, 2012) p. 62

LIBEL

Persons liable for — Not only is the person who published, exhibited or caused the publication or exhibition of any defamation in writing responsible for the same, all other

persons who participated in its publication are liable, including the editor or business manager of a daily newspaper, magazine or serial publication, who shall be equally responsible for the defamations contained therein to the same extent as if he were the author thereof. (Bautista *vs.* Cuneta-Pangilinan, G.R. No. 189754, Oct. 24, 2012) p. 110

LOCAL GOVERNMENT CODE OF 1991 (R.A. NO. 7160)

Section 143 — Application thereof, elucidated. (Cagayan Electric Power and Light Co., Inc. *vs*. City of Cagayan De Oro, G.R. No. 191761, Nov. 14, 2012) p. 788

Section 151 on Tax Rates — Application thereof, elucidated. (Cagayan Electric Power and Light Co., Inc. *vs*. City of Cagayan De Oro, G.R. No. 191761, Nov. 14, 2012) p. 788

Tax on business — Imposition thereof specified in Section 143 of the Local Government Code; business is defined in Section 131 (d). (Cagayan Electric Power and Light Co., Inc. *vs*. City of Cagayan De Oro, G.R. No. 191761, Nov. 14, 2012) p. 788

LOCAL GOVERNMENTS

Local revenue measures — Appeal must be filed to the Secretary of Justice within thirty (30) days from the effectivity of the ordinance; relaxed application of the rules for more substantive matters. (Cagayan Electric Power and Light Co., Inc. *vs*. City of Cagayan De Oro, G.R. No. 191761, Nov. 14, 2012) p. 788

Ordinance — Has to be enacted to validly apply funds, already appropriated for a determined public purpose, to some other purpose. (Ysidoro *vs*. People of the Phils., G.R. No. 192330, Nov. 14, 2012) p. 813

MARRIAGE

Declaration of nullity of marriage — In an action for declaration of nullity of marriage, payment to the spouse of a certain amount so as to convince her not to oppose the petition

is not an indication of collusion between the parties. (Rep. of the Phils. *vs*. Hon. CA, [Ninth Div.], G.R. No. 159594, Nov. 12, 2012) p. 257

— The Office of the Solicitor General appears as counsel for the State in the capacity of a *defensor vinculi* (*i.e*., defender of the marital bond) to oppose petitions for, and to appeal judgments in favor of declarations of nullity of marriage under Article 36 of the Family Code. (Mendoza *vs*. Rep. of the Phils., G.R. No. 157649, Nov. 12, 2012) p. 241

MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. NO. 8042)

Illegal recruitment — Defined and explained. (Hon. Sto. Tomas *vs*. Salac, G.R. No. 152642, Nov. 13, 2012) p. 454

Money claims — The liability of corporate directors and officers is not automatic; there must be a finding that they were remiss in directing the affairs of the company to make them jointly and solidarily liable. (Hon. Sto. Tomas *vs*. Salac, G.R. No. 152642, Nov. 13, 2012) p. 454

Penalties — Penalties for each of the enumerated acts of illegal recruitment is within the police power of the State. (Hon. Sto. Tomas *vs*. Salac, G.R. No. 152642, Nov. 13, 2012) p. 454

Venue — Fixing an alternative venue for violations of Section 6 of R.A. No. 8042 is an exception to the rule on venue of criminal actions. (Hon. Sto. Tomas *vs*. Salac, G.R. No. 152642, Nov. 13, 2012) p. 454

MOTION FOR RECONSIDERATION

Failure to file on time — A party's inaction to hire new counsel cannot justify application of equity and relaxation of the rules. (V.C. Ponce Co., Inc. *vs*. Mun. of Parañaque, G.R. No. 178431, Nov. 12, 2012) p. 338

Period to file — Filing a motion for extension of time does not toll the reglementary period; failure to file on time renders the decision final and executory by operation of law. (V.C. Ponce Co., Inc. *vs*. Mun. of Parañaque, G.R. No. 178431, Nov. 12, 2012) p. 338

MOTION TO DISMISS

Denial of — Cannot be questioned in an extraordinary remedy of certiorari except if tainted with grave abuse of discretion. (Rep. of the Phils. *vs*. Roman Catholic Archbishop of Mla., G.R. No. 192975, Nov. 12, 2012) p. 429

— No grave abuse of discretion amounting to lack or excess of jurisdiction can be attributed to RTC in denying respondent's motion to dismiss. *(Id.)*

MURDER

Damages recoverable — 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. (People of the Phils. *vs.* Malicdem *y* Molina, G.R. No. 184601, Nov. 12, 2012) p. 408

Qualifying circumstances — Absence of treachery makes the crime only that of homicide. (People of the Phils. *vs*. Artajo *y* Alimangohan, G.R. No. 198050, Nov. 14, 2012) p. 826

NEGLIGENCE

Contributory negligence, effect of — Where the bank and the depositor are equally negligent, they should equally suffer the loss, and must both bear the consequences of their mistakes. (Westmont Bank *vs*. Dela Rosa-Ramos, G.R. No. 160260, Oct. 24, 2012) p. 23

OMNIBUS ELECTION CODE (B.P. BLG. 881)

Eligibility of candidates and certificate of candidacy — A petition to cancel or deny due course to a certificate of candidacy cannot be treated in the same manner as a petition to disqualify. (Dela Cruz *vs*. COMELEC, G.R. No. 192221, Nov. 13, 2012) p. 548

— The votes cast for a nuisance candidate declared as such in a final judgment, particularly where such nuisance candidate has the same surname as that of the legitimate

candidate, not stray but counted in favor of the latter. *(Id.)*

OWNERSHIP

Accion reinvindicatoria — Article 434 of the Civil Code provides that 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. (VSD Realty & Development Corp. *vs*. Uniwide Sales, Inc., G.R. No. 170677, Oct. 24, 2012) p. 62

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Compensation and disability benefits — As a rule, whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence. (Andrada *vs*. Agemar Manning Agency, Inc., and/or Sonnet Shipping Ltd./Malta, G.R. No. 194758, Oct. 24, 2012) p. 170

— Section 20 of the POEA-SEC laid down the procedure for claiming compensation and disability benefits. *(Id.)*

Total and permanent disability benefits — A seafarer may not file a claim for total and permanent disability benefits within the 240-day applicable period; a temporary total disability only becomes permanent when the company-designated physician, within the 240-day period, declares it to be so, or when after the lapse of the same, he fails to make such declaration. (Millan *vs*. Wallem Maritime Services, Inc., G.R. No. 195168, Nov. 12, 2012) p. 437

PLEADINGS

Complaint-in-intervention — The original parties are required to file an answer to the complaint-in-intervention within 15 days from notice of the order admitting the same, unless a different period is fixed by the court; failure to file the answer can give rise to default. (Lim *vs*. Nat'l. Power Corp., G.R. No. 178789, Nov. 14, 2012) p. 670

Service of — The Rules prefer personal service and filing of pleadings and other papers, but resort to service by registered mail is not sanctioned when such service ensures receipt by the adverse party. (Lim *vs*. Nat'l. Power Corp., G.R. No. 178789, Nov. 14, 2012) p. 670

Verification — Liberal construction of the rule on verification, not applicable. (Martos *vs*. New San Jose Builders, Inc., G.R. No. 192650, Oct. 24, 2012) p. 147

— Verification is deemed substantially complied with when, one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matter alleged in the petition have been made in good faith or are true and correct. *(Id.)*

PRELIMINARY INVESTIGATION

Issuance of warrants of arrests — The judge is not required, when determining probable cause for the issuance of warrants of arrests, to conduct a de novo hearing, except if there are inconsistent statements and related documents brought up by witnesses. (People of the Phils. *vs*. Hon. Dela Torre-Yadao, G.R. Nos. 162144-54, Nov. 13, 2012) p. 471

Options of the trial court — Enumerated; the option to order the prosecutor to present additional evidence is not mandatory. (People of the Phils. *vs*. Hon. Dela Torre-Yadao, G.R. Nos. 162144-54, Nov. 13, 2012) p. 471

Probable cause — Defined; no definitive standard to determine probable cause except to consider the attendant conditions. (Sy *vs*. Hon. Sec. of Justice Ma. Merceditas N. Gutierrez, G.R. No. 171579, Nov. 14, 2012) p. 637

PRESCRIPTION, AS A MODE OF ACQUIRING OWNERSHIP

Acquisitive prescription, not a case of — Respondents failed to show their possession of the property continuously, openly, publicly and adversely for more than thirty years; the payment of realty taxes and survey of the property are not conclusive proof of ownership. (Rep. of the Phils. *vs*. Santos III, G.R. No. 160453, Nov. 12, 2012) p. 275

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT

Sequestration — An extraordinary measure in the form of a provisional remedy merely intended to prevent the destruction, concealment or dissipation of sequestered properties and to preserve them, pending the judicial determination of whether they are in truth ill-gotten. (Rep. of the Phils. *vs*. Estate of Hans Menzi, G.R. No. 183446, Nov. 13, 2012) p. 495

— Subsists only until ownership is finally judicially determined; upon dissolution, the property should be returned to its owner/s. *(Id.)*

PROPERTY

Property of public dominion — All river beds remain property of public dominion and cannot be acquired by acquisitive prescription unless declared by the government to be alienable and disposable. (Rep. of the Phils. *vs*. Santos III, G.R. No. 160453, Nov. 12, 2012) p. 275

— Dried-up river beds belong to the State as its property of public dominion unless there is an express law providing that they should belong to some other person. *(Id.)*

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Requirements for land registration — Applicants for registration under Section 14 (1) of Presidential Decree No. 1529 must sufficiently establish the following: 1. that the subject land forms part of the disposable and alienable lands of the public domain; 2. that the applicant and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the same; and 3. that it is under a bona fide claim of ownership since June 12, 1945, or earlier. (Rep. of the Phils. *vs*. Jaralve, G.R. No. 175177, Oct. 24, 2012) p. 86

— The PENRO/CENRO (Provincial/Community Environment and Natural Resources Officer) Certification is not enough to certify that the land is alienable and disposable. *(Id.)*

PSYCHOLOGICAL INCAPACITY

Determination of — Based strictly on the facts of each case and not on a priori assumptions, predilections or generalizations; should be established by the totality of evidence presented during trial; incumbent upon petitioner to sufficiently prove the existence of the incapacity. (Rep. of the Phils. *vs*. Hon. CA, [Ninth Div.], G.R. No. 159594, Nov. 12, 2012) p. 257

— The actual medical examination of a party was to be dispensed with only if the totality of evidence presented was enough to support a finding of his psychological incapacity; trial courts must always base their judgments not solely on the expert opinions presented by parties but on the totality of the evidence. (Mendoza *vs*. Rep. of the Phils., G.R. No. 157649, Nov. 12, 2012) p. 241

— The neuro-psychological report and court testimony did not sufficiently explain the gravity, root cause and incurability of psychological incapacity. (Rep. of the Phils. *vs*. Hon. CA, [Ninth Div.], G.R. No. 159594, Nov. 12, 2012) p. 257

Ground for nullification of marriage — Should refer to no less than a mental, not physical, incapacity; must be grave and serious as to indicate an utter incapacity to comprehend and comply with the essential objects of marriage, including the rights and obligations between husband and wife; affliction must be shown to exist at the time of marriage and must be incurable. (Mendoza *vs*. Rep. of the Phils., G.R. No. 157649, Nov. 12, 2012) p. 241

Nature of — An incapacity or inability to take cognizance of and to assume basic marital obligations, and not merely the difficulty, refusal, or neglect in the performance of marital obligations or ill will. (Rep. of the Phils. *vs*. Hon. CA, [Ninth Div.], G.R. No. 159594, Nov. 12, 2012) p. 257

Requisites — Consists of: a) a true inability to commit oneself to the essentials of marriage; b) the inability must refer to the essential obligations of marriage; and c) the inability

must be tantamount to a psychological abnormality. (Rep. of the Phils. *vs*. Hon. CA, [Ninth Div.], G.R. No. 159594, Nov. 12, 2012) p. 257

PUBLIC LAND ACT (C.A. NO. 141)

Importance thereof —The Public Land Act or Commonwealth Act No. 141 is the existing general law governing the classification and disposition of lands of the public domain, except for timber and mineral lands. (Rep. of the Phils. *vs*. Jaralve, G.R. No. 175177, Oct. 24, 2012) p. 86

QUALIFYING CIRCUMSTANCES

Abuse of superior strength — There is abuse of superior strength when the aggressors purposely use excessive force rendering the victim unable to defend himself. (People of the Phils. *vs.* Nazareno, G.R. No. 196434, Oct. 24, 2012) p. 187

Treachery — Defined; appellant caught the victim by surprise when he suddenly embraced him and proceeded immediately to plunge a knife to his chest. (People of the Phils. *vs*. Malicdem *y* Molina, G.R. No. 184601, Nov. 12, 2012) p. 408

RAPE

Aggravating circumstances of relationship and minority — Admission in open court is sufficient and conclusive to prove relationship with the victim; minority must be sufficiently established by independent evidence other than the testimonies of prosecution witnesses and the absence of denial by the accused. (People of the Phils. *vs*. Soria *y* Gomez, G.R. No. 179031, Nov. 14, 2012) p. 676

Commission of — A medical certificate is not necessary to prove the commission of rape, as even a medical examination of the victim is not indispensable in a prosecution for rape. (People of the Phils. *vs*. Colorado, G.R. No. 200792, Nov. 14, 2012) p. 833

— Hymenal rupture, vaginal laceration or genital injury is not indispensable because the same is not an element of the crime of rape. (People of the Phils. *vs*. Soria *y* Gomez, G.R. No. 179031, Nov. 14, 2012) p. 676

— It is unnatural that the daughter was merely instigated by her mother to file the charge of rape and to publicly expose the dishonor of the family unless rape was indeed committed. *(Id.)*

— It would be highly inconceivable for a victim to impute to her own father the crime of raping her unless the imputation is true. *(Id.)*

— May still be committed in a confined space and even in the presence of victim's siblings; rape is not a respecter of place and time. (People of the Phils. *vs*. Laurino, G.R. No. 199264, Oct. 24, 2012) p. 195

— Not negated by the presence of siblings in the same room at the time when victim was raped; lust respects no time, locale or circumstance. (People of the Phils. *vs*. Colorado, G.R. No. 200792, Nov. 14, 2012) p. 833

— The absence of external signs of physical injuries does not negate rape. (People of the Phils. *vs*. Mangune *y* Del Rosario, G.R. No. 186463, Nov. 14, 2012) p. 759

— The date of commission is not an essential element of the offense; what is material is its occurrence, as sufficiently established by the victim and her testimony's credibility. (People of the Phils. *vs*. Colorado, G.R. No. 200792, Nov. 14, 2012) p. 833

Element of intimidation — Physical resistance need not be established when intimidation is exercised upon the victim who submits herself out of fear; intimidation is addressed to the mind of the victim and is therefore subjective. (People of the Phils. *vs*. Lansangan, G.R. No. 201587, Nov. 14, 2012) p. 847

Penalty — Increased to reclusion temporal if the rape is committed by any aggravating/qualifying circumstance. (People of the Phils. *vs*. Soria *y* Gomez, G.R. No. 179031, Nov. 14, 2012) p. 676

Qualified rape — Elements thereof, enumerated. (People of the Phils. *vs*. Colorado, G.R. No. 200792, Nov. 14, 2012) p. 833

— The best evidence to prove the age of the victim is an original or certified true copy of the birth certificate. *(Id.)*

Qualifying circumstances of minority and relationship — Under Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353, the concurrence of minority and relationship qualifies the crime of rape; to warrant the imposition of death penalty, these must be alleged in the information and proved during the trial. (People of the Phils. *vs*. Ending *y* Onyong, G.R. No. 183827, Nov. 12, 2012) p. 396

RAPE BY SEXUAL ASSAULT

Commission of — It is inconsequential that the victim failed to specifically identify the particular instrument or object that was inserted into her genital. (People of the Phils. *vs*. Soria *y* Gomez, G.R. No. 179031, Nov. 14, 2012) p. 676

— No categorical declaration in the Medico-Legal Report and court testimony that an instrument or object had been inserted into the victim's private part; the prosecution bears the primary duty to present its evidence with clarity and persuasion. (People of the Phils. *vs*. Soria *y* Gomez, G.R. No. 179031, Nov. 14, 2012; *Brion, J., dissenting opinion*) p. 676

REALTY INSTALLMENT BUYER ACT/ MACEDA LAW (R.A. NO. 6552)

Cancellation of the contract to sell — Before a contract to sell can be validly and effectively cancelled, the seller has 1) to send a notarized notice of cancellation to the buyer and 2) to refund the cash surrender value. (Communities Cagayan, Inc. *vs*. Sps. Nanol, G.R. No. 176791, Nov. 14, 2012) p. 648

RES GESTAE

Determining factors for spontaneity — Factors to determine whether statements are spontaneous: 1) the time that lapsed between the occurrence of the act or transaction

and the making of the statement; 2) the place where the statement was made; 3) the condition of the declarant when he made the statement; 4) the presence or absence of intervening events between the occurrence and the statement relative thereto; and 5) the nature and circumstances of the statement itself. (Belbis, Jr. *y* Competente *vs*. People of the Phils., G.R. No. 181052, Nov. 14, 2012) p. 706

RES JUDICATA

Concepts — Secs. 47 (b) and (c) of Rule 39 provides for the two (2) concepts of *res judicata*: bar by prior judgment and conclusiveness of judgment. (P.L. Uy Realty Corp. *vs*. Als Management and Development Corp., G.R. No. 166462, Oct. 24, 2012) p. 47

RIGHT OF ACCESSION

Builder in good faith — As a general rule, Article 448 on builders in good faith applies when the builder has a claim of title over the property; as an exception, the Court construed good faith beyond its limited definition when: 1) good faith is presumed on the part of the respondent-spouses; 2) petitioner failed to rebut this presumption; 3) no evidence was presented to show that petitioner opposed or objected to the improvements introduced by the respondent-spouses. (Communities Cagayan, Inc. *vs*. Sps. Nanol, G.R. No. 176791, Nov. 14, 2012) p. 648

Options of the landowner — The seller (the owner of the land) has two options under Article 448: 1) he may appropriate the improvements for himself after reimbursing the buyer (the builder in good faith) the necessary and useful expenses under Articles 546 and 548 of the Civil Code; or 2) he may sell the land to the buyer, unless its value is considerably more than that of the improvements, in which case, the buyer shall pay reasonable rent. (Communities Cagayan, Inc. *vs*. Sps. Nanol, G.R. No. 176791, Nov. 14, 2012) p. 648

ROBBERY

Elements — (1) The subject is personal property belonging to another; (2) There is unlawful taking of that property; (3) The taking is with the intent to gain; and (4) There is violence against or intimidation of any person or use of force upon things. (Sy *vs*. Hon. Sec. of Justice Ma. Merceditas N. Gutierrez, G.R. No. 171579, Nov. 14, 2012) p. 637

Taking — Means depriving the offended party of ownership of the thing taken with the character of permanency; should not be under a claim of ownership; intent to gain deduced from the circumstances surrounding the commission of the offense. (Sy *vs*. Hon. Sec. of Justice Ma. Merceditas N. Gutierrez, G.R. No. 171579, Nov. 14, 2012) p. 637

RULES OF PROCEDURE IN ELECTION CONTESTS BEFORE THE COURTS INVOLVING ELECTIVE MUNICIPAL AND BARANGAY OFFICIALS (A.M. NO. P. 07-4-15-SC)

Relaxation of procedural rules — A relaxation of the Rules is justified by the paramount interest in determining the true will of the electorate. (Gravides *vs*. COMELEC, G.R. No. 199433, Nov. 13, 2012) p. 581

SELF-DEFENSE

As a justifying circumstance — An accused who invokes self-defense assumes the burden to establish his plea by credible, clear and convincing evidence; elucidated. (Belbis, Jr. *y* Competente *vs*. People of the Phils., G.R. No. 181052, Nov. 14, 2012) p. 706

— The means employed by a person claiming self-defense must be commensurate to the nature and the extent of the attack sought to be averted, and must be rationally necessary to prevent or repel an unlawful aggression. *(Id.)*

STATUTES

Constitutionality of — Every statute has in its favor the presumption of constitutionality; the Court cannot inquire into the wisdom or expediency of the laws enacted by the Legislative Department. (Hon. Sto. Tomas *vs*. Salac, G.R. No. 152642, Nov. 13, 2012) p. 454

SUPPORT

Burden of proof — Incumbent upon the mother to prove that she had sexual intercourse with the putative father prior to the usual period of pregnancy or nine months before the birth of the child. (Perla *vs*. Mirasol Baring and Randy Perla, G.R. No. 172471, Nov. 12, 2012) p. 323

Support for illegitimate child — Where the complaint for support was based on illegitimate filiation, support must be issued only if such filiation is established by clear and convincing evidence. (Perla *vs*. Mirasol Baring and Randy Perla, G.R. No. 172471, Nov. 12, 2012) p. 323

TAX EXEMPTION

Construction — Strictly construed against the claimant; cannot arise by mere implication, much less by an implied re-enactment of a repealed tax exemption clause. (Cagayan Electric Power and Light Co., Inc. *vs*. City of Cagayan De Oro, G.R. No. 191761, Nov. 14, 2012) p. 788

TECHNICAL MALVERSATION

Commission of — Elements: a) that the offender is an accountable public officer; b) that he applies public funds or property under his administration to some public use; and c) that the public use for which such funds or property were applied is different from the purpose for which they were originally appropriated by law or ordinance. (Ysidoro *vs*. People of the Phils., G.R. No. 192330, Nov. 14, 2012) p. 813

Criminal intent — Not an element of technical malversation; the offense is *mala prohibita*. (Ysidoro *vs*. People of the Phils., G.R. No. 192330, Nov. 14, 2012) p. 813

TENANT EMANCIPATION DECREE (P.D. NO. 27)

Application — Specifically prohibited any transfer of landholding except to the government or by hereditary succession; Section 27 of R.A. No. 6657 allowed transfers to the Land Bank of the Philippines and to other qualified beneficiaries; any other transfer is null and void for being contrary to law. (Gua-an *vs*. Quirino, G.R. No. 198770, Nov. 12, 2012) p. 446

Reversion of landholding, proscribed — Reversion of the landholding to the former owner is proscribed under P.D. No. 27 in accordance with its policy of holding such lands under trust for the succeeding generations of farmers. (Gua-an *vs*. Quirino, G.R. No. 198770, Nov. 12, 2012) p. 446

Transfer of landholding — The subject transaction is covered by the prohibition under P.D. No. 27 and R.A. No. 6657 which include transfer of possession of the landholding to the vendee a retro. (Gua-an *vs*. Quirino, G.R. No. 198770, Nov. 12, 2012) p. 446

VOLUNTARY SURRENDER

As a mitigating circumstance — The following requisites should be present: 1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary. (Belbis, Jr. *y* Competente *vs*. People of the Phils., G.R. No. 181052, Nov. 14, 2012) p. 706

WILLS

Attestation — Must state the number of pages used upon which the will is written; the statement in the acknowledgment portion of the will cannot be deemed substantial compliance where there is discrepancy in the actual number of pages of the will. (In the Matter of the Petition for the Probate of the Last Will and Testament of Enrique S. Lopez; Richard B. Lopez *vs*. Diana Jeanne Lopez, G.R. No. 189984, Nov. 12, 2012) p. 423

WITNESSES

Credibility of — A few inconsistent remarks in rape cases will not necessarily impair the testimony of the offended party; a rape victim not expected to make an errorless recollection of the incident, so humiliating and painful that she might in fact be trying to obliterate it from her memory. (People of the Phils. *vs*. Laurino, G.R. No. 199264, Oct. 24, 2012) p. 195

— Accorded full faith and credit absent evidence showing any reason or motive to falsely testify against the accused. (People of the Phils. *vs*. Mangune *y* Del Rosario, G.R. No. 186463, Nov. 14, 2012) p. 759

— Alleged inconsistencies are minor or trivial which serve to strengthen, rather than destroy, the credibility of the said witnesses as they erase doubts that the said testimonies had been coached or rehearsed. (People of the Phils. *vs*. Nazareno, G.R. No. 196434, Oct. 24, 2012) p. 187

— Findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by this Court, particularly when affirmed by the CA, and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case. (People of the Phils. *vs*. Mangune *y* Del Rosario, G.R. No. 186463, Nov. 14, 2012) p. 759

(People of the Phils. *vs*. Malicdem *y* Molina, G.R. No. 184601, Nov. 12, 2012) p. 408

(People of the Phils. *vs*. Musa *y* Pinasilo, G.R. No. 199735, Oct. 24, 2012) p. 204

— Findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal. (People of the Phils. *vs*. Laurino, G.R. No. 199264, Oct. 24, 2012) p. 195

— Findings of the trial court relative to the credibility of the rape victim are normally respected and not disturbed on appeal, more so, if affirmed by the appellate court; exceptions. (People of the Phils. *vs*. Lansangan, G.R. No. 201587, Nov. 14, 2012) p. 847

— Great respect is accorded to the findings of the trial judge who is in a better position to observe the demeanor, facial expression, and manner of testifying of witnesses, and to decide who among them is telling the truth. (People of the Phils. *vs*. Colorado, G.R. No. 200792, Nov. 14, 2012) p. 833

Testimony of sole witness — The testimony of the sole witness if uncorroborated by any other documentary or testimonial evidence, could only be assessed as self-serving. (Tom Tan *vs*. Heirs of Antonio F. Yamson, G.R. No. 163182, Oct. 24, 2012) p. 35

CITATION

Page

I. LOCAL CASES

AAA *vs.* Carbonell, G.R. No. 171465, June 8, 2007,
524 SCRA 496, 506 ..... 482, 487
Aba *vs.* De Guzman, Jr., A.C. No. 7649, Dec. 14, 2011,
662 SCRA 361, 371 607
Aballe *vs.* Santiago, 117 Phil. 936, 938-939 (1963) 660
Abdulla *vs.* People, 495 Phil. 70 (2005) 819
Abiero *vs.* Juanino, A.C. No. 5302, Feb. 18, 2005,
452 SCRA 1 602
Acevedo *vs.* Advanstar Company, Inc.,
511 Phil. 279, 287 (2005) 180
Active Realty & Development Corp. *vs.* Daroya,
431 Phil. 753, 761-762 (2002) 659
Adecer *vs.* Akut, A.C. No. 4809, May 3, 2006,
489 SCRA 1 603
Adriano *vs.* Tanco, G.R. No. 168164, July 5, 2010,
623 SCRA 218, 228 368-369
Aguilar *vs.* Commission on Elections, G.R. No. 185140,
June 30, 2009, 591 SCRA 491, 508 594
Alano *vs.* Planter's Development Bank, G.R. No. 171628,
June 13, 2011, 651 SCRA 766, 774 757
Alcazar *vs.* Alcazar, G.R. No. 174451, Oct. 13, 2009,
603 SCRA 604, 620 274
Alfaro *vs.* CA, 416 Phil. 310, 318 (2001) 180
Alfonso *vs.* Andres, G.R. No. 166236, July 29, 2010,
626 SCRA 149, 155-156 352
Almeda *vs.* CA, G.R. No. 113412, April 17, 1996,
256 SCRA 292 13
Almeida *vs.* CA, G.R. No. 159124, Jan. 17, 2005,
448 SCRA 681 20
Amatorio *vs.* People, 445 Phil. 481, 491 (2003) 340, 350
Amil *vs.* CA, G.R. No. 125272, Oct. 7, 1999,
316 SCRA 317 235
Anciro *vs.* People, G.R. No. 107819, Dec. 17, 1993,
228 SCRA 629, 642 717
Angelia *vs.* Grageda, A.M. No. RTJ-10-2220, Feb. 7, 2011,
641 SCRA 554 624

Page

Antonio *vs.* Reyes, G.R. No. 155800, Mar. 10, 2006, 484 SCRA 353, 376 267
Apex Mining Co., Inc. *vs.* Commissioner of Internal Revenue, 510 Phil. 268, 273-274 (2005) 350
Apex Mining, Inc. *vs.* CA, G.R. No. 133750, Nov. 29, 1999, 319 SCRA 456 239-240
Arceno *vs.* People, G.R. No. 116098, April 26, 1996 217
Aries *vs.* Beldia, 476 SCRA 298 620
Arnado *vs.* Suarin, A.M. No.P-05-2059, Aug. 19, 2005, 467 SCRA 402 609
Arroyo, Jr. *vs.* Taduran, 466 Phil. 173, 180 (2004) 516
Arzaga *vs.* Copias, 448 Phil. 171, 180 (2003) 435
Asiatico *vs.* People, G.R. No. 195005, Sept. 12, 2011 216
Athena Computers, Inc., et al. *vs.* Reyes, G.R. No. 156905, Sept. 5, 2007, 532 SCRA 343, 350 747
Azuela *vs.* CA, 521 Phil. 263, 278 (2006) 428
Bangayan, Jr. *vs.* Bangayan, G.R. Nos. 172777 and 172792, Oct. 19, 2011, 659 SCRA 590, 597 123
Bartolome *vs.* Intermediate Appellate Court, G.R. No. 76792, Mar. 12, 1990, 183 SCRA 102, 112 289
Bases Conversion Development Authority *vs.* Provincial Agrarian Reform Officer of Pampanga, G.R. Nos. 155322-29, June 27, 2012 365
Bataan Shipyard & Engineering Co., Inc. (BASECO) *vs.* PCGG, 234 Phil. 180, 209 (1987) 524
Bautista *vs.* COMELEC, G.R. No. 133840, Nov. 13, 1998, 298 SCRA 480 ..... 553, 564
Bayaca *vs.* Ramos, A.M. No. MTJ-07-1676, Jan. 29, 2009, 577 SCRA 93 622
Bernal *vs.* CA, 247-A Phil. 92, 97 (1988) 645-646
Bernas *vs.* CA, G.R. No. 85041, Aug. 5, 1993, 225 SCRA 119, 129 367
Bier *vs.* Bier, G.R. No. 173294, Feb. 27, 2008, 547 SCRA 123, 132 267
Bolos *vs.* Bolos, G.R. No. 186400, Oct. 20, 2010, 634 SCRA 429, 438 350

Page

Boncodin *vs.* National Power Corporation Employees Consolidated Union (NECU), G.R. No. 162716, Sept. 27, 2006, 503 SCRA 611, 623 20
Boyboy *vs.* Yabut, Jr., A.C. No. 5225, April 29, 2003, 401 SCRA 622, 627 606
BPI *vs.* Casa Montessori Internationale, G.R. Nos. 149454 and 149507, May 23, 2004, 430 SCRA 261, 283 31
BPI *vs.* Lifetime Marketing Corp., G.R. No. 176434, June 25, 2008, 555 SCRA 373, 381 31
Briones *vs.* Macabagdal, G.R. No. 150666, Aug. 3, 2010, 626 SCRA 300, 307 661
Bulaong *vs.* COMELEC, G.R. No. 116206, Feb. 7, 1995, 241 SCRA 180, 190 559
Bulos, Jr. *vs.* Yasuma, G.R. No. 164159, July 17, 2007, 527 SCRA 727, 737 288
C.F. Sharp Crew Management, Inc. *vs.* Taok, G.R. No. 193679, July 18, 2012 ..... 443, 445
Cabang *vs.* Basay, G.R. No. 180587, Mar. 20, 2009, 582 SCRA 172, 182 520
Cabatania *vs.* CA, 484 Phil. 42, 50 (2004) 326, 333-334, 336
Cabrera *vs.* COMELEC, G.R. No. 182084, Oct. 6, 2008, 567 SCRA 686 ..... 586, 590, 592
Cadiz *vs.* CA, 510 Phil. 721, 735 (2005) 31
Calimutan *vs.* People, 517 Phil. 272, 284 (2006) 723
Campos *vs.* Pastrana, G.R. No. 175994, Dec. 8, 2009, 608 SCRA 55, 68 757
Canada *vs.* All Commodities Marketing Corporation, G.R. No. 146141, Oct. 17, 2008, 569 SCRA 321, 327 517
Canadian Opportunities Unlimited, Inc. *vs.* Dalangin, Jr., G.R. No. 172223, Feb. 6, 2012, 665 SCRA 21, 31 757
Caneda *vs.* CA, G.R. No. 103554, May 28, 1993, 222 SCRA 781, 790 427-428
Castro *vs.* People, G.R. No. 193379, Aug. 15, 2011 219
Cavite Development Bank *vs.* Lim, 324 SCRA 346, 358 (2000) 756
CBL Transit, Inc. *vs.* National Labor Relations Commission, 469 Phil. 363, 371 (2004) 180

Page

Cebu Portland Cement Company *vs.* Municipality of Naga, Cebu, G.R. Nos. L-24116-17, Aug. 22, 1968, 24 SCRA 708, 712 285
Celestial *vs.* Cachopero, G.R. No. 142595, Oct. 15, 2003, 413 SCRA 469, 485-489 291
Cheng *vs.* Agravante, A.C. No. 6183, Mar. 23, 2004, 426 SCRA 42 603
China Banking Corporation *vs.* Ciriaco, G.R. No. 170038, July 11, 2012 17
Chua *vs.* CA, G.R. No. 109840, Jan. 21, 1999, 301 SCRA 356, 364; 361 Phil. 308, 318 (1999) 82
Chua *vs.* Torres, et al., 505 Phil. 455, 461 (2005) 161
CIR *vs.* PLDT Co., G.R. No. 140230, Dec. 15, 2005, 478 SCRA 61, 72 393
Citibank, N.A. (formerly First National City Bank) *vs.* Sabeniano, G.R. No. 156132, Oct. 16, 2006, 504 SCRA 378, 409 288
City Government of Butuan *vs.* Consolidated Broadcasting System (CBS), Inc., G.R. No. 157315, Dec. 1, 2010, 636 SCRA 320, 336-337 17
City Government of San Pablo, Laguna *vs.* Hon. Reyes, 364 Phil. 842 (1999) 804
Clavecilla *vs.* Quitain, 518 Phil. 53, 62 (2006) 747
Co *vs.* CA, Aug. 11, 1995, 247 SCRA 195, 200 715
Coastal Safeway Marine Services, Inc. *vs.* Esguerra, G.R. No. 185352, Aug. 10, 2011, 655 SCRA 300, 307-308 182
Commissioner of Internal Revenue *vs.* Seagate Technology (Phil.), G.R. No. 153866, Feb. 11, 2005, 451 SCRA 132, 141-143 395
Conlu *vs.* Aredonia, Jr., A.C. No. 4955, Sept. 12, 2011, 657 SCRA 367, 377 601-602
Cosco Philippines Shipping, Inc. *vs.* Kemper Insurance Company, G.R. No. 179488, April 23, 2012 747
Cruz *vs.* Bancom Finance Corporation, G.R. No. 147788, Mar. 19, 2002, 379 SCRA 490, 509 756
Cruz *vs.* CA, G.R. No. 164797, Feb. 13, 2006, 482 SCRA 379, 392-393 60

Page

Dacanay *vs.* Yrastorza, Sr., G.R. No. 150664,
Sept. 3, 2009, 598 SCRA 20, 25-26 521
Dadula *vs.* Judge Ginete, 493 Phil. 700 (2005) 623
DAR vs. Manuel Goduco, G.R. Nos. 174007 and 181327,
June 27, 2012 383
David *vs.* Gutierrez-Fruelda, G.R. No. 170427,
Jan. 30, 2009, 577 SCRA 357, 362 674
De Guzman *vs.* People, G.R. No. 166502, Oct. 17, 2008,
569 SCRA 452, 457 ..... 645, 647
De Joya *vs.* Judge Marquez, 516 Phil. 717, 722 (2006) 487
De Leon *vs.* Castelo, A.C. No. 8620, Jan. 12, 2011,
639 SCRA 237 608
De Vera *vs.* De Vera, G.R. No. 172832, April 6, 2009,
584 SCRA 506, 515 724
Dedel *vs.* CA, G.R. No. 151867, Jan. 29, 2004,
421 SCRA 461, 466 271
Del Castillo *vs.* Orciga, G.R. No. 153850, Aug. 31, 2006,
500 SCRA 498, 508 & 511 453
Del Mar *vs.* PAGCOR, 400 Phil. 307, 326 (2000) 435
Del Rosario *vs.* Republic, G.R. No. 148338, June 6, 2002,
383 SCRA 262, 274 289
Dela Victoria *vs.* Orig-Maloloy-on, A.M. No.P-07-2343,
Aug. 14, 2007, 530 SCRA 1 609
Delos Santos *vs.* Elizalde, G.R. Nos. 141810 & 141812,
Feb. 2, 2007, 514 SCRA 14, 29-30 351
Delos Santos *vs.* Papa, G.R. No. 154427, May 8, 2009,
587 SCRA 385, 397 733
Department of Education, Division of Albay *vs.* Oñate,
G.R. No. 161758, June 8, 2007, 524 SCRA 200 634
Depra *vs.* Dumlao, 221 Phil. 168 (1985) 667
Dimaranan *vs.* Heirs of Spouses Hermogenes Arayata
and Flaviana Arayata, G.R. No. 184193, Mar. 29, 2010,
617 SCRA 101, 113 333
Diokno *vs.* Cacdac, G.R. No. 168475, July 4, 2007,
526 SCRA 440, 460 44
Director of Lands *vs.* Intermediate Appellate Court,
G.R. No. 73246, Mar. 2, 1993, 219 SCRA 339, 348 289

Page

Dizon *vs.* Laurente, A.C. No. 6597, Sept. 23, 2005,
470 SCRA 595, 601 602-603
Duco *vs.* Commission on Elections, First Division,
G.R. No. 183366, Aug. 19, 2009, 596 SCRA 573, 583-584 594
Dueñas, Jr. *vs.* House of Representatives Electoral Tribunal,
G.R. No. 185401, July 21, 2009, 593 SCRA 316, 345 559
Duvaz Corporation *vs.* Export and Industry Bank,
G.R. No. 163011, June 7, 2007, 523 SCRA 405, 413-414 20
Eastern Shipping Lines, Inc. *vs.* CA, G.R. No. 97412,
July 12, 1994, 234 SCRA 78 84
Eastland Construction & Development Corporation *vs.*
Mortel, 520 Phil. 76, 91 (2006) 521
Ebreo *vs.* Ebreo, G.R. No. 160065, Feb. 28, 2006,
483 SCRA 583, 594 289
Ek Lee Steel Works Corporation *vs.* Manila Castor
Oil Corporation, G.R. No. 119033, July 9, 2008,
557 SCRA 339, 352 336
Equitable PCI Bank, Inc. *vs.* OJ-Mark Trading, Inc.,
G.R. No. 165950, Aug. 11, 2010, 628 SCRA 79, 91-92 17
Ereña *vs.* Querrer-Kauffman, G.R. No. 165853,
June 22, 2006, 492 SCRA 298, 319 756-757
Estares *vs.* CA, G.R. No. 144755, June 8, 2005,
459 SCRA 604, 620-621 14
Estarija *vs.* People, G.R. No. 173990, Oct. 27, 2009,
604 SCRA 464, 469 520
Estate of Pastor M. Samson *vs.* Susano, G.R. Nos. 179024
& 179086, May 30, 2011, 649 SCRA 345, 365 368-369
Estel *vs.* Diego, Sr., G.R. No. 174082, Jan. 16, 2012,
663 SCRA 17, 27 161
Estolas *vs.* Mabalot, G.R. No. 133706, May 7, 2002,
381 SCRA 702, 708 451
Eterton Multi-Resources Corporation *vs.* Filipino Pipe
and Foundry Corporation, G.R. No. 179812, July 6, 2010,
624 SCRA 148, 154 45
Fermin *vs.* COMELEC, G.R. Nos. 179695 and 182369,
Dec. 18, 2008, 574 SCRA 782 562
Fermin *vs.* People, G.R. No. 157643, Mar. 28, 2008,
550 SCRA 132 127

Page

Filipinas Palmoil Processing, Inc. *vs.* Dejapa,
G.R. No. 167332, Feb. 7, 2011, 641 SCRA 572, 581 520
Frias *vs.* Lozada, A.C. No. 6656, Dec. 13, 2005,
477 SCRA 393, 400 605
Fuentes *vs.* CA, 335 Phil. 1163, 1169 (1997) 660
Fuentes *vs.* CA, G.R. No. 109849, Feb. 26, 1997,
268 SCRA 703, 708-709 216
Galen *vs.* Paguirigan, A.C. No. 5558, Mar. 7, 2002,
378 SCRA 527 602
Galvez *vs.* CA, G.R. Nos. 187919, 187979 & 188030,
April 25, 2012 758
Garcia *vs.* Bala, A.C. No. 5039, Nov. 25, 2005,
476 SCRA 85 603
Garcia *vs.* Lopez, A.C. No. 6422, Aug. 28, 2007,
531 SCRA 265, 268 608
Gatmaytan, Jr. *vs.* Ilao, A.C. No. 6086, Jan. 26, 2005,
449 SCRA 269, 270 601
General Milling Corporation-Independent Labor Union
(GMC-ILU) *vs.* General Milling Corporation,
G.R. Nos. 183122 & 183889, June 15, 2011,
652 SCRA 235, 253 520
German Marine Agencies, Inc. *vs.* National Labor
Relations Commission, 403 Phil. 572, 588 (2001) 182
Go *vs.* Tan, G.R. No. 130330, Sept. 26, 2003,
412 SCRA 123, 129-130 240
Golden Ace Builders, et al. *vs.* Talde, G.R. No. 187200,
May 5, 2010, 620 SCRA 283, 289-290 164
Gomez *vs.* Montalban, G.R. No. 174414, Mar. 14, 2008,
548 SCRA 693, 708 235
Gordula *vs.* CA, G.R. No. 127296, Jan. 22, 1998,
284 SCRA 617, 630 293
Gregorio Araneta, Inc. *vs.* Phil. Sugar Estate
Development Co., Inc., G.R. No. L-22558, May 31, 1967,
20 SCRA 330, 336 61
Habaluyas Enterprises, Inc. *vs.* Judge Japson,
226 Phil. 144, 148 (1986) 350
Heirs of Tiburcio F. Ballesteros, Sr. *vs.* Apiag,
A.C. No. 5760, Sept. 30, 2005, 471 SCRA 111 602

Page

Heirs of Jose Barredo *vs.* Besañes, G.R. No. 164695, Dec. 13, 2010, 637 SCRA 717, 723 ..... 357, 368-369
Heirs of Mariano, Juan, Tarcela and Josefa Brusas *vs.* CA, G.R. No. 126875, Aug. 26, 1999, 313 SCRA 176, 184 289
Heirs of Federico C. Delgado *vs.* Gonzalez, G.R. No. 184337, Aug. 7, 2009, 595 SCRA 501, 524 125
Heirs of Tomas Dolleton *vs.* Fil-Estate Management, Inc., G.R. No. 170750, April 7, 2009, 584 SCRA 409 634
Heirs of Rosa Dumaliang and Cirila Dumaliang, etc. *vs.* Serban, G.R. No. 155133, Feb. 21, 2007, 516 SCRA 343 634
Heirs of Emiliano Navarro *vs.* Intermediate Appellate Court, G.R. No. 68166, Feb. 12, 1997, 268 SCRA 74, 85 283
Heirs of Anacleto B. Nieto *vs.* Municipality of Meycauayan, Bulacan, G.R. No. 150654, Dec. 13, 2007, 540 SCRA 100 635
Heirs of Domingo Valientes *vs.* Ramas, G.R. No. 157852, Dec. 15, 2010, 638 SCRA 444, 451 57
Heirs of Lorenzo and Carmen Vidad *vs.* Land Bank of the Philippines, G.R. No. 166461, April 30, 2010, 619 SCRA 609, 625 ..... 308, 313, 315, 321-322
Hernandez *vs.* CA, G.R. No. 126010, Dec. 8, 1999, 320 SCRA 76 248
Hutchinson *vs.* Buscas, 498 Phil. 257, 262 (2005) 78
Ibasco *vs.* Private Development Corporation of the Philippines, G.R. No. 162473, Oct. 12, 2009, 603 SCRA 317, 320 350
Ilisan *vs.* People, G.R. No. 179487, Nov. 15, 2010, 634 SCRA 658, 663 416
In re: Atty. C.T. Oliva, 103 Phil. 312 (1958) 602
In re: Delayed Remittance of Collections of Teresita R. Odtuhan, Officer-in-Charge, Regional Trial Court, Branch 117, Pasay City, 445 Phil. 220 (2003) 614
International Corporate Bank, Inc. *vs.* CA, G.R. No. 129910, Sept. 5, 2006, 501 SCRA 20, 32 350
Jarantilla, Jr. *vs.* Jarantilla, G.R. No. 154486, Dec. 1, 2010, 636 SCRA 299, 308 105
Jison *vs.* CA, 350 Phil. 138, 172 (1998) 335-336
Jurado *vs.* Suy Yan, 148 Phil. 677, 686 (1971) 688

Page

Kare *vs.* COMELEC, G.R. Nos. 157526 & 157527,
April 28, 2004, 428 SCRA 264, 273 ..... 558, 560
Labaro *vs.* Panay, G.R. No. 129567, Dec. 4, 1998,
299 SCRA 714, 720 123
Labrador *vs.* Perlas, G.R. No. 173900, Aug. 9, 2010,
627 SCRA 265 636
Lacson *vs.* The Executive Secretary,
361 Phil. 251 (1999) 476-477
Land Bank of the Philippines *vs.* Araneta,
G.R. No. 161796, Feb. 8, 2012 382
Belista, G.R. No. 164631, June 26, 2009, 591 SCRA 137 309
CA, 376 Phil. 252 (1999) 313
CA, 378 Phil. 1248 (1999) 378
Celada, 515 Phil. 467, 477 (2006) 313-314
Celada, G.R. No. 164876, Jan. 23, 2006, 479 SCRA 495 312
Estanislao, G.R. No. 166777, July 10, 2007,
527 SCRA 181 382
Ferrer, G.R. No. 179421, Feb. 2, 2011, 641 SCRA 414 382
Heirs of Eleuterio Cruz, G.R. No. 175175, Sept. 29, 2008,
567 SCRA 31 ..... 321, 382
Honeycomb Farms Corporation, G.R. No. 169903,
Feb. 29, 2012 ..... 317, 320-321
Lim, G.R. No. 171941, Aug. 2, 2007, 529 SCRA 129 321
Natividad, 497 Phil. 738, 746 (2005) 382
Natividad, G.R. No. 127198, May 16, 2005,
458 SCRA 441 311
Soriano, G.R. Nos. 180772 and 180776, May 6, 2010,
620 SCRA 347, 353 384
Sps. Banal, 478 Phil. 701 (2004) 307, 321
Wycoco, 464 Phil. 83, 97-98 (2004) 314, 320
Wycoco, G.R. Nos. 140160 and 146733, Jan. 13, 2004,
419 SCRA 67 311
Landicho *vs.* Sia, G.R. No. 169472, Jan. 20, 2009,
576 SCRA 602, 618-619 368-369
Laurena, Jr. *vs.* COMELEC, G.R. No. 174499, June 29, 2007,
526 SCRA 230, 237 559
LBP *vs.* J. L. Jocson and Sons, G.R. No. 180803,
Oct. 23, 2009, 604 SCRA 373 382

Page

Leaño *vs.* CA, 420 Phil. 836, 847 (2001) 659
Leca Realty Corporation *vs.* Republic of the Philippines, 534 Phil. 693, 701 (2006) 353
Lee *vs.* People, 483 Phil. 684, 699 (2004) 353
Legarda *vs.* CA, G.R. No. 94457, Mar. 18, 1991, 195 SCRA 418 235
Leoncio *vs.* De Vera, G.R. No. 176842, Feb. 18, 2008, 546 SCRA 180, 184 732
Leyte *vs.* Cusi, G.R. No. L-31974, July 31, 1987, 152 SCRA 496 236
Ligeralde *vs.* Patalinghug, G.R. No. 168796, April 15, 2010, 618 SCRA 315, 321-322 271
Lim *vs.* Antonio, A.C. No. 1092, Oct. 27, 1983, 125 SCRA 273 609
Lim *vs.* Sta. Cruz-Lim, G.R. No. 176464, Feb. 4, 2010, 611 SCRA 569 270
Lim-Santiago *vs.* Sagucio, A.C. No. 6705, Mar. 31, 2006, 486 SCRA 10, 22 605
Liwayway Publishing, Inc. *vs.* PCGG, 243 Phil. 864 (1988) 501
Lozano *vs.* Yorac, G.R. Nos. 94521 & 94626, Oct. 28, 1991, 203 SCRA 256 559
Luciano *vs.* Estrella, 145 Phil. 454, 464-465 (1970) 820
Macasasa *vs.* Sicad, G.R. No. 146547, June 20, 2006, 491 SCRA 368, 383 169
Macawiwili Gold Mining and Development Co., Inc. *vs.* CA, G.R. No. 115104, Oct. 12, 1998, 297 SCRA 602, 615 732
Madriñan *vs.* Madriñan, G.R. No. 159374, July 12, 2007, 527 SCRA 487 484
Magsaysay Maritime Corp. *vs.* Velasquez, G.R. No. 179802, Nov. 14, 2008, 571 SCRA 239, 249 182
Malaysian International Shipping Corp. *vs.* Lariza, 218 Phil. 224, 232 (1984) 441
Malillin *vs.* People, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633 142
Malinias *vs.* COMELEC, 439 Phil. 319, 330 (2002) 595
MAM Realty Development Corp. *vs.* National Labor Relations Commission, 314 Phil. 838, 845 (1995) 469

Page

Manacop *vs.* Equitable PCI Bank, 505 Phil. 361, 377 (2005) 353
Manila Midtown Hotels & Land Corp. *vs.* NLRC,
G.R. No. 118397, Mar. 27, 1998, 288 SCRA 259, 265 16
Manotok Realty, Inc. *vs.* CLT Realty Development
Corporation, 512 Phil. 679, 708 (2005) 520
Manzala *vs.* COMELEC, G.R. No. 176211, May 8, 2007,
523 SCRA 31, 38 559
Marable *vs.* Marable, G.R. No. 178741, Jan. 17, 2011,
639 SCRA 557, 567 270
Marcelo *vs.* Philippine Commercial International
Bank (PCIB), G.R. No. 182735, Dec. 4, 2009,
607 SCRA 778, 792 350
Marcos *vs.* Marcos, G.R. No. 136490, Oct. 19, 2000,
343 SCRA 755 249
Martinez III *vs.* House of Representatives Electoral
Tribunal, G.R. No. 189034, Jan. 12, 2010,
610 SCRA 53, 75-76 564-565
Marzonia *vs.* People, G.R No. 153794, June 26, 2006,
492 SCRA 627, 634 719
Mastura *vs.* COMELEC, G.R. No. 124521, Jan. 29, 1998,
285 SCRA 493 559
Maunlad Transport, Inc. *vs.* Manigo, Jr.,
G.R. No. 161416, June 13, 2008, 554 SCRA 446, 457 182
Maylem *vs.* Ellano, G.R. No. 162721, July 13, 2009,
592 SCRA 440, 452 452
Medina *vs.* Judge Canoy, A.M. No. RTJ-11-2298,
Feb. 22, 2012, 666 SCRA 424, 436 625
Mendoza *vs.* People, G.R. No. 173551, Oct. 4, 2007,
534 SCRA 668, 697-698 724
Menguito *vs.* Republic, G.R. No. 134308, Dec. 14, 2000,
348 SCRA 128, 139-140 295
MERALCO *vs.* Province of Laguna, 366 Phil. 428 (1999) 804
Mercado *vs.* Valley Mountain Mines Exploration, Inc.,
G.R. No. 141019, Nov. 23, 2011, 661 SCRA 13, 45 107
Metropolitan Bank and Trust Co. (Metrobank),
represented by Rosella A. Santiago *vs.* Tobias III,
G.R. No. 177780, Jan. 25, 2012 644

Page

Metropolitan Bank and Trust Company *vs.* Veridiano II, G.R. No. 118251, June 29, 2001, 360 SCRA 359, 367-368; 412 Phil. 795, 804-805 (2001) 123
Miranda *vs.* People, G.R. No. 176298, Jan. 25, 2012 192
Misajon *vs.* Feranil, 483 Phil.340 (2004) 614
Mobilia Products, Inc. *vs.* Umezawa, 493 Phil. 85, 106 (2005) 494
National Power Corp. *vs.* City of Cabanatuan, 49 Phil. 233 (2003) 804
Navales *vs.* Navales, G.R. No. 167523, June 27, 2008, 556 SCRA 272, 285 333
Navarro *vs.* COMELEC, G.R. No. 106019, Dec. 17, 1993, 228 SCRA 596, 600 559
Navarro, Jr. *vs.* Cecilio-Navarro, G.R. No. 162049, April 13, 2007, 521 SCRA 121, 130 271
Neplum, Inc. *vs.* Orbeso, G.R. No. 141986, July 11, 2002, 384 SCRA 467, 481-482; 433 Phil. 844, 864 (2002) 124
Nepomuceno *vs.* Lopez, G.R. No. 181258, Mar. 18, 2010, 616 SCRA 145, 153 334
New Rural Bank of Guimba (N.E.), Inc. *vs.* Abad, G.R. No. 161818, Aug. 20, 2008, 562 SCRA 503, 509-510 104
Neypes *vs.* CA, G.R. No. 241524, April 14, 2005, 469 SCRA 633 167
NFD International Manning Agents, Inc. *vs.* National Labor Relations Commission, 336 Phil. 466, 474 (1997) 184
Nisda *vs.* Sea Serve Maritime Agency, G.R. No. 179177, July 23, 2009, 593 SCRA 668, 689 180
NM Rothschild & Sons (Australia) *vs.* Lepanto Consolidated Mining Company, G.R. No. 175799, Nov. 28, 2011, 661 SCRA 328 434
Ocampo *vs.* House of Representatives Electoral Tribunal, G.R. No. 158466, June 15, 2004, 432 SCRA 144 580
Office of the President *vs.* CA, 413 Phil. 711 (2001) 382
Oliveros *vs.* Sison, A.M. No. RTJ-07-2050, June 27, 2007, 525 SCRA 795, 803 365
Ong *vs.* CA, 339 Phil. 109, 119 (1997) 335
Ong *vs.* Genio, G.R. No. 182336, Dec. 23, 2009, 609 SCRA 188, 195, 197 ..... 125, 492

Page

Oriental Shipmanagement Co., Inc. *vs.* Bastol, G.R. No. 186289, June 29, 2010, 622 SCRA 352, 377 184
Pada-Kilario *vs.* CA, G.R. No. 134329, Jan. 19, 2000, 322 SCRA 481, 492-493; 379 Phil. 515, 529 (2000) 82
Pagadora *vs.* Ilao, G.R. No. 165769, Dec. 12, 2011, 662 SCRA 14, 25, 29-33 ..... 162, 371
Pagkatipunan *vs.* CA, G.R. No. 129682, Mar. 21, 2002, 379 SCRA 621, 627 293
Pagtalunan *vs.* Dela Cruz Vda. de Manzano, G.R. No. 147695, Sept. 13, 2007, 533 SCRA 242, 254 658-659
Pangasinan Electric Cooperative I (PANELCO I) *vs.* Montemayor, A.C. No. 5739, Sept. 12, 2007, 533 SCRA 1, 9 602
Pang-oden *vs.* Leonen, G.R. No. 138939, Dec. 6, 2006, 510 SCRA 93, 102; 539 Phil. 148, 157 (2006) 84
Panolino *vs.* Tajala, G.R. No. 183616, June 29, 2010, 622 SCRA 309, 315 167
Parilla *vs.* Pilar, G.R. No. 167680, Nov. 30, 2006, 509 SCRA 420, 427; 538 Phil. 909, 917 (2006) 82
Paris *vs.* Alfeche, 416 Phil. 473, 488 (2001) 382
Parungao *vs.* Sandiganbayan, 274 Phil. 451, 460 (1991) 817
PCIBank *vs.* CA, 403 Phil. 361, 388 (2001) 31
People *vs.* Abedin, G.R. No. 179936, April 11, 2012 ..... 227, 780
Abonada, 251 Phil. 482, 494 (1989) 768
Abulon, G.R. No. 174473, Aug. 17, 2007, 530 SCRA 675, 702 687
Agcanas, G.R No. 174476, Oct. 11, 2011, 658 SCRA 842 ..... 203, 854
Ahmad, 464 Phil. 848, 869-870 (2004) 786
Albalate, Jr., G.R. No. 174480, Dec. 18, 2009, 608 SCRA 535, 546 696
Alberca, 327 Phil. 398 (1996) 225
Alfonso, G.R. No. 182094, Aug. 18, 2010, 628 SCRA 431, 452 697
Alfonso, 237 Phil. 467, 479 (1987) 768
Almeda, 209 Phil. 393, 398 (1983) 717
Alverio, G.R. No. 194259, Mar. 16, 2011, 645 SCRA 658, 670 407

Page

Amansec, G.R. No. 186131, Dec. 14, 2011 227
Ambray, 303 SCRA 709 839
Andres, G.R. No. 193184, Feb. 7, 2011 216
Anticamara, G.R. No. 178771, June 8, 2011,
651 SCRA 489, 520-521 421
Apa-ap, Jr., G.R. No. 110993, Aug. 17, 1994,
235 SCRA 468, 473 716
Apattad, G.R. No. 193188, Aug. 10, 2011 217-218
Arbalate, G.R. No. 183457, Sept. 17, 2009,
600 SCRA 239, 255 194
Arcillas, G.R. No. 181491, July 30, 2012 841
Arnan, G.R. No. 72608, June 30, 1993,
224 SCRA 37, 43 768
Arpon, G.R. No. 183563, Dec. 14, 2011,
662 SCRA 506, 529 202
Arriola, G.R. No. 187736, Feb. 8, 2012 227
Aure, G.R. No. 180451, Oct. 17, 2008,
569 SCRA 836, 864 404
Aycardo, G.R. No. 168299, Oct. 6, 2008,
567 SCRA 523, 534 404
Balonzo, G.R. No. 176153, Sept. 21, 2007,
533 SCRA 760 845
Baniaga, et al., G.R. No. L-14905, Jan. 28, 1961,
1 SCRA 283 217
Bara, G.R. No. 184808, Nov. 14, 2011 227
Barcelona, G.R. No. 82589, Oct. 31, 1990,
191 SCRA 100, 106 768
Barita, 381 Phil. 832, 846-847 (2000) 786
Bautista, G.R. No. 177320, Feb. 22, 2012 227
Bautista, G.R. No. 191266, June 6, 2011 215
Beduya, G.R. No. 175315, Aug. 9, 2010,
627 SCRA 275, 284 193
Bodoso, G.R. No. 188129, July 5, 2010,
623 SCRA 580, 605-606 846
Brioso, G.R. No. 182517, Mar. 13, 2009,
581 SCRA 485, 493 ..... 687, 689
Buenaventura, G.R. No. 184807, Nov. 23, 2011 227
Bulan, 498 Phil. 586, 599 (2005) 771

Page

Bustamante, G.R. No. 172357, Mar. 19, 2010,
616 SCRA 203, 216 192
CA, G.R. No. 132396, Sept. 23, 2002,
389 SCRA 461, 475 125
Cabalquinto, 533 Phil. 703 (2006) 698
Caisip, 352 Phil. 1058, 1065 (1998) 203, 854
Cardenas, G.R. No. 190342, Mar. 21, 2012 227
Casipit, G.R. No. 88229, May 31, 1994,
232 SCRA 638, 642 768
Catubig, 416 Phil. 102, 119-120 (2001) 422
Cerilla, G.R. No. 177147, Nov. 28, 2007,
539 SCRA 251, 261-262 716-717
Chua Uy, 384 Phil. 70, 85-86 (2000) 786
Clores, 263 Phil. 585, 591 (1990) 416
Combate, G.R. No. 189301, Dec. 15, 2010,
638 SCRA 797 215-216
Concillado, G.R. No. 181204, Nov. 28, 2011,
661 SCRA 363, 384 421
Constantino, G.R. No. 109119, Aug. 16, 1994,
235 SCRA 384, 391 786
Cutura, G.R. No. L-12702, Mar. 30, 1962, 4 SCRA 663 724
Davatos, G.R. No. 93322, Feb. 4, 1994,
229 SCRA 647, 652 768
De Leon, G.R. No. 186471, Jan. 25, 2010,
611 SCRA 118, 128 780
De los Santos, Jr., G.R. No. 186499, Mar. 21, 2012 854
De Mesa, G.R. No. 188570, July 6, 2010,
624 SCRA 248 220
Del Mundo, 539 Phil. 609, 617 (2006) 780
Del Mundo, G.R. Nos. 119964-69, Sept. 20, 1996,
262 SCRA 266 240
Dela Cruz, G.R. No. 177572, Feb. 26, 2008,
546 SCRA 703, 718 404
Denoman, G.R. No. 171732, Aug. 14, 2009,
596 SCRA 257, 267 219
Devaras, 147 Phil. 664, 673 (1971) 717
Diaz, 328 Phil. 794, 806 (1996) 464

Page

Dichoso, G.R. Nos. 101216-18, June 4, 1993,
223 SCRA 174, 187 786
Dinglasan, G.R. No. 101312, Jan. 28, 1997,
267 SCRA 26, 39 215
Dion, G.R. No. 181035, July 4, 2011,
653 SCRA 117, 133 769-770
Dollano, Jr., G.R. No. 188851, Oct. 19, 2011,
659 SCRA 740, 753-755 ..... 203, 844
Dolorido, G.R. No. 191721, Jan. 12, 2011,
639 SCRA 496, 502-503 417
Duca, G.R. No. 171175, Oct. 9, 2009,
603 SCRA 159, 166 123
Ducabo, G.R. No. 175594, Sept. 28, 2007,
534 SCRA 458, 467 842
Dulay, 468 Phil. 56, 65 (2004) 786
Dumadag, G.R. No.176740, June 22, 2011,
652 SCRA 535, 538-539 ..... 399, 682
Escarlos, 457 Phil. 580, 598 (2003) 722
Escleto, G.R. No. 183706, April 25, 2012 ..... 416, 420-422
Esoy, G.R. No. 185849, April 7, 2010,
617 SCRA 552, 564 192
Esperanza, 453 Phil. 54, 75-76 (2003) 696
Espino, Jr., G.R. No. 176742, June 17, 2008,
554 SCRA 682, 702 844
Espinosa, 476 Phil. 42, 62 (2004) 771
Estoya, G.R. No. 153538, May 19, 2004,
428 SCRA 544 217
Estrada, G.R. No. 178318, Jan. 15, 2010,
610 SCRA 222, 233 ..... 193, 845
Fabito, G.R. No. 179933, April 16, 2009,
585 SCRA 591, 614 704
Felan, G.R. No. 176631, Feb. 2, 2011,
641 SCRA 449, 453-454 689
Flores, G.R. No. 177355, Dec. 15, 2010,
638 SCRA 631, 643 697
Fontanilla, G.R. No. 177743, Jan. 25, 2012,
664 SCRA 150, 158 ..... 417, 421
Gabrino, G.R. No. 189981, Mar. 9, 2011,
645 SCRA 187 216

Page

Garcia, G.R. No. 174479, June 17, 2008,
554 SCRA 616, 637 724
Gingos, G.R. No. 176632, Sept. 11, 2007,
532 SCRA 670, 683 ..... 203, 854
Gum-Oyen, G.R. No. 182231, April 16, 2009,
585 SCRA 668, 678 222
Hermocilla, G.R. No. 175830, July 10, 2007,
527 SCRA 296, 304-305 696
Hernandez, G.R. Nos. 67690-91, Jan. 21, 1992,
205 SCRA 213, 220-221 716
Israel, G.R. No. 97027, Mar. 11, 1994,
231 SCRA 155, 161-162 716
Javier, 370 Phil. 128, 139 (1999) 689
Juntilla, 373 Phil. 351, 365 (1999) 768
Lacson, 448 Phil. 317 (2003) 476
Lacson, 432 Phil. 113 (2002) 476
Laguio, Jr., G.R. No. 128587, Mar. 16, 2007,
518 SCRA 393, 403 126
Laog, G.R. No. 178321, Oct. 5, 2011,
658 SCRA 654, 671 202
Lapiz, 394 Phil. 160, 173 (2000) 844
Lardizabal, G.R. No. 89113, Nov. 29, 1991,
204 SCRA 320, 329 769
Laurio, G.R. No. 182523, Sept. 13, 2012 418
Ledesma, 320 Phil. 215, 221-222 (1995) 366
Lee Hoi Ming, 459 Phil. 187, 194 (2003) 786
Legaspi, G.R. No. 173485, Nov. 23, 2011 227
Leonardo, G.R. No. 181036, July 6, 2010,
624 SCRA 166, 197 193
Lizada, 444 Phil. 67 (2003) 705
Malate, G.R. No. 185724, June 5, 2009,
588 SCRA 817, 829 ..... 203, 854
Managaytay, 364 Phil. 800, 807 (1999) 768
Manalili, G.R. No. 184598, June 23, 2009,
590 SCRA 695, 716 696
Mantalaba, G.R. No. 186227, July 20, 2011,
654 SCRA 188 223

Page

Mariacos, G.R. No. 188611, June 21, 2010,
621 SCRA 327 220
Mariano, G.R. No. 168693, June 19, 2009,
590 SCRA 74, 94 407
Mateo, G.R. Nos. 147678-87, July 7, 2004,
433 SCRA 640 402
Mendoza, G.R. No. 186387, Aug. 31, 2011,
656 SCRA 616, 622 139
Midtomod, 283 SCRA 395 231
Miguel, G.R. No. 180505, June 29, 2010,
622 SCRA 210, 227 193
Mingming, G.R. No. 174195, Dec. 10, 2008,
573 SCRA 509, 534-535 705
Miranda, G.R. No. 176634, April 5, 2010,
617 SCRA 298, 316-317 771
Mongado, G.R. No. L-24877, June 30, 1969,
28 SCRA 642 226
Morales, G.R. No. 188608, Feb. 9, 2011,
642 SCRA 612, 619 139
Napud, Jr., 418 Phil. 268, 279-280 (2001) 765
Narca, 341 Phil. 696, 713-714 (1997) 715
Nicart, G.R. No. 182059, July 4, 2012 227
Nugas, G.R. No. 172606, Nov. 23, 2011,
661 SCRA 159, 168 417
Oco, 458 Phil. 815, 851 (2003) 724
Padilla, G.R. No. 167955, Sept. 30, 2009,
601 SCRA 385, 397 696
Pajes, G.R. No. 184179, April 12, 2010,
618 SCRA 147, 161 193
Palgan, G.R. No. 186234, Dec. 21, 2009,
608 SCRA 725, 731 695
Pama, G.R. Nos. 90297-98, Dec. 11, 1992,
216 SCRA 385, 403 716
Pambid, G.R. No. 192237, Jan. 26, 2011 220
Pangilinan, G.R. No. 183090, Nov. 14, 2011,
660 SCRA 16, 32 844
Paringit, G.R. No. 83947, Sept. 13, 1990,
189 SCRA 478 767
Pascua, G.R. 194580, Aug. 31, 2011 215

Page

Perez, G.R. No. 182924, Dec. 24, 2008,
575 SCRA 653, 678-679 403
Platilla, 428 Phil. 520, 531 (2002) 844
Plazo, G.R. No. 120547, Jan. 29, 2001,
350 SCRA 433, 442-443 720
Poras, G.R. No. 177747, Feb. 16, 2010, 6
12 SCRA 624, 645 705
Presas, G.R. No. 182525, Mar. 2, 2011 221
Pruna, 439 Phil. 440, 470 (2002) 841
Quiamanlon, G.R. No. 191198, Jan. 26, 2011 216
Rabanal, G.R. No. 146687, Aug. 22, 2002,
387 SCRA 685 227
Rabanes, G.R. No. 93709, May 8, 1992, 208 SCRA 768 768
Ramos, G.R. No. 198017, June 13, 2012 ..... 201, 853
Rebucan, G.R. No. 182551, July 27, 2011,
654 SCRA 726, 758 421
Rellota, G.R. No. 168103, Aug. 3, 2010,
626 SCRA 422, 433 202
Rollan, G.R. No. 175835, July 13, 2010,
625 SCRA 57, 63 193
Salafranca, G.R. No. 173476, Feb. 22, 2012,
666 SCRA 501, 517 422
Salazar, G.R. No. 181900, Oct. 20, 2010,
634 SCRA 307, 319-320 842
Saludes, 451 Phil. 719, 726-727 (2003) 786
Saludo, G.R. No. 178406, April 6, 2011, 6
47 SCRA 374, 387 398
Sanchez, G.R. No. 74740, Aug. 28, 1992,
213 SCRA 70, 79 717
Sancholes, G.R. Nos. 110999 & 111000,
April 18, 1997 217
Santiago, G.R. No. 175326, Nov. 28, 2007,
539 SCRA 198 226
Santiago, G.R. No. 80778, June 20, 1989,
174 SCRA 143; 255 Phil. 851 (1989) 123-124
Sapigao, Jr., G.R. No. 178485, Sept. 4, 2009,
598 SCRA 416, 425-426 770

Page

Sarmiento, G.R. No. 126145, April 30, 2001,
357 SCRA 447, 457; 409 Phil. 515, 528 (2001) 720
Serrano, G.R. No. 179038, May 6, 2010,
620 SCRA 327, 340 780
Silvano, G.R. No. 125923, Jan. 31, 2001,
350 SCRA 650, 657; 403 Phil. 598, 606 (2001) 720
Simon, G.R. No. 93028, July 29, 1994, 234 SCRA 555 224
Sitco, G.R. No. 178202, May 14, 2010,
620 SCRA 561, 574-575 142
Soriano, G.R. No. 173795, April 3, 2007,
520 SCRA 458, 468 786
Sorongon, 445 Phil. 273, 278 (2003) 769
Sumingwa, G.R. No. 183619, Oct. 13, 2009,
603 SCRA 638, 652 689
Tabanggay, 390 Phil. 67, 91 (2000) 696
Tabio, G.R. No. 179477, Feb. 6, 2008,
544 SCRA 156, 166 202
Tagana, G.R. No. 133027, Mar. 4, 2004,
424 SCRA 620, 634; 468 Phil. 784, 800 (2004) 719
Tagun, 427 Phil. 389, 403-404 (2002) 846
Tamayo, G.R. No. 187070, Feb. 24, 2010,
613 SCRA 556, 564 222
Tampos, 455 Phil. 844, 858 (2003) 695
Taneo, G.R. No. 87236, Feb. 8, 1993,
218 SCRA 494, 506 717
Tejero, G.R. No. 187744, June 20, 2012 853
Tranca, G.R. No. 110357, Aug. 17, 1994,
235 SCRA 455, 462-463 786
Tubat, G.R. No. 183093, Feb. 1, 2012,
664 SCRA 712, 719-720 ..... 202, 399
Ulama, G.R. No. 186530, Dec. 14, 2011 227
Valenzuela, G.R. No. 182057, Feb. 6, 2009,
578 SCRA 157, 169-170 695
Veluz, G.R. No. 167755, Nov. 28, 2008,
572 SCRA 500, 511 405
Ventura, 114 Phil. 162, 167 (1962) 465
Vicente, 452 Phil. 986, 998 (2003) 721
Vicente, Jr., G.R. No. 188847, Jan. 31, 2011 222

Page

Villacorta, G.R. No. 186412, Sept. 7, 2011,
657 SCRA 270, 279 723
Villamin, G.R. No. 175590, Feb. 9, 2010,
612 SCRA 91, 106 222
Vinecario, 465 Phil. 192, 215 (2004) 786
Watimar, 392 Phil. 711, 724 (2000) 844
Perez *vs.* CA, G.R. No. 162580, Jan. 27, 2006,
480 SCRA 411, 416 559
Pesca *vs.* Pesca, G.R. No. 136921, April 17, 2001,
356 SCRA 588 ..... 248, 255
Petron Corporation *vs.* Tiangco, G.R. No. 158881,
April 16, 2008, 551 SCRA 484, 493-494 393
Philippine Acetylene Co., Inc. *vs.* Commissioner
of Internal Revenue, G.R. No. 19707, Aug. 17, 1967,
10 SCRA 1056 389
Philippine National Bank *vs.* Heirs of Estanislao Militar,
G.R. Nos. 164801 & 165165, June 30, 2006,
494 SCRA 308, 319 ..... 756, 758
Philippine National Bank *vs.* Rocamora, G.R. No. 164549,
Sept. 18, 2009, 600 SCRA 395, 406-407 19
Philippine Transmarine Carriers *vs.* National Labor
Relations Commission, 405 Phil. 487, 495 (2001) 186
Pimping *vs.* COMELEC, Nos. 69765-67, 69773-75 & 69846,
Nov. 19, 1985, 140 SCRA 192, 222 559
PLDT *vs.* City of Davao, 447 Phil. 571, 591-592 (2003) 805
PNB *vs.* Pike, 507 Phil. 322, 340 (2005) 31
PNB *vs.* Spouses Cheah Chee Chong and Ofelia
Camacho Cheah, G.R. No. 170865, April 25, 2012 34
Pormento, Sr. *vs.* Pontevedra, A.C. No. 5128, Mar. 31, 2005,
454 SCRA 167, 177 606
Premiere Development Bank *vs.* CA, G.R. Nos. 128122,
128184 & 128229, Mar. 18, 2005, 453 SCRA 630, 654 756
Presidential Commission on Good Government *vs.*
Sandiganbayan, 418 Phil. 8, 20 (2001) 523
Prieto *vs.* Corpuz, A.C. No. 6517, Dec. 6, 2006,
510 SCRA 1 609
Provincial Fiscal of Nueva Ecija *vs.* Court of First
Instance of Nueva Ecija, 79 Phil. 165, 168 (1947) 688

Page

Punzalan *vs.* COMELEC, 352 Phil. 538, 556 (1998) 594
Punzalan *vs.* COMELEC, G.R. Nos. 126669, 127900, 128800 and 132435, April 27, 1998, 289 SCRA 702, 716 559
Quezon City *vs.* ABS-CBN Broadcasting Corp., G.R. No. 166408, Oct. 6, 2008, 568 SCRA 496, 515 395
Quijano *vs.* Development Bank of the Philippines, G.R. No. L-26419, Oct. 16, 1970, 35 SCRA 270, 277 285
Raquel-Santos *vs.* CA, G.R. Nos. 174986, 175071 & 181415, July 7, 2009, 592 SCRA 169, 190-191 656
Razon *vs.* People, G.R. No. 158053, June 21, 2007, 525 SCRA 284, 296 351
Razon, Jr. *vs.* Tagitis, G.R. No. 182498, Dec. 3, 2009, 606 SCRA 598, 687 542
Re: Financial Report on the Audit Conducted in the MCTC Apalit- San Simon, Pampanga, A.M. No. 08-1-30-MCTC, April 10, 2008, 551 SCRA 58 614
Re: Misappropriation of the Judiciary Fund Collections by Ms. Juliet C. Banag, Clerk of Court, MTC, Plaridel, Bulacan, 465 Phil. 24 (2004) 614
Republic *vs.* Alconaba, G.R. No. 155012, April 14, 2004, 427 SCRA 611, 617 287
CA, G.R. No. 108763, Feb. 13, 1997, 268 SCRA 198, 207 ..... 246, 264
CA, 331 Phil. 1070 (1996) 308
CA, G.R. No. 122256, Oct. 30, 1996, 263 SCRA 758 310
CA, G.R. No. 61647, Oct. 12, 1984, 132 SCRA 514, 520 283
Cacho, G.R. 173401, July 7, 2010, 624 SCRA 360, 471-491 435
Dagdag, G.R. No. 109975, Feb. 9, 2001, 351 SCRA 425, 431 ..... 248, 267
Estate of Hans Menzi, 512 Phil. 425, 430 (2005) 501, 505
Galang, G.R. No. 168335, June 6, 2011, 650 SCRA 524, 540 271
Heirs of Juan Fabio, G.R. No. 159589, Dec. 23, 2008, SCRA 51, 73 105
Malabanan, G.R. No. 169067, Oct. 6, 2010, 632 SCRA 338, 345 732

Page

Manimtim, G.R. No. 169599, Mar. 16, 2011,
645 SCRA 520, 532-533 107
Medida, G.R. No. 195097, Aug. 13, 2012 109
Orfinada, Sr., 485 Phil. 18 (2004) 72
Partisala, G.R. No. L-61997, Nov. 15, 1982,
118 SCRA 370, 373 125
Sandiganbayan (First Division),
310 Phil. 401, 503 (1995) 524
Sandiganbayan (Fourth Division),
426 Phil. 104 (2002) 502, 521
Sandiganbayan (Second Division), G.R. No. 89425,
Feb. 25, 1992, 206 SCRA 506, 518 524
Sandiganbayan, 334 Phil. 472, 486 (1997) 524
Sandiganbayan, 355 Phil. 181, 207 (1998) 524
Sandiganbayan, 453 Phil. 1059, 1129 (2003) 516
Sarmiento, G.R. No. 169397, Mar. 13, 2007,
518 SCRA 250, 259-260 295
Sayo, G.R. No. 60413, Oct. 31, 1990, 191 SCRA 71, 74 292
T.A.N. Properties, Inc., G.R. No. 154953,
June 26, 2008, 555 SCRA 477, 489-491 ..... 107-108, 296
Republic Glass Corporation *vs.* Qua,
479 Phil. 393, 407 (2004) 516
Reyes *vs.* CA, 378 Phil. 232, 237-238 (1999) 798
Reyes *vs.* Mosqueda, 99 Phil. 241 (1956) 43
Reyes-Tabujara *vs.* CA, G.R. No. 172813, July 20, 2006,
495 SCRA 844, 857-858 595
Rivera *vs.* CA, G.R. No. 115625, Jan. 23, 1998,
284 SCRA 673, 681 283
Rivera *vs.* CA, G.R. No. 107903, May 22, 1995,
244 SCRA 218, 222 289
Roca *vs.* CA, G.R. No. 114917, Jan. 29, 2001,
350 SCRA 414, 422 720
Rodica *vs.* Lazaro, A.C. No. 9259, Aug. 23, 2012 607
Rodriguez *vs.* Gadiane, G.R. No. 152903, July 17, 2006,
495 SCRA 368, 372; 527 Phil. 691, 697 (2006) 123
Rodriguez *vs.* Salvador, G.R. No. 171972, June 8, 2011,
651 SCRA 429, 437 368-369

Page

Rosales *vs.* Castelltort, 509 Phil. 137, 147 (2005) 661
Rubrico *vs.* Macapagal-Arroyo, G.R. No. 183871,
Feb. 18, 2010, 613 SCRA 233, 256 542
Saint Louis University *vs.* Cordero, G.R. No. 144118,
July 21, 2004, 434 SCRA 575, 584 234
San Miguel Corporation *vs.* CA, G.R. No. 57667,
May 28, 1990, 185 SCRA 722, 725 289
Sandejas *vs.* Ignacio, G.R. No. 155033, Dec. 19, 2007,
541 SCRA 61, 82 31
Santeco *vs.* Avance, A.C. No. 5834, Dec. 11, 2003,
418 SCRA 6 603
Santiago *vs.* CA, 356 Phil. 647, 667 (1998) 366
Santiago *vs.* Pacbasin Shipmanagement, Inc.,
G.R. No. 194677, April 18, 2012 445
Santos *vs.* CA, G.R. No. 112019, Jan. 4, 1995,
240 SCRA 20 ..... 249, 266
CA, G.R. No. 61218, Sept. 23, 1992, 214 SCRA 162, 163 436
Orda, Jr., G.R. No. 189402, May 6, 2010,
620 SCRA 375, 383 ..... 482, 493
Vda. De Cerdenola, 115 Phil. 813, 819 (1962) ` 367
Schulz *vs.* Flores, A.C. No. 4219, Dec. 8, 2003,
417 SCRA 159 603
Seagull Maritime Corp. *vs.* Dee, G.R. No. 165156,
April 2, 2007, 520 SCRA 109, 188 182
Secretary of National Defense *vs.* Manalo,
G.R. No. 180906, Oct. 7, 2008, 568 SCRA 1, 38 ..... 540, 545
Secretary of the Department of Environment and
Natural Resources *vs.* Yap, G.R. No. 167707 and
G.R. No. 173775, Oct. 8, 2008, 568 SCRA 164, 192-193 294
Selegna Management and Development Corporation *vs.*
United Coconut Planters Bank, G.R. No. 165662,
May 3, 2006, 489 SCRA 125, 127 6
Seriña *vs.* Caballero, G.R. No. 127382, Aug. 17, 2004,
436 SCRA 593, 604 289
Serra *vs.* Mumar, G.R. No. 193861, Mar. 14, 2012 192
Serrano *vs.* Galant Maritime Services, Inc., G.R. No. 151833,
Aug. 7, 2003, 408 SCRA 523, 526 16

Page

Sevilleno *vs.* Carilo, G.R. No. 146454, Sept. 14, 2007, 533 SCRA 385, 388 732
Signey *vs.* Social Security System, G.R. No. 173582, Jan. 28, 2008, 542 SCRA 629, 639 184
Silkair (Singapore) Pte, Ltd. *vs.* Commissioner of Internal Revenue, G.R. 173594, Feb. 6, 2008, 544 SCRA 100, 112 393
Social Security Commission *vs.* Rizal Poultry and Livestock Association, Inc., G.R. No. 167050, June 1, 2011, 650 SCRA 50, 56-57 59
Soliman *vs.* Pampanga Sugar Development Company (PASUDECO), Inc., G.R. No. 169589, June 16, 2009, 589 SCRA 236, 246 368
Sombilon, Jr. *vs.* People, G.R. No. 175528, Sept. 30, 2009, 601 SCRA 405, 414 705
Soriano *vs.* Mendoza-Arcega, G.R. No. 175473, Jan. 31, 2011, 641 SCRA 51, 57-58 351
Spouses Abrajano *vs.* Heirs of Augusto F. Salas, Jr., 517 Phil. 663, 674-675 (2006) 485
Spouses Angeles *vs.* Spouses Tan, 482 Phil. 635, 646 (2004) 336
Spouses Daisy and Socrates M. Arevalo *vs.* Planters Development Bank, et al., G.R. No. 193415, April 18, 2012 ..... 314, 316
Spouses Atuel *vs.* Spouses Valdez, 451 Phil. 631, 643 (2003) 357, 369, 372
Spouses Chan *vs.* Judge Lantion, 505 Phil. 159, 164 (2005) 623
Spouses Macasaet *vs.* Spouses Macasaet, 482 Phil. 853, 871-872 (2004) 662
St. James College of Parañaque *vs.* Equitable PCI Bank, G.R. No. 179441, Aug. 9, 2010, 627 SCRA 328, 350 20
Sta. Monica Industrial and Development Corporation *vs.* Department of Agrarian Reform Regional Director for Region III, G.R. No. 164846, June 18, 2008, 555 SCRA 97, 106 452
Suarez *vs.* CA, G.R. No. 91133, Mar. 22, 1993, 220 SCRA 274 235

Page

Suazo *vs.* Suazo, G.R. No. 164493, Mar. 12, 2010, 615 SCRA 154, 176 270-271
Suliguin *vs.* Commission on Elections, G.R. No. 166046, Mar. 23, 2006, 485 SCRA 219, 233 594
Suyat *vs.* Gonzales-Tesoro, 513 Phil. 85, 95 (2005) 520
Swire Agricultural Products, Inc. *vs.* Hyundai Corporation, 499 Phil. 73, 79 (2005) 353
Tan *vs.* Gullas, 441 Phil. 622, 632 (2002) 45
Tapuz *vs.* Del Rosario, .R. No. 182484, June 17, 2008, 554 SCRA 768, 784 540
Technogas Philippines Manufacturing Corp. *vs.* CA, 335 Phil. 471, 487 (1997) 666-667
Testate Estate of the late Alipio Abada *vs.* Abaja, G.R. No. 147145, Jan. 31, 2005, 450 SCRA 264, 276 428
Thornton *vs.* Thornton, 480 Phil. 224 (2004) 484
Ting *vs.* Velez-Ting, G.R. No. 166562, Mar. 31, 2009, 582 SCRA 694, 709 252
Toledo *vs.* People, 482 Phil. 292, 301-309 (2004) 419
Torres, Jr. *vs.* Aguinaldo, G.R. No. 164268, June 28, 2005, 461 SCRA 599 644
Trans Middle East (Phils.) *vs.* Sandiganbayan, 524 Phil. 1, 22 (2006) 523
Tuatis *vs.* Escol, G.R. No. 175399, Oct. 27, 2009, 604 SCRA 471 663-664
Tulfo *vs.* People, G.R. Nos. 161032 and 161176, Sept. 16, 2008, 565 SCRA 283, 314-315 128
U.S. *vs.* Ocampo, 18 Phil. 1 (1910) 128
United States *vs.* Manluco, 28 Phil. 360, 361 (1914) 646
Vda. De Formoso *vs.* Philippine National Bank, G.R. No. 154704, June 1, 2011, 650 SCRA 35, 45-46 ..... 161, 747-748
Velayo-Fong *vs.* Spouses Velayo, 539 Phil. 377 (2006) 44
Vergara *vs.* Hammonia Maritime Services, Inc., G.R. No. 172933, Oct. 6, 2008, 567 SCRA 610, 628 442
Villalon *vs.* Villalon, G.R. No. 167206, Nov. 18, 2005, 475 SCRA 572, 582 272
Villamor *vs.* People, G.R. Nos. 172110 & 181804, Aug. 1, 2011, 655 SCRA 30, 38 350

Page

Yambao *vs.* Republic, G.R. No. 184063, Jan. 24, 2011,
640 SCRA 355, 367 266
Yap *vs.* CA (Special Eleventh Division), et al.,
G.R. No. 186730, June 13, 2012 315
Yu *vs.* Lim, G.R. No. 182291, Sept. 22, 2010,
631 SCRA 172, 184 315
Yu *vs.* Tatad, G.R. No. 170979, Feb. 9, 2011,
642 SCRA 421 168
Yupangco Cotton Mills, Inc. *vs.* Mendoza,
494 Phil. 391, 416 (2005) 647
Zalameda *vs.* People, G.R. No. 183656, Sept. 4, 2009,
598 SCRA 537, 549 785

II. FOREIGN CASES

Cushman *vs.* Commissioners' Court of Blount County,
49 So. 311, 312, 160 Ala. 227 (1909) 14
Ex parte Hennies, 34 So.2d 22, 23,
33 Ala. App. 377 (1948) 14
Greater Miami Development Corp. *vs.* Pender,
194 So. 867, 868, 142 Fla. 390 (1940) 15
People *vs.* Pavlic, 227 Mich., 563, N.W. 371, 35 ALR 820
Schwander *vs.* Feeney's Del. Super.,
29 A.2d 369, 371 (1942) 14
Toulouse *vs.* Board of Zoning Adjustment,
87 A.2d 670, 673, 147 Me. 387 (1952) 15
Worcester Gas Light Co. *vs.* Commissioners of Woodland
Water Dist. in Town of Auburn, 49 N.E.2d 447, 448,
314 Mass. 60 (1943) 15

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

1987 Constitution
Art. III, Sec. 1 169
Art. VIII, Sec. 15 623

Page

Art. X, Sec. 5 799
Art. XII, Sec. 2 295

B. STATUTES

Administrative Code 1987
Book IV, Title III, Chapter 12, Sec. 35 (1) 122
Batas Pambansa
B.P. Blg. 22 ..... 245, 249
B.P. Blg. 129, Sec. 19 (2) 436
B.P. Blg. 881, Secs. 202-203 585
Art. IX, Sec. 72 560
Art. XVIII, Sec. 211 (24) 558, 560
Civil Code, New
Arts. 19, 21 742
Art. 24 99
Art. 26 742
Arts. 419-420 290
Art. 434 77-78
Art. 448 ..... 81-82, 371, 660-661
Art. 453 663
Art. 457 ..... 280-282, 285
Art. 461 293
Art. 502 ..... 285, 290
Art. 546 ..... 81-82, 664, 667
Art. 548 ..... 664, 667
Art. 805 ..... 425, 427
Art. 809 425-427
Art. 1163 56
Art. 1167 57
Art. 1186 56
Art. 1256 511
Art. 1306 61
Art. 1377 42
Art. 1602 452
Art. 1678 360
Art. 2208 733
Arts. 2209, 2212 84
Art. 2230 422

Page

Code of Judicial Conduct
Canon 1, Rule 1.02 624
Canon 3, Rule 3.05 624
Rule 3.12 485
Code of Professional Responsibility
Canon 15 ..... 599, 604
Rules 15.01-15.03 605
Canons 17-18 ..... 599, 602
Commonwealth Act
C.A. No. 141 99-100
Sec. 48 (b) 95, 105
Executive Order
E.O. No. 228 ..... 378-379, 382
E.O. No. 229 382
Family Code
Art. 36 ..... 245, 248, 256, 260, 263
Art. 55 ..... 249, 255
Art. 55 (10) 264, 272
Art. 68 ..... 254, 266
Arts. 172, 175 334
Labor Code
Art. 192 445
Art. 192 (c) (1) 442
Local Government Code
Secs. 131 (d), 133 (a) 800
Sec. 137 ..... 797, 805
Sec. 143 (h) 797, 800, 805, 811-812
Sec. 151 ..... 794, 807, 809, 811
Sec. 187 ..... 792, 795
Sec. 193 ..... 792, 805
National Internal Revenue Code (Tax Code)
Sec. 22 (N) 394
Sec. 110 (B) 395
Secs. 129, 130 (A) 393
Sec. 130 (A) (1) 390
Sec. 130 (A) (2) 390, 393
Sec. 130 (D) 387-388, 390, 395
Sec. 131 (A) 393
Sec. 204 (C) 394

Page

Omnibus Election Code
Art. XVIII, Sec. 211 557
Penal Code, Revised
Art. 8 192
Art. 11, par. 1 830
Art. 12, par. 4 420
Art. 14, par. 16 831
Art. 22 406
Art. 62 ..... 213, 225-226
par. 1 (a) 225
Art. 63, par. 2 420
Art. 220 ..... 814, 817
Art. 248 420
Art. 249 411
Art. 266-A 686
par. 1 766
par. 2 ..... 687, 698-700, 706
Art. 266-B 203, 405-406, 695, 840
par. 2 766
par. 2 (1) 761
Art. 300 641
Art. 335 686
Art. 336 705
Art. 360 127
Presidential Decree
P.D. No. 27 ..... 359, 373, 376-383, 449
P.D. No. 266 382
P.D. No. 385 21
P.D. No. 902-A, Sec. 5 823
P.D. No. 1073 105
P.D. No. 1529 ..... 94, 99-100
Sec. 14 (1) 106, 281, 287
Republic Act
R.A. No. 1942 95
R.A. No. 3247 794
R.A. No. 3570 795
R.A. No. 3844 ..... 357, 382
R.A. No. 3872 95

Page

R.A. No. 6020 795
R.A. No. 6552 656
Sec. 3 (b) 667
R.A. No. 6657 ..... 302, 313, 359, 373, 377
Sec. 16 303
Sec. 16 (f) 305
Sec. 17 ..... 307, 316-319, 321-322
Sec. 27 451
Sec. 49 384
Sec. 50 309
Sec. 57 ..... 307, 309, 317
Sec. 64 374
Sec. 73 (f) 451
R.A. No. 7160 794
Sec. 40 562
Sec. 133 (a) 792
Sec. 187 799
R.A. No. 7610 ..... 399, 483, 682, 699
R.A. No. 7659 ..... 411, 420
Sec. 23 225-226
R.A. No. 7691 436
R.A. No. 7716 812
R.A. No. 8042 ..... 458, 470
Sec. 6 ..... 462-463, 466, 470
Sec. 7 ..... 462-463, 470
Sec. 9 ..... 463-464, 466, 470
Sec. 10 ..... 468, 470
Secs. 29-30 459-462
R.A. No. 8249 477
R.A. No. 8293, Sec. 170 166
R.A. No. 8353 ..... 405, 686, 766
R.A. No. 8369, Sec. 5 ..... 480, 483
R.A. No. 8424, Sec. 105 811
R.A. No. 8799 823
R.A. No. 9165 ..... 138-139, 213-214, 225
Art. II, Sec. 5 ..... 133, 208, 223, 227, 775
Sec. 11 (3) 133
Sec. 12 ..... 775, 778, 785
Sec. 21 ..... 144, 218, 220

Page

Sec. 3 (o) 225
Sec. 98 223
R.A. No. 9262 ..... 197, 399, 682, 761, 836
R.A. No. 9284 ..... 792, 795-796
Sec. 1 804
R.A. No. 9344, Sec. 51 214
R.A. No. 9346 ..... 194, 203, 406, 838 , 854
Sec. 3 846
R.A. No. 9369 577
R.A. No. 9422 461
R.A. No. 10022 465
Revised Rules of Evidence
Rule 129, Sec. 4 516
Rule 130, Sec. 9 45
Rules on the Writ of Amparo
Sec. 5 541
Secs. 17-18 541
Rules of Court, Revised
Rule 3, Sec. 2 389
Rule 7, Sec. 4 366
Rule 9, Sec. 1 57-58
Rule 16, Sec. 1 825
Rule 18, Sec. 5 634
Rule 38 231
Rule 41, Sec. 2 (a) 428
Rule 43, Sec. 6 (d) 232, 234
Rule 45 ..... 64, 88, 122, 301, 387
Rule 47 434-435
Rule 52 349
Rule 64, Sec. 2 559
Rule 65 ..... 340, 441, 641
Sec. 1 ..... 15, 124
Rule 67, Sec. 2 341
Sec. 4 343
Rule 71, Sec. 3 365
Rule 112, Sec. 6 ..... 487, 491-492
Rule 113, Sec. 5 786

Page

Rule 119, Sec. 23 125
Rule 129, Sec. 1 380
Sec. 3 320
Rule 130, Sec. 37 714
Sec. 42 717
Rule 135, Sec. 5 493
Rule 137, Sec. 1 484
Rule 140, Sec. 9 625
Rules on Civil Procedure, 1997
Rule 7, Secs. 4-5 ..... 160, 745
Rule 13, Sec. 11 674
Rule 19, Sec. 4 673
Rule 39, Sec. 47 (b) 59
Rule 41, Sec. 1 (h) 156
Rule 45 ..... 25, 38, 726, 745, 748
Rule 64, Sec. 2 ..... 551, 571
Rule 65 ..... 155, 498
Rule 70, Sec. 8, pars. 2-3 586
Rules on Criminal Procedure
Rule 119, Sec. 23 126
Rule 122, Sec. 6 167-168

C. OTHERS

Amended Rules on Employees Compensation
Rule X, Sec. 2 (a) 443
COMELEC Rules of Procedure
Rule 18, Sec. 13, par. c 589
Rule 40, Sec. 7 (f) 589
Sec. 18 594
Interim Rules of Procedure for Intra-Corporate Controversies
Rule 1, Sec. 8 825
2002 Internal Rules of the Court of Appeals (IRCA)
Rule 7 349

Page

Rules of Procedure in Election Contest Before the
Court Involving Elective Municipal and Barangay
Officials (A.M. No. 07-4-15-SC)
Rule 9, Sec. 1 586
Sec. 4 ..... 586-588, 591
Secs. 5-6 590

D. BOOKS
(Local)

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