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FROM

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2015

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PHILIPPINE REPORTS
CONTENTS

I. CASES REPORTED xiii

II. TEXT OF DECISIONS 1

III. SUBJECT INDEX 705

IV. CITATIONS 733

PHILIPPINE REPORTS

Page

Acaac, et al., Ramonito O. *vs*. Melquiades D.
Azcuna, Jr., in his capacity as Mayor, et al. 445
Aguila, Eden Villena – Juan Sevilla Salas, Jr. *vs*. 274
Ahorro, et al., Susana – Spouses Carmelito and
Antonia Aldover *vs*. 205
Alawig, SPO1 Alfredo – People of the Philippines *vs*. 104
Aldover, Spouses Carmelito and Antonia *vs*.
Susana Ahorro, et al. 205
Aldover, Spouses Carmelito and Antonia *vs*.
Court of Appeals, et al. 205
Alinao, Gary – People of the Philippines *vs*. 133
Alvarez, substituted by Elizabeth Alvarez-Casajeros, Eric
vs. Golden Tri Bloc, Inc., et al. 415
Asia Brewery, Inc. *vs*. Tunay na Pagkakaisa ng mga
Manggagawa sa Asia (TPMA) 33
Azcuna, Jr., in his capacity as Mayor, et al.,
Melquiades D. – Ramonito O. Acaac, et al. *vs*. 445
Bacatan, Joey – People of the Philippines *vs*. 187
Bagayas, et al., Rogelio – Hilaria Bagayas *vs*. 91
Bagayas, Hilaria *vs*. Rogelio Bagayas, et al. 91
Basilan Agricultural Trading Corporation (BATCO) –
Department of Agrarian Reform, represented by
OIC-Secretary Nasser C. Pangandaman *vs*. 232
Boto, Mary Rose A. *vs*. Senior Assistant City
Prosecutor Vincent L. Villena, et al. 24
Camp John Hay Development Corporation *vs*.
Central Board of Assessment Appeals, represented
by its Chairman Hon. Cesar S. Gutierrez, et al. 543
Carbajosa, Jesus D. *vs*. Judge Hannibal R. Patricio, etc. 534
Cayanan, Marvin – People of the Philippines *vs*. 168
Cedenio *y* Peralta, Jimmy – People of the Philippines *vs*. 393
Central Board of Assessment Appeals, represented
by its Chairman Hon. Cesar S. Gutierrez, et al. –
Camp John Hay Development Corporation *vs*. 543
Chua, Richard *vs*. The Executive Judge, Metropolitan
Trial Court, Manila 698
Citibank, N.A. – Jose U. Pua, et al. *vs*. 1
City of Lapu-Lapu – LBL Industries, Inc. *vs*. 11

Page

Commissioner of Internal Revenue *vs.* Philippine Airlines, Inc. (PAL) 309
Constantino, et al., Oscar *vs.* Heirs of Pedro Constantino, Jr., represented by Asuncion Laquindanum 575
Constantino, Jr., represented by Asuncion Laquindanum, Heirs of Pedro – Oscar Constantino, et al. *vs.* 575
Court of Appeals, et al. – Department of Agrarian Reform, represented by OIC-Secretary Nasser C. Pangandaman *vs.* 232
Court of Appeals, et al. – Spouses Carmelito and Antonia Aldover *vs.* 205
Cuaycong *y* Remonquillo, Jade – People of the Philippines *vs.* 633
De Villa, et al., Marietta O'Hara – Juanito Victor C. Remulla *vs.* 55
Department of Agrarian Reform, represented by OIC-Secretary Nasser C. Pangandaman *vs.* Basilan Agricultural Trading Corporation (BATCO) 232
Department of Agrarian Reform, represented by OIC-Secretary Nasser C. Pangandaman *vs.* Court of Appeals, et al. 232
Endaya, namely, Titus L. Endaya, Heirs of Spouses Eustacio T. and Trinidad L. – Frederick Ventura, et al. *vs.* 621
Enriquez *y* De Los Reyes, Arturo – People of the Philippines *vs.* 352
Espenilla, Carlito – People of the Philippines *vs.* 153
Espera *y* Cuyacot, Michael – People of the Philippines *vs.* 680
First Solid Rubber Industries, Inc. – Reynaldo Hayan Moya *vs.* 77
Frias *y* Galang *a.k.a.* "Tagadog", Ryan – People of the Philippines *vs.* 173
Gambao *y* Esmail, et al., Halil – People of the Philippines *vs.* 507
Golden Tri Bloc, Inc., et al – Eric Alvarez, substituted by Elizabeth-Casajeros *vs.* 415

Page

Government Service Insurance System (GSIS), et al. –
Benito E. Lorenzo *vs.* 596
Guido-Enriquez, Crisanta *vs.* Alicia I. Victorino, et al. 429
Hospicio De San Jose – Analita P. Inocencio,
substituting for Ramon Inocencio (Deceased) *vs.* 399
Ibañez *y* Albante, et al., Edwin –
People of the Philippines *vs.* 370
In Re: Petition to Sign in the Roll of Attorneys,
Michael A. Medado 286
Inocencio, substituting for Ramon Inocencio
(Deceased), Analita P. *vs.* Hospicio De San Jose 399
Land Transportation Franchising and Regulatory
Board, et al. *vs.* Stronghold Insurance Company, Inc. 660
LBL Industries, Inc. *vs.* City of Lapu-Lapu 11
Leal, etc., Nancy R. – Office of the Court
Administrator *vs.* 489
Lorenzo, Benito E. *vs.* Government Service
Insurance System (GSIS), et al. 596
Maglasang, namely, Oscar A. Maglasang, et al.,
Heirs of the Late Spouses Flaviano and Salud
Adaza *vs.* Manila Banking Corporation, now
substituted by First Sovereign Asset Management
(SPV-AMC), Inc. (FSAMI) 256
Maliksi, in his capacity as Governor of the Province
of Cavite, Erineo S. – Juanito Victor C. Remulla *vs.* 55
Manila Banking Corporation, now substituted by
First Sovereign Asset Management (SPV-AMC),
Inc. (FSAMI) – Heirs of the Late Spouses Flaviano
Maglasang and Salud Adaza-Maglasang, namely,
Oscar A. Maglasang, et al., *vs.* 256
Mattus, Mary Ann T. *vs.* Atty. Albert T. Villaseca 478
Moya, Reynaldo Hayan *vs.* First Solid Rubber
Industries, Inc. 77
Ocfemia *y* Chavez, Giovanni – People of the
Philippines *vs.* 330
Office of the Court Administrator *vs.*
Nancy R. Leal, etc. 489
Patricio, etc., Hannibal R. – Jesus D. Carbajosa *vs.* 534

Page

People of the Philippines *vs.* Arturo Enriquez *y* De Los Reyes 352
People of the Philippines – Anita Ramirez *vs.* 653
People of the Philippines *vs.* SPO1 Alfredo Alawig 104
Gary Alinao 133
Joey Bacatan 187
Marvin Cayanan 168
Jimmy Cedenio *y* Peralta 393
Jade Cuaycong *y* Remonquillo 633
Carlito Espenilla 153
Michael Espera *y* Cuyacot 680
Ryan Frias *y* Galang *a.k.a.* "Tagadog" 173
Halil Gambao *y* Esmail, et al. 507
Edwin Ibañez *y* Albante, et al. 370
Giovanni Ocfemia *y* Chavez 330
Jovi Pornillos y Hallare 675
Philippine Airlines, Inc. (PAL) – Commissioner of Internal Revenue *vs.* 309
Philippine Reclamation Authority (Formerly known as the Public Estates Authority) *vs.* Romago, Incorporated 64
Philippine Reclamation Authority (Formerly Public Estates Authority) – Romago, Incorporated *vs.* 64
Pornillos y Hallare, Jovi – People of the Philippines *vs.* 675
Pua, et al., Jose U. *vs.* Citibank, N.A. 1
Ramirez, Anita *vs.* People of the Philippines 653
Re: Request for Guidance/Clarification on Section 7, Rule III of Republic Act No. 10154 Requiring Retiring Government Employees to Secure a Clearance of Pendency/Non-Pendency of Case/s from the Civil Service Commission 503
Remulla, Juanito Victor C. *vs.* Marietta O'Hara De Villa, et al. 55
Remulla, Juanito Victor C. *vs.* Erineo S. Maliksi, in his capacity as Governor of the Province of Cavite, et al. 55
Republic of the Philippines, represented by the Executive Secretary, et al. *vs.* Herminio Harry Roque, et al. 294

Page

Romago, Incorporated – Philippine Reclamation Authority (Formerly known as the Public Estates Authority) *vs.* 64
Romago, Incorporated *vs.* Philippine Reclamation Authority (Formerly Public Estates Authority) 64
Roque, et al., Herminio Harry – Republic of the Philippines, represented by the Executive Secretary, et al. *vs.* 294
Salas, Jr., Juan Sevilla *vs.* Eden Villena Aguila 274
Sandiganbayan (3rd Division), et al. – Gregorio Singian, Jr. *vs.* 455
Singian, Jr., Gregorio *vs.* Sandiganbayan (3rd Division), et al. 455
Stronghold Insurance Company, Inc. – Land Transportation Franchising and Regulatory Board, et al. *vs.* 660
The Executive Judge, Metropolitan Trial Court, Manila – Richard Chua *vs.* 698
Tunay na Pagkakaisa ng mga Manggagawa sa Asia (TPMA) – Asia Brewery, Inc. *vs.* 33
Ventura, et al., Frederick *vs.* Heirs of Spouses Eustacio T. Endaya and Trinidad L. Endaya, namely, Titus L. Endaya, et al. 621
Victorino, et al., Alicia I. – Crisanta Guido-Enriquez *vs.* 429
Villaseca, Atty. Albert T. – Mary Ann T. Mattus *vs.* 478
Villena, et al., Senior Assistant City Prosecutor Vincent L. *vs.* Mary Rose A. Boto *vs.* 24

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 180064. September 16, 2013]

JOSE U. PUA and BENJAMIN HANBEN U. PUA, *petitioners, vs.* **CITIBANK, N.A.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; IT IS A FUNDAMENTAL RULE IN PROCEDURAL LAW THAT JURISDICTION IS CONFERRED BY LAW.—** It is a fundamental rule in procedural law that jurisdiction is conferred by law; it cannot be inferred but must be explicitly stated therein. Thus, when Congress confers exclusive jurisdiction to a judicial or quasi-judicial entity over certain matters by law, this, absent any other indication to the contrary, evinces its intent to exclude other bodies from exercising the same.

2. **COMMERCIAL LAW; SECURITIES REGULATIONS CODE; CASES WHICH PERTAIN TO CIVIL LIABILITIES FROM VIOLATIONS OF THE REQUIREMENTS FOR OFFER TO SELL OR THE SALE OF SECURITIES AS WELL AS OTHER CIVIL SUITS SHALL BE EXCLUSIVELY BROUGHT BEFORE THE REGIONAL TRIAL COURTS; SUSTAINED.—** Records show that petitioners' complaint constitutes a civil suit for declaration of nullity of contract and sums of money with damages, which stemmed from respondent's alleged sale of unregistered securities, in violation of the various provisions

of the SRC and not a criminal case such as that involved in *Baviera*. In this light, when the Court ruled in *Baviera* that "all complaints for any violation of the [SRC] x x x should be filed with the SEC," it should be construed as to apply only to criminal and not to civil suits such as petitioners' complaint. x x x It is apparent that the Securities Regulation Code (SRC) provisions governing criminal suits are separate and distinct from those which pertain to civil suits. On the one hand, Section 53 of the SRC governs criminal suits involving violations of the said law. x x x On the other hand, Sections 56, 57, 58, 59, 60, 61, 62 and 63 of the SRC pertain to civil suits involving violations of the same law. Among these, the applicable provisions to this case are Sections 57.1 and 63.1 of the SRC. x x x It is clear that cases falling under Section 57 of the SRC, which pertain to civil liabilities arising from violations of the requirements for offers to sell or the sale of securities, as well as other civil suits under Sections 56, 58, 59, 60, and 61 of the SRC ***shall be exclusively brought before the regional trial courts***. It is a well-settled rule in statutory construction that the term "shall" is a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory. Likewise, it is equally revelatory that no SRC provision of similar import is found in its sections governing criminal suits; quite the contrary, the SRC states that criminal cases arising from violations of its provisions should be first referred to the SEC. Therefore, based on these considerations, it stands to reason that civil suits falling under the SRC are under the exclusive original jurisdiction of the regional trial courts and hence, need not be first filed before the SEC, unlike criminal cases wherein the latter body exercises primary jurisdiction.

APPEARANCES OF COUNSEL

Conrado R. Ayuyao & Associates for petitioners.
Angara Abello Concepcion Regala & Cruz for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 21, 2007 and Resolution[3] dated October 16, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 79297, which reversed and set aside the Orders dated May 14, 2003[4] and July 16, 2003[5] of the Regional Trial Court of Cauayan City, Isabela, Branch 19 (RTC), dismissing petitioners Jose (Jose) and Benjamin Hanben U. Pua's (petitioners) complaint against respondent Citibank, N.A. (respondent).

The Facts

On December 2, 2002, petitioners filed before the RTC a Complaint[6] for declaration of nullity of contract and sums of money with damages against respondent,[7] docketed as Civil Case No. 19-1159.[8] In their complaint, petitioners alleged that they had been depositors of Citibank Binondo Branch (Citibank Binondo) since 1996. Sometime in 1999, Guada Ang, Citibank Binondo's Branch Manager, invited Jose to a dinner party at the Manila Hotel where he was introduced to several officers and employees of Citibank Hongkong Branch (Citibank

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[1] *Rollo*, Vol. 1, pp. 10-34.

[2] *Id.* at 38-56. Penned by Associate Justice Japar B. Dimaampao, with Presiding Justice Ruben T. Reyes (now retired Associate Justice of the Supreme Court) and Associate Justice Mario L. Guariña III, concurring.

[3] *Id.* at 64-67. Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Rosalinda Asuncion-Vicente and Enrico A. Lanzanas, concurring.

[4] *Id.* at 176-185. Penned by Executive Judge Raul V. Babaran.

[5] *Id.* at 211-214.

[6] *Id.* at 69-81.

[7] *Id.* at 14.

[8] The various pleadings filed by petitioners before the RTC were docketed as Civil Case No. 2387.

Hongkong).[9] A few months after, Chingyee Yau (Yau), Vice-President of Citibank Hongkong, came to the Philippines to sell securities to Jose. They averred that Yau required Jose to open an account with Citibank Hongkong as it is one of the conditions for the sale of the aforementioned securities.[10] After opening such account, Yau offered and sold to petitioners numerous securities[11] issued by various public limited companies established in Jersey, Channel Isands. The offer, sale, and signing of the subscription agreements of said securities were all made and perfected at Citibank Binondo in the presence of its officers and employees.[12] Later on, petitioners discovered that the securities sold to them were not registered with the Securities and Exchange Commission (SEC) and that the terms and conditions covering the subscription were not likewise submitted to the SEC for evaluation, approval, and registration.[13] Asserting that respondent's actions are in violation of Republic Act No. 8799, entitled the "Securities Regulation Code" (SRC), they assailed the validity of the subscription agreements and the terms and conditions thereof for being contrary to law and/or public policy.[14]

For its part, respondent filed a motion to dismiss[15] alleging, *inter alia*, that petitioners' complaint should be dismissed outright for violation of the doctrine of primary jurisdiction. It pointed out that the merits of the case would largely depend on the issue of whether or not there was a violation of the SRC, in particular, whether or not there was a sale of unregistered

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[9] *Rollo,* pp. 39 and 70.

[10] *Id*.

[11] *Id.* at 39 and 70-71. Namely, AERIS II, CERES II, and PALMYRA, issued by Aeris Finance, Ltd., Ceres II Finance, Ltd., and Palmyra Funding, Limited, respectively.

[12] *Id.* at 39 and 71.

[13] *Id.* at 72 and 75-77.

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

[15] *Id.* at 140-163. Dated January 10, 2003.

securities. In this regard, respondent contended that the SRC conferred upon the SEC jurisdiction to investigate compliance with its provisions and thus, petitioners' complaint should be first filed with the SEC and not directly before the RTC.[16]

Petitioners opposed[17] respondent's motion to dismiss, maintaining that the RTC has jurisdiction over their complaint. They asserted that Section 63 of the SRC expressly provides that the RTC has exclusive jurisdiction to hear and decide all suits to recover damages pursuant to Sections 56 to 61 of the same law.[18]

The RTC Ruling

In an Order[19] dated May 14, 2003, the RTC denied respondent's motion to dismiss. It noted that petitioners' complaint is for declaration of nullity of contract and sums of money with damages and, as such, it has jurisdiction to hear and decide upon the case even if it involves the alleged sale of securities. It ratiocinated that the legal questions or issues arising from petitioners' causes of action against respondent are more appropriate for the judiciary than for an administrative agency to resolve.[20]

Respondent filed an omnibus motion[21] praying, among others, for the reconsideration of the aforesaid ruling, which petitioners, in turn, opposed.[22] In an Order[23] dated July 16, 2003, the RTC denied respondent's omnibus motion with respect to its prayer for reconsideration. Dissatisfied, respondent filed a petition for *certiorari* before the CA.[24]

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[16] *Id*. at 152-155.

[17] *Id*. at 164-173. Vigorous Opposition dated January 16, 2003.

[18] *Id*. at 168-169.

[19] *Id*. at 176-185.

[20] *Id*. at 180-181.

[21] *Id*. at 186-200. Dated June 2, 2003.

[22] *Id*. at 202-210. Opposition with Motion to Declare Defendant in Default dated June 5, 2003.

[23] *Id*. at 211-214.

[24] *Id*. at 287-327. Dated September 15, 2003.

The CA Ruling

In a Decision[25] dated May 21, 2007, the CA reversed and set aside the RTC's Orders and dismissed petitioners' complaint for violation of the doctrine of primary jurisdiction. The CA agreed with respondent's contention that since the case would largely depend on the issue of whether or not the latter violated the provisions of the SRC, the matter is within the special competence or knowledge of the SEC. Citing the case of *Baviera v. Paglinawan*[26] (*Baviera*), the CA opined that all complaints involving violations of the SRC should be first filed before the SEC.[27]

Aggrieved, petitioners moved for reconsideration,[28] which was, however, denied by the CA in a Resolution[29] dated October 16, 2007. Hence, this petition.

The Issue Before the Court

The essential issue in this case is whether or not petitioners' action falls within the primary jurisdiction of the SEC.

Petitioners reiterate their original position that the SRC itself provides that civil cases for damages arising from violations of the same law fall within the exclusive jurisdiction of the regional trial courts.[30]

On the contrary, respondent maintains that since petitioners' complaint would necessarily touch on the issue of whether or not the former violated certain provisions of the SRC, then the said complaint should have been first filed with the SEC which has the technical competence to resolve such dispute.[31]

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[25] *Id.* at 38-56.

[26] G.R. Nos. 168380 and 170602, February 8, 2007, 515 SCRA 170.

[27] *Rollo*, pp. 54-55.

[28] *Id.* at 357-371. Motion for Reconsideration dated June 7, 2007.

[29] *Id.* at 64-67.

[30] *Id.* at 26.

[31] *Rollo,* Vol. II, pp. 445-504. Comment dated October 9, 2008.

The Court's Ruling

The petition is meritorious.

At the outset, the Court observes that respondent erroneously relied on the *Baviera* ruling to support its position that all complaints involving purported violations of the SRC should be first referred to the SEC. A careful reading of the *Baviera* case would reveal that the same involves a criminal prosecution of a purported violator of the SRC, and not a civil suit such as the case at bar. The pertinent portions of the *Baviera* ruling thus read:

> **A criminal charge for violation of the Securities Regulation Code is a specialized dispute. Hence, it must first be referred to an administrative agency of special competence, *i.e.*, the SEC**. Under the doctrine of primary jurisdiction, courts will not determine a controversy involving a question within the jurisdiction of the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the specialized knowledge and expertise of said administrative tribunal to determine technical and intricate matters of fact. The Securities Regulation Code is a special law. Its enforcement is particularly vested in the SEC. **Hence, all complaints for any violation of the Code and its implementing rules and regulations should be filed with the SEC.** Where the complaint is criminal in nature, the SEC shall indorse the complaint to the DOJ for preliminary investigation and prosecution as provided in Section 53.1 earlier quoted.
>
> **We thus agree with the Court of Appeals that petitioner committed a fatal procedural lapse when he filed his criminal complaint directly with the DOJ**. Verily, no grave abuse of discretion can be ascribed to the DOJ in dismissing petitioner's complaint.[32] (Emphases and underscoring supplied)

Records show that petitioners' complaint constitutes a civil suit for declaration of nullity of contract and sums of money with damages, which stemmed from respondent's alleged sale of unregistered securities, in violation of the various provisions of the SRC and not a criminal case such as that involved in *Baviera*.

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[32] *Baviera v. Paglinawan, supra* note 26, at 182-183.

In this light, when the Court ruled in *Baviera* that "all complaints for any violation of the [SRC] x x x should be filed with the SEC,"[33] it should be construed as to apply only to criminal and not to civil suits such as petitioners' complaint.

Moreover, it is a fundamental rule in procedural law that jurisdiction is conferred by law;[34] it cannot be inferred but must be explicitly stated therein. Thus, when Congress confers exclusive jurisdiction to a judicial or quasi-judicial entity over certain matters by law, this, absent any other indication to the contrary, evinces its intent to exclude other bodies from exercising the same.

It is apparent that the SRC provisions governing criminal suits are separate and distinct from those which pertain to civil suits. On the one hand, Section 53 of the SRC governs criminal suits involving violations of the said law, *viz.*:

SEC. 53. *Investigations, Injunctions and Prosecution of Offenses.* –

53.1. The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency, other self-regulatory organization, and may require or permit any person to file with it a statement in writing, under oath or otherwise, as the Commission shall determine, as to all facts and circumstances concerning the matter to be investigated. The Commission may publish information concerning any such violations, and to investigate any fact, condition, practice or matter which it may deem necessary or proper to aid in the enforcement of the provisions of this Code, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this Code relates: *Provided, however,* That any person requested or subpoenaed to produce documents or testify in any investigation shall simultaneously be notified in writing of the purpose of such investigation: *Provided, further,* That all criminal complaints for violations of this Code, and the implementing

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[33] *Id.* at 182.

[34] *Magno v. People*, G.R. No. 171542, April 6, 2011, 647 SCRA 362, 371, citing *Machado v. Gatdula*, G.R. No. 156287, February 16, 2010, 612 SCRA 546, 559.

rules and regulations enforced or administered by the Commission shall be referred to the Department of Justice for preliminary investigation and prosecution before the proper court: *Provided, furthermore,* That in instances where the law allows independent civil or criminal proceedings of violations arising from the same act, the Commission shall take appropriate action to implement the same: *Provided, finally,* That the investigation, prosecution, and trial of such cases shall be given priority.

On the other hand, Sections 56, 57, 58, 59, 60, 61, 62, and 63 of the SRC pertain to civil suits involving violations of the same law. Among these, the applicable provisions to this case are Sections 57.1 and 63.1 of the SRC which provide:

SEC. 57. *Civil Liabilities Arising in Connection With Prospectus, Communications and Reports.*— 57.1. **Any person who:**

(a) **Offers to sell or sells a security in violation of Chapter III**; or

(b) Offers to sell or sells a security, whether or not exempted by the provisions of this Code, by the use of any means or instruments of transportation or communication, by means of a prospectus or other written or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall fail in the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, **shall be liable to the person purchasing such security from him, who may sue to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.**

x x x x

SEC. 63. *Amount of Damages to be Awarded.* — 63.1. **All suits to recover damages** pursuant to Sections 56, **57**, 58, 59, 60 and 61 **shall be brought before the Regional Trial Court which shall have exclusive jurisdiction to hear and decide such suits.** The Court is hereby authorized to award damages in an amount not exceeding triple the amount of the transaction plus actual damages.

x x x x (Emphases and underscoring supplied)

Based on the foregoing, it is clear that cases falling under Section 57 of the SRC, which pertain to civil liabilities arising from violations of the requirements for offers to sell or the sale of securities, as well as other civil suits under Sections 56, 58, 59, 60, and 61 of the SRC ***shall be exclusively brought before the regional trial courts***. It is a well-settled rule in statutory construction that the term "shall" is a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory.[35] Likewise, it is equally revelatory that no SRC provision of similar import is found in its sections governing criminal suits; quite the contrary, the SRC states that criminal cases arising from violations of its provisions should be first referred to the SEC.

Therefore, based on these considerations, it stands to reason that civil suits falling under the SRC are under the exclusive original jurisdiction of the regional trial courts and hence, need not be first filed before the SEC, unlike criminal cases wherein the latter body exercises primary jurisdiction.

All told, petitioners' filing of a civil suit against respondent for purported violations of the SRC was properly filed directly before the RTC.

WHEREFORE, the petition is **GRANTED**. Accordingly, the Court of Appeals' Decision dated May 21, 2007 and Resolution dated October 16, 2007 in CA-G.R. SP No. 79297 are hereby **REVERSED** and **SET ASIDE**. Let Civil Case No. 19-1159 be **REINSTATED** and **REMANDED** to the Regional Trial Court of Cauayan City, Isabela, Branch 19 for further proceedings.

SO ORDERED.

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

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[35] *Enriquez v. Enriquez*, G.R. No. 139303, August 25, 2005, 468 SCRA 77, 84, citing *Lacson v. San Jose-Lacson*, G.R. Nos. L-23482, L-23767, and L-24259, August 30, 1968, 24 SCRA 837, 848.

THIRD DIVISION

[G.R. No. 201760. September 16, 2013]

LBL INDUSTRIES, INC., *petitioner, vs.* **CITY OF LAPU-LAPU,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; PLEADINGS; VERIFICATION AND CERTIFICATE OF NON-FORUM SHOPPING; SUFFICIENCY OF A SECRETARY'S CERTIFICATE AS PROOF OF AUTHORITY FOR AN INDIVIDUAL NAMED IN IT TO REPRESENT A CORPORATION IN A SUIT, SUSTAINED.—** The Court, in several cases, has recognized the sufficiency of a Secretary's Certificate as proof of authority for an individual named in it to represent a corporation in a suit. x x x A simple perusal of the records shows that separate authorizing board resolutions, as evidenced by the Secretary's Certificate, were executed a few days prior to the filing of the Answer to the basic complaint to expropriate and the petition for *certiorari* interposed before the CA. The Answer was filed on **February 28, 2006.** Prior to this date, the board of petitioner already authorized Mariño "to do any and all acts that may be essential in the prosecution and defense of the cases of the corporation, more particularly involving and in connection with the Eminent Domain case filed by the City of Lapu-Lapu" during its **February 14, 2006** special meeting**.** Similarly, the Petition for *Certiorari* before the CA was filed on **April 15, 2011**, accompanied by a secretary's certificate executed on **April 12, 2011** by Mariño, which states, among others, that the latter, as well as Sison, was authorized by the Board on **April 8, 2011** to represent petitioner in said eminent domain case. Clearly then, Sison, petitioner's representative, was duly authorized to sign the verification and certificate of non-forum shopping and that a Secretary's Certificate is sufficient proof of said authority, it not being limited to the Board Resolution itself.

2. **ID.; ID.; PRE-TRIAL; THE PRESENT RULE IS THAT IF THE PLAINTIFF FAILS TO FILE A MOTION TO SET THE CASE FOR PRE-TRIAL WITHIN FIVE (5) DAYS FROM THE FILING OF A REPLY, THE DUTY TO SET THE CASE FOR PRE-TRIAL FALLS UPON THE BRANCH CLERK OF COURT; APPLICATION IN CASE AT BAR.—** Sec. 1, Rule 18 of the Rules of Court imposes upon the plaintiff the duty to set the case for pre-trial after the last pleading is served and filed. With this in mind, We have, in several cases, ruled that the plaintiff's omission to promptly move that the case be set for pre-trial is a ground for the dismissal of the complaint due to his fault, particularly for failing to prosecute his action for an unreasonable length of time, pursuant to Sec. 3, Rule 17. The parties, as well as the courts below, however, failed to consider that the aforequoted Sec. 1 of Rule 18 had already been superseded by A.M. No. 03-1-09-SC, which took effect on August 16, 2004. x x x Thus, the present rule is that if the plaintiff fails to file a motion to set the case for pre-trial within five (5) days from the filing of a reply, the duty to set the case for pre-trial falls upon the branch clerk of court. However, this does not relieve the plaintiff of his own duty to prosecute the case diligently. For a plaintiff, as herein respondent, to be excused from its burden to promptly prosecute its case, it must convince the court that its **failure to do so was due to justifiable reasons.** If the neglect is justified, then a dismissal of the case on said ground is not warranted.

APPEARANCES OF COUNSEL

Inso & Associates for petitioner.
Office of the City Attorney (Lapu-Lapu) for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before Us is a Petition for Review on *Certiorari* under Rule 45, assailing and seeking the annulment of the Resolution

of the Court of Appeals (CA) dated July 11, 2011 in CA-G.R. SP No. 05877 as well as its Resolution dated April 19, 2012 denying reconsideration of the first assailed issuance.

The Facts

Petitioner is the registered owner of a 40,634-square meter parcel of land, Lot No. 4839, situated in Mactan, Lapu-Lapu City and covered by Transfer Certificate of Title (TCT) No. 34555.

On January 25, 2006, respondent City of Lapu-Lapu (respondent) filed a complaint[1] before the Regional Trial Court seeking to expropriate, among others, a 300-square meter portion of Lot No. 4839 for its road opening project from Saac II to Bag-ong Silingan, Mactan, Lapu-Lapu City. Later, or on February 19, 2006, the complaint was amended, captioned as "Second Amended Complaint," increasing the area sought to be appropriated to 2,750 sq.m.

Upon deposit of an amount equivalent to 15% of the fair market value of the property based on the current tax declaration, respondent took possession of and utilized the property. On February 28, 2006, petitioner filed its Answer, accompanied by a Secretary's Certificate, which states, in part:

That at the Special Meeting of the Board of the Corporation on February 14, 2006, the following resolution had been adopted and approved[,] to wit:

> "RESOLVED, as it is hereby resolved, to authorize **ELSIE TAN MARIÑO** [Mariño], an officer of the corporation, to commence any action for and in behalf of the corporation as she may deem fit and necessary to do any and all acts that may be essential in the prosecution and defense of the cases of the corporation[,] more particularly involving and in connection with the Eminent Domain case filed by the City of Lapu-Lapu[,] including the execution/signing and verification

[1] Docketed as Civil Case No. 6538-L before the RTC, Branch 27 in Lapu-Lapu City, entitled *City of Lapu-Lapu v. Sps. Lhullier, et al.*

of the Answer of other necessary pleadings[,] and do such other acts necessary and proper in connection therewith."[2]

Meanwhile, petitioner interposed a Motion to Conduct Joint Survey and Set Case for Pre-trial.

Later, or on March 3, 2006, petitioner filed its Answer to the Amended and Second Amended Complaint.

Meantime, the RTC issued two Orders, dated July 10, 2006 and March 28, 2007, directing the issuance of a writ of possession. The branch clerk of court, however, failed to comply with any of the orders.[3]

A year later, or on January 25, 2008, petitioner moved for the dismissal of the case on the ground that respondent failed to prosecute the case for an unreasonable length of time as provided for under Section 3, Rule 17 of the Rules of Court. According to petitioner, respondent has yet to move for the setting of the case for pre-trial and it had done nothing to ensure compliance with the Orders for the issuance of the writ of execution. Respondent opposed the motion, explaining that the reason for the delay was that it is awaiting the RTC's resolution on the motion filed by petitioner for the conduct of a joint survey and for the setting of the case for pre-trial. Petitioner filed a Reply to respondent's Opposition and Comment on the Motion to Dismiss on February 14, 2008.

In its Order[4] dated February 18, 2008 denying the motion to dismiss, the RTC ruled that respondent cannot be faulted for the alleged delay in prosecuting the case as, indeed, petitioner's motion for the conduct of a joint survey and for the setting of the case for trial had not yet been resolved. And as an additional reason for its action, the RTC cited the non-observance of the three (3)-day notice rule noting that the motion to dismiss was

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[2] *Rollo*, p. 139.

[3] *Id.* at 172.

[4] *Id.* at 162.

received by the plaintiff on January 31, 2008, but the motion was set for hearing on the following day, or on February 1, 2008. The *fallo* of the Order reads:

WHEREFORE, premises considered, the Motion to Dismiss is denied.

Plaintiff [respondent] is directed to prosecute this case within thirty (30) days from receipt of this order.

Furnish copies of this order to counsels.

SO ORDERED.

Petitioner's motion for reconsideration of the RTC's February 18, 2008 Order was likewise denied in that court's January 26, 2011 Order,[5] the dispositive portion of which states:

WHEREFORE PREMISES CONSIDERED, the motion for reconsideration is hereby DENIED.

For the third time, the Branch Clerk of Court is hereby directed to issue a writ of possession.

Furnish copy of this order to counsels.

SO ORDERED.

In the latter Order, the RTC attributed the fault to its branch clerk of court for failing to comply with its twin orders directing the issuance of a writ of possession.

On April 15, 2011, petitioner went to the CA on a Petition for *Certiorari* under Rule 65 assailing the said February 18, 2008 and January 26, 2011 Orders of the trial court, the recourse docketed as CA-G.R. SP. No. 05877. Attached to the petition is a Secretary's Certificate executed on April 12, 2011, by Elsie T. Mariño, petitioner's assistant corporate secretary. Said certificate states, among others, that at the special meeting of petitioner's board on April 8, 2011, the following resolution was adopted:

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[5] *Id.* at 172.

RESOLVED, as it is hereby resolved, to authorize **Mr. Roberto Z. Sison** [Sison] **or Ms. Elsie T. Mariño**, to commence any action and/or represent the corporation as he/she may deem fit and necessary and to do any and all acts that may be essential in the prosecution and defense of the cases of the corporation more particularly involving the **Complaint for Eminent Domain filed with the RTC of Lapu-Lapu City, any proceedings for just compensation for its lots in Lapu-Lapu City** including the execution/signing and verification of the necessary documents and do such other acts necessary and proper in connection therewith.[6]

CA Ruling

The CA dismissed the petition in its July 11, 2011 Resolution[7] owing to the following infirmities, *viz.*:

1. a One Hundred and Fifty Peso (PhP150) deficiency in docket fees;
2. the absence of the serial number, as well as the province or city of commission of the Notary Public in the Notarial Certificate of the Verification and Certification of Non-Forum Shopping
3. lack of proper proof of service; and
4. **absence of a board resolution evincing the authority of Roberto Sison, petitioner's Chief Operating Officer, to represent it in the case.**

The *fallo* of the CA's July 11, 2011 Resolution reads as follows:

In view of the foregoing premises, petitioners' Petition for *Certiorari* dated April 11, 2011 is hereby **DISMISSED.**

SO ORDERED.

As regards the absence of a board resolution, the CA held that "the Petition is subject to dismissal if a certification was submitted unaccompanied by proof of the signatory's authority."[8] Petitioner,

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[6] *Id.* at 186.

[7] *Id.* at 32-34. Penned by Associate Justice Eduardo B. Peralta Jr. and concurred in by Associate Justices Pampio A. Abarintos and Gabriel T. Ingles.

[8] *Id.* at 33.

thus, moved for reconsideration, offering explanations for the defects cited by the CA including the absence of the board resolution.

CA Ruling on Motion for Reconsideration

The appellate court, in its April 19, 2012 Resolution, accepted petitioner's explanation as regards the first three (3) defects but ruled that the person signing the petition lacked authority to do so because the Secretary's Certificate appended to the petition is insufficient proof of said authority. The CA ruled that "the failure to attach the Board Resolution for the filing of the Petition was fatal x x x.[9] In disposing of the case, the CA stated:

WHEREFORE, in view of the foregoing premises, petitioner's Motion for Reconsideration dated August 10, 2011, is hereby **DENIED**.

SO ORDERED. [10]

The Issues

Petitioner now comes before this Court assailing the foregoing Resolutions of the CA and raising the following issues, to wit:

I. [WHETHER THE CA] SERIOUSLY ERRED IN HOLDING THAT THE SECRETARY'S CERTIFICATE EXECUTED BY ASSISTANT CORPORATE SECRETARY ELSIE T. MARIÑO AUTHORIZING ROBERTO Z. SISON TO ACT FOR AND ON BEHALF OF THE PETITIONER CORPORATION IN FILING THE PETITION FOR *CERTIORARI* DOES NOT CONSTITUTE SUFFICIENT PROOF OF [SISON'S] AUTHORITY TO REPRESENT THE CORPORATION.

II. [WHETHER THE CA] SERIOUSLY ERRED IN DISMISSING THE CASE BASED ON A TECHNICALITY WHEN PETITIONER HAS SUBSTANTIALLY RAISED VALID GROUNDS TO SET ASIDE THE ORDERS OF THE TRIAL COURT DENYING PETITIONER'S MOTION TO DISMISS THE CASE FOR FAILURE OF THE RESPONDENT TO PROSECUTE THE CASE FOR AN UNREASONABLE LENGTH OF TIME.[11]

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[9] *Id.* at 37.

[10] *Id.* at 38.

[11] *Id.* at 14.

Accompanying the Petition is a copy of the April 8, 2011 Minutes of the Special Meeting of the Board of Directors of petitioner authorizing Sison to represent petitioner in the expropriation case.[12]

The Court's Ruling

The petition is partly meritorious.

On the first issue, petitioner argues that the Secretary's Certificate executed by Assistant Corporate Secretary Mariño — reflecting the Board's resolution that authorized its Chief Operating Officer, Sison, to file the Petition for *Certiorari* under Rule 65 with the CA — is sufficient proof of authority. We agree.

The Court, in several cases, has recognized the sufficiency of a Secretary's Certificate as proof of authority for an individual named in it to represent a corporation in a suit.[13] In *Vicar International Construction, Inc. v. FEB Leasing and Finance Corp.*,[14] We held:

> In *Shipside Incorporated v. Court of Appeals*, the petitioner had not attached any proof that its resident manager was authorized to sign the Verification and the non-forum shopping Certification, as a consequence of which the Petition was dismissed by the Court of Appeals. Subsequent to the dismissal, however, the petitioner filed a motion for reconsideration, to which was already attached **a Certificate issued by its board secretary** who stated that, prior to the filing of the Petition, the resident manager had been authorized by the board of directors to file the Petition.
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> Citing several cases excusing noncompliance with the requirement of a certificate of non-forum shopping, the Court held that "with more

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[12] *Id.* at 219.

[13] *Shipside Incorporated v. Court of Appeals*, 404 Phil. 981 (2001); *Cebu Metro Pharmacy, Inc. v. Euro-Med Laboratories Philippines, Inc.*, G.R. No. 164757, October 18, 2010, 633 SCRA 320; *Mediserv, Inc. v. CA*, G.R. No. 161368, April 5, 2010, 617 SCRA 284.

[14] 496 Phil. 467, 475 (2005).

reason should x x x the instant petition [be allowed,] since petitioner herein did submit a certification on non-forum shopping, failing only to show proof that the signatory was authorized to do so." The Court further said that the **subsequent submission of the Secretary's Certificate, attesting that the signatory to the certification was authorized to file the action on behalf of petitioner,** mitigated the oversight. (Emphasis supplied; citations omitted.)

A simple perusal of the records shows that separate authorizing board resolutions, as evidenced by the Secretary's Certificate, were executed a few days prior to the filing of the Answer to the basic complaint to expropriate and the petition for *certiorari* interposed before the CA. The Answer was filed on **February 28, 2006.** Prior to this date, the board of petitioner already authorized Mariño "to do any and all acts that may be essential in the prosecution and defense of the cases of the corporation, more particularly involving and in connection with the Eminent Domain case filed by the City of Lapu-Lapu" during its **February 14, 2006** special meeting. Similarly, the Petition for *Certiorari* before the CA was filed on **April 15, 2011,** accompanied by a secretary's certificate executed on **April 12, 2011** by Mariño, which states, among others, that the latter, as well as Sison, was authorized by the Board on **April 8, 2011** to represent petitioner in said eminent domain case.

Clearly then, Sison, petitioner's representative, was duly authorized to sign the verification and certificate of non-forum shopping and that a Secretary's Certificate is sufficient proof of said authority, it not being limited to the Board Resolution itself. Accordingly, We hold that the CA erred in dismissing petitioner's *certiorari* petition and in denying its motion for reconsideration.

This is not to say, however, that the petition before the CA is meritorious. Taking into consideration the length of dormancy of Civil Case No. 6538-L and a review of the developments in said case convinces Us that the issue of whether the denial of petitioner's Motion to Dismiss by the RTC is proper, which issue the CA has yet to resolve, should be resolved in respondent's

favor. The Court likewise finds it apt to settle said issue once and for all instead of directing the appellate court to proceed with CA-G.R. SP. No. 05877 in order to avert further delays in its resolution.[15] Thus, for practical reasons and in the greater interest of justice, the Court shall now address the issue of whether the RTC erred in denying petitioner's motion to dismiss.

Petitioner contends that the trial court erred in not dismissing the case for respondent's failure to prosecute the case for an unreasonable length of time in violation of Sec. 1, Rule 18 and Sec. 3, Rule 17 of the Rules of Court.

Sec. 1, Rule 18 on Pre-Trial, reads:

Sec. 1. *When conducted.* — After the last pleading has been served and filed, it shall be the duty of the plaintiff to promptly move *ex parte* that the case be set for pre-trial.

Related to the above section is Sec. 3 of Rule 17, which states:

Sec. 3. *Dismissal due to fault of plaintiff.* — If, for no justifiable cause, the plaintiff fails x x x to prosecute his action for an unreasonable length of time, x x x the complaint may be dismissed upon motion of the defendant or upon the court's own motion x x x.

Sec. 1, Rule 18 of the Rules of Court imposes upon the plaintiff the duty to set the case for pre-trial after the last pleading

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[15] See *Golangco v. Court of Appeals*, 347 Phil. 771, 778 (1997). [The next most logical step would then be for the Court to simply set aside the challenged resolutions, remand the case to the CA and direct the latter to resolve on the merits of the petition in CA-G.R. SP No. 58799. But that would further delay the case. Considering the issues raised which can be resolved on the basis of the pleadings and documents filed, and the fact that petitioner itself has asked the Court to decide its petition on the merits, the Court deems it more practical and in the greater interest of justice not to remand the case to the CA but, instead, to resolve the controversy once and for all.]

[16] *Olave v. Mistas*, G.R. No. 155193, November 26, 2004, 444 SCRA 479; *Samson v. Fiel-Macaraig*, G.R. No. 166356, February 2, 2010, 611 SCRA 345; *New Japan Motors, Inc. v. Perucho*, 165 Phil. 636 (1976).

is served and filed. With this in mind, We have, in several cases,[16] ruled that the plaintiff's omission to promptly move that the case be set for pre-trial is a ground for the dismissal of the complaint due to his fault, particularly for failing to prosecute his action for an unreasonable length of time, pursuant to Sec. 3, Rule 17.

The parties, as well as the courts below, however, failed to consider that the afore-quoted Sec. 1 of Rule 18 had already been superseded by A.M. No. 03-1-09-SC,[17] which took effect on August 16, 2004, Item 1.2 of which states:

> **I. PRE-TRIAL**
>
> A. Civil Cases
>
> 1. Within one day from receipt of the complaint:
>
> 1.1. Summons shall be prepared and shall contain a reminder to defendant to observe restraint in filing a motion to dismiss and instead allege the grounds thereof as defences in the Answer, in conformity with IBP-OCA Memorandum on Policy Guidelines dated March 12, 2002. x x x.
>
> 1.2 x x x Within five (5) days from date of filing of the reply, the plaintiff must promptly move *ex parte* that the case be set for pre-trial conference. **If the plaintiff fails to file said motion within the given period, the Branch [Clerk of Court] shall issue a notice of pre-trial.**

Thus, the present rule is that if the plaintiff fails to file a motion to set the case for pre-trial within five (5) days from the filing of a reply, the duty to set the case for pre-trial falls upon the branch clerk of court. However, this does not relieve the plaintiff of his own duty to prosecute the case diligently.

For a plaintiff, as herein respondent, to be excused from its burden to promptly prosecute its case, it must convince the

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[17] Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures.

court that its failure to do so was due to justifiable reasons. If the neglect is justified, then a dismissal of the case on said ground is not warranted.

In an attempt to convince Us that it was not remiss in its duty to diligently prosecute its case, respondent proffered the following reasons, to wit:

1. Respondent was constrained to await the trial court's resolution of petitioner's Motion to Conduct Joint Survey and Set the Case for Pre-Trial, which the RTC has not yet resolved to this date;[18]
2. Respondent's right to due process — *i.e.,* the right to be given a reasonable or ample opportunity to be heard — is violated since the RTC has not yet resolved said Motion to Conduct Joint Survey;[19]
3. Petitioner's Motion to Dismiss is a mere scrap of paper, petitioner having violated the three-day notice rule under Sec. 4, Rule 15 of the Rules of Court;[20] and
4. Respondent cannot be faulted for the alleged delay not only because of the pendency of the resolution of said Motion and because of petitioner's failure to strictly comply with the three-day notice rule, but also because the branch clerk of court failed to comply with the July 10, 2006 and March 28, 2007 directives of the RTC that a writ of possession be issued.[21]

A consideration of the events that transpired in the said expropriation case readily shows that the delay cannot solely be attributed to respondent City of Lapu-Lapu but is in fact due to the failure of the branch clerk of court to set the case for pre-trial pursuant to A.M. No. 03-1-09-SC, as well as the

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[18] *Rollo*, p. 151.

[19] *Id.* at 152.

[20] *Id.* at 153.

[21] *Id.* at 172.

trial court's delay in resolving petitioner's Motion to Conduct Joint Survey and Set the Case for Pre-Trial. We find good reason to believe respondent's assertion that it acted in good faith when it did not move to set the case for pre-trial, since petitioner already moved for the pre-trial setting. Another motion from respondent can be simply repetitive of petitioner's earlier motion.

The Court, however, is mindful of petitioner's predicament that the delay in the resolution of the expropriation case and respondent's continued occupation and enjoyment of the subject property for more than half a decade is extremely disadvantageous and prejudicial to said corporation without any payment of just compensation. To prevent further damage to petitioner, the trial court is directed to immediately resolve petitioner's Motion to Conduct Joint Survey, set the case for pre-trial, and take all appropriate measures to expedite the resolution of said case.

WHEREFORE, in view of the foregoing pronouncements, the petition is hereby **PARTIALLY GRANTED**. The assailed CA Resolutions dated July 11, 2011 and April 19, 2012 in CA-G.R. SP. No. 05877 are hereby **REVERSED** and **SET ASIDE** for the reason that petitioner's representative was duly authorized to sign the verification and certification against forum shopping.

The February 18, 2008 and January 26, 2011 Orders of the RTC are hereby **AFFIRMED**. However, in the interest of substantial justice, the RTC, Branch 27 in Lapu-Lapu City is hereby **DIRECTED** to take immediate action on all pending matters in Civil Case No. 6538-L, set the case for pre-trial, and expedite the resolution of said case.

No pronouncement as to costs.

SO ORDERED.

Del Castillo,[*] *Abad, Mendoza,* and *Leonen, JJ.,* concur.

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[*] Acting member per Special Order No. 1541 (Revised) dated September 9, 2013.

THIRD DIVISION

[A.C. No. 9684. September 18, 2013]

MARY ROSE A. BOTO, *complainant, vs.* **SENIOR ASSISTANT CITY PROSECUTOR VINCENT L. VILLENA, CITY PROSECUTOR ARCHIMEDES V. MANABAT and ASSISTANT CITY PROSECUTOR PATRICK NOEL P. DE DIOS,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; LIBEL; THE REVISED PENAL CODE EXPLICITLY PROVIDES THAT JURISDICTION OVER LIBEL CASES ARE LODGED WITH THE REGIONAL TRIAL COURTS (RTC).—** Article 360 of the Revised Penal Code (*RPC*) explicitly provides that jurisdiction over libel cases are lodged with the RTC. The criminal and civil action for damages in cases of written defamations shall be filed simultaneously or separately with the RTC of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense. Jurisprudence is replete with decisions on the exclusive jurisdiction of the RTC to hear and try libel cases. In fact, the language of the law cannot be any clearer; its meaning is free from doubt. All that is required is application.

2. **POLITICAL LAW; PUBLIC OFFICERS; PROSECUTORS; FAILURE TO APPLY THE BASIC RULES ON JURISDICTION AMOUNTS TO IGNORANCE OF THE LAW AND REFLECTS HIS LACK OF PRUDENCE IN THE PERFORMANCE OF HIS DUTIES.—** When the motion to quash was filed by Boto for lack of jurisdiction, Villena should have immediately acted on it by not opposing the dismissal of the case. The records disclose that in his Comment, Villena prayed that the motion to quash be DENIED. x x x Patently, this responsive pleading of Villena demonstrates that he did not know the elementary rules on jurisdiction. Fundamental is the rule that jurisdiction is conferred by law and is not within the courts, let alone the parties themselves, to determine or conveniently set aside. It cannot be waived except for those judicially recognizable grounds like

estoppel. And it is not mooted by an action of a court in an erroneously filed case. It has been held in a plethora of cases that when the law or procedure is so elementary, not to know, or to act as if one does not know it, constitutes gross ignorance of the law, even without the complainant having to prove malice or bad faith. Villena should have even initiated the move for the dismissal of the case on the ground of lack of jurisdiction. Instead of taking the initiative, he even opposed the motion to quash the information. At any rate, respondents are not barred from refiling the case before the proper court if probable cause to hold the complainant liable really exists. His dismal failure to apply the basic rule on jurisdiction amounts to ignorance of the law and reflects his lack of prudence, if not his incompetence, in the performance of his duties.

3. **ID.; ID.; ID.; A PROSECUTOR'S PRIMARY DUTY IS NOT SIMPLY TO CONVICT BUT TO SEE THAT JUSTICE IS DONE; ELUCIDATED.—** As a responsible public servant, a prosecutor's primary duty is not to simply convict but to see that justice is done. He is obliged to perform his duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights in contributing to ensuring due process and the smooth functioning of the criminal justice system. As such, he should not initiate or continue prosecution, or shall make every effort to stay the proceedings when it is apparent that the court has no jurisdiction over the case. This is where Villena failed. As lawyers, the respondents are officers of the court with the duty to uphold its dignity and authority and not promote distrust in the administration of justice. No less than the Code of Professional Responsibility mandates all lawyers to exert every effort to assist in the speedy and efficient administration of justice.

D E C I S I O N

MENDOZA, *J.*:

This administrative matter stemmed from an information for Libel against complainant Mary Rose A. Boto (*Boto*) filed before the Metropolitan Trial Court, Branch LXXIV, Taguig City (*MeTC*). The information was prepared by Assistant City

Prosecutor Patrick Noel P. de Dios (*De Dios*), the investigating prosecutor; and approved by City Prosecutor Archimedes Manabat (*Manabat*). Senior Assistant City Prosecutor Vincent Villena (*Villena*) was the trial prosecutor assigned to Branch LXXIV.

In her Complaint-Affidavit,[1] Boto charged respondents Villena, Manabat and De Dios with gross ignorance of the law for filing the information for libel before the MeTC and for opposing the motion to quash despite the knowledge that the said first level court had no jurisdiction over the case.

Boto alleged that on January 13, 2012, the Information[2] charging her with libel was filed before the MeTC; that on the same day, the MeTC issued a warrant for her arrest;[3] that on January 25, 2012, she posted bail[4] and was informed that the arraignment and trial were scheduled on February 13, 2012; that before the scheduled arraignment, she filed the Motion to Quash[5] the information on the ground of lack of jurisdiction as the crime of libel falls within the exclusive jurisdiction of the Regional Trial Court (RTC) and not with the MeTC and that there was no crime as internet libel; that acting thereon, the MeTC, instead of dismissing the case, issued the Order[6] requiring the trial prosecutor to file his comment within ten (10) days and resetting the arraignment to April 13, 2012; that despite the lapse of the period granted, Villena failed to file the required comment within the period prompting the MeTC to extend the filing of the same and reset the hearing on June 27, 2012, thereby, delaying the process by five (5) months; that the delay violated her constitutional right to a speedy trial; and that in his Comment[7]

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[1] *Rollo*, p. 1.

[2] Annex A of the Complaint, *id.* at 8-9.

[3] Annex B of the Complaint, *id.* at 10.

[4] Annex C of the Complaint, *id.* at 11.

[5] Annex D of the Complaint, *id.* at 12-18.

[6] Annex E of the Complaint, *id.* at 20.

[7] Annex G of the Complaint, *id.* at 22.

filed before the MeTC, Villena opposed the motion to quash and contended that "the court had already determined probable cause when it issued the warrant of arrest, thus, it has *effectively mooted the resolution of any issue concerning jurisdiction*, venue and sufficiency of evidence against the complainant."[8]

Boto further averred that she had previously filed a libel case against one George Tizon (*Tizon*) and others, but the said case was dismissed by Villena without conducting an investigation; that Tizon was the Administrative Officer V of the Department of Education Division, Taguig City, and the "godson" of Hon. Senator Allan Peter Cayetano, spouse of Taguig City Mayor, Lani Cayetano; that she received the resolution of the case only in January 2012 after the period to appeal had lapsed; that, however, when Tizon filed a complaint for libel against her, his complaint was immediately acted upon by the Taguig City prosecutors; and that so much interest was shown in the case, from its filing to the issuance of the warrant of arrest on the same day the case was filed before the MeTC.

Boto added that Manabat, De Dios, and Villena had all been practicing law for quite a number of years and it would be impossible for them not to know that the crime of libel falls within the jurisdiction of the RTC. She asserted that the respondents were all ignorant of the law, whose incompetence was a disgrace not only to the Department of Justice but to the legal profession as a whole.

The records further disclose that on October 17, 2012, the Information was properly filed with the RTC, Taguig City.[9]

On December 12, 2012, the Court issued the Resolution[10] requiring the respondents to file their comment within ten (10) days from receipt thereof.

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[8] *Rollo*, p. 22.

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

[10] *Id.* at 27.

Positions of the Respondents

Being not similarly situated, the respondents filed their separate comments. In his Comment,[11] De Dios, the investigating prosecutor, averred that the information for libel against complainant was filed before the MeTC due to inadvertence and that no malice or gross ignorance of the law attended it. He added that the information was later on filed with the RTC-Pasig, Branch 266, docketed as Criminal Case No. 149408, after the case filed before the MeTC was quashed.

In his separate Comment,[12] Manabat, the City Prosecutor who approved the Information, stated that the libel was filed based on the uncontroverted evidence of the complainant therein; that the information, however, was filed inadvertently with the MeTC; that there was no ignorance of the law or malice involved as they had previously filed cases of libel with the RTC; that the inadvertent filing was already corrected when the information was later on filed with the RTC; and that after the filing of the information with the RTC, the said court issued an order finding that probable cause existed to hold Boto for trial.

The trial prosecutor, Villena, in his Comment,[13] countered that the filing of the information was not within his discretion as he was not the investigating prosecutor and that it was not his duty to review the resolution of the investigating prosecutor as he had no authority to approve or disapprove an information or its filing in court. His participation commenced only after it was filed with the MeTC. He averred that the "Supreme Court had been very clear that once the information was filed in court, what to do with it is solely the court's prerogative and discretion. No one else can impose on the court, not even the Secretary of Justice much more this respondent."[14] Thus, he could not be expected to call the court's attention that it erred in taking

[11] *Id.* at 28.

[12] *Id.* at 35.

[13] *Id.* at 45-48.

[14] *Id.* at 46.

cognizance of the case. He could not be charged with gross ignorance of the law since he was not the person whose judgment was called on to decide on whether or not the court had jurisdiction.

On the libel case filed by Boto against one Tizon, he denied being biased when he dismissed it. He claimed that in his ten (10) years as a practicing lawyer, he had been conscientious and judicious in all his actions.

The Court's Ruling

The Court finds that Boto has valid reasons to file this complaint against the respondents who, being prosecutors, are members of the bar and officers of the court.

Article 360 of the Revised Penal Code (*RPC*) explicitly provides that jurisdiction over libel cases are lodged with the RTC. The criminal and civil action for damages in cases of written defamations shall be filed simultaneously or separately with the RTC of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense. Jurisprudence is replete with decisions on the exclusive jurisdiction of the RTC to hear and try libel cases. In fact, the language of the law cannot be any clearer; its meaning is free from doubt. All that is required is application.[15]

De Dios candidly admitted that inadvertence attended the filing of the information for libel with the MeTC. He did not, however, proffer any justification or explanation for the error. He did not claim that the mistake was either typographical or was a result of the application of a default form or template. In the Court's view, it was plain carelessness. As no malice can be attributed, he merely deserves a reprimand.

Manabat, on the other hand, should have been more cautious and careful in reviewing the report and recommendation of his

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[15] *People of the Philippines v. Benipayo,* G.R. No. 154473, April 24, 2009, 586 SCRA 420, 431.

subordinate. He should not have approved the information and its filing in the wrong court considering that his office was very knowledgeable of the law that jurisdiction in libel cases lies with the RTC. In fact, he cited several libel cases which his office filed with the proper court. As the head of office, he should be admonished to be more careful as his office is in the forefront in the administration of criminal justice.

While De Dios and Manabat can validly claim inadvertence, Villena cannot invoke the same defense in his handling of the case. Indeed, he did not file the information with the MeTC as he was not the investigating prosecutor, but merely the trial prosecutor. He, however, mishandled the case which prejudiced the complainant.

When the motion to quash was filed by Boto for lack of jurisdiction, Villena should have immediately acted on it by not opposing the dismissal of the case. The records disclose that in his Comment,[16] Villena prayed that the motion to quash be DENIED. His Comment reads:

> The undersigned prosecutor respectfully states that:
>
> 1. For lack of jurisdiction, improper venue, insufficiency of evidence, and that the allegations contained information do not constitute an offense, accused moves for the quashal of the information.
>
> 2. As to the first three (3) grounds relied upon by the accused, the Honorable Court had already determined probable cause when it issued a warrant of arrest against the accused. Thus, *it has effectively mooted the resolution of any issue concerning jurisdiction,* venue and sufficiency of evidence against the accused.
>
> 3. Accused herself contended that there is no jurisprudence yet defining the extent of the coverage of the crime of libel over social network. Thus, with more reason, the findings of the undersigned's office must be respected.

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[16] Annex G of the Complaint, *rollo*, p. 22.

Wherefore, premises considered, the undersigned respectfully prays of this Honorable Court to DENY accused's motion to quash.

x x x.[17] [Italization supplied]

Patently, this responsive pleading of Villena demonstrates that he did not know the elementary rules on jurisdiction. Fundamental is the rule that jurisdiction is conferred by law and is not within the courts, let alone the parties themselves, to determine or conveniently set aside.[18] It cannot be waived except for those judicially recognizable grounds like estoppel. And it is not mooted by an action of a court in an erroneously filed case. It has been held in a plethora of cases that when the law or procedure is so elementary, not to know, or to act as if one does not know it, constitutes gross ignorance of the law, even without the complainant having to prove malice or bad faith.[19]

Villena should have even initiated the move for the dismissal of the case on the ground of lack of jurisdiction. Instead of taking the initiative, he even opposed the motion to quash the information. At any rate, respondents are not barred from refiling the case before the proper court if probable cause to hold the complainant liable really exists. His dismal failure to apply the basic rule on jurisdiction amounts to ignorance of the law and reflects his lack of prudence, if not his incompetence, in the performance of his duties.[20]

Moreover, by not immediately filing a comment, he cannot blame the complainant for claiming that her right to a speedy trial was violated. It cannot be argued that no prejudice was

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[17] *Id.*

[18] *La Naval Drug Corporation v. Court of Appeals,* G.R. No. 103200, August 31, 1994, 236 SCRA 78, 90.

[19] *Torrevillas v. Navidad,* A.M. No. RTJ-06-1976 [Formerly OCA I.P.I. No. 03-1857], April 29, 2009, 587 SCRA 39, 56.

[20] *Uy v. Javellana,* A.M. No. MTJ-07-1666 [Formerly A.M. OCA-IPI No. 05-1761-MTJ], September 5, 2012, 680 SCRA 13, 35.

caused against her because the error was immediately corrected and the information was properly filed with the RTC. Boto was adversely affected not because the MeTC immediately issued a warrant for her arrest, but because the prosecution of the case, meritorious or not, was considerably delayed. The Court takes judicial notice that proceedings at the first level courts, especially in cities and capital towns, are relatively slower than those at the RTC because of its more numerous pending cases.

As a responsible public servant, a prosecutor's primary duty is not to simply convict but to see that justice is done.[21] He is obliged to perform his duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights in contributing to ensuring due process and the smooth functioning of the criminal justice system.[22] As such, he should not initiate or continue prosecution, or shall make every effort to stay the proceedings when it is apparent that the court has no jurisdiction over the case. This is where Villena failed.

As lawyers, the respondents are officers of the court with the duty to uphold its dignity and authority and not promote distrust in the administration of justice.[23] No less than the Code of Professional Responsibility mandates all lawyers to exert every effort to assist in the speedy and efficient administration of justice.[24]

WHEREFORE, Senior Assistant City Prosecutor Vincent L. Villena is found liable for Ignorance of the Law and is hereby **FINED** in the amount of Ten Thousand (₱10,000.00) Pesos, payable within 30 days from receipt of this resolution with a

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[21] Canon 6.01 Code of Professional Responsibility.

[22] Guidelines on the Role of Prosecutors, http://www.lawphil.net/international/treaties/grp.html, September 12, 2013.

[23] *Bondoc v. Aquino-Simbulan,* A.M. No. RTJ-09-2204 (formerly A.M. OCA IPI No. 04-2137-RTJ), October 26, 2009, 604 SCRA 416, 430.

[24] Canon 12 of the Code of Professional Responsibility.

warning that a repetition of the same or similar offense shall be dealt with more severely.

Assistant City Prosecutor Patrick Noel P. de Dios, for his negligence, is **REPRIMANDED** with a warning that a repetition of the same or similar offense shall be dealt with more severely.

City Prosecutor Archimedes V. Manabat is admonished to be more careful and circumspect in the review of the actions of his assistants.

SO ORDERED.

*Velasco, Jr. (Chairperson), del Castillo,** *Abad,* and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. Nos. 171594-96. September 18, 2013]

ASIA BREWERY, INC., *petitioner, vs.* **TUNAY NA PAGKAKAISA NG MGA MANGGAGAWA SA ASIA (TPMA),** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR RELATIONS; ASSUMPTION OF JURISDICTION BY THE SECRETARY OF LABOR DUE TO LABOR DISPUTE; THE SECRETARY OF LABOR COMMITTED GRAVE ABUSE OF DISCRETION IN RELYING ON THE UNAUDITED FINANCIAL STATEMENTS SUBMITTED BY THE EMPLOYER IN DETERMINING THE WAGE AWARD; RATIONALE; CASE AT BAR.—** In *MERALCO v. Sec. Quisumbing*, we had occasion to expound on the extent of our review powers over the arbitral

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* Designated Member in lieu of Associate Justice Diosdado M. Peralta, per Special Order No. 1541 dated September 9, 2013.

award of the Secretary of Labor, in general, and the factors that the Secretary of Labor must consider in determining the proper wage award, in particular. x x x Thus, we rule that the Secretary of Labor gravely abused her discretion when she relied on the unaudited financial statements of petitioner corporation in determining the wage award because such evidence is self-serving and inadmissible. Not only did this violate the December 19, 2003 Order of the Secretary of Labor herself to petitioner corporation to submit its complete audited financial statements, but this may have resulted to a wage award that is based on an inaccurate and biased picture of petitioner corporation's capacity to pay — one of the more significant factors in making a wage award. Petitioner corporation has offered no reason why it failed and/or refused to submit its audited financial statements for the past five years relevant to this case. This only further casts doubt as to the veracity and accuracy of the unaudited financial statements it submitted to the Secretary of Labor. Verily, we cannot countenance this procedure because this could unduly deprive labor of its right to a just share in the fruits of production and provide employers with a means to understate their profitability in order to defeat the right of labor to a just wage.

2. **ID.; ID.; ID.; ID.; FOR FAILURE TO INDICATE THE ACTUAL DATA UPON WHICH THE WAGE AWARD WAS BASED, THE SECRETARY OF LABOR COMMITTED GRAVE ABUSE OF DISCRETION; PRESENT IN CASE AT BAR.—** We also note with disapproval the manner by which the Secretary of Labor issued the wage award in this case, effectively paying lip service to the guidelines we laid down in *Meralco*. x x x [T]he Secretary of Labor failed to indicate the *actual* data upon which the wage award was based. It even appears that she utilized the "middle ground" approach which we precisely warned against in *Meralco*. Factors such as the actual and projected net operating income, impact of the wage increase on net operating income, the company's previous CBAs, and industry trends were not discussed in detail so that the precise bases of the wage award are not discernible on the face of the Decision. The contending parties are effectively precluded from seeking a review of the wage award, even if proper under our ruling in *Meralco*, because of the general but unsubstantiated statement in the Decision that the wage award was based on factors like the bargaining history, trends of arbitrated and agreed awards, and industry trends. In fine, there

is no way of determining if the Secretary of Labor utilized the proper evidence, figures or data in arriving at the subject wage award as well as the reasonableness thereof. This falls short of the requirement of administrative due process obligating the decision-maker to adjudicate the rights of the parties in such a manner that they can know the various issues involved and the reasons for the decision rendered. Based on the foregoing, we hold that the Secretary of Labor gravely abused her discretion in making the subject wage award.

APPEARANCES OF COUNSEL

Montenegro Arcilla Cua Kagaoan and Tiangson Law Offices for petitioner.

Napoleon Banzuela, Jr. for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

In cases of compulsory arbitration before the Secretary of Labor pursuant to Article 263(g) of the Labor Code, the financial statements of the employer must be properly audited by an external and independent auditor in order to be admissible in evidence for purposes of determining the proper wage award.

This Petition for Review on *Certiorari* assails the Court of Appeal's (CA) October 6, 2005 Decision[1] and the February 17, 2006 Amended Decision[2] in CA-G.R. SP Nos. 80839, 81639, and 83168 which modified the January 19, 2004 Decision[3] of the Secretary of Labor in OS-AJ-0042-2003.

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[1] CA *rollo* (CA-G.R. SP No. 83168), pp. 371-402; penned by Associate Justice Delilah Vidallon-Magtolis and concurred in by Associate Justices Josefina Guevara-Salonga and Fernanda Lampas Peralta.

[2] *Id.* at 479-483; penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta.

[3] *Id.* at 47-68.

Factual Antecedents

The antecedents are aptly summarized by the CA:

[Respondent union] Tunay Na Pagkakaisa ng mga Manggagawa sa Asia (TPMA) is a legitimate labor organization, certified as the sole and exclusive bargaining agent of all regular rank and file employees of [petitioner corporation] Asia Brewery, Incorporated (ABI). The [petitioner corporation], on the other hand, is a company engaged in the manufacture, sale and distribution of beer, shandy, glass and bottled water products. It employs about 1,500 workers and has existing distributorship agreements with at least 13 companies.

[Respondent union] and [petitioner corporation] had been negotiating for a new collective bargaining agreement (CBA) for the years 2003-2006 since the old CBA expired last July 2003. After about 18 sessions or negotiations, the parties were still unable to reconcile their differences on their respective positions on most items, particularly on wages and other economic benefits.

On October 21, 2003, the [respondent union] declared a deadlock. On October 27, 2003, [respondent union] filed a notice of strike with the National Conciliation and Mediation Board (NCMB), docketed as NCMB-RB-IV-LAG-NS-10-064-03. However, the parties did not come to terms even before the NCMB.

On November 18, 2003, [respondent union] conducted a strike vote. Out of the 840 union members, 768 voted in favor of holding a strike.

On November 20, 2003, [petitioner corporation] then petitioned the Secretary of the Department of Labor and Employment (DOLE) to assume jurisdiction over the parties' labor dispute, invoking Article 263 (g) of the Labor Code. In answer, [respondent union] opposed the assumption of jurisdiction, reasoning therein that the business of [petitioner corporation] is not indispensable to the national interest.

On December 2, 2003, [respondent union] filed before [the Court of Appeals] a petition for injunction, docketed as CA-G.R. SP No. 80839, which sought to enjoin the respondent Secretary of Labor from assuming jurisdiction over the labor dispute, or in the alternative, to issue a temporary restraining order, likewise to enjoin the former from assuming jurisdiction.

On December 19, 2003, the public respondent, through Undersecretary/Acting Secretary Manuel G. Imson, issued an order

assuming jurisdiction over the labor dispute between the [respondent union] and [petitioner corporation]. The pertinent portions of the said order read:

x x x x

"WHEREFORE, based on our considered determination that the current labor dispute is likely to adversely affect national interest, this Office hereby ASSUME[S] JURISDICTION over the labor dispute between the ASIA BREWERY[,] INCORPORATED and the *TUNAY NA PAGKAKAISA NG MANGGAGAWA SA* ASIA pursuant to Article 263 (g) of the Labor Code, as amended. Accordingly, any strike or lockout in the Company, whether actual or impending, is hereby enjoined. Parties are hereby directed to cease and desist from taking any action that might exacerbate the situation.

x x x x

"To expedite the resolution of this dispute, the parties are directed to submit in three (3) copies, their Position Papers within ten (10) days from receipt of this Order and another five (5) days from receipt of the said position papers to submit their Reply.

"1. The Company shall be required to provide:

"a. Complete Audited Financial Statements for the past five (5) years certified as to its completeness by the Chief Financial Comptroller or Accountant;

"b. Projected Financial Statements of the Company for the next three (3) years;

"c. CBA history as to economic issues; and

"d. The average monthly salary of the employees in this bargaining unit.

"2. The Union is required to provide an itemized summary of their CBA demands with financial costing and sample CBA's (if any) in similarly situated or comparable bargaining units.

"In the interest of speedy labor justice, this Office will entertain no motion for extension or postponement.

"The appropriate police authority is hereby deputized to enforce this Order in case of defiance or the same is not forthwith obeyed.

"SO ORDERED."

x x x x

On January 19, 2004, [respondent union] filed another petition for *certiorari* with [the Court of Appeals], docketed as CA-G.R. SP No. 81639, imputing bad faith and grave abuse of discretion to the Secretary of Labor. [Respondent union] prayed therein for the nullification of the order of assumption of jurisdiction and the declaration that [petitioner corporation] is not an industry indispensable to the national interest.

In the meantime, in a decision dated January 19, 2004, Secretary of Labor Patricia Sto. Tomas resolved the deadlock between the parties. As summarized in a later resolution, the public respondent granted the following arbitral awards:

(1) WAGE INCREASES as follows:

First Year	=	₱18.00
Second Year	=	15.00
Third Year	=	12.00
Total	=	₱45.00

(2) HEALTH CARE (HMO)

₱1,300 premium to be shouldered by Asia Brewery, Inc., for each covered employee and ₱1,800 contribution [for each] Union member-dependent.

x x x x

The [respondent union] moved for a reconsideration of the decision on the ground that the ruling lacks evidentiary proof to sufficiently justify the same. It also filed a "Paglilinaw o Pagwawasto" of the Decision. Similarly, [petitioner corporation] also filed a motion for clarification/ reconsideration. The respondent Secretary of Labor resolved all three motions in a resolution dated January 29, 2004 x x x.

x x x x

Thereafter, on February 9, 2004, the parties executed and signed the Collective Bargaining Agreement with a term from August 1, 2003 to July 31, 2006.

Subsequently, on April 1, 2004, [respondent union] filed another petition for *certiorari* before [the Court of Appeals], which was docketed as SP-83168, assailing the arbitral award and imputing grave abuse of discretion upon the public respondent.

x x x x[4]

Court of Appeals' Ruling

On October 6, 2005, the CA rendered the first assailed Decision affirming with modification the arbitral award of the Secretary of Labor, *viz*:

WHEREFORE, judgment is hereby rendered with the following rulings:

1) The assailed order dated December 19, 2003 of public respondent Secretary of Labor is ***AFFIRMED***. The petitions for injunction and *certiorari* in CA-G.R. SP Nos. 80839 and 81639 are ***denied*** and accordingly ***DISMISSED.***

2) In CA-G.R. SP No. 81368, the assailed decision dated January 19, 2004 and the order dated January 29, 2004 of the public respondent are hereby ***MODIFIED to read as follows:***

a) The present CBA is declared effective as of August 1, 2003;

b) Consequently, the employees are entitled to the arbitral awards or benefits from August 1, 2003 on top of the ₱2,500.00 signing bonus;

c) The computation of the wage increase is ***REMANDED*** to the public respondent; and

d) The health benefit of the employees shall be ₱1,390.00.

SO ORDERED.[5]

In modifying the arbitral award of the Secretary of Labor, the CA ruled that: (1) The effectivity of the CBA should be August

[4] *Id.* at 372-380.

[5] *Id.* at 401-402. Emphases in the original.

1, 2003 because this is the date agreed upon by the parties and not January 1, 2004 as decreed by the Secretary of Labor; (2) The computation of wage increase should be remanded to the Secretary of Labor because the computation was based on petitioner corporation's unaudited financial statements, which have no probative value pursuant to the ruling in *Restaurante Las Conchas v. Llego*,[6] and was done in contravention of DOLE Advisory No. 1, Series of 2004, which contained the guidelines in resolving bargaining deadlocks; and (3) The health benefits should be ₱1,390.00 per covered employee because petitioner corporation had already agreed to this amount and the same cannot be altered or reduced by the Secretary of Labor.

Aggrieved, respondent union and petitioner corporation moved for reconsideration and partial reconsideration, respectively. On February 17, 2006, the CA issued an Amended Decision, *viz*:

> **WHEREFORE**, the foregoing considered, the Motion for Reconsideration of [respondent union] is **DENIED** and the Partial Motion for Reconsideration of [petitioner corporation] is **PARTIALLY GRANTED**. Accordingly, Our Decision is MODIFIED and the signing bonus previously awarded is hereby **DELETED**. The assailed Decision of the respondent Secretary with respect to the issue on salary increases is **REMANDED** to her office for a definite resolution within one month from the finality of this Court's Decision using as basis the externally audited financial statements to be submitted by [petitioner corporation].
>
> **SO ORDERED**.[7]

The CA partially modified its previous Decision by deleting the award of the signing bonus. It ruled that, pursuant to the express provisions of the CBA, the signing bonus is over and beyond what the parties agreed upon in the said CBA.

From this Amended Decision, only petitioner corporation appealed to this Court *via* this Petition for Review on *Certiorari*.

[6] 372 Phil. 697 (1999).

[7] CA *rollo* (CA-G.R. SP No. 83168), pp. 482-483.

Issues

Petitioner corporation raises the following issues for our resolution:

I. Whether the CA erred when it failed to dismiss CA-G.R. SP No. 83168 despite the lack of authority of those who instituted it.

II. Whether the CA erred when it remanded to the Secretary of Labor the issue on wage increase.

III. Whether the CA erred when it awarded ₱1,390.00 as premium payment for each covered employee.[8]

Our Ruling

The Petition lacks merit.

The authority of Rodrigo Perez (Perez) to file the petition before the CA was not sufficiently refuted.

Petitioner corporation claims that Perez, the person who verified the Petition in CA-G.R. SP No. 83168 questioning the propriety of the arbitral award issued by the Secretary of Labor, was without authority to represent respondent union. While there was a Secretary's Certificate attached to the aforesaid Petition purportedly authorizing Perez to file the Petition on behalf of the union, there was no showing that the union president, Jose Manuel Miranda (Miranda), called for and presided over the meeting when the said resolution was adopted as required by the union's constitution and by-laws. Moreover, the aforesaid resolution was adopted on March 23, 2004 while the Petition was filed on April 1, 2004 or nine days from the adoption of the resolution. Under the union's constitution and by-laws, the decision of the board of directors becomes effective only after two weeks from its issuance. Thus, at the time of the filing of the aforesaid Petition, the resolution authorizing Perez to file the same was still ineffective. Petitioner corporation also adverts

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[8] *Rollo*, pp. 709-710.

to two labor cases allegedly divesting Perez of authority to represent the union in the case before the appellate court.

We disagree.

The Secretary's Certificate[9] attached to the Petition in CA-G.R. SP No. 83168 stated that the union's board of directors held a special meeting on March 23, 2004 and unanimously passed a resolution authorizing Perez to file a Petition before the CA to question the Secretary of Labor's arbitral award.[10] While petitioner corporation claims that the proper procedure for calling such a meeting was not followed, it presented no proof to establish the same. Miranda, the union president who allegedly did not call for and preside over the said meeting, did not come out to contest the validity of the aforesaid resolution or Secretary's Certificate. Similarly, petitioner corporation's claim that the aforesaid resolution was still ineffective at the time of the filing of the subject Petition is unsubstantiated. A fair reading of the provisions which petitioner corporation cited in the union's constitution and by-laws, particularly Article VIII, Section 2[11] thereof, would show that the same refers to decisions

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[9] CA *rollo* (CA-G.R. SP No. 83168), p. 40.

[10] *Id*.

[11] Article VIII, Section 2 of respondent union's constitution and by-laws states:

Seksyon 2. Ang Lupon ng mga Kagawad (Board of Directors) ay magdaraos ng regular na pulong isang (1) beses tuwing ikalawang (2) buwan. Ang mga paanyaya o abiso sa bawat kasapi ng Lupon ng mga kagawad ay ipapadala tatlong (3) araw bago sumapit ang takdang araw ng pulong. Ang petsa, oras at lugar ng pulong ay itatakda ng Chairman of the Board.

a. *Ito ang pangalawang mataas na kapulungan ng Unyon dahil dito, ang Mahahalal na Chairman of the Board ang magpapatawag at mangungulo sa pulong.*

b. *Lalamin ng pulong ang pagpapasa ng mga partikular na patakaran ng unyon sa bawat yugto alinsunod sa mga batayang prinsipyo ng Unyon sa itinatadhana ng Saligang Batas na ito. Upang maging masigla at malaman ang talakayan at mga pagtitiyang mga desisyon dapat malalim na nauunawaan ng*

of the board of directors regarding the laws or rules that would govern the union, hence, the necessity of a two-week prior notice to the affected parties before they become effective. These provisions have not been shown to apply to resolutions granting authority to individuals to represent the union in court cases. Besides, even if we assume that these provisions in the union's constitution and by-laws apply to the subject resolution, the continuing silence of the union, from the time of its adoption to the filing of the Petition with the CA and up to this point in these proceedings, would indicate that such defect, if at all present, in the authority of Perez to file the subject Petition, was impliedly ratified by respondent union itself.

As to the two labor cases allegedly divesting Perez of the authority to file the subject Petition, an examination of the same would show that they did not affect the legal capacity of Perez to file the subject Petition. The first labor case (*i.e.*, RO400-0407-AU-002,[12] RO400-0409-AU-006,[13] and RO400-0412-AU-001[14]) involved the move of Perez and other union members to amend the union's Constitution and By-Laws in order to include a provision on recall elections and to conduct a recall elections on June 26, 2004. In that case, the Med-Arbiter, in

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bawat kasapi ng Lupon ng mga kagawad ang Saligang prinsipyong isinusulong ng Unyon at ang nilalaman ng Saligang Batas na ito.

c. *Magkakabisa ang mga desisyon ng Lupon ng mga kagawad dalawang (2) linggo matapos maipasa ang batas at mapatalakay at mapagkaisa ang buong pamunuan at mga komite ng Unyon.* (*Rollo*, p. 234)

[12] Entitled *In Re: Petition for Interpleader, Asia Brewery, Inc. v. Jose Manuel Miranda, et al.*; *id*. at 567.

[13] Entitled *In Re: Petition for Annulment of Amendments to TPMA Constitution and By-Laws Providing for a Recall Election and the Recall Election held on June 26, 2004, Jose Manuel Miranda v. Rodrigo Perez et al.*; *id*.

[14] Entitled *In Re: Petition to Declare the Amendments in the Constitution and By-Laws of the TPMA-Independent and the Recall Election of its Officers Valid, Rodrigo Perez et al. v. Jose Manuel D. Miranda, et al.*; *id*. at 568.

his January 25, 2005 Order,[15] ruled that the amendment sought to be introduced was not validly ratified by the requisite two-thirds vote from the union membership. As a result, the recall elections held on June 26, 2004 was annulled.[16] The second labor case (*i.e.*, NLRC NCR CC No. 000282-04[17] and NLRC-RAB IV-12-20200-04-L[18]) involved the strike staged by Perez and other union members on October 4, 2004. There, the National Labor Relations Commission, in its March 2006 Decision,[19] ruled that the strike was illegal and, as a consequence, Perez and the other union members were declared to have lost their employment status.[20]

These two labor cases had no bearing on the legal capacity of Perez to represent the union in CA-G.R. SP No. 83168 because (1) they did not nullify the authority granted to Perez in the March 23, 2004 resolution of the union's board of directors to file the subject Petition, and (2) the material facts of these cases occurred and the Decisions thereon were rendered after the subject Petition was already filed with the CA on April 1, 2004.

The remand of this case to the Secretary of Labor as to the issue of wage increase was proper.

Petitioner corporation admits that what it submitted to the Secretary of Labor were unaudited financial statements which were then used as one of the bases in fixing the wage award. However, petitioner corporation argues that these financial statements were duly signed and certified by its chief financial officer. These statements have also been allegedly submitted to various government agencies and should, thus, be considered

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[15] *Id.* at 569-586.

[16] *Id.* at 586.

[17] Entitled *In Re: Labor Dispute at Asia Brewery Inc.*; *id*. at 611.

[18] Entitled *Rodrigo Perez, et al. v. Asia Brewery Inc., et al.*; *id.*

[19] *Id.* at 611-639 (exact day illegible).

[20] *Id.* at 639.

official and public documents. Moreover, respondent union did not object to the subject financial statements in the proceedings before the Secretary of Labor and even used the same in formulating its (the union's) arguments in said proceedings. Thus, petitioner corporation contends that although the subject financial statements were not audited by an external and independent auditor, the same should be considered substantial compliance with the order of the Secretary of Labor to produce the petitioner corporation's complete audited financial statements for the past five years. Furthermore, the Decision of the Secretary of Labor was not solely based on the subject financial statements as the CBA history, costing of the proposals, and wages in other similarly situated bargaining units were considered. Finally, petitioner corporation claims that the demands of respondent union on wage increase are unrealistic and will cause the former to close shop.

The contention is untenable.

In *Restaurante Las Conchas v. Llego*,[21] several employees filed a case for illegal dismissal after the employer closed its restaurant business. The employer sought to justify the closure through unaudited financial statements showing the alleged losses of the business. We ruled that such financial statements are mere self-serving declarations and inadmissible in evidence even if the employees did not object to their presentation before the Labor Arbiter.[22] Similarly, in *Uichico v. National Labor Relations Commission,*[23] the services of several employees were terminated on the ground of retrenchment due to alleged serious business losses suffered by the employer. We ruled that by submitting unaudited financial statements, the employer failed to prove the alleged business losses, *viz*:

x x x It is true that administrative and quasi-judicial bodies like the NLRC are not bound by the technical rules of procedure in the

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[21] *Supra* note 6.

[22] *Id.* at 704-705.

[23] 339 Phil. 242 (1997).

adjudication of cases. However, this procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules. While the rules of evidence prevailing in the courts of law or equity are not controlling in proceedings before the NLRC, the evidence presented before it must at least have a modicum of admissibility for it to be given some probative value. The Statement of Profit and Losses submitted by Crispa, Inc. to prove its alleged losses, **without the accompanying signature of a certified public accountant or audited by an independent auditor, are nothing but self-serving documents which ought to be treated as a mere scrap of paper devoid of any probative value.** For sure, this is not the kind of sufficient and convincing evidence necessary to discharge the burden of proof required of petitioners to establish the alleged losses suffered by Crispa, Inc. in the years immediately preceding 1990 that would justify the retrenchment of respondent employees. x x x[24]

While the above-cited cases involve proof necessary to establish losses in cases of business closure or retrenchment, we see no reason why this rule should not equally apply to the determination of the proper level of wage award in cases where the Secretary of Labor assumes jurisdiction in a labor dispute pursuant to Article 263(g)[25] of the Labor Code.

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[24] *Id.* at 250-251. Emphasis supplied.

[25] Article 263(g) of the Labor Code provides:

When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure the compliance with this provision as well as with such orders as he may issue to enforce the same.

x x x x

In *Meralco v. Sec. Quisumbing*,[26] we had occasion to expound on the extent of our review powers over the arbitral award of the Secretary of Labor, in general, and the factors that the Secretary of Labor must consider in determining the proper wage award, in particular, *viz*:

The extent of judicial review over the Secretary of Labor's arbitral award is not limited to a determination of grave abuse in the manner of the secretary's exercise of his statutory powers. This Court is entitled to, and must — in the exercise of its judicial power — review the substance of the Secretary's award when grave abuse of discretion is alleged to exist in the award, *i.e.*, in the appreciation of and the conclusions the Secretary drew from the evidence presented.

x x x x

In this case we believe that the more appropriate and available standard — and one does not require a constitutional interpretation — is simply the standard of reasonableness. In layman's terms, reasonableness implies the absence of arbitrariness; in legal parlance, this translates into the exercise of proper discretion and to the observance of due process. **Thus, the question we have to answer in deciding this case is whether the Secretary's actions have been reasonable in light of the parties[‘] positions and the evidence they presented.**

x x x x

This Court has recognized the Secretary of Labor's distinct expertise in the study and settlement of labor disputes falling under his power of compulsory arbitration. It is also well-settled that factual findings of labor administrative officials, if supported by substantial evidence, are entitled not only to great respect but even to finality. x x x

But at the same time, we also recognize the possibility that abuse of discretion may attend the exercise of the Secretary's arbitral functions; his findings in an arbitration case are usually based on position papers and their supporting documents (as they are in the present case), and not on the thorough examination of the parties' contending claims that may be present in a court trial and in the face-to-face adversarial process that better insures the proper

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[26] 361 Phil. 845 (1999).

presentation and appreciation of evidence. There may also be grave abuse of discretion where the board, tribunal or officer exercising judicial function fails to consider evidence adduced by the parties. Given the parties' positions on the justiciability of the issues before us, the question we have to answer is one that goes into the substance of the Secretary's disputed orders: **Did the Secretary properly consider and appreciate the evidence presented before him?**

x x x x

While We do not seek to enumerate in this decision the factors that should affect wage determination, we must emphasize that a collective bargaining dispute such as this one requires due consideration and *proper balancing of the interests of the parties to the dispute and of those who might be affected by the dispute.* To our mind, the best way in approaching this task holistically is to consider the available objective facts, including, where applicable, factors such as the bargaining history of the company, the trends and amounts of arbitrated and agreed wage awards and the company's previous CBAs, and industry trends in general. As a rule, affordability or capacity to pay should be taken into account but cannot be the sole yardstick in determining the wage award, especially in a public utility like MERALCO. In considering a public utility, the decision maker must always take into account the "public interest" aspects of the case; MERALCO's income and the amount of money available for operating expenses — including labor costs — are subject to State regulation. We must also keep in mind that high operating costs will certainly and eventually be passed on to the consuming public as MERALCO has bluntly warned in its pleadings.

We take note of the "middle ground" approach employed by the Secretary in this case which we do not necessarily find to be the best method of resolving a wage dispute. Merely finding the midway point between the demands of the company and the union, and "splitting the difference" is a simplistic solution that fails to recognize that the parties may already be at the limits of the wage levels they can afford. It may lead to the danger too that neither of the parties will engage in principled bargaining; the company may keep its position artificially low while the union presents an artificially high position, on the fear that a "Solomonic" solution cannot be avoided. Thus, rather than encourage agreement, a "middle ground approach"

instead promotes a "play safe" attitude that leads to more deadlocks than to successfully negotiated CBAs.[27]

Thus, we rule that the Secretary of Labor gravely abused her discretion when she relied on the unaudited financial statements of petitioner corporation in determining the wage award because such evidence is self-serving and inadmissible. Not only did this violate the December 19, 2003 Order[28] of the Secretary of Labor herself to petitioner corporation to submit its complete audited financial statements, but this may have resulted to a wage award that is based on an inaccurate and biased picture of petitioner corporation's capacity to pay — one of the more significant factors in making a wage award. Petitioner corporation has offered no reason why it failed and/ or refused to submit its audited financial statements for the past five years relevant to this case. This only further casts doubt as to the veracity and accuracy of the unaudited financial statements it submitted to the Secretary of Labor. Verily, we cannot countenance this procedure because this could unduly deprive labor of its right to a just share in the fruits of production[29]

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[27] *Id.* at 866-872. Emphasis supplied.

[28] The December 19, 2003 Order states in part:

To expedite the resolution of this dispute, the parties are directed to submit in **three (3) copies, their Position Papers** within **ten (10) days** from receipt of this Order and another **five (5) days** from receipt of the said position papers to submit their Reply.

1. The Company shall be required to provide:

   a. Complete Audited Financial Statements for the past five (5) years certified as to its completeness by the Chief Financial Comptroller or Accountant; x x x (*Rollo*, p. 156. Emphases in the original.)

[29] Article XIII, Section 3 of the Constitution states in part:

x x x x

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

and provide employers with a means to understate their profitability in order to defeat the right of labor to a just wage.

We also note with disapproval the manner by which the Secretary of Labor issued the wage award in this case, effectively paying lip service to the guidelines we laid down in *Meralco*. To elaborate, the Secretary of Labor held:

Based on such factors as BARGAINING HISTORY, TRENDS OF ARBITRATED AND AGREED AWARDS AND INDUSTRY TRENDS, in general, we hold that *vis-à-vis* the Union['s] demands and the Company's offers, as follows:

UNION['S] DEMANDS		**COMPANY'S OFFERS**	
For the FIRST YEAR:	₱36	For the First 18 months:	₱18
For the SECOND YEAR:	36	For the Second 18 months:	18
For the THIRD YEAR:	36		
TOTAL:	₱108 for three (3) years		₱36 for 36 months

this Office awards the following wage increases:

For the FIRST YEAR:	₱18
For the SECOND YEAR:	15
For the THIRD YEAR:	12
	₱45 for three (3) years[30]

As can be seen, the Secretary of Labor failed to indicate the *actual* data upon which the wage award was based. It even appears that she utilized the "middle ground" approach which we precisely warned against in *Meralco*. Factors such as the actual and projected net operating income, impact of the wage increase on net operating income, the company's previous CBAs, and industry trends were not discussed in detail so that the precise bases of the wage award are not discernible on the face of the Decision. The contending parties are effectively

[30] *Rollo*, p. 323.

precluded from seeking a review of the wage award, even if proper under our ruling in *Meralco*, because of the general but unsubstantiated statement in the Decision that the wage award was based on factors like the bargaining history, trends of arbitrated and agreed awards, and industry trends. In fine, there is no way of determining if the Secretary of Labor utilized the proper evidence, figures or data in arriving at the subject wage award as well as the reasonableness thereof. This falls short of the requirement of administrative due process obligating the decision-maker to adjudicate the rights of the parties in such a manner that they can know the various issues involved and the reasons for the decision rendered.[31]

Based on the foregoing, we hold that the Secretary of Labor gravely abused her discretion in making the subject wage award. The appellate court, thus, correctly remanded this case to the Secretary of Labor for the proper determination of the wage award which should utilize, among others, the audited financial statements of petitioner corporation and state with sufficient clarity the facts and law on which the wage award is based.

The modification of the arbitral award on health benefits from ₱1,300.00 to ₱1,390.00 was proper.

The CA held that the Secretary of Labor gravely abused her discretion when the latter awarded ₱1,300.00 as premium payment for each covered employee because the minutes of the October 17, 2003 collective bargaining negotiations between the parties showed that they had previously agreed to a higher ₱1,390.00 premium payment for each covered employee. However, petitioner corporation claims that it never agreed to this higher amount as borne out by the same minutes. The final offer of petitioner corporation on this item was allegedly to provide only ₱1,300.00 (not ₱1,390.00) as premium payment for each covered employee.

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[31] *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, 644 (1940).

We have reviewed the minutes[32] of the October 17, 2003 collective bargaining negotiations adverted to by both parties. A fair reading thereof indicates that the issue of premium payments underwent several proposals and counter-proposals from petitioner corporation and respondent union, respectively. The last proposal of petitioner corporation relative thereto was to allot ₱1,390.00 as premium payment per covered employee provided that it (petitioner corporation) would not shoulder the premium payments of the employee's dependents. For its part,

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[32] CA *rollo* (CA-G.R. SP No. 83168), pp. 180-181. The minutes relevantly state:

AGENDA (ECONOMIC ISSUES)

> ARTICLE IX: HOSPITALIZATION, MEDICAL AND DENTAL SERVICES

UNION/TPMA:

- Clarified Management Position- ₱1,390 without dependent? Contract with Fortune Care had expired last October 15, 2003.
- ₱1,390- dependent, negotiable;
- 50%-50% for dependent's premium;
- 70%-30% (70% is for TPMA);
- Accepted ₱ 1,390 but to rephrase/change the CBA existing provision- NOT to indicate the amount/figure instead, 100% cost of net premium- is to be shouldered by the Management.
- Suggested to DEFER this provision.
- Other provisions DEADLOCK.
- We're not telling that we don't want to negotiate anymore, but seems you're one sided. Even we declared Deadlock- we are still OPEN for a marathon negotiation.
- Let's discuss at the LABOR for we see that at this level we cannot have an agreement. We were able to justify our position- it is not "*SUNTOK SA BUWAN*" as you claimed. It will just last for so long, so, let's elevate it at the Labor (DOLE).
- Can we ask for an increase for the succeeding years in addition to what you have given this year? For sure we will not get an expensive HMO.

respondent union accepted the proposal provided that the premium payment would be renegotiated on the second and third years of the CBA. Consequently, both parties agreed *at the minimum*

- Can we just ask for a 30% increase in premium for the 2nd and 3rd year? You know the HMO increases its rate on a yearly basis.
- Ok for ₱1,390; renegotiate for the 2nd and 3rd year. "*Nakasalalay dito ang mga empleyadong naka*-confine *sa hospital*."
- All other provisions-DEADLOCK, it was you who deferred the HMO provision.

MANAGEMENT/ABI:

- ₱1,390 is the current Management position. If the TPMA will insist for the Dependent's inclusion, we will be back to ₱1,200; otherwise, we have to close this provision at ₱1390, employee only.
- Clarified Management position ever since. We have to CLOSE this provision.
- Suggested to use the existing rate of ₱1,200 while still negotiating this specific provision.
- Still ₱1,390 only for the employee.
- Retain the existing provision of the existing CBA and will be increasing the premium from ₱1,200 to ₱1,390.
- If you're declaring deadlock in other provisions, we are here to continuously negotiate with you until we arrive to an agreement which is mutually beneficial to both parties.
- We are sincere in negotiating because what we're giving means Millions already. Look at the Management side for you to understand us. Much as we wanted to improve the welfare and benefits of our employees but there are limitations. We cannot give you heaven, anything you want. Management is trying its very best to accommodate all the demands of the Union.
- We didn't quote "*suntok sa buwan*" but the Management can't afford your demands. We believe you are sincere in your demands, but we cannot accept your demands on HMO, is the ₱1,390 the same provision of the CBA? Is this already acceptable to you?
- ₱1,390 for the employee, the rest of the HMO provision, the same-that's the position of the Management.

that the premium payment shall be ₱1,390.00 per covered employee and the remaining point of contention was whether the premium payment could be renegotiated on the second and third years of the CBA. It was, thus, grave abuse of discretion on the part of the Secretary of Labor to reduce the award to ₱1,300.00 which is below the minimum of ₱1,390.00 previously agreed upon by the parties. We also note that in the proceedings before the CA, respondent union only pleaded for the award of the ₱1,390.00 premium payment per covered employee[33] thereby effectively waiving its proposal on the renegotiation of the premium payment on the second and third years of the CBA.

WHEREFORE, the Petition is **DENIED**. The February 17, 2006 Amended Decision of the Court of Appeals in CA-G.R. SP Nos. 80839, 81639, and 83168 is **AFFIRMED.**

Costs against petitioner.

SO ORDERED.

Carpio (Chairperson), Perez, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

□ Management will observe the Ground Rules to meet every Tuesday and Friday. May we know the side of the UNION? Please clarify- are you willing to negotiate again?

□ We will comply with the Ground Rules and in our scheduled session, we will be THERE.

[33] *Id.* at 27.

SECOND DIVISION

[G.R. No. 171633. September 18, 2013]

JUANITO VICTOR C. REMULLA, *petitioner, vs.* **ERINEO S. MALIKSI, in his capacity as Governor of the Province of Cavite, RENATO A. IGNACIO, in his capacity as Provincial Legal Officer of the Province of Cavite, MARIETTA O'HARA DE VILLA, HEIRS OF HIGINO DE VILLA, GOLDENROD, INC., SONYA G. MATHAY, and ELEUTERIO M. PASCUAL,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; PARTIES IN INTEREST; PETITIONER HAS LEGAL STANDING TO FILE THE ANNULMENT OF JUDGMENT CASE BOTH AS A TAXPAYER AND IN HIS OFFICIAL CAPACITY AS THEN VICE-GOVERNOR AND PRESIDING OFFICER OF THE SANGGUNIANG PANLALAWIGAN OF THE PROVINCE OF CAVITE.— Records bear out that Remulla filed his petition for annulment of judgment in two capacities: ***first***, in his personal capacity as a taxpayer; and, ***second***, in his official capacity as then presiding officer of the Sangguniang Panlalawigan of the Province of Cavite. With respect to the first, jurisprudence dictates that a taxpayer may be allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law or ordinance. In this case, public funds of the Province of Cavite stand to be expended to enforce the compromise judgment. As such, Remulla – being a resident-taxpayer of the Province of Cavite – has the legal standing to file the petition for annulment of judgment and, therefore, the same should not have been dismissed on said ground. Notably, the fact that there lies no proof that public funds have already been disbursed should not preclude Remulla from assailing the validity of the compromise judgment. Lest it be misunderstood, the concept of legal standing is ultimately a procedural

technicality which may be relaxed by the Court if the circumstances so warrant. As observed in *Mamba v. Lara,* the Court did not hesitate to give standing to taxpayers in cases where serious legal issues were raised or where public expenditures of millions of pesos were involved. Likewise, it has also been ruled that a taxpayer need not be a party to the contract in order to challenge its validity, or to seek the annulment of the same on the ground of extrinsic fraud. Indeed, for as long as taxes are involved, the people have a right to question contracts entered into by the government, as in this case. Anent the second, Remulla equally lodged the petition for annulment of judgment in his official capacity as then Vice-Governor and Presiding Officer of the Sangguniang Panlalawigan of the Province of Cavite. As such, he represents the interests of the province itself which is, undoubtedly, a real party in interest since it stands to be either benefited or injured by the execution of the compromise judgment. For these reasons, the CA should not have dismissed the petition for annulment of judgment on account of Remulla's lack of legal standing. Consequently, the case should be remanded to the said court for further proceedings.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioner.
Provincial Legal Office (Cavite) for public respondent.
Amado R. Fojas for private respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Resolutions dated May 18, 2005[2] and February 16, 2006[3] of the Court of Appeals (CA) in CA-G.R. SP No. 86465 which

[1] *Rollo*, pp. 3-60.

[2] *Id*. at 65-76. Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Roberto A. Barrios and Vicente S.E. Veloso, concurring.

dismissed petitioner Juanito Victor C. Remulla's (Remulla) petition for annulment of judgment.

The Facts

On May 7, 1957, Marietta O'Hara de Villa (de Villa), in her personal capacity and as administratix of the estate of her late husband Guillermo, ceded, through a deed of donation[4] (1957 deed of donation), 134,957 square meters (sq. m.) (donated portion) of their 396,622 sq. m. property (subject property) in favor of the Province of Cavite, on which now stands various government offices and facilities.[5]

On December 28, 1981 and February 1, 1982,[6] the Province of Cavite respectively filed a Complaint and an Amended Complaint, before the then Court of First Instance of Cavite, Trece Martires City, Branch 1 – now, Regional Trial Court of Trece Martires City, Branch 23 (RTC), docketed as Civil Case No. TM-955 (expropriation case) – seeking to expropriate, for the amount of ₱215,050.00, the remaining 261,665 sq. m. of the subject property which the former intends to develop as the Provincial Capitol Site. Accordingly, the Province of Cavite made a preliminary deposit of the amount of ₱21,505.00 and, on January 4, 1982, the RTC issued a Confirmatory Writ of Immediate Possession[7] in its favor, by virtue of which the Province of Cavite took possession of the entire property.[8]

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[3] *Id*. at 78-80. Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Roberto A. Barrios and Fernanda Lampas Peralta, concurring and Associate Justices Mariano C. del Castillo (now Supreme Court Associate Justices) and Vicente S.E. Veloso, dissenting.

[4] *Id*. at 105-107.

[5] *Id*. at 7-8, 227-228, 460, and 507.

[6] See *id*. at 460. In the Compromise Agreement, the Complaint and Amended Complaint were dated January 4, 1982 and February 2, 1982, respectively.

[7] *Id*. at 115-116. Issued by District Judge Pablo D. Suarez.

[8] *Id*. at 8-9 and 229-230.

For her part, de Villa, through her Answer,[9] opposed the expropriation proceedings, claiming that there are still areas within the donated portion which the Province of Cavite failed to develop.[10] She also alleged that the fair market value of the subject property should be pegged at the amount of ₱11,272,500.00, or at ₱45.00 per sq. m.[11] On June 9, 1989, while the expropriation case was still pending, de Villa sold, for the amount of₱2,000,000.00,[12] the 261,665 sq. m. portion of the subject property to Goldenrod, Inc. (Goldenrod), a joint venture company owned by Sonya G. Mathay (Mathay) and Eleuterio M. Pascual, Jr. (Pascual).[13] Subsequently, Mathay and Pascual intervened in the expropriation case.[14]

On November 4, 2003, respondent then Cavite Governor Erineo S.Maliksi (Maliksi) issued Executive Order No. 004[15] authorizing the creation of a committee which recommended the terms and conditions for the proper settlement of the expropriation case. The said committee thereafter submitted its Committee Report[16] dated November 24, 2003 recommending that: (*a*) the just compensation be pegged at the amount of ₱495.00 per sq. m. plus 6% annual interest for 22 years,[17] for

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[9] *Id*. at 418-426. Dated June 20, 1982.

[10] *Id*. at 419 and 423.

[11] *Id*. at 9-10 and 426.

[12] *Id*. at 131-133. Per a Deed of Absolute Sale.

[13] *Id*. at 460.

[14] *Id*. at 461.

[15] See *id*. at 455-456. Entitled "CREATING A COMMITTEE TO RECOMMEND THE TERMS AND CONDITIONS OF THE SETTLEMENT OF THE EXPROPRIATION CASE INVOLVING THE PROVINCIAL CAPITOL SITE."

[16] *Id*. at 457-458.

[17] See *id*. at 134-135, and 139. The court-appointed Committees on Appraisal (one in 1993 and another in1997) submitted their respective reports dated October 26, 1993 and December 15, 1997,recommending that just compensation for the area sought to be expropriated should be ₱500.00 and ₱2,800.00 per sq. m.

a total net consideration of ₱50,000,000.00, which amount shall be equally shouldered by the Province of Cavite and Trece Martires City; (*b*) the total area to be expropriated be limited to only 116,287 sq. m. and the donated portion be reduced to 48,429sq. m.; and (*c*) 193,662 sq. m. of the subject property be reverted to Goldenrod which include a fenced stadium, one-half of the Trece Martires Cemetery, the forest park; a residential area, and some stalls; in turn, Goldenrod will construct a commercial/business center, an art/historical museum, and an educational institution within five years from the signing of the compromise agreement, among others.

The foregoing recommendations were then adopted/embodied in a Compromise Agreement[18] dated December 8, 2003 (subject compromise)entered into by and between Maliksi and then Trece Martires City Mayor Melencio De Sagun, Jr., both assisted by respondent Cavite Provincial Legal Officer Atty. Renato A. Ignacio (Ignacio), and, on the other hand, Mathay and Pascual, in their capacity as owners of Goldenrod. On February 28,2004, Goldenrod sold its landholdings to Mathay and Pascual for the amount of ₱400,000.00.[19]

Thereafter, the subject compromise was approved by the RTC in a Decision[20] dated March 18, 2004 and an Amended Decision[21] dated March 25, 2004 (compromise judgment), both of which were ratified by the Sangguniang Panlalawigan of the Province of Cavite and the Sangguniang Panlungsod of Trece Martires City per Resolution Nos. 195-S-2004[22] and 2004-049,[23] respectively.

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[18] *Id*. at 459-468.

[19] *Id*. at 469-470.

[20] *Id*. at 474-477. Penned by Executive Judge Aurelio G. Icastano, Jr.

[21] *Id*. at 478-489.

[22] *Id*. at 214-216. Dated August 2, 2004.

[23] *Id*. at 502-503. Dated September 20, 2004.

The Proceedings Before The CA

On September 21, 2004, Remulla, in his personal capacity as taxpayer and as then Vice-Governor and, hence, Presiding Officer of the Sangguniang Panlalawigan of the Province of Cavite,[24] filed a petition for annulment of judgment[25] under Rule 47 of the Rules of Court before the CA, arguing that the subject compromise is grossly disadvantageous to the government because: (*a*) the agreed price for the subject property was excessive as compared to its value at the time of taking in 1981;[26] (*b*) the government stands to lose prime lots;[27] and (*c*) it nullifies/amends the 1957 deed of donation.[28] Moreover, Maliksi entered into the subject compromise without authority from the Sangguniang Panlalawigan of the Province of Cavite and *sans* any certification on the availability of funds as required by law.[29] Remulla claimed that extrinsic fraud tainted the expropriation proceedings considering that there was collusion between the parties and that respondent Ignacio deliberately withheld crucial information regarding the property valuation and certain incidents prior to the expropriation case when he presented

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[24] Section 467(a), Article III of Republic Act No. 7160 provides:

> Section 467. *Composition*.
>
> (a) The sangguniang panlalawigan, the legislative body of the province, shall be **composed of the provincial vice-governor as presiding officer,** the regular sanggunian members, the president of the provincial chapter of the liga ng mga barangay, the president of the panlalawigang pederasyon ng mga sangguniang kabataan, the president of the provincial federation of sanggunian members of municipalities and component cities and the sectoral representatives, as members. (Emphasis supplied)
>
> x x x x.

[25] *Rollo*, pp. 504-529.

[26] See *id*. at 516-517.

[27] See *id*. at 518-519.

[28] *Id*. at 518.

[29] See *id*. at 519-520.

the subject compromise for ratification before the Sangguniang Panlalawigan of the Province of Cavite.[30]

On motion of respondents, however, the CA rendered a Resolution[31] dated May 18, 2005, dismissing Remulla's petition for annulment of judgment based on the following grounds: (*a*) there was yet no disbursement of public funds at the time of its filing; thus, it cannot be considered as a taxpayer's suit; and (*b*) Remulla was not a real party in interest to question the propriety of the subject compromise as he was not a signatory thereto.[32]

Aggrieved, Remulla filed a motion for reconsideration which was, however, denied by the CA in a Resolution[33]dated February 16, 2006. Hence, the instant petition.

The Issue Before The Court

The essential issue in this case is whether or not the CA properly denied Remulla's petition for annulment of judgment due to his lack of legal standing.

The Court's Ruling

The petition is meritorious.

Records bear out that Remulla filed his petition for annulment of judgment in two capacities: ***first***, in his personal capacity as a taxpayer; and, ***second***, in his official capacity as then presiding officer of the Sangguniang Panlalawigan of the Province of Cavite.

With respect to the first, jurisprudence dictates that a taxpayer may be allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through

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[30] *Id.* at 523-526.

[31] *Id.* at 65-76.

[32] *Id.* at 70-74.

[33] *Id.* at 78-80.

the enforcement of an invalid or unconstitutional law or ordinance.[34] In this case, public funds of the Province of Cavite stand to be expended to enforce the compromise judgment. As such, Remulla – being a resident-taxpayer of the Province of Cavite – has the legal standing to file the petition for annulment of judgment and, therefore, the same should not have been dismissed on said ground. Notably, the fact that there lies no proof that public funds have already been disbursed should not preclude Remulla from assailing the validity of the compromise judgment. Lest it be misunderstood, the concept of legal standing is ultimately a procedural technicality which may be relaxed by the Court if the circumstances so warrant. As observed in *Mamba v. Lara*,[35] the Court did not hesitate to give standing to taxpayers in cases[36] where serious legal issues were raised or where public expenditures of millions of pesos were involved. Likewise, it has also been ruled that a taxpayer need not be a party to the contract in order to challenge its validity,[37] or to seek the annulment of the same on the ground of extrinsic fraud.[38] Indeed, for as long as taxes are involved, the people have

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[34] *Land Bank of the Philippines v. Cacayuran,* G.R. No. 191667, April 17, 2013.

[35] See G.R. No. 165109, December 14, 2009, 608 SCRA 149, 162-163.

[36] *Id*. at 163. See also *Constantino, Jr. v. Cuisia,* G.R. No. 106064, October 13, 2005, 472 SCRA 505,518-519; *Abaya v. Ebdane, Jr.,* G.R. No. 167919, February 14, 2007, 515 SCRA 720, 758; *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain* (*GRP*), G.R. Nos. 183591, 183752, 183893, 183951, & 183962, October 14, 2008, 568 SCRA 402; *Garcillano v. House of Representatives Committees on Public Information, Public Order and Safety, National Defense and Security, Information and Communications Technology, and Suffrage and Electoral Reforms,* G.R. Nos. 170338 & 179275, December 23, 2008, 575 SCRA 170, 185.

[37] *Mamba v. Lara, supra* note 35, at 162.

[38] In *Arcelona v. CA* (G.R. No. 102900, October 2, 1997, 280 SCRA 20, 51), the Court held that "x x x a person need not be a party to the judgment sought to be annulled by reason of extrinsic fraud x x x."

a right to question contracts entered into by the government,[39] as in this case.

Anent the second, Remulla equally lodged the petition for annulment of judgment in his official capacity as then Vice-Governor and Presiding Officer of the Sangguniang Panlalawigan of the Province of Cavite. As such, he represents the interests of the province itself which is, undoubtedly, a real party in interest since it stands to be either benefited or injured[40] by the execution of the compromise judgment.

For these reasons, the CA should not have dismissed the petition for annulment of judgment on account of Remulla's lack of legal standing. Consequently, the case should be remanded to the said court for further proceedings.

WHEREFORE, the petition is GRANTED. Accordingly, the Resolutions dated May 18, 2005 and February 16, 2006 of the Court of Appeals in CA-G.R. SP No. 86465 are hereby, **REVERSED** and **SET ASIDE**. The case is **REINSTATED** and **REMANDED** to the Court of Appeals for further proceedings.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Leonen,*[*] *JJ.,* concur.

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[39] *Mamba v. Lara, supra* note 27, at 162.

[40] Section 2, Rule 3 of the Rules of Court provides:

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.

[*] Designated Additional Member per Special Order No. 1551 dated September 16, 2013.

THIRD DIVISION

[G.R. No. 174665. September 18, 2013]

PHILIPPINE RECLAMATION AUTHORITY (Formerly known as the PUBLIC ESTATES AUTHORITY), *petitioner, vs.* **ROMAGO, INCORPORATED,** *respondent.*

[G.R. No. 175221. September 18, 2013]

ROMAGO, INCORPORATED, *petitioner, vs.* **PHILIPPINE RECLAMATION AUTHORITY (Formerly PUBLIC ESTATES AUTHORITY),** *respondent.*

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; NOVATION; REQUIREMENTS.—** In novation, a subsequent obligation extinguishes a previous one through substitution either by changing the object or principal conditions, by substituting another in place of the debtor, or by subrogating a third person into the rights of the creditor. Novation requires (a) the existence of a previous valid obligation; (b) the agreement of all parties to the new contract; (c) the extinguishment of the old contract; and (d) the validity of the new one.

2. **ID.; ID.; ID.; ID.; THERE CANNOT BE NOVATION IN CASE AT BAR SINCE THE PROPOSED SUBSTITUTED PARTIES DID NOT AGREE TO PETITIONER'S SUPPOSED ASSIGNMENT OF ITS OBLIGATIONS UNDER THE CONTRACT.—** There cannot be novation in this case since the proposed substituted parties did not agree to the PRA's supposed assignment of its obligations under the contract for the electrical and light works at Heritage Park to the HPMC. The latter definitely and clearly rejected the PRA's assignment of its liability under that contract to the HPMC. Romago tried to follow up its claims with the HPMC, not because of any new contract it entered into with the latter, but simply because the PRA told it that the HPMC would henceforth assume the PRA's

liability under its contract with Romago. Besides, Section 11.07 of the PFTA makes it clear that the termination of the PRA's obligations is conditioned upon the turnover of documents, equipment, computer hardware and software on the geographical information system of the Park; and the completion and faithful performance of its respective duties and responsibilities under the PFTA. More importantly, Section 11.07 did not say that the HPMC shall, thereafter, assume the PRA's obligations. On the contrary, Section 7.01 of the PFTA recognizes that contracts that the PRA entered into in its own name and makes it liable for the same.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for Phil. Reclamation Authority.
Hernani T. Barrios for Romago, Inc.

D E C I S I O N

ABAD, *J.*:

These cases pertain to the defense of novation by virtue of the debtor's assignment to a third party of its contractual liability to the creditor.

The Facts and the Case

In order to convert former military reservations and installations to productive use and raise funds out of the sale of portions of the country's military camps,[1] in 1992 Congress enacted Republic Act 7227,[2] creating the Bases Conversion and Development Authority (BCDA). Pursuant to this law, the President issued Executive Order 40,[3] Series of 1992, setting aside portions of

[1] Section 2 of Republic Act 7227.

[2] Entitled as "An Act Accelerating the Conversion of Military Reservations Into Other Productive Uses, Creating the Bases Conversion and Development Authority For This Purpose, Providing Funds Therefor and For Other Purposes."

[3] Issued on December 8, 1992.

Fort Bonifacio in Taguig, Metro Manila, for the Heritage Park Project, aimed at converting a 105-hectare land into a world class memorial park for the purpose of generating funds for the BCDA.[4]

On August 9, 1993 the BCDA entered into a Memorandum of Agreement[5] (MOA) with the Philippine Reclamation Authority (PRA), formerly the Public Estates Authority, designating it as the Project Manager. On September 9, 1994 the BCDA, PRA, and the Philippine National Bank (PNB) executed a Pool Formation Trust Agreement (PFTA)[6] under which BCDA, as project owner, was to issue Heritage Park Investment Certificates that would evidence the holders' right to the perpetual use and care of specific interment plots. The PFTA designated PRA as Project Manager, tasked with the physical development of the park. The PNB was to act as trustee for the Heritage Park securitization.[7]

After public bidding, the PRA awarded the outdoor electrical and lighting works for the park to respondent Romago, Inc. (Romago) with which it entered into a Construction Agreement on March 18, 1996 for the contract price of ₱176,326,794.10.[8] On receipt of the PRA's notice to proceed,[9] Romago immediately began construction works.[10]

Meanwhile, the parties to the PFTA organized the Heritage Park Management Corporation (HPMC) to take over the management of the project.[11] On February 24, 2000 the Chairman

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[4] Section 3 of Executive Order 40, Series of 1992.

[5] *Rollo* (G.R. 174665), pp. 70-83.

[6] *Id.* at 226-270.

[7] Whereas Clause of PFTA, *id.* at 232.

[8] *Id.* at 128.

[9] *Id.* at 438.

[10] *Id.*

[11] Section 11.01, Article XI of the PFTA, *id.* at 263.

of HPMC Board of Trustees, Mr. Rogelio L. Singson, sent a notice of termination of management to then PRA General Manager Carlos P. Doble with a demand for the turnover of the park to HPMC.[12] The letter reads:

> Pursuant to Article 11 of the Pool Formation Trust Agreement (PFTA), the certificate holders of the Heritage Park Management Corporation (HPMC) duly elected its Board of Trustees at the 03 January 2000 meeting held at the BCDA Corporate Center. Attached is a copy of the Secretary's Certificate attesting to said election of the HPMC Board of Trustees.
>
> Section 11.07 of the PFTA provides that upon the election of the Board of Trustees, the PNB shall turnover to the Board all its functions and responsibilities, and all documents in its custody, including all Heritage Park Accounts, except the General Fund, which will go to BCDA. Upon such turnover and upon the complete and faithful performance by PNB and [PRA] of their respective obligations under this Agreement, the respective obligations of [PRA] and PNB under this Agreement shall be deemed terminated. *[PRA] shall turnover to the Board of Trustees all the documents and equipment it has in its possession relating to the Project and the Park, including the computer hardware and software pertaining to the geographical information system of the Park."*
>
> Pursuant to the foregoing provision, we hereby formally advise you of the termination of [PRA's] obligations, duties and responsibilities as Project Manager under the PFTA, effective upon receipt of this letter. We also formally request for [PRA] to turn over, within fifteen (15) days from receipt of this letter, the documents and equipment relating to the Heritage Park Project, including the computer hardware and software in [PRA's] possession pertaining to the geographical information system of the Park.[13]

The PRA lost no time in informing Romago of the consequent termination of its services. Thus, it wrote Romago a letter[14] on March 13, 2000:

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[12] *Rollo* (G.R. 174665), p. 198.

[13] *Id.*

[14] *Id.* at 197.

As a consequence of the assumption of functions, duties and responsibilities by the Heritage Park Management Corporation, as provided for under the provisions of the Pool Formation Trust Agreement, we are constrained to assign the Electrical Works contract entered with you on March 18, 1996 including all supplemental agreements relative thereto, effective March 18, 2000 in favor of the Heritage Park Management Corporation. The formal turnover on March 17, 2000 by [PRA] to the Heritage Park Management Corporation of all its obligations, duties and responsibilities, and all documents relating to the Heritage Park Project, was made pursuant to the attached letter of the Chairman of HPMC Board of Trustees, Mr. Rogelio L. Singson to the [PRA], received by us on March 02, 2000.

By virtue of this assignment, all the contractual functions, responsibilities and liabilities, if any, as well as any cause of action for or against [PRA] shall hereafter accrue to and devolve upon the assignee hereof.

Please be guided accordingly.[15]

Because the HPMC refused to recognize the PRA's contract with it, on March 17, 2004 Romago filed with the Construction Industry Arbitration Commission (CIAC) a complaint,[16] docketed as CIAC Case 18-2004, seeking to collect its claims totalling ₱24,467,621.64, plus interest from the PRA, HPMC, and Rosehills Memorial Management (Phils.), Inc. (RMMI). Romago claimed that it won the bidding for the construction of the electrical and lighting facilities at the Heritage Park for ₱181,779,800.00[17] but PRA deducted 3% from the bid amount, reducing the contract price to ₱176,326,794.10.[18]

Because of problems encountered with illegal settlers, only around 60 of the 105-hectare park was delivered to Romago for lighting work, reducing the contract price to ₱101,083,636.16.[19] But this amount was adjusted to

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[15] *Id*.

[16] *Rollo* (G.R. 175221), pp. 97-102.

[17] *Rollo* (G.R. 174665), p. 200.

[18] *Id.* at 128, 202.

[19] *Id.* at 203.

₱109,330,032.81 due to PRA variation orders.[20] Although Romago completed 96.15% of the works, it claimed that the PRA paid it only ₱82,929,577.22 instead of the ₱105,120,826.50 due it.[21] Romago also claimed that it should be reimbursed the ₱9,336,054.15 retention money that it posted since its services had already been terminated and since it had substantially completed the Heritage Park Project.[22]

Romago also sought payment of the additional costs and expenses that it incurred by reason of PRA's delays in turning over the project area, in delivering the owner-supplied equipment, and in solving the security problems at the worksite. These included price escalation of materials and supplies, at ₱857,799.10; and extended overhead costs, at ₱10,051,870.61.[23] And, for mobilizations costs that it spent preparing for works on the entire 105-hectare project area, Romago sought additional payment of ₱7,524,315.79 plus interest of ₱517,923.74 from April 12, 1999 to May 31, 1999 or a total of ₱8,042,239.53. It also claimed proportionate refund of ₱2,327,107.97 out of the 3% discount applied to its original bid[24] and ₱420,944.02 in damages for the unceremonious termination of its services.[25]

Romago admitted, however, owing the PRA ₱15,475,835.42 in unrecouped prepaid materials and ₱12,286,795.12 in unrecouped down payment.[26]

In its answer, the PRA denied liability, claiming that it entered into the construction agreement with Romago after its approval

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[20] *Id.*

[21] *Id.* Per Romago's Complaint, it valued 96.15% of its work accomplishment at ₱105,120,592.60. However, the amount should be ₱105,120,826.50 computed as follows: Adjusted contract price of ₱109,330,032.81 x 96.15 work accomplishment = ₱105,120,826.50.

[22] *Id.*

[23] *Id.* at 98-99.

[24] *Id.* at 99.

[25] *Id.*

[26] *Id.* at 100.

by the Heritage Park Executive Committee, the policy-making and governing body of the Heritage Park Project. The PRA merely processed and recommended payment of all the works done. The money came from the project's Construction and Development Fund that PRA did not control. PNB acted as trustee of the fund under the PFTA. Since these funds had all been turned over to the HPMC when the latter came into being, Romago should not address its claims to PRA.[27]

Rather than answer the complaint, the HPMC and RMMI moved to dismiss it, claiming that CIAC had no jurisdiction over them since they never agreed to arbitration.[28] Additionally, the HPMC said that the PRA's turnover of the Heritage Park project to it did not amount to assignment of the PRA's liabilities under the construction agreement. Further, its termination of the PRA's authority over the project carried with it the termination of any Construction Agreement that the PRA entered into.

For its part, RMMI averred that it was merely the undertaker at the Heritage Park, tasked with providing services for embalming, burial, cremation, and other activities for the care of the dead.[29]

On July 22, 2004 the CIAC issued an order dropping RMMI as respondent but denying the HPMC's motion to dismiss the case against it.[30] The HPMC elevated the CIAC order to the Court of Appeals (CA) by special civil action of *certiorari* and prohibition in CA-G.R. SP 86342.

Meantime, after due proceedings, on October 22, 2004 the CIAC rendered a decision,[31] holding the PRA and the HPMC jointly and severally liable to Romago for the following amounts:

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[27] *Rollo* (G.R. 174665), pp. 216-223.

[28] *Id.* at 657.

[29] *Id.*

[30] *Id.* at 657-658.

[31] *Id.* at 650-668.

The unpaid balance of the 96.15% accomplishment ----------------------------------	₱22,191,249.38
Interest from 15 May 2002 to 31 January 2004 at 6% per annum ----------------	2,276,372.31
Plus:	
1.1.1 – Retention Charges ------------------------------	₱9,336,054.15
1.1.2 – Price Escalation -------------------------------	775,793.55
1.1.3 – Damages for Closure of Area------------------	8,042,239.53
1.1.4 – Reimbursement for Pro-rata discount ---	(not entitled)
1.1.5 – Damages for Stoppage of Works	420,944.02
Sub-Total ----------------	₱18,575,031.25
Less:	
Unrecouped prepaid materials and unrecouped downpayment -------------------	27,762,642.54
Actual Damages Due ----------------	₱15,280,012.35
Plus:	
Additional 6% interest from February 1, 2004 to August 31, 2004 on the ₱15,280,012.35------------------	534,800.43
Costs of Arbitration:	
Filing Fee ------------------------- ₱26,834.39	
Administrative Fee ------------- 28,164.39	
Arbitrator's Fees ---------------- 316,296.95	
ADF-------------------------------- 25,323.99	
Total Cost of Arbitration----	₱396,608.73
Total Award -------------	₱16,211,421.51[32]

Not satisfied with the CIAC decision, the PRA filed a petition for review of the same with the CA in CA-G.R. SP 88059.

Meantime on February 18, 2005 the CA rendered a Decision in CA-G.R. SP 86342, dismissing Romago's complaint before the CIAC against the HPMC on the ground that the latter did not have an arbitration agreement with Romago.[33]

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[32] *Id.* at 663, 667.

[33] CA *rollo*, pp. 744-767.

On December 20, 2005 the CA rendered a Decision[34] in CA-G.R. SP 88059, the main case, finding that the unpaid accomplishment of Romago should be reduced from ₱22,191,249.33 to ₱18,641,208.89, and that interests on the damages awarded to Romago arising from the reduction in project area and on its unpaid accomplishment from May 15, 2002 to January 31, 2004 should be deleted, therefore entitling it to actual damages in the amount of ₱8,935,673.86[35] plus interest from February 1, 2004 to August 31, 2004 and the costs of arbitration.

The CA rejected the PRA's argument that it can no longer be held liable to Romago after turning over and assigning the project, including all its duties and obligations relating to it, to the HPMC. Romago was not a party to the PFTA and it did not give consent to the PRA's supposed assignment of its obligations to the HPMC.

The PRA and Romago separately moved for reconsideration of the decision but the CA denied both motions in its August 24, 2006 Resolution.[36] Undeterred, both parties filed separate petitions for review before this Court in G.R. 174665 for the PRA and in G.R. 175221 for Romago.

The Issues Presented

These consolidated cases present the following issues:

1. Whether or not the CA erred in holding the PRA still liable to Romago under the Construction Agreement despite

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[34] Penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Mariano C. del Castillo (now a member of the Court) and Magdangal M. de Leon, *rollo* (G.R. 175221), pp. 6-18.

[35] *Id.* at 12. ₱9,336,054.15 (retention charges) + ₱775,793.55 (price escalation) + ₱7,524,315.79 (damages for closure of area less interests) + ₱420,944.02 (damages for stoppage of works) + ₱18,641,208.89 (unpaid accomplishment) less ₱27,762,642.54 (unrecouped prepaid materials and downpayment).

[36] *Id.* at 19-22.

the subsequent turnover of the Heritage Park Project to the HPMC; and

2. Whether or not the CA erred in reducing the CIAC award for actual damages to Romago to just ₱8,935,673.86.

The Rulings of the Court

The PRA claims that its liability under its contract with Romago had been extinguished by novation when it assigned all its obligations to the HPMC pursuant to the provisions of the PFTA. The PRA insists that the CA erroneously applied to the case the 2001 ruling of the Court in *Public Estates Authority v. Uy*[37] that also involved the Heritage Park Project. Uy dealt only with the PRA and the HPMC came into the picture only after the case has been filed. Here, while Romago first dealt with the PRA, it eventually dealt with the HPMC before the construction company can finish the contracted works, evidencing novation of parties.

In novation, a subsequent obligation extinguishes a previous one through substitution either by changing the object or principal conditions, by substituting another in place of the debtor, or by subrogating a third person into the rights of the creditor.[38] Novation requires (a) the existence of a previous valid obligation; (b) the agreement of all parties to the new contract; (c) the extinguishment of the old contract; and (d) the validity of the new one.[39]

There cannot be novation in this case since the proposed substituted parties did not agree to the PRA's supposed assignment of its obligations under the contract for the electrical and light works at Heritage Park to the HPMC. The latter definitely and clearly rejected the PRA's assignment of its liability

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[37] 423 Phil. 407, 418 (2001).

[38] *Philippine Savings Bank v. Spouses Mañalac, Jr.*, 496 Phil. 671, 686 (2005).

[39] *Spouses Bautista v. Pilar Development Corporation*, 371 Phil. 533, 541 (1999).

under that contract to the HPMC. Romago tried to follow up its claims with the HPMC, not because of any new contract it entered into with the latter, but simply because the PRA told it that the HPMC would henceforth assume the PRA's liability under its contract with Romago.

Besides, Section 11.07 of the PFTA makes it clear that the termination of the PRA's obligations is conditioned upon the turnover of documents, equipment, computer hardware and software on the geographical information system of the Park; and the completion and faithful performance of its respective duties and responsibilities under the PFTA. More importantly, Section 11.07 did not say that the HPMC shall, thereafter, assume the PRA's obligations. On the contrary, Section 7.01 of the PFTA recognizes that contracts that the PRA entered into in its own name and makes it liable for the same. Thus:

> Section 7.01. Liability of BCDA and [PRA]. BCDA and [PRA] shall be liable in accordance herewith only to the extent of the obligations specifically undertaken by BCDA and [PRA] herein and any other documents or agreements relating to the Project, and in which they are parties.[40]

Romago claims that the CA award should be increased to ₱13,598,139.24 based on the detailed account of expenses and cash payments as of December 31, 2005 that it submitted. But the Court cannot agree. Engineer J. R. Milan testified that Romago received ₱86,479,617.61 out of ₱105,120,826.50 worth of work that it accomplished, thereby leaving a deficiency of only ₱18,641,208.89. Thus:

ATTY. S.B. GARCIA:

Mr. Witness, from the time you became the Project Manager of Heritage Park Project up to the time it turned over its responsibilities to HPMC, can you recall how much [PRA] already paid to Romago? You can refer to any documents we have now with you for recollection.

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[40] *Rollo* (G.R. 174665), p. 252.

ENGR. J.R. MILLAN:

Based on progress Report No. 50, which was submitted by the Managing Consultant of Robert Espiritu, the accomplishment as of February 29, 2000, the amount disbursed as of Billing No. 14A is ₱86,479,617.61.

ATTY. S.B. GARCIA:

What document again are you referring to, Mr. Witness?

ENGR. J.R. MILLAN:

This is a Progress Report dated March 8, 2000 addressed to the [Philippine Reclamation Authority], Progress Report No. 50 submitted by Mr. Roberto Espiritu.

ATTY. S.B. GARCIA:

And the one where the ₱86,479,617.61, the document which reflects that amount, that is what the document?

ENGR. J.R. MILLAN:

This is the attachment to the accomplishment of Romago *kasi* the Managing Consultant who made the report, they were the ones computing the accomplishments of the contractors. All the contractors in the project, *bale ito yong* report *nila*. For Romago, *ito yong* report *niya* as of February 29, 2000.

ATTY. S.B. GARCIA:

Your Honor, please, may I request that this accomplishment report as February 29, 2000 for outdoor electrical and lighting works be marked as our exhibit "R-2-10."[41]

Had the above testimony been untrue, Romago should have refuted the same considering that it had every opportunity to do so. On the contrary, it even adopted the same document as its own exhibit.[42] In effect, Romago conceded the correctness of the PRA's valuation of the balance due it.

[41] *Id.* at 633-634.

[42] *Id.* at 644.

In keeping with this Court's ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[43] the Court deems it proper to impose legal interest of 6% *per annum* on the amount finally adjudged, reckoned from October 22, 2004, the date the CIAC rendered judgment until the same is wholly satisfied.[44]

WHEREFORE, the Court **AFFIRMS** the Decision dated December 20, 2005 and Resolution dated August 24, 2006 of the Court of Appeals in CA-G.R. SP 88059 with **MODIFICATION**, directing the Philippine Reclamation Authority to pay Romago in addition to the ₱8,935,673.86 award of actual damages, legal interest of 6% *per annum* from October 22, 2004 until the judgment against it is wholly paid; and the costs of arbitration in the amount of ₱396,608.73.

SO ORDERED.

Velasco, Jr. (Chairperson), Mendoza, Reyes,[*] and *Leonen, JJ.,* concur.

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[43] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95.

[44] *Tan v. OMC Carriers, Inc.*, G.R. No. 190521, January 12, 2011, 639 SCRA 471, 487.

[*] Designated Acting Member, in lieu of Associate Justice Diosdado M. Peralta, per Special Order 1541-A dated September 9, 2013.

SECOND DIVISION

[G.R. No. 184011. September 18, 2013]

REYNALDO HAYAN MOYA, *petitioner, vs.* **FIRST SOLID RUBBER INDUSTRIES, INC.,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE MANAGEMENT PREROGATIVE OF EMPLOYERS WHICH INCLUDE THE RIGHT TO DISMISS ITS ERRING EMPLOYEES MUST BE RESPECTED.—** Petitioner is not entitled to separate pay. Payment of separation pay cannot be justified by his length of service. It must be stressed that Moya was not an ordinary rank-and-file employee. He was holding a supervisory rank being an Officer-in-Charge of the Tire Curing Department. The position, naturally one of trust, required of him abiding honesty as compared to ordinary rank-and-file employees. When he made a false report attributing the damage of five tires to machine failure, he breached the trust and confidence reposed upon him by the company. In a number of cases, this Court put emphasis on the right of an employer to exercise its management prerogative in dealing with its company's affairs including its right to dismiss its erring employees. We recognized the right of the employer to regulate all aspects of employment, such as the freedom to prescribe work assignments, working methods, processes to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of workers. It is a general principle of labor law to discourage interference with an employer's judgment in the conduct of his business. As already noted, even as the law is solicitous of the welfare of the employees, it also recognizes employer's exercise of management prerogatives. As long as the company's exercise of judgment is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.

2. **ID.; ID.; ID.; AN EMPLOYEE WHO HAS BEEN DISMISSED FOR ANY JUST CAUSES ENUMERATED UNDER ARTICLE 282**

OF THE LABOR CODE, INCLUDING BREACH OF TRUST, IS NOT ENTITLED TO SEPARATION PAY; AN ERRING EMPLOYEE COULD NOT BENEFIT UNDER THE CLOAK OF SOCIAL JUSTICE IN THE AWARD OF SEPARATION PAY.— As pronounced in the recent case of *Unilever Philippines, Inc., v. Rivera*, an employee who has been dismissed for any of the just causes enumerated under Article 282 of the Labor Code, including breach of trust, is not entitled to separation pay. This is further bolstered by Section 7, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code. x x x However, this Court also provides exceptions to the rule based on "social justice" or on "equitable grounds" following the ruling in *Philippine Long Distance Telephone Co. v. NLRC,* stating that separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice. The *PLDT case* further elucidates why an erring employee could not benefit under the cloak of social justice in the award of separation pay. x x x Moya's dismissal is based on one of the grounds under Art. 282 of the Labor Code which is willful breach by the employee of the trust reposed in him by his employer. Also, he is outside the protective mantle of the principle of social justice as his act of concealing the truth from the company is clear disloyalty to the company which has long employed him.

3. **ID.; ID.; ID.; PETITIONER'S LENGTH OF SERVICE SHOULD BE TAKEN AGAINST HIM.—** Indeed, as found below, Moya's length of service should be taken against him. The pronouncement in *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa (NLM) - Katipunan* is instructive on the matter: x x x Length of service is not a bargaining chip that can simply be stacked against the employer. After all, an employer-employee relationship is symbiotic where both parties benefit from mutual loyalty and dedicated service. If an employer had treated his employee well, has accorded him fairness and adequate compensation as determined by law, it is only fair to expect **a**

long-time employee to return such fairness with at least some respect and honesty. Thus, it may be said that betrayal by a long-time employee is more insulting and odious for a fair employer.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Gerardo B. Collado for respondent.

D E C I S I O N

PEREZ, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] of the Decision[2] of the Special Third Division of the Court of Appeals in CA-G.R. SP No. 99500 dated 30 April 2008, modifying the Decision of the National Labor Relations Commission (NLRC) by deleting the award of separation pay in favor of Reynaldo Hayan Moya (Moya). The dispositive portion of the assailed decision reads:

WHEREFORE, premises considered, the petition is hereby **GRANTED.** The Resolutions dated January 31, 2007 and April 24, 2007 of the National Labor Relations Commission in NLRC NCR CA No. 048653-06 (NLRC NCR Case No. 00-11-12626-2004) affirming the Decision dated February 28, 2006 of the Labor Arbiter Pablo C. Espiritu[,] Jr. is **MODIFIED** by deleting the award for separation pay in favor of private respondent Reynaldo Hayan Moya.[3]

The facts as gathered by this Court follow:

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[1] Rule on Civil Procedure, Rule 45.

[2] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Hakim S. Abdulwahid and Sesinando E. Villon, concurring. *Rollo,* pp. 187-200.

[3] *Id.* at 199-200.

On 25 January 2005, Moya filed before the NLRC-National Capital Region a complaint for illegal dismissal against First Solid Rubber Industries, Inc. (First Solid) and its President Edward Lee Sumulong. In his complaint-affidavit,[4] Moya alleged that:

1. Sometime in May 1993, he was hired by the company First Solid, a business engaged in manufacturing of tires and rubbers, as a machine operator;

2. Through years of dedication to his job, he was promoted as head of the Tire Curing Department of the company;

3. On October 15, 2004, he reported an incident about an undercuring of tires within his department which led to the damage of five tires;

4. The company conducted an investigation of the incident and he was later required to explain;

5. In his explanation, he stated that the damage was caused by machine failure and the incident was without any fault of the operator;

6. Despite his explanation of what transpired, he was terminated by the company through a letter dated November 9, 2004.

From the foregoing, he prayed that payment of backwages, separation pay, moral damages and exemplary damages be adjudged in his favor due to the illegal dismissal he suffered from the company.

Moya, through his Reply,[5] added that his termination fell short of any of the just causes of serious misconduct, gross and habitual neglect of duties and willful breach of trust. He pointed out that the company failed to prove that his act fell within the purview of improper or wrong misconduct, and that a single act of negligence as compared to eleven (11) years of service of good record with the company will not justify his dismissal.

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[4] *Id.* at 25-28.

[5] CA *rollo*, pp. 80-81.

First Solid, in its Position Paper,[6] Reply[7] and Memorandum,[8] admitted that Moya was a former employee of the company and was holding the position of Officer-in-Charge of the Tire Curing Department until his valid dismissal. However, it denied that it illegally dismissed Moya and maintained that his severance from the company was due to a valid exercise of management prerogative.[9] The company insisted on its right to validly dismiss an employee in good faith if it has a reasonable ground to believe that its employee is responsible of misconduct, and the nature of his participation therein renders him absolutely unworthy of the trust and confidence demanded by his position.[10]

Opposing the story of Moya, the company countered that Moya, who was exercising supervision and control over the employees as a department head, failed to exercise the diligence required of him to see to it that the machine operator, Melandro Autor, properly operated the machine. This act is considered as a gross and habitual neglect of duty which caused actual losses to the company.[11]

During the initial investigation, Moya, in his Explanation Letter[12] dated 15 October 2004, insisted that the cause of the damage of five (5) tires was due to premature hauling of the tires below curing time. Unsatisfied with the explanation, the company sent Moya a Letter[13] dated 26 October 2004 stating that he failed to explain what really transpired in the undercuring of tires. The company informed Moya that the damage was caused by the operator's unlawful setting of the timer from

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[6] *Id.* at 57-68.

[7] *Id.* at 73-79.

[8] *Rollo*, pp. 41-49.

[9] *Id.* at 34-35.

[10] *Id.* at 34.

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

[12] *Id.* at 50

[13] Annex B, *id.* at 51.

manual to automatic without Moya's permission. To make the matter worse, Moya failed to disclose the real situation that the operator was at fault.

Moya was given twenty-four (24) hours to defend himself and explain the matter. In response, Moya admitted in a letter dated 29 October 2004 his mistake of not disclosing the true incident and explained that he found it more considerate to just let the operator be suspended and be fined for the damage committed. He denied any willful intention to conceal the truth or cover up the mistake of his employee. Finally, he asked for the company's forgiveness for the fault he had committed.[14] In a letter dated 3 November 2004, Moya reiterated his plea for forgiveness and asked for another chance to continue his employment with the company.[15]

Procedural due process, through issuance of twin notices, was also complied with by the company. Moya was informed of the charges against him through a memorandum[16] indicating his violation and was given an opportunity to answer or rebut the charges. After giving his explanation through several letters to the company, a notice was sent informing him of the management's decision of his dismissal and termination from services on 9 November 2004 based on serious misconduct, gross and habitual neglect of duty and willful breach of trust reposed upon him by the company.[17]

On 28 February 2006, Labor Arbiter Pablo C. Espiritu, Jr. rendered a judgment[18] finding sufficient and valid grounds to dismiss Moya for concealing and lying to First Solid about the factual circumstances leading to the damage of five (5) tires on 15 October 2004. However, it ruled that the dismissal from

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[14] Annex C, *id.* at 52.

[15] Annex D, *id.* at 53.

[16] Annex B, *id.* at 51.

[17] Annex E, CA *rollo,* p. 56.

[18] *Rollo*, pp. 54-59.

service of the complainant was too harsh as a penalty since it was a first offense and there was no willful and malicious intention on his part to cause damage. The dispositive portion reads:

> **WHEREFORE,** judgment is hereby rendered ordering Respondents First Solid Rubber Industrial, Inc. and Edward Lee Sumulong to jointly and severally pay complainant separation pay in lieu of reinstatement the amount of **P63, 654.00.**
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> All other claims whether monetary or otherwise are hereby **DISMISSED** for lack of merit.[19]

In justifying his decision, the Labor Arbiter explained that the length of time during which the complainant was deprived of employment was sufficient penalty for the act he had committed against the company. As a result, his reinstatement without backwages to his former position was in order. However, since the employment was already strained and Moya was no longer seeking to be reinstated, he decided that it was for the best interest of both parties to award instead a separation pay of one (1) month salary for every year of credited service less the total of cash advances of the complainant amounting to P19,000.00.[20]

Not in total accord with the outcome of the decision, First Solid filed its partial appeal before the NLRC on 13 April 2006. The company assailed as error on the part of the Labor Arbiter the grant of separation pay in favor of Moya despite the finding that there was a just cause for the employee's dismissal from service. It was submitted that the complainant's length of service to the company cannot be invoked to justify the award. It was argued that Moya was dismissed for just causes; hence, to award separation pay would be tantamount to giving a prize for disloyalty and breach of trust.[21]

On 31 January 2007, the NLRC affirmed the Decision of the Labor Arbiter in its entirety.[22]

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[19] *Id.* at 59.
[20] *Id.* at 58-59.
[21] Memorandum of Partial Appeal, *id.* at 60-68.
[22] NLRC Decision, *id.* at 89-93.

The NLRC affirmed the finding of the Labor Arbiter that a separation pay should be given to Moya in lieu of reinstatement citing primarily his length of service and years of contribution to the profitable business operation of the company. It also noted that this transgression was the first mistake of Moya in the performance of his functions. Finally, it cited as justification the Court's ruling in *St. Michael's Institute v. Santos*,[23] wherein the Court held that *"even when an employee is found to have transgressed the employer's rules, in the actual imposition of penalties upon the erring employee, due consideration must still be given to his length of service and the number of violations committed during his employment."*[24]

In its Motion for Reconsideration,[25] First Solid insisted that length of service cannot mitigate breach of trust which is penalized with dismissal.

On 24 April 2007, the NLRC denied the motion of First Solid as it found no compelling justification to overturn its findings.[26]

In its Petition for *Certiorari* before the Court of Appeals, the company reiterated its previous arguments that separation pay cannot be awarded to validly dismissed employees and that length of service was not a ground to reduce the penalty of dismissal due to breach of trust.[27]

In his Comment[28] and Memorandum,[29] Moya capitalized on the pronouncement of the Labor Arbiter that his alleged infraction does not merit a penalty of dismissal from service given his length of service to the company as well as the failure of the

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[23] 422 Phil. 723 (2001).
[24] *Id.* at 733.
[25] *Rollo,* pp. 95-105.
[26] *Id.* at 106-108.
[27] *Id.* at 110-127.
[28] *Id.* at 150-157.
[29] *Id.* at 178-184.

company to prove that he acted maliciously and with the intention to cause damage.

First Solid, in its Reply[30] and Memorandum,[31] argued that Moya, being a supervisor, the company reposed on him its trust and confidence. He was expected to remain loyal and trustworthy and promote the best interest of the company. His act of concealing, by making a fraudulent report to the company regarding the transgression of the machine operator under him, is a valid basis for dismissal based on breach of trust and confidence. The company further contended that the award of separation pay made by the labor tribunals was contrary to law and jurisprudence.

In its Decision,[32] the Court of Appeals ruled in favor of the company and reversed the decisions of the labor tribunals. The dispositive portion of the decision reads:

> **WHEREFORE**, premises considered, the petition is **GRANTED.** The Resolutions dated January 31, 2007 and April 24, 2007 of the National Labor Relations Commission in NLRC NCR CA No. 048653-06 (NLRC NCR Case No. 00-11-12626-2004) affirming the Decision dated February 28, 2006 of the Labor Arbiter Pablo C. Espiritu[,] Jr. is **MODIFIED** by deleting the award for separation pay in favor of private respondent Reynaldo Hayan Moya.[33]

The appellate court ruled that an employee found to be guilty of serious misconduct or other acts reflecting his moral character is not entitled to separation pay. Moya who held a supervisory position as the Head of the Curing Department breached the trust reposed upon him when he did not disclose what was actually done by the machine operator which eventually caused the damage. It was only when the company discovered that

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[30] *Id.* at 158-165.

[31] *Id.* at 166-177.

[32] *Id.* at 187-200.

[33] *Id.* at 199-200.

the report was not in accordance with what really transpired that Moya admitted its mistake. In sum, the appellate court agreed that First Solid presented substantial proof to consider Moya as dishonest and disloyal to the company.

It took the position that instead of being a basis for the award of separation pay, Moya's length of service should have been taken against him. The reason for his dismissal was his lack of integrity and loyalty to the company reflecting upon his moral character.

The appellate court emphasized that while the law is considerate to the welfare of the employees whenever there is a labor conflict, it also protects the right of an employer to exercise its management prerogative in good faith.

The Court's Ruling

That there is a valid ground for the dismissal of Moya based on breach and loss of trust and confidence is no longer at issue. The Labor Arbiter, NLRC and the appellate court were unanimous in their rulings on this matter. The remaining question is whether or not petitioner employee is entitled to separation pay based on his length of service.

Petitioner is not entitled to separation pay. Payment of separation pay cannot be justified by his length of service.

It must be stressed that Moya was not an ordinary rank-and-file employee. He was holding a supervisory rank being an Officer-in-Charge of the Tire Curing Department. The position, naturally one of trust, required of him abiding honesty as compared to ordinary rank-and-file employees. When he made a false report attributing the damage of five tires to machine failure, he breached the trust and confidence reposed upon him by the company.

In a number of cases,[34] this Court put emphasis on the right of an employer to exercise its management prerogative in dealing

[34] *Radio Philippines Network, Inc. v. Yap,* G.R. No. 187713, 1 August 2012, 678 SCRA 148, 164 citing *Association of Integrated Security Force*

with its company's affairs including its right to dismiss its erring employees. We recognized the right of the employer to regulate all aspects of employment, such as the freedom to prescribe work assignments, working methods, processes to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of workers.[35] It is a general principle of labor law to discourage interference with an employer's judgment in the conduct of his business. As already noted, even as the law is solicitous of the welfare of the employees, it also recognizes employer's exercise of management prerogatives. As long as the company's exercise of judgment is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.[36]

Following the ruling in *The Coca-Cola Export Corporation v. Gacayan,*[37] the employers have a right to impose a penalty of dismissal on employees by reason of loss of trust and confidence. More so, in the case of supervisors or personnel occupying positions of responsibility, loss of trust justifies termination of employment. Loss of confidence as a just cause for termination of employment is premised on the fact that an employee concerned holds a position of trust and confidence. This situation holds where a person is entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property. But, in order to constitute a just cause for dismissal, the act complained of must be "work-

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of Bislig (AISFB)-ALU v. Court of Appeals, 505 Phil. 10, 25 (2005); *San Miguel Corporation v. Layoc, Jr.*, 562 Phil. 670, 687 (2007) citing *San Miguel Brewery Sales Force Union (PTGWO) v. Hon. Ople*, 252 Phil. 27, 31 (1989).

[35] *Goya, Inc. v. Goya, Inc. Employees Union-FFW,* G.R. No. 170054, 21 January 2013, 689 SCRA 1, 9.

[36] *Id.*

[37] G.R. No. 149433, 22 June 2011, 652 SCRA 463, 470.

related" such as would show the employee concerned to be unfit to continue working for the employer.[38]

The foregoing as viewpoint, the right of First Solid to handle its own affairs in managing its business must be respected. The clear consequence is the denial of the grant of separation pay in favor of Moya.

As pronounced in the recent case of *Unilever Philippines, Inc., v. Rivera*,[39] an employee who has been dismissed for any of the just causes enumerated under Article 282[40] of the Labor Code, including breach of trust, is not entitled to separation pay.[41] This is further bolstered by Section 7, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code which provides that:

> Sec. 7. Termination of employment by employer. — The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits

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[38] *Yabut v. Manila Electric Company*, G.R. No. 190436, 16 January 2012, 663 SCRA 92, 106.

[39] G.R. No. 201701, 3 June 2013.

[40] **Art. 282.** Termination by employer. — An employer may terminate an employment for any of the following causes:

a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

b. Gross and habitual neglect by the employee of his duties;

c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

e. Other causes analogous to the foregoing.

[41] *Tirazona v. Philippine EDS Techno-Service, Inc. (PET, Inc.)*, G.R. No. 169712, 20 January 2009, 576 SCRA 625, 628-629.

and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.

However, this Court also provides exceptions to the rule based on "social justice" or on "equitable grounds" following the ruling in *Philippine Long Distance Telephone Co. v. NLRC,*[42] stating that separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.[43]

The *PLDT case* further elucidates why an erring employee could not benefit under the cloak of social justice in the award of separation pay, we quote:

> The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.[44]

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[42] 247 Phil. 641, 649 (1988).

[43] *Unilever Philippines, Inc. v. Rivera, supra* note 39.

[44] *Id.*, citing *Philippine Long Distance Telephone Co. v. NLRC, supra* note 42 at 650; *Toyota Motor Phils. Corp. Workers Association v. NLRC*, 562 Phil. 759, 810-811 (2007).

Moya's dismissal is based on one of the grounds under Art. 282 of the Labor Code which is willful breach by the employee of the trust reposed in him by his employer. Also, he is outside the protective mantle of the principle of social justice as his act of concealing the truth from the company is clear disloyalty to the company which has long employed him.

Indeed, as found below, Moya's length of service should be taken against him. The pronouncement in *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa (NLM) - Katipunan*[45] is instructive on the matter:

> x x x Length of service is not a bargaining chip that can simply be stacked against the employer. After all, an employer-employee relationship is symbiotic where both parties benefit from mutual loyalty and dedicated service. If an employer had treated his employee well, has accorded him fairness and adequate compensation as determined by law, it is only fair to expect **a long-time employee to return such fairness with at least some respect and honesty. Thus, it may be said that betrayal by a long-time employee is more insulting and odious for a fair employer.**[46] (Emphasis supplied).

WHEREFORE, we **DENY** the petition for review on *certiorari*. The Decision dated 30 April 2008 and Resolution dated 1 August 2008 of the Special Third Division of the Court of Appeals in CA-G.R. SP No. 99500 are hereby **AFFIRMED.**

SO ORDERED.

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

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[45] G.R. No. 164016, 15 March 2010, 615 SCRA 240.

[46] *Id.* at 252.

[*] Per Special Order No. 1548 dated 16 September 2013.

SECOND DIVISION

[G.R. Nos. 187308 & 187517. September 18, 2013]

HILARIA BAGAYAS, *petitioner, vs.* **ROGELIO BAGAYAS, FELICIDAD BAGAYAS, ROSALINA BAGAYAS, MICHAEL BAGAYAS, and MARIEL BAGAYAS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL PROCEEDINGS; TRIAL COURTS CANNOT MAKE A DECLARATION OF HEIRSHIP IN AN ORDINARY CIVIL ACTION, FOR MATTERS RELATING TO THE RIGHTS OF FILIATION AND HEIRSHIP MUST BE VENTILATED IN A SPECIAL PROCEEDING INSTITUTED PRECISELY FOR THE PURPOSE OF DETERMINING SUCH RIGHTS.—** While the RTC may have made a definitive ruling on petitioner's adoption, as well as the forgery of Eligia's signature on the questioned deed, no partition was decreed, as the action was, in fact, dismissed. Consequently, the declaration that petitioner is the legally adopted child of Maximino and Eligia did not amount to a declaration of heirship and co-ownership upon which petitioner may institute an action for the amendment of the certificates of title covering the subject land. More importantly, the Court has consistently ruled that the trial court cannot make a declaration of heirship in an ordinary civil action, for matters relating to the rights of filiation and heirship must be ventilated in a special proceeding instituted precisely for the purpose of determining such rights.

2. **CIVIL LAW; LAND REGISTRATION; TORRENS TITLE; WHAT CANNOT BE COLLATERALLY ATTACKED IS THE CERTIFICATE OF TITLE AND NOT THE TITLE ITSELF.—** In *Lacbayan v. Samoy, Jr.* (*Lacbayan*) which is an action for partition premised on the existence or non-existence of co-ownership between the parties, the Court categorically pronounced that a resolution on the issue of ownership does not subject the Torrens title issued over the disputed realties to a collateral attack. It must be borne in mind that what cannot be collaterally attacked is the certificate of title and not the

title itself. As pronounced in *Lacbayan*: There is no dispute that a Torrens certificate of title cannot be collaterally attacked, but that rule is not material to the case at bar. **What cannot be collaterally attacked is the certificate of title and not the title itself**. The certificate referred to is that document issued by the Register of Deeds known as the TCT. **In contrast, the title referred to by law means ownership which is, more often than not, represented by that document**. Petitioner apparently confuses title with the certificate of title. Title as a concept of ownership should not be confused with the certificate of title as evidence of such ownership although both are interchangeably used. Thus, the RTC erroneously dismissed petitioner's petition for annulment of sale on the ground that it constituted a collateral attack since she was actually assailing Rogelio and Orlando's title to the subject lands and not any Torrens certificate of title over the same.

3. **ID.; ID.; PROPERTY REGISTRATION DECREE (P.D. 1529); PETITIONER CANNOT AVAIL OF THE SUMMARY PROCEEDINGS UNDER SECTION 108 OF P.D. 1529; THE SUMMARY NATURE OF THE PROCEEDING CONTEMPLATES ONLY CORRECTIONS OR INSERTIONS OF MISTAKES WHICH ARE ONLY CLERICAL AND NOT CONTROVERSIAL ISSUES.—** Petitioner cannot avail of the summary proceedings under Section 108 of PD 1529 because the present controversy involves not the amendment of the certificates of title issued in favor of Rogelio and Orlando but the partition of the estate of Maximino and Eligia who are both deceased. As held in *Philippine Veterans Bank v. Valenzuela,* the prevailing rule is that proceedings under Section 108 of PD 1529 are summary in nature, contemplating corrections or insertions of mistakes which are only clerical but certainly not controversial issues. Relief under said legal provision can only be granted if there is unanimity among the parties, or that there is no adverse claim or serious objection on the part of any party in interest. This is now the controlling precedent, and the Court should no longer digress from such ruling. Therefore, petitioner may not avail of the remedy provided under Section 108 of PD 1529. In fine, while LRC Nos. 08-34 and 08-35 are technically not barred by the prior judgment in Civil Case No. 04-42 as they involve different causes of action, the dismissal of said petitions for the amendment of TCT Nos. 375657 and 375658

is nonetheless proper for reasons discussed above. The remedy then of petitioner is to institute intestate proceedings for the settlement of the estate of the deceased spouses Maximino and Eligia.

APPEARANCES OF COUNSEL

Dennis V. Nino for petitioner.
Johann Cecilio A. Ibarra for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Resolution[2] dated January 6, 2009[3] and Order[4] dated March 16, 2009 of the Regional Trial Court of Camiling, Tarlac, Branch 68 (RTC) which dismissed on the ground of *res judicata* the twin petitions of Hilaria Bagayas (petitioner) for amendment of Transfer Certificate of Title (TCT) Nos. 375657 and 375658, docketed as Land Registration Case (LRC) Nos. 08-34 and 08-35.

The Facts

On June 28, 2004, petitioner filed a complaint[5] for annulment of sale and partition before the RTC, docketed as Civil Case No. 04-42, claiming that Rogelio, Felicidad, Rosalina, Michael, and Mariel, all surnamed Bagayas (respondents) intended to exclude her from inheriting from the estate of her legally adoptive parents, Maximino Bagayas (Maximino) and Eligia Clemente

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[1] *Rollo,* pp. 9-33.

[2] *Id.* at 36-47. Penned by Presiding Judge Jose S. Vallo.

[3] *Id.* at 18. Erroneously appearing as January 6, 2008. See footnote 1 of the Petition.

[4] *Id.* at 48.

[5] *Id.* at 49-55.

(Eligia), by falsifying a deed of absolute sale (deed of absolute sale) purportedly executed by the deceased spouses (Maximino and Eligia) transferring two parcels of land (subject lands) registered in their names to their biological children, respondent Rogelio and Orlando Bagayas[6] (Orlando).[7] Said deed, which was supposedly executed on October 7, 1974,[8] bore the signature of Eligia who could not have affixed her signature thereon as she had long been dead since August 21, 1971.[9] By virtue of the same instrument, however, the Bagayas brothers were able to secure in their favor TCT Nos. 375657[10] and 375658[11] over the subject lands.

As a matter of course, trial ensued on the merits of the case. Petitioner presented herself and five other witnesses to prove the allegations in her complaint. Respondents likewise testified in their defense denying any knowledge of the alleged adoption of petitioner by Maximino and Eligia, and pointing out that petitioner had not even lived with the family.[12] Furthermore, Rogelio claimed[13] that after their parents had died, he and Orlando executed a document denominated as Deed of Extrajudicial Succession[14] (deed of extrajudicial succession) over the subject lands to effect the transfer of titles thereof to their names. Before the deed of extrajudicial succession could be registered, however, a deed of absolute sale transferring the subject lands to them was discovered from the old files of Maximino, which they used by "reason of convenience" to acquire title to the said lands.[15]

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[6] Deceased. Survived by wife, respondent Rosalina, and children, respondents Michael and Mariel.

[7] *Rollo,* pp. 51-52.

[8] *Id.* at 61-62.

[9] *Id.* at 62.

[10] *Id.* at 85. Including the dorsal portion.

[11] *Id.* at 93. Including the dorsal portion.

[12] *Id.* at 57-59.

[13] *Id.* at 59.

[14] There is no copy of the deed of extrajudicial succession in the records.

[15] *Rollo*, p. 57.

In a Decision[16] dated March 24, 2008 dismissing the case *a quo*, the RTC summarized the threshold issues for resolution, to wit:

> [1] Whether or not [petitioner] is an adopted child of the late spouses Maximino Bagayas and Eligia Clemente;
>
> [2] Whether or not the Deed of Absolute Sale dated October 7, 1974 is valid;
>
> [3] Whether or not plaintiff can ask for partition of the subject properties assuming that she is an adopted child of the late spouses Maximino Bagayas and Eligia Clemente and assuming further that the subject deed of sale is invalid; and
>
> [4] Is the prevailing party entitled to damages?[17]

With respect to the first issue, the RTC declared petitioner to be an adopted child of Maximino and Eligia on the strength of the order of adoption, which it considered as more reliable than the oral testimonies of respondents denying the fact of adoption.[18] On the issue of the validity of the questioned deed of absolute sale, the RTC ruled that Eligia's signature thereon was a mere surplusage, as the subject lands belonged exclusively to Maximino who could alienate the same without the consent of his wife.[19]

The RTC further held that, even though petitioner is an adopted child, she could not ask for partition of the subject lands as she was not able to prove any of the instances that would invalidate the deed of absolute sale. Moreover, the action for annulment of sale was improper as it constituted a collateral attack on the title of Rogelio and Orlando.[20]

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[16] *Id.* at 56-63.

[17] *Id.* at 60.

[18] *Id.* at 61.

[19] *Id.* at 61-62.

[20] *Id.* at 62.

Insisting that the subject lands were conjugal properties of Maximino and Eligia, petitioner filed a motion for reconsideration[21] from the aforesaid Decision, which was denied by the RTC in a Resolution[22] dated June 17, 2008 holding that while it may have committed a mistake in declaring the subject lands as exclusive properties of Maximino (since the defendants therein already admitted during the pre-trial conference that the subject lands are the conjugal properties of Maximino and Eligia), the action was nevertheless dismissible on the ground that it was a collateral attack on the title of Rogelio and Orlando.[23] Citing the case of *Tapuroc v. Loquellano Vda. de Mende*,[24] it observed that the action for the declaration of nullity of deed of sale is not the direct proceeding required by law to attack a Torrens certificate of title.[25]

No appeal was taken from the RTC's Decision dated March 24, 2008 or the Resolution dated June 17, 2008, thereby allowing the same to lapse into finality.

Subsequently, however, petitioner filed, on August 1, 2008, twin petitions[26] before the same RTC, docketed as LRC Nos. 08-34 and 08-35, for the amendment of TCT Nos. 375657 and 375658 to include her name and those of her heirs and successors-in-interest as registered owners to the extent of one-third of the lands covered therein.[27] The petitions were anchored on Section 108 of Presidential Decree No. (PD) 1529,[28] otherwise known as the "Property Registration Decree," which provides as follows:

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[21] *Id.* at 64-74. Dated April 13, 2008.

[22] *Id.* at 75-77.

[23] *Id.* at 76.

[24] 541 Phil. 93 (2007).

[25] *Rollo*, p. 77.

[26] *Id.* at 78-83 (for LRC No. 08-34) and 86-91 (for LRC No. 08-35).

[27] See *id.* at 83 and 91.

[28] "AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES."

Section 108. *Amendment and alteration of certificates.* No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same be [*sic*] Register of Deeds, except by order of the proper Court of First Instance. A registered owner [*sic*] of other person having an interest in registered property, or, in proper cases, the [*sic*] Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that x x x **new interest not appearing upon the certificate have arisen or been created**; x x x; or **upon any other reasonable ground**; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant of any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; Provided, however, That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. x x x.

x x x x (Emphasis supplied)

To substantiate her "interest" in the subject lands, petitioner capitalized on the finding of the RTC in its Decision dated March 24, 2008 that she is the adopted child of Maximino and Eligia, and that the signature of the latter in the deed of absolute sale transferring the subject lands to Rogelio and Orlando was falsified.[29]

The petitions were dismissed[30] by the RTC, however, on the ground of *res judicata*. The RTC ruled that the causes of action in the two cases filed by petitioner are similar in that the ultimate objective would be her inclusion as co-owner of the subject lands and, eventually, the partition thereof.[31] Since

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[29] *Rollo,* pp. 87-88.

[30] *Id.* at 36-47. See Resolutions dated January 6, 2008 (supposed to be January 6, 2009).

[31] *Id.* at 40 and 46.

judgment had already been rendered on the matter, and petitioner had allowed the same to attain finality, the principle of *res judicata* barred further litigation thereon.[32]

Dissatisfied, petitioner argued in her motion for reconsideration[33] that the dismissal of Civil Case No. 04-42 (for annulment of sale and partition) on the ground that it was a collateral attack on the title of Rogelio and Orlando did not amount to a judgment on the merits, thus, precluding the applicability of *res judicata*.[34] The motion was resolved against petitioner, and the dismissal of LRC Nos. 08-34 and 08-35 (for amendment of TCT Nos. 375657 and 375658) was upheld by the RTC in an Order[35] dated March 16, 2009. Hence, the instant petition.

The Issue Before the Court

The essential issue in this case is whether or not the dismissal of the earlier complaint on the ground that it is in the nature of a collateral attack on the certificates of title constitutes a bar to a subsequent petition under Section 108 of PD 1529.

The Court's Ruling

At the outset, it must be stressed that Civil Case No. 04-42 was a complaint for annulment of sale and partition. In a complaint for partition, the plaintiff seeks, *first*, a declaration that he is a co-owner of the subject properties; and *second*, the conveyance of his lawful shares. An action for partition is at once an action for declaration of co-ownership and for segregation and conveyance of a determinate portion of the properties involved.[36] The determination, therefore, as to the

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[32] *Id.* at 39-41 and 45-47.

[33] *Id.* at 107-114. Dated January 10, 2009.

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

[35] *Id.* at 48.

[36] *Dapar v. Biascan*, G.R. No. 141880, September 27, 2004, 439 SCRA 179, 197.

existence of co-ownership is necessary in the resolution of an action for partition. As held in the case of *Municipality of Biñan v. Garcia*:[37]

> **The first phase of a partition and/or accounting suit is taken up with the determination of whether or not a co-ownership in fact exists**, and a partition is proper (*i.e.*, not otherwise legally proscribed) and may be made by voluntary agreement of all the parties interested in the property. This phase may end with a declaration that plaintiff is not entitled to have a partition either because a co-ownership does not exist, or partition is legally prohibited. It may end, on the other hand, with an adjudgment that a co-ownership does in truth exist, partition is proper in the premises and an accounting of rents and profits received by the defendant from the real estate in question is in order. In the latter case, the parties may, if they are able to agree, make partition among themselves by proper instruments of conveyance, and the court shall confirm the partition so agreed upon. In either case – *i.e.,* either the action is dismissed or partition and/or accounting is decreed – the order is a final one, and may be appealed by any party aggrieved thereby.[38] (Emphasis supplied; citations omitted)

In dismissing Civil Case No. 04-42, the RTC declared that petitioner could not ask for the partition of the subject lands, even though she is an adopted child, because "she was not able to prove any of the instances that would invalidate the deed of absolute sale"[39] purportedly executed by Maximino and Eligia. This conclusion came about as a consequence of the RTC's finding that, since the subject lands belonged exclusively to Maximino, there was no need to secure the consent of his wife who was long dead before the sale took place. For this reason, the forgery of Eligia's signature on the questioned deed was held to be inconsequential. However, on reconsideration, the RTC declared that it committed a mistake in holding the subject lands as exclusive properties of Maximino "since there was already an admission [by] the defendants during the pre-

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[37] G.R. No. 69260, December 22, 1989, 180 SCRA 576.

[38] *Id.* at 584-585.

[39] *Rollo*, p. 62.

trial conference that the subject properties are the conjugal properties of the spouses Maximino Bagayas and Eligia Clemente."[40] Nonetheless, the RTC sustained its dismissal of Civil Case No. 04-42 on the ground that it constituted a collateral attack upon the title of Rogelio and Orlando.

In *Lacbayan v. Samoy, Jr.*[41] (*Lacbayan*) which is an action for partition premised on the existence or non-existence of co-ownership between the parties, the Court categorically pronounced that a resolution on the issue of ownership does not subject the Torrens title issued over the disputed realties to a collateral attack. It must be borne in mind that what cannot be collaterally attacked is the certificate of title and not the title itself. As pronounced in *Lacbayan*:

> There is no dispute that a Torrens certificate of title cannot be collaterally attacked, but that rule is not material to the case at bar. **What cannot be collaterally attacked is the certificate of title and not the title itself**. The certificate referred to is that document issued by the Register of Deeds known as the TCT. **In contrast, the title referred to by law means ownership which is, more often than not, represented by that document**. Petitioner apparently confuses title with the certificate of title. Title as a concept of ownership should not be confused with the certificate of title as evidence of such ownership although both are interchangeably used.[42] (Emphases supplied)

Thus, the RTC erroneously dismissed petitioner's petition for annulment of sale on the ground that it constituted a collateral attack since she was actually assailing Rogelio and Orlando's title to the subject lands and not any Torrens certificate of title over the same.

Be that as it may, considering that petitioner failed to appeal from the dismissal of Civil Case No. 04-42, the judgment therein is final and may no longer be reviewed.

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[40] *Id.* at 77.

[41] G.R. No. 165427, March 21, 2011, 645 SCRA 677.

[42] *Id.* at 689.

The crucial issue, therefore, to be resolved is the propriety of the dismissal of LRC Nos. 08-34 and 08-35 on the ground of *res judicata*.

It must be pointed out that LRC Nos. 08-34 and 08-35 praying that judgment be rendered directing the Registry of Deeds of Tarlac to include petitioner's name, those of her heirs and successors-in-interest as registered owners to the extent of one-third of the lands covered by TCT Nos. 375657 and 375658, were predicated on the theory[43] that Section 108 of PD 1529 is a mode of directly attacking the certificates of title issued to the Bagayas brothers. On the contrary, however, the Court observes that the amendment of TCT Nos. 375657 and 375658 under Section 108 of PD 1529 is actually not the direct attack on said certificates of title contemplated under Section 48[44] of the same law. Jurisprudence instructs that an action or proceeding is deemed to be an attack on a certificate of title when its objective is to nullify the same, thereby challenging the judgment pursuant to which the certificate of title was decreed.[45] Corollary thereto, it is a well-known doctrine that the issue as to whether the certificate of title was procured by falsification or fraud can only be raised in an action expressly instituted for such purpose. As explicated in *Borbajo v. Hidden View Homeowners, Inc.*:[46]

> It is a well-known doctrine that the issue as to whether [the certificate of] title was procured by falsification or fraud can only be raised in an action expressly instituted for the purpose. A Torrens title can be attacked only for fraud, within one year after the date of

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[43] *Rollo*, p. 38.

[44] SEC. 48. *Certificate not subject to collateral attack*. A **certificate of title shall not be subject to collateral attack**. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law. (Emphasis supplied)

[45] See *Jarantilla, Jr. v. Jarantilla*, G.R. No. 154486, December 1, 2010, 636 SCRA 299, 319.

[46] *Borbajo v. Hidden View Homeowners, Inc.*, G. R. No. 152440, January 31, 2005, 450 SCRA 315.

the issuance of the decree of registration. Such attack must be direct, and not by a collateral proceeding. The title represented by the certificate cannot be changed, altered, modified, enlarged, or diminished in a collateral proceeding. The certificate of title serves as evidence of an indefeasible title to the property in favor of the person whose name appears therein.[47] (Citations omitted)

Contrary to the foregoing characterization, Section 108 of PD 1529 explicitly states that said provision "shall not be construed to give the court authority to reopen the judgment or decree of registration." In fact, based on settled jurisprudence, Section 108 of PD 1529 is limited only to seven instances or situations, namely: (*a*) when registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased; (*b*) when new interests have arisen or been created which do not appear upon the certificate; (*c*) when any error, omission or mistake was made in entering a certificate or any memorandum thereon or on any duplicate certificate; (*d*) when the name of any person on the certificate has been changed; (*e*) when the registered owner has been married, or, registered as married, the marriage has been terminated and no right or interest of heirs or creditors will thereby be affected; (*f*) when a corporation, which owned registered land and has been dissolved, has not conveyed the same within three years after its dissolution; and (*g*) when there is reasonable ground for the amendment or alteration of title.[48] Hence, the same cannot be said to constitute an attack on a certificate of title as defined by case law. That said, the Court proceeds to resolve the issue as to whether or not the dismissal of petitioner's twin petitions for the amendment of TCT Nos. 375657 and 375658 was proper.

Petitioner claims that the determination of the RTC in Civil Case No. 04-42 that she is an adopted child and that the signature of her adoptive mother Eligia in the deed of absolute sale

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[47] *Id.* at 325.

[48] *Paz v. Republic*, G.R. No. 157367, November 23, 2011, 661 SCRA 74, 81.

transferring the subject land to Rogelio and Orlando was forged amounts to a new interest that should be reflected on the certificates of title of said land, or provides a reasonable ground for the amendment thereof.

The Court disagrees for two reasons:

First. While the RTC may have made a definitive ruling on petitioner's adoption, as well as the forgery of Eligia's signature on the questioned deed, no partition was decreed, as the action was, in fact, dismissed. Consequently, the declaration that petitioner is the legally adopted child of Maximino and Eligia did not amount to a declaration of heirship and co-ownership upon which petitioner may institute an action for the amendment of the certificates of title covering the subject land. More importantly, the Court has consistently ruled that the trial court cannot make a declaration of heirship in an ordinary civil action, for matters relating to the rights of filiation and heirship must be ventilated in a special proceeding instituted precisely for the purpose of determining such rights.[49]

Second. Petitioner cannot avail of the summary proceedings under Section 108 of PD 1529 because the present controversy involves not the amendment of the certificates of title issued in favor of Rogelio and Orlando but the partition of the estate of Maximino and Eligia who are both deceased. As held in *Philippine Veterans Bank v. Valenzuela,*[50] the prevailing rule is that proceedings under Section 108 of PD 1529 are summary in nature, contemplating corrections or insertions of mistakes which are only clerical but certainly not controversial issues.[51] Relief under said legal provision can only be granted if there is unanimity among the parties, or that there is no adverse claim or serious objection on the part of any party in interest. This

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[49] *Heirs of Teofilo Gabatan v. CA*, G.R. No. 150206, March 13, 2009, 581 SCRA 70, 78-79, citing *Milagros Joaquino v. Lourdes Reyes*, G.R. No. 154645, July 13, 2004, 434 SCRA 260, 274.

[50] G.R. No. 163530, March 9, 2011, 645 SCRA 66.

[51] *Id.* at 73.

is now the controlling precedent, and the Court should no longer digress from such ruling.[52] Therefore, petitioner may not avail of the remedy provided under Section 108 of PD 1529.

In fine, while LRC Nos. 08-34 and 08-35 are technically not barred by the prior judgment in Civil Case No. 04-42 as they involve different causes of action, the dismissal of said petitions for the amendment of TCT Nos. 375657 and 375658 is nonetheless proper for reasons discussed above. The remedy then of petitioner is to institute intestate proceedings for the settlement of the estate of the deceased spouses Maximino and Eligia.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 187731. September 18, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SPO1 ALFREDO ALAWIG,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; APPELLANT'S CLAIM OF SELF-DEFENSE DESERVES NO CREDENCE AT ALL.—** Obviously, appellant was confused. It must be noted that he was the only witness who testified on the circumstances surrounding the tragic death of the victim. It was he who supplied the necessary evidence showing that there was unlawful aggression on the part of the victim. Contrary to the undisputed finding of Dr. Bernales that

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[52] See *City Government of Tagaytay v. Guerrero,* G.R. Nos. 140743 & 140745, September 17, 2009, 600 SCRA 33, 58-59.

there are more than one assailant in view of the multiple bullet wounds on the body of the victim, appellant insists it was only PO3 Ventinilla who killed the victim. However, neither PO3 Ventinilla nor the victim could be resurrected from their graves to controvert appellant's version of the story. Besides, it has not escaped our attention that in the Counter-Affidavit of SPO4 Miraples, appellant's co-accused, he stated therein that appellant acted in self-defense when the victim allegedly went berserk. More important, in his Answer to the administrative complaint filed by the victim's widow, appellant interposed self-defense by alleging that it was the victim who initiated the attack through unlawful aggression. Hence, the CA committed no error in imposing upon him the burden of proving the elements of self-defense. At any rate, appellant's claim of self-defense deserves no credence at all. Aside from the fact that the defense presented absolutely no credible evidence to establish self-defense, this was belied by appellant's assertion that he was outside the police station premises when the victim was killed. But even the appellant's denial equally deserves scant consideration. The physical evidence presented by the prosecution put appellant in the crime scene. He tested positive for gunpowder nitrates which proved that he fired his firearm. Dr. Bernales also testified that the victim was killed by more than one assailant. Clearly, appellant was with PO3 Ventinilla when the victim was killed.

2. **ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; APPELLANT PERFORMED SPECIFIC ACTS IN THE FURTHERANCE OF THE CONSPIRACY TO KILL THE VICTIM AS WELL AS TO COVER-UP THE SAME.—** "Under Article 8 of the Revised Penal Code [RPC], there is conspiracy if two or more persons agree to commit a felony and decide to commit it. [It] must be proven during trial with the same quantum of evidence as the felony subject of the agreement of the parties [either] by direct or circumstantial evidence [of the conspirators' conduct] before, during and after the commission of the felony to achieve a common design or purpose." We affirm the findings of the RTC that all of the accused conspired to commit the crime. x x x [B]y manipulating the entries in the logbook, the accused conspired to make it appear that they were in some place other than where the killing took place and that they were performing

acts independent of each other. The entries were recorded with the concurrence of all the accused. With PO3 Ventinilla dead, appellant painted him as the sole perpetrator and tried to exculpate himself and the rest of the accused. Records also show that none of the accused attempted to prevent the killing of the victim. More telling is their act of placing six empty cartridges at the crime scene to make it appear that the victim fired his firearm and was the unlawful aggressor. As borne out by the Firearms Identification Report No. FAID-212-96: the two cartridges were fired from an M16 rifle with Serial No. RP154135; two other cartridges were fired using an M16 rifle with Serial No. RP144440; while the last two cartridges were fired from an M16 rifle with Serial No. RP138254. Per the Initial Investigation Report of SPO1 Angeles I. Miranda, the M16 rifle with Serial No. RP144440 belonged to appellant as well as a 0.38 caliber revolver with Serial No. BBW4740; the M16 rifle with Serial No. RP154135 and the 0.38 caliber revolver with Serial No. AUS1926 belonged to PO3 Ventinilla; while the M16 rifle with Serial No. RP138254 and 0.45 caliber pistol with Serial No. 162457 belonged to the victim. Significantly, the Physical Sciences Report No. 0-552-96 indicated that all the aforementioned firearms were fired. However, as already mentioned, the victim tested negative for gunpowder nitrates hence the possibility that he fired his weapons is remote. Besides, as already testified to by Dr. Bernales, the possible firearm used could be caliber 0.38 of which both the appellant and PO3 Ventinilla were equipped at the time the victim was killed. Finally, the accused presented a T-shirt allegedly worn by the victim which, however, did not bear any holes compatible to the gunshot wounds sustained by the victim. In fact, Dr. Bausa testified that the T-shirt did not even contain traces of human blood. All these taken together suffice to show that appellant conspired with the other accused in the killing of the victim. There is evidence that the accused performed specific acts in the furtherance of the conspiracy to kill the victim as well as to cover-up the same. The evidence is adequate to establish unity of purpose at the time of the commission of the offense and unity in its execution.

3. **ID.; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; ATTENDED THE KILLING IN CASE AT BAR; BASED ON THE NATURE AND LOCATION OF THE WOUNDS**

SUSTAINED, THE VICTIM DEFINITELY WOULD NOT BE ABLE TO PUT UP ANY DEFENSE EVEN IF HE WAS ARMED WITH AN ARMALITE RIFLE AND A CALIBER .45 PISTOL AT THE TIME.— "For [treachery] to qualify the crime to murder, it must be shown that: a) the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and b) the said means, method and manner of execution were deliberately adopted." "The circumstances surrounding the [killing] must be proved as indubitably as the crime itself." Treachery cannot be presumed. We agree with the RTC finding as affirmed by the CA that treachery attended the killing. The Medico-Legal Record showed that the victim sustained two puncture wounds at his lower neck and three gunshot wounds. The Autopsy Report also showed that the victim had contusion on his chest, upper quadrant and contused-abrasion on his left forearm. As regards the gunshot wounds, the prosecution was able to establish that the same were inflicted by more than one assailant using three different firearms in view of their size and location. On September 10, 1997, SA Danielito Q. Lalusis of the NBI requested Dr. Bernales to enlighten them on the following: "(1) What was the relative position of the [v]ictim when he was fired upon by the assailants?; (2) What was the relative position of the assailants when they fired at the [v]ictim?; (3) What could have been the distance of the firearms of the assailants to the [v]ictim?; (4) How many firearms could have been used in killing [the v]ictim?; and (5) What was the trajectory of the bullets that hit the body of the [v]ictim?" x x x Considering the contusions, abrasions, and puncture wounds sustained by the victim, it is clear that he was first manhandled prior to the shooting. The location of the gunshot wounds likewise is indicative of the relative positions of the assailants *vis-à-vis* the victim. As noted by Dr. Bernales, the first assailant was facing the victim but more to his left; the second assailant was at the left side but more at the back of the victim; while the third assailant was at the right side of the victim. More importantly, the assailants were positioned on a higher level than the victim which could mean that the victim was in a kneeling or stooping position. Thus, as correctly pointed out by the RTC, "[b]ased on the nature and location of the wounds sustained, the victim definitely would not be able to put up any defense even if he was armed with armalite rifle and caliber

.45 at the time. This explains why he was found negative of gunpowder nitrate in both hands x x x when he was killed. He was not able to fire his gun to defend himself. The conclusion, therefore, is inescapable that the attack on the victim was perpetrated with alevosia, hence, qualifying the killing to murder."

4. **ID.; ID.; ID.; EVIDENT PREMEDITATION; REQUISITES; NOT ESTABLISHED IN CASE AT BAR; THE LAPSE OF TIME FROM THE MOMENT THE VICTIM WAS FETCHED UNTIL THE SHOOTING CANNOT BE CONSIDERED SUFFICIENT FOR APPELLANT TO REFLECT UPON THE CONSEQUENCES OF HIS ACT.—** In order "for evident premeditation to be appreciated, the following [requisites must concur]: (1) the time when accused [decided] to commit the crime; (2) an overt act manifestly indicating that [he] has clung to his determination; and, (3) sufficient lapse of time between [such a determination and the actual] execution to allow the accused time to reflect upon the consequences of his act." In this case, the courts below based their finding of evident premeditation on the entries in the Dispatch Logbook, the alleged pretense made by the appellant and cohorts that they were going to conduct a police operation regarding illegal drugs, as well as the telephone call made by the victim to his friend Reyes before the incident. To our mind, however, these circumstances do not constitute clear and positive evidence of outward acts showing a premeditation to kill. At most, these circumstances are indicative only of conspiracy among the accused. Settled is the rule that when it is not shown how and when the plan to kill was hatched or how much time had elapsed before it was carried out, evident premeditation cannot be considered. "[I]t must appear not only that the accused decided to commit the crime prior to the moment of its execution but also that this decision was the result of meditation, calculation, reflection or persistent attempt." Notably, even the OSG admitted that the lapse of time from the moment the victim was fetched until the shooting cannot be considered sufficient for appellant to reflect upon the consequences of his act.

5. **ID.; CIVIL LIABILITY; CIVIL INDEMNITY, ACTUAL, MORAL AND EXEMPLARY DAMAGES, AWARDED.—** In conformity with prevailing jurisprudence, we affirm the award of ₱50,000.00 as civil indemnity to the heirs of the victim. This is given

without need of proof other than the fact of death as a result of the crime and proof of appellant's responsibility for it. We also affirm the grant of ₱50,000.00 as moral damages. This is "mandatory in cases of murder and homicide without need of allegation and proof other than the death of the victim." In addition, we sustain the award of actual damages but only to the amount of ₱103,472.00 representing expenses incurred during the wake of the victim supported by uncontroverted receipts. "Credence can be given only to claims which are duly supported by receipts or other credible evidence." We also sustain the award of exemplary damages but in the increased amount of ₱30,000.00 to conform to prevailing jurisprudence.

6. **ID.; ID.; LOSS OF EARNING CAPACITY AWARDED TO THE HEIRS OF THE VICTIM AS A CONSEQUENCE OF HIS UNTIMELY DEATH.—** We note, however, that no indemnity for loss of earning capacity was awarded to the heirs of the victim as a consequence of his untimely death. Under Article 2206 of the Civil Code, the heirs of the victim are entitled to indemnity for loss of earning capacity. The evidence shows that the victim's annual gross income as a police officer was ₱88,530.00 computed from his monthly rate of ₱7,377.50. There being no proof of his living expenses, the net income is deemed equivalent to 50% of the gross income, hence, his estimated annual net income is ₱44,265.00. As computed on the basis of the usual formula adopted by the Court in cases similarly awarding compensation for loss of earning to wit: Net Earning Capacity = Life expectancy x Gross Annual Income – Living Expenses = [2/3 (80-age of death)] x (GAI) – 50% of GAI) the loss of earning capacity of the victim who died at the age of 31 would be ₱1,445,990.00 computed as: 2/3 x (80-31) x (₱88,530.00 – ₱44,265.00). Finally, in conformity with current policy, we impose interest at the rate of 6% *per annum* on all damages awarded from date of finality of this Decision until fully paid.

7. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; CIRCUMSTANTIAL EVIDENCE; REQUISITES; SUFFICIENTLY ESTABLISHED IN CASE AT BAR.—** Indeed, no prosecution witness has actually seen the commission of the crime. But jurisprudence tells us that direct evidence of the crime is not the only matrix from which a trial court may draw its conclusion and finding of guilt. The rules on evidence allow a trial court to rely on circumstantial evidence to support

its conclusion of guilt. Circumstantial evidence is that evidence "which indirectly proves a fact in issue through an inference which the fact-finder draws from the evidence established." In this case, the Office of the Solicitor General (OSG) correctly synthesized the circumstances constituting circumstantial evidence as culled from the entire testimony of Reyes, the prosecution's key witness. x x x The prosecution likewise presented corroborating evidence which constitute an unbroken chain leading to the inevitable conclusion that appellant is guilty of killing the victim. For instance, the presence of gunpowder nitrates on appellant after a paraffin test; the firearm used in the killing which could either be a .38 caliber or 9 mm pistol dovetails with the testimony of Reyes that he saw appellant carrying a .38 caliber short firearm which was later found to have been recently fired; and the absence of gunpowder nitrates on the hands of the victim after a paraffin test which belies appellant's claim that he was shot by the victim or that the latter exchanged fire with PO3 Ventinilla. "[C]ircumstantial evidence is sufficient to sustain a conviction if (i) there is more than one circumstance; (ii) the facts from which the inference is derived are proven; and (iii) the combination of all circumstances is such as to produce conviction beyond reasonable doubt." All the foregoing elements were sufficiently established in this case.

8. **ID.; ID.; FLIGHT OF ACCUSED; NON-FLIGHT IS NOT PROOF OF INNOCENCE; FACT THAT APPELLANT DID NOT FLEE MAY BE A BADGE OF INNOCENCE, NEVERTHELESS, IT IS NOT A SUFFICIENT GROUND TO EXCULPATE HIM FROM HIS PROVEN CRIMINAL LIABILITY.—** The trial court properly disregarded appellant's non-flight. While it has been ruled that an accused's decision not to flee after the crime despite an opportunity to do so is not characteristic of a guilty person, the opposite has also been upheld in some cases. Appellant may not have indeed fled from the scene of the crime as he even allowed himself to be subjected to paraffin test, but the same are not necessarily indicative of a clear conscience. "Non-flight is not proof of innocence" as ruled in *People v. Del Castillo.* Thus, the fact that appellant did not flee may be a badge of innocence, nevertheless, it is not a sufficient ground to exculpate him from his proven criminal liability.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
U.P. Office of Legal Aid for accused-appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

For final review is the November 3, 2008 Decision[1] of the Court of Appeals (CA), affirming with modification the May 17, 2005 Decision[2] of the Regional Trial Court (RTC), Branch 11, Manila, finding SPO1 Alfredo Alawig (appellant) and SPO2 Enrique M. Dabu (SPO2 Dabu) guilty beyond reasonable doubt of the crime of murder.

Factual Antecedents

Appellant, along with PO3 Romeo Ventinilla (PO3 Ventinilla), was initially charged with homicide for the killing of PO3 Miel de Ocampo Cafe (victim). Upon motion of Percelita Cafe (Percelita), the victim's mother,[3] a reinvestigation of the case was conducted. Subsequently, the Deputy Ombudsman for the Military approved the filing of an Amended Information[4] against appellant, PO3 Ventinilla together with SPO4 Ponciano Miraples (SPO4 Miraples), PO2 Armando de Vera (PO2 De Vera), SPO2 Dabu and PO2 Vivencio Corpuz (PO2 Corpuz). The Department of Justice accordingly moved for the admission of said Amended Information,[5] which the RTC Manila, Branch

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[1] CA *rollo*, pp. 256-268; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison.

[2] Records, Vol. 3, pp. 1844-1849; penned by Judge Luis J. Arranz.

[3] See Urgent Motion for Reinvestigation, Records, Vol. 1, pp. 43-45.

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

[5] See Motion for Leave to Admit Amended Information with Manifestation, *id.* at 161-165.

18 granted.[6] The accusatory portion of the Amended Information reads as follows:

The undersigned Ombudsman Investigator, Office of the Deputy Ombudsman for the Military, hereby accuses SPO4 PONCIANO MIRAPLES, SPO1 ALFREDO ALAWIG, PO3 ROMEO VENTINILLA, PO2 ARMANDO DE VERA, SPO2 ENRIQUE DABU and PO2 VIVENCIO CORPUZ of the crime of MURDER, defined and penalized under Article 248 of the Revised Penal Code, committed as follows:

> That on or about November 30, 1996, or for sometime subsequent thereto, in Marulas, Valenzuela, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused (SPO1 Alawig and PO3 VENTINILLA), both public officers, being then members of the Philippine National Police (PNP) Force assigned at the Valenzuela Police Station, armed with various firearms, with evident premeditation, treachery and with deliberate intent to kill, conspiring and confederating with their co-accused (SPO4 MIRAPLES, PO2 DE VERA, SPO2 DABU and PO2 CORPUZ), committing the offense in relation to their Office, did then and there willfully, unlawfully and feloniously shoot PO3 MIEL DE OCAMPO CAFE, causing multiple gunshot wounds on the vital parts of his body which were the direct and immediate cause of his death, to the damage and prejudice of the latter's heirs.
>
> Contrary to law.[7]

SPO2 Dabu pleaded not guilty when arraigned on July 1, 1999 as did appellant when arraigned on July 29, 1999. SPO4 Miraples, PO2 De Vera and PO2 Corpuz were never apprehended and remain at large while PO3 Ventinilla met his violent death on February 27, 2001.[8] Per letter[9] of Police Chief

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[6] See Order dated May 21, 1999, Records, Vol. 2, pp. 441-442. In A.M. No. 99-1-42-RTC, the Court *en banc* issued a Minute Resolution dated February 2, 1999 granting the request of the Department of Justice for the transfer of venue of the trial of the case from the Regional Trial Court of Valenzuela to Regional Trial Court of Manila. *Id.* at 433.

[7] Records, Vol. 1, p. 169.

[8] See Certificate of Death, records, Vol. 3, p. 1359.

[9] *Id.* at 1242.

Inspector Isidro C. Suyo, Jr. dated March 5, 2001, PO3 Ventinilla "who was tagged as member of the dreaded 'GAPOS GANG' was killed during the encounter with the [police] elements x x x at Rodriguez, Rizal." Accordingly, the case against PO3 Ventinilla was dismissed per Order[10] dated January 31, 2005.

The prosecution presented as witnesses Dr. Fernando Mandapat (Dr. Mandapat), Dr. Valentin Bernales (Dr. Bernales), Aida Pascual (Pascual), MacGregor Reyes (Reyes), Percelita, Sr. Insp. Edison Lopez (Lopez), Joel Lester Valdez (Valdez) and Dr. Olga Bausa (Dr. Bausa), whose collective testimonies established the facts of this case as hereunder summarized.

In the early morning of November 30, 1996, the victim and Reyes went to a nearby market. Upon their return, Reyes left the victim at the latter's residence and came back at noon. He did not immediately enter the house as he noticed several policemen strategically positioned on the premises. He saw appellant and PO3 Ventinilla standing by the door shortly before entering the victim's house. He also saw SPO2 Dabu standing at the front gate while PO2 De Vera was on top of the septic tank. Standing at the main door was PO2 Corpuz. To avoid being noticed, Reyes used the alternative road and went inside the house through the back gate. From his position, he could hear the conversation among appellant, PO3 Ventinilla and the victim. The latter who just woke up was told to dress up and bring his firearm as he was summoned by SPO4 Miraples to join a police team in an operation regarding illegal drugs. After the group left the victim's residence, Reyes entered the house. While inside, he received a telephone call from the victim telling him, "*Pare wala pala kaming tatrabahuhin, ako pala ang tatrabahuhin, tulungan mo ako, sumundo ka ng tao na tutulong sa akin*." But before Reyes could say anything, the telephone conversation was cut. Not long after, Reyes learned that the victim died from gunshot wounds in different parts of his body while inside the premises of Police Kababayan Center I in Doña Ata Subdivision, Marulas, Valenzuela City.

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[10] *Id.* at 1787.

Dr. Mandapat, the physician on duty at the time the victim was brought to the Fatima Hospital (now Fatima Medical Center), conducted the initial post mortem examination. He noticed that the victim had no upper clothing and shoes when he was brought to the hospital by PO2 Corpuz. He identified the Medico-Legal Record[11] and Medico-Legal Report[12] that he prepared.

Dr. Bernales, a medico-legal officer from the National Bureau of Investigation (NBI), corroborated the initial medical findings of Dr. Mandapat. His autopsy report[13] indicates that the victim sustained three gunshot wounds, contusions on the chest, subclavicular area and the forearm, lacerated wounds on the ear and posterior axillary line, and abrasions in post aurical and anterolateral.

Lopez was the Team Leader of the Scene of the Crime Operatives which investigated the shooting incident. The team took photographs and other physical evidence at the crime scene some of which were disturbed and tampered with. Lopez noticed a pool of blood leading to the door of the police station. Six spent shells taken from the office of SPO4 Miraples were placed on the floor by the members of the police station contingent when the team was about to take pictures. He also noticed that the holes on the wall were not caused by gunshots but by a concrete nail. He invited all the members of the police station contingent to undergo paraffin examination but only appellant and PO3 Ventinilla acquiesced to be paraffin tested. Both of them were positive for gunpowder nitrates.

Dr. Bausa, a medico-legal officer of the PNP Crime Laboratory, conducted a forensic examination on the blood-stained hat, face towel and T-shirt worn by the victim and submitted by the Valenzuela police. According to her, the T-shirt had no bullet holes on the areas where the victim was apparently shot and had no trace of blood.

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[11] Exhibit “A”, Folder of Exhibits.

[12] Exhibit “B”, *id.*

[13] Exhibit “C”, *id.*

Percelita testified that sometime in September 1996, the victim confided to her that he earned the ire of his superior and fellow police officers after he apprehended a drug pusher in Valenzuela. She likewise recalled that on November 28, 1996, the victim told her, "*Inay[,] ang Valenzuela ay bulok*" as some high-ranking officials were involved in a drug syndicate. The victim even told her that some unknown persons were following him from time to time. As a result of her son's death, she testified that she suffered moral damages and actual damages amounting to ₱104,000.00. She also spent ₱221,000.00 as attorney's fees.

On the other hand, the version of appellant and SPO2 Dabu as summarized by the CA is quoted hereunder:

> On November 30, 1996, at around 1:00 o'clock in the afternoon, accused-appellant Alawig, accused PO3 Ventinilla and PO2 De Vera were dispatched by their Precinct Commander SPO4 Miraples to ARTY Subdivision to respond to a report involving illegal drugs. However, they were not able to proceed to the assigned operation because SPO4 Miraples directed them to go to Gumamela Street to investigate on a reported trouble in the area. When they arrived at the area, the reported trouble was already over, thus, they proceeded to the house of the victim which was also within the vicinity and also to inquire on the trouble which occurred there. They reached the house of the victim while the latter was playing dart with a certain Tomas Beroy. The victim invited the police officers to get inside the house but only the accused-appellant Alawig and Ventinilla entered. The victim admitted to them that he had a quarrel with his wife which caused him to shoot the thermos bottle. Thereafter, the victim joined them in reporting back to the police station in order to explain the alleged trouble that took place in the area where he also resided. The victim brought his armalite rifle and .45 pistol and boarded the owner-type jeep of Ventinilla. When they were about to leave, Ventinilla noticed that the victim was holding a plastic sachet containing "shabu". There, Ventinilla said to the victim, "*Matagal ka nang tinatrabaho ng DILG Parak*." Upon arrival at the police station, the accused-appellant Alawig went to a store to buy cigarette and, when he returned, he saw the victim and the accused Ventinilla having a heated argument. During the occurrence, Dabu and De Vera left the station to respond to a reported illegal gambling while the victim and Ventinilla went inside the station.

Inside the station, the victim made a telephone call and thereafter the heated argument between the victim and Ventinilla resumed. Alawig could see the events from outside the station where he was seated. He saw the victim [kick] his armalite rifle and [point] it at Ventinilla which the latter tried to impede by holding the end part of the weapon and pointed it upward. At the same time, Ventinilla kicked the table towards the victim which caused the latter to fall down to his knees. At that moment, the victim fired his armalite rifle and, in retaliation thereto, Ventinilla shot the victim x x x several times. Thereafter, Alawig told Ventinilla to stop[,] after which the latter left the scene.[14]

x x x x

For his part, Dabu testified that he was not among those who fetched the victim at his house. He remained at the police station to wait for De Vera before they would respond to a reported illegal gambling somewhere in Pasong Balete Hills. Immediately after De Vera arrived, Dabu left the station with De Vera. They apprehended three (3) persons in their operation and brought them to their station. Upon their arrival at the station, Dabu learned that a shooting incident transpired between the victim and Ventinilla while they were away. Due to the incident, Dabu released the persons he apprehended in an illegal gambling pursuant to an order of his superior, SPO4 Miraples.

Ruling of the Regional Trial Court

On May 17, 2005, the RTC convicted appellant and SPO2 Dabu of murder qualified by treachery. The RTC also considered the killing of the victim as attended by the aggravating circumstance of evident premeditation. Accordingly, they were sentenced to suffer the penalty of death.

The dispositive portion of the RTC Decision reads:

WHEREFORE, judgment is hereby rendered in this case, finding accused Alfredo Alawig and Enrique M. Dabu guilty beyond reasonable doubt of the crime of Murder qualified by treachery. There being attendant in the commission of the offense the aggravating circumstance of evident premeditation without any mitigating

[14] CA *rollo*, pp. 261-262.

circumstance present, the greater penalty shall be applied (Art. 63, par. 1, RPC). Under Art. 48 of the Revised Penal Code as amended by R.A. 7659, the maximum penalty of the crime of Murder is death. Accordingly, both accused Alawig and Dabu, who stand trial, are hereby sentenced to suffer the penalty of death.

Accused Dabu and Alawig are likewise ordered to pay jointly and severally the heirs of the victim, Miel Cafe, compensatory damage in the amount of ₱50,000.00, actual damages in the amount of ₱325,000.00, moral damages in the amount of ₱50,000.00 and exemplary damages in the amount of ₱25,000.00

SO ORDERED.[15]

Considering, however, the failure of SPO2 Dabu to appear during the promulgation of the Decision, the RTC issued an Order[16] directing the issuance of a warrant of arrest. Thereafter, SPO2 Dabu filed a Motion for Reconsideration[17] of the RTC Decision but the same was denied in an Order[18] dated October 25, 2005.

Ruling of the Court of Appeals

SPO2 Dabu then filed with the CA a Compliance (With Omnibus Motion to (a) Give Due Course to the Appeal, (b) Lift and Set Aside Warrant of Arrest and (c) Allow Accused to Post Bail.[19] However, in a Resolution[20] dated March 22, 2006, the CA denied due course to SPO2 Dabu's appeal. Hence, the CA's disposition was limited to the appeal interposed by appellant.

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[15] Records, Vol. 3, p. 1889.

[16] *Id.* at 1890.

[17] *Id.* at 1904-1928.

[18] *Id.* at 1993-1999; penned by Executive Judge Antonio M. Eugenio, Jr..

[19] CA *rollo*, pp. 33-41.

[20] *Id.* at 107-113; penned by Associate Justice Bienvenido L. Reyes (now a Member of this Court) and concurred in by Associate Justices Arturo D. Brion (now a Member of this Court) and Mariflor Punzalan Castillo.

The CA agreed with the factual presentation of the prosecution and discredited the version of the defense. On November 3, 2008, the CA promulgated its Decision affirming the RTC Decision but reduced the penalty from death to *reclusion perpetua, viz*:

WHEREFORE, in view of the foregoing premises, the assailed decision of the Regional Trial Court, Branch 11, in Manila rendered on May 17, 2005 in Criminal Case No. 99-170722 finding the accused-appellant guilty of the crime of murder is hereby **AFFIRMED** by us with the **MODIFICATION** that the penalty of death imposed is reduced to *reclusion perpetua.*

SO ORDERED.[21]

Hence, this appeal.

Issues

In his Brief,[22] appellant contends that in affirming his conviction, the CA —

1. X X X ERRED IN ITS FACTUAL FINDING THAT [APPELLANT] CLAIMED SELF-DEFENSE DESPITE EVIDENCE SHOWING THAT HIS DEFENSE WAS TOTAL DENIAL.

2. X X X ERRED IN NOT RESOLVING THE FOLLOWING ISSUES RAISED TO IT ON APPEAL FROM THE TRIAL COURT, TO WIT:

   A. WHETHER X X X THE TRIAL COURT ERRED IN HOLDING THAT THE GUILT OF THE [APPELLANT] WAS PROVEN BEYOND REASONABLE DOUBT BASED ON CIRCUMSTANTIAL EVIDENCE

      i. WHETHER X X X THE TRIAL COURT ERRED IN RULING THAT THERE EXISTS SUFFICIENT CIRCUMSTANTIAL EVIDENCE TO PROVE

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[21] *Id.* at 267.

[22] *Rollo*, pp. 30-60.

THAT THE [APPELLANT] CONSPIRED IN KILLING THE VICTIM

ii. WHETHER X X X THE TRIAL COURT ERRED IN RULING THAT THERE WAS MOTIVE ON THE PART OF THE [APPELLANT]

3. X X X ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

4. X X X ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF EVIDENT PREMEDITATION.

5. X X X ERRED IN NOT RESOLVING THE ISSUE AS TO WHETHER X X X THE TRIAL COURT ERRED IN APPRECIATING FLIGHT ON THE PART OF [APPELLANT].[23]

Self-defense

Appellant faults the CA when it imposed on him the burden of proving the elements of self-defense. He claims it was PO3 Ventinilla who acted in self-defense and, therefore, it was incumbent upon the latter to establish such fact. He avers that his defense is denial as found by the trial court.

Obviously, appellant was confused. It must be noted that he was the only witness who testified on the circumstances surrounding the tragic death of the victim. It was he who supplied the necessary evidence showing that there was unlawful aggression on the part of the victim. Contrary to the undisputed finding of Dr. Bernales that there are more than one assailant in view of the multiple bullet wounds on the body of the victim, appellant insists it was only PO3 Ventinilla who killed the victim. However, neither PO3 Ventinilla nor the victim could be resurrected from their graves to controvert appellant's version of the story.

Besides, it has not escaped our attention that in the Counter-Affidavit[24] of SPO4 Miraples, appellant's co-accused, he stated

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[23] *Id.* at 37.

[24] Records, Vol. 1, pp. 258-261.

therein that appellant acted in self-defense when the victim allegedly went berserk.[25] More important, in his Answer[26] to the administrative complaint filed by the victim's widow, appellant interposed self-defense by alleging that it was the victim who initiated the attack through unlawful aggression.

Hence, the CA committed no error in imposing upon him the burden of proving the elements of self-defense.

At any rate, appellant's claim of self-defense deserves no credence at all. Aside from the fact that the defense presented absolutely no credible evidence to establish self-defense, this was belied by appellant's assertion that he was outside the police station premises when the victim was killed. But even the appellant's denial equally deserves scant consideration. The physical evidence presented by the prosecution put appellant in the crime scene. He tested positive for gunpowder nitrates which proved that he fired his firearm. Dr. Bernales also testified that the victim was killed by more than one assailant. Clearly, appellant was with PO3 Ventinilla when the victim was killed.

Circumstantial evidence

Appellant also claims that the circumstantial evidence presented by the prosecution was not sufficient to convict him. He argues that the prosecution failed to establish an unbroken chain of events that showed his guilt beyond reasonable doubt. Thus, he is entitled to enjoy the constitutional presumption of innocence.

We find the contention unconvincing.

Indeed, no prosecution witness has actually seen the commission of the crime. But jurisprudence tells us that direct evidence of the crime is not the only matrix from which a trial court may draw its conclusion and finding of guilt. The rules on evidence allow a trial court to rely on circumstantial evidence

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[25] *Id.* at 259.

[26] Records, Vol. 3, p. 960.

to support its conclusion of guilt.[27] Circumstantial evidence is that evidence "which indirectly proves a fact in issue through an inference which the fact-finder draws from the evidence established."[28]

In this case, the Office of the Solicitor General (OSG) correctly synthesized the circumstances constituting circumstantial evidence as culled from the entire testimony of Reyes, the prosecution's key witness, to wit:

1. Around x x x noon of November 30, 1996, Reyes saw appellant and the late PO3 x x x Ventinilla enter the house of [the victim] after the latter's friend Tomas Beroy, opened the door upon the instruction of [the victim];

2. Reyes saw appellant and [PO3] Ventinilla carrying [an] armalite [rifle] and [a] .38 caliber [pistol];

3. Reyes heard appellant and [PO3] Ventinilla tell [the victim] that he was being instructed by SPO4 x x x Miraples, the Chief of Police of Police Kababayan Center I, Doña Ata Subdivision Station, Marulas, Valenzuela, [to join a team of police which will apprehend] a big person x x x involved in illegal drugs in Malanday, Valenzuela;

4. Because of the alleged instruction of [the victim's] superior, Reyes saw [the victim] leave his house together with appellant and PO3 Ventinilla around 1:00 [p.m.] of November 30, 1996;

5. [A f]ew minutes thereafter, Reyes received a telephone call from [the victim who] nervously told him, "*Pare wala pala kaming tatrabahuhin, ako pala ang tatrabahuhin. Tulungan mo ako sumundo ka ng tao na tutulong sa akin*." But before Reyes could respond, the line at the other end of the telephone was suddenly cut x x x; and

6. Later in the afternoon, Reyes learned from his friend that [the victim] was already dead.[29]

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[27] *People v. Manchu*, G.R. No. 181901, November 29, 2008, 572 SCRA 752, 759.

[28] *People v. Osianas*, G.R. No. 182548, September 30, 2008, 567 SCRA 319, 329.

[29] CA *rollo*, p. 236, Citations omitted.

The prosecution likewise presented corroborating evidence which constitute an unbroken chain leading to the inevitable conclusion that appellant is guilty of killing the victim. For instance, the presence of gunpowder nitrates on appellant after a paraffin test;[30] the firearm used in the killing which could either be a .38 caliber or 9 mm pistol[31] dovetails with the testimony of Reyes that he saw appellant carrying a .38 caliber short firearm which was later found to have been recently fired; and the absence of gunpowder nitrates on the hands of the victim after a paraffin test[32] which belies appellant's claim that he was shot by the victim or that the latter exchanged fire with PO3 Ventinilla.

"[C]ircumstantial evidence is sufficient to sustain a conviction if (i) there is more than one circumstance; (ii) the facts from which the inference is derived are proven; and (iii) the combination of all circumstances is such as to produce conviction beyond reasonable doubt."[33] All the foregoing elements were sufficiently established in this case.

Conspiracy

"Under Article 8 of the Revised Penal Code [RPC], there is conspiracy if two or more persons agree to commit a felony and decide to commit it. [It] must be proven during trial with the same quantum of evidence as the felony subject of the agreement of the parties [either] by direct or circumstantial evidence [of the conspirators' conduct] before, during and after the commission of the felony to achieve a common design or purpose."[34]

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[30] Exhibit "I", Folder of Exhibits.

[31] Exhibit "F", *id.*

[32] Exhibit "H", *id.*

[33] *People v. Gaffud, Jr.*, G.R. No. 168050, September 19, 2008, 566 SCRA 76, 85.

[34] *Asetre v. Asetre*, G.R. No. 171536, April 7, 2009, 584 SCRA 471, 486-487.

We affirm the findings of the RTC that all of the accused conspired to commit the crime, *viz:*

x x x In the case at bar, the record of the case is enmeshed with various acts of the accused, before, during, and after the killing of Cafe that are indicative of a joint purpose, concerted action, and concurrence of sentiments. Before the victim was fetched by Alawig, Ventinilla, Dabu, de Vera and Corpuz, as witnessed by Reyes, accused made it appear in Exh. "KK-1" that on November 30, 1996 at 2:45 p.m., accused Alawig, Vent[i]nilla, de Vera, Corpuz and a certain Cariño who is not a member of PKC-1 and without including accused Dabu, they were dispatched to an unnamed place to conduct surveillance on a suspect involved in drugs. A cursory reading of said entry presupposes that said accused were already dispatched at the place at 2:45 p.m. Although it appears strange that the subject area and the subject person are not specified in the entry contrary to the standard practices in making entry in a Dispatch Log Book, accused Alawig, however, when confronted with the said entry during the trial, had a different tale to tell. He claims that another instruction was made by their Police Precinct Commander, co-accused Ponciano Miraples, to proceed instead to Gumamela Street where there was a reported trouble. Thus, his group according to him proceeded to Gumamela St. at 1:00 o'clock p.m. on the said date but said [change] of dispatch was not recorded in the Dispatch Log Book of the PKC-1. Interestingly, the court finds the version of Alawig incredible. For how can a later dispatch instruction (2:45 p.m. dispatch) be changed by another instruction that occurred earlier (1:00 p.m. dispatch to Gumamela St. per accused Alawig) than the first? The Court likewise notes the entry on Exh. "LL-1". The same is a clear indication of orchestrating the purported activities of the accused on the day of the killing of the victim. Accused entered in the police blotter at 3:00 p.m. about a call regarding a trouble in Gumamela St. to which the group of Alawig according to him responded. If indeed they were dispatched to the said place at 1:00 p.m., how then could it be possible, when the call about the reported incident happened at 3:00 p.m.? To the Court's mind, the latter entry (Exh. "LL-1") further strengthen the theory of the prosecution that the police operation before and after the killing of the victim, which the accused want to dramatize are nothing but falsehood and are part of the grand design where each of the accused are made to appear doing acts that are independent of each other in order to muddle the events that actually transpired when Cafe was killed.

Moreover, the Court also observes that the alleged call claimed by Dabu to have been received by accused Miraples on the same day at 3:20 p.m. about people playing tong-its was not recorded in the PKC-1 Police Blotter (Exh. "LL"). Strangely, it was the dispatch for the purpose that was recorded in the Dispatch Log Book (Exh. "8-A", Dabu) at a very precise time at 3:28 p.m., November 30, 1996 by accused de Vera. How then can accused de Vera record such dispatch when according to Alawig upon their arrival at the PKC-1 from Gumamela St., accused Dabu and de Vera immediately left without the latter entering the police precinct? It is also noted that such entry (Exh. "8-A") has signs of peculiarity from the rest of the entries in the Dispatch Log Book. The time written was precise up to the last minute (3:28 p.m.) unlike the other entries the time is rounded-off to 3:25 or 3:30. Also, the time is written in bold stroke. Compared with the other entries, the same bears signs of alterations. Such entry therefore supports the view that there was actually no dispatch made to Pasong Balete Hills. The alleged arrest of three (3) people playing tong-its in the area never happened there being [no] such entry in the PKC-1 Police Blotter. Gleaned from the foregoing, every entry made in the record books could not be accomplished by just one or two accused without the concurrence of the rest of the accused assigned at the PKC-1 and the imprimatur of the Police Precinct Commander, accused Ponciano Miraples.

After the victim was brought to the PKC-1, accused Alawig tried to make the Court [believe] that his co-accused Ventinilla, who is already deceased, was the sole perpetrator in killing Cafe, exculpating himself and the rest of the accused. The version of Alawig, however, is [diametrically at odds with the conclusion of] Dr. Bernales of the NBI that there were more than one assailant in slaying Cafe. From the evidence adduced by the defense, there is no iota of credible evidence to show that one or two accused at least attempted to prevent the slaying of Cafe. To the Court[']s mind, there was indeed a concurrence of sentiments among the accused for the attainment of evil purpose.

The joint purpose and concurrence of sentiments among the accused is further demonstrated when accused Alawig again tried to mislead the Court in claiming that it was [he] who brought the victim to the hospital after being shot when in truth and in fact as shown in Exh. "A", it was his co-accused Vivencio Corpuz who brought the victim to the hospital. The most outrageous act done by the accused, as police officers, was when they tampered with

the evidence to cover-up the crime while the team of P/Insp. Lopez was still conducting investigation in the PKC-1 premises. The accused placed six (6) spent ammunition cartridges coming from the office of accused Miraples that were not initially found lying on the floor. Likewise, they submitted a T-shirt (Exh. "OO") allegedly worn by the victim at the time of the shooting for forensic examination. It was found out, however, by Dr. Bausa that despite the gunshot wounds sustained by the victim, the submitted T-shirt does not bear a single bullet hole that would match the location of any of the gunshot wounds in the body of Cafe. To top it all, the accused failed to record the killing of Cafe in the PKC-1 police blotter, which should have been done as a matter of standard operating procedure.

In light of the foregoing, it is inescapable to conclude that conspiracy is attendant in the commission of the offense. Thus, the guilt of one is the guilt of all and the accused are equally liable for the offense committed.[35]

Thus, by manipulating the entries in the logbook, the accused conspired to make it appear that they were in some place other than where the killing took place and that they were performing acts independent of each other. The entries were recorded with the concurrence of all the accused. With PO3 Ventinilla dead, appellant painted him as the sole perpetrator and tried to exculpate himself and the rest of the accused. Records also show that none of the accused attempted to prevent the killing of the victim. More telling is their act of placing six empty cartridges at the crime scene to make it appear that the victim fired his firearm and was the unlawful aggressor. As borne out by the Firearms Identification Report No. FAID-212-96:[36] the two cartridges were fired from an M16 rifle with Serial No. RP154135; two other cartridges were fired using an M16 rifle with Serial No. RP144440; while the last two cartridges were fired from an M16 rifle with Serial No. RP138254. Per the Initial Investigation Report[37] of SPO1 Angeles I. Miranda,

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[35] Records, Vol. 3, pp. 1880-1883.

[36] Records, Vol. 1, p. 254.

[37] *Id.* at 320-321.

the M16 rifle with Serial No. RP144440 belonged to appellant as well as a 0.38 caliber revolver with Serial No. BBW4740; the M16 rifle with Serial No. RP154135 and the 0.38 caliber revolver with Serial No. AUS1926 belonged to PO3 Ventinilla; while the M16 rifle with Serial No. RP138254 and 0.45 caliber pistol with Serial No. 162457 belonged to the victim. Significantly, the Physical Sciences Report No. 0-552-96[38] indicated that all the aforementioned firearms were fired. However, as already mentioned, the victim tested negative for gunpowder nitrates hence the possibility that he fired his weapons is remote. Besides, as already testified to by Dr. Bernales, the possible firearm used could be caliber 0.38 of which both the appellant and PO3 Ventinilla were equipped at the time the victim was killed.

Finally, the accused presented a T-shirt allegedly worn by the victim which, however, did not bear any holes compatible to the gunshot wounds sustained by the victim. In fact, Dr. Bausa testified that the T-shirt did not even contain traces of human blood.

All these taken together suffice to show that appellant conspired with the other accused in the killing of the victim. There is evidence that the accused performed specific acts in the furtherance of the conspiracy to kill the victim as well as to cover-up the same. The evidence is adequate to establish unity of purpose at the time of the commission of the offense and unity in its execution.

Treachery

Appellant disputes the CA's finding affirming that of the RTC that treachery attended the commission of the crime as shown by the medical evidence submitted by the NBI. The CA found that the location of the wounds and the victim's stooping or kneeling position coincide with the concept of treachery regarding the means or modes of execution tending to insure their execution without risk to the perpetrators. The latter reflected on the means they adopted in killing the victim

[38] Records, Vol. 3, p. 926.

while he was not given sufficient time to defend himself from the attack.

"For [treachery] to qualify the crime to murder, it must be shown that: a) the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and b) the said means, method and manner of execution were deliberately adopted."[39] "The circumstances surrounding the [killing] must be proved as indubitably as the crime itself."[40] Treachery cannot be presumed.

We agree with the RTC finding as affirmed by the CA that treachery attended the killing. The Medico-Legal Record[41] showed that the victim sustained two puncture wounds at his lower neck and three gunshot wounds. The Autopsy Report[42] also showed that the victim had contusion on his chest, upper quadrant and contused-abrasion on his left forearm. As regards the gunshot wounds, the prosecution was able to establish that the same were inflicted by more than one assailant using three different firearms in view of their size and location. On September 10, 1997, SA Danielito Q. Lalusis of the NBI requested Dr. Bernales to enlighten them on the following: "(1) What was the relative position of the [v]ictim when he was fired upon by the assailants?; (2) What was the relative position of the assailants when they fired at the [v]ictim?; (3) What could have been the distance of the firearms of the assailants to the [v]ictim?; (4) How many firearms could have been used in killing [the v]ictim?; and (5) What was the trajectory of the bullets that hit the body of the [v]ictim?"[43]

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[39] *People v. Balais*, G.R. No. 173242, September 17, 2008, 565 SCRA 555, 568.

[40] *People v. Nueva*, G.R. No. 173248, November 3, 2008, 570 SCRA 449, 465-466.

[41] Exhibit "A", Folder of Exhibits.

[42] Exhibit "C", *id.*

[43] Records, Vol. 1, p. 242.

In compliance with the directive, Dr. Bernales opined that:

THE APPROXIMATE RELATIVE POSITION OF THE VICTIM AND THE ASSAILANT.

In determining the relative positions, we assumed that both are standing, in anatomical position and that, the assailant is a right-handed person.

In gunshot wound No. (1), based on the trajectory of the projectile from the entrance wound to the exit wound, which was BACKWARD, DOWNWARD AND LATERALLY; the assailant and the victim are both facing each other, with the assailant positioned more to the left side of the victim and that, he could be on a stooping position or the assailant is taller and/or positioned in a higher level.

In gunshot wound No. (2), based on the trajectory of the projectiles, from the entrance wound to exit wound, which was MEDIALLY, SLIGHTLY FORWARD AND DOWNWARD; the assailant is at the left side and more to the back of the victim, with the victim leaning to the left or the assailant is positioned on a higher level.

In gunshot wound No. (3), based on the trajectory of the projectile, from the entrance wound to exit wound, which was MEDIALLY, DOWNWARD AND SLIGHTLY BACKWARD; the assailant is at the right side of the victim with the assailant positioned on a higher level.

THE APPROXIMATE DISTANCE BETWEEN THE VICTIM AND THE MUZZLE OF THE GUN.

Based on negative findings of any products of explosion of a bullet, with exception of the projectile, the approximate distance could be more than one (1) foot, to a small firearm and more than two (2) to three (3) feet, to a high powered firearm.

THE POSSIBLE CALIBER OF FIREARM USED IN KILLING THE VICTIM,

Based on the sizes of the entrance wounds, the possible caliber used could be caliber 32 to 38, including 9 mm. caliber pistol.

> The trajectory of the bullet that hit the body of the victim was already mentioned in the above paragraph relative to the positions of the victims and the assailant.[44]

Considering the contusions, abrasions, and puncture wounds sustained by the victim, it is clear that he was first manhandled prior to the shooting. The location of the gunshot wounds likewise is indicative of the relative positions of the assailants *vis-à-vis* the victim. As noted by Dr. Bernales, the first assailant was facing the victim but more to his left; the second assailant was at the left side but more at the back of the victim; while the third assailant was at the right side of the victim. More importantly, the assailants were positioned on a higher level than the victim which could mean that the victim was in a kneeling or stooping position. Thus, as correctly pointed out by the RTC, "[b]ased on the nature and location of the wounds sustained, the victim definitely would not be able to put up any defense even if he was armed with armalite rifle and caliber .45 at the time. This explains why he was found negative of gunpowder nitrate in both hands x x x when he was killed. He was not able to fire his gun to defend himself. The conclusion, therefore, is inescapable that the attack on the victim was perpetrated with alevosia, hence, qualifying the killing to murder."[45]

Evident Premeditation

In order "for evident premeditation to be appreciated, the following [requisites must concur]: (1) the time when accused [decided] to commit the crime; (2) an overt act manifestly indicating that [he] has clung to his determination; and, (3) sufficient lapse of time between [such a determination and the actual] execution to allow the accused time to reflect upon the consequences of his act."[46]

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[44] Records, Vol. 1, pp. 243-244.

[45] Records, Vol. 3, pp. 1886-1887.

[46] *People v. Nueva*, *supra* note 40 at 468.

In this case, the courts below based their finding of evident premeditation on the entries in the Dispatch Logbook, the alleged pretense made by the appellant and cohorts that they were going to conduct a police operation regarding illegal drugs, as well as the telephone call made by the victim to his friend Reyes before the incident. To our mind, however, these circumstances do not constitute clear and positive evidence of outward acts showing a premeditation to kill. At most, these circumstances are indicative only of conspiracy among the accused. Settled is the rule that when it is not shown how and when the plan to kill was hatched or how much time had elapsed before it was carried out, evident premeditation cannot be considered.[47] "[I]t must appear not only that the accused decided to commit the crime prior to the moment of its execution but also that this decision was the result of meditation, calculation, reflection or persistent attempt."[48] Notably, even the OSG admitted that the lapse of time from the moment the victim was fetched until the shooting cannot be considered sufficient for appellant to reflect upon the consequences of his act.

Flight

The trial court properly disregarded appellant's non-flight. While it has been ruled that an accused's decision not to flee after the crime despite an opportunity to do so is not characteristic of a guilty person, the opposite has also been upheld in some cases. Appellant may not have indeed fled from the scene of the crime as he even allowed himself to be subjected to paraffin test, but the same are not necessarily indicative of a clear conscience. "Non-flight is not proof of innocence" as ruled in *People v. Del Castillo.*[49] Thus, the fact that appellant did not flee may be a badge of innocence, nevertheless, it is not a sufficient ground to exculpate him from his proven criminal liability.

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[47] *People v. Iligan*, 369 Phil. 1005, 1041 (1999).

[48] *People v. Eribal*, 364 Phil. 829, 840 (1999).

[49] G.R. No. 180925, August 20, 2008, 562 SCRA 752, 760.

The Crime Committed and The Imposable Penalty

In view of the qualifying circumstance of treachery, the crime committed is murder. In the absence of any attendant circumstance, appellant is hereby sentenced to suffer the penalty of *reclusion perpetua* in accordance with Article 248 in relation to Article 63, paragraph 2, of the RPC. He is not eligible for parole pursuant to Republic Act No. 9346, Section 3.

The Civil Liability

In conformity with prevailing jurisprudence, we affirm the award of ₱50,000.00 as civil indemnity to the heirs of the victim. This is given without need of proof other than the fact of death as a result of the crime and proof of appellant's responsibility for it.[50]

We also affirm the grant of ₱50,000.00 as moral damages. This is "mandatory in cases of murder and homicide without need of allegation and proof other than the death of the victim."[51]

In addition, we sustain the award of actual damages but only to the amount of ₱103,472.00 representing expenses incurred during the wake of the victim supported by uncontroverted receipts. "Credence can be given only to claims which are duly supported by receipts or other credible evidence."[52]

We also sustain the award of exemplary damages but in the increased amount of ₱30,000.00 to conform to prevailing jurisprudence.[53]

We note, however, that no indemnity for loss of earning capacity was awarded to the heirs of the victim as a consequence of his untimely death. Under Article 2206 of the Civil Code, the

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[50] *People v. Berondo, Jr*. G.R. No. 177827, March 30, 2009, 582 SCRA 547, 554-555.

[51] *People v. Casta*, G.R. No. 172871, September 16, 2008, 565 SCRA 341, 361.

[52] *People v. Dulay*, 401 Phil. 400, 413 (2000).

[53] *People v. Pondivila*, G.R. No. 188969, February 27, 2013.

heirs of the victim are entitled to indemnity for loss of earning capacity. The evidence[54] shows that the victim's annual gross income as a police officer was ₱88,530.00 computed from his monthly rate of ₱7,377.50. There being no proof of his living expenses, the net income is deemed equivalent to 50% of the gross income, hence, his estimated annual net income is ₱44,265.00. As computed on the basis of the usual formula adopted by the Court in cases similarly awarding compensation for loss of earning to wit:

Net Earning

Capacity = Life expectancy x Gross Annual Income = Living Expenses
= [2/3 (80-age of death)] x (GAI) = 50% of GAI)[55]

the loss of earning capacity of the victim who died at the age of 31 would be ₱1,445,990.00 computed as: 2/3 x (80-31) x (₱88,530.00 – ₱44,265.00).

Finally, in conformity with current policy, we impose interest at the rate of 6% *per annum* on all damages awarded from date of finality of this Decision until fully paid.[56]

WHEREFORE, the Decision of the Court of Appeals dated November 3, 2008 which affirmed with modification the May 17, 2005 Decision of the Regional Trial Court, Manila, Branch 11, convicting appellant of the crime of Murder is further **MODIFIED** as follows: Appellant SPO1 Alfredo Alawig is found **GUILTY** beyond reasonable doubt of the crime of Murder and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole; to pay the heirs of the victim PO3 Miel de Ocampo Cafe the amount of ₱103,472.00 as actual damages; ₱1,445,990.00 as indemnity for the victim's loss of earning capacity and to pay the costs of suit. The award of exemplary damages is increased to ₱30,000.00 while the awards of

[54] Exhibit "Z", Folder of Exhibits.

[55] *People v. Lopez*, G.R. No. 188902, February 16, 2011, 643 SCRA 524, 529.

[56] *People v. Rarugal*, G.R. No. 188603, January 16, 2013.

₱50,000.00 civil indemnity and ₱50,000.00 as moral damages stand. All damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.

SO ORDERED.

Carpio (Chairperson),[*] *Abad,*[**] *Perez,* and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 191256. September 18, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GARY ALINAO**, *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, ESPECIALLY THOSE AFFIRMED BY THE COURT OF APPEALS, ARE GENERALLY CONCLUSIVE ON THE COURT WHEN SUPPORTED BY EVIDENCE ON RECORD.—** After a thorough review of the testimonies of all the witnesses and other evidence presented, we find no reason to disturb the findings of fact of the trial court. As we have held time and again, factual findings of the trial court, especially those affirmed by the Court of Appeals, are generally conclusive on this Court when supported by the evidence on record. x x x This Court observes that in the case at bar, counsels for both sides went the extra mile in questioning the witnesses through in-depth cross-examinations, re-direct and re-cross examinations, and even bringing them back as rebuttal and sur-rebuttal witnesses. The trial court, for its part, was also very active in

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[*] Per Special Order No. 1548 dated September 16, 2013.
[**] Per Raffle dated September 2, 2013.

trying to ascertain the credibility of the witnesses. The trial court thus had every opportunity to take advantage of observing the witnesses' demeanor, conduct, and attitude, as well as the emphasis, gesture, and inflection of their voices, as potent aids in ascertaining which of them were telling the truth. As we find nothing material in the records which the trial court seems to have ignored, misunderstood or misconstrued that could warrant the reversal of its factual findings, said findings should be affirmed.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; CLEAR AND STRAIGHTFORWARD TESTIMONY OF WITNESS, UPHELD.—** Accused-appellant hinges his defense mainly on discrediting Nestor Ardet, Antonio Ardet's brother. The Testimony of Nestor Ardet, however, was clear and straightforward. The defense's contentions against his ability to have seen the incident are likewise merely excessive nitpicking. Based on experience, a three-inch opening of either a door or a window is certainly wide enough to give the observer a full view of the outside if he "peeps" (peering with the eyes very close to the crevice) through it, as Nestor said he did. The defense likewise failed to show how the barbed-wire fence, the roof of the porch, and the elevation of Antonio's house could have completely blocked Nestor's view of the house. We are also more inclined to believe the testimony of Nestor Ardet over that of his sister, Linda Alinao. While both are siblings of the deceased, Antonio Ardet, Linda Alinao is the wife of accused-appellant himself, and is naturally expected to be protective of him. Linda Alinao's testimony is likewise hearsay as she was not present when Nestor Ardet was allegedly maltreated and forced to testify against her husband. Furthermore, we cannot emphasize enough that Nestor Ardet and Linda Alinao were recalled on the same trial date to refute each other's testimonies. The trial court was thus afforded an even better opportunity to observe their demeanor, conduct, attitude, gesture, and inflection of their voices, and ultimately believed Nestor over Linda. As regards the distance of the houses of Antonio and Nestor, we agree with the finding that Nestor's estimation of 12 meters should be considered more accurate as he is certainly more familiar with the surroundings of the place than SPO3 Erving, who estimated the distance to be 29 meters.

3. **ID.; ID.; ID.; ONCE A PERSON KNOWS ANOTHER THROUGH ASSOCIATION, IDENTIFICATION BECOMES AN EASY TASK EVEN FROM A CONSIDERABLE DISTANCE.—** Accused-appellant emphasizes the testimonies of defense witnesses that there was no moon on the night of February 27, 2006. Nestor Ardet, however, testified that the sorroundings were very bright because of the fire that razed the victim's house. It should be furthermore stressed that the three eyewitnesses, Nestor Ardet, Boyet Tamot and Edison Beltran are all relatives of accused-appellant and his son Jocel. As correctly held by the Court of Appeals, it was settled in *People v. Amodia* that "once a person knows another through association, identification becomes an easy task even from a considerable distance; most often, the face and body movements of the person identified [have] created a lasting impression on the identifier's mind that cannot easily be erased."

4. **ID.; ID.; ID.; DELAY IN REVEALING THE IDENTITY OF THE PERPETRATORS OF A CRIME DOES NOT NECESSARILY IMPAIR THE CREDIBILITY OF WITNESSES, ESPECIALLY WHERE SUFFICIENT EXPLANATION IS GIVEN.—** Nestor Ardet, Boyet Tamot and Edison Beltran all adequately explained their delay in revealing what they saw. We cannot underestimate how they feared for their lives as they all saw firsthand what accused-appellant can do to them. Edison Beltran even heard accused-appellant's warning that anyone who will give his testimony will be killed. As regards Nestor Ardet, it is certainly very understandable that he would refrain from identifying accused-appellant as the perpetrator to the police officer, with the armed accused-appellant close by. Accused-appellant himself testified that he was merely one meter away when SPO3 Erving was asking Nestor questions and can actually hear what they were saying. Neither does Jocel Alinao's remaining at large at the time they revealed what they witnessed affect their credibility. Having seen that it was accused-appellant and not Jocel Alinao who actually started the fire and shot Antonio Ardet, it makes perfect sense that Nestor Ardet, Boyet Tamot and Edison Beltran are more frightened of accused-appellant than his son. The appellate court committed no error in applying the jurisprudential principle that delay in revealing the identity of the perpetrators of a crime does not necessarily impair the credibility of a witness, especially where sufficient explanation is given.

5. **CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; EVIDENT PREMEDITATION; ELEMENTS THEREOF; PRESENT IN CASE AT BAR.—** For evident premeditation to be appreciated, the following elements must be proved: a) the time when the accused determined to commit the crime; b) an act manifestly indicating that the accused has clung to his determination; and, c) sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act. The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment. In the case at bar, accused-appellant, in razing Antonio Ardet's house in order to drive him out and shooting him the moment he appears at his front door, clearly had a *previously and carefully crafted plan* to kill his victim. We are convinced that the time it took accused-appellant and his son to device their plan, plot where the gasoline should be poured, and procure the gasoline and the firearms, as well as the time it took to go to Antonio Ardet's house, even the time when they waited for Antonio Ardet to come out of the house, all afforded accused-appellant sufficient opportunity to reflect upon the consequences of his act to kill his brother-in-law and his determination to commit the cold-blooded deed from the time of its conception until it was carried out.

6. **ID.; CIVIL LIABILITY; EXEMPLARY DAMAGES; AWARD THEREOF JUSTIFIED IN CASE AT BAR.—** The Court of Appeals deleted the trial court's award of exemplary damages on the ground that no aggravating circumstance was established in evidence. This Court, however, has ruled that an award of exemplary damages is justified if an aggravating circumstance, *either qualifying or generic*, accompanies the crime. In the case at bar, the qualifying circumstance of evident premeditation was duly alleged in the Information and proved during the trial. Therefore, in line with current jurisprudence, we reinstate the trial court's award of the amount of ₱30,000.00 as exemplary damages to heirs of the victim, Antonio Ardet.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

This is an appeal from the Decision[1] of the Court of Appeals dated October 28, 2009 in CA-G.R. CR.-H.C. No. 03567, which affirmed with modification the Decision[2] of the Regional Trial Court of Luna, Apayao in Crim. Case No. 38-2006 finding accused-appellant Gary Alinao guilty beyond reasonable doubt of the crime of murder.

Accused-appellant Gary Alinao, together with his son, Jocel Alinao, was charged in an Information dated September 5, 2006 with the crime of Murder with the Use of Illegally Possessed Firearm under Article 248 of the Revised Penal Code. The Information states:

> That on or about February 27, 2006 in Badduat, Kabugao, Apayao and within the jurisdiction of this Honorable Court, the said accused did, then and there and with intent to kill and with evident premeditation, willfully, unlawfully and feloniously set on fire the house of Antonio Ardet knowing it to be occupied at the time and when said Antonio Ardet came out from his burning house shot him with an illegally possessed shotgun hitting him on his face that caused his instantaneous death.[3]

With Jocel Alinao still at large, only accused-appellant Gary Alinao was arraigned. He pleaded not guilty to the offense charged.

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[*] Per Special Order No. 1549 dated September 16, 2013.

[1] *Rollo*, pp. 2-36; penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Magdangal M. de Leon and Priscilla J. Baltazar-Padilla, concurring.

[2] CA *rollo*, pp. 51-58.

[3] Records, p. 1.

The first witness for the prosecution was **Police Officer (PO) 1 Armando Arnais**, an operation and investigation officer of the Kabugao Municipal Police Station. He testified that his office was assigned to investigate the case. During said investigation, he was able to secure the sworn statements of several witnesses to the incident. Hence, he filed a criminal complaint which he identified in the course of his testimony.[4]

Dr. Cynthia T. Melchor conducted the postmortem examination on the body of Antonio Ardet and executed a postmortem report. She testified that there were seven entry gunshot wounds on the head of the victim, and that all seven wounds were fatal.[5]

Nestor Ardet, half-brother of the victim Antonio Ardet, testified that on February 27, 2006 at around 11:00 p.m., he was inside his house, which was eight meters away from the house of the deceased Antonio Ardet. He was awakened by the barking of dogs. He stood and slowly opened his window, and saw Antonio Ardet's house burning. Gary Alinao was pointing his gun at the door of Antonio Ardet, with Jocel Alinao behind him.[6] On cross, Nestor later corrected himself and said that it was a door, not a window, through which he peeped and saw the incident.[7]

Antonio Ardet tried to get out of his house, but Gary Alinao shot him and fell inside the burning house. Gary and Jocel Alinao ran towards Barangay Baduat. Nestor Ardet went out of the house and shouted, asking for help to bring Antonio Ardet out of the burning house. Boyet Tamot, Elvis Singsing, Tano Singsing and Wally Sipsip responded to his call. The premises were bright because of the fire.[8] When the police came, the accused were

[4] TSN, March 26, 2007, pp. 2-3.

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

[6] TSN, March 27, 2007, pp. 2-4.

[7] TSN, June 6, 2007, pp. 6-7.

[8] TSN, March 27, 2007, pp. 4-6.

also in the vicinity of the crime.[9] Nestor likewise saw accused-appellant go to Antonio's wake once.[10]

The deceased's daughter, **Annie Ardet**, testified that accused-appellant Gary Alinao is the husband of her father's sister (and was thus the deceased's brother-in-law). Jocel Alinao is Gary Alinao's son and Annie Ardet's cousin. She incurred more than ₱112,000.00 as burial expenses. After her father was buried, Annie Ardet reported her father's death to the Municipal Hall of Kabugao, Apayao and she was issued a Death Certificate. She testified that when her father died, her family grieved so much and could not sleep or eat well.[11]

Boyet Tamot, nephew of the victim Antonio Ardet and accused-appellant's wife, Linda Ardet, testified that he was inside his house with his wife and two children on February 27, 2006. His house was around 10 meters away from that of Antonio Ardet. At around 11:00 p.m., he heard dogs barking and went to the cornfield beside his house. He saw Gary and Jocel Alinao going near the house of Antonio Ardet. Gary Alinao took a container from Jocel and poured the contents on the wall of Antonio Ardet's house. Gary Alinao set the house on fire. Boyet Tamot went inside his house as the place grew brighter from the fire. He heard gunshots. When he peeped outside, he saw that Gary and Jocel Alinao had left.[12] On cross, Boyet Tamot explained that he only revealed what he saw on November 23, 2006 as he was afraid of accused-appellant Gary Alinao. Gary did not threaten Boyet Tamot personally, but as he and his son have already killed somebody, Boyet was afraid they could do it to him as well. Accused-appellant Gary Alinao was already in jail on November 23, 2006. Boyet did not, however, see Gary Alinao shoot Antonio Ardet or even point a gun at him.[13]

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[9] TSN, June 6, 2007, pp. 18-19.

[10] *Id.* at 22.

[11] *Id.* at 25-30.

[12] TSN, July 11, 2007, pp. 3-6.

[13] *Id.* at 11-16.

Edison Beltran, another nephew of the victim Antonio Ardet and accused-appellant's wife, Linda Ardet, testified that on February 27, 2006, he was in the house of his cousin Niño Singsing Beltran. He saw Gary and Jocel Alinao pass by, going upstream to the house of Antonio Ardet. Gary Alinao was holding a plastic gallon container and a winchester shotgun. Five minutes later, Edison heard gunshots and saw fire. He ran towards the fire to help. Gary Alinao, holding a short homemade shotgun, and Jocel Alinao, holding a winchester shotgun, were running back to the place where they came from. On cross, Edison Beltran explained that he only went to the police on May 26, 2006, which was after the burial, because he was frightened of Gary Alinao, who said in public that anyone who will give his testimony will be killed. Edison changed his mind when people were telling him that reporting the incident would stop the criminal activities of the accused.[14]

For the defense, 71-year old **Manuel Morta** testified that on February 27, 2006, he attended the wake of Elvie Agculao at around 7:00 a.m. and left the place at around midnight. Gary Alinao was among the many people who attended the wake. Gary was there from 9:00 a.m. to 11:00 p.m. Gary invited him to sleep in the house but he refused. Two minutes after Gary left, they heard that Antonio Ardet was dead.[15]

Senior Police Officer (SPO) 3 Marcelino Tenay testified that on February 27, 2006, his office received information from the Vice Mayor that there was an incident at Sitio Colilimtao, Barangay Baduat wherein a certain Boy Ardet was shot to death and his house was burned. SPO3 Tenay called the fire station and requested a car from the Vice Mayor to bring him and his companions to the area.[16]

At the crime scene, SPO3 Tenay and his companions saw that while the fire was still blazing, the house was already

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[14] TSN, July 12, 2007, pp. 3-15.

[15] TSN, October 1, 2007, pp. 2-3.

[16] TSN, October 25, 2007, pp. 2-3.

completely burned and that only the posts were left standing. Antonio Ardet's body was brought to the backyard, which was around 7 to 10 meters away from the house. SPO3 Tenay was able to talk to a person who claimed to be the brother of the victim. This alleged brother saw two persons ascending towards Sitio Tabba.[17]

Accused-appellant **Gary Alinao** testified that on February 27, 2006, he went to the house of Elvy[18] Agculao for the latter's wake. Elvy's house is 300 meters away from his own, or around four minutes walk. He stayed in Elvy's house from 8:00 a.m. to 11:00 p.m. He knew that he left at 11:00 p.m. because he partook of the last *merienda* at that time.[19]

A few minutes after arriving home, accused-appellant Gary Alinao heard someone call his name. He went out of the house and saw three persons, Warry Mahuray, Elvis Singsing, and his son Edgar. They told him that "Manong Antonio is dead," and that the house of Antonio was burned. Jesus Era arrived, and the five of them went to the scene of the crime aboard two motorcycles. He left his other son, co-accused Jocel Alinao, in the house. On the way, they dropped by the house of Rene and Aldrin Ukkong, who were nephews of Antonio, but nobody came out of the house. When they reached the house of Antonio, Gary Alinao went directly to the body of Antonio to look at him. He told Nestor Ardet to move the body of Antonio, but Nestor answered, "later." Nevertheless the body was moved into the house of Nestor.[20]

The police arrived at around 2:00 a.m. and started asking Gary questions. He told them to ask Nestor instead. The police proceeded to talk to Nestor, with Gary one meter away from them. He heard Nestor tell the police "I heard something running towards upward (sic), sir." He stayed at Nestor's house until

[17] *Id*. at 3-4.

[18] Spelled Elvie Agculao in some portions of the records.

[19] TSN, January 10, 2008, p. 3.

[20] *Id*. at 4-10.

morning, drinking gin with Edison, his co-*barangay tanod* Stewart Alinao, Celso Tallong and Junior Siddayao.[21]

Sometime during his stay that night, the vice mayor talked to him on the cellular phone to ask him if Rene Ukkong, Aldrin Ukkong and Edison Beltran were there. He went home at around 10:00 a.m. His wife, Linda Alinao, arrived home at 5:00 p.m. from Tuguegarao. The following day, he went to the house of Antonio to help.[22]

Accused-appellant Gary Alinao believes that Edison Beltran was only boasting about seeing Gary and Jocel Alinao pass by his house. Gary Alinao claims that Edison's house is 500 meters away from Antonio's house, and that one cannot see Antonio's house from Edison's.[23]

On cross, accused-appellant Gary Alinao testified that Elvy Agculao's house is 300 meters away from his own, and 5 kilometers away from the house of Antonio Ardet. He also testified that when the police came to arrest him, he pointed to his son and told them to arrest him. The police told him they'll do so later.[24] The court proceeded to order the arrest of a certain police officer Robles for dereliction of duty in failing to arrest Jocel Alinao. Robles was asked in a later hearing why he did not arrest Jocel Alinao when Gary Alinao pointed at him. Robles answered that the person Gary pointed at was Edgar Alinao, and not Jocel. Gary Alinao affirmed that this was what happened.[25]

Linda Alinao, the wife of accused-appellant Gary Alinao and sister of both deceased Antonio Ardet and prosecution witness Nestor Ardet, testified that her brother, prosecution

[21] *Id*. at 10-11.

[22] *Id*. at 11-15.

[23] *Id*. at 16.

[24] *Id*. at 22-27.

[25] TSN, February 7, 2008, pp. 1-2.

witness Nestor Ardet, told her that he was forced to testify by Aldrin Ukkong and Rosendo Ukkong by hitting him with a firearm. She claimed that the mark of the gun can be seen on Nestor Ardet's body.[26]

SPO3 Felipe Erving testified that they reached the crime scene between 1:00 a.m. and 2:00 a.m. on February 27, 2006. The house was burned and the body of Antonio Ardet was retrieved by his neighbor and placed 10 meters away from the burning house. It was a moonless night. He asked the people at the scene about the incident, but they told him nothing.[27]

SPO3 Erving went to the house where the body was brought and got the chance to talk to Nestor Ardet. SPO3 Erving asked Nestor Ardet where he was when the victim was shot and his house was burned. Nestor Ardet told him that he was sleeping inside his room at that time. SPO3 Erving asked Nestor Ardet if he noticed any person during the incident, but Nestor replied "None, sir." Upon further questioning, Nestor said that he peeped through the windows when he heard a shot from the burning house. He saw two persons running towards Sitio Tabba, but did not recognize them. He estimated the house of Nestor to be 29 meters away from Antonio Ardet's house. He saw accused-appellant Gary Alinao at the scene, but did not talk to him.[28]

The prosecution then presented rebuttal witnesses.

Benito Agculao testified that his house was considered a public place on February 27, 2006 during the wake of his daughter, Elvy Agculao. While he had seen accused-appellant playing cards on February 25, he did not see him on the 26th and the 27th. On the 27th, he did not see accused-appellant from 5:00 p.m. until midnight, although he admittedly had to go out sometimes and urinated twice or thrice.[29]

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[26] TSN, January 11, 2008, pp. 11-12.

[27] TSN, February 7, 2008, pp. 3-6.

[28] *Id.* at 6-8.

[29] TSN, April 24, 2008, pp. 10-13.

Nestor Ardet was recalled to the witness stand. He admitted that he was asked by SPO3 Erving if he saw who burned and shot the victim and that he told SPO3 Erving that he did not recognize the two persons running away. He testified that he was frightened at that time because both Gary and Jocel Alinao had firearms and were not yet arrested. He denied the claim of Linda Ardet that Rosendo Ukkong forced him to testify in favor of complainant and stated that he voluntarily testified to tell the truth. On February 28, Nestor Ardet revealed the names of the perpetrators to Annie Ardet. The court asked Nestor to show if there was really a scar on his breast allegedly caused by Rosendo Ukkong. The court interpreter identified a white portion on his breast, but the opposing counsels disagreed as to whether it was a scar.[30]

As sur-rebuttal evidence, the defense recalled **Linda Alinao** to the stand. Linda Alinao reiterated that Nestor was maltreated by Rosendo Ukkong and was forced to testify. She claims that she would not make a false statement since the victim, Antonio Ardet, is her full-blood brother, while Nestor is her half-brother. She admitted that she was not present when Nestor was maltreated, but that was what Nestor told her and that Nestor even showed her his torn and dirty clothes.[31]

On September 9, 2008, the trial court rendered its Decision finding accused-appellant guilty of murder with evident premeditation as the qualifying circumstance. The dispositive portion of the Decision reads:

> **WHEREFORE**, finding the accused Gary Alinao *y* Aridao guilty beyond reasonable doubt of the crime of Murder charged against him, the court hereby sentences said accused to suffer the penalty of imprisonment of (sic) ***RECLUSION PERPETUA***.
>
> Accused, Gary Alinao is further ordered to pay the aggrieved party the sum of **FIFTY THOUSAND PESOS (₱50,000.00)** by way of civil

[30] TSN, July 17, 2008, pp. 2-3.

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

indemnity for the death of Antonio Ardet, plus moral damages in the amount of **ONE HUNDRED TWENTY THOUSAND PESOS (₱120,000.00)** and actual and exemplary [damages] in the amount of **SEVENTY[-]FIVE THOUSAND PESOS (₱75,000.00)** and **THIRTY THOUSAND PESOS (₱30,000.00)** respectively.

Whatever imprisonment the accused have (sic) undergone in this case shall be credited in his favor.

The case as against Jocel Alinao is ordered ARCHIVED and to be retrieved upon his arrest.

Let an Alias Warrant of arrest be issued for his apprehension.[32]

Accused-appellant appealed through a Notice of Appeal[33] dated September 12, 2008. The Court of Appeals rendered its Decision on October 28, 2009, with the following dispositive portion:

WHEREFORE, premises considered, the Decision dated 09 September 2008 of the Regional Trial Court of Luna, Apayao, Branch 26 in *Crim. Case No. 38-2006* finding accused-appellant Gary Alinao guilty beyond reasonable doubt of Murder, as defined in Article 248 of the Revised Penal Code, and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED** with **MODIFICATION** in that accused-appellant is further **ORDERED** to pay to the heirs of the victim Antonio Ardet, ₱75,000.00 as civil indemnity *ex delicto*, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages, all with interest at the legal rate of six percent (6%) *per annum* from this date until fully paid. The award of ₱30,000.00 as exemplary damages is hereby **DELETED**.[34]

Accused-appellant appealed to this Court through another Notice of Appeal[35] dated November 9, 2009. On June 1, 2010, accused-appellant filed a Supplemental Brief adopting his Appellant's Brief which he filed with the Court of Appeals as

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[32] CA *rollo*, p. 58.

[33] *Id.* at 59.

[34] *Rollo*, p. 33.

[35] *Id.* at 37-39.

well as asserting new arguments and adducing the following additional assignment of error:

THE COURT OF APPEALS GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[36]

Whether or not accused-appellant killed Antonio Ardet

Taken together, accused-appellant's Supplemental Brief and Appellant's Brief pose the following arguments to show that the prosecution failed to prove that he was one of the culprits responsible for the death of Antonio Ardet:

1. Nestor Ardet's testimony is highly suspect. Nestor did not immediately execute an affidavit to implicate accused-appellant despite the fact that the victim is his brother.[37] When Nestor was investigated by the police officers, he failed to identify the alleged malefactors.[38] Nestor and Antonio's sister, Linda Ardet, testified that Nestor had admitted to her his being mauled, assaulted, intimidated and forced to testify against accused-appellant. Although Nestor denied the same, Linda Ardet's testimony that there was a scar on Nestor's breast as a result of the mauling was purportedly confirmed when the Court asked Nestor to show his breast.[39]

Nestor Ardet's identification of accused-appellant is questionable. Nestor testified that he peeped through a slightly opened window or door measuring only three inches in width. Nestor likewise testified that he was 12 meters[40] away from the accused-appellant when the

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[36] *Id.* at 46.

[37] CA *rollo*, p. 83.

[38] *Id.* at 80; accused-appellant citing SPO3 Erving's Testimony, TSN, February 7, 2008, p. 7.

[39] TSN, July 17, 2008, pp. 2-3.

[40] Nestor Ardet testified that he was 8 meters away from accused-appellant Gary Alinao when the latter shot Antonio Ardet. The Court asked Nestor Ardet to illustrate the length of his perceived 8 meters. The court interpreter judged the illustrated distance to be around 12 meters (TSN, March 27, 2007, pp. 4-5).

latter allegedly shot Antonio Ardet.[41] Nestor's barbed-wire fence, the roof of his porch, and the elevation of Antonio's house allegedly further obstructed Nestor's view of the crime scene.[42]

2. The testimonies of Edison Beltran and Boyet Tamot, who both claimed that they were aided by the light of the moon, were incredible. Edison's testimony that he saw accused-appellant holding a short firearm at around 11:00 p.m., and Boyet's testimony that he saw accused-appellant burn Antonio's house at around that time were negated by the testimonies of SPO3 Tenay and SPO3 Erving, who both stated and presented evidence that the evening of February 27, 2006 was a moonless night.[43]

Edison Beltran and Boyet Tamot's assertion that they did not immediately report what they saw because they were afraid to do so was a "lame excuse" since they later came out in the open despite the knowledge that one of the accused remains at large.[44]

After a thorough review of the testimonies of all the witnesses and other evidence presented, we find no reason to disturb the findings of fact of the trial court. As we have held time and again, factual findings of the trial court, especially those affirmed by the Court of Appeals, are generally conclusive on this Court when supported by the evidence on record.[45] In *People v. Sapigao, Jr.*,[46] we explained the reason for this rule:

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

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[41] CA *rollo*, p. 79.

[42] Records, p 79. The sketch drawn by Nestor Ardet during his testimony on June 6, 2007 was marked as Exhibit K (records, p. 128).

[43] CA *rollo*, p. 84.

[44] *Id.* at 85.

[45] *People v. Barde*, G.R. No. 183094, September 22, 2010, 631 SCRA 187, 209.

[46] G.R. No. 178485, September 4, 2009, 598 SCRA 416, 425-426.

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.)

This Court observes that in the case at bar, counsels for both sides went the extra mile in questioning the witnesses through in-depth cross-examinations, re-direct and re-cross examinations, and even bringing them back as rebuttal and sur-rebuttal witnesses. The trial court, for its part, was also very active in trying to ascertain the credibility of the witnesses. The trial court thus had every opportunity to take advantage of observing the witnesses' demeanor, conduct, and attitude, as well as the emphasis, gesture, and inflection of their voices, as potent aids in ascertaining which of them were telling the truth. As we find nothing material in the records which the trial court seems to have ignored, misunderstood or misconstrued that could warrant the reversal of its factual findings, said findings should be affirmed.

Accused-appellant hinges his defense mainly on discrediting Nestor Ardet, Antonio Ardet's brother. The testimony of Nestor Ardet, however, was clear and straightforward. The defense's contentions against his ability to have seen the incident are likewise merely excessive nitpicking. Based on experience, a

three-inch opening of either a door or a window is certainly wide enough to give the observer a full view of the outside if he "peeps" (peering with the eyes very close to the crevice) through it, as Nestor said he did. The defense likewise failed to show how the barbed-wire fence, the roof of the porch, and the elevation of Antonio's house could have completely blocked Nestor's view of the house.

We are also more inclined to believe the testimony of Nestor Ardet over that of his sister, Linda Alinao. While both are siblings of the deceased, Antonio Ardet, Linda Alinao is the wife of accused-appellant himself, and is naturally expected to be protective of him. Linda Alinao's testimony is likewise hearsay as she was not present when Nestor Ardet was allegedly maltreated and forced to testify against her husband. Furthermore, we cannot emphasize enough that Nestor Ardet and Linda Alinao were recalled on the same trial date to refute each other's testimonies. The trial court was thus afforded an even better opportunity to observe their demeanor, conduct, attitude, gesture, and inflection of their voices, and ultimately believed Nestor over Linda.

As regards the distance of the houses of Antonio and Nestor, we agree with the finding that Nestor's estimation of 12 meters should be considered more accurate as he is certainly more familiar with the surroundings of the place than SPO3 Erving, who estimated the distance to be 29 meters.

Accused-appellant emphasizes the testimonies of defense witnesses that there was no moon on the night of February 27, 2006. Nestor Ardet, however, testified that the surroundings were very bright because of the fire that razed the victim's house. It should be furthermore stressed that the three eyewitnesses, Nestor Ardet, Boyet Tamot and Edison Beltran are all relatives of accused-appellant and his son Jocel. As correctly held by the Court of Appeals, it was settled in *People v. Amodia*[47] that "once a person knows another through

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[47] G.R. No. 173791, April 7, 2009, 584 SCRA 518, 535.

association, identification becomes an easy task even from a considerable distance; most often, the face and body movements of the person identified [have] created a lasting impression on the identifier's mind that cannot easily be erased."

Finally, Nestor Ardet, Boyet Tamot and Edison Beltran all adequately explained their delay in revealing what they saw. We cannot underestimate how they feared for their lives as they all saw firsthand what accused-appellant can do to them. Edison Beltran even heard accused-appellant's warning that anyone who will give his testimony will be killed. As regards Nestor Ardet, it is certainly very understandable that he would refrain from identifying accused-appellant as the perpetrator to the police officer, with the armed accused-appellant close by. Accused-appellant himself testified that he was merely one meter away when SPO3 Erving was asking Nestor questions and can actually hear what they were saying. Neither does Jocel Alinao's remaining at large at the time they revealed what they witnessed affect their credibility. Having seen that it was accused-appellant and not Jocel Alinao who actually started the fire and shot Antonio Ardet, it makes perfect sense that Nestor Ardet, Boyet Tamot and Edison Beltran are more frightened of accused-appellant than his son.

The appellate court committed no error in applying the jurisprudential principle that delay in revealing the identity of the perpetrators of a crime does not necessarily impair the credibility of a witness, especially where sufficient explanation is given.[48]

Whether or not evident premedition should be considered

Accused-appellant likewise claims that there was no evidence categorically showing evident premeditation.

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[48] The Court of Appeals cited *People v. Berondo*, G.R. No. 177827, March 30, 2009, 582 SCRA 547, 552. *See* also *People v. Paraiso,* 402 Phil. 372, 382 (2001).

For evident premeditation to be appreciated, the following elements must be proved: a) the time when the accused determined to commit the crime; b) an act manifestly indicating that the accused has clung to his determination; and, c) sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act.[49] The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[50]

In the case at bar, accused-appellant, in razing Antonio Ardet's house in order to drive him out and shooting him the moment he appears at his front door, clearly had a *previously and carefully crafted plan* to kill his victim. We are convinced that the time it took accused-appellant and his son to device their plan, plot where the gasoline should be poured, and procure the gasoline and the firearms, as well as the time it took to go to Antonio Ardet's house, and even the time when they waited for Antonio Ardet to come out of the house, all afforded accused-appellant sufficient opportunity to reflect upon the consequences of his act to kill his brother-in-law and his determination to commit the cold-blooded deed from the time of its conception until it was carried out.

Award of exemplary damages

The Court of Appeals deleted the trial court's award of exemplary damages on the ground that no aggravating circumstance was established in evidence.[51] This Court, however, has ruled that an award of exemplary damages is justified if an aggravating circumstance, *either qualifying or generic*,

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[49] *Bug-atan v. People*, G.R. No. 175195, September 15, 2010, 630 SCRA 537, 556.

[50] *People v. Duavis*, G.R. No. 190861, December 7, 2011, 661 SCRA 775, 784.

[51] CA *rollo*, p. 188.

accompanies the crime.[52] In the case at bar, the qualifying circumstance of evident premeditation was duly alleged in the Information and proved during the trial. Therefore, in line with current jurisprudence,[53] we reinstate the trial court's award of the amount of ₱30,000.00 as exemplary damages to heirs of the victim, Antonio Ardet.

WHEREFORE, the Decision of the Court of Appeals dated October 28, 2009 in CA-G.R. CR.-H.C. No. 03567, which affirmed with modification the Decision of the Regional Trial Court of Luna, Apayao in Crim. Case No. 38-2006 finding accused-appellant Gary Alinao **GUILTY** beyond reasonable doubt of the crime of murder is hereby **AFFIRMED**, with **MODIFICATION** reinstating the trial court's award of the amount of ₱30,000.00 as exemplary damages to the heirs of the victim, Antonio Ardet. Accused-appellant Gary Alinao is likewise **ORDERED** to pay the heirs of Antonio Ardet interest at the legal rate of six percent (6%) per annum on all the amounts of damages awarded, commencing from the date of finality of this Decision until fully paid.

SO ORDERED.

*Carpio*** *(Acting C.J.), Mendoza,**** *Reyes,* and *Perlas-Bernabe,***** *JJ.,* concur.

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[52] *People v. Paling*, G.R. No. 185390, March 16, 2011, 645 SCRA 627, 644.

[53] *Id*.

** Per Special Order No. 1550 dated September 16, 2013.

*** Per Special Order No. 1545 dated September 16, 2013.

**** Per Special Order No. 1537 (Revised) dated September 6, 2013.

FIRST DIVISION

[G.R. No. 192253. September 18, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CARLITO ESPENILLA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; ELEMENTS OF THE CRIME.—** To reiterate, the incident of rape involved in this case occurred before the enactment of Republic Act No. 8353 and the applicable provision of law is Article 335 of the Revised Penal Code: Art. 335. *When and how rape is committed.* – Rape is committed by having carnal knowledge of a woman under any of the following circumstances: 1. By using force or intimidation; 2. When the woman is deprived of reason or otherwise unconscious; and 3. When the woman is under twelve years of age or is demented. Based on the foregoing provision, the elements of rape under Article 335 of the Revised Penal Code are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ACCUSED MAY BE CONVICTED SOLELY ON THE BASIS OF THE TESTIMONY OF THE VICTIM THAT IS CREDIBLE, CONVINCING, AND CONSISTENT WITH HUMAN NATURE.—** The records of this case reveal that the prosecution has sufficiently demonstrated that there is ample evidence to prove that appellant had carnal knowledge of the then minor victim through the use of force and intimidation. The testimony of AAA pertaining to the rape incident at issue articulates in blunt detail her horrific experience at the hands of appellant. x x x It is a settled doctrine in our jurisprudence that in a prosecution for rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things. It is likewise elementary that the issue of credibility of witnesses is resolved primarily by the trial court

since it is in a better position to decide the same after having heard the witnesses and observed their conduct, deportment and manner of testifying; accordingly, the findings of the trial court are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any showing that it overlooked, misunderstood, or misapplied some facts or circumstances of weight or substance which would otherwise affect the result of the case. In other words, as we have repeatedly declared in the past, the trial judge's evaluation, which the Court of Appeals affirmed, binds the Court, leaving to the accused the burden to bring to the Court's attention facts or circumstances of weight that were overlooked, misapprehended, or misinterpreted by the lower courts but would materially affect the disposition of the case differently if duly considered. Unfortunately, appellant failed to discharge this burden.

3. **ID.; ID.; ID.; VICTIM'S TESTIMONY WAS DELIVERED IN A CLEAR AND STRAIGHTFORWARD MANNER AND IS WORTHY OF BELIEF.—** We find that the testimony of AAA was indeed delivered in a clear and straightforward manner; thus, the same is worthy of the belief that was bestowed upon it by the trial court and later by the Court of Appeals. As borne out of the records of this case, AAA never wavered in her allegations of rape against appellant. Furthermore, conventional wisdom cemented in jurisprudence dictates that no young Filipina would publicly admit that she had been criminally abused and ravished unless it is the truth, for it is her natural instinct to protect her honor; and that no young girl would concoct a tale of defloration, allow the examination of her private parts and undergo the expense, trouble and inconvenience, not to mention the trauma and scandal of a public trial, unless she was, in fact, raped.

4. **ID.; ID.; ID.; DELAY IN REPORTING RAPE INCIDENTS, IN THE FACE OF THREATS OF PHYSICAL VIOLENCE, CANNOT BE TAKEN AGAINST THE VICTIM.—** With regard to appellant's assertion that the considerable amount of time which elapsed between the rape and AAA's act of reporting said incident gives rise to doubt as to the veracity of the charge, this argument deserves scant consideration since it is already doctrinally settled that delay in reporting rape incidents, in the

face of threats of physical violence, cannot be taken against the victim.

5. **ID.; ID.; ID.; THE RECANTATION CANNOT PREVAIL OVER THE POSITIVE DECLARATION OF RAPE MADE BY THE VICTIM.—** We declare that the Affidavit of Recantation executed by BBB, AAA's father, fails to convince considering that the said document, which seeks to exculpate appellant from the charge of rape, was unsubstantiated by clear and convincing evidence. In both his affidavit and testimony, BBB intimated that the rape incident at issue was merely a fabrication concocted by him and AAA so that he could get back at CCC and appellant with both of whom he had a misunderstanding over the management of certain real properties. Courts have long been skeptical of recantations of testimonies for as we explained in *People v. Nardo*: A recantation of a testimony is exceedingly unreliable, for there is always the probability that such recantation may later on be itself repudiated. Courts look with disfavor upon retractions, because they can easily be obtained from witnesses through intimidation or for monetary consideration. A retraction does not necessarily negate an earlier declaration. x x x. Indeed, jurisprudence is replete with instances where the recantation of testimony by the rape victim herself was not accepted by the Court when her previous testimony appeared more trustworthy and believable. In *People v. Bulagao*, we reiterated the rationale for upholding a rape victim's original testimony over that of her subsequent recantation. x x x Thus, with more reason, we cannot ascribe any weight to the recantation of the charges by the victim's father when the victim's own categorical testimony remains on record. Alternatively put, unless supported by clear and convincing evidence, BBB's recantation cannot prevail over the positive declaration of rape made by AAA.

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.*:**

The present case is an appeal from the Decision[1] dated February 25, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01830, entitled *People of the Philippines v. Carlito Espenilla*, which affirmed the Decision[2] dated March 3, 2005 of the Regional Trial Court (RTC) of Masbate City, Branch 44 in Criminal Case No. 9115. The trial court found appellant Carlito Espenilla guilty beyond reasonable doubt of the crime of simple rape as defined and penalized under Article 335 of the Revised Penal Code.

As stated in the Information[3] dated March 30, 1999, the aforementioned crime was committed in the following manner:

> That on or about October 20, 1995, at x x x, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused with lewd design and by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one AAA,[4] a girl of 13 years old, against her will.

It should be noted that appellant was charged under Article 335 of the Revised Penal Code prior to its amendment by Republic Act No. 8353 or the "Anti-Rape Law of 1997" that reclassified

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[*] Per Special Order No. 1549 dated September 16, 2013.

[1] *Rollo*, pp. 2-17; penned by Court of Appeals (CA) Associate Justice Jose C. Reyes, Jr. with Associate Justices Ricardo R. Rosario and Amy C. Lazaro-Javier, concurring.

[2] CA *rollo*, pp. 47-54.

[3] *Id*. at 6.

[4] In court decisions involving rape, the real name of the victim-survivor is withheld and fictitious initials are instead used to represent her. Personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate families or household members, shall likewise not be disclosed. (*See People v. Cabalquinto*, 533 Phil. 703 [2006].)

and expanded the definition of rape, the provisions of which are now found in Articles 266-A to 266-D under Crimes Against Persons in the Revised Penal Code. This was in light of the fact that the alleged offense was committed prior to the effectivity of said amendment on October 22, 1997.

The case sprang from one of two complaints instituted by AAA with the aid of her father BBB who represented her since she was then a minor. The other complaint for rape was filed against AAA's grandfather, CCC. The two criminal cases were tried jointly. However, the case against CCC was later dismissed by the trial court owing to the death of the accused.[5]

Upon his arraignment on November 18, 1999, appellant entered a plea of "not guilty."[6] Pre-trial of the case was held which was then followed by a trial on the merits. Only AAA testified for the prosecution while the defense offered BBB and the appellant as witnesses.

The facts of this case, as culled in the assailed February 25, 2010 Decision of the Court of Appeals, are as follows:

> [A]t around 7:00 o'clock in the morning of October 20, 1995, while AAA, a Grade 2 pupil in Brgy. Balatucan Elementary School was left in their house in x x x, Masbate with her two younger siblings (as her father and stepmother were in the farm), accused-appellant Carlito Espenilla, who is the brother of her stepmother, arrived and asked her for a tobacco leaf and a newspaper. When AAA went inside the room to get what was asked of her, accused-appellant followed and closed the door behind him. While inside the room, accused-appellant who was then with a bolo, immediately undressed her by taking off her shorts and panty and at the same time warning her not to tell anyone about what is happening, otherwise, she will be killed. After she was undressed, accused-appellant unzipped his pants, put out his private organ, held her, and ordered her to lie down on the floor. With the unsheathed bolo beside them, accused-appellant inserted his penis into AAA's vagina. AAA cried because of the

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[5] Records, p. 1.

[6] *Id*. at 19.

pain but did not offer any resistance because accused-appellant was very strong and had a bolo that was placed beside her. Neither did she shout because there was no other person in the house (except her younger siblings). And besides, she knows that nobody would come to her rescue. With accused-appellant's penis inside AAA's private organ, he then made thrusting motions which lasted for about five (5) minutes and AAA felt something come out from accused-appellant's penis. When accused-appellant was done, he again warned AAA not to reveal the incident to anybody, otherwise, he would kill her and her family.

In the late afternoon or early evening of the same date, while AAA's parents were not yet around, accused-appellant came back and raped her again for the second time. Again, she was threatened not to reveal to anyone said incident. Because of fear, she kept the incident to herself. She could not, however, keep it forever as she could no longer suffer in silence. Thus, she ran away from home and took refuge at the house of Brgy. Captain Floro Medina of the nearby barangay of Marintoc. It was there that she was able to unburden herself of her secret. Brgy. Captain Medina then summoned the victim's father, BBB, and explained to him his daughter's predicament. Thereafter, BBB accompanied his daughter to the Police Authorities of Mobo where she was investigated. She was also subjected to medical examination by Dr. Enrique O. Legaspi III who issued a Medico-Legal Certificate (Records, p. 81) dated January 7, 1999, with the following findings:

Name	:	AAA
Address	:	x x x, Mobo
Age	:	13
Sex	:	Female
Date and Time of Infliction	:	1995 (?) – 1996 (?)
Date and Time of Examination	:	January 7, 1999, 2:30 p.m.
Findings	:	Old healed hymenal laceration at 3, 6, 9, o'clock position. Admits two fingers with resistance.

A complaint was then lodged before the MCTC of Mobo-Milagros in connection with the aforesaid rape incident. Meanwhile, after AAA's plight was brought to the attention of the Department of Social Welfare and Development (DSWD), AAA was taken from the house of Brgy. Captain Medina and was brought to the Bahay

Ampunan of DSWD in Sorsogon where she stayed after the case was filed in Court.

On its turn to present evidence, the defense offered the testimony of the victim's father BBB and the accused-appellant himself. BBB testified that he was the complainant in the cases filed against herein accused-appellant and CCC, the victim's grandfather or BBB's father. He narrated that he was made to believe by her daughter AAA that she was raped by the said two accused on different occasions. However, he allegedly came to realize that the story of rape was not true, that is why he wanted that if it is possible, the cases against the two accused be dismissed by the Court. He then proceeded to affirm and confirm the contents of the Affidavit of Recantation which he claimed he had previously executed. When cross-examined, BBB maintained that he filed the cases against the accused-appellant and CCC (AAA's grandfather or BBB's father) because his daughter AAA informed him that she was allegedly raped and not because of the misunderstanding regarding the administration of his father's property. But when asked by the Court during a clarificatory hearing, BBB easily changed his answer and claimed that what he stated in his Affidavit of Recantation was the truth. That he merely forced his daughter AAA to say that she was raped by CCC and accused-appellant, so that the two will be put to jail. He went further and said that he came to know that the person who actually raped his daughter was someone who was killed by the NPA.

When called to the witness stand, accused-appellant Carlito Espenilla, merely denied the accusation against him and claimed that the charge of rape was fabricated only because of a misunderstanding between him and BBB regarding his non-payment of the Php1,000.00 indebtedness he owed to BBB (the victim's father). Accused-appellant did not offer an alibi.[7]

Upon evaluation of the evidence, the trial court found credence in AAA's version of events and, thus, convicted appellant of the felony of simple rape. The dispositive portion of the assailed March 3, 2005 ruling read:

WHEREFORE, foregoing premises considered, the Court finds the accused CARLITO ESPENILLA, guilty beyond reasonable doubt of

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[7] *Rollo*, pp. 3-6.

the crime of Rape, defined and penalized under Article 335 of the Revised Penal Code and is hereby sentenced to suffer the penalty of *Reclusion Perpetua* to pay the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 for moral damages, or a total amount of ₱100,000.00, and to pay the costs.

The accused being a detention prisoner, his detention shall be credited in full in the service of his sentence.[8]

Appellant then elevated his case to the Court of Appeals in the hope that his conviction would be reversed. However, the Court of Appeals merely affirmed the trial court's ruling in the assailed February 25, 2010 Decision, the dispositive portion of which provided:

WHEREFORE, in view of the foregoing, the appealed Decision dated March 3, 2005 of the Regional Trial Court (RTC) of Masbate City, Branch 44 in Criminal Case No. 9115 finding herein accused-appellant Carlito Espenilla guilty beyond reasonable doubt of the crime of rape, sentencing him to *Reclusion Perpetua* and ordering him to pay the amount of Php50,000.00 as civil indemnity; Php50,000.00 as moral damages and costs is hereby **AFFIRMED**.[9]

Hence, appellant questions before us the foregoing affirmance of his guilt by propounding the following assignments of error:

I

THE COURT *A QUO* GRAVELY ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT.

II

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF RAPE DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[10]

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[8] CA *rollo*, p. 54.

[9] *Rollo*, p. 16.

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

After an assiduous review, we find the present appeal to be without merit.

To reiterate, the incident of rape involved in this case occurred before the enactment of Republic Act No. 8353 and the applicable provision of law is Article 335 of the Revised Penal Code:

Art. 335. *When and how rape is committed.* – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

Based on the foregoing provision, the elements of rape under Article 335 of the Revised Penal Code are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age.[11]

The records of this case reveal that the prosecution has sufficiently demonstrated that there is ample evidence to prove that appellant had carnal knowledge of the then minor victim through the use of force and intimidation. The testimony of AAA pertaining to the rape incident at issue articulates in blunt detail her horrific experience at the hands of appellant. The pertinent portion of her testimony is quoted here:

[PROSECUTOR] ALFORTE

Q While you and the accused were inside the house, what happened?

A He undressed me.

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[11] *People v. Manjares*, G.R. No. 185844, November 23, 2011, 661 SCRA 227, 242.

Q In what part of the house the accused undressed you? Do you have a room?
A There was a room.

Q Were you undressed inside the room of that house?
A Yes, sir.

Q How about your younger brother, where was he at that time?
A My younger brother cried.

Q Where was he, inside or outside the bedroom?
A Outside the bedroom.

Q Was the accused armed at that time he undressed you?
A Yes, sir.

Q What kind of instrument?
A A bolo.

COURT

Q What did he do with that bolo?
A When I was already nude, he placed the bolo beside me.

Q You told the court that you were told by the accused to undress yourself. Were you able to undress yourself?
A He was the one [who] undressed me.

Q Did he succeed in undressing you?
A Yes, sir.

Q Completely?
A My shorts and my panty.

Q After you were undressed by him, what did the accused do?
A He unzipped his pants and put out his male organ.

Q Did he tell you anything when he undressed you?
A Yes, your Honor.

Q What did he tell you?
A He told me not to reveal this matter, because if I will reveal this to anybody, he is going to kill me.

[PROSECUTOR] ALFORTE

Q When the accused was already undressed and allow his penis to go out, what did he do next?
A He held my breast and inserted his penis.

COURT

Q Can you tell us what was your position whether sitting, standing or what?
A I was made to lie down.

[PROSECUTOR] ALFORTE

Q You want to impress the court… the Honorable Court when the accused inserted his male organ or penis, you were lying down?
A Yes, sir.

COURT

Q On bed or on the floor?
A On the floor.

Q Did you cry when the accused inserted his penis in your vagina?
A Yes, sir.

Q Did you tell anything to the accused before he inserted his penis in your vagina?
A Yes, sir.

Q What did you tell him?
A I told him it is painful.

COURT

Q You did not resist?
A I did not resist because he is very strong.

Q Where was the bolo at the time?
A Beside me.

x x x x

[PROSECUTOR] ALFORTE

Q Was it unsheathed from the scabbard?
A [It] was unsheathed from the scabbard.[12]

It is a settled doctrine in our jurisprudence that in a prosecution for rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things.[13] It is likewise elementary that the issue of credibility of witnesses is resolved primarily by the trial court since it is in a better position to decide the same after having heard the witnesses and observed their conduct, deportment and manner of testifying; accordingly, the findings of the trial court are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any showing that it overlooked, misunderstood, or misapplied some facts or circumstances of weight or substance which would otherwise affect the result of the case.[14] In other words, as we have repeatedly declared in the past, the trial judge's evaluation, which the Court of Appeals affirmed, binds the Court, leaving to the accused the burden to bring to the Court's attention facts or circumstances of weight that were overlooked, misapprehended, or misinterpreted by the lower courts but would materially affect the disposition of

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[12] TSN, October 12, 2001, pp. 5-7.

[13] *People v. Viojela*, G.R. No. 177140, October 17, 2012, 684 SCRA 241, 251.

[14] *People v. Batula*, G.R. No. 181699, November 28, 2012, 686 SCRA 575, 583.

the case differently if duly considered.[15] Unfortunately, appellant failed to discharge this burden.

We find that the testimony of AAA was indeed delivered in a clear and straightforward manner; thus, the same is worthy of the belief that was bestowed upon it by the trial court and later by the Court of Appeals. As borne out of the records of this case, AAA never wavered in her allegations of rape against appellant. Furthermore, conventional wisdom cemented in jurisprudence dictates that no young Filipina would publicly admit that she had been criminally abused and ravished unless it is the truth, for it is her natural instinct to protect her honor; and that no young girl would concoct a tale of defloration, allow the examination of her private parts and undergo the expense, trouble and inconvenience, not to mention the trauma and scandal of a public trial, unless she was, in fact, raped.[16]

With regard to appellant's assertion that the considerable amount of time which elapsed between the rape and AAA's act of reporting said incident gives rise to doubt as to the veracity of the charge, this argument deserves scant consideration since it is already doctrinally settled that delay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against the victim.[17]

Lastly, we declare that the Affidavit of Recantation[18] executed by BBB, AAA's father, fails to convince considering that the said document, which seeks to exculpate appellant from the charge of rape, was unsubstantiated by clear and convincing evidence. In both his affidavit and testimony, BBB intimated that the rape incident at issue was merely a fabrication concocted by him and AAA so that he could get back at CCC and appellant with both of whom he had a misunderstanding over the management of certain real properties.

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[15] *People v. Abrencillo*, G.R. No. 183100, November 28, 2012, 686 SCRA 592, 597-598.

[16] *People v. Estoya*, G.R. No. 200531, December 5, 2012, 687 SCRA 376, 386-387.

[17] *People v. De los Reyes*, G.R. No. 177357, October 17, 2012, 684 SCRA 260, 279.

[18] Records, p. 94.

Courts have long been skeptical of recantations of testimonies for as we explained in *People v. Nardo:*[19]

> A recantation of a testimony is exceedingly unreliable, for there is always the probability that such recantation may later on be itself repudiated. Courts look with disfavor upon retractions, because they can easily be obtained from witnesses through intimidation or for monetary consideration. A retraction does not necessarily negate an earlier declaration. x x x. (Citation omitted.)

Indeed, jurisprudence is replete with instances where the recantation of testimony by the rape victim herself was not accepted by the Court when her previous testimony appeared more trustworthy and believable.[20]

In *People v. Bulagao*,[21] we reiterated the rationale for upholding a rape victim's original testimony over that of her subsequent recantation in this wise:

> In rape cases particularly, the conviction or acquittal of the accused most often depends almost entirely on the credibility of the complainant's testimony. By the very nature of this crime, it is generally unwitnessed and usually the victim is left to testify for herself. When a rape victim's testimony is straightforward and marked with consistency despite grueling examination, it deserves full faith and confidence and cannot be discarded. If such testimony is clear, consistent and credible to establish the crime beyond reasonable doubt, a conviction may be based on it, notwithstanding its subsequent retraction. Mere retraction by a prosecution witness does not necessarily vitiate her original testimony.
>
> A retraction is looked upon with considerable disfavor by the courts. It is exceedingly unreliable for there is always the probability that such recantation may later on be repudiated. It can easily be obtained from witnesses through intimidation or monetary consideration. Like any other testimony, it is subject to the test of credibility based on the relevant

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[19] 405 Phil. 826, 842 (2001).

[20] *People v. Teodoro*, G.R. No. 175876, February 20, 2013; *People v. Bulagao*, G.R. No. 184757, October 5, 2011, 658 SCRA 746; *People v. Sumingwa*, G.R. No. 183619, October 13, 2009, 603 SCRA 638; *People v. Deauna*, 435 Phil. 141 (2002).

[21] *Id.* at 755-756 citing *People v. Sumingwa*, *id.* at 649-650.

circumstances and, especially, on the demeanor of the witness on the stand. (Citation omitted.)

Thus, with more reason, we cannot ascribe any weight to the recantation of the charges by the victim's father when the victim's own categorical testimony remains on record. Alternatively put, unless supported by clear and convincing evidence, BBB's recantation cannot prevail over the positive declaration of rape made by AAA.

In view of the foregoing, we therefore affirm the conviction of appellant with the modification that exemplary damages in the amount of ₱30,000.00, in addition to the amount of civil indemnity and moral damages previously granted, should also be awarded to AAA in line with prevailing jurisprudence.[22]

WHEREFORE, premises considered, the Decision dated February 25, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01830, finding appellant Carlito Espenilla guilty in Criminal Case No. 9115, is hereby **AFFIRMED** with **MODIFICATIONS**, to wit:

(1) Appellant Carlito Espenilla is ordered to pay Thirty Thousand Pesos (₱30,000.00) as exemplary damages; and

(2) Appellant Carlito Espenilla is further ordered to pay the private offended party interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment.

No pronouncement as to costs.

SO ORDERED.

Carpio[**] *(Acting C.J.), Mendoza,*[***] *Reyes,* and *Perlas-Bernabe,*[****] *JJ.,* concur.

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[22] *People v. Viojela*, *supra* note 13 at 258.

[**] Per Special Order No. 1550 dated September 16, 2013.

[***] Per Special Order No. 1545 dated September 16, 2013.

[****] Per Special Order No. 1537 (Revised) dated September 6, 2013.

FIRST DIVISION

[G.R. No. 200080. September 18, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARVIN CAYANAN,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; SWEETHEART DEFENSE MUST BE PROVEN BY COMPELLING EVIDENCE; INDEPENDENT PROOF IS REQUIRED SUCH AS TOKENS, MEMENTOS, AND PHOTOGRAPHS.—** A review of the CA decision shows that it did not commit any reversible error in affirming Cayanan's conviction. Record shows that Cayanan forced AAA to have sex with him on February 1, 2001 and threatened her and her family with physical harm. The testimony of Adriano, meanwhile, corroborated AAA's testimony that Cayanan forcibly took her by the school campus gate on February 26, 2001 and thereafter raped her. The defense failed to show any reason why the prosecution's evidence should not be given weight or credit. Moreover, the claim that they were sweethearts does not justify the commission of the crimes. For the Court to even consider giving credence to the sweetheart defense, it must be proven by compelling evidence. The defense cannot just present testimonial evidence in support of the theory. Independent proof is required — such as tokens, mementos, and photographs. And while Cayanan produced two love letters allegedly written by AAA, the CA correctly sustained the finding of the RTC that these letters were unauthenticated and therefore, bereft of any probative value.

2. **ID.; FORCIBLE ABDUCTION; ABSORBED IN THE CRIME OF RAPE.—** The Court, however, finds that Cayanan should be convicted only of Qualified Rape in Criminal Case No. 1498-M-2001. Forcible abduction is absorbed in the crime of rape if the real objective of the accused is to rape the victim. In this case, circumstances show that the victim's abduction was with the purpose of raping her. Thus, after Cayanan dragged her into the tricycle, he took her to several places until they reached his sister's house where he raped her inside the bedroom.

Under these circumstances, the rape absorbed the forcible abduction.

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.*:

Accused-appellant Marvin Cayanan (Cayanan) seeks a review of the Decision[1] dated July 14, 2011 of the Court of Appeals (CA) in CA-G.R. CR- HC No. 04256 affirming with modifications the Consolidated Decision[2] dated June 16, 2009 of the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 77. The RTC decision convicted Cayanan of the crimes of Qualified Rape (Criminal Case No. 1499-M-2001) and Forcible Abduction with Qualified Rape (Criminal Case No. 1498-M-2001), and sentenced him to suffer the penalty of *reclusion perpetua* for each crime without eligibility for parole.

The CA, however, increased the award of damages originally awarded by the RTC: (1) in Criminal Case No. 1499-M-2001, from ₱50,000.00 to ₱75,000.00 as civil indemnity; and (2) in Criminal Case No. 1498-M-2001, from ₱50,000.00 to ₱75,000.00 as civil indemnity and from ₱50,000.00 to ₱75,000.00 as moral damages. The CA also awarded an additional ₱75,000.00 as moral damages in Criminal Case No. 1499-M-2001 and ₱30,000.00 as exemplary damages in both criminal cases.[3]

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[1] Penned by Associate Justice Mario V. Lopez, with Associate Justices Magdangal M. De Leon and Socorro B. Inting, concurring; *rollo*, pp. 2-11.

[2] Issued by Presiding Judge Rolando L. Bulan, CA *rollo*, pp. 47-58.

[3] *Rollo*, p. 11.

The prosecution established that Cayanan took advantage of 15-year old AAA[4] on February 1, 2001 while the victim was alone inside her house in x x x, Bulacan. Cayanan is the victim's brother-in-law, being married to her older sister, and the couple lived in a nearby house. AAA was asleep when she felt someone caressing her. It turned out to be Cayanan. He then started kissing her and told her to remove her shorts. When she refused, Cayanan forcibly took it off and after the latter took off his own undergarment, he inserted his organ into her genitalia. Cayanan, who had a knife with him, threatened to kill AAA if she resisted and informed anybody of the incident.

On February 26, 2001, AAA was about to enter the school campus with her friend Armina Adriano (Adriano) when Cayanan arrived on a tricycle driven by his uncle, Boy Manalastas. Cayanan then pulled AAA towards the tricycle. She tried shouting but he covered her mouth. They alighted somewhere and boarded a jeep. He brought her to a dress shop in x x x, Bulacan where he asked someone to give her a change of clothes as she was in her school uniform and later to a Jollibee outlet. He then brought her to his sister's house in x x x where he raped her inside a bedroom. Afterwards, a certain couple Putay and Tessie talked to Cayanan and she was brought to the *barangay* office where she was asked to execute a document stating that she voluntarily went with Cayanan. It was the latter's mother and sister-in-law who brought her home later that evening. She told her mother and brother of the incidents only after her classmate Adriano informed her family of what happened in school and of the rape incidents. AAA testified that she did not immediately tell her family because she was still in a state of shock.[5]

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[4] The name of the victim, her personal circumstances and other information which tend to establish or compromise her identity shall not be disclosed to protect her privacy and fictitious initials shall, instead, be used, in accordance with *People v. Cabalquinto*, 533 Phil. 703 (2006) and A.M. No. 04-11-09-SC dated September 19, 2006.

[5] CA *rollo*, pp. 48-55.

Adriano and the victim's mother corroborated her testimony. A resident psychiatrist at the National Center for Mental Health also testified that AAA was suffering from mental depressive symptoms/chronic symptoms and presence of sexual abuse.[6]

Cayanan interposed the sweetheart defense. The RTC, however, did not give credit to his defense, ruling that it is a weak defense and does not rule out the use of force given the prosecution's evidence. He also failed to establish the genuineness and authenticity of the love letters allegedly written by AAA.[7]

The CA sustained the ruling of the RTC.[8]

A review of the CA decision shows that it did not commit any reversible error in affirming Cayanan's conviction. Record shows that Cayanan forced AAA to have sex with him on February 1, 2001 and threatened her and her family with physical harm. The testimony of Adriano, meanwhile, corroborated AAA's testimony that Cayanan forcibly took her by the school campus gate on February 26, 2001 and thereafter raped her. The defense failed to show any reason why the prosecution's evidence should not be given weight or credit.

Moreover, the claim that they were sweethearts does not justify the commission of the crimes. For the Court to even consider giving credence to the sweetheart defense, it must be proven by compelling evidence. The defense cannot just present testimonial evidence in support of the theory. Independent proof is required such as tokens, mementos, and photographs.[9] And while Cayanan produced two love letters allegedly written by AAA, the CA correctly sustained the finding of the RTC that these letters were unauthenticated and therefore, bereft of any probative value.

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

[7] *Id.* at 55-57.

[8] *Rollo*, pp. 9-10.

[9] *People v. Dahilig*, G.R. No. 187083, June 13, 2011, 651 SCRA 778, 788; *People v. Olesco*, G.R. No. 174861, April 11, 2011, 647 SCRA 461, 470.

The Court, however, finds that Cayanan should be convicted only of Qualified Rape in Criminal Case No. 1498-M-2001. Forcible abduction is absorbed in the crime of rape if the real objective of the accused is to rape the victim.[10] In this case, circumstances show that the victim's abduction was with the purpose of raping her. Thus, after Cayanan dragged her into the tricycle, he took her to several places until they reached his sister's house where he raped her inside the bedroom. Under these circumstances, the rape absorbed the forcible abduction.[11]

Finally, the CA did not commit any reversible error in increasing the amount of civil indemnity and moral damages awarded in Criminal Case No. 1498-M-2001, and in awarding additional ₱75,000.00 as moral damages in Criminal Case No. 1499-M-2001 and ₱30,000.00 as exemplary damages in both criminal cases, as these are in accord with prevailing jurisprudence.[12]

WHEREFORE, the Decision dated July 14, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 04256 is **MODIFIED** in that accused appellant Marvin Cayanan is found guilty of Qualified Rape in Criminal Case No. 1498-M-2001. In all other respects, the CA Decision is **AFFIRMED *in toto*.**

Interest at the rate of six percent (6%) *per annum* shall be imposed on all the damages awarded, to earn from the date of the finality of this judgment until fully paid, in line with prevailing jurisprudence.[13]

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[10] *People v. Sabadlab*, G.R. No. 175924, March 14, 2012, 668 SCRA 237, 248-249; *Garces v. People*, G.R. No. 173858, July 17, 2007, 527 SCRA 827, 835.

[11] *People v. Sabadlab*, *id.*

[12] *People v. Dominguez, Jr.*, G.R. No. 180914, November 24, 2010, 636 SCRA 134, 163; *People v. Iroy*, G.R. No. 187743, March 3, 2010, 614 SCRA 245, 253.

[13] *People of the Philippines v. Rolando Cabungan*, G.R. No. 189355, January 23, 2013.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson),[*] *Carpio,*[**] *Mendoza,*[***] and *Perlas-Bernabe,*[****] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 203068. September 18, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RYAN FRIAS *y* GALANG** *a.k.a.* **"TAGADOG,"** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; ELEMENTS NECESSARY TO SUSTAIN A CONVICTION.—** The elements necessary to sustain a conviction for rape are: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.

2. **ID.; ID.; ID.; SWEETHEART DEFENSE MUST BE ESTABLISHED BY CONVINCING EVIDENCE SUCH AS DOCUMENTARY AND/OR OTHER EVIDENCE LIKE MEMENTOS, LOVE LETTERS, NOTES, PHOTOGRAPHS AND THE LIKE.—** The accused-appellant's claim that he and AAA were lovers, being an affirmative defense, must be established by convincing

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[*] Acting Chairperson per Special Order No. 1549 dated September 16, 2013.

[**] Acting member per Special Order No. 1550 dated September 16, 2013.

[***] Acting member per Special Order No. 1545 dated September 16, 2013.

[****] Acting member per Special Order No. 1537 (Revised) dated September 6, 2013.

evidence — some documentary and/or other evidence like mementos, love letters, notes, photographs and the like. However, other than his self-serving testimony, no convincing evidence was presented to substantiate his claim. Thus, the lower courts aptly discredited the defense interposed by the accused-appellant.

3. **ID.; ID.; ID.; PHYSICAL RESISTANCE NEED NOT BE ESTABLISHED IN RAPE CASES WHEN THREATS AND INTIMIDATION ARE EMPLOYED AND THE VICTIM SUBMITS HERSELF TO THE EMBRACE OF HER RAPIST BECAUSE OF FEAR.—** Further, the lack of resistance on the part of AAA as claimed by the accused-appellant, even assuming it to be true, does not mean that AAA willingly surrendered to his sexual desires. It bears stressing that physical resistance need not be established in rape cases when threats and intimidation are employed and the victim submits herself to the embrace of her rapist because of fear. x x x That the accused-appellant held a knife against AAA undoubtedly produced fear in the latter's mind that the former would kill her if she would not submit to his sexual design. The act of holding a knife by itself is strongly suggestive of force or, at least, intimidation, and threatening the victim with a knife is sufficient to bring a woman into submission. It would thus be unreasonable, to say the least, to require AAA to establish that she indeed forcibly resisted the accused-appellant's sexual aggression.

4. **ID.; PENALTIES; *RECLUSION PERPETUA*; PROPER PENALTY IN CASE AT BAR.—** Since *reclusion perpetua* and death are two indivisible penalties, Article 63 of the Revised Penal Code applies; when there are neither mitigating nor aggravating circumstances in the commission of the deed, as in this case, the lesser penalty shall be applied. Since no other qualifying or aggravating circumstance was alleged in the Information, the RTC and the CA correctly imposed the penalty of *reclusion perpetua* on the accused-appellant. The Court however clarify that the accused-appellant shall be ineligible for parole, a requirement under Section 3 of Republic Act No. 9346 that was not mentioned in the assailed CA's Decision and which, must then be rectified by this Resolution.

5. ID.; CIVIL LIABILITY; AWARD OF MORAL DAMAGES AND CIVIL INDEMNITY, SUSTAINED; AMOUNT OF EXEMPLARY DAMAGES AWARDED BY THE TRIAL COURT INCREASED IN CONFORMITY WITH CURRENT JURISPRUDENCE.— Likewise, the Court sustains the award of moral damages and civil indemnity in favor of AAA. Moral damages in rape cases should be awarded without need of showing that the victim suffered trauma or mental, physical, and psychological sufferings constituting the basis thereof. Also, the award of civil indemnity to the rape victim is mandatory upon the finding that rape took place. Considering that the penalty imposable is *reclusion perpetua*, the Court affirms the award of ₱50,000.00 as moral damages and ₱50,000.00 as civil indemnity, based on prevailing jurisprudence. However, the exemplary damages awarded by the RTC, as affirmed by the CA must be increased from ₱25,000.00 to ₱30,000.00 in conformity with prevailing jurisprudence. The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example or correction for the public good. In addition, and in conformity with current policy, the Court imposes interest on all monetary awards for damages at the rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully paid.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DELAY IN REPORTING AN INCIDENT OF RAPE DOES NOT CREATE ANY DOUBT OVER THE CREDIBILITY OF THE COMPLAINANT NOR CAN IT BE TAKEN AGAINST HER PROVIDED THAT THE DELAY IS REASONABLE AND SUFFICIENTLY EXPLAINED.— Contrary to the accused-appellant's insinuation, AAA's delay in filing a complaint against the accused-appellant is not an *indicia* of consent to the latter's sexual design. Delay in reporting an incident of rape does not create any doubt over the credibility of the complainant nor can it be taken against her. That it took several months before AAA was able to file a complaint against the accused-appellant does not tarnish her credibility and the veracity of her allegations. The threat made by the accused-appellant against her life and that of her siblings is sufficient reason to cow AAA into silence, especially considering that she was just a minor then. Moreover, the delay in revealing the commission of a crime such as rape does not necessarily render such charge unworthy of belief. This is because the

victim may choose to keep quiet rather than expose her defilement to the harsh glare of public scrutiny. Only when the delay is unreasonable or unexplained may it work to discredit the complainant.

7. **ID.; ID.; ID.; YOUTH AND IMMATURITY ARE GENERALLY BADGES OF TRUTH AND SINCERITY.—** Likewise, it is highly unlikely that AAA, then only thirteen (13) years old, would feign a traumatizing experience merely out of spite towards the accused-appellant. No sane girl would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not in truth, been a victim of rape and impelled to seek justice for the wrong done to her. Youth and immaturity are generally badges of truth and sincerity. The weight of such testimony may be countered by physical evidence to the contrary, or indubitable proof that the accused could not have committed the rape, but in the absence of such countervailing proof, the testimony shall be accorded utmost value.

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.*:

The Court resolves in this Resolution the appeal from the Decision[1] dated January 30, 2012 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04540. The CA affirmed with modification the Decision[2] dated September 30, 2008 of the Regional Trial Court (RTC) of Manila, Branch 48, in Crim. Case No. 05-236370, finding Ryan Frias *y* Galang

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[1] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Remedios A. Salazar-Fernando and Mario V. Lopez, concurring; *rollo*, pp. 2-11.

[2] Issued by Judge Silverio Q. Castillo; CA *rollo*, pp. 11-19.

(accused-appellant) guilty beyond reasonable doubt of the crime of rape, as defined in Article 266-A of the Revised Penal Code.

The Facts

The accused-appellant was charged in an Information for the crime of rape, docketed as Criminal Case No. 05-236370 before the RTC, allegedly committed as follows:

> That on or about July 9, 2004, in the City of Manila, Philippines, the said accused, by means of force and intimidation, did then and there, willfully, unlawfully and knowingly have carnal knowledge upon the person of [AAA][3], by poking a fan knife at her, ordering her to undress and inserting his penis into her vagina, against her will and consent, to her damage and prejudice.
>
> Contrary to law.[4]

Upon arraignment, the accused-appellant pleaded "not guilty" to the offense charged.[5] During the pre-trial conference, the parties stipulated on the following: *first*, the identity of AAA; and *second*, that the accused-appellant is the one charged in the Information cited above.[6] Trial on the merits ensued thereafter.

The prosecution's version of the facts, which was adopted by the RTC, relied heavily on the testimony of AAA. AAA alleged that, on July 9, 2004, at around 3:00 p.m., while she was on her way to take a bath in the comfort room at the back of their house, she was suddenly pulled by the accused-appellant to BBB's room. The accused-appellant was then staying with

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[3] The real name of the victim and the immediate family members other than the accused are withheld pursuant to the Court's Decision in *People v. Cabalquinto*, 533 Phil. 703 (2006) and the Resolution in A.M. No. 04-11-09-SC dated September 19, 2006.

[4] CA *rollo*, p. 32.

[5] *Id.* at 11.

[6] *Id.*

BBB, whose house was just adjacent to AAA's house. AAA was only thirteen (13) years old at the time of the incident.[7]

Once inside the room, AAA claimed that the accused-appellant locked the door with a chain and pushed her into a bamboo bed. He then instructed AAA to keep quiet and remove her clothes. AAA complied out of fear since he poked a fan knife at her neck. She then claimed that he removed his clothes, went on top of her, spread her legs, and inserted his penis into her vagina.[8]

The accused-appellant stayed on top of AAA for about fifteen minutes. Thereafter, AAA alleged that the accused-appellant threatened to kill her and her siblings should she tell anyone about what he did. AAA hurriedly dressed up and went home. She did not dare tell anyone about the incident, fearing that the accused-appellant would make good his threat.[9]

After several months, AAA's grandmother noticed that her abdomen was getting bigger. AAA was then constrained to tell her grandmother and mother about what the accused-appellant did to her. Whereupon, AAA, accompanied by her grandmother and mother, reported the incident to their *barangay* chairman and the police station. At the police station, AAA was referred to be examined at the Philippine General Hospital (PGH).[10]

At the PGH, AAA was examined by Dr. Irene D. Baluyot, a physician at the Child Protection Unit of the PGH, who found that there was clear evidence that AAA was sexually abused considering the lacerations found in her hymen. At the time that AAA was examined at the PGH, she was already about thirty (30) weeks pregnant.[11]

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[7] *Id.* at 12.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.* at 13.

On the other hand, the accused-appellant vehemently denied that he raped AAA, claiming that he and AAA have been in a relationship for about three (3) months prior to the incident. He averred that, at the time of the incident, it was AAA who went to his room where they talked for a while and thereafter had sexual intercourse. After the incident, the accused-appellant did not see AAA anymore. He further alleged that he only learned of AAA's complaint against him through his friend.[12]

The Ruling of the RTC

On September 30, 2008, the RTC rendered a Decision[13] finding the accused-appellant guilty beyond reasonable doubt of the crime of rape, sentencing him to suffer the penalty of *reclusion perpetua* and directing him to pay ₱50,000.00 as moral damages, ₱25,000.00 as exemplary damages, and the costs of suit.[14]

The RTC did not give credence to the accused-appellant's claim that the sexual intercourse between him and AAA was consensual. The RTC pointed out that the accused-appellant's defense that he and AAA were lovers is but a self-serving statement conveniently concocted by him in an effort to exculpate himself from criminal liability. That if indeed they were in a relationship, he should have immediately stated such fact when he was arrested by the authorities.

Unperturbed, the accused-appellant appealed the RTC's Decision dated September 30, 2008 to the CA.[15]

The Ruling of the CA

On January 30, 2012, the CA rendered the herein assailed decision which affirmed the RTC's Decision dated September 30, 2008, albeit with the modification that the accused-appellant was ordered to pay civil indemnity in the amount of ₱50,000.00.

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[12] *Id.* at 14.

[13] *Id.* at 11-19.

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

[15] *Id.* at 20.

The CA gave more credence to the testimony of AAA as against the accused-appellant, asserting that AAA would not make such accusation against him and subject herself to public trial if indeed she had not been raped. The CA opined that, other than his own self-serving testimony, the accused-appellant failed to show any other evidence that would prove that he and AAA were in a relationship.

The CA further pointed out that AAA's alleged lack of resistance during the sexual act does not mean that AAA consented thereto. The CA stressed that the act of poking a knife at the neck of a thirteen-year old victim, by itself, strongly suggests force that is sufficient to bring the young girl to submission.

As to AAA's delay in relaying what the accused-appellant did to her, the CA opined that it is expected that a young girl, such as AAA, would be hesitant or disinclined to cry out in public and relate a painful and horrible experience of sexual violation, especially in the face of threats of physical violence.

Hence, this appeal.

Both the accused-appellant and the Office of the Solicitor General manifested that they would no longer file with the Court supplemental briefs, and adopted instead their respective briefs with the CA.[16]

Issue

Essentially, the issue set forth by the accused-appellant for this Court's resolution is whether the CA erred in affirming the RTC's Decision dated September 30, 2008 which found him guilty beyond reasonable doubt of the crime of rape.[17]

In an effort to avoid criminal liability, the accused-appellant maintains that he and AAA were lovers and that the sexual tryst that was had between them was but a consummation of

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[16] *Rollo*, pp. 22-24; 26-27.

[17] CA *Rollo*, p. 35.

their relationship. He likewise alleged that AAA did not offer any resistance during their sexual tryst and that it took AAA several months before she accused him of raping her. The foregoing, the accused-appellant claimed, negates AAA's accusation against him.

The Court's Ruling

The appeal is dismissed for lack of merit.

The crime of rape is defined under Article 266-A of the Revised Penal Code, which states that:

> 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.
>
> 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. (Emphasis ours)

The elements necessary to sustain a conviction for rape are: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.[18]

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[18] *People v. Perez*, G.R. No. 191265, September 14, 2011, 657 SCRA 734, 739.

That the accused-appellant had carnal knowledge of AAA is not disputed; he does not deny having sexual intercourse with AAA on July 9, 2004. The only question that has to be resolved then is whether the sexual intercourse between the accused-appellant and AAA is indeed consensual or was consummated through force or intimidation.

It is well-settled that, 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. It is only in exceptional circumstances, such as when the trial court overlooked material and relevant matters, that this Court will re-calibrate and evaluate the factual findings of the court below.[19]

The Court sees no reason to depart from the foregoing rule.

The accused-appellant's claim that he and AAA were lovers, being an affirmative defense, must be established by convincing evidence — some documentary and/or other evidence like mementos, love letters, notes, photographs and the like.[20] However, other than his self-serving testimony, no convincing evidence was presented to substantiate his claim. Thus, the lower courts aptly discredited the defense interposed by the accused-appellant.

Further, the lack of resistance on the part of AAA as claimed by the accused-appellant, even assuming it to be true, does not mean that AAA willingly surrendered to his sexual desires. It bears stressing that physical resistance need not be established in rape cases when threats and intimidation are employed and the victim submits herself to the embrace of her rapist because of fear.[21]

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[19] *See Seguritan v. People*, G.R. No. 172896, April 19, 2010, 618 SCRA 406.

[20] *See People v. Dumadag*, G.R. No. 176740, June 22, 2011, 652 SCRA 535, 547-548; *People v. Corpuz*, G.R. No. 175836, January 30, 2009, 577 SCRA 465, 471.

[21] *People v. Arnaiz*, 538 Phil. 479, 497 (2006); *People v. Adajio*, 397 Phil. 354, 371-372 (2000).

In *People v. Sgt. Bayani*,[22] the Court explained that:

[I]t must be emphasized that force as an element of rape need not be irresistible; it need but be present, and so long as it brings about the desired result, all considerations of whether it was more or less irresistible is beside the point. So must it likewise be for intimidation which is addressed to the mind of the victim and is therefore subjective. Intimidation must be viewed in light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule; it is therefore enough that it produces fear – fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at that moment or even thereafter as when she is threatened with death if she reports the incident. **Intimidation includes the moral kind as the fear caused by threatening the girl with a knife or pistol. And where such intimidation exists and the victim is cowed into submission as a result thereof, thereby rendering resistance futile, it would be extremely unreasonable, to say the least, to expect the victim to resist with all her might and strength. If resistance would nevertheless be futile because of continuing intimidation, then offering none at all would not mean consent to the assault as to make the victim's participation in the sexual act voluntary.**[23] (Emphasis ours)

That the accused-appellant held a knife against AAA undoubtedly produced fear in the latter's mind that the former would kill her if she would not submit to his sexual design. The act of holding a knife by itself is strongly suggestive of force or, at least, intimidation, and threatening the victim with a knife is sufficient to bring a woman into submission.[24] It would thus be unreasonable, to say the least, to require AAA to establish that she indeed forcibly resisted the accused-appellant's sexual aggression.

Furthermore, contrary to the accused-appellant's insinuation, AAA's delay in filing a complaint against the accused-appellant is not an *indicia* of consent to the latter's sexual design. Delay

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[22] 331 Phil. 169 (1996).

[23] *Id.* at 193, citing *People v. Grefiel,* G.R. No. 77228, November 13, 1992, 215 SCRA 596, 608-609.

[24] *See People v. Saludo*, G.R. No. 178406, April 6, 2011, 647 SCRA 374, 393; *People v. Buates*, 455 Phil. 688, 702 (2003).

in reporting an incident of rape does not create any doubt over the credibility of the complainant nor can it be taken against her.[25] That it took several months before AAA was able to file a complaint against the accused-appellant does not tarnish her credibility and the veracity of her allegations. The threat made by the accused-appellant against her life and that of her siblings is sufficient reason to cow AAA into silence, especially considering that she was just a minor then.

Moreover, the delay in revealing the commission of a crime such as rape does not necessarily render such charge unworthy of belief. This is because the victim may choose to keep quiet rather than expose her defilement to the harsh glare of public scrutiny. Only when the delay is unreasonable or unexplained may it work to discredit the complainant.[26]

Likewise, it is highly unlikely that AAA, then only thirteen (13) years old, would feign a traumatizing experience merely out of spite towards the accused-appellant. No sane girl would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not in truth, been a victim of rape and impelled to seek justice for the wrong done to her. Youth and immaturity are generally badges of truth and sincerity. The weight of such testimony may be countered by physical evidence to the contrary, or indubitable proof that the accused could not have committed the rape, but in the absence of such countervailing proof, the testimony shall be accorded utmost value.[27]

As regards the penalty imposed on the accused-appellant, the Court finds the same to be consistent with Article 266-B[28] of the Revised Penal Code. The prosecution was able to sufficiently allege in the Information, and establish during trial, that a knife was used in the commission of rape. Under Article 266-B of the

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[25] *People v. Montefalcon*, 364 Phil. 646, 656 (1999).

[26] *People v. Navarette, Jr.*, G.R. No. 191365, February 22, 2012, 666 SCRA 689, 704.

[27] *See People v. Bon*, 536 Phil. 897, 915 (2006).

[28] Art. 266-B. *Penalty*. – x x x

Revised Penal Code, the crime of rape under paragraph 1 of Article 266-A, when committed with the use of a deadly weapon, is punishable by *reclusion perpetua* to death.

Since *reclusion perpetua* and death are two indivisible penalties, Article 63 of the Revised Penal Code applies; when there are neither mitigating nor aggravating circumstances in the commission of the deed, as in this case, the lesser penalty shall be applied. Since no other qualifying or aggravating circumstance was alleged in the Information, the RTC and the CA correctly imposed the penalty of *reclusion perpetua* on the accused-appellant.[29] The Court however clarify that the accused-appellant shall be ineligible for parole, a requirement under Section 3 of Republic Act No. 9346[30] that was not mentioned in the assailed CA's Decision and which, must then be rectified by this Resolution.

Likewise, the Court sustains the award of moral damages and civil indemnity in favor of AAA. Moral damages in rape cases should be awarded without need of showing that the victim suffered trauma or mental, physical, and psychological sufferings constituting the basis thereof.[31] Also, the award of civil indemnity to the rape victim is mandatory upon the finding that rape took place.[32] Considering that the penalty imposable is *reclusion perpetua*, the Court affirms the award of ₱50,000.00 as moral damages and ₱50,000.00 as civil indemnity, based on prevailing jurisprudence.[33]

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x x x x

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

x x x x

[29] *See People v. Delabajan*, G.R. No. 192180, March 21, 2012, 668 SCRA 859.

[30] An Act Prohibiting the Imposition of Death Penalty.

[31] *People of the Philippines v. Rolando Cabungan*, G.R. No. 189355, January 23, 2013.

[32] *People v. Banig*, G.R. No. 177137, August 23, 2012, 679 SCRA 133, 149.

[33] *Sison v. People*, G.R. No. 187229, February 22, 2012, 666 SCRA 645, 667.

However, the exemplary damages awarded by the RTC, as affirmed by the CA must be increased from ₱25,000.00 to ₱30,000.00 in conformity with prevailing jurisprudence.[34] The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example or correction for the public good.[35]

In addition, and in conformity with current policy, the Court imposes interest on all monetary awards for damages at the rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully paid.[36]

WHEREFORE, in consideration of the foregoing disquisitions, the appeal is **DISMISSED**. The Decision dated January 30, 2012 of the Court of Appeals in CA-G.R. CR-HC No. 04540 is hereby **AFFIRMED WITH MODIFICATION** in that accused-appellant Ryan Frias *y* Galang, is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole. The accused-appellant is likewise ordered to pay ₱30,000.00 as exemplary damages and to pay interest on all monetary award for damages at the rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully satisfied.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson),[*] *Carpio,*[**] *Mendoza,*[***] and *Perlas-Bernabe,*[****] *JJ.,* concur.

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[34] *People of the Philippines v. Rolando Cabungan*, *supra* note 31.

[35] *People v. Delabajan*, *supra* note 29, at 868.

[36] *People of the Philippines v. Jonathan "Uto" Veloso y Rama*, G.R. No. 188849, February 13, 2013.

[*] Acting Chairperson per Special Order No. 1549 dated September 16, 2013.

[**] Acting member per Special Order No. 1550 dated September 16, 2013.

[***] Acting member per Special Order No. 1545 dated September 16, 2013.

[****] Acting member per Special Order No. 1537 (Revised) dated September 6, 2013.

FIRST DIVISION

[G.R. No. 203315. September 18, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOEY BACATAN,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; BARE INVOCATION OF "SWEETHEART THEORY" CANNOT STAND ALONE; TO BE CREDIBLE, IT MUST BE CORROBORATED BY DOCUMENTARY, TESTIMONIAL, OR OTHER EVIDENCE.—** The Court affirms the conviction of Bacatan. Evidence on record shows that the following elements of rape were proved beyond reasonable doubt, *viz*: (1) Bacatan had carnal knowledge of AAA; and (2) it was accomplished through the use of force. The first element is undisputed as it is an admission inherent in the sweetheart defense advanced by Bacatan, which in turn, was correctly, rejected by the courts *a quo* for lack of substantial corroboration. As a rule, bare invocation of sweetheart theory cannot stand alone. To be credible, it must be corroborated by documentary, testimonial, or other evidence. Usually, these are letters, notes, photos, mementos, or credible testimonies of those who know the lovers.

2. **ID.; ID.; EVEN IF IT WERE TRUE THAT APPELLANT AND THE VICTIM WERE SWEETHEARTS, A LOVE AFFAIR DOES NOT JUSTIFY RAPE.—** To substantiate the claim of whirlwind romance between AAA and Bacatan, the defense presented the testimony of people who saw them after the incident. Raga, the owner of the store in *Tabunok* where they had refreshments testified that AAA and Bacatan sat side by side and were affectionate towards each other because she leaned on his shoulder. Elizalde Labuca, a *barangay tanod* assigned to watch La Moderna Pawnshop across Raga's store, narrated the same observation. These testimonies are, however, not enough to lead to the conclusion that a romantic relationship existed between Bacatan and AAA. They are mere hasty inferences based on a fleeting occurrence that do not essentially indicate the presence of a relationship. The observations made by the

said defense witnesses were intermittent and spanned for merely 20 minutes. At any rate, even if it were true that they were sweethearts, a love affair does not justify rape. As repeatedly stressed by the Court, a man does not have the unbridled license to subject his beloved to his carnal desires.

3. **ID.; ID.; THE VICTIM'S FAILURE TO SEEK HELP CANNOT BE TAKEN AGAINST HER; A RAPE VICTIM'S ACTIONS ARE OFTENTIMES OVERWHELMED BY FEAR RATHER THAN BY REASON.—** AAA's failure to seek help as soon as she saw other people in *Tabunok* cannot be taken against her. This Court has recognized that a rape victim's actions are oftentimes overwhelmed by fear rather than by reason. AAA was also able to explain herself on this matter. Her testimony was aptly summarized by the RTC, thus: She did not know the places that they had passed by. She did not shout because she was afraid considering that something had already happened to her. She was looking for an opportunity that she could see somebody whom she could trust and tell what happened to her. x x x [W]hat matters most to her at that time was that she was alive and she was thinking of the possibility that there would be somebody whom she could confide and tell everything that had happened to her. She did not dare ask the woman who was tending the store to call the police or the *barangay tanod* because she noticed that Joey Bacatan and that woman were close to each other.

4. **ID.; ID.; MEDICAL EVIDENCE IN RAPE CASES IS DISPENSABLE.—** Bacatan's submission that the contents of the medical certificate cannot be considered as corroborative of the claim of rape as the signatory himself did not testify, cannot prosper. As held in *People v. Alverio,* medical evidence is dispensable evidence; it is not necessary to prove rape in as much the time of its commission does not constitute a material ingredient of the crime. These circumstances do not pertain to the details and elements that produce the gravamen of the offense that is – sexual intercourse with a woman against her will or without her consent.

5. **REMEDIAL LAW; EVIDENCE; TRIAL COURT'S FACTUAL FINDINGS AND EVALUATION ON THE CREDIBILITY OF WITNESSES, ESPECIALLY WHEN AFFIRMED BY THE APPELLATE COURT, ARE ACCORDED THE HIGHEST**

DEGREE OF RESPECT AND ARE GENERALLY CONCLUSIVE AND BINDING ON THE COURT.— Further, the irregularities proffered by Bacatan bring to fore the issue of assessment of AAA's credibility as a witness, a matter generally conceded to be within the province of the trial court having had the first hand opportunity to hear the testimony of witnesses and observe their demeanor, conduct and attitude during their presentation. "The age-old rule is that the task of assigning values to the testimonies of witnesses in the stand and weighing their credibility is best left to the trial court which forms its first-hand impressions as a witness testifies before it." Hence, the trial court's factual findings and evaluation on the credibility of witnesses, especially when affirmed by the appellate court, are accorded the highest degree of respect and are generally conclusive and binding on this Court. By way of exception, such findings will be re-opened for review only upon a showing of highly meritorious circumstances such as when the court's evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance, which, if considered, would affect the result of the case. However, none of these exceptional instances obtain in the present case.

6. **ID.; ID.; CREDIBILITY OF WITNESSES; THE VICTIM'S TESTIMONY PASSED THE TWO-TIER QUALIFICATION FOR CREDIBILITY, IT COMES FROM A CREDIBLE WITNESS AND IS CREDIBLE IN ITSELF, TESTED BY HUMAN EXPERIENCE, OBSERVATION, COMMON KNOWLEDGE AND ACCEPTED CONDUCT THAT HAS EVOLVED THROUGH THE YEARS.—** [T]he Court finds that AAA's testimony passed the two-tier qualification for credibility—it comes from a credible witness and is credible in itself, tested by human experience, observation, common knowledge and accepted conduct that has evolved through the years. The trial court judge, after observing AAA's deportment on the witness stand, was convinced of her credibility, and held thus: "[t]here was no motive being [sic] established as to why (AAA) would concoct lies against [Bacatan] if she were not actually raped. No woman would concoct a story of defloration, allow an examination of her private parts and thereafter, permit herself to be subjected to a public trial, if she is not motivated by the desire to have the culprit apprehended and punished x x x, [and] unless she has been truly wronged and

seeks atonement for her abuse x x x." The appellate court arrived at a similar conclusion and found AAA's narration of her ordeal to be honest, spontaneous and unshaken especially during cross-examination where she was subjected to relentless bullying of the defense counsel. Further, AAA's testimony is credible in itself. Upon seeing her parents and brother, AAA instantaneously reported to them that she was raped. She also instructed them to call the police. The incident was entered in the police blotter that same evening barring any chance for fabrication. In addition, the results of AAA's medical examination conducted on the same night confirmed the presence of sperm in her private parts. During trial, she remained steadfast in her narration that Mabano held her arms as Bacatan consummated his dastardly desires. Consequently, the Court upholds the ruling of the RTC and CA that AAA candidly and categorically recounted the manner Bacatan forced her into having sexual intercourse with her against her will.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
R.L. Moldez Law Office for accused-appellant.

D E C I S I O N

REYES, *J.*:

For review[1] is the Decision[2] dated January 28, 2011 of the Court of Appeals (CA) in CA-G.R. CEB-CR.-H.C. No. 00635 which affirmed the Decision[3] dated June 20, 2002 of the Regional Trial Court (RTC) of Cebu City, Branch 18, convicting and sentencing accused-appellant Joey Bacatan (Bacatan) to *reclusion perpetua* for the crime of rape.

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[1] Pursuant to *People v. Mateo*, G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 653-658.

[2] Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Portia A. Hormachuelos (retired) and Socorro B. Inting, concurring; *rollo*, pp. 4-16.

[3] Issued by Presiding Judge Galicano C. Arriesgado; CA *rollo*, pp. 26-41.

The Facts

On January 19, 1998, Bacatan and Danilo Mabano (Mabano) were having a drinking spree outside the house of 18-year old private complainant, AAA[4]. Mabano is the childhood friend of AAA's brother, a neighbor and family friend. Bacatan, on the other hand, was a stranger to AAA until that night. When they ran out of beer, Bacatan and Mabano decided to look for a store to buy some more. Such is the only certain and undisputed episode in this present debacle because, as in other criminal cases, the parties tendered different versions of the ensuing incidents.[5]

The prosecution claimed[6] that Mabano invited AAA to join them in buying beer. She declined at first but the two men prodded that storeowners will surely sell to her than to them. Sensing no evil motive cloaked behind their request, she eventually obliged. The three boarded a motorcycle with Mabano as driver while AAA sat in the middle of the two men. They were able to buy four (4) bottles of beer from a nearby store but the same was not enough. Upon Mabano's suggestion, they proceeded to *Tabunok*. However, instead of heading directly to *Tabunok*, Mabano turned left towards a place called *Pook*.

In *Pook*, they disembarked at NAZ Beach Resort where they were offered a cottage. At that point, AAA got worried so she decided to walk away. Mabano followed her and warned that it is dangerous for her to go home alone. Bacatan then ordered AAA to board the motorcycle with a promise that they will already bring her home. Bacatan, however, diverted to a different direction and proceeded towards Litmon Talisay.

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[4] The name of the victim, her personal circumstances and other information which tend to establish or compromise her identity shall not be disclosed to protect her privacy and fictitious initials shall, instead, be used, in accordance with *People v. Cabalquinto*, 533 Phil. 703 (2006) and A.M. No. 04-11-09-SC dated September 19, 2006.

[5] As culled from the CA's Decision dated January 28, 2011 and RTC's Decision dated June 20, 2002; *rollo*, pp. 4-16 and CA *rollo*, pp. 26-41.

[6] *Id.*

Upon arriving at Litmon Beach, Bacatan talked to an old man as Mabano held AAA. When AAA inquired from Mabano about the purpose of their stopover, the latter told her to wait for a few minutes. She saw Bacatan and the old man enter the cottage and the latter placed beer inside. AAA and Mabano thereafter joined Bacatan. Afterwards, Mabano took the beer outside and walked towards the parked motorcycle leaving AAA and Bacatan inside.

Bacatan continued drinking beer. Moments later, he pushed AAA towards the elevated portion of the cottage causing her to slump on the floor. He asked her to have sex with him. Confused, AAA asked him what was sex all about to which he replied by knocking her thigh thrice using his forefinger. Terrified, AAA brushed his hand aside and told him that such act should be done only by married couples. She tried to escape by running to the door but it failed to open as someone from the outside was seemingly holding the lock to prevent her from escaping. Bacatan then pulled her back and forced her to lie on the floor, got on top of her and endeavoured to separate her legs. She resisted by wiggling from his hold and kicking him but he was stronger. Suddenly, Mabano, wearing only his underwear, entered the cottage and asked Bacatan if he was already through.

Mabano held AAA's hands as Bacatan removed her pants and inserted his sexual organ in her private part. After consummating his beastly act, Bacatan got up and went out of the cottage. Mabano then expressed his desire to have carnal knowledge with AAA but he changed his mind after she pleaded for him not to do so. He tried to exculpate himself by telling her that he was merely a witness to the incident. Mabano then brought her to the motorcycle with a plan to leave Bacatan behind, but they fell after running a short distance. Bacatan, who was following them, was thus able to ride and drive the vehicle. Instead of heading home, the trio returned to *Tabunok* where they stopped at an open store. Bacatan offered AAA softdrinks which she declined. He instructed her to sit on a bench and remarked: "I believe in *provinciana*." Upon that

instance, AAA's parents and brother arrived. Apparently, they have been looking for her the entire night. Mabano immediately went inside the store as AAA ran towards her mother and told her to go to the police because she was raped by Bacatan and Mabano. AAA's mother and brother went to the *Tabunok* police precinct but nobody responded to them because the policemen were sleeping.

Meanwhile, AAA's father confronted Mabano who, before attempting to run, denied having any participation in the incident. AAA's father called the attention of the nearby *barangay tanods* who arrested Mabano and brought him to the police station. Bacatan, on the other hand, was able to escape because the storeowner prevented the *barangay tanods* from entering the store where he hid.

AAA reported the incident to the police on the same evening and at around 1:00 to 2:00 o'clock of the following morning, she underwent medical examination by Dr. Bessie Acebes of the Don Vicente Sotto Memorial Medical Center. The results of the examination yielded: "discharged bloody, minimal sperm identification."

The defense proffered a whirlwind romance version.[7] Bacatan claimed that he and AAA were sweethearts and that she voluntarily went with them. She even sat between him and Mabano on the motorcycle. AAA's parents saw her board the vehicle but they expressed no objections.

The three went to Nashville Beach and ordered beer but nothing was available. They proceeded to *Tabunok* and then to Canton Beach. Still unable to find beer, Bacatan and AAA just decided to pass time in an open cottage while Mabano left to buy some cigarettes.

AAA asked him if he was already married. He replied that he is still single. AAA then said that she has seen him before at Esperanza when he was playing basketball. The entire time,

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[7] *Id.*

AAA was leaning her back towards his body. They were in that position for half an hour talking about basketball. He then asked AAA if she was still single. When she replied yes, he insinuated that since they were both single, they can get married. When AAA agreed for them to be sweethearts, he kissed her. She kissed him back. She embraced him and they continued kissing for about 30 minutes. He then hinted that they should head home as it was almost midnight but AAA didn't want to go home because her parents might scold her.

The trio proceeded to Hernando Beach located at *Poblacion*, Talisay where they rented a cottage and bought a crate of beer. The two men continued drinking while AAA went upstairs to rest. A few minutes later, she bid for him to go up. He complied.

AAA held his hand, hugged him and kissed his lips. He responded with an equal degree of affection. She told him to remove his clothes as well as hers and they copulated. Thereafter, Bacatan went outside to urinate. Mabano attempted to go upstairs but Bacatan forbade him causing the former to get angry and mount the motorcycle. Bacatan then told AAA to come down and they both boarded the motorcycle with Mabano driving. They fell down after a few meters prompting Bacatan to take over the steering wheel.

The trio went back to *Tabunok* and had refreshments at the store of Priscilla Raga (Raga). AAA and Bacatan sat beside each other; she leaned on and kept caressing him. A little later, her parents arrived. Sensing that her father was furious, Bacatan went inside the store, left his sunglasses with the owner and headed home. On October 14, 1998, he voluntarily surrendered to the police after learning that there is a warrant for his arrest in connection with a criminal case for rape filed against him.

Meanwhile, for unexplained reasons, Mabano, was able to abscond. He still remains a fugitive from justice. Only Bacatan was taken in court custody and he pleaded "Not Guilty" to the following charges, *viz*:

That on January 19, 1998 at around 10:45 in the evening, more or less, at Barangay Poblacion, Tanke, Talisay, Cebu, Philippines, and within the jurisdiction of this Honorable Court, said accused, conspiring, confederating and mutually helping one another, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously, accused Joey Bacatan lie and succeed in having carnal knowledge with one [AAA], 18 years old, while accused Danilo Mabano held her hands by indispensable cooperation, against her will and consent.

CONTRARY TO LAW.[8]

Ruling of the RTC

After due proceedings, the RTC rendered a Decision[9] on June 20, 2002 finding Bacatan guilty beyond reasonable doubt. The RTC accorded weight and credibility to the testimony of AAA and rejected the sweetheart defense interposed by Bacatan, disposing thus:

WHEREFORE, premises all considered, JUDGMENT is hereby rendered convicting accused Joey Bacatan of the crime of Rape as defined under Article 266-A and penalized under Article 266-B of the Revised Penal Code and he is hereby imposed [sic] to suffer the penalty of *Reclusion Perpetua* with the inherent accessory penalties provided by law and to indemnify the victim in the sum of [₱]50,000.00 as moral damages and to pay the costs.

Let separate proceedings be conducted as soon as co-accused (Danilo) Mabano is brought within the ambit of the law. In the meantime, the case against accused (Danilo) Mabano is archived without prejudiced [sic] to its revival as soon as accused (Danilo) Mabano is apprehended. Let an *alias* warrant of arrest be issued against him.

SO ORDERED.[10]

Bacatan appealed contending that there was no evidence of force and intimidation employed upon AAA. He insisted that

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[8] CA *rollo*, p. 7.
[9] *Id.* at 26-41.
[10] *Id.* at 41.

the intimate act that occurred was consensual and the charge of rape was filed to force him into marrying her, to save her from public humiliation and from the wrath of her parents. According to Bacatan, her failure to put up a tenacious and aggressive resistance negates the fact that Bacatan forced himself on her. She also had several opportunities to ask for help from the people near the alleged crime scene and from persons in authority they met along the way, but she didn't.

He further argued that her medical certificate did not indicate that she sustained bruises and abrasions which are common and natural in rape cases committed thru force and intimidation especially considering that Bacatan is a stout man who stands six (6) feet tall. He questioned the failure of the prosecution to present the underwear AAA was wearing during the alleged rape. He insinuated irregularity in the mysterious appearance of AAA's pants during trial despite its absence in the earlier proceedings and tags the same as manufactured evidence. He discredited the contents of AAA's medical certificate since it was never testified to by the signatory himself. He also disputed the truthfulness of AAA's first affidavit on the ground that it did not indicate the time of commission of the alleged crime.[11]

The case was directly elevated to this Court for automatic review. However, pursuant to this Court's ruling in *People v. Mateo*[12], the case was transferred to the CA in a Resolution dated March 27, 2006.[13]

Ruling of the CA

The CA affirmed the RTC's ruling that the prosecution met the required quantum of evidence necessary to convict Bacatan. It also upheld the credibility of AAA's testimony and stressed that no sensible woman will concoct a rape story and thereby put herself and her family in public disrepute. The sweetheart

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[11] *Id.* at 106-122.

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

[13] CA *rollo*, p. 164.

theory advanced by Bacatan was adjudged unavailing as it is anchored only on his self-serving allegation with no other evidence to prove the same. The decretal portion of the CA's Decision[14] dated January 28, 2011 thus read:

> **WHEREFORE**, the herein assailed decision of the Regional Trial Court of Cebu City, Branch 18 dated June 20, 2002 is **AFFIRMED.**
>
> **SO ORDERED.**[15]

Hence, the present review. In our Resolution[16] dated October 15, 2012, the Court required the parties to file their respective supplemental briefs but, in their Manifestations,[17] they waived the filing of the same and instead adopted their respective briefs filed before the CA. Bacatan lobbies for his acquittal and insists that his guilt was not proved beyond reasonable doubt.

The Court's Ruling

The Court affirms the conviction of Bacatan. Evidence on record shows that the following elements of rape were proved beyond reasonable doubt, *viz*: (1) Bacatan had carnal knowledge of AAA; and (2) it was accomplished through the use of force.[18]

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[14] *Rollo*, pp. 4-16.

[15] *Id.* at 16.

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

[17] *Id.* at 26-27 and 29-30.

[18] REVISED PENAL CODE, 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 circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machinations 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.

The first element is undisputed as it is an admission inherent in the sweetheart defense advanced by Bacatan,[19] which in turn, was correctly, rejected by the courts *a quo* for lack of substantial corroboration.

As a rule, bare invocation of sweetheart theory cannot stand alone. To be credible, it must be corroborated by documentary, testimonial, or other evidence. Usually, these are letters, notes, photos, mementos, or credible testimonies of those who know the lovers.[20]

To substantiate the claim of whirlwind romance between AAA and Bacatan, the defense presented the testimony of people who saw them after the incident. Raga, the owner of the store in *Tabunok* where they had refreshments testified that AAA and Bacatan sat side by side and were affectionate towards each other because she leaned on his shoulder.[21] Elizalde Labuca, a *barangay tanod* assigned to watch La Moderna Pawnshop across Raga's store, narrated the same observation.[22]

These testimonies are, however, not enough to lead to the conclusion that a romantic relationship existed between Bacatan and AAA. They are mere hasty inferences based on a fleeting occurrence that do not essentially indicate the presence of a relationship. The observations made by the said defense witnesses were intermittent and spanned for merely 20 minutes.[23]

At any rate, even if it were true that they were sweethearts, a love affair does not justify rape. As repeatedly stressed by the Court, a man does not have the unbridled license to subject his beloved to his carnal desires.[24]

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[19] *People v. Mirandilla*, *Jr.*, G.R. No. 186417, July 27, 2011, 654 SCRA 761, 772.

[20] *Id.* at 771-772.

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

[22] *Id.* at 34.

[23] *Id.* at 33-34.

[24] *People v. Baldo*, G.R. No. 175238, February 24, 2009, 580 SCRA 225, 232.

With the presence of the first element being settled, the prosecution only had to prove the employment of force upon AAA.

Bacatan points out that the absence of abrasions in AAA's body negates the employment of force upon her. She also did not put up tenacious resistance neither did she cry for help during and after the alleged rape incident despite the presence of other people in nearby areas. Neither was she or her family members threatened for her to succumb to the sexual congress.

We are not persuaded. In rape cases, the law does not impose a burden on the rape victim to prove resistance because it is not an element of rape.[25] Hence, the absence of abrasions or contusions in AAA's body is inconsequential. Also, not all victims react the same way. Some people may cry out, some may faint, some may be shocked into insensibility, while others may appear to yield to the intrusion. Some may offer strong resistance while others may be too intimidated to offer any resistance at all.[26] The failure of a rape victim to offer tenacious resistance does not make her submission to accused's criminal acts voluntary. What is necessary is that the force employed against her was sufficient to consummate the purpose which he has in mind.[27]

Sufficient force does not mean great or is of such character that is irresistible; as long as it brings about the desired result, all considerations of whether it was more or less irresistible are beside the point.[28]

In any event, AAA put up resistance by kicking and wiggling out of Bacatan whose entire weight was on top of her, but he

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[25] *Id.* at 233.

[26] *Id.*

[27] *People v. Olesco*, G.R. No. 174861, April 11, 2011, 647 SCRA 461, 469.

[28] *People v. Buban*, G.R. No. 172710, October 9, 2009, 603 SCRA 205, 223-224.

proved too strong. He even mocked her defiance by telling her she's like a horse.

Moreover, there is no doubt that Bacatan employed that amount of force sufficient to consummate rape. At the time the crime was committed, AAA was only 18 years old, while Bacatan was a full-grown 32-year old man who stands six feet tall with stout bearing. There is thus a clear disparity of physical strength between them thus any resistance exerted by AAA proved in vain. More importantly, Mabano reduced her to helplessness when he held her hands as Bacatan inserted his sexual organ in hers. The combined might of two adult male constitutes more than sufficient force as it inescapably subdues the frailty of female strength rendering her vulnerable to their felonious appetite to fornicate.

AAA's failure to seek help as soon as she saw other people in *Tabunok* cannot be taken against her. This Court has recognized that a rape victim's actions are oftentimes overwhelmed by fear rather than by reason.[29] AAA was also able to explain herself on this matter. Her testimony was aptly summarized by the RTC, thus:

> She did not know the places that they had passed by. She did not shout because she was afraid considering that something had already happened to her. She was looking for an opportunity that she could see somebody whom she could trust and tell what happened to her. x x x [W]hat matters most to her at that time was that she was alive and she was thinking of the possibility that there would be somebody whom she could confide and tell everything that had happened to her. She did not dare ask the woman who was tending the store to call the police or the *barangay tanod* because she noticed that Joey Bacatan and that woman were close to each other.[30]

Bacatan's submission that the contents of the medical certificate cannot be considered as corroborative of the claim

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[29] *People v. Delos Reyes*, G.R. No. 177357, October 17, 2012, 684 SCRA 260, 279.

[30] CA *rollo*, p. 31.

of rape as the signatory himself did not testify, cannot prosper. As held in *People v. Alverio,*[31] medical evidence is dispensable evidence;[32] it is not necessary to prove rape in as much the time of its commission does not constitute a material ingredient of the crime.[33] These circumstances do not pertain to the details and elements that produce the gravamen of the offense that is – sexual intercourse with a woman against her will or without her consent.[34]

Further, the irregularities proffered by Bacatan bring to fore the issue of assessment of AAA's credibility as a witness, a matter generally conceded to be within the province of the trial court having had the first hand opportunity to hear the testimony of witnesses and observe their demeanor, conduct and attitude during their presentation.[35] "The age-old rule is that the task of assigning values to the testimonies of witnesses in the stand and weighing their credibility is best left to the trial court which forms its first-hand impressions as a witness testifies before it."[36] Hence, the trial court's factual findings and evaluation on the credibility of witnesses, especially when affirmed by the appellate court, are accorded the highest degree of respect and are generally conclusive and binding on this Court.[37]

By way of exception, such findings will be re-opened for review only upon a showing of highly meritorious circumstances such as when the court's evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance, which,

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[31] G.R. No. 194259, March 16, 2011, 645 SCRA 658.

[32] *Id.* at 669.

[33] *Supra* note 28, at 225.

[34] *People v. Dumadag*, G.R. No. 176740, June 22, 2011, 652 SCRA 535, 544.

[35] *Id.* at 543.

[36] *Supra* note 27, at 469-470, citing *People v. Magbanua*, G.R. No. 176265, April 30, 2008, 553 SCRA 698, 704.

[37] *Supra* note 34, at 543-544.

if considered, would affect the result of the case.[38] However, none of these exceptional instances obtain in the present case.

Besides, the Court finds that AAA's testimony passed the two-tier qualification for credibility—it comes from a credible witness and is credible in itself, tested by human experience, observation, common knowledge and accepted conduct that has evolved through the years.[39]

The trial court judge, after observing AAA's deportment on the witness stand, was convinced of her credibility, and held thus: "[t]here was no motive being [sic] established as to why (AAA) would concoct lies against [Bacatan] if she were not actually raped. No woman would concoct a story of defloration, allow an examination of her private parts and thereafter, permit herself to be subjected to a public trial, if she is not motivated by the desire to have the culprit apprehended and punished x x x, [and] unless she has been truly wronged and seeks atonement for her abuse x x x."[40] The appellate court arrived at a similar conclusion and found AAA's narration of her ordeal to be honest, spontaneous and unshaken especially during cross-examination where she was subjected to relentless bullying of the defense counsel.

Further, AAA's testimony is credible in itself. Upon seeing her parents and brother, AAA instantaneously reported to them that she was raped. She also instructed them to call the police. The incident was entered in the police blotter that same evening barring any chance for fabrication. In addition, the results of AAA's medical examination conducted on the same night confirmed the presence of sperm in her private parts. During trial, she remained steadfast in her narration that Mabano held her arms as Bacatan consummated his dastardly desires.

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[38] *Id.* at 544.

[39] *Supra* note 19, at 769.

[40] CA *rollo*, pp. 40-41.

Consequently, the Court upholds the ruling of the RTC and CA that AAA candidly and categorically recounted the manner Bacatan forced her into having sexual intercourse with her against her will.

The Court likewise affirms the penalty of *reclusion perpetua* meted upon Bacatan for being in accord with Article 266-A in relation to 266-B of the Revised Penal Code.[41] It must be emphasized, however, that he shall not be eligible for parole pursuant to Section 3 of Republic Act No. 9346 which states that "[p]ersons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended."[42]

The Court sustains the moral damages awarded in the amount of ₱50,000.00. Moral damages are granted to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent.[43]

It is imperative to award civil indemnity which is mandatory upon the finding that rape took place.[44] Considering that the crime committed is simple rape, there being no qualifying circumstances attendant in its commission, the appropriate amount is ₱50,000.00.[45] While there is no aggravating circumstance attendant in this case, an award of ₱30,000.00

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[41] *People v. Sabadlab*, G.R. No. 175924, March 14, 2012, 668 SCRA 237, 249.

[42] See *People of the Philippines v. Dante Dejillo and Gervacio "Dongkoy" Hoyle, Jr.*, G.R. No. 185005, December 10, 2012.

[43] *People v. Tejero*, G.R. No. 187744, June 20, 2012, 674 SCRA 244, 259-260.

[44] *Id.* at 259.

[45] *People of the Philippines v. Rogelio Abrencillo*, G.R. No. 183100, November 28, 2012.

as exemplary damages is still proper in order to deter similar conduct and to serve as an example for public good.[46]

Lastly, in accordance with current jurisprudence,[47] the damages awarded shall earn legal interest at the rate of six percent (6%) *per annum* to be reckoned from the date of finality of this judgment until fully paid.

WHEREFORE, all the foregoing considered, the Decision dated January 28, 2011 of the Court of Appeals (CA) in CA-G.R. CEB-CR.-H.C. No. 00635 is **AFFIRMED** with **MODIFICATIONS**. Accused-appellant Joey Bacatan is found **GUILTY** beyond reasonable doubt of **RAPE** and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay victim AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages. The award of damages shall earn legal interest at the rate of six percent (6%) *per annum* from the finality of this judgment until fully paid.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson),[*] *Carpio,*[**] *Mendoza,*[***] and *Perlas-Bernabe,*[****] *JJ.,* concur.

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[46] See *People v. Combate*, G.R. No. 189301, December 15, 2010, 638 SCRA 797, 823.

[47] *Supra* note 43, at 260.

[*] Acting Chairperson per Special Order No. 1549 dated September 16, 2013.

[**] Acting member per Special Order No. 1550 dated September 16, 2013.

[***] Acting member per Special Order No. 1545 dated September 16, 2013.

[****] Acting member per Special Order No. 1537 (Revised) dated September 6, 2013.

SECOND DIVISION

[G.R. No. 167174. September 23, 2013]

SPOUSES CARMELITO and ANTONIA ALDOVER, *petitioners, vs.* **THE COURT OF APPEALS, SUSANA AHORRO, ARLINE SINGSON, BIBIANA CAHIBAYBAYAN, LUMINADA ERQUIZA,**[1] **ANGELITA ALBERT, JOSELITO ACULA, SORAYDA ACULA, JOMAR ACULA, CECILIA FAMORCA, CELESTE VASQUEZ, ALFONSO CABUWAGAN, CARMELITA RIVERA, JESSIE CAHIBAYBAYAN, MA. ANA V. TAKEGUCHI, ROSEMARIE BONIFACIO, ANGELINA FLORES, ALMACERES D. MISHIMA, AURELIA CAHIBAYBAYAN, SONIA S. MALAQUE, NORA ANTONIO, REYNALDO ANTONIO, REGINALD ANTONIO, RONALDO ANTONIO, JR., JUANITA CHING,**[2] **MARIETA PACIS, TITO PACIS, JOSE IBAYAN, ELSIE SISON, LEONARDO SISON, MERCEDES ANTONIO, RICARDO SARMIENTO,**[3] **SERGIO TEGIO, CRISENCIA FAVILLAR, NELLY FERNANDEZ, MARILYN DE VEGA, CELIA TUAZON, CELINE RAMOS, EUTEMIO RAMOS, LUZVIMINDA VERUEN, NICANOR ORTEZA, ADELAIDA CALUGAN,**[4] **GLORIA AGBUSAC,**[5]

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[1] Should be Iluminada Erquiza per the Verification and Certification attached to respondents' Amended Petition with the Court of Appeals, CA *rollo*, p. 183.

[2] Although impleaded herein as one of the respondents, she was not among the signatories in the Verification and Certification of Non-Forum Shopping attached to respondents' Amended Petition with the Court of Appeals, *id.* at 183-196.

[3] Should be Ricardo Sarmiento, Jr. per the Verification and Certification attached to respondents' Amended Petition with the Court of Appeals, *id.* at 184.

[4] Should be Adelaida Calugay, *id.*

[5] Should be Gloria Agbusag, *id.*

VIRGINIA GAON, REMIGIO MAYBITUIN, LAURA GARCIA, CHARLES GARCIA, MA. CRISTINA GARCIA,[6] RICARDO SARMIENTO, SR., ROBERTO TUAZON, GEMMA TUAZON, ANALYN TUAZON, JOHN ROBERT TUAZON, ELJEROME TUAZON, JEMMALYN TUAZON, MILAGROS TUBIGO,[7] MARICAR TUBIGO,[8] MARISSA BITUIN,[9] ROGER GOBRIN, MARCELINA RAMOS, ESTRELLA RAMOS, ALFREDO RAMOS, ADORACION RAMOS, ERICSON RAMOS, CAMILLE RAMOS, RAMIL MARQUISA,[10] ROMEO PORCARE, NIDA PORCARE, JEROME PORCARE, JONATHAN PORCARE, PILARCITA ABSIN, JHON-JHON ABSIN, JASON ABSIN,[11] JAYSON ABSIN, EDWARDO ABSIN, MAMRIA EDEN,[12] ARNEL REUCAZA, ZENAIDA REUCAZA, MICHELE REUCAZA, NALYN REUCAZA,[13] MARICRIS REUCAZA, ABELLE REUCAZA,[14] JHON VILLAVECENCIO, CILLE VILLAVECENCIO, ARIEL CAHIBAYBAYAN, JOHN EDWARD VILLAVECENCIO, ARCELITO VILLAVECENCIO,

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[6] Should be Ma. Cristina Garcia Soliman, *id.*

[7] Should be Milagros Tubigon, *id.*

[8] Should be Maricar Tubigon, *id.*

[9] Should be Marissa Maybituin, *id.*

[10] Should be Ramil Marquina, *id.*

[11] Although impleaded herein as one of the respondents, he was not among the signatories in the Verification and Certification of Non-Forum Shopping attached to respondents' Amended Petition with the Court of Appeals, *id.* at 183-196.

[12] Should be Maria Eden Absin per the Verification and Certification attached to respondents' Amended Petition with the Court of Appeals, *id.* at 185.

[13] Should be Analyn Reucaza, *id.*

[14] Should be Anabelle Reucaza, *id.*

FERMINA RIVERA, ANITA RIVERA,[15] EDWIN HOSMILLO, ESTER HOSMILLO, REGINE HOSMILLO, MARFIKIS VENZON, CURT SMITH VENZON, ALBERTO VILLAVECENCIO, MARILYN DE VEGA, JEFFREY DE VEGA, LIANA DE VEGA, RAMIL DE VEGA,[16] SHANE VENZON, RUFO SINGSON, ROSALIE BALINGIT, RAUL SINGSON, HAZEL GARCIA, CRISTINE GARCIA, JASON GARCIA, ECY B. TAN,[17] GREGORIO AURE, ICTORIA SARMIENTO,[18] OSCAR TUBIGO,[19] JOVY SARMIENTO, BABYLYN SARMIENTO, JEAN CAHIBAYBAYAN,[20] RONALD CAHIBAYBAYAN,[21] ALLAN CAHIBAYBAYAN, AMELIA DEQUINA, DENNIS DEQUINA, IRMA DEQUINA, FREDERICK DEQUINA, CRISTINE JOY DEQUINA, ENRIQUE LOPEZ,[22] NERY LOPEZ, NERISSA LOPEZ, ERICA LOPEZ, VANESSA LOPEZ, LEO JIMENEZ, MICHELLE JIMENEZ, MAYLEEN JIMENEZ, LEONARDO JIMENEZ,[23] FELICIANO MIRALLES, VIRGINIA ECIJA, LEONARDO AHORRO, MA. GINA SORIO, ARNEL SORIO,

[15] Should be Anita Rivera Bacamante, *id.*

[16] Should be Drandeb P. De Vega, *id.* at 186.

[17] Should be Recy B. Tan, *id.*

[18] Should be Victoria Sarmiento, *id.*

[19] Should be Oscar Tubigon, *id.*

[20] Should be Jean Cahibaybayan Patron, *id.*

[21] Should be Arnold Cahibaybayan, *id.*

[22] Although impleaded herein as one of the respondents, he was not among the signatories in the Verification and Certification of Non-Forum Shopping attached to respondents' Amended Petition with the Court of Appeals, *id.* at 183-196.

[23] Should be Leonardo Jimenez, Jr., per the Verification and Certification of Non-Forum Shopping attached to respondents' Amended Petition with the Court of Appeals, *id.* at 187.

JOENNY PAVILLAR, SALVACION PAVILLAR, JOHNNY BALDERAMA, MARY JANE BALDERAMA, FERDINAND MALAQUE, MARK ADELCHI MALAQUE, CLIO JOY MALAQUE, IRISH MADLANGBAYAN, EFFERSON MADLANGBAYAN, ROBERTO MALAQUE, HELARIA MALAQUE,[24] ARBIE MAY MALAQUEROY,[25] GILBERT MALAQUE,[26] SARRY LEGASPI, TERESITA LEGASPI, ROSEANN CRUZ, SHE ANN CRUZ, EXELEN LEGASPI, GREGORIO RAMOS, NENITA RAMOS, FELINO TEGIO, JOYZAIRRA ACULA, JUANITO CALUGAY,[27] GEMMA CALUGAY, CARLITO ANTONIO, CELIA ANTONIO,[28] PRINCES MARGARET,[29] JOSE CECILIO,[30] JEROME CZAR,[31] RAMON SISON, DANILO SISON, MARILOU SISON, ALEX RIVERA, NARCISO DEL ROSARIO, BRIAN DEL ROSARIO,[32] CHARLINE DEL ROSARIO, CARMELA DEL ROSARIO, KEVIN DEL ROSARIO, BEHNSIN JOHN DEL PACIS,[33] MELRON ANTONIO, ANGEO

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[24] Should be Hilaria Malaque, *id.*

[25] Should be Arbie May Malaque, *id.*

[26] Should be Roy Gilbert Malaque, *id.*

[27] Should be Juanita Calugay Chin, *id.* at 188.

[28] Should be Celia Lao Santos, *id.*

[29] Should be Princess Margaret Lao Santos, *id.*

[30] Should be Jose Cecilio Lao Santos, *id.*

[31] Should be Jerome Czar Lao Santos, *id.*

[32] Although impleaded herein as one of the respondents, he was not among the signatories in the Verification and Certification of Non-Forum Shopping attached to respondents' Amended Petition with the Court of Appeals, *id.* at 183-196.

[33] Should be Behnsil John Del Rosario per the Verification and Certification of non-Forum Shopping attached to respondents' Amended Petition with the Court of Appeals, *id.* at 188.

ANTONIO,[34] **DAISY ANN ANTONIO, IVAN ANTONIO, RAYMART ANTONIO, PRESCILLA PAGKALIWANGAN, MARK KENNETH PAGKALIWANGAN, MARK JULIUS PAGKALIWANGAN, VINCENT PAGKALIWANGAN, DOLORES ORTEZA, JONECA ORTEZA,**[35] **YUMI ORTEZA, NICANOR ORTEZA, RAUL BALINGIT, KATRINA CASSANDRA BAES, CHRISTOPHER BAES, MARK GIL BAES, BIENVENIDO BAES, ARTEMIO SANTOS, CATHERINE UMINGA, ROLANDO UMINGA, SR., ERLINDA TUAZON, CHRISTIAN TUAZON, ARGEL ANGELO SANTOS, MONTANO PAGKALIWANGAN, in their own behalf and as members of Samahang Magkakapitbahay ng Villa Reyes Compound Association,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT THE PROPER REMEDY TO REVIEW THE INTRINSIC CORRECTNESS OF THE COURT OF APPEALS' RULING; THE COURT'S REVIEW IS LIMITED TO THEIR DETERMINATION OF WHETHER THE APPELLATE COURT COMMITTED GRAVE ABUSE OF DISCRETION IN GRANTING RESPONDENTS' ANCILLARY PRAYER FOR PRELIMINARY INJUNCTION.—** We stress at the outset that this Petition for *Certiorari* merely assails the CA's interlocutory resolutions granting respondents' ancillary prayer for injunctive relief. This does not pertain to the main action for *certiorari*, prohibition and injunction in CA-G.R. SP No. 86363, which is still pending before the CA. We will thus limit ourselves to the determination of whether the CA gravely abused its discretion in issuing the questioned Resolutions and avoid matters that will preempt or render moot whatever final decision it may render in CA-G.R. SP No. 86363. More specifically, we will not touch on petitioners' contentions that respondents are

[34] Should be Angelo Antonio, *id.* at 189.

[35] Should be Jonica Orteza, *id.*

guilty of forum shopping and that the latter's filing of a Petition for *Certiorari* before the CA was premature and out of time for the assailed CA Resolutions pertained only to the propriety of the issuance of the Writ of Preliminary Injunction. A Petition for *Certiorari* lies only to correct acts rendered without or in excess of jurisdiction or with grave abuse of discretion. "Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction." "Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting 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." A Petition for *Certiorari* is not the proper remedy to review the intrinsic correctness of the public respondent's ruling. It is settled that as long as a court or quasi-judicial body acts within its jurisdiction, any alleged errors committed in the exercise of its jurisdiction will amount to nothing more than errors of judgment which are not reviewable in a special civil action of *certiorari*. Thus, whether the CA committed errors in proceedings, misappreciated the facts, or misapplied the law is beyond our power of review in this Petition for *Certiorari* for it cannot be used for any purpose except to limit the action of the respondent court within the bounds of its jurisdiction.

2. **ID.; ID.; ID.; NO GRAVE ABUSE OF DISCRETION ON THE PART OF THE RESPONDENT COURT IN ISSUING A WRIT OF PRELIMINARY INJUNCTION WHEN THE PARTIES WERE AMPLY HEARD THEREON.—** [W]e note that although the scheduled January 4, 2005 hearing on the propriety of issuing a Writ of Preliminary Injunction did not push through, the parties were nonetheless amply heard thru their pleadings. At the time the CA issued its challenged January 3, 2005 Resolution, petitioners had already filed their Comment and Rejoinder where they argued at length why no injunctive relief should be granted in favor of the respondents. In *Land Bank of the Phils. v. Continental Watchman Agency, Inc*, we reiterated our ruling that there can be no grave abuse of discretion on the part of the respondent court in issuing a Writ of Preliminary Injunction

when the parties were amply heard thereon. Thus: We have consistently held that there is no grave abuse of discretion in the issuance of a [W]rit of [P]reliminary [I]njunction where a party was not deprived of its day in court, as it was heard and had exhaustively presented all its arguments and defenses. Hence, when contending parties were both given ample time and opportunity to present their respective evidence and arguments in support of their opposing contentions, no grave abuse of discretion can be attributed to the x x x court which issued the [W]rit of [P]reliminary [I]njunction, as it is given a generous latitude in this regard, pursuant to Section 4, Rule 58 of the 1997 Rules of Civil Procedure, as amended. We emphasize though that the evidence upon which the CA based its January 3, 2005 Resolution is not conclusive as to result in the automatic issuance of a final injunction. "The evidence submitted [for purposes of issuing] a [W]rit of [P]reliminary [I]njunction is not conclusive or complete for only a 'sampling' is needed to give the x x x court an idea of the justification for the preliminary injunction pending the decision of the case on the merits." In the same vein, our Decision in this case is without prejudice to whatever final resolution the CA and Branch 268 may arrive at in CA-G.R. SP No. 86363 and Civil Case Nos. 69979 and 69949, respectively.

3. **ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; RESPONDENTS AMPLY JUSTIFIED THE GRANT OF PROVISIONAL RELIEF THEY PRAYED FOR.—** From our review of the case, nothing indicates that the CA acted without or in excess of jurisdiction or with grave abuse of discretion in ordering the issuance of the Writ of Preliminary Injunction. Measured against jurisprudentially established parameters, its disposition to grant the writ was not without basis and, hence, could not have been arrived at capriciously, whimsically, arbitrarily or despotically. Respondents amply justified the grant of the provisional relief they prayed for. A Writ of Preliminary Injunction is issued at any stage of an action prior to judgment or final order to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied or adjudicated. To justify its issuance, the applicants must prove the following requisites: (1) that they have a clear and unmistakable right to be protected, that is a right *in esse*; (2) there is a material and substantial

invasion of such right; (3) there is an urgent need for the writ to prevent irreparable injury to the applicants; and, (4) there is no other ordinary, speedy, and adequate remedy to prevent the infliction of irreparable injury. It is true that the buyer in a foreclosure sale becomes the absolute owner of the property if it is not redeemed within one year from registration of the sale and title is consolidated in his name. "As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it becomes the ministerial duty of the courts," upon application and proof of title, to issue a Writ of Possession to place him in possession. This rule is clear from the language of Section 33, Rule 39 of the Rules of Court. The same provision of the Rules, however, provides as an exception that when a third party is actually holding the property adversely to the judgment debtor, the duty of the court to issue a Writ of Possession ceases to be ministerial. x x x Jurisprudence abounds applying this exception to the ministerial duty of the court in issuing the Writ of Possession.

4. **ID.; ID.; ID.; RESPONDENTS HAVE INDUBITABLY SHOWN THAT THEY ARE IN ACTUAL POSSESSION OF THE DISPUTED PROPERTY WHICH UNDER THE LAW RAISES A DISPUTABLE PRESUMPTION THAT THEY ARE THE OWNERS THEREOF.—** [R]espondents alleged in their CA Petition that they possess and own portions of the property subject of the Writ of Demolition. In support thereof, they annexed to their Petition and Reply deeds of conveyances, contracts to sell, receipts, *etc*. showing that the Reyeses already sold to them the portions of the subject lot they respectively occupy. A number of these documents predate the REM which the Reyeses executed in favor of Aldover while others were executed subsequent thereto. Respondents' allegation of actual possession is likewise confirmed by the Sheriff's Partial Report which states that there are several other persons who occupy portions of subject lot and claim to be the owners thereof. In fine, respondents have indubitably shown that they are in actual possession of the disputed portions of subject property. Their possession, under Article 433 of the Civil Code, raises a disputable presumption that they are the owners thereof. Thus, petitioners cannot resort to procedural shortcut in ousting them by the simple expedient of filing a Motion for Special Order of Demolition in LRC Case No. R-6203 for under the same Article

433 petitioners have to file the appropriate judicial process to recover the property from the respondents. This "judicial process," as elucidated in *Villanueva v. Cherdan Lending Investors Corporation*, "could mean no less than an ejectment suit or a reinvindicatory action, in which the ownership claims of the contending parties may be properly heard and adjudicated." Moreover, to dispossess the respondents based on the proceedings taken in LRC Case No. R-6203 where they were not impleaded and did not take part would be tantamount to taking of real property without due process of law. But petitioners downplayed respondents' documentary evidence as unreliable for being unnotarized and unregistered compared to their TCT No. PT-122311 which was duly issued after the Reyeses failed to redeem the property and they (petitioners) consolidated their title thereto. However, "between an unrecorded sale of a prior date and a recorded mortgage of a later date the former is preferred to the latter for the reason that if the original owner had parted with his ownership of the thing sold then he no longer had the ownership and free disposal of that thing so as to be able to mortgage it again."

5. **ID.; ID.; ID.; ID.; THE PRECIPITATE DEMOLITION OF RESPONDENTS' HOUSES WOULD CONSTITUTE MATERIAL AND SUBSTANTIAL INVASION OF THEIR RIGHT WHICH CANNOT BE REMEDIED UNDER ANY STANDARD COMPENSATION.—** In fine, the CA cannot be said to have acted capriciously, whimsically, arbitrarily or despotically in issuing its January 3, 2005 Resolution and February 10, 2005 Writ of Preliminary Injunction to prevent a threatened or continuous irremediable injury. There is preliminary showing that respondents have clear and unmistakable right over the disputed portions of the property which must be protected during the pendency of CA-G.R. SP No. 86363. Indeed, the precipitate demolition of their houses would constitute material and substantial invasion of their right which cannot be remedied under any standard compensation. Hence, the need for a Writ of Preliminary Injunction. Besides, it has been held that the trial court (or the CA in this case) has a wide latitude in determining the property of issuing a Writ of Preliminary Injunction. The assessment and evaluation of evidence in the issuance of a Writ of Preliminary Injunction involve findings of facts ordinarily left to it for its determination. Hence, absent

a clear showing of grave abuse of discretion, the trial court's disposition in injunctive matters is not generally interfered with by the appellate courts.

APPEARANCES OF COUNSEL

Ricardo J.M. Rivera Law Office for petitioners.
Liwag Escobar Amazona De Vera Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for *Certiorari*[36] filed under Rule 65 of the Rules of Court seeks to annul: (i) the January 3, 2005 Resolution[37] of the Court of Appeals (CA) in CA-G.R. SP No. 86363, which granted herein respondents' ancillary prayer for injunctive relief; and, (ii) the February 10, 2005 Writ of Preliminary Injunction[38] issued pursuant thereto. Said writ enjoined the Regional Trial Court (RTC), Branch 71, Pasig City from implementing its August 9, 2004 Order[39] directing the issuance of a Writ of Demolition against the respondents.

Factual Antecedents

Siblings Tomas M. Reyes and Sidra M. Reyes and their father Alfredo Reyes (the Reyeses) were the registered owners of a 4,044-square meter lot located in *Barangay* Bambang, Pasig City covered by Transfer Certificate of Title (TCT) No. PT-107508.[40] On August 12, 1999, they obtained a loan from Antonia

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[36] *Rollo*, pp. 3-27.

[37] CA *rollo*, pp. 426-427; penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Fernanda Lampas Peralta.

[38] *Id.* at 476-477.

[39] Records, pp. 65-66; penned by Judge Celso D. Laviña.

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

B. Aldover (Aldover) secured by a Real Estate Mortgage (REM)[41] over the said property.

When the Reyeses failed to pay, Aldover caused the extrajudicial foreclosure of mortgage. At the foreclosure sale conducted, Aldover emerged as the winning bidder. A Certificate of Sale was issued in her favor which was annotated at the back of TCT No. PT-107508 on September 2, 2002.[42]

Thereafter, Aldover filed with the RTC of Pasig City a verified Petition for the Issuance of a Writ of Possession docketed as LRC Case No. R-6203.[43] On August 26, 2003, Branch 71 of the RTC of Pasig City issued a Decision[44] granting Aldover's Petition for Issuance of a Writ of Possession subject to the posting of a bond.

On December 12, 2003, the Reyeses filed a Motion to Recall and Lift Issuance of Writ of Possession[45] claiming, among others, that the mortgage and the auction sale of property are both null and void as the mortgagee (Aldover) was not armed with a special power of attorney to foreclose the mortgaged property extrajudicially. This drew Aldover's Opposition[46] where she also prayed for the issuance of the writ *sans* the requisite bond

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[41] *Id.* at 5-6. Although the amount of the loan as reflected in the REM is ₱500,000.00, the Reyeses claimed that its true amount is only ₱300,000.00 with 5% per month for 6 months interest rate. The Reyeses alleged that herein petitioners falsely and wrongfully made it appear that the amount of the loan is ₱500,000.00. (See Complaint for Annulment of Mortgage Contract, Foreclosure Proceedings, Auction Sale, Certificate of Sale, Consolidation of Ownership, with Prayer for A Temporary Restraining Order and/or Writ of Preliminary Injunction with Damages, Moral and Exemplary docketed as Civil Case No. 69949, CA *rollo*, pp. 136-143).

[42] Records, p. 10.

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

[44] *Id.* at 27-29; penned by Judge Celso D. Laviña.

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

[46] *Id.* at 35-37.

as the property was not redeemed within the one-year redemption period.

In the meantime, Aldover also caused the consolidation of title over the foreclosed property in her name. On December 17, 2003, TCT No. PT-107508 was cancelled and, in lieu thereof, TCT No. PT-122311[47] was issued in Aldover's name.

On March 17, 2004, Branch 71 issued an Order[48] denying the Reyeses' Motion to Recall and granting Aldover's motion to dispense with the posting of a bond. On the same date, a Writ of Possession[49] was issued directing the Branch Sheriff to place Aldover in possession of subject lot.

In compliance with the writ, the Branch Sheriff issued a Notice to Vacate[50] dated April 1, 2004. Then on April 23, 2004, he issued a Sheriff's Partial Report[51] informing the court that he cannot fully implement the writ because there are several other persons who occupy portions of subject lot claiming to be the owners thereof.

On May 17, 2004, respondents filed before the RTC of Pasig City a Complaint for Declaration of Nullity of Documents and Title, Reconveyance and Damages with Prayer for Temporary Restraining Order and/or Preliminary Injunction[52] against Aldover and her husband Carmelito (petitioners), the Reyeses, the Branch Sheriff, and the Registrar of Deeds of Pasig City. In said Complaint docketed as Civil Case No. 69979 and raffled to Branch 268 of said court, respondents alleged that they have been residing in the same lot subject of LRC Case No. R-6203 since the 1960's by virtue of lease contracts wherein they were

[47] *Id.* at 38.

[48] *Id.* at 47-48.

[49] *Id.* at 51-52.

[50] *Id.* at 53.

[51] *Id.* at 57-58.

[52] CA *rollo*, pp. 322-332.

allowed by the Reyeses to build their houses. Subsequently, their occupation became in the concept of owners after the Reyeses sold to them portions of the lot they respectively occupy. Respondents insisted that petitioners were aware of the lease and subsequent sale. Respondents also claimed that the REM is a fictitious transaction because at the time of its execution the Reyeses were no longer the owners of the entire property subject thereof. Hence, the mortgage as well as the subsequent foreclosure sale is null and void.

Respondents sought the issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction to immediately restrain petitioners from further committing acts of dispossession and prayed for the cancellation of TCT No. PT-122311. On July 5, 2004, however, they filed a Motion to Admit Attached Amended Complaint as a matter of right (with prayer for withdrawal of TRO and injunction).[53]

On July 26, 2004, Branch 268 issued an Order[54] denying respondents' prayer for TRO on the ground that it cannot interfere with the order of a coordinate court. This was followed by an Order[55] dated August 27, 2004 granting respondents' Motion to Admit and admitting respondents' Amended Complaint where they withdrew their ancillary prayer for injunctive relief.

Meanwhile, in LRC Case No. R-6203, in view of the Sheriff's Partial Report, Aldover filed a Motion for Special Order of Demolition.[56] Branch 71 granted the Motion in an Order[57] dated August 9, 2004, thus:

> WHEREFORE, in view of the foregoing, the Motion for Special Order of Demolition is hereby GRANTED. Let a writ issue.

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[53] *Rollo*, pp. 150-153.

[54] CA *rollo*, p. 336; penned by Judge Amelia C. Manalastas.

[55] *Rollo*, p. 162.

[56] Records, pp. 59-60.

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

The respondents and all other persons deriving rights from them are given sixty (60) days from receipt of this Order to vacate the premises.

SO ORDERED.[58]

On September 14, 2004, respondents filed before the CA a Petition for *Certiorari*, Prohibition, Injunction with prayer for the issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction[59] against the petitioners and the Reyeses, which they later on amended.[60] Respondents alleged that on August 23, 2004 they were surprised to receive the August 9, 2004 Order of demolition directing them to vacate the premises within 60 days from notice since they were neither impleaded nor notified of the proceedings conducted in LRC Case No. R-6203, as well as in the foreclosure sale. Respondents postulated that they are not, therefore, bound by the August 9, 2004 Order of Branch 71 for want of jurisdiction over their persons. Respondents reiterated their claim in Civil Case No. 69979 that they own the portions of subject lot which they respectively occupy. Thus, the implementation of said Order would deprive them of their property without due process of law and would render Civil Case No. 69979 pending before Branch 268 moot.

Respondents also asserted that the right they sought to be protected in their Petition is clear and unmistakable and that the invasion of such right is material and substantial. They thus prayed for the issuance of a TRO and/or Writ of Preliminary Injunction to enjoin the implementation of Branch 71's Order of demolition.[61]

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[58] *Id.* at 66.

[59] CA *rollo*, pp. 2-37.

[60] See Omnibus Motion for Reconsideration x x x and Motion to Admit Attached Amended Petition, *id.* at 151-158. See also Amended Petition, *id.* at 159-215.

[61] Respondents likewise claimed that in recognition of their long and continued occupation, they were allowed to purchase the lots they occupy on installment; that some of them were able to pay in full their obligation

On September 23, 2004, the CA issued a Resolution[62] outrightly dismissing the Petition on procedural grounds.

Invoking substantial justice and great and irreparable damage that may be caused by the impending demolition of their homes, respondents filed an Omnibus Motion for Reconsideration and Motion to Admit Attached Amended Petition.[63] This was followed by an Extremely Urgent Omnibus Motion for Re-Raffle and for Early Resolution[64] since the Justice to whom the case was assigned was then on official leave.

In a Resolution[65] dated October 22, 2004, the CA reconsidered its resolution of dismissal and granted respondents' prayer for the issuance of a TRO. It restrained the implementation of

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and for which the Reyeses executed Deeds of Sale while others are still in the process of paying the monthly amortizations as provided in their respective Contracts to Sell; and, that the rest remain as lessees while still negotiating for the eventual acquisition of the portion of the lot they occupy. However, the Reyeses in cahoots with herein petitioners, mortgaged the entire property to the latter without any intention of paying the loan, thereby allowing the eventual transfer of the property to the petitioners. Respondents asserted that even then the mortgage is a nullity because prior to the alleged mortgage petitioners had actual knowledge that they occupy the property by virtue of deeds of conveyance.

Respondents further alleged in their CA Petition that they were in the process of filing Estafa charges against the Reyeses. They believed that the case initiated by the Reyeses for the recovery of the subject property which was subsequently consolidated with their case pending before Branch 268 was a mere cover up to give semblance of truth to the alleged mortgage transaction. Notably, the Reyeses intentionally suppressed the fact that the actual occupants of the mortgaged property are herein respondents by not mentioning the same in their Complaint.

[62] CA *rollo*, pp. 145-146; penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Fernanda Lampas Peralta.

[63] *Id.* at 151-158.

[64] *Id.* at 216-220.

[65] *Id.* at 306-307; penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Fernanda Lampas Peralta.

the Order of demolition as well as of the Notice to Vacate. In the same Resolution, the CA required petitioners to file their comment to the Petition.

After the parties' filing of pleadings[66] and upon respondents' motion,[67] the CA set for hearing on January 4, 2005 the propriety of issuing a Writ of Preliminary Injunction. This hearing, however, did not push through since the CA already issued the challenged January 3, 2005 Resolution[68] granting respondents' ancillary prayer for injunctive relief. It disposed thus:

WHEREFORE, we resolve to:

1. GRANT [respondents'] prayer for the issuance of a writ of preliminary injunction enjoining [petitioners] from enforcing the Notice to Vacate and Order of Demolition.
2. ORDER the [respondents] to file a bond in the amount of Three Hundred Thousand (₱300,000.00) Pesos within five (5) days from notice hereof, which shall answer for whatever damages [petitioners] may sustain by reason of the injunction in the event that we finally decide that [respondents] were not entitled thereto.
3. CANCEL the hearing set on January 4, 2005.
4. CONSIDER the main petition submitted for decision.

SO ORDERED.[69]

On January 12, 2005, petitioners filed a Motion for Reconsideration[70] which was denied by the CA in its January 24, 2005 Resolution.[71] Then on February 8, 2005, respondents

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[66] See herein respondents' Comment, *id.* at 314-321; and herein petitioners' Reply, *id.* at 353-363 and Rejoinder, *id.* at 395-396.

[67] See Urgent Motion for Early Resolution of Injunction, *id.* at 397-404; and, Extremely Urgent Motion to Maintain Status Quo, *id.* 405-408.

[68] *Id.* at 426-427.

[69] *Id.* at 427.

[70] *Id.* at 435-445.

[71] *Id.* at 465.

posted the required injunction bond[72] and the CA accordingly issued the Writ of Preliminary Injunction[73] on February 10, 2005.

Petitioners subsequently filed a Motion for Inhibition of the CA Sixth (6th) Division[74] which the CA granted in a Resolution[75] dated March 28, 2005. Thereafter, petitioners sought recourse before us *via* this Petition for *Certiorari* ascribing grave abuse of discretion on the part of the CA for the following reasons:

Issues

I

THE COURT OF APPEALS, IN EFFECT, GAVE ITS IMPRIMATUR ON THE VERY CLEAR ACT OF FORUM SHOPPING DONE BY THE PRIVATE RESPONDENTS.

II

THE PETITION FOR *CERTIORARI* FILED BY PRIVATE RESPONDENTS BEFORE THE COURT OF APPEALS WAS AN IMPROPER REMEDY.

III

IN ANY CASE, EVEN ASSUMING THE PETITION FOR *CERTIORARI* WAS A PROPER REMEDY THE SAME, HOWEVER, WAS CLEARLY FILED OUT OF TIME.

IV

THE WRIT OF PRELIMINARY INJUNCTION THE COURT OF APPEALS ISSUED GOES AGAINST ESTABLISHED JURISPRUDENCE ON THE MATTER.

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[72] See photocopies of official receipts, *id.* at 473.

[73] *Id.* at 476-477.

[74] *Id.* at 478-479.

[75] *Id.* at 481; penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Fernanda Lampas Peralta.

V

PRIVATE RESPONDENTS, EVEN ASSUMING THEIR FACTUAL CLAIMS TO BE TRUE, CANNOT HAVE A BETTER RIGHT OVER THE SUBJECT PROPERTY THAN HEREIN PETITIONERS.[76]

Petitioners' Arguments

Petitioners contend that the CA gravely abused its discretion in issuing the assailed January 3, 2005 Resolution and the Writ of Preliminary Injunction. They maintain that the CA did not only condone respondents' clear and blatant act of forum shopping; it actually rewarded them for pursuing the same. According to the petitioners, respondents' Complaint in Civil Case No. 69979 pending before Branch 268 already included an ancillary relief for TRO and/or Preliminary Injunction for the purpose of stopping Branch 71 from implementing its Order of demolition and dispossessing them of the disputed property. However, since Branch 268 did not favorably act on their prayer for such provisional remedy, respondents withdrew the same by amending their Complaint, only to later on file an original action for *certiorari*, prohibition and injunction before the CA practically raising the same issues, same cause of action, and the very same prayer to temporarily and then permanently restrain Branch 71 from implementing its Order of demolition. Petitioners assert that what respondents actually did was to split a single cause of action as they could have pursued their prayer for injunction in CA-G.R. SP No. 86363 as a mere ancillary relief in Civil Case No. 69979 pending before Branch 268. Petitioners also accuse respondents of misleading the CA by concealing the fact that their Complaint in Civil Case No. 69979 included an ancillary relief for injunction and by not attaching a copy thereof to their Petition filed with the CA.

Petitioners likewise contend that respondents' recourse to the CA was premature because they did not give Branch 71 an opportunity to correct its alleged errors. Petitioners point out that before resorting to a special civil action for *certiorari*

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[76] *Rollo*, pp. 9-10.

before the CA, respondents should have first appealed or filed the appropriate motion or pleading before Branch 71 so that said court could correct any of its perceived errors. But they did not. Hence, no error or grave abuse of discretion can be attributed to Branch 71. And even assuming that respondents' Petition before the CA is not premature, petitioners assert that the same was filed out of time. Respondents received the Notice to Vacate on April 1, 2004 and, therefore, had only until May 31, 2004 within which to file a petition for *certiorari*. However, it was only on September 14, 2004 when they invoked the *certiorari* jurisdiction of the CA. Petitioners maintain that respondents erroneously reckoned the 60-day period for filing a petition for *certiorari* on the date they received the Order of demolition because the same was a mere offshoot of the Writ of Possession and Notice to Vacate issued by Branch 71.

Petitioners further argue that the pendency of Civil Case No. 69979 will not bar the issuance and implementation of the Writ of Possession in LRC Case No. R-6203.

Lastly, petitioners asseverate that respondents' ancillary prayer for injunctive relief lacked basis as they have no clear and unmistakable right that must be protected. Only 15 out of the 315 respondents are armed with proof of ownership.[77] And of these 15, only five have deeds of absolute sale; the remaining 10 have only contracts to sell containing incomplete details of payment. In addition, the alleged proofs of ownership do not bear the signatures of all the co-owners and some of those proofs are not even notarized. And assuming further that the titles of these 15 respondents are true, their collective rights

[77] Namely: (a) Spouses Hernando and Susana Ahorro; (b) Spouses Carlito and Iluminada Erquiza; (c) Arline M. Singson; (d) Brian Del Rosario; (e) Ma. Luisa Lucas-Santos and Sonia Santos-Malaque; (f) Carmelita Rivera, Ma, Luisa Vistro, Virginia Navarro; (g) Almaceres Mishima; (h) Rosemarie Bonifacio; (i) Spouses Efren and Angelina Flores; (j) Aurelia Cahibaybayan; (k) Spouses Jessie and Bibiana Cahibaybayan; (l) Ma. Celeste L. Vasquez; (m) Cecilia R. Famorca; (n) Alfonso F. Cabuganan; and, (o) Angelita S. Albert. See *rollo*, pp. 21-22.

over the subject lot cannot prevail over the rights of the petitioners. The total area they occupy constitute only about 1,371.66 square meters, or a little over 30% of the disputed 4,432-square meter lot.[78] Above all, petitioners registered their claim as early as January 3, 2000 while none of respondents' alleged proofs of ownership were ever registered.[79]

Respondents' Arguments

Respondents, on the other hand, deny having misled the CA. They claim that on July 5, 2004 they filed their Motion to Admit Attached Amended Complaint as a matter of right seeking the withdrawal of their prayer for TRO and on August 27, 2004 Branch 268 issued its Order admitting their Amended Complaint. Thus, when they filed their Petition in CA-G.R. SP No. 86363 on September 14, 2004, they found it unnecessary to state that, previously, their Complaint in Civil Case No. 69979 contained a prayer for the issuance of a TRO.

With regard to the second and third assigned errors, respondents assert that the instant Petition for *Certiorari* assails only the propriety of the CA's January 3, 2005 Resolution and February 10, 2005 Writ of Preliminary Injunction. This Court cannot thus pass upon the correctness of respondents' recourse to the CA as well as the prematurity and timeliness of such legal remedy, as the same is still pending with said court.

Respondents further assert that the issue of who have a better right over the property in question is an extraneous matter that is totally irrelevant in the present controversy. They emphasize that the issue to be resolved in this Petition for *Certiorari* is whether the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction in granting their ancillary prayer

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[78] As alleged in petitioners' Memorandum, *id.* at 592. Note however that per TCT No. PT-107508, the subject property consists only of 4,044 square meters.

[79] Prior to the inscription of the Certificate of Sale on September 2, 2002, Aldover also caused the annotation of an Adverse Claim on TCT No. PT-107508 on January 3, 2000.

for injunction. They claim that the points raised by the petitioners in support of their contention should be threshed out in Civil Case No. 69979 (declaration of nullity of documents and title, reconveyance, and damages) pending before Branch 268.

Our Ruling

The review we are bound to undertake in this Petition for Certiorari is limited to the determination of whether the CA committed grave abuse of discretion in granting respondents' ancillary prayer for preliminary injunction.

We stress at the outset that this Petition for *Certiorari* merely assails the CA's interlocutory resolutions granting respondents' ancillary prayer for injunctive relief. This does not pertain to the main action for *certiorari*, prohibition and injunction in CA-G.R. SP No. 86363, which is still pending before the CA. We will thus limit ourselves to the determination of whether the CA gravely abused its discretion in issuing the questioned Resolutions and avoid matters that will preempt or render moot whatever final decision it may render in CA-G.R. SP No. 86363. More specifically, we will not touch on petitioners' contentions that respondents are guilty of forum shopping and that the latter's filing of a Petition for *Certiorari* before the CA was premature and out of time for the assailed CA Resolutions pertained only to the propriety of the issuance of the Writ of Preliminary Injunction.

A Petition for *Certiorari* lies only to correct acts rendered without or in excess of jurisdiction or with grave abuse of discretion. "Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction."[80] "Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious

[80] *Tagle v. Equitable PCI Bank*, G.R. No. 172299, April 22, 2008, 552 SCRA 424, 436.

and whimsical exercise of judgment that is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting 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."[81]

A Petition for *Certiorari* is not the proper remedy to review the intrinsic correctness of the public respondent's ruling. It is settled that as long as a court or quasi-judicial body acts within its jurisdiction, any alleged errors committed in the exercise of its jurisdiction will amount to nothing more than errors of judgment which are not reviewable in a special civil action of *certiorari*. Thus, whether the CA committed errors in proceedings, misappreciated the facts, or misapplied the law is beyond our power of review in this Petition for *Certiorari* for it cannot be used for any purpose except to limit the action of the respondent court within the bounds of its jurisdiction.[82]

CA did not commit grave abuse of discretion.

From our review of the case, nothing indicates that the CA acted without or in excess of jurisdiction or with grave abuse of discretion in ordering the issuance of the Writ of Preliminary Injunction. Measured against jurisprudentially established parameters, its disposition to grant the writ was not without basis and, hence, could not have been arrived at capriciously, whimsically, arbitrarily or despotically. Respondents amply justified the grant of the provisional relief they prayed for. A Writ of Preliminary Injunction is issued at any stage of an action prior to judgment or final order to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied or adjudicated. To justify its issuance, the applicants must prove the following requisites: (1) that they

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[81] *Dela Rosa v. Heirs of Juan Valdez*, G.R. No. 159101, July 27, 2011, 654 SCRA 467, 480.

[82] *Tagle v. Equitable PCI Bank*, *supra* note 80.

have a clear and unmistakable right to be protected, that is a right *in esse*; (2) there is a material and substantial invasion of such right; (3) there is an urgent need for the writ to prevent irreparable injury to the applicants; and, (4) there is no other ordinary, speedy, and adequate remedy to prevent the infliction of irreparable injury.[83]

It is true that the buyer in a foreclosure sale becomes the absolute owner of the property if it is not redeemed within one year from registration of the sale and title is consolidated in his name. "As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it becomes the ministerial duty of the courts," upon application and proof of title, to issue a Writ of Possession to place him in possession.[84] This rule is clear from the language of Section 33, Rule 39 of the Rules of Court. The same provision of the Rules, however, provides as an exception that when a third party is actually holding the property adversely to the judgment debtor, the duty of the court to issue a Writ of Possession ceases to be ministerial. Thus:

> SEC. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* – If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

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[83] *St. James College of Parañaque v. Equitable PCI Bank*, G.R. No. 179441, August 9, 2010, 627 SCRA 328, 344.

[84] *Asia United Bank v. Goodland Company, Inc.*, G.R. No. 188051, November 22, 2010, 635 SCRA 637, 646.

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer ***unless a third party is actually holding the property adversely to the judgment obligor***. (Emphasis supplied)

Jurisprudence abounds applying this exception to the ministerial duty of the court in issuing the Writ of Possession.[85]

Here, respondents alleged in their CA Petition that they possess and own portions of the property subject of the Writ of Demolition. In support thereof, they annexed to their Petition and Reply deeds of conveyances, contracts to sell, receipts, *etc*. showing that the Reyeses already sold to them the portions of the subject lot they respectively occupy. A number of these documents predate the REM which the Reyeses executed in favor of Aldover while others were executed subsequent thereto. Respondents' allegation of actual possession is likewise confirmed by the Sheriff's Partial Report[86] which states that there are several other persons who occupy portions of subject lot and claim to be the owners thereof. In fine, respondents have indubitably shown that they are in actual possession of the disputed portions of subject property. Their possession, under Article 433 of the Civil Code, raises a disputable presumption that they are the owners thereof.[87] Thus, petitioners cannot resort to procedural

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[85] *Id.*; *Bank of the Philippine Islands v. Icot*, G.R. No. 168061, October 12, 2009, 603 SCRA 322; *Development Bank of the Philippines v. Prime Neighborhood Association*, G.R. Nos. 175728 and 178914, May 8, 2009, 587 SCRA 582; *Dayot v. Shell Chemical Company (Phils.), Inc.,* 552 Phil. 602 (2007)*; Philippine National Bank v. Court of Appeals*, 424 Phil. 757 (2002).

[86] Records, pp. 57-58.

[87] Article 433 of the CIVIL CODE reads:

Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

shortcut in ousting them by the simple expedient of filing a Motion for Special Order of Demolition in LRC Case No. R-6203 for under the same Article 433 petitioners have to file the appropriate judicial process to recover the property from the respondents. This "judicial process," as elucidated in *Villanueva v. Cherdan Lending Investors Corporation*,[88] "could mean no less than an ejectment suit or a reinvindicatory action, in which the ownership claims of the contending parties may be properly heard and adjudicated." Moreover, to dispossess the respondents based on the proceedings taken in LRC Case No. R-6203 where they were not impleaded and did not take part would be tantamount to taking of real property without due process of law.[89]

But petitioners downplayed respondents' documentary evidence as unreliable for being unnotarized and unregistered compared to their TCT No. PT-122311 which was duly issued after the Reyeses failed to redeem the property and they (petitioners) consolidated their title thereto. However, "between an unrecorded sale of a prior date and a recorded mortgage of a later date the former is preferred to the latter for the reason that if the original owner had parted with his ownership of the thing sold then he no longer had the ownership and free disposal of that thing so as to be able to mortgage it again."[90]

In fine, the CA cannot be said to have acted capriciously, whimsically, arbitrarily or despotically in issuing its January 3, 2005 Resolution and February 10, 2005 Writ of Preliminary Injunction to prevent a threatened or continuous irremediable injury. There is preliminary showing that respondents have clear and unmistakable right over the disputed portions of the property which must be protected during the pendency of CA-G.R. SP No. 86363. Indeed, the precipitate demolition of their

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[88] G.R. No. 177881, October 13, 2010, 633 SCRA 173, 183; citing *Dayot v. Shell Chemical Company (Phils.) Inc., supra* at 615.

[89] *Id.*; *id.*

[90] *Reyes v. De Leon*, 126 Phil. 710, 717 (1967).

houses would constitute material and substantial invasion of their right which cannot be remedied under any standard compensation. Hence, the need for a Writ of Preliminary Injunction.

Besides, it has been held that the trial court (or the CA in this case) has a wide latitude in determining the propriety of issuing a Writ of Preliminary Injunction. The assessment and evaluation of evidence in the issuance of a Writ of Preliminary Injunction involve findings of facts ordinarily left to it for its determination. Hence, absent a clear showing of grave abuse of discretion, the trial court's disposition in injunctive matters is not generally interfered with by the appellate courts.[91]

Furthermore, we note that although the scheduled January 4, 2005 hearing on the propriety of issuing a Writ of Preliminary Injunction did not push through, the parties were nonetheless amply heard thru their pleadings. At the time the CA issued its challenged January 3, 2005 Resolution, petitioners had already filed their Comment[92] and Rejoinder[93] where they argued at length why no injunctive relief should be granted in favor of the respondents. In *Land Bank of the Phils. v. Continental Watchman Agency, Inc.*,[94] we reiterated our ruling that there can be no grave abuse of discretion on the part of the respondent court in issuing a Writ of Preliminary Injunction when the parties were amply heard thereon. Thus:

> We have consistently held that there is no grave abuse of discretion in the issuance of a [W]rit of [P]reliminary [I]njunction where a party was not deprived of its day in court, as it was heard and had exhaustively presented all its arguments and defenses. Hence, when

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[91] *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas Province*, G.R. No. 183367, March 14, 2012, 668 SCRA 253, 261-262.

[92] CA *rollo*, pp. 314-321.

[93] *Id.* at 395-396.

[94] 465 Phil. 607, 610 (2004).

contending parties were both given ample time and opportunity to present their respective evidence and arguments in support of their opposing contentions, no grave abuse of discretion can be attributed to the x x x court which issued the [W]rit of [P]reliminary [I]njunction, as it is given a generous latitude in this regard, pursuant to Section 4, Rule 58 of the 1997 Rules of Civil Procedure, as amended.

We emphasize though that the evidence upon which the CA based its January 3, 2005 Resolution is not conclusive as to result in the automatic issuance of a final injunction. "The evidence submitted [for purposes of issuing] a [W]rit of [P]reliminary [I]njunction is not conclusive or complete for only a 'sampling' is needed to give the x x x court an idea of the justification for the preliminary injunction pending the decision of the case on the merits."[95] In the same vein, our Decision in this case is without prejudice to whatever final resolution the CA and Branch 268 may arrive at in CA-G.R. SP No. 86363 and Civil Case Nos. 69979 and 69949, respectively.

WHEREFORE, the instant Petition for *Certiorari* is **DISMISSED**. The Resolutions dated January 3, 2005 and January 24, 2005 of the Court of Appeals in CA-G.R. SP No. 86363 are **AFFIRMED**. This case is **REMANDED** to the Court of Appeals for the immediate resolution of the main petition in CA-G.R. SP No. 86363.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[95] *Urbanes, Jr. v. Court of Appeals*, 407 Phil. 856, 867 (2001).

SECOND DIVISION

[G.R. No. 170018. September 23, 2013]

DEPARTMENT OF AGRARIAN REFORM, REPRESENTED BY OIC-SECRETARY NASSER C. PANGANDAMAN, *petitioner, vs.* **THE COURT OF APPEALS and BASILAN AGRICULTURAL TRADING CORPORATION (BATCO),** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (R.A. 6657); SINCE LIVESTOCK FARMS ARE OUTSIDE THE SCOPE OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM, THE DEPARTMENT OF AGRARIAN REFORM (DAR) HAS NO POWER TO REGULATE IT .—** Under RA 6657, the CARP shall cover all public and private agricultural lands, including other lands of the public domain suitable for agriculture, regardless of tenurial arrangement and commodity produced. Section 3(c) thereof defines "agricultural land" as land devoted to agricultural activity and not classified as mineral, forest, residential, commercial or industrial land. Lands devoted to livestock, poultry, and swine raising are classified as industrial, not agricultural lands and, thus, exempt from agrarian reform. As such, the DAR has no power to regulate livestock farms.

2. **ID.; ID.; THE DETERMINATION OF A LAND'S CLASSIFICATION AS EITHER AN AGRICULTURAL OR INDUSTRIAL LAND AND, WHETHER OR NOT THE LAND FALLS UNDER THE AGRARIAN REFORM EXEMPTION FALLS WITHIN THE COMPETENCE AND JURISDICTION OF THE DAR SECRETARY.—** The determination of the land's classification as either an agricultural or industrial land – and, in turn, whether or not the land falls under agrarian reform exemption – must be preliminarily threshed out before the DAR, particularly, before the DAR Secretary. Verily, issues of exclusion or exemption partake the nature of Agrarian Law Implementation (ALI) cases which are well within the competence and jurisdiction of the DAR Secretary. Towards

this end, the latter is ordained to exercise his legal mandate of excluding or exempting a property from CARP coverage based on the factual circumstances of each case and in accordance with the law and applicable jurisprudence. Thus, considering too his technical expertise on the matter, courts cannot simply brush aside his pronouncements regarding the status of the land in dispute, *i.e.*, as to whether or not it falls under CARP coverage. As held in *DAR v. Oroville Development Corp.*: **We cannot simply brush aside the DAR's pronouncements regarding the status of the subject property as not exempt from CARP coverage considering that the DAR has unquestionable technical expertise on these matters**. Factual findings of administrative agencies are generally accorded respect and even finality by this Court, if such findings are supported by substantial evidence, a situation that obtains in this case. **The factual findings of the Secretary of Agrarian Reform who, by reason of his official position, has acquired expertise in specific matters within his jurisdiction, deserve full respect and, without justifiable reason, ought not to be altered, modified or reversed**.

3. **ID.; ID.; IN ORDER TO BE ENTITLED TO EXCLUSION/ EXEMPTION, IT MUST BE SHOWN THAT THE LAND IS EXCLUSIVELY DEVOTED TO LIVESTOCK, SWINE OR POULTRY AS OF THE EFFECTIVITY OF R.A. 6657, OR ON JUNE 15, 1988, TO PREVENT ANY FRAUDULENT DECLARATION OF AREAS SUPPOSEDLY USED FOR THESE PURPOSES AS WELL AS TO PROTECT THE RIGHTS OF AGRARIAN BENEFICIARIES THEREIN.—** It is settled that in order to be entitled to exclusion/exemption, it must be shown that the land is exclusively devoted to livestock, swine or poultry raising. The land must be shown to have been used for such purposes as of the effectivity of RA 6657, or on June 15, 1988, in order to prevent any fraudulent declaration of areas supposedly used for these purposes as well as to protect the rights of agrarian beneficiaries therein. This is in consonance with Section 73(c) of RA 6657 which prohibits the conversion by any landowner of his agricultural land into any non-agricultural use with intent to avoid the application of RA 6657 to his landholdings and to dispossess his tenant farmers of the land tilled by them. A thorough review of the records reveals no substantial evidence to show that the entirety of the subject lands were exclusively devoted to livestock production since

June 15, 1988 so as to warrant their exclusion/exemption from CARP coverage and the consequent cancellation of MCFARMCO's certificates of title. In fact, contrary to its original submission that almost all of the entire 206.5694 has. landholding has been devoted to cattle and livestock production since their acquisition in 1987, BATCO subsequently admitted in its Supplemental Motion for Reconsideration of the Order dated 25 February 1999 (supplemental motion for reconsideration) that only a portion of the subject lands was actually devoted to livestock raising, for which the exemption of not less than 100 has. was sought. On this score alone, the CA gravely abused its discretion in declaring the subject lands as exempt from CARP coverage and ordering the cancellation of MCFARMCO's certificates of title and the issuance of new titles in BATCO's favor.

4. **ID.; ID.; IN VIEW OF THE PROSPECTIVITY PRINCIPLE OF JUDICIAL DECISIONS AND THE OPERATIVE FACT DOCTRINE, THE PETITION FOR EXEMPTION MUST BE RESOLVED UNDER THE PROVISIONS OF DEPARTMENT OF AGRICULTURE ADMINISTRATIVE ORDER 09-93 (DAR AO 09-93) ALTHOUGH SAID AO WAS STRUCK DOWN AS UNCONSTITUTIONAL IN THE CASE OF *DAR VS. SUTTON*.—** It must be further pointed out that the subject lands were offered by BATCO to the government under the VOS scheme on September 20, 1989, which offer was reiterated on January 6, 1993 without any claim of exemption, notwithstanding the existence of the *Luz Farms* ruling (which was promulgated on December 4, 1990). In fact, the subject portion was acquired by the government in 1992 and still BATCO never sought exemption under *Luz Farms*. While it protested the valuation of the DAR during its VOS, it did not, at that time, seek any exemption from CARP coverage. BATCO only raised the claimed exemption when it filed the petition for exemption before the DAR Regional Director on May 6, 1998. However, the petition was filed on the basis of DAR AO 09-93, and accordingly denied by the DAR Regional Director and the DAR Secretary for failing to meet the requirements set forth therein. While the Court struck down DAR AO 09-93 as unconstitutional in the case of *DAR v. Sutton* (*Sutton*) on October 19, 2005, the DAR Decisions and even the CA Decision dated September 6, 2005 in CA-G.R. SP No. 55377 were all rendered at the time that the said AO was

still subsisting and in full force and effect. Consequently, in view of the prospectivity principle of judicial decisions and the operative fact doctrine, the petition for exemption must be resolved under the provisions of the said AO.

5. ID.; ID.; IT WAS NOT SUFFICIENTLY ESTABLISHED THAT THE ENTIRETY OF THE SUBJECT LANDS WERE EXCLUSIVELY DEVOTED TO RAISING OF CATTLE, SWINE AND GOAT AS OF JUNE 15, 1988.— Even if the Court were to apply *Sutton* retroactively and disregard DAR AO 09-93, the pieces of evidence relied upon by the CA actually failed to establish the theory that the entirety of the subject lands or specific portions thereof are exclusively devoted to the raising of cattle, swine and goat as of June 15, 1988. The Court notes that the Municipal Agriculturist Certification dated March 26, 1998, which the CA appreciated in favor of BATCO, merely stated that the subject lands are "suitable for cattle production since before it was acquired and transferred to BATCO PLANTATION." On the other hand, the Affidavits of former municipal mayors confirming their issuance of several certificates of livestock ownership during their respective terms were only presented before the CA and were not backed up by copies of the certificates themselves. Moreover, while the former municipal mayors attested to the existence and presence of livestock in the subject lands starting the year 1987, they commonly described the subject lands as a vast tract of land principally devoted to coconut production, which was extensively inter-cropped with coffee, rubber, black pepper, and cacao trees after BATCO's acquisition. These descriptions are insufficient to establish BATCO's claimed exemption as what is required is exclusive devotion of the lands to the raising of cattle, swine and goat as of June 15, 1988.

6. ID.; ID.; NO DENIAL OF RESPONDENT'S RIGHT TO DUE PROCESS IN CASE AT BAR; NEITHER WAS IT DEPRIVED OF ITS PROPERTIES WITHOUT JUST COMPENSATION.— The Court cannot give credence to BATCO's claim of denial of due process when its certificates of title were cancelled and new ones were issued in favor of the Republic prior to the issuance of the DAR Regional Director's August 12, 1998 Order. While the final resolution of petitions for exemption, as a rule, should precede the placing of the property under the CARP and the issuance of the CLOA to the beneficiaries, it bears

stressing that the subject lands had already been placed under the CARP coverage in 1992, or long before the petition for exemption was filed by BATCO on May 6, 1998. In the meantime, the actions undertaken by BATCO such as the VOS on January 6, 1993, the counter-offer of valuation for the subject lands according to their declared land uses as contained in the afore-mentioned landowner's reply dated May 6, 1997, the letter-protest dated May 23, 1997 (which challenged the survey of the lands), and the identification of the beneficiaries grounded on its alleged failure to choose the retention area, all affirmed the coverage of the subject lands under the CARP. Considering further that the claim of denial of due process was never raised in the proceedings before the DAR but belatedly brought up only in its Memorandum dated July 28, 2005 filed before the CA and in the absence of showing that the same prevented it from presenting its case before the DAR officials, it cannot be said that BATCO was denied due process. Neither was it deprived of its properties without just compensation given that after it rejected the DAR's valuation on May 6, 1997, the DAR immediately caused the deposit of the compensation in cash and in agrarian reform bonds on June 11, 1997. All told, the denial of BATCO's petition for exemption was proper. In view of its contrary ruling, and the absence of any substantial bases therefor, the Court finds that the CA gravely abused its discretion in reversing the DAR Secretary's February 25, 1999 Order.

APPEARANCES OF COUNSEL

Litigation, Legal Affairs Department (DAR) for petitioner.

De Los Reyes and *De Los Reyes-Kong Law Offices* and *Ong Saavedra Doctolero Law Offices* for private respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for *certiorari*[1] is the Decision[2] dated September 6, 2005 of the Court of Appeals (CA) in CA-G.R.

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[1] *Rollo*, pp. 2-21.

[2] *Id.* at 23-37. Penned by Associate Justice Arturo G. Tayag, with Associate Justices Rodrigo F. Lim, Jr. and Normandie B. Pizarro, concurring.

SP No. 55377 which: (*a*) reversed and set aside the Order[3] dated February 25, 1999 of the Secretary of the Department of Agrarian Reform (DAR); (*b*) cancelled Transfer Certificates of Title (TCT) Nos. T-1012,[4] T-1013,[5] and T-1014[6] in the name of Malo-ong Canal Farmers Agrarian Reform Multi-Purpose Cooperative (MCFARMCO); and (*c*) directed the Registry of Deeds of the Province of Basilan (Basilan RD) to issue a new set of titles in favor of private respondent Basilan Agricultural Trading Corporation (BATCO).

The Facts

BATCO was the owner of several parcels of agricultural land, with an aggregate area of 206.5694 hectares (has.), situated in Malo-ong[7] Canal, Lamitan, Province of Basilan (Basilan) and covered by TCT Nos. T-7454,[8] T-7455,[9] and T-7456[10] (subject lands).[11] On September 20, 1989, the aforesaid lands were voluntarily offered for sale (VOS) to the government pursuant to Section 19[12] of Republic Act No. (RA) 6657,[13]

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[3] CA *rollo*, pp. 11-15. Penned by then DAR Secretary Horacio R. Morales, Jr.

[4] *Id.* at 65-66. Including the dorsal portion.

[5] *Id.* at 67-68. Including the dorsal portion.

[6] *Id.* at 69-70. Including the dorsal portion.

[7] "Maloong" in some parts of the records.

[8] CA *rollo*, pp. 49-50.

[9] *Id.* at 51-52. Including the dorsal portion.

[10] *Id.* at 53-54. Including the dorsal portion.

[11] *Id.* at 54-55. Including the dorsal portion.

[12] Section 19. *Incentives for Voluntary Offers for Sales*. — Landowners, other than banks and other financial institutions, who voluntarily offer their lands for sale shall be entitled to an additional five percent (5%) cash payment.

[13] "AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES."

otherwise known as the "Comprehensive Agrarian Reform Law of 1988," for a consideration of ₱12,360,000.00.[14] In 1992, BATCO was notified[15] that the 153.8801 hectare portion of the subject lands (subject portion), consisting of Lot Nos. 3, 4, and 5, was being placed under the compulsory acquisition scheme by the DAR.[16]

On January 6, 1993, BATCO reiterated its offer to sell the entire 206.5694 has. of the subject lands, but this time to include the improvements thereon, and for a higher consideration of ₱32,000,000.00.[17] On May 6, 1997, BATCO received a Notice of Land Valuation and Acquisition[18] dated April 15, 1997 from the DAR Provincial Agrarian Reform Officer (PARO), offering it the amount of ₱7,501,228.39 for the subject portion.[19] BATCO rejected[20] the valuation and opposed the same before the DAR Adjudication Board (DARAB).[21] In view of BATCO's rejection, the DAR – following the procedure under Section 16(e)[22] of

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[14] *Rollo*, p. 38.

[15] The 1992 Notice of Coverage, however, is not appended to the records of the case.

[16] *Rollo*, pp. 45, 55, and 327.

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

[18] *Id.* at 44.

[19] *Id.* at 55 and 272.

[20] *Id.* at 45. Landowner's Reply to Notice of Land Valuation and Acquisition.

[21] *Id.* at 48. To note, the records do not show the outcome of the case.

[22] Section 16. *Procedure for Acquisition of Private Lands.* — For purposes of acquisition of private lands, the following procedures shall be followed:

x x x x

e) Upon receipt by the landowner of the corresponding payment or, **in case of rejection** or no response from the landowner, **upon the deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds** in accordance with this Act, **the DAR shall take immediate possession of the land and shall**

RA 6657 – directed the Land Bank of the Philippines (LBP) to deposit the compensation in cash and in agrarian reform bonds[23] and thereafter requested[24] the Basilan RD to issue TCTs in the name of the Republic of the Philippines (Republic). In the meantime, the subject portion was surveyed and the beneficiaries were accordingly identified. After which, DAR Regional Director Rogelio E. Tamin (Director Tamin) directed the PARO to generate and issue the corresponding Certificates of Land Ownership (CLOAs) in favor of the identified beneficiaries even over BATCO's protest.[25]

On February 9, 1998, then DAR Secretary Ernesto Garilao directed Director Tamin and the PARO to proceed with the registration and distribution of the CLOAs to the said identified beneficiaries.[26]

In a letter dated March 2, 1998 to Director Tamin,[27] BATCO requested for the exemption of the subject portion, citing the case of *Luz Farms v. DAR Secretary*[28] (*Luz Farms*) and DAR Administrative Order No. (AO) 09, Series of 1993[29] (DAR AO 09-93).[30] On May 6, 1998, BATCO filed before the DAR

> **request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines**. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries. (Emphases supplied)

[23] *Rollo*, p. 46. See Certification of Deposit dated June 13, 1997.

[24] *Id.* at 326.

[25] *Id.* at 47-50. See Order dated December 3, 1997.

[26] *Id.* at 55.

[27] *Id.* at 56. A copy of BATCO's letter was not appended to the records. See Order dated August 12, 1998.

[28] G.R. No. 86889, December 4, 1990, 192 SCRA 51.

[29] "RULES AND REGULATIONS GOVERNING THE EXCLUSION OF AGRICULTURAL LANDS USED FOR LIVESTOCK, POULTRY AND SWINE RAISING FROM THE COVERAGE OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP)."

[30] *Rollo*, p. 86.

Regional Office a petition[31] for the exemption of the subject portion from the coverage of the government's Comprehensive Agrarian Reform Program (CARP). It alleged that almost all of the entire subject lands have been devoted to cattle and livestock production since their acquisition in 1987,[32] warranting their exemption from CARP coverage in accordance with the ruling in *Luz Farms* and the provisions of DAR AO 09-93. It claimed that as of March 15, 1998, there were 150 heads of cattle, 50 heads of swine, and 50 heads of goats in the subject portion.[33] Meanwhile, BATCO's certificates of title over the foregoing were cancelled and new titles were issued in the name of the Republic on July 17, 1998.[34]

The DAR Regional Director's Ruling

On August 12, 1998, Director Tamin issued an Order[35] (August 12, 1998 Order) dismissing BATCO's petition, holding that based on the DAR's ocular inspection/investigation, the subject portion was "not exclusively, directly and actually used for livestock, poultry, and swine raising as of June 15, 1988[,] the date of effectivity of RA 6657, and contrary to the spirit and intent of [DAR AO 09-93]." [36] Hence, the subject portion is not exempt from CARP coverage. Moreover, under DAR AO 09, Series of 1990, VOS of lands to the government, with the exception of lands within the retention limits, may no longer be withdrawn.[37]

BATCO appealed[38] to the Office of the DAR Secretary, reiterating[39] its claim that the subject portion was devoted to

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[31] *Id.* at 51-53. Docketed as PPARU Case No. 0905-0005-98.

[32] *Id.* at 52.

[33] *Id.* at 51-52.

[34] CA *rollo*, pp. 59-64. TCT Nos. T-12101, T-12102, and T-12103. Including the dorsal portions.

[35] *Rollo*, pp. 54-58.

[36] *Id.* at 57.

[37] *Id.* at 56-57.

[38] *Id.* at 59. See Notice of Appeal dated September 15, 1998.

[39] *Id.* at 60-68. See Appeal Memorandum.

cattle production prior to June 15, 1988 as evidenced by the appended certificates of ownership of large cattle (certificates of livestock ownership) which, according to it, "should have been the major basis in the determination of whether or not a particular landholding is devoted to such production, as claimed."[40]

In the interim, the Republic's certificates of title were cancelled on October 6, 1998 with the registration of the CLOAs in the name of MCFARMCO for the benefit of its 54 members. Accordingly, new certificates of title,[41] *i.e.*, TCT Nos. T-1012, T-1013, and T-1014, were issued in favor of MCFARMCO.

The DAR Secretary's Ruling

On February 25, 1999, then DAR Secretary Horacio R. Morales, Jr. (Secretary Morales) issued an Order[42] (February 25, 1999 Order), denying the appeal on the ground that BATCO failed: *1*) to present substantial evidence to show that the subject portion was exclusively, directly and actually used for livestock, poultry, and swine raising prior to June 15, 1988; and *2*) to comply with the livestock and infrastructure requirements under DAR AO 09-93.[43] Secretary Morales observed that: (*a*) none

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[40] *Id.* at 65.

[41] CA *rollo*, pp. 65-70. Including the dorsal portions.

[42] *Id.* at 11-15.

[43] Part III (B) and (C) of DAR AO 09-93 provide:

B. In determining the areas qualified for exclusion under this Administrative Order, the following ratios of land, livestock, poultry, and swine raising shall be adopted:

1.0 Grazing

1.1 Cattle, Carabao and Horse Raising

— cattle, carabao and horses (regardless of age) — the maximum ratio is one (1) head to one (1) hectare.

1.2 Sheep and Goat Raising

— sheep and goat (regardless of age) — the maximum ratio is seven (7) heads to one (1) hectare.

of the certificates of livestock ownership appended to the records predates the effectivity of RA 6657;[44] (*b*) more than

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2.0 Infrastructure

2.1 Cattle, Horses and Carabao Raising — a ratio of 21 heads, for every 1.7815 hectares of infrastructure

x x x x

2.2 Swine Raising — a ratio of 21 heads of hogs for every 0.5126 hectare of infrastructure.

x x x x

2.3 Sheep and Goat Raising — a ratio of 147 heads for every 0.7205 hectare of infrastructure.

x x x x

2.4 Poultry Raising — a ratio of 500 layers for every 0.53 hectare of infrastructure or 1,000 broilers for every 1.428 hectares of infrastructure.

x x x x

C. Any act of a landowner to change or convert his agricultural land to livestock, poultry and swine raising after, 15 June 1988, with the intent to avoid the application of R.A. No. 6657 to his landholdings, shall be considered invalid and illegal and shall not affect the coverage of his landholding under CARP Conversion of crop lands to livestock, poultry and swine raising after the effectivity of this Administrative Order shall be governed by DAR Administrative Order Nos. 1 and 2, Series of 1990.

However, in lieu of Documentary Requirement Nos. 5 and 6 under Section VII of said Administrative Order No. 1-90, *i.e.,* Certification from the Department of Agriculture (DA) or Housing Land Use Regulatory Board (HLURB) respectively, the consent of Agrarian Reform Beneficiaries and/or their waiver of rights, and a certification from the Regional Director of the DA that the poultry, livestock or swine project is of greater economic value than the present agricultural usage, shall be required.

[44] *Rollo,* p. 70.

half[45] of the cattle "was registered and presumably brought into the property only on March 13, 1998 onwards, barely three months before [BATCO] filed [its] application for exemption with the DAR Provincial Office on May 6, 1998";[46] and (*c*) BATCO's act of submitting the subject lands (including the subject portion) under the VOS scheme is an admission that they were subject to CARP coverage.[47] Finding that the act of changing or converting the lands to livestock, poultry and swine raising after June 15, 1988 was without an approved conversion, Secretary Morales directed the Municipal Agrarian Reform Officer concerned to conduct an investigation[48] for possible violations of Section 73(c) and (e) of RA 6657.[49]

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[45] *Id.* The dates of the certificates of ownership of large cattle and the corresponding heads of cattle thereon are as follows:

July 21, 1988	10	
July 22, 1988	17	
March 4, 1990	19	
March 9, 1990	30	
March 13, 1998	55	55
April 1, 1998	6	6
April 2, 1998	19	19
	156	80

[46] *Id.* at 71.

[47] *Id*.

[48] *Id.* at 72.

[49] Section 73(c) and (e) of RA 6657 provide:

Sec. 73. *Prohibited Acts and Omissions*. — The following are prohibited:

x x x x

(c) The conversion by any landowner of his agricultural land into any non-agricultural use with intent to avoid the application of this Act to his landholdings and to dispossess his tenant farmers of the land tilled by them.

x x x x

(e) The sale, transfer, conveyance or change of the nature of lands outside of urban centers and city limits either in whole or in part

BATCO filed a motion for reconsideration[50] and a supplemental motion,[51] averring that prior to its acquisition of the subject lands from the Marcelo Mendoza Development Corporation (Mendoza Plantation) on February 4, 1987, the latter was already engaged in livestock raising and had facilities such as shade/barn, feed storage, corals and gates, which BATCO subsequently improved and developed.[52] BATCO further admitted that only a portion (about 100 has.) of the subject lands was devoted to livestock raising, for which the corresponding exemption was prayed.[53] It explained that the necessary documents were in the possession of the previous owner, hence, it was unable to produce the same before the DAR Regional Director.[54] In support of the foregoing motions, BATCO submitted,[55] among others, Certificates of Ownership of Large Cattle Nos. B-3144051 to B-3144150[56] dated between July 10, 1987 to August 15, 1987,[57] and the Joint Affidavit[58] of barangay officials of Barangays Tumakid, Maloong San Jose, Maloong Canal, and Buahan, all in Lamitan, Basilan declaring that BATCO is engaged in large cattle raising. Nonetheless, BATCO affirmed that it is still offering 100 has. of the subject lands for the CARP.[59]

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after the effectivity of this Act. The date of the registration of the deed of conveyance in the Register of Deeds with respect to titled lands and the date of the issuance of the tax declaration to the transferee of the property with respect to unregistered lands, as the case may be, shall be conclusive for the purpose of this Act.

x x x x

[50] *Rollo,* pp. 74-76.

[51] *Id.* at 77-82.

[52] *Id.* at 78.

[53] *Id.* at 81.

[54] *Id.* at 74-75.

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

[56] Not appended to the records of the case.

[57] *Rollo*, pp. 85-86.

[58] CA *rollo*, pp. 216-217.

[59] *Rollo,* p. 81.

On August 31, 1999, Secretary Morales issued an Order[60] denying BATCO's motion for reconsideration. He gave no credence to the certificates of livestock ownership belatedly submitted by BATCO, observing that the absence of a sufficient justification for its failure to present such certificates earlier casts doubt to their veracity and genuineness.[61] Further, he held that *laches* had set in, especially considering that the petition was filed only in 1998, or long after the orders for coverage were issued in 1992.[62] Finally, he pointed out that BATCO failed to present proof that it has met the infrastructure requirements under DAR AO 09-93.[63]

The Proceedings Before the CA

BATCO's appeal was initially dismissed[64] but subsequently reinstated by the CA.[65]

On September 6, 2005, the CA issued a Decision[66] reversing and setting aside Secretary Morales' February 25, 1999 Order. It ruled that *estoppel* does not lie against BATCO considering that the pertinent law and regulations did not provide for a prescriptive period for the filing of exemption from CARP coverage.[67] Moreover, in the light of *Luz Farms*, a petition for

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[60] *Id.* at 83-90.

[61] *Id.* at 87.

[62] *Id.* at 87-88.

[63] *Id.* at 89.

[64] CA *rollo*, pp. 353-356. See Resolution dated December 29, 1999. Penned by Associate Justice Ruben T. Reyes (now retired Associate Justice of the Supreme Court), with Associate Justices Teodoro P. Regino and Edgardo P. Cruz, concurring.

[65] *Id.* at 365-367. See Resolution dated April 6, 2004. Penned by Associate Justice Ruben T. Reyes (now retired Associate Justice of the Supreme Court), with Associate Justices Edgardo P. Cruz and Rosalinda Asuncion-Vicente, concurring.

[66] *Rollo*, pp. 23-37.

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

exemption is not even necessary so long as the landholdings are devoted to livestock, poultry, and swine raising, thus, rendering DAR AO 09-93 ineffective and inconsequential.[68]

The CA gave credence to BATCO's documentary evidence to support its claim of the existence and presence of livestock in the lands in question starting the year 1987 consisting of: (*a*) the Certification[69] dated March 26, 1998 of the Municipal Agriculturist of Lamitan, Basilan (Municipal Agriculturist Certification) as to the number of cattle found in the area; (*b*) the photographs[70] of the livestock therein allegedly taken on May 31, 2001 and July 5, 2005; and (*c*) the affidavits[71] of former municipal mayors[72] of Lamitan, Basilan – namely, Wilfrido C. Furigay and Ramon Garcia, Jr. – attesting to the existence and presence of livestock in the subject lands starting the year 1987. The CA likewise condemned the cancellation of BATCO's certificates of title prior to full payment of the compensation and prior to the decision on the petition for exemption as violative of BATCO's right to procedural and substantive due process.[73] Corollarily, the CA cancelled TCT Nos. T-1012, T-1013 and T-1014 in the name of MCFARMCO and directed the Basilan RD to issue a new set of titles in BATCO's favor.[74]

The Issue Before the Court

The essential issue in this case is whether or not the CA gravely abused its discretion in excluding/exempting the subject lands from CARP coverage despite BATCO's admission that

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

[69] CA *rollo*, p. 218.

[70] *Id.* at 205-212.

[71] *Id.* at 213-215.

[72] *Id.* at 221. Mayor Inocente J. Ramos, on the other hand, merely certified as to the number of cattle owned by BATCO as of January 6, 2003.

[73] *Rollo*, p. 33.

[74] *Id.* at 36.

only a portion thereof was devoted to livestock raising and considering its previous voluntary offer of the lands to the government under the VOS scheme.

The Court's Ruling

The petition is meritorious.

Under RA 6657, the CARP shall cover all public and private agricultural lands, including other lands of the public domain suitable for agriculture, regardless of tenurial arrangement and commodity produced.[75] Section 3(c) thereof defines "agricultural land" as land devoted to agricultural activity and not classified as mineral, forest, residential, commercial or industrial land. Lands devoted to livestock, poultry, and swine raising are classified as industrial, not agricultural lands and, thus, exempt from agrarian reform. As such, the DAR has no power to regulate livestock farms.[76]

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[75] Section 4 of RA 6657 provides:

SEC. 4. *Scope*. – The Comprehensive Agrarian Reform Law of 1988 shall cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture.

More specifically, the following lands are covered by the Comprehensive Agrarian Reform Program:

(a) All alienable and disposable lands of the public domain devoted to or suitable for agriculture. No reclassification of forest or mineral lands to agricultural lands shall be undertaken after the approval of this Act until Congress, taking into account ecological, developmental and equity considerations, shall have determined by law, the specific limits of the public domain;

(b) All lands of the public domain in excess of the specific limits as determined by Congress in the preceding paragraph;

(c) All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon.

[76] *DAR v. Sutton*, G.R. No. 162070, October 19, 2005, 473 SCRA 392, 400.

Nevertheless, the determination of the land's classification as either an agricultural or industrial land – and, in turn, whether or not the land falls under agrarian reform exemption – must be preliminarily threshed out before the DAR, particularly, before the DAR Secretary. Verily, issues of exclusion or exemption partake the nature of Agrarian Law Implementation (ALI) cases which are well within the competence and jurisdiction of the DAR Secretary.[77] Towards this end, the latter is ordained to exercise his legal mandate of excluding or exempting a property from CARP coverage based on the factual circumstances of each case and in accordance with the law and applicable jurisprudence.[78] Thus, considering too his technical expertise on the matter, courts cannot simply brush aside his pronouncements regarding the status of the land in dispute, *i.e.*, as to whether or not it falls under CARP coverage. As held in *DAR v. Oroville Development Corp.*:[79]

> **We cannot simply brush aside the DAR's pronouncements regarding the status of the subject property as not exempt from CARP coverage considering that the DAR has unquestionable technical expertise on these matters**. Factual findings of administrative agencies are generally accorded respect and even finality by this Court, if such findings are supported by substantial evidence, a situation that obtains in this case. **The factual findings of the Secretary of Agrarian Reform who, by reason of his official position, has acquired expertise in specific matters within his jurisdiction, deserve full respect and, without justifiable reason, ought not to be altered, modified or reversed**. (Emphases supplied)

It is settled that in order to be entitled to exclusion/exemption, it must be shown that the land is exclusively devoted to livestock, swine or poultry raising.[80] The land must be shown to have

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[77] *Milestone Farms, Inc. v. Office of the President*, G.R. No. 182332, February 23, 2011, 644 SCRA 217, 239.

[78] *Id.* at 240.

[79] 548 Phil. 51, 58 (2007).

[80] See *DAR v. Sutton*, *supra* note 76, at 399.

been used for such purposes as of the effectivity of RA 6657, or on June 15, 1988,[81] in order to prevent any fraudulent declaration of areas supposedly used for these purposes as well as to protect the rights of agrarian beneficiaries therein. This is in consonance with Section 73(c) of RA 6657 which prohibits the conversion by any landowner of his agricultural land into any non-agricultural use with intent to avoid the application of RA 6657 to his landholdings and to dispossess his tenant farmers of the land tilled by them.

A thorough review of the records reveals no substantial evidence to show that the entirety of the subject lands were exclusively devoted to livestock production since June 15, 1988 so as to warrant their exclusion/exemption from CARP coverage and the consequent cancellation of MCFARMCO's certificates of title. In fact, contrary to its original submission that almost all of the entire 206.5694 has. landholding has been devoted to cattle and livestock production since their acquisition in 1987,[82] BATCO subsequently admitted in its Supplemental Motion for Reconsideration of the Order dated 25 February 1999[83] (supplemental motion for reconsideration) that only a portion of the subject lands was actually devoted to livestock raising, for which the exemption of not less than 100 has. was sought.[84] On this score alone, the CA gravely abused its discretion in declaring the subject lands as exempt from CARP coverage and ordering the cancellation of MCFARMCO's certificates of title and the issuance of new titles in BATCO's favor.

It must be further pointed out that the subject lands were offered by BATCO to the government under the VOS scheme on September 20, 1989,[85] which offer was reiterated on January

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[81] See *Junio v. Garilao*, G.R. No. 147146, July 29, 2005, 465 SCRA 173.

[82] *Rollo*, p. 52.

[83] *Id.* at 77-82.

[84] *Id.* at 81.

[85] *Id.* at 38.

6, 1993[86] without any claim of exemption, notwithstanding the existence of the *Luz Farms* ruling (which was promulgated on December 4, 1990). In fact, the subject portion was acquired by the government in 1992 and still BATCO never sought exemption under *Luz Farms*. While it protested the valuation of the DAR[87] during its VOS, it did not, at that time, seek any exemption from CARP coverage. BATCO only raised the claimed exemption when it filed the petition for exemption before the DAR Regional Director on May 6, 1998. However, the petition was filed on the basis of DAR AO 09-93,[88] and accordingly denied by the DAR Regional Director[89] and the DAR Secretary[90] for failing to meet the requirements set forth therein. While the Court struck down DAR AO 09-93 as unconstitutional in the case of *DAR v. Sutton*[91] (*Sutton*) on October 19, 2005, the DAR Decisions and even the CA Decision dated September 6, 2005 in CA-G.R. SP No. 55377 were all rendered at the time that the said AO was still subsisting and in full force and effect. Consequently, in view of the prospectivity principle of judicial decisions[92] and the operative fact doctrine,[93] the petition for exemption must be resolved under the provisions of the said AO.

Under DAR AO 09-93, in order to be entitled to exemption, the applicant must prove that: (*a*) the land sought to be excluded from CARP coverage is exclusively, directly and actually used

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

[87] *Id.* at 47-50. See Order dated December 3, 1997.

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

[89] *Id.* at 54-58. See Order dated August 12, 1998.

[90] *Id.* at 69-73 (Order dated February 25, 1999) and *id.* at 83-90 (Order dated August 31, 1999).

[91] *Supra* note 76.

[92] See *Co v. CA*, G.R. No. 100776, October 28, 1993, 227 SCRA 444.

[93] See *Chavez v. Judicial and Bar Council*, G.R. No. 202242, July 17, 2012, 676 SCRA 579.

for livestock, poultry and swine raising as of June 15, 1988; (*b*) there should be one head of cattle per hectare of land and seven heads of goat per hectare of land; and (*c*) there should be 21 heads of cattle for every 1.7815 has. of infrastructure, 147 heads of goat or sheep for every 0.7205 hectare of infrastructure, and 21 heads of swine for every 0.5126 hectare of infrastructure. Consistent with the prohibition under Section 73(c) of RA 6657, DAR AO 09-93 likewise provided that "[a]ny act of a landowner to change or convert his agricultural land to livestock, poultry and swine raising after [June 15, 1988], with the intent to avoid the application of [RA 6657] to his landholdings, shall be considered invalid and illegal and shall not affect the coverage of his landholding under CARP."

It bears noting that the denial of the petition for exemption by the DAR Regional Director was based on an ocular inspection/ investigation conducted by the DAR provincial personnel in Basilan.[94] The rationale for the denial of the petition was also clearly outlined in the February 25, 1999 Order[95] of the DAR Secretary who observed that: (*a*) none of the 156 certificates of livestock ownership submitted by BATCO predates the effectivity of RA 6657;[96] (*b*) more than half (80 out of 156)[97] of the cattle was brought into the property only a few months before the petition was filed; (*c*) the municipal agriculturist certified the presence of only 120 heads of cattle,[98] which is short of the minimum requirement under DAR AO 09-93;[99] and (*d*) no evidence was presented to prove the presence of hogs and goats as well as of BATCO having met the infrastructure requirements under DAR AO 09-93.[100] There being no cogent

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[94] *Rollo*, p. 57.

[95] CA *rollo*, pp. 11-15.

[96] *Rollo*, p. 70.

[97] *Id.* See also footnote 45.

[98] CA *rollo,* p. 218.

[99] *Rollo*, p. 71.

[100] *Id.*

reason to deviate from the foregoing, the Court is impelled to sustain the DAR Secretary's findings.

To note, in denying BATCO's motion for reconsideration, the DAR Secretary also observed that, contrary to BATCO's claim that the additional certificates of livestock ownership it undertook to produce further were in the name of the Mendoza Plantation from which it purchased the subject lands in 1987, the certificates eventually submitted with its supplemental motion for reconsideration were actually under its name. Accordingly, the DAR Secretary cannot be faulted for not giving credence to the same.

In fact, even if the Court were to apply *Sutton* retroactively and disregard DAR AO 09-93, the pieces of evidence relied upon by the CA actually failed to establish the theory that the entirety of the subject lands or specific portions thereof are exclusively devoted to the raising of cattle, swine and goat as of June 15, 1988. The Court notes that the Municipal Agriculturist Certification[101] dated March 26, 1998, which the CA appreciated in favor of BATCO, merely stated that the subject lands are "suitable for cattle production since before it was acquired and transferred to BATCO PLANTATION."[102] On the other hand, the Affidavits[103] of former municipal mayors confirming their issuance of several certificates of livestock ownership during their respective terms were only presented before the CA and were not backed up by copies of the certificates themselves. Moreover, while the former municipal mayors attested to the existence and presence of livestock in the subject lands starting the year 1987, they commonly described the subject lands as a vast tract of land principally devoted to coconut production, which was extensively inter-cropped with coffee, rubber, black pepper, and cacao trees after BATCO's acquisition.[104] These

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[101] CA *rollo*, p. 218.

[102] *Id.*

[103] *Id.* at 213-217.

[104] *Id.*

descriptions are insufficient to establish BATCO's claimed exemption as what is required is exclusive devotion of the lands to the raising of cattle, swine and goat as of June 15, 1988.

More pertinently, the Court further notes that contrary to BATCO's representations in its petition for exemption, the primary land use of the subject lands[105] as declared by BATCO itself in its landowner's reply to notice of land valuation and acquisition[106] (landowners reply) dated May 6, 1997, negates its own claim that the said lands were exclusively devoted for the raising of cattle, swine and goat, *viz.*:

Lot	Land Use	Area Acq'd
3	Cocoland	8.9917
	Cocoland/Coffee	10.0000
	Sub-total	18.9917
4	Cocoland	44.4733
	Coco/Coffee	8.0000
	Coco/Rubber	1.5000
	Coco/Black Pepper	1.5000
	Coco/Black Pepper/ Rubber	1.5000
	Sub-total	56.9733
5	Cocoland	10.0000
	Cocoland/Coffee	67.9151
	Sub-total	77.9151
	GRAND TOTAL	153.8801[107] =======

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[105] Namely, Lot Nos. 3, 4, and 5 of TCT Nos. T-7454, T-7455, and T-7456.

[106] *Rollo*, p. 45.

[107] *Id*.

In this accord, the Court finds that BATCO's claim of a different land use in its petition for exemption was only a mere afterthought which, therefore, cannot be countenanced.

Finally, the Court cannot give credence to BATCO's claim of denial of due process when its certificates of title were cancelled and new ones were issued in favor of the Republic prior to the issuance of the DAR Regional Director's August 12, 1998 Order. While the final resolution of petitions for exemption, as a rule, should precede the placing of the property under the CARP and the issuance of the CLOA to the beneficiaries,[108] it bears stressing that the subject lands had already been placed under the CARP coverage in 1992, or long before the petition for exemption was filed by BATCO on May 6, 1998. In the meantime, the actions undertaken by BATCO such as the VOS on January 6, 1993,[109] the counter-offer of valuation for the subject lands according to their declared land uses as contained in the afore-mentioned landowner's reply[110] dated May 6, 1997, the letter-protest dated May 23, 1997 (which challenged the survey of the lands), and the identification of the beneficiaries grounded on its alleged failure to choose the retention area,[111] all affirmed the coverage of the subject lands under the CARP. Considering further that the claim of denial of due process was never raised in the proceedings before the DAR but belatedly brought up only in its Memorandum[112] dated July 28, 2005 filed before the CA[113] and in the absence of

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[108] See *DAR v. Estate of Pureza Herrera*, G.R. No. 149837, July 8, 2005, 463 SCRA 107, 123-124.

[109] *Rollo*, pp. 41-42.

[110] *Id.* at 45.

[111] *Id.* at 47.

[112] CA *rollo*, pp. 166-188.

[113] It was not even raised in BATCO's petition for review before the CA. See *id.* at 25-35.

showing that the same prevented it from presenting its case before the DAR officials, it cannot be said that BATCO was denied due process. Neither was it deprived of its properties without just compensation given that after it rejected the DAR's valuation on May 6, 1997, the DAR immediately caused the deposit of the compensation in cash and in agrarian reform bonds on June 11, 1997.[114] All told, the denial of BATCO's petition for exemption was proper. In view of its contrary ruling, and the absence of any substantial bases therefor, the Court finds that the CA gravely abused its discretion in reversing the DAR Secretary's February 25, 1999 Order.

WHEREFORE, the petition is **GRANTED**. The Decision dated September 6, 2005 of the Court of Appeals in CA-G.R. SP No. 55377 is hereby **REVERSED AND SET ASIDE** and a new judgment is rendered **REINSTATING** the Order dated February 25, 1999 of the Department of Agrarian Reform Secretary dismissing private respondent Basilan Agricultural Trading Corporation's petition for exemption.

SO ORDERED.

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

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[114] *Rollo*, p. 46.

SECOND DIVISION

[G.R. No. 171206. September 23, 2013]

HEIRS OF THE LATE SPOUSES FLAVIANO MAGLASANG and SALUD ADAZA-MAGLASANG, namely, OSCAR A. MAGLASANG, EDGAR A. MAGLASANG, CONCEPCION CHONA A. MAGLASANG, GLENDA A. MAGLASANG-ARNAIZ, LERMA A. MAGLASANG, FELMA A. MAGLASANG, FE DORIS A. MAGLASANG, LEONILO A. MAGLASANG, MARGIE LEILA A. MAGLASANG, MA. MILALIE A. MAGLASANG, SALUD A. MAGLASANG, and MA. FLASALIE A. MAGLASANG, REPRESENTING THE ESTATES OF THEIR AFORE-NAMED DECEASED PARENTS, *petitioners, vs.* **MANILA BANKING CORPORATION, now substituted by FIRST SOVEREIGN ASSET MANAGEMENT [SPV-AMC], INC. [FSAMI],** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL PROCEEDINGS; CLAIMS AGAINST ESTATE; SECTION 7, RULE 86 OF THE RULES COVERS ALL SECURED CLAIMS, WHETHER BY MORTGAGE OR ANY OTHER FORM OF COLLATERAL, WHICH A CREDITOR MAY ENFORCE AGAINST THE ESTATE OF THE DECEASED DEBTOR.—** Claims against deceased persons should be filed during the settlement proceedings of their estate. Such proceedings are primarily governed by special rules found under Rule 73 to 90 of the Rules, although rules governing ordinary actions may, as far as practicable, apply suppletorily. Among these special rules, Section 7, Rule 86 of the Rules (Section 7, Rule 86) provides the rule in dealing with secured claims against the estate: SEC. 7. *Mortgage debt due from estate*.—**A creditor holding a claim against the deceased secured by a mortgage or other collateral security**. x x x As the foregoing generally speaks of "[a] creditor

holding a claim against the deceased secured by a mortgage or other collateral security" as above-highlighted, it may be reasonably concluded that the aforementioned section covers all secured claims, whether by mortgage or any other form of collateral, which a creditor may enforce against the estate of the deceased debtor. On the contrary, nowhere from its language can it be fairly deducible that the said section would – as the CA interpreted – narrowly apply only to mortgages made by the administrator over any property belonging to the estate of the decedent. To note, mortgages of estate property executed by the administrator, are also governed by Rule 89 of the Rules, captioned as "Sales, Mortgages, and Other Encumbrances of Property of Decedent." In this accord, it bears to stress that the CA's reliance on *Philippine National Bank v. CA (PNB)* was misplaced as the said case did not, in any manner, limit the scope of Section 7, Rule 86. It only stated that the aforesaid section equally applies to cases where the administrator mortgages the property of the estate to secure the loan he obtained. Clearly, the pronouncement was a ruling of inclusion and not one which created a distinction. It cannot, therefore, be doubted that it is Section 7, Rule 86 which remains applicable in dealing with a creditor's claim against the mortgaged property of the deceased debtor, as in this case, as well as mortgages made by the administrator, as that in the *PNB* case.

2. **ID.; ID.; ID.; THE THREE REMEDIES/OPTIONS THAT A SECURED CREDITOR MAY ALTERNATIVELY ADOPT FOR THE SATISFACTION OF HIS INDEBTEDNESS ARE DISTINCT, INDEPENDENT AND MUTUALLY EXCLUSIVE FROM EACH OTHER THAT THE ELECTION OF ONE EFFECTIVELY BARS THE EXERCISE OF THE OTHERS.—** Jurisprudence breaks down the rule under Section 7, Rule 86 and explains that the secured creditor has three remedies/options that he may alternatively adopt for the satisfaction of his indebtedness. In particular, he may choose to: (*a*) waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim; (*b*) foreclose the mortgage judicially and prove the deficiency as an ordinary claim; and (*c*) rely on the mortgage exclusively, or other security and foreclose the same before it is barred by prescription, without the right to file a claim for any deficiency. It must, however, be emphasized that these remedies are distinct, independent

and mutually exclusive from each other; thus, the election of one effectively bars the exercise of the others. With respect to real properties, the Court in *Bank of America v. American Realty Corporation* pronounced: In our jurisdiction, the remedies available to the mortgage creditor are deemed **alternative and not cumulative. Notably, an election of one remedy operates as a waiver of the other.** For this purpose, a remedy is deemed chosen upon the filing of the suit for collection or upon the filing of the complaint in an action for foreclosure of mortgage, pursuant to the provision of Rule 68 of the 1997 Rules of Civil Procedure. As to extrajudicial foreclosure, such remedy is deemed elected by the mortgage creditor upon filing of the petition not with any court of justice but with the Office of the Sheriff of the province where the sale is to be made, in accordance with the provisions of Act No. 3135, as amended by Act No.4118.

3. **ID.; ID.; ID.; THE PLAIN RESULT OF ADOPTING THE LAST MODE OF FORECLOSURE IS THAT THE CREDITOR WAIVES HIS RIGHT TO RECOVER ANY DEFICIENCY FROM THE ESTATE.—** Anent the third remedy, it must be mentioned that the same includes the option of extra-judicially foreclosing the mortgage under Act No. 3135, as availed of by respondent in this case. However, the plain result of adopting the last mode of foreclosure is that the creditor waives his right to recover any deficiency from the estate. These precepts were discussed in the *PNB* case, citing *Perez v. Philippine National Bank* which overturned the earlier *Pasno v. Ravina* ruling.

4. **ID.; ID.; ID.; THE OPERATION OF ACT NO. 3135 DOES NOT ENTIRELY DISCOUNT THE APPLICATION OF SECTION 7, RULE 86, OR VICE-VERSA; RATHER THE TWO COMPLEMENT EACH OTHER WITHIN THEIR RESPECTIVE SPHERES OF OPERATION.—** To obviate any confusion, the Court observes that the operation of Act No. 3135 does not entirely discount the application of Section 7, Rule 86, or vice-versa. Rather, the two complement each other within their respective spheres of operation. On the one hand, Section 7, Rule 86 lays down the options for the secured creditor to claim against the estate and, according to jurisprudence, the availment of the third option bars him from claiming any deficiency amount. On the other hand, after the third option is chosen, the

procedure governing the manner in which the extra-judicial foreclosure should proceed would still be governed by the provisions of Act No. 3135. Simply put, Section 7, Rule 86 governs the parameters and the extent to which a claim may be advanced against the estate, whereas Act No. 3135 sets out the specific procedure to be followed when the creditor subsequently chooses the third option – specifically, that of extra-judicially foreclosing real property belonging to the estate. The application of the procedure under Act No. 3135 must be concordant with Section 7, Rule 86 as the latter is a special rule applicable to claims against the estate, and at the same time, since Section 7, Rule 86 does not detail the procedure for extra-judicial foreclosures, the formalities governing the manner of availing of the third option – such as the place where the application for extra-judicial foreclosure is filed, the requirements of publication and posting and the place of sale – must be governed by Act No. 3135.

5. **ID.; ID.; ID.; HAVING UNEQUIVOCALLY OPTED TO EXERCISE THE THIRD OPTION OF EXTRA-JUDICIAL FORECLOSURE UNDER SECTION 7, RULE 86, RESPONDENT IS NOW PRECLUDED FROM FILING A SUIT TO RECOVER ANY DEFICIENCY AMOUNT.—** In this case, respondent sought to extra-judicially foreclose the mortgage of the properties previously belonging to Sps. Maglasang (and now, their estates) and, therefore, availed of the third option. Lest it be misunderstood, it did not exercise the first option of directly filing a claim against the estate, as petitioners assert, since it merely notified the probate court of the outstanding amount of its claim against the estate of Flaviano and that it was currently restructuring the account. Thus, having unequivocally opted to exercise the third option of extra-judicial foreclosure under Section 7, Rule 86, respondent is now precluded from filing a suit to recover any deficiency amount as earlier discussed.

6. **CIVIL LAW; REAL ESTATE MORTGAGE LAW (ACT NO. 3135); THE STIPULATED VENUE AND THAT PROVIDED UNDER ACT NO. 3135 CAN BE APPLIED ALTERNATIVELY; THE AUCTION SALE CONDUCTED IN ORMOC CITY WHICH IS WITHIN THE TERRITORIAL JURISDICTION OF THE PROVINCE OF LEYTE IS SUFFICIENT COMPLIANCE WITH THE LAW.—** As may be gleaned from the records, the stipulation under the real estate mortgage executed by Sps. Maglasang which

fixed the place of the foreclosure sale at Tacloban City lacks words of exclusivity which would bar any other acceptable fora wherein the said sale may be conducted, to wit: It is hereby agreed that in case of foreclosure of this mortgage under Act 3135, the auction sale shall be held at the capital of the province if the property is within the territorial jurisdiction of the province concerned, or shall be held in the city if the property is within the territorial jurisdiction of the city concerned; x x x. Case law states that absent such qualifying or restrictive words to indicate the exclusivity of the agreed forum, the stipulated place should only be as an additional, not a limiting venue. As a consequence, the stipulated venue and that provided under Act No. 3135 can be applied alternatively. In particular, Section 2 of Act No. 3135 allows the foreclosure sale to be done within the province where the property to be sold is situated, *viz.*: SEC. 2. Said sale cannot be made legally *outside of the province* which the property sold is situated; and in case the place within said province in which the sale is to be made is subject to stipulation, such sale shall be made in said place or in the municipal building of the municipality in which the property or part thereof is situated. In this regard, since the auction sale was conducted in Ormoc City, which is within the territorial jurisdiction of the Province of Leyte, then the Court finds sufficient compliance with the above-cited requirement.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioners.
Puyat Jacinto & Santos for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated July 20, 2005 and Resolution[3] dated January

[1] *Rollo*, pp. 3-25.
[2] *Id.* at 39-50. Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Vicente L. Yap and Enrico A. Lanzanas, concurring.
[3] *Id.* at 52-53.

4, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 50410 which dismissed petitioners' appeal and affirmed the Decision[4] dated April 6, 1987 of the Regional Trial Court of Ormoc City, Branch 12 (RTC) directing petitioners to jointly and severally pay respondent Manila Banking Corporation the amount of ₱434,742.36, with applicable interests, representing the deficiency of the former's total loan obligation to the latter after the extra-judicial foreclosure of the real estate mortgage subject of this case, including attorney's fees and costs of suit.

The Facts

On June 16, 1975, spouses Flaviano and Salud Maglasang (Sps. Maglasang) obtained a credit line from respondent[5] in the amount of ₱350,000.00 which was secured by a real estate mortgage[6] executed over seven of their properties[7] located in Ormoc City and the Municipality of Kananga, Province of Leyte.[8] They availed of their credit line by securing loans in the amounts of ₱209,790.50 and ₱139,805.83 on October 24, 1975 and March 15, 1976, respectively,[9] both of which becoming due and demandable within a period of one year. Further, the parties agreed that the said loans would earn interest at 12% per annum (p.a.) and an additional 4% penalty would be charged upon default.[10]

After Flaviano Maglasang (Flaviano) died intestate on February 14, 1977, his widow Salud Maglasang (Salud) and their surviving children, herein petitioners Oscar (Oscar), Concepcion Chona,

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[4] *Id*. at 71-76. Penned by Judge Francisco C. Pedrosa.

[5] *Id*. at 401-402. Now substituted in these proceedings by First Sovereign Asset Management (SPV-AMC), Inc. (FSAMI). See Resolution dated October 4, 2010.

[6] *Id*. at 54-55.

[7] *Id*. at 56-57.

[8] *Id*. at 6 and 40.

[9] *Id*. at 7.

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

Lerma, Felma, Fe Doris, Leolino, Margie Leila, Ma. Milalie, Salud and Ma. Flasalie, all surnamed Maglasang, and Glenda Maglasang-Arnaiz, appointed[11] their brother petitioner Edgar Maglasang (Edgar) as their attorney-in-fact.[12] Thus, on March 30, 1977, Edgar filed a verified petition for letters of administration of the intestate estate of Flaviano before the then Court of First Instance of Leyte, Ormoc City, Branch 5 (probate court), docketed as Sp. Proc. No. 1604-0.[13] On August 9, 1977, the probate court issued an Order[14] granting the petition, thereby appointing Edgar as the administrator[15] of Flaviano's estate.

In view of the issuance of letters of administration, the probate court, on August 30, 1977, issued a Notice to Creditors[16] for the filing of money claims against Flaviano's estate. Accordingly, as one of the creditors of Flaviano, respondent notified[17] the probate court of its claim in the amount of ₱382,753.19 as of October 11, 1978, exclusive of interests and charges.

During the pendency of the intestate proceedings, Edgar and Oscar were able to obtain several loans from respondent, secured by promissory notes[18] which they signed.

In an Order[19] dated December 14, 1978 (December 14, 1978 Order), the probate court terminated the proceedings with the surviving heirs executing an extra-judicial partition of the properties of Flaviano's estate. The loan obligations owed by

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[11] Records, pp. 325-327. See Bill of Exhibits and Minutes.

[12] *Rollo*, p. 97.

[13] *Id.* at 41.

[14] CA *rollo*, pp. 146-147. Penned by Judge Numeriano G. Estenzo.

[15] *Id.* at 148.

[16] *Id.* at 149.

[17] Records, p. 344. See Bill of Exhibits and Minutes.

[18] *Id.* at 328-342.

[19] *Id.* at 346.

the estate to respondent, however, remained unsatisfied due to respondent's certification that Flaviano's account was undergoing a restructuring. Nonetheless, the probate court expressly recognized the rights of respondent under the mortgage and promissory notes executed by the Sps. Maglasang, specifically, its "right to foreclose the same within the statutory period."[20]

In this light, respondent proceeded to extra-judicially foreclose the mortgage covering the Sps. Maglasang's properties and emerged as the highest bidder at the public auction for the amount of ₱350,000.00.[21] There, however, remained a deficiency on Sps. Maglasang's obligation to respondent. Thus, on June 24, 1981, respondent filed a suit to recover the deficiency amount of ₱250,601.05 as of May 31, 1981 against the estate of Flaviano, his widow Salud and petitioners, docketed as Civil Case No. 1998-0.[22]

The RTC Ruling and Subsequent Proceedings

After trial on the merits, the RTC (formerly, the probate court)[23] rendered a Decision[24] on April 6, 1987 directing the petitioners to pay respondent, jointly and severally, the amount of ₱434,742.36 with interest at the rate of 12% p.a., plus a 4% penalty charge, reckoned from September 5, 1984 until fully paid.[25] The RTC found that it was shown, by a preponderance of evidence, that petitioners, after the extra-judicial foreclosure of all the properties mortgaged, still have an outstanding obligation in the amount and as of the date as above-stated. The RTC also found in order the payment of interests and penalty charges

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[20] *Id*. at 344.

[21] *Rollo*, p. 42.

[22] *Id*.

[23] *Ibid*.

[24] *Id*. at 71-76.

[25] *Id*. at 76.

as above-mentioned as well as attorney's fees equivalent to 10% of the outstanding obligation.[26]

Dissatisfied, petitioners elevated the case to the CA on appeal, contending,[27] *inter alia*, that the remedies available to respondent under Section 7, Rule 86 of the Rules of Court (Rules) are alternative and exclusive, such that the election of one operates as a waiver or abandonment of the others. Thus, when respondent filed its claim against the estate of Flaviano in the proceedings before the probate court, it effectively abandoned its right to foreclose on the mortgage. Moreover, even on the assumption that it has not so waived its right to foreclose, it is nonetheless barred from filing any claim for any deficiency amount.

During the pendency of the appeal, Flaviano's widow, Salud, passed away on July 25, 1997.[28]

The CA Ruling

In a Decision[29] dated July 20, 2005, the CA denied the petitioners' appeal and affirmed the RTC's Decision. At the outset, it pointed out that the probate court erred when it, through the December 14, 1978 Order, closed and terminated the proceedings in Sp. Proc. No. 1604-0 without first satisfying the claims of the creditors of the estate – in particular, respondent – in violation of Section 1, Rule 90 of the Rules.[30] As a consequence, respondent was not able to collect from the petitioners and thereby was left with the option of foreclosing the real estate mortgage.[31] Further, the CA held that Section 7, Rule 86 of the Rules does not apply to the present case

[26] *Id*.

[27] *Rollo*, p. 43.

[28] *Id*. at 10.

[29] *Id*. at 39-50.

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

[31] *Id*. at 46.

since the same does not involve a mortgage made by the administrator over any property belonging to the estate of the decedent.[32] According to the CA, what should apply is Act No. 3135[33] which entitles respondent to claim the deficiency amount after the extra-judicial foreclosure of the real estate mortgage of Sps. Maglasang's properties.[34]

Petitioners' motion for reconsideration was subsequently denied in a Resolution[35] dated January 4, 2006. Hence, the present recourse.

The Issue Before the Court

The essential issue in this case is whether or not the CA erred in affirming the RTC's award of the deficiency amount in favor of respondent.

Petitioners assert[36] that it is not Act No. 3135 but Section 7, Rule 86 of the Rules which applies in this case. The latter provision provides alternative and exclusive remedies for the satisfaction of respondent's claim against the estate of Flaviano.[37] Corollarily, having filed its claim against the estate during the intestate proceedings, petitioners argue that respondent had effectively waived the remedy of foreclosure and, even assuming that it still had the right to do so, it was precluded from filing a suit for the recovery of the deficiency obligation.[38]

Likewise, petitioners maintain that the extra-judicial foreclosure of the subject properties was null and void, not having been

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[32] *Id*.

[33] "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES." Effective March 6, 1924.

[34] *Rollo*, pp. 46-49.

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

[36] *Id.* at 214.

[37] *Id.* at 11-14.

[38] *Id.* at 14-18.

conducted in the capital of the Province of Leyte in violation of the stipulations in the real estate mortgage contract.[39] They likewise deny any personal liability for the loans taken by their deceased parents.[40]

The Court's Ruling

The petition is partly meritorious.

Claims against deceased persons should be filed during the settlement proceedings of their estate.[41] Such proceedings are primarily governed by special rules found under Rules 73 to 90 of the Rules, although rules governing ordinary actions may, as far as practicable, apply suppletorily.[42] Among these special rules, Section 7, Rule 86 of the Rules (Section 7, Rule 86) provides the rule in dealing with secured claims against the estate:

SEC. 7. *Mortgage debt due from estate.* – **A creditor holding a claim against the deceased secured by a mortgage or other collateral security**, may abandon the security and prosecute his claim in the manner provided in this rule, and share in the general distribution of the assets of the estate; or he may foreclose his mortgage or realize upon his security, by action in court, making the executor or administrator a party defendant, and if there is a judgment for a deficiency, after the sale of the mortgaged premises, or the property pledged, in the foreclosure or other proceeding to realize upon the security, he may claim his deficiency judgment in the manner provided in the preceding section; or he may rely upon his mortgage or other security alone, and foreclose the same at any time within the period

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[39] *Id.* at 18-20.

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

[41] See *Metropolitan Bank & Trust Company v. Absolute Management Corporation,* G.R. No. 170498, January 9, 2013, 688 SCRA 225, 237.

[42] Section 2, Rule 72 of the Rules provides:

SEC. 2. *Applicability of rules of civil actions.* — In the absence of special provisions, the rules provided for in ordinary actions shall be, as far as practicable, applicable in special proceedings.

of the statute of limitations, and in that event he shall not be admitted as a creditor, and shall receive no share in the distribution of the other assets of the estate; but nothing herein contained shall prohibit the executor or administrator from redeeming the property mortgaged or pledged, by paying the debt for which it is held as security, under the direction of the court, if the court shall adjudged it to be for the best interest of the estate that such redemption shall be made. (Emphasis and underscoring supplied)

As the foregoing generally speaks of "[a] creditor holding a claim against the deceased secured by a mortgage or other collateral security" as above-highlighted, it may be reasonably concluded that the aforementioned section covers all secured claims, whether by mortgage or any other form of collateral, which a creditor may enforce against the estate of the deceased debtor. On the contrary, nowhere from its language can it be fairly deducible that the said section would – as the CA interpreted – narrowly apply only to mortgages made by the administrator over any property belonging to the estate of the decedent. To note, mortgages of estate property executed by the administrator, are also governed by Rule 89 of the Rules, captioned as "Sales, Mortgages, and Other Encumbrances of Property of Decedent."

In this accord, it bears to stress that the CA's reliance on *Philippine National Bank v. CA*[43] (*PNB*) was misplaced as the said case did not, in any manner, limit the scope of Section 7, Rule 86. It only stated that the aforesaid section equally applies to cases where the administrator mortgages the property of the estate to secure the loan he obtained.[44] Clearly, the pronouncement was a ruling of inclusion and not one which created a distinction. It cannot, therefore, be doubted that it is Section 7, Rule 86 which remains applicable in dealing with a creditor's claim against the mortgaged property of the deceased debtor, as in this case, as well as mortgages made by the administrator, as that in the *PNB* case.

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[43] 412 Phil. 807 (2001).

[44] See *id*. at 812-815.

Jurisprudence breaks down the rule under Section 7, Rule 86 and explains that the secured creditor has three remedies/ options that he may alternatively adopt for the satisfaction of his indebtedness. In particular, he may choose to: (*a*) waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim; (*b*) foreclose the mortgage judicially and prove the deficiency as an ordinary claim; and (*c*) rely on the mortgage exclusively, or other security and foreclose the same before it is barred by prescription, without the right to file a claim for any deficiency.[45] It must, however, be emphasized that these remedies are distinct, independent and mutually exclusive from each other; thus, the election of one effectively bars the exercise of the others. With respect to real properties, the Court in *Bank of America v. American Realty Corporation*[46] pronounced:

> In our jurisdiction, the remedies available to the mortgage creditor are deemed **alternative and not cumulative**. **Notably, an election of one remedy operates as a waiver of the other**. For this purpose, a remedy is deemed chosen upon the filing of the suit for collection or upon the filing of the complaint in an action for foreclosure of mortgage, pursuant to the provision of Rule 68 of the 1997 Rules of Civil Procedure. As to extrajudicial foreclosure, such remedy is deemed elected by the mortgage creditor upon filing of the petition not with any court of justice but with the Office of the Sheriff of the province where the sale is to be made, in accordance with the provisions of Act No. 3135, as amended by Act No. 4118.[47] (Emphasis supplied)

Anent the third remedy, it must be mentioned that the same includes the option of extra-judicially foreclosing the mortgage under Act No. 3135, as availed of by respondent in this case. However, the plain result of adopting the last mode of foreclosure is that the creditor waives his right to recover any deficiency from the estate.[48] These precepts were discussed in the *PNB*

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[45] *Id.* at 814.

[46] 378 Phil. 1279 (1999).

[47] *Id.* at 1291.

[48] *Id.* at 1289-1304.

case, citing *Perez v. Philippine National Bank*[49] which overturned the earlier *Pasno v. Ravina* ruling:[50]

Case law now holds that this rule grants to the mortgagee three distinct, independent and mutually exclusive remedies that can be alternatively pursued by the mortgage creditor for the satisfaction of his credit in case the mortgagor dies, among them:

> (1) to waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim;
>
> (2) to foreclose the mortgage judicially and prove any deficiency as an ordinary claim; and
>
> (3) to rely on the mortgage exclusively, foreclosing the same at any time before it is barred by prescription *without right to file a claim for any deficiency*.

In *Perez v. Philippine National Bank,* reversing *Pasno vs. Ravina*, we held:

> The ruling in *Pasno v. Ravina* not having been reiterated in any other case, we have carefully reexamined the same, and after mature deliberation have reached the conclusion that the dissenting opinion is more in conformity with reason and law. Of the three alternative courses that Section 7, Rule 87 (now Rule 86), offers the mortgage creditor, to wit, (1) to waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim; (2) foreclose the mortgage judicially and prove any deficiency as an ordinary claim; and (3) to rely on the mortgage exclusively, foreclosing the same at any time before it is barred by prescription, ***without right to file a claim for any deficiency***, the majority opinion in *Pasno v. Ravina*, in requiring a judicial foreclosure, virtually wipes out the third alternative conceded by the Rules to the mortgage creditor, and ***which would precisely include extra-judicial foreclosures*** by contrast with the second alternative.

[49] 124 Phil. 260 (1966).

[50] 54 Phil. 378 (1990).

The plain result of adopting the last mode of foreclosure is that the creditor waives his right to recover any deficiency from the estate. **Following the *Perez* ruling that the third mode includes extrajudicial foreclosure sales, the result of extrajudicial foreclosure is that the creditor waives any further deficiency claim**. x x x.[51] (Emphases and underscoring supplied; italics in the original)

To obviate any confusion, the Court observes that the operation of Act No. 3135 does not entirely discount the application of Section 7, Rule 86, or vice-versa. Rather, the two complement each other within their respective spheres of operation. On the one hand, Section 7, Rule 86 lays down the options for the secured creditor to claim against the estate and, according to jurisprudence, the availment of the third option bars him from claiming any deficiency amount. On the other hand, after the third option is chosen, the procedure governing the manner in which the extra-judicial foreclosure should proceed would still be governed by the provisions of Act No. 3135. Simply put, Section 7, Rule 86 governs the parameters and the extent to which a claim may be advanced against the estate, whereas Act No. 3135 sets out the specific procedure to be followed when the creditor subsequently chooses the third option – specifically, that of extra-judicially foreclosing real property belonging to the estate. The application of the procedure under Act No. 3135 must be concordant with Section 7, Rule 86 as the latter is a special rule applicable to claims against the estate, and at the same time, since Section 7, Rule 86 does not detail the procedure for extra-judicial foreclosures, the formalities governing the manner of availing of the third option – such as the place where the application for extra-judicial foreclosure is filed, the requirements of publication and posting and the place of sale – must be governed by Act No. 3135.

In this case, respondent sought to extra-judicially foreclose the mortgage of the properties previously belonging to Sps. Maglasang (and now, their estates) and, therefore, availed of the third option. Lest it be misunderstood, it did not exercise the first option of directly filing a claim against the estate, as petitioners assert, since

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[51] *Philippine National Bank v. CA*, *supra* note 43, at 814-815.

it merely notified[52] the probate court of the outstanding amount of its claim against the estate of Flaviano and that it was currently restructuring the account.[53] Thus, having unequivocally opted to exercise the third option of extra-judicial foreclosure under Section 7, Rule 86, respondent is now precluded from filing a suit to recover any deficiency amount as earlier discussed.

As a final point, petitioners maintain that the extra-judicial foreclosure of the subject properties was null and void since

[52] Records, p. 344. See Bill of Exhibits and Minutes.

[53] To note, petitioners did not file a claim against the estate since its notice deviates from the proper characterization under Section 9, Rule 86 of the Rules of Court which sets forth the manner through which a claim against the estate may be filed, to wit:

SEC. 9. *How to file a claim. Contents thereof. Notice to executor or administrator.* – A claim may be filed **by delivering the same with the necessary vouchers to the clerk of court and by serving a copy thereof on the executor or administrator. If the claim be founded on a bond, bill, note, or any other instrument, the original need not be filed, but a copy thereof with all indorsements shall be attached to the claim and filed** therewith. On demand, however, of the executor or administrator, or by order of the court or judge, the original shall be exhibited, unless it be lost or destroyed, in which case the claimant must accompany his claim with affidavit or affidavits containing a copy or particular description of the instrument and stating its loss or destruction. **When the claim is due, it must be supported by affidavit stating the amount justly due, that no payments have been made thereon which are not credited**, and that there are no offsets to the same, to the knowledge of the affiant. If the claim is not due, or is contingent, when filed, it must also be supported by affidavit stating the particulars thereof. When the affidavit is made by a person other than the claimant, he must set forth therein the reason why it is not made by the claimant. The claim once filed shall be attached to the record of the case in which the letters testamentary or of administration were issued, although the court, in its discretion, and as a matter of convenience, may order all the claims to be collected in a separate folder. (Emphases supplied)

the same was conducted in violation of the stipulation in the real estate mortgage contract stating that the auction sale should be held in the capital of the province where the properties are located, *i.e.,* the Province of Leyte.

The Court disagrees.

As may be gleaned from the records, the stipulation under the real estate mortgage[54] executed by Sps. Maglasang which fixed the place of the foreclosure sale at Tacloban City lacks words of exclusivity which would bar any other acceptable fora wherein the said sale may be conducted, to wit:

> It is hereby agreed that in case of foreclosure of this mortgage under Act 3135, the auction sale shall be held at the capital of the province if the property is within the territorial jurisdiction of the province concerned, or shall be held in the city if the property is within the territorial jurisdiction of the city concerned; x x x.[55]

Case law states that absent such qualifying or restrictive words to indicate the exclusivity of the agreed forum, the stipulated place should only be as an additional, not a limiting venue.[56] As a consequence, the stipulated venue and that provided under Act No. 3135 can be applied alternatively.

In particular, Section 2 of Act No. 3135 allows the foreclosure sale to be done within the province where the property to be sold is situated, *viz.*:

> SEC. 2. Said sale cannot be made legally *outside of the province* which the property sold is situated; and in case the place within

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[54] *Rollo*, pp. 54-55.

[55] *Id.* at 55.

[56] "[T]he doctrine that absent qualifying or restrictive words, the venue shall either be that stated in the law or rule governing the action or the one agreed in the contract, was applied to an extra-judicial foreclosure sale under Act No. 3135." (*Auction in Malinta, Inc. v. Luyaben*, 544 Phil. 500, 505 [2007].)

said province in which the sale is to be made is subject to stipulation, such sale shall be made in said place or in the municipal building of the municipality in which the property or part thereof is situated. (Italics supplied)

In this regard, since the auction sale was conducted in Ormoc City, which is within the territorial jurisdiction of the Province of Leyte, then the Court finds sufficient compliance with the above-cited requirement.

All told, finding that the extra-judicial foreclosure subject of this case was properly conducted in accordance with the formalities of Act No. 3135, the Court upholds the same as a valid exercise of respondent's third option under Section 7, Rule 86. To reiterate, respondent cannot, however, file any suit to recover any deficiency amount since it effectively waived its right thereto when it chose to avail of extra-judicial foreclosure as jurisprudence intructs.

WHEREFORE, the petition is **PARTLY GRANTED**. The complaint for the recovery of the deficency amount after extra-judicial foreclosure filed by respondent Manila Banking Corporation is hereby **DISMISSED**. The extra-judicial foreclosure of the mortgaged properties, however, stands.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 202370. September 23, 2013]

JUAN SEVILLA SALAS, JR., *petitioner, vs.* **EDEN VILLENA AGUILA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PARTITION; THE SETTLEMENT OF THE ISSUE OF CO-OWNERSHIP IS THE FIRST STAGE IN AN ACTION FOR PARTITION.—**Since the original manifestation was an action for partition, this Court cannot order a division of the property, unless it first makes a determination as to the existence of a co-ownership. Thus, the settlement of the issue of ownership is the first stage in this action.

2. **ID.; EVIDENCE; WEIGHT AND SUFFICIENCY; PREPONDERANCE OF EVIDENCE IN CIVIL CASES; RESPONDENT'S EVIDENCE IS OF SUPERIOR WEIGHT THAN THAT OF PETITIONER'S EVIDENCE.—**Basic is the rule that the party making an allegation in a civil case has the burden of proving it by a preponderance of evidence. Salas alleged that contrary to Aguila's petition stating that they had no conjugal property, they actually acquired the Waived Properties during their marriage. However, the RTC found, and the CA affirmed, that Salas failed to prove the existence and acquisition of the Waived Properties during their marriage. x x x On the other hand, Aguila proved that the Discovered Properties were acquired by Salas during their marriage. Both the RTC and the CA agreed that the Discovered Properties registered in Salas' name were acquired during his marriage with Aguila. The TCTs of the Discovered Properties were entered on 2 July 1999 and 29 September 2003, or during the validity of Salas and Aguila's marriage. In *Villanueva v. Court of Appeals*, we held that the question of whether the properties were acquired during the marriage is a factual issue. Factual findings of the RTC, particularly if affirmed by the CA, are binding on us, except under compelling circumstances not present in this case.

3. **ID.; CIVIL PROCEDURE; INTERVENTION; A PERSON WHO HAS NO LEGAL INTEREST IN THE MATTER OF LITIGATION HAS NO RIGHT TO INTERVENE.—** Considering that Rubina failed to prove her title or her legal interest in the Discovered Properties, she has no right to intervene in this case. The Rules of Court provide that only "a person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action."

4. **CIVIL LAW; LAND REGISTRATION; TORRENS TITLE; GENERALLY A CONCLUSIVE EVIDENCE OF THE OWNERSHIP OF THE LAND REFERRED TO, BECAUSE THERE IS A STRONG PRESUMPTION THAT IT IS VALID AND REGULARLY ISSUED.—** On both Salas and Rubina's contention that Rubina owns the Discovered Properties, we likewise find the contention unmeritorious. The TCTs state that "Juan S. Salas, married to Rubina C. Salas" is the registered owner of the Discovered Properties. A Torrens title is generally a conclusive evidence of the ownership of the land referred to, because there is a strong presumption that it is valid and regularly issued. The phrase "married to" is merely descriptive of the civil status of the registered owner. Furthermore, Salas did not initially dispute the ownership of the Discovered Properties in his opposition to the manifestation. It was only when Rubina intervened that Salas supported Rubina's statement that she owns the Discovered Properties.

5. **ID.; FAMILY CODE; PROPERTY REGIME UNDER ARTICLE 147 OF THE FAMILY CODE IS GOVERNED BY THE RULES ON CO-OWNERSHIP.—** In *Diño v. Diño,* we held that Article 147 of the Family Code applies to the union of parties who are legally capacitated and not barred by any impediment to contract marriage, but whose marriage is nonetheless declared void under Article 36 of the Family Code, as in this case. Article 147 of the Family Code provides : ART. 147. When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and **the property acquired by both of them through their work or industry shall be governed by the**

rules on co-ownership. In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. x x x Under this property regime, property acquired during the marriage is *prima facie* presumed to have been obtained through the couple's joint efforts and governed by the rules on co-ownership. In the present case, Salas did not rebut this presumption. In a similar case where the ground for nullity of marriage was also psychological incapacity, we held that the properties acquired during the union of the parties, as found by both the RTC and the CA, would be governed by co-ownership. Accordingly, the partition of the Discovered Properties as ordered by the RTC and the CA should be sustained, but on the basis of co-ownership and not on the regime of conjugal partnership of gains.

APPEARANCES OF COUNSEL

Oliver C. Ong for petitioner.
Edwin P. Sulit for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review on *certiorari*[1] assails the 16 March 2012 Decision[2] and the 28 June 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 95322. The CA affirmed the 26 September 2008 Order[4] of the Regional Trial Court of Nasugbu, Batangas, Branch 14 (RTC), in Civil Case No. 787.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 10-21. Penned by Associate Justice Romeo F. Barza with Associate Justices Noel G. Tijam and Edwin D. Sorongon, concurring.

[3] *Id.* at 31-32.

[4] *Id.* at 77-87. Penned by Judge Wilfredo De Joya Mayor.

The Facts

On 7 September 1985, petitioner Juan Sevilla Salas, Jr. (Salas) and respondent Eden Villena Aguila (Aguila) were married. On 7 June 1986, Aguila gave birth to their daughter, Joan Jiselle. Five months later, Salas left their conjugal dwelling. Since then, he no longer communicated with Aguila or their daughter.

On 7 October 2003, Aguila filed a Petition for Declaration of Nullity of Marriage (petition) citing psychological incapacity under Article 36 of the Family Code. The petition states that they "have no conjugal properties whatsoever."[5] In the Return of Summons dated 13 October 2003, the sheriff narrated that Salas instructed his mother Luisa Salas to receive the copy of summons and the petition.[6]

On 7 May 2007, the RTC rendered a Decision[7] declaring the nullity of the marriage of Salas and Aguila (RTC Decision). The RTC Decision further provides for the "dissolution of their conjugal partnership of gains, if any."[8]

On 10 September 2007, Aguila filed a Manifestation and Motion[9] stating that she discovered: (a) two 200-square-meter parcels of land with improvements located in San Bartolome, Quezon City, covered by Transfer Certificate of Title (TCT) No. N-259299-A and TCT No. N-255497; and (b) a 108-square-

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[5] *Id.* at 59.

[6] Records, p. 21.

[7] *Rollo,* pp. 61-70. Penned by Judge Elihu A. Ibañez.

[8] *Id.* at 70. The dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered DECLARING THE NULLITY of the marriage of petitioner Eden Villena Aguila Salas and respondent Juan Sevilla Salas, Jr. which was celebrated on September 7, 1985 and the DISSOLUTION of their conjugal partnership of gains, if any.

SO ORDERED.

[9] *Id.* at 71-72.

meter parcel of land with improvement located in Tondo, Manila, covered by TCT No. 243373 (collectively, "Discovered Properties"). The registered owner of the Discovered Properties is "Juan S. Salas, married to Rubina C. Salas." The manifestation was set for hearing on 21 September 2007. However, Salas' notice of hearing was returned unserved with the remark, "RTS Refused To Receive."

On 19 September 2007, Salas filed a Manifestation with Entry of Appearance[10] requesting for an Entry of Judgment of the RTC Decision since no motion for reconsideration or appeal was filed and no conjugal property was involved.

On 21 September 2007, the hearing for Aguila's manifestation ensued, with Aguila, her counsel and the state prosecutor present. During the hearing, Aguila testified that on 17 April 2007 someone informed her of the existence of the Discovered Properties. Thereafter, she verified the information and secured copies of TCTs of the Discovered Properties. When asked to clarify, Aguila testified that Rubina C. Salas (Rubina) is Salas' common-law wife.[11]

On 8 February 2008, Salas filed an Opposition to the Manifestation[12] alleging that there is no conjugal property to be partitioned based on Aguila's petition. According to Salas, Aguila's statement was a judicial admission and was not made through palpable mistake. Salas claimed that Aguila waived her right to the Discovered Properties. Salas likewise enumerated properties he allegedly waived in favor of Aguila, to wit: (1) parcels of land with improvements located in Sugar Landing Subdivision, Alangilan, Batangas City; No. 176 Brias Street, Nasugbu, Batangas; P. Samaniego Street, Silangan, Nasugbu, Batangas; and Batangas City, financed by Filinvest; (2) cash amounting to ₱200,000.00; and (3) motor vehicles, specifically Honda City and Toyota Tamaraw FX (collectively, "Waived

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[10] Records, pp. 188-189.

[11] *Id.* at 174. TSN, 21 September 2007, p. 7.

[12] *Rollo,* pp. 73-76.

Properties"). Thus, Salas contended that the conjugal properties were deemed partitioned.

The Ruling of the Regional Trial Court

In its 26 September 2008 Order, the RTC ruled in favor of Aguila. The dispositive portion of the Order reads:

WHEREFORE, foregoing premises being considered, the petitioner and the respondent are hereby directed to partition between themselves by proper instruments of conveyance, the following properties, without prejudice to the legitime of their legitimate child, Joan Jisselle Aguila Salas:

(1) A parcel of land registered in the name of Juan S. Salas married to Rubina C. Salas located in San Bartolome, Quezon City and covered by TCT No. N-259299-A marked as Exhibit "A" and its improvements;

(2) A parcel of land registered in the name of Juan S. Salas married to Rubina C. Salas located in San Bartolome, Quezon City and covered by TCT No. N-255497 marked as Exhibit "B" and its improvements;

(3) A parcel of land registered in the name of Juan S. Salas married to Rubina Cortez Salas located in Tondo and covered by TCT No. 243373-Ind. marked as Exhibit "D" and its improvements.

Thereafter, the Court shall confirm the partition so agreed upon by the parties, and such partition, together with the Order of the Court confirming the same, shall be recorded in the Registry of Deeds of the place in which the property is situated.

SO ORDERED.[13]

The RTC held that pursuant to the Rules,[14] even upon entry of judgment granting the annulment of marriage, the court can proceed with the liquidation, partition and distribution of the conjugal partnership of gains if it has not been judicially

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[13] *Id.* at 87.

[14] Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (A. M. No. 02-11-10-SC), Section 21.

adjudicated upon, as in this case. The RTC found that the Discovered Properties are among the conjugal properties to be partitioned and distributed between Salas and Aguila. However, the RTC held that Salas failed to prove the existence of the Waived Properties.

On 11 November 2008, Rubina filed a Complaint-in-Intervention, claiming that: (1) she is Rubina Cortez, a widow and unmarried to Salas; (2) the Discovered Properties are her paraphernal properties; (3) Salas did not contribute money to purchase the Discovered Properties as he had no permanent job in Japan; (4) the RTC did not acquire jurisdiction over her as she was not a party in the case; and (5) she authorized her brother to purchase the Discovered Properties but because he was not well-versed with legal documentation, he registered the properties in the name of "Juan S. Salas, married to Rubina C. Salas."

In its 16 December 2009 Order, the RTC denied the Motion for Reconsideration filed by Salas. The RTC found that Salas failed to prove his allegation that Aguila transferred the Waived Properties to third persons. The RTC emphasized that it cannot go beyond the TCTs, which state that Salas is the registered owner of the Discovered Properties. The RTC further held that Salas and Rubina were at fault for failing to correct the TCTs, if they were not married as they claimed.

Hence, Salas filed an appeal with the CA.

The Ruling of the Court of Appeals

On 16 March 2012, the CA affirmed the order of the RTC.[15] The CA ruled that Aguila's statement in her petition is not a judicial admission. The CA pointed out that the petition was filed on 7 October 2003, but Aguila found the Discovered

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[15] *Rollo,* pp. 20-21. The dispositive portion of the Decision reads:

WHEREFORE, in light of the foregoing, the instant appeal is hereby DENIED for lack of merit. The appealed orders of the lower court dated September 26, 2008 and December 16, 2009 are hereby AFFIRMED.

SO ORDERED.

Properties only on 17 April 2007 or before the promulgation of the RTC decision. Thus, the CA concluded that Aguila was palpably mistaken in her petition and it would be unfair to punish her over a matter that she had no knowledge of at the time she made the admission. The CA also ruled that Salas was not deprived of the opportunity to refute Aguila's allegations in her manifestation, even though he was not present in its hearing. The CA likewise held that Rubina cannot collaterally attack a certificate of title.

In a Resolution dated 28 June 2012,[16] the CA denied the Motion for Reconsideration[17] filed by Salas. Hence, this petition.

The Issues

Salas seeks a reversal and raises the following issues for resolution:

1. The Court of Appeals erred in affirming the trial court's decision ordering the partition of the parcels of land covered by TCT Nos. N-259299-A and N-255497 in Quezon City and as well as the property in Manila covered by TCT No. 243373 between petitioner and respondent.

2. The Court of Appeals erred in affirming the trial court's decision in not allowing Rubina C. Cortez to intervene in this case.[18]

The Ruling of the Court

The petition lacks merit.

Since the original manifestation was an action for partition, this Court cannot order a division of the property, unless it first makes a determination as to the existence of a co-ownership.[19]

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[16] *Id.* at 31-32.

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

[18] *Id.* at 44-45.

[19] *Lacbayan v. Samoy, Jr.,* G.R. No. 165427, 21 March 2011, 645 SCRA 677; *Ocampo v. Ocampo*, 471 Phil. 519 (2004) citing *Heirs of Velasquez v. Court of Appeals,* 382 Phil. 438 (2000) and *Catapusan v. Court of Appeals,* 332 Phil. 586 (1996).

Thus, the settlement of the issue of ownership is the first stage in this action.[20]

Basic is the rule that the party making an allegation in a civil case has the burden of proving it by a preponderance of evidence.[21] Salas alleged that contrary to Aguila's petition stating that they had no conjugal property, they actually acquired the Waived Properties during their marriage. However, the RTC found, and the CA affirmed, that Salas failed to prove the existence and acquisition of the Waived Properties during their marriage:

> A perusal of the record shows that the documents submitted by [Salas] as the properties allegedly registered in the name of [Aguila] are merely photocopies and not certified true copies, hence, this Court cannot admit the same as part of the records of this case. These are the following:
>
> > (1) TCT No. T-65876 – a parcel of land located at Poblacion, Nasugbu, Batangas, registered in the name of Eden A. Salas, married to Juan Salas Jr. which is cancelled by TCT No. T-105443 in the name of Joan Jiselle A. Salas, single;
> >
> > (2) TCT No. T-68066 – a parcel of land situated in the Barrio of Landing, Nasugbu, Batangas, registered in the name of Eden A. Salas, married to Juan S. Salas Jr.
>
> Moreover, [Aguila] submitted original copy of Certification issued by Ms. Erlinda A. Dasal, Municipal Assessor of Nasugbu, Batangas, certifying that [Aguila] has no real property (land and improvement) listed in the Assessment Roll for taxation purposes, as of September 17, 2008. Such evidence, in the absence of proof to the contrary, has the presumption of regularity. x x x.
>
> Suffice it to say that such real properties are existing and registered in the name of [Aguila], certified true copies thereof should have been the ones submitted to this Court. Moreover, there is also a presumption that properties registered in the Registry of Deeds are also declared in the Assessment Roll for taxation purposes.[22]

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[20] *Id.*

[21] Rules of Court, Rule 133, Sec. 1.

[22] *Rollo,* pp. 85-86.

On the other hand, Aguila proved that the Discovered Properties were acquired by Salas during their marriage. Both the RTC and the CA agreed that the Discovered Properties registered in Salas' name were acquired during his marriage with Aguila. The TCTs of the Discovered Properties were entered on 2 July 1999 and 29 September 2003, or during the validity of Salas and Aguila's marriage. In *Villanueva v. Court of Appeals*,[23] we held that the question of whether the properties were acquired during the marriage is a factual issue. Factual findings of the RTC, particularly if affirmed by the CA, are binding on us, except under compelling circumstances not present in this case.[24]

On Salas' allegation that he was not accorded due process for failing to attend the hearing of Aguila's manifestation, we find the allegation untenable. The essence of due process is opportunity to be heard. We hold that Salas was given such opportunity when he filed his opposition to the manifestation, submitted evidence and filed his appeal.

On both Salas and Rubina's contention that Rubina owns the Discovered Properties, we likewise find the contention unmeritorious. The TCTs state that "Juan S. Salas, married to Rubina C. Salas" is the registered owner of the Discovered Properties. A Torrens title is generally a conclusive evidence of the ownership of the land referred to, because there is a strong presumption that it is valid and regularly issued.[25] The phrase "married to" is merely descriptive of the civil status of the registered owner.[26] Furthermore, Salas did not initially dispute the ownership of the Discovered Properties in his opposition to the manifestation. It was only when Rubina intervened that

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[23] 471 Phil. 394 (2004).

[24] *Land Bank of the Philippines v. Poblete,* G.R. No. 196577, 25 February 2013, 691 SCRA 613 citing *Montecillo v. Reynes,* 434 Phil. 456 (2002).

[25] *Rodriguez v. Court of Appeals,* G.R. No. 184589, 13 June 2013.

[26] *De Leon v. Rehabilitation Finance Corp.,* 146 Phil. 862 (1970) citing *Litam v. Espiritu,* 100 Phil. 364 (1956).

Salas supported Rubina's statement that she owns the Discovered Properties.

Considering that Rubina failed to prove her title or her legal interest in the Discovered Properties, she has no right to intervene in this case. The Rules of Court provide that only "a person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action."[27]

In *Diño v. Diño*,[28] we held that Article 147 of the Family Code applies to the union of parties who are legally capacitated and not barred by any impediment to contract marriage, but whose marriage is nonetheless declared void under Article 36 of the Family Code, as in this case. Article 147 of the Family Code provides:

> ART. 147. When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and **the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.**
>
> **In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares.** For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.
>
> Neither party can encumber or dispose by acts *inter vivos* of his or her share in the property acquired during cohabitation and owned in

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[27] Rules of Court, Rule 19, Sec. 1.

[28] G.R. No. 178044, 19 January 2011, 640 SCRA 178 citing *Mercado-Fehr v. Bruno Fehr,* 460 Phil. 445 (2003).

common, without the consent of the other, until after the termination of their cohabitation.

When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default of or waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation. (Emphasis supplied)

Under this property regime, property acquired during the marriage is *prima facie* presumed to have been obtained through the couple's joint efforts and governed by the rules on co-ownership.[29] In the present case, Salas did not rebut this presumption. In a similar case where the ground for nullity of marriage was also psychological incapacity, we held that the properties acquired during the union of the parties, as found by both the RTC and the CA, would be governed by co-ownership.[30] Accordingly, the partition of the Discovered Properties as ordered by the RTC and the CA should be sustained, but on the basis of co-ownership and not on the regime of conjugal partnership of gains.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 16 March 2012 and the Resolution dated 28 June 2012 of the Court of Appeals in CA-G.R. CV No. 95322.

SO ORDERED.

Brion, del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[29] *Valdes v. RTC, Branch 102, Quezon City,* 328 Phil. 1289 (1996).

[30] *Buenaventura v. Court of Appeals,* 494 Phil. 264 (2005).

EN BANC

[B.M. No. 2540. September 24, 2013]

IN RE: PETITION TO SIGN IN THE ROLL OF ATTORNEYS, MICHAEL A. MEDADO, *petitioner.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; PRACTICING LAW WITHOUT SIGNING THE ROLL OF ATTORNEYS CONSTITUTES UNAUTHORIZED PRACTICE OF LAW; DOCTRINE OF *IGNORANTIA FACTI EXCUSAT*; *IGNORANTIA LEGIS NEMINEM EXCUSAT*, APPLIED.—** While an honest mistake of fact could be used to excuse a person from the legal consequences of his acts as it negates malice or evil motive, a mistake of law cannot be utilized as a lawful justification, because everyone is presumed to know the law and its consequences. *Ignorantia facti excusat; ignorantia legis neminem excusat*. Applying these principles to the case at bar, Medado may have at first operated under an honest mistake of fact when he thought that what he had signed at the PICC entrance before the oath-taking was already the Roll of Attorneys. However, the moment he realized that what he had signed was merely an attendance record, he could no longer claim an honest mistake of fact as a valid justification. At that point, Medado should have known that he was not a full-fledged member of the Philippine Bar because of his failure to sign in the Roll of Attorneys, as it was the act of signing therein that would have made him so. When, in spite of this knowledge, he chose to continue practicing law without taking the necessary steps to complete all the requirements for admission to the Bar, he willfully engaged in the unauthorized practice of law.

2. **ID.; ID.; ID.; AN ATTORNEY MAY NOT BE MADE LIABLE FOR INDIRECT CONTEMPT FOR ENGAGING IN UNAUTHORIZED PRACTICE OF LAW IN THE ABSENCE OF A FORMAL CHARGE.—** Under the Rules of Court, the unauthorized practice of law by one's assuming to be an attorney or officer of the court, and acting as such without authority, may constitute indirect contempt of court, which is punishable by fine or

imprisonment or both. Such a finding, however, is in the nature of criminal contempt and must be reached after the filing of charges and the conduct of hearings. In this case, while it appears quite clearly that petitioner committed indirect contempt of court by knowingly engaging in unauthorized practice of law, we refrain from making any finding of liability for indirect contempt, as no formal charge pertaining thereto has been filed against him.

3. **ID.; ID.; ID.; PENALTY AKIN TO SUSPENSION AND FINE, IMPOSED.—** While a reading of Canon 9 appears to merely prohibit lawyers from assisting in the unauthorized practice of law, the unauthorized practice of law by the lawyer himself is subsumed under this provision, because at the heart of Canon 9 is the lawyer's duty to prevent the unauthorized practice of law. This duty likewise applies to law students and Bar candidates. As aspiring members of the Bar, they are bound to comport themselves in accordance with the ethical standards of the legal profession. Turning now to the applicable penalty, previous violations of Canon 9 have warranted the penalty of suspension from the practice of law. As Medado is not yet a full-fledged lawyer, we cannot suspend him from the practice of law. However, we see it fit to impose upon him a penalty akin to suspension by allowing him to sign in the Roll of Attorneys one (1) year after receipt of this Resolution. For his transgression of the prohibition against the unauthorized practice of law, we likewise see it fit to fine him in the amount of ₱32,000. During the one year period, petitioner is warned that he is not allowed to engage in the practice of law, and is sternly warned that doing any act that constitutes practice of law before he has signed in the Roll of Attorneys will be dealt with severely by this Court.

APPEARANCES OF COUNSEL

Datu Omar S. Sinsuat and Gilbert Karl T. Sison for petitioner.

RESOLUTION

SERENO, *C.J.*:

We resolve the instant Petition to Sign in the Roll of Attorneys filed by petitioner Michael A. Medado (Medado).

Medado graduated from the University of the Philippines with the degree of Bachelor of Laws in 1979[1] and passed the same year's bar examinations with a general weighted average of 82.7.[2]

On 7 May 1980, he took the Attorney's Oath at the Philippine International Convention Center (PICC) together with the successful bar examinees.[3] He was scheduled to sign in the Roll of Attorneys on 13 May 1980,[4] but he failed to do so on his scheduled date, allegedly because he had misplaced the Notice to Sign the Roll of Attorneys[5] given by the Bar Office when he went home to his province for a vacation.[6]

Several years later, while rummaging through his old college files, Medado found the Notice to Sign the Roll of Attorneys. It was then that he realized that he had not signed in the roll, and that what he had signed at the entrance of the PICC was probably just an attendance record.[7]

By the time Medado found the notice, he was already working. He stated that he was mainly doing corporate and taxation work, and that he was not actively involved in litigation practice. Thus, he operated "under the mistaken belief [that] since he

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[1] *Rollo*, p. 1; Petition dated 6 February 2012.

[2] *Id*.

[3] *Id.* at 2.

[4] *Id*.

[5] *Id.* at 10.

[6] *Id.* at 2.

[7] *Id*.

ha[d] already taken the oath, the signing of the Roll of Attorneys was not as urgent, nor as crucial to his status as a lawyer";[8] and "the matter of signing in the Roll of Attorneys lost its urgency and compulsion, and was subsequently forgotten."[9]

In 2005, when Medado attended Mandatory Continuing Legal Education (MCLE) seminars, he was required to provide his roll number in order for his MCLE compliances to be credited.[10] Not having signed in the Roll of Attorneys, he was unable to provide his roll number.

About seven years later, or on 6 February 2012, Medado filed the instant Petition, praying that he be allowed to sign in the Roll of Attorneys.[11]

The Office of the Bar Confidant (OBC) conducted a clarificatory conference on the matter on 21 September 2012[12] and submitted a Report and Recommendation to this Court on 4 February 2013.[13] The OBC recommended that the instant petition be denied for petitioner's gross negligence, gross misconduct and utter lack of merit.[14] It explained that, based on his answers during the clarificatory conference, petitioner could offer no valid justification for his negligence in signing in the Roll of Attorneys.[15]

After a judicious review of the records, we grant Medado's prayer in the instant petition, subject to the payment of a fine and the imposition of a penalty equivalent to suspension from the practice of law.

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[8] *Id*.

[9] *Id*.

[10] *Id.* at 3.

[11] *Id.* at 4.

[12] *Id.* at 20; TSN, 21 September 2012.

[13] *Id.* at 35-43; Report and Recommendation of the OBC dated 24 January 2013.

[14] *Id.* at 42.

[15] *Id*.

At the outset, we note that not allowing Medado to sign in the Roll of Attorneys would be akin to imposing upon him the ultimate penalty of disbarment, a penalty that we have reserved for the most serious ethical transgressions of members of the Bar.

In this case, the records do not show that this action is warranted.

For one, petitioner demonstrated good faith and good moral character when he finally filed the instant Petition to Sign in the Roll of Attorneys. We note that it was not a third party who called this Court's attention to petitioner's omission; rather, it was Medado himself who acknowledged his own lapse, albeit after the passage of more than 30 years. When asked by the Bar Confidant why it took him this long to file the instant petition, Medado very candidly replied:

> *Mahirap hong* i-explain *yan pero, yun bang* at the time, what can you say? *Takot ka kung anong mangyayari sa 'yo,* you don't know what's gonna happen. At the same time, it's a combination of apprehension and anxiety of what's gonna happen. And, finally it's the right thing to do. I have to come here … sign the roll and take the oath as necessary.[16]

For another, petitioner has not been subject to any action for disqualification from the practice of law,[17] which is more than what we can say of other individuals who were successfully admitted as members of the Philippine Bar. For this Court, this fact demonstrates that petitioner strove to adhere to the strict requirements of the ethics of the profession, and that he has *prima facie* shown that he possesses the character required to be a member of the Philippine Bar.

Finally, Medado appears to have been a competent and able legal practitioner, having held various positions at the Laurel

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[16] *Rollo*, p. 28; Report and Recommendation of the OBC dated 24 January 2013.

[17] *Id.* at 3; Petition dated 6 February 2012.

Law Office,[18] Petron, Petrophil Corporation, the Philippine National Oil Company, and the Energy Development Corporation.[19]

All these demonstrate Medado's worth to become a full-fledged member of the Philippine Bar. While the practice of law is not a right but a privilege,[20] this Court will not unwarrantedly withhold this privilege from individuals who have shown mental fitness and moral fiber to withstand the rigors of the profession.

That said, however, we cannot fully exculpate petitioner Medado from all liability for his years of inaction.

Petitioner has been engaged in the practice of law since 1980, a period spanning more than 30 years, without having signed in the Roll of Attorneys.[21] He justifies this behavior by characterizing his acts as "neither willful nor intentional but based on a mistaken belief and an honest error of judgment."[22]

We disagree.

While an honest mistake of fact could be used to excuse a person from the legal consequences of his acts[23] as it negates malice or evil motive,[24] a mistake of law cannot be utilized as a lawful justification, because everyone is presumed to know the law and its consequences.[25] *Ignorantia facti excusat; ignorantia legis neminem excusat.*

Applying these principles to the case at bar, Medado may have at first operated under an honest mistake of fact when he thought that what he had signed at the PICC entrance before

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[18] *Id.* at 22; TSN, 21 September 2012, p. 3.

[19] *Id.* at 34; *id.* at 15.

[20] *Barcenas v. Alvero*, A.C. No. 8159, 23 April 2010, 619 SCRA 1, 11.

[21] *Rollo*, p. 35; TSN, 21 September 2012, p. 16.

[22] *Id.* at 3; Petition dated 6 February 2012.

[23] *Wooden v. Civil Service Commission*, 508 Phil. 500, 515 (2005).

[24] *Manuel v. People*, 512 Phil. 818, 836 (2005).

[25] *Id.*

the oath-taking was already the Roll of Attorneys. However, the moment he realized that what he had signed was merely an attendance record, he could no longer claim an honest mistake of fact as a valid justification. At that point, Medado should have known that he was not a full-fledged member of the Philippine Bar because of his failure to sign in the Roll of Attorneys, as it was the act of signing therein that would have made him so.[26] When, in spite of this knowledge, he chose to continue practicing law without taking the necessary steps to complete all the requirements for admission to the Bar, he willfully engaged in the unauthorized practice of law.

Under the Rules of Court, the unauthorized practice of law by one's assuming to be an attorney or officer of the court, and acting as such without authority, may constitute indirect contempt of court,[27] which is punishable by fine or imprisonment or both.[28] Such a finding, however, is in the nature of criminal contempt[29] and must be reached after the filing of charges and the conduct of hearings.[30] In this case, while it appears quite clearly that petitioner committed indirect contempt of court by knowingly engaging in unauthorized practice of law, we refrain from making any finding of liability for indirect contempt, as no formal charge pertaining thereto has been filed against him.

Knowingly engaging in unauthorized practice of law likewise transgresses Canon 9 of the Code of Professional Responsibility, which provides:

CANON 9 – A lawyer shall not, directly or indirectly, assist in the unauthorized practice of law.

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[26] *Aguirre v. Rana*, 451 Phil. 428, 435 (2003).

[27] RULES OF COURT, Rule 71, Sec. 3(e).

[28] *Tan v. Balajadia*, 519 Phil. 632 (2006).

[29] *Id*.

[30] RULES OF COURT, Rule 71, Sec. 3.

While a reading of Canon 9 appears to merely prohibit lawyers from assisting in the unauthorized practice of law, the unauthorized practice of law by the lawyer himself is subsumed under this provision, because at the heart of Canon 9 is the lawyer's duty to prevent the unauthorized practice of law. This duty likewise applies to law students and Bar candidates. As aspiring members of the Bar, they are bound to comport themselves in accordance with the ethical standards of the legal profession.

Turning now to the applicable penalty, previous violations of Canon 9 have warranted the penalty of suspension from the practice of law.[31] As Medado is not yet a full-fledged lawyer, we cannot suspend him from the practice of law. However, we see it fit to impose upon him a penalty akin to suspension by allowing him to sign in the Roll of Attorneys one (1) year after receipt of this Resolution. For his transgression of the prohibition against the unauthorized practice of law, we likewise see it fit to fine him in the amount of ₱32,000. During the one year period, petitioner is warned that he is not allowed to engage in the practice of law, and is sternly warned that doing any act that constitutes practice of law before he has signed in the Roll of Attorneys will be dealt with severely by this Court.

WHEREFORE, the instant Petition to Sign in the Roll of Attorneys is hereby **GRANTED**. Petitioner Michael A. Medado is **ALLOWED** to sign in the Roll of Attorneys **ONE (1) YEAR** after receipt of this Resolution. Petitioner is likewise **ORDERED** to pay a **FINE** of ₱32,000 for his unauthorized practice of law. During the one year period, petitioner is **NOT ALLOWED** to practice law, and is **STERNLY WARNED** that doing any act that constitutes practice of law before he has signed in the Roll of Attorneys will be dealt with severely by this Court.

Let a copy of this Resolution be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the

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[31] See *Tapay v. Bancolo*, A.C. No. 9604, 20 March 2013; *Noe-Lacsamana v. Busmente*, A.C. No. 7269, 23 November 2011, 661 SCRA 1; and *Cambaliza v. Cristal-Tenorio*, 478 Phil. 378 (2004).

Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, del Castillo, Abad, Perez, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Brion and *Villarama, Jr., JJ.,* on leave.

Peralta, Bersamin, and *Mendoza, JJ.,* on official leave.

EN BANC

[G.R. No. 204603. September 24, 2013]

REPUBLIC OF THE PHILIPPINES, represented by THE EXECUTIVE SECRETARY, THE SECRETARY OF JUSTICE, THE SECRETARY OF FOREIGN AFFAIRS, THE SECRETARY OF NATIONAL DEFENSE, THE SECRETARY OF THE INTERIOR AND LOCAL GOVERNMENT, THE SECRETARY OF FINANCE, THE NATIONAL SECURITY ADVISER, THE SECRETARY OF BUDGET AND MANAGEMENT, THE TREASURER OF THE PHILIPPINES, THE CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES, and THE CHIEF OF THE PHILIPPINE NATIONAL POLICE, *petitioners, vs.* **HERMINIO HARRY ROQUE, MORO CHRISTIAN PEOPLE'S ALLIANCE, FR. JOE DIZON, RODINIE SORIANO, STEPHANIE ABIERA, MARIA LOURDES ALCAIN, VOLTAIRE ALFEREZ, CZARINA MAY ALTEZ, SHERYL**

BALOT, RENIZZA BATACAN, EDAN MARRI CAÑETE, LEANA CARAMOAN, ALDWIN CAMANCE, RENE DELORINO, PAULYN MAY DUMAN, RODRIGO FAJARDO III, ANNA MARIE GO, ANNA ARMINDA JIMENEZ, MARY ANN LEE, LUISA MANALAYSAY, MIGUEL MUSNGI, MICHAEL OCAMPO, NORMAN ROLAND OCANA III, WILLIAM RAGAMAT, MARICAR RAMOS, CHERRY LOU REYES, MELISSA ANN SICAT, CRISTINE MAE TABING, VANESSA TORNO, and HON. JUDGE ELEUTERIO L. BATHAN, as Presiding Judge of Regional Trial Court, Quezon City, Branch 92, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; REQUISITES.—** Case law states that the following are the requisites for an action for declaratory relief: ***first***, the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; ***second***, the terms of said documents and the validity thereof are doubtful and require judicial construction; ***third***, there must have been no breach of the documents in question; ***fourth***, there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; ***fifth***, the issue must be ripe for judicial determination; and ***sixth***, adequate relief is not available through other means or other forms of action or proceeding.

2. **ID.; ID.; ID.; ID.; JUSTICIABLE CONTROVERSY, EXPLAINED.—** [A] justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. Corollary thereto, by "ripening seeds" it is meant, not that sufficient accrued facts may be dispensed with, but that a dispute may be tried at its inception before it has accumulated the asperity, distemper, animosity, passion, and violence of a full blown battle that looms ahead. The concept describes a state of facts indicating imminent and inevitable litigation provided that the issue is not settled and stabilized by tranquilizing declaration.

3. ID.; ID.; ID.; ID.; THE PETITION FAILED TO SHOW THAT ACTUAL JUDICIAL CONTROVERSY EXISTS IN THIS CASE.— A perusal of private respondents' petition for declaratory relief would show that they have failed to demonstrate how they are left to sustain or are in immediate danger to sustain some direct injury as a result of the enforcement of the assailed provisions of RA 9372. Not far removed from the factual milieu in the *Southern Hemisphere* cases, private respondents only assert general interests as citizens, and taxpayers and infractions which the government could prospectively commit if the enforcement of the said law would remain untrammelled. As their petition would disclose, private respondents' fear of prosecution was solely based on remarks of certain government officials which were addressed to the general public. They, however, failed to show how these remarks tended towards any prosecutorial or governmental action geared towards the implementation of RA 9372 against them. In other words, there was no particular, real or imminent threat to any of them.

4. ID.; ID.; ID.; ID.; FAILURE TO DEMONSTRATE THAT THE QUESTION IS RIPE FOR ADJUDICATION.— As to the fifth requisite for an action for declaratory relief, neither can it be inferred that the controversy at hand is ripe for adjudication since the possibility of abuse, based on the above-discussed allegations in private respondents' petition, remain highly-speculative and merely theorized. It is well-settled that a question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. This private respondents failed to demonstrate in the case at bar.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Roque & Butuyan Law Offices for respondents.

RESOLUTION

PERLAS-BERNABE, *J.*:

Assailed in this petition for *certiorari*[1] are the April 23, 2012[2] and July 31, 2012[3] Orders of the Regional Trial Court of Quezon City, Branch 92 (RTC) in Special Civil Action (SCA) No. Q-07-60778, denying petitioners' motion to dismiss (subject motion to dismiss) based on the following grounds: (*a*) that the Court had yet to pass upon the constitutionality of Republic Act No. (RA) 9372,[4] otherwise known as the "Human Security Act of 2007," in the consolidated cases of *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*[5] (*Southern Hemisphere*); and (*b*) that private respondents' petition for declaratory relief was proper.

The Facts

On July 17, 2007, private respondents filed a Petition[6] for declaratory relief before the RTC, assailing the constitutionality of the following sections of RA 9372: (*a*) Section 3,[7] for being

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[1] *Rollo*, pp. 2-29.

[2] *Id.* at 31-32. Penned by Presiding Judge Eleuterio L. Bathan.

[3] *Id.* at 33-35.

[4] "An Act to Secure the State and Protect Our People From Terrorism."

[5] G.R. Nos. 178552, 178554, 178581, 178890, 179157 & 179461, October 5, 2010, 632 SCRA 146.

[6] *Rollo*, pp. 51-91.

[7] SEC. 3. *Terrorism*.- Any person who commits an act punishable under any of the following provisions of the Revised Penal Code:

a. Article 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);

b. Article 134 (Rebellion or Insurrection);

c. Article 134-a (*Coup d' Etat*), including acts committed by private persons;

void for vagueness;[8] (*b*) Section 7,[9] for violating the right to privacy of communication and due process and the privileged

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d. Article 248 (Murder);

e. Article 267 (Kidnapping and Serious Illegal Detention);

f. Article 324 (Crimes Involving Destruction), or under

1. Presidential Decree No. 1613 (The Law on Arson);

2. Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);

3. Republic Act No. 5207, (Atomic Energy Regulatory and Liability Act of 1968);

4. Republic Act No. 6235 (Anti-Hijacking Law);

5. Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and,

6. Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives)

thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole as provided for under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

[8] *Rollo,* pp. 72-77.

[9] SEC. 7. *Surveillance of Suspects and Interception and Recording of Communications*. — The provisions of Republic Act No. 4200 (Anti-Wire Tapping Law) to the contrary notwithstanding, a police or law enforcement official and the members of his team may, upon a written order of the Court of Appeals, listen to, intercept and record, with the use of any mode, form, kind or type of electronic or other surveillance equipment or intercepting and tracking devices, or with the use of any other suitable ways and means for that purpose, any communication, message, conversation, discussion, or spoken or written words between members of a judicially declared and outlawed terrorist organization, association, or group of persons or of any person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism.

Provided, That surveillance, interception and recording of communications between lawyers and clients, doctors and patients, journalists and their sources and confidential business correspondence shall not be authorized.

nature of priest-penitent relationships;[10] (*c*) Section 18,[11] for violating due process, the prohibition against *ex post facto* laws or bills of attainder, the Universal Declaration of Human Rights,

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[10] *Rollo,* pp. 77-79.

[11] SEC. 18. *Period of Detention Without Judicial Warrant of Arrest.* — The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any police or law enforcement personnel, who, having been duly authorized in writing by the Anti-Terrorism Council has taken custody of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said charged or suspected person to the proper judicial authority within a period of three days counted from the moment the said charged or suspected person has been apprehended or arrested, detained, and taken into custody by the said police, or law enforcement personnel: *Provided*, That the arrest of those suspected of the crime of terrorism or conspiracy to commit terrorism must result from the surveillance under Section 7 and examination of bank deposits under Section 27 of this Act.

The police or law enforcement personnel concerned shall, before detaining the person suspected of the crime of terrorism, present him or her before any judge at the latter's residence or office nearest the place where the arrest took place at any time of the day or night. It shall be the duty of the judge, among other things, to ascertain the identity of the police or law enforcement personnel and the person or persons they have arrested and presented before him or her, to inquire of them the reasons why they have arrested the person and determine by questioning and personal observation whether or not the suspect has been subjected to any physical, moral or psychological torture by whom and why. The judge shall then submit a written report of what he/she had observed when the subject was brought before him to the proper court that has jurisdiction over the case of the person thus arrested. The judge shall forthwith submit his/her report within three calendar days from the time the suspect was brought to his/her residence or office.

Immediately after taking custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, the police or law enforcement personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest: *Provided*, That where the arrest is made during Saturdays, Sundays, holidays or after office hours, the written notice shall be served at the residence of the judge nearest the place where the accused was arrested.

The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon the police or law enforcement personnel who fails to notify any judge as provided in the preceding paragraph.

and the International Covenant on Civil and Political Rights, as well as for contradicting Article 125[12] of the Revised Penal Code, as amended;[13] (*d*) Section 26,[14] for violating the right to travel;[15] and (*e*) Section

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[12] Art. 125. *Delay in the delivery of detained persons to the proper judicial authorities.* — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel. (As amended by Executive Order Nos. 59 and 272, November 7, 1986 and July 25, 1987, respectively.)

[13] *Rollo,* pp. 79-85.

[14] SEC. 26. *Restriction on Travel.* — In cases where evidence of guilt is not strong, and the person charged with the crime of terrorism or conspiracy to commit terrorism is entitled to bail and is granted the same, the court, upon application by the prosecutor, shall limit the right of travel of the accused to within the municipality or city where he resides or where the case is pending, in the interest of national security and public safety, consistent with Article III, Section 6 of the Constitution. Travel outside of said municipality or city, without the authorization of the court, shall be deemed a violation of the terms and conditions of his bail, which shall then be forfeited as provided under the Rules of Court. He/she may also be placed under house arrest by order of the court at his or her usual place of residence.

While under house arrest, he or she may not use telephones, cellphones, e-mails, computers, the internet or other means of communications with people outside the residence until otherwise ordered by the court.

The restrictions abovementioned shall be terminated upon the acquittal of the accused or of the dismissal of the case filed against him or earlier upon the discretion of the court on motion of the prosecutor or of the accused.

[15] *Rollo,* pp. 85-86.

27,[16] for violating the prohibition against unreasonable searches and seizures.[17]

Petitioners moved to suspend the proceedings,[18] averring that certain petitions (SC petitions) raising the issue of RA 9372's constitutionality have been lodged before the Court.[19] The said motion was granted in an Order dated October 19, 2007.[20]

On October 5, 2010, the Court promulgated its Decision[21] in the *Southern Hemisphere* cases and thereby dismissed the SC petitions.

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[16] SEC. 27. *Judicial Authorization Required to Examine Bank Deposits, Accounts, and Records*. - The provisions of Republic Act No. 1405 as amended, to the contrary notwithstanding, the justices of the Court of Appeals designated as a special court to handle anti-terrorism cases after satisfying themselves of the existence of probable cause in a hearing called for that purpose that: (1) a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, (2) of a judicially declared and outlawed terrorist organization, association, or group of persons; and (3) of a member of such judicially declared and outlawed organization, association, or group of persons, may authorize in writing any police or law enforcement officer and the members of his/her team duly authorized in writing by the anti-terrorism council to: (a) examine, or cause the examination of, the deposits, placements, trust accounts, assets and records in a bank or financial institution; and (b) gather or cause the gathering of any relevant information about such deposits, placements, trust accounts, assets, and records from a bank or financial institution. The bank or financial institution concerned, shall not refuse to allow such examination or to provide the desired information, when so ordered by and served with the written order of the Court of Appeals.

[17] *Rollo,* pp. 86-88.

[18] *Id*. at 95-99. Very Urgent Motion to Suspend Proceedings in Deference to Supreme Court dated September 3, 2007.

[19] Pertaining to the petitions for *certiorari* in the *Southern Hemisphere* cases.

[20] *Rollo*, pp. 104-105. Penned by then Presiding Judge (now Court of Appeals Associate Justice) Samuel H. Gaerlan.

[21] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, *supra* note 5.

On February 27, 2012, petitioners filed the subject motion to dismiss,[22] contending that private respondents failed to satisfy the requisites for declaratory relief. Likewise, they averred that the constitutionality of RA 9372 had already been upheld by the Court in the *Southern Hemisphere* cases.

In their Comment/Opposition,[23] private respondents countered that: (*a*) the Court did not resolve the issue of RA 9372's constitutionality in *Southern Hemisphere* as the SC petitions were dismissed based purely on technical grounds; and (*b*) the requisites for declaratory relief were met.

The RTC Ruling

On April 23, 2012, the RTC issued an Order[24] which denied the subject motion to dismiss, finding that the Court did not pass upon the constitutionality of RA 9372 and that private respondents' petition for declaratory relief was properly filed.

Petitioners moved for reconsideration[25] which was, however, denied by the RTC in an Order dated July 31, 2012.[26] The RTC observed that private respondents have personal and substantial interests in the case and that it would be illogical to await the adverse consequences of the aforesaid law's implementation considering that the case is of paramount impact to the Filipino people.[27]

Hence, the instant petition.

The Issues Before the Court

The present controversy revolves around the issue of whether or not the RTC gravely abused its discretion when it denied the subject motion to dismiss.

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[22] *Rollo*, pp. 107-117.

[23] *Id*. at 118-132. Dated March 23, 2012.

[24] *Id*. at 31-32.

[25] *Id*. at 37-48. Dated June 13, 2012.

[26] *Id*. at 33-35.

[27] *Id*. at 35.

Asserting the affirmative, petitioners argue that private respondents failed to satisfy the requirements for declaratory relief and that the Court had already sustained with finality the constitutionality of RA 9372.

On the contrary, private respondents maintain that the requirements for declaratory relief have been satisfied and that the Court has yet to resolve the constitutionality of RA 9372, negating any grave abuse of discretion on the RTC's part.

The Court's Ruling

The petition is meritorious.

An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.[28] It is well-settled that the abuse of discretion to be qualified as "grave" must be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law.[29] In this relation, case law states that not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion.[30] The degree of gravity, as above-described, must be met.

Applying these principles, the Court observes that while no grave abuse of discretion could be ascribed on the part of the RTC when it found that the Court did not pass upon the constitutionality of RA 9372 in the *Southern Hemisphere* cases, it, however, exceeded its jurisdiction when it ruled that private respondents' petition had met all the requisites for an action for declaratory relief. Consequently, its denial of the subject motion to dismiss was altogether improper.

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[28] *Yu v. Reyes-Carpio*, G.R. No. 189207, June 15, 2011, 652 SCRA 341, 348.

[29] *Chua Huat v. Court of Appeals*, 276 Phil. 1, 18 (1991).

[30] See *Tavera-Luna, Inc. v. Nable*, 67 Phil. 340, 344 (1939).

To elucidate, it is clear that the Court, in *Southern Hemisphere*, did not make any definitive ruling on the constitutionality of RA 9372. The *certiorari* petitions in those consolidated cases were dismissed based solely on procedural grounds, namely: (*a*) the remedy of *certiorari* was improper;[31] (*b*) petitioners therein lack *locus standi*;[32] and (*c*) petitioners therein failed to present an actual case or controversy.[33] Therefore, there was no grave abuse of discretion.

The same conclusion cannot, however, be reached with regard to the RTC's ruling on the sufficiency of private respondents' petition for declaratory relief.

Case law states that the following are the requisites for an action for declaratory relief: ***first***, the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; ***second***, the terms of said documents and the validity thereof are doubtful and require judicial construction; ***third***, there must have been no breach of the documents in question; ***fourth***, there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; ***fifth***, the issue must be ripe for judicial determination; and ***sixth***, adequate relief is not available through other means or other forms of action or proceeding.[34]

Based on a judicious review of the records, the Court observes that while the first,[35] second,[36] and

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[31] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, *supra* note 5, at 166-167.

[32] *Id.* at 167-175.

[33] *Id.* at 175-179.

[34] *Almeda v. Bathala Marketing Industries, Inc.*, 566 Phil. 458, 467 (2008).

[35] The subject matter of the controversy is a law, in particular, Sections 3, 7, 18, 26, and 27 of RA 9372.

[36] Private respondents assert that the validity of Sections 3, 7, 18, 26, and 27 of RA 9372 remain doubtful on grounds of, among others, void for vagueness, lack of due process, and for being violative of various constitutional rights.

third[37]requirements appear to exist in this case, the fourth, fifth, and sixth requirements, however, remain wanting.

As to the fourth requisite, there is serious doubt that an actual justiciable controversy or the "ripening seeds" of one exists in this case.

Pertinently, a justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory.[38] Corollary thereto, by "ripening seeds" it is meant, not that sufficient accrued facts may be dispensed with, but that a dispute may be tried at its inception before it has accumulated the asperity, distemper, animosity, passion, and violence of a full blown battle that looms ahead. The concept describes a state of facts indicating imminent and inevitable litigation provided that the issue is not settled and stabilized by tranquilizing declaration.[39]

A perusal of private respondents' petition for declaratory relief would show that they have failed to demonstrate how they are left to sustain or are in immediate danger to sustain some direct injury as a result of the enforcement of the assailed provisions of RA 9372. Not far removed from the factual milieu in the *Southern Hemisphere* cases, private respondents only assert general interests as citizens, and taxpayers and infractions which the government could prospectively commit if the enforcement of the said law would remain untrammelled. As their petition would disclose, private respondents' fear of

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[37] Private respondents admit that they have yet to suffer any injury from the implementation of the said law. See *rollo*, pp. 162-164.

[38] *Velarde v. Social Justice Society,* G.R. No. 159357, April 28, 2004, 428 SCRA 283, 291.

[39] HERRERA, OSCAR M., *Remedial Law, Volume* III, Special Civil Actions Rule 57-71, p. 193 (1999), citing *Tolentino v. Board of Accountancy*, 90 Phil. 83 (1951) and *In re: Pablo Y. Sen. v. Republic of the Philippines,* 96 Phil. 987 (1955).

prosecution was solely based on remarks of certain government officials which were addressed to the general public.[40] They, however, failed to show how these remarks tended towards any prosecutorial or governmental action geared towards the implementation of RA 9372 against them. In other words, there was no particular, real or imminent threat to any of them. As held in *Southern Hemisphere*:

> Without any justiciable controversy, the petitions have become pleas for declaratory relief, over which the Court has no original jurisdiction. **Then again, declaratory actions characterized by "double contingency," where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are merely theorized, lie beyond judicial review for lack of ripeness.**
>
> **The possibility of abuse in the implementation of RA 9372 does not avail to take the present petitions out of the realm of the surreal and merely imagined**. Such possibility is not peculiar to RA 9372 since the exercise of any power granted by law may be abused. Allegations of abuse **must be anchored on real events before courts may step in to settle actual controversies involving rights which are legally demandable and enforceable**.[41] (Emphasis supplied; citations omitted)

Thus, in the same light that the Court dismissed the SC petitions in the *Southern Hemisphere* cases on the basis of, among others, lack of actual justiciable controversy (or the ripening seeds of one), the RTC should have dismissed private respondents' petition for declaratory relief all the same.

It is well to note that private respondents also lack the required *locus standi* to mount their constitutional challenge against the implementation of the above-stated provisions of RA 9372

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[40] *Rollo,* pp. 62-65.

[41] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, *supra* note 5, at 179.

since they have not shown any direct and personal interest in the case.[42] While it has been previously held that transcendental public importance dispenses with the requirement that the petitioner has experienced or is in actual danger of suffering direct and personal injury,[43] it must be stressed that cases involving the constitutionality of penal legislation belong to an altogether different genus of constitutional litigation.[44] Towards this end, compelling State and societal interests in the proscription of harmful conduct necessitate a closer judicial scrutiny of *locus standi*,[45] as in this case. To rule otherwise, would be to corrupt the settled doctrine of *locus standi*, as every worthy cause is an interest shared by the general public.[46]

As to the fifth requisite for an action for declaratory relief, neither can it be inferred that the controversy at hand is ripe for adjudication since the possibility of abuse, based on the above-discussed allegations in private respondents' petition,

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[42] "x x x [A] party who assails the constitutionality of a statute must have a direct and personal interest. It must show not only that the law or any governmental act is invalid, but also that it sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement, and not merely that it suffers thereby in some indefinite way. It must show that it has been or is about to be denied some right or privilege to which it is lawfully entitled or that it is about to be subjected to some burdens or penalties by reason of the statute or act complained of.

For a concerned party to be allowed to raise a constitutional question, it must show that (1) it has personally suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government, (2) the injury is fairly traceable to the challenged action, and (3) the injury is likely to be redressed by a favorable action." (*Anak Mindanao Party-List Group v. Exec. Sec. Ermita*, 558 Phil. 338, 351 [2007]; citations omitted.)

[43] See *Chavez v. PCGG*, 360 Phil. 133, 155-156 (1998).

[44] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, *supra* note 5, at 168.

[45] *Id*.

[46] *Id*. at 174.

remain highly-speculative and merely theorized. It is well-settled that a question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it.[47] This private respondents failed to demonstrate in the case at bar.

Finally, as regards the sixth requisite, the Court finds it irrelevant to proceed with a discussion on the availability of adequate reliefs since no impending threat or injury to the private respondents exists in the first place.

All told, in view of the absence of the fourth and fifth requisites for an action for declaratory relief, as well as the irrelevance of the sixth requisite, private respondents' petition for declaratory relief should have been dismissed. Thus, by giving due course to the same, it cannot be gainsaid that the RTC gravely abused its discretion.

WHEREFORE, the petition is **GRANTED**. Accordingly, the April 23, 2012 and July 31, 2012 Orders of the Regional Trial Court of Quezon City, Branch 92 in SCA No. Q-07-60778 are **REVERSED** and **SET ASIDE** and the petition for declaratory relief before the said court is hereby **DISMISSED**.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., de Castro, del Castillo, Abad, Perez, Reyes, and *Leonen, JJ.,* concur.

Brion and *Villarama, Jr., JJ.,* on leave.

Peralta, Bersamin, and *Mendoza, JJ.,* on official leave.

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[47] *Guingona, Jr. v. Court of Appeals*, 354 Phil. 415, 427 (1998).

SECOND DIVISION

[G.R. No. 179259. September 25, 2013]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PHILIPPINE AIRLINES, INC. (PAL),** *respondent.*

SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997 IN RELATION TO PD 1590; FUNDAMENTAL RULES THAT GOVERN THE TAXATION OF PHILIPPINE AIRLINES, INC. (PAL).—** [D]uring the lifetime of the franchise of respondent, its taxation shall be strictly governed by two fundamental rules, to wit: (1) respondent shall pay the Government either the basic corporate income tax or franchise tax, whichever is lower; and (2) the tax paid by respondent, under either of these alternatives, shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges, except only real property tax. Parenthetically, the basic corporate income tax of respondent shall be based on its annual net taxable income, computed in accordance with the NIRC of 1997, as amended. PD 1590 also explicitly authorizes respondent, in the computation of its basic corporate income tax, to: (1) depreciate its assets twice as fast the normal rate of depreciation; and (2) carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss. The franchise tax, on the other hand, shall be 2% of the gross revenues derived by respondent from all sources, whether transport or nontransport operations. However, with respect to international air-transport service, the franchise tax shall only be imposed on the gross passenger, mail, and freight revenues of respondent from its outgoing flights.

2. **ID.; ID.; ID.; PAL IS EXEMPT FROM THE MINIMUM CORPORATE INCOME TAX (MCIT) IMPOSED UNDER THE NIRC.—** Based on the x x x pronouncements [in *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*], it is clear that respondent is exempt from the MCIT imposed under Section 27(E) of the NIRC of 1997, as amended. Thus, respondent cannot

be held liable for the assessed deficiency MCIT of ₱326,778,723.35 for fiscal year ending 31 March 2000.

3. **ID.; ID.; ID.; ID.; WHAT EXEMPTS PAL FROM MCIT IS NOT THE FACT OF PAYMENT BUT THE EXERCISE OF ITS OPTION.—** [A]s to petitioner's contention that respondent needs to actually pay a certain amount as basic corporate income tax or franchise tax before it can enjoy the tax exemption granted to it since it should retain the responsibility of paying its share of the tax burden, this Court has categorically ruled in the above-cited cases that it is not the fact of tax payment that exempts it, but the exercise of its option. Notably, in another case involving the same parties, the Court further expressed that a strict interpretation of the word "pay" in Section 13 of PD 1590 would effectively render nugatory the other rights categorically conferred upon the respondent by its franchise. Hence, there being no qualification to the exercise of its options under Section 13, then respondent is free to choose basic corporate income tax, even if it would have zero liability for the same in light of its net loss position for the taxable year. By way of reiteration, although it appears that respondent is not completely exempt from all forms of taxes under PD 1590 considering that Section 13 thereof requires it to pay, either the lower amount of the basic corporate income tax or franchise tax (which are both direct taxes), at its option, mere exercise of such option already relieves respondent of liability for all other taxes and/or duties, whether direct or indirect taxes. This is an expression of the same thought in Our ruling that, to repeat, it is not the fact of tax payment that exempts it, but the exercise of its option.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jaclyn Marie S. Arellano Tan and *Oscar C. Yentanilla* for respondent.

D E C I S I O N

PEREZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* seeking to reverse and set aside the 19 July 2007 Decision[1] and 23 August 2007 Resolution[2] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 271 which affirmed the cancellation and withdrawal of Assessment Notice No. INC-FY-99-2000-000085 and Formal Letter of Demand for the payment by the respondent Philippine Airlines, Inc. (respondent), of deficiency Minimum Corporate Income Tax (MCIT) in the amount of ₱326,778,723.35, covering the fiscal year ending 31 March 2000.

The Facts

The factual antecedents of the case are undisputed:

Petitioner, the Commissioner of Internal Revenue, has the power to assess and collect national internal revenue taxes, fees, and charges, including the 2% per centum MCIT imposed under Section 27(E) of the National Internal Revenue Code (NIRC) of 1997, as amended. Respondent, on the other hand, is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines.

For the fiscal year that ended 31 March 2000, respondent filed on 17 July 2000 its Tentative Corporate Income Tax Return, reflecting a creditable tax withheld for the fourth quarter amounting to ₱524,957.00, and a zero taxable income for said year. Hence, respondent filed on 16 July 2001 a written claim for refund before the petitioner.

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[1] *Rollo*, pp. 43-62; Penned by Associate Justice Lovell R. Bautista with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy and Olga Palanca-Enriquez concurring.

[2] *Id.* at 64-67.

As a consequence thereof, respondent received on 10 September 2001 the Letter of Authority No. 200000002247 from the Bureau of Internal Revenue (BIR) Large Taxpayers Service, dated 3 September 2001, authorizing the revenue officers named therein to examine respondent's books of accounts and other accounting records for the purpose of evaluating respondent's "Claim for Refund on Creditable Withholding Tax – Income Tax" covering the fiscal year ending 31 March 2000.

Numerous correspondences between respondent and the Group Supervisor of the BIR Large Taxpayers Service, the revenue officers examining its accounting records, and the Chief of LT Audit & Investigation Division I of the BIR ensued, particularly as to the submission of various supporting documents and presentation of records.

On 16 July 2003, respondent received a "Summary of Creditable Withholding Tax at Source Certified by RAD Fiscal Year Ending March 31, 2000," together with a computation labelled "Compromise Penalties for Late Filing of Return." Likewise, on same date, respondent received a letter dated 8 July 2003 issued by the Chief of LT Audit & Investigation Division I, informing the former that the results of the investigation of its claim for refund on creditable withholding tax for fiscal year ending 31 March 2000 had already been submitted, and that an informal conference was set on 17 July 2003 to be held on the latter's office.

On 11 August 2003, respondent received from the same revenue officers a computation of their initial deficiency MCIT assessment in the amount of ₱537,477,867.64. Consequently, respondent received on 20 October 2003 a Preliminary Assessment Notice and Details of Assessment issued by the Large Taxpayers Service dated 22 September 2003, assessing respondent deficiency MCIT including interest, in the aggregate amount of ₱315,566,368.68. A written protest to said preliminary assessment was filed by respondent on 3 November 2003.

Thereafter, on 16 December 2003, respondent received a Formal Letter of Demand and Details of Assessment dated 1

December 2003 from the Large Taxpayers Service demanding the payment of the total amount of ₱326,778,723.35, inclusive of interest, as contained in Assessment Notice No. INC-FY-99-2000-000085. In response thereto, respondent filed its formal written protest on 13 January 2004 reiterating the following defenses: (1) that it is exempt from, or is not subject to, the 2% MCIT by virtue of its charter, Presidential Decree No. (PD) 1590;[3] and (2) that the three-year period allowed by law for the BIR to assess deficiency internal revenue taxes for the taxable year ending 31 March 2000 had already lapsed on 15 July 2003.

Since no final action has been taken by petitioner on respondent's formal written protest, respondent filed a Petition for Review before the Second Division of the CTA on 4 August 2004 docketed as CTA Case No. 7029.

The Ruling of the CTA Second Division

In a Decision dated 22 August 2006,[4] the CTA Second Division granted respondent's petition and accordingly ordered for the cancellation and withdrawal of Assessment Notice No. INC-FY-99-2000-000085 and Formal Letter of Demand for the payment of deficiency MCIT in the amount of ₱326,778,723.35, covering the fiscal year ending 31 March 2000, issued against respondent.

The CTA Second Division made the following factual and legal findings, to wit:

(a) Section 13 of PD 1590 acquiring and limiting the extent of the tax liability of respondent under its franchise is coached in a clear, plain and unambiguous manner, and needs no further interpretation or construction;

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[3] An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Other Countries, which took effect on 11 June 1978.

[4] *Rollo*, pp. 69-90; Penned by Associate Justice Olga Palanca-Enriquez with Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy concurring.

(b) Section 13 clearly provides that respondent is liable only for either the basic corporate income tax based on its annual net taxable income, or the 2% franchise tax based on gross revenue, whichever is lower;

(c) Respondent-grantee must only choose between the two alternatives mentioned in Section 13 in the payment of its tax liability to the government, and its choice must be that which will result in a lower tax liability;

(d) Since the income tax return of respondent reflected a zero taxable income for the fiscal year ending 31 March 2000, obviously being lower than the 2% franchise tax, its choice of the former is definitely a better alternative as basis for its tax liability to the government;[5]

(e) The basic corporate income tax mentioned in Section 13 of PD 1590 does not refer to the MCIT under Section 27(E) of the NIRC of 1997, as amended, but particularly to the applicable rate of 32% income tax under Section 27(A) of the same Code, on the taxable income of domestic corporations;

(f) The MCIT is regarded to belong to "other taxes" as it was not included in the choices provided by the franchise. To hold otherwise would be to give another option to respondent which is evidently not within the ambit of PD 1590;[6]

(g) The "in lieu of all other taxes" clause under Section 13 of respondent's legislative franchise exempts it from all taxes necessary in the conduct of its business covered by the franchise, except the tax on its real property for which respondent is expressly made payable;[7] and

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[5] *Id.* at 81-83.

[6] *Id.* at 88.

[7] *Id.* at 84.

(h) The rationale or purpose for the exemption from all other taxes except the income tax and real property tax granted to respondent upon the payment of the basic corporate income tax or the 2% franchise tax is that such tax exemption is part of inducement for the acceptance of the franchise and the rendition of public service by the grantee.[8]

Simply put, it pronounced that the only qualification provided for in the law is the option given to respondent to choose between the taxes which will yield the lesser liability. Thus, if as a result of the exercise of the option, the respondent ends up without any tax liability, it should not be held liable for any other tax, such as the MCIT, except for real property tax.[9]

On 30 January 2007, the CTA Second Division denied petitioner's Motion for Reconsideration for lack of merit.[10]

Aggrieved, petitioner appealed to the CTA *En Banc* by filing a Petition for Review pursuant to Section 18 of Republic Act (RA) No. 9282 (should be RA No. 1125, as amended by RA No. 9282)[11] on 1 March 2007, docketed as CTA EB No. 271.[12]

The Ruling of the CTA En Banc

The CTA *En Banc* affirmed both the aforesaid Decision and Resolution rendered by the CTA Second Division in CTA

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[8] *Id.* at 86.

[9] *Id.* at 86-87.

[10] *Id.* at 111-113.

[11] RA No. 1125, otherwise known as "An Act Creating the Court of Tax Appeals," as amended by RA No. 9282, also known as "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, As Amended, Otherwise Known As the Law Creating the Court of Tax Appeals, and for Other Purposes", which took effect on 23 April 2004.

[12] *Rollo*, pp. 114-140.

Case No. 7029, ruling that under Section 13 of PD 1590, respondent, as consideration for the franchise, is indeed granted the privilege to choose between two options in the payment of its tax liability to the government. Naturally, its choice will be that which will result in a lower tax liability since such choice is "in lieu of all other taxes" imposed by all government entities in the country.[13] The only exception is the real property tax.

The appellate court pointed out that even if respondent opted to be covered by the Income Tax provisions of the NIRC, it does not follow that it is covered by the MCIT provisions of the same Code. There is nothing in PD 1590 which obliges the respondent to pay other taxes, much less the MCIT, in case it suffers a net operating loss. Otherwise, it would negate the tax relief granted under Section 13 of its franchise and would render it useless. The tax relief allows respondent to carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss.[14]

Likewise, it elucidated that the MCIT is not the basic corporate income tax referred to in Section 13 of PD 1590. There is a distinction between the MCIT and the basic corporate income tax. The MCIT under Section 27(E)(1) of the NIRC of 1997, as amended, is imposed upon gross income; while the basic corporate income tax refers to the 32% income tax on the taxable income of domestic corporations under Section 27(A) of the same Code. In other words, the court *a quo* ruled that since the MCIT is imposed upon gross income, it cannot be made to apply to respondent by virtue of the express provision in its franchise that its basic corporate income tax shall be based on its annual net taxable income. Hence, it is in this sense that the MCIT qualifies as "other taxes" from which the respondent had been granted tax exemption by its franchise.[15]

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[13] *Id.* at 52; CTA *En Banc* Decision dated 19 July 2007.

[14] *Id.* at 54-55 citing *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, 535 Phil. 95 (2006).

[15] *Rollo*, pp. 55-56.

Moreover, the provision on MCIT, Section 27(E) of the NIRC of 1997, as amended, did not repeal respondent's franchise considering that it is a general law which cannot impliedly repeal, alter, or amend PD 1590, being a special law. Neither can Revenue Memorandum Circular (RMC) No. 66-2003 amend respondent's franchise as it is merely an administrative issuance.

Lastly, there is no provision in RA No. 8424[16] which provides and specifies that the MCIT shall be in addition to the taxes for which respondent is liable. To rule otherwise would be violative of Section 24 of PD 1590 which states that respondent's franchise may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend or repeal the franchise or any section or provision thereof. Therefore, in the absence of a law expressly repealing PD 1590 at the time the subject assessment was issued and for the period covered by the assessment, respondent's tax exemption privilege under the "in lieu of all other taxes" clause of Section 13 thereof must be applied.

Upon denial of petitioner's Motion for Reconsideration of the 19 July 2007 Decision of the CTA *En Banc*, it filed this Petition for Review on *Certiorari* before this Court seeking the reversal of the aforementioned Decision and the 23 August 2007 Resolution[17] rendered in CTA EB No. 271.

The Issues

The issues submitted before this Court for consideration are as follows:

(1) Whether or not the CTA *En Banc* erred in holding that the MCIT is properly categorized as "other taxes" pursuant to respondent's charter; and

(2) Whether or not the CTA *En Banc* erred in ruling that respondent is not liable for the 2% MCIT deficiency for the fiscal year ending 31 March 2000.[18]

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[16] The Tax Reform Act of 1997, which took effect on 1 January 1998.

[17] *Rollo*, pp. 64-67.

[18] *Id*. at 19.

The abovementioned issues may be consolidated and restated as follows: whether or not the CTA *En Banc* erred when it affirmed the cancellation of Assessment Notice No. INC-FY-99-2000-000085 and Formal Letter of Demand issued by petitioner against respondent for the payment of deficiency MCIT in the amount of ₱326,778,723.35, covering the fiscal year ending 31 March 2000.

In support thereof, petitioner submits the following arguments: (a) respondent clearly opted to be covered by the income tax provision of the NIRC of 1997, as amended; hence, it is covered by the MCIT provision of the same Code and liable to pay the same; (b) the MCIT does not belong to the category of "other taxes" which may enable respondent to avail of the "in lieu of all other taxes" clause under Section 13 of PD 1590 because it is a category of an income tax pursuant to Section 27(E)(1) of the NIRC of 1997, as amended; (c) the MCIT provision of the NIRC of 1997, as amended, is not an amendment of respondent's charter, but an amendment of the same Code. Hence, respondent's obligation to pay the MCIT is not the result of an implied amendment of PD 1590, but rather, the consequence of respondent's option of paying income tax rather than franchise tax; (d) respondent is not only given the privilege to choose between what will give it the benefit of a lower tax, but also the responsibility of paying its share of the tax burden. Otherwise stated, it is the legislative intent to give respondent a privilege in the form of an option in paying its taxes which would result in paying a lower tax liability, but not in dispensing the sharing of a tax burden to which every taxpayer is obligated to bear; and (e) a claim for exemption from taxation is never presumed; thus, respondent is liable for the deficiency MCIT.

Respondent, in its Comment thereto, counters among others, that there is nothing in PD 1590 which obliges respondent to pay other taxes, much less the MCIT, in case it suffers a net operating loss. Since the MCIT is not the basic corporate income tax, nor the 2% franchise tax, nor the real property tax mentioned by Section 13 thereof, then it is but logical to conclude that the

MCIT belongs to the category of "other taxes" for which respondent is not liable.

Our Ruling

Respondent's exemption from the MCIT is already a settled matter.

Section 27 of the NIRC of 1997, as amended, provides as follows:

SEC. 27. *Rates of Income Tax on Domestic Corporations.—*

(A) *In General.—* Except as otherwise provided in this Code, an income tax of thirty-five percent (35%) is hereby imposed upon the **taxable income derived during each taxable year from all sources within and without the Philippines by every corporation**, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or existing under the law of the Philippines: *Provided*, That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); **and effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%)**.

x x x x

(E) *Minimum Corporate Income Tax on Domestic Corporations.—*

(1) *Imposition of Tax —* **A minimum corporate income tax of two percent (2%) of the gross income as of the end of the taxable year**, as defined herein, is hereby imposed on a corporation taxable under this Title, beginning on the fourth taxable year immediately following the year in which such corporation commenced its business operations, when the minimum income tax is greater than the tax computed under Subsection (A) of this Section for the taxable year. (Emphasis supplied)

Based on the foregoing, a domestic corporation must pay whichever is the higher of: (1) the income tax under Section 27(A) of the NIRC of 1997, as amended, computed by applying the tax rate therein to the taxable income of the corporation; or (2) the MCIT under Section 27(E), also of the same Code, equivalent to 2% of the gross income of the corporation. The Court would like to underscore that although this may be the

general rule in determining the income tax due from a domestic corporation under the provisions of the NIRC of 1997, as amended, such rule can only be applied to respondent only as to the extent allowed by the provisions of its franchise.

Relevant thereto, PD 1590, the franchise of respondent, contains the following pertinent provisions governing its taxation:

Section 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise **whichever of subsections (a) and (b) hereunder will result in a lower tax:**

(a) The **basic corporate income tax** based on the **grantee's annual net taxable income** computed in accordance with the provisions of the National Internal Revenue Code; or

(b) A **franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources**, without distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

The tax paid by the grantee under either of the above alternatives shall be **in lieu of all other taxes**, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:

x x x x

The grantee, shall, however, **pay the tax on its real property** in conformity with existing law.

For purposes of computing the basic corporate income tax as provided herein, the grantee is authorized:

(a) To **depreciate its assets** to the extent of **not more than twice** as fast the normal rate of depreciation; and

(b) To **carry over** as a deduction from taxable income **any net loss incurred in any year** up to five years following the year of such loss.

Section 14. The grantee shall pay either the franchise tax or the basic corporate income tax on quarterly basis to the Commissioner of Internal Revenue. Within sixty (60) days after the end of each of the first three quarters of the taxable calendar or fiscal year, the quarterly franchise or income-tax return shall be filed and payment of either the franchise or income tax shall be made by the grantee.

A final or an adjustment return covering the operation of the grantee for the preceding calendar or fiscal year shall be filed on or before the fifteenth day of the fourth month following the close of the calendar or fiscal year. The amount of the fiscal franchise or income tax to be paid by the grantee shall be the balance of the total franchise or income tax shown in the final or adjustment return after deducting therefrom the total quarterly franchise or income taxes already paid during the preceding first three quarters of the same taxable year.

Any excess of the total quarterly payments over the actual annual franchise of income tax due as shown in the final or adjustment franchise or income-tax return shall either be refunded to the grantee or credited against the grantee's quarterly franchise or income-tax liability for the succeeding taxable year or years at the option of the grantee.

The term **"gross revenue"** is herein defined as the total gross income earned by the grantee; (a) transport, nontransport, and other services; (b) earnings realized from investments in money-market placements, bank deposits, investments in shares of stock and other securities, and other investments; (c) total gains net of total losses realized from the disposition of assets and foreign-exchange transactions; and (d) gross income from other sources. (Emphasis supplied)

From the foregoing provisions, during the lifetime of the franchise of respondent, its taxation shall be strictly governed by two fundamental rules, to wit: (1) respondent shall pay the Government either the basic corporate income tax or franchise tax, whichever is lower; and (2) the tax paid by respondent, under either of these alternatives, shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges, except only real property tax.

Parenthetically, the basic corporate income tax of respondent shall be based on its annual net taxable income, computed in accordance with the NIRC of 1997, as amended. PD 1590

also explicitly authorizes respondent, in the computation of its basic corporate income tax, to: (1) depreciate its assets twice as fast the normal rate of depreciation;[19] and (2) carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss.[20]

The franchise tax, on the other hand, shall be 2% of the gross revenues derived by respondent from all sources, whether transport or nontransport operations. However, with respect to international air-transport service, the franchise tax shall only be imposed on the gross passenger, mail, and freight revenues of respondent from its outgoing flights.[21]

Accordingly, considering the foregoing precepts, this Court had the opportunity to finally settle this matter and categorically enunciated in *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,[22] that respondent cannot be subjected to MCIT for the following reasons:

> *First*, Section 13(a) of [PD] 1590 refers to **"basic corporate income tax."** In *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,[23] the Court already settled that the "basic corporate income tax," under Section 13(a) of [PD] 1590, relates to the general rate of 35% (reduced to 32% by the year 2000) as stipulated in Section 27(A) of the NIRC of 1997.

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[19] Section 34(F) of the NIRC of 1997, as amended. - As a general rule, there shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including reasonable allowance obsolescence) of property used in the trade or business.

[20] In general, losses shall be deducted from gross income in the same taxable year said losses were incurred. The recognized exception under Section 39(D) of the NIRC of 1997, as amended, allowing net capital loss carryover, may only be availed of by a taxpayer "other than a corporation."

[21] *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, G.R. No. 180066, 7 July 2009, 592 SCRA 237, 250.

[22] *Id.* at 252-268.

[23] 535 Phil. 95 (2006).

Section 13(a) of [PD] 1590 requires that the basic corporate income tax be computed in accordance with the NIRC. This means that PAL shall compute its basic corporate income tax using the rate and basis prescribed by the NIRC of 1997 for the said tax. There is nothing in Section 13(a) of [PD] 1590 to support the contention of the CIR that PAL is subject to the entire Title II of the NIRC of 1997, entitled "Tax on Income."

Second, Section 13(a) of Presidential Decree No. 1590 further provides that the basic corporate income tax of PAL shall be based on its **annual net taxable income**. This is consistent with Section 27(A) of the NIRC of 1997, which provides that the rate of basic corporate income tax, which is 32% beginning 1 January 2000, shall be imposed on the **taxable income** of the domestic corporation.

Taxable income is defined under Section 31 of the NIRC of 1997 as the **pertinent items of gross income specified in the said Code, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by the same Code or other special laws.** The gross income, referred to in Section 31, is described in Section 32 of the NIRC of 1997 as income from whatever source, including compensation for services; the conduct of trade or business or the exercise of profession; dealings in property; interests; rents; royalties; dividends; annuities; prizes and winnings; pensions; and a partner's distributive share in the net income of a general professional partnership.

Pursuant to the NIRC of 1997, the taxable income of a domestic corporation may be arrived at by subtracting from gross income deductions authorized, not just by the NIRC of 1997, but also by special laws. [PD] 1590 may be considered as one of such special laws authorizing PAL, in computing its annual net taxable income, on which its basic corporate income tax shall be based, to deduct from its gross income the following: (1) depreciation of assets at twice the normal rate; and (2) net loss carry-over up to five years following the year of such loss.

In comparison, the 2% MCIT under Section 27(E) of the NIRC of 1997 shall be based on the **gross income** of the domestic corporation. The Court notes that gross income, as the basis for MCIT, is given a special definition under Section 27(E)(4) of the NIRC of 1997, different from the general one under Section 34 of the same Code.

According to the last paragraph of Section 27(E)(4) of the NIRC of 1997, gross income of a domestic corporation engaged in the sale of service means **gross receipts, less sales returns, allowances, discounts and cost of services**. "Cost of services" refers to all **direct costs and expenses** necessarily incurred to provide the services required by the customers and clients including (a) salaries and employee benefits of personnel, consultants, and specialists directly rendering the service; and (b) cost of facilities directly utilized in providing the service, such as depreciation or rental of equipment used and cost of supplies. Noticeably, inclusions in and exclusions/deductions from gross income for MCIT purposes are limited to those directly arising from the conduct of the taxpayer's business. It is, thus, more limited than the gross income used in the computation of basic corporate income tax.

In light of the foregoing, there is an apparent distinction under the NIRC of 1997 between taxable income, which is the basis for basic corporate income tax under Section 27(A); and gross income, which is the basis for the MCIT under Section 27(E). The two terms have their respective technical meanings, and cannot be used interchangeably. **The same reasons prevent this Court from declaring that the basic corporate income tax, for which PAL is liable under Section 13(a) of [PD] 1590, also covers MCIT under Section 27(E) of the NIRC of 1997, since the basis for the first is the annual net taxable income, while the basis for the second is gross income**.

Third, even if the basic corporate income tax and the MCIT are both income taxes under Section 27 of the NIRC of 1997, and one is paid in place of the other, the two are distinct and separate taxes.

The Court again cites *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,[24] wherein it held that income tax on the passive income of a domestic corporation, under Section 27(D) of the NIRC of 1997, is different from the basic corporate income tax on the taxable income of a domestic corporation, imposed by Section 27(A), also of the NIRC of 1997. Section 13 of [PD] 1590 gives PAL the option to pay basic corporate income tax or franchise tax, whichever is lower; and the tax so paid shall be in lieu of all other taxes, except real property tax. The income tax on the passive income

[24] *Id.*

of PAL falls within the category of "all other taxes" from which PAL is exempted, and which, if already collected, should be refunded to PAL.

The Court herein treats MCIT in much the same way. Although both are income taxes, the MCIT is different from the basic corporate income tax, not just in the rates, but also in the bases for their computation. Not being covered by Section 13(a) of [PD] 1590, which makes PAL liable only for basic corporate income tax, then MCIT is included in "all other taxes" from which PAL is exempted.

That, under general circumstances, the MCIT is paid in place of the basic corporate income tax, when the former is higher than the latter, does not mean that these two income taxes are one and the same. The said taxes are merely paid in the alternative, giving the Government the opportunity to collect the higher amount between the two. The situation is not much different from Section 13 of [PD] 1590, which reversely allows PAL to pay, whichever is lower of the basic corporate income tax or the franchise tax. It does not make the basic corporate income tax indistinguishable from the franchise tax.

Given the fundamental differences between the basic corporate income tax and the MCIT, presented in the preceding discussion, it is not baseless for this Court to rule that, pursuant to the franchise of PAL, said corporation is subject to the first tax, yet exempted from the second.

Fourth, the evident intent of Section 13 of [PD] 1520 (sic) is to extend to PAL tax concessions not ordinarily available to other domestic corporations. Section 13 of [PD] 1520 (sic) permits PAL to pay **whichever is lower** of the basic corporate income tax or the franchise tax; and the tax so paid shall be **in lieu of all other taxes**, except only real property tax. Hence, under its franchise, PAL is to pay the least amount of tax possible.

Section 13 of [PD] 1520 (sic) is not unusual. A public utility is granted special tax treatment (including tax exceptions/exemptions) under its franchise, as an inducement for the acceptance of the franchise and the rendition of public service by the said public utility. In this case, in addition to being a public utility providing air-transport service, PAL is also the official flag carrier of the country.

The imposition of MCIT on PAL, as the CIR insists, would result in a situation that contravenes the objective of Section 13 of [PD] 1590. In effect, PAL would not just have two, but three tax alternatives, namely, the basic corporate income tax, MCIT, or

franchise tax. More troublesome is the fact that, as between the basic corporate income tax and the MCIT, PAL shall be made to pay whichever is higher, irrefragably, in violation of the avowed intention of Section 13 of [PD] 1590 to make PAL pay for the lower amount of tax.

Fifth, the CIR posits that PAL may not invoke in the instant case the "in lieu of all other taxes" clause in Section 13 of [PD] No. 1520 (sic), if it did not pay anything at all as basic corporate income tax or franchise tax. As a result, PAL should be made liable for "other taxes" such as MCIT. This line of reasoning has been dubbed as the Substitution Theory, and this is not the first time the CIR raised the same. The Court already rejected the Substitution Theory in *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,[25] to wit:

> ***"Substitution Theory" of the CIR Untenable***
>
> **A careful reading of Section 13 rebuts the argument of the CIR that the "in lieu of all other taxes" proviso is a mere incentive that applies only when PAL actually pays something.** It is clear that PD 1590 intended to give respondent the option to avail itself of Subsection (a) or (b) as consideration for its franchise. Either option excludes the payment of other taxes and dues imposed or collected by the national or the local government. PAL has the option to choose the alternative that results in lower taxes. **It is not the fact of tax payment that exempts it, but the exercise of its option.**
>
> Under Subsection (a), the basis for the tax rate is respondent's annual net taxable income, which (as earlier discussed) is computed by subtracting allowable deductions and exemptions from gross income. By basing the tax rate on the annual net taxable income, PD 1590 necessarily recognized the situation in which taxable income may result in a negative amount and thus translate into a zero tax liability.
>
> Notably, PAL was owned and operated by the government at the time the franchise was last amended. It can reasonably

[25] *Id*.

be contemplated that PD 1590 sought to assist the finances of the government corporation in the form of lower taxes. When respondent operates at a loss (as in the instant case), no taxes are due; in this instances, it has a lower tax liability than that provided by Subsection (b).

The fallacy of the CIR's argument is evident from the fact that the payment of a measly sum of one peso would suffice to exempt PAL from other taxes, whereas a zero liability arising from its losses would not. There is no substantial distinction between a zero tax and a one-peso tax liability. (Emphasis theirs)

Based on the same ratiocination, the Court finds the Substitution Theory unacceptable in the present Petition.

The CIR alludes as well to Republic Act No. 9337, for reasons similar to those behind the Substitution Theory. Section 22 of Republic Act No. 9337, more popularly known as the Expanded Value Added Tax (E-VAT) Law, abolished the franchise tax imposed by the charters of particularly identified public utilities, including [PD] 1590 of PAL. PAL may no longer exercise its options or alternatives under Section 13 of [PD] 1590, and is now liable for both corporate income tax and the 12% VAT on its sale of services. The CIR alleges that Republic Act No. 9337 reveals the intention of the Legislature to make PAL share the tax burden of other domestic corporations.

The CIR seems to lose sight of the fact that the Petition at bar involves the liability of PAL for MCIT for the fiscal year ending 31 March 2001. **Republic Act No. 9337, which took effect on 1 July 2005, cannot be applied retroactively and any amendment introduced by said statute affecting the taxation of PAL is immaterial in the present case.**

And sixth, [PD] 1590 explicitly allows PAL, in computing its basic corporate income tax, to carry over as deduction any net loss incurred in any year, up to five years following the year of such loss. Therefore, [PD] 1590 does not only consider the possibility that, at the end of a taxable period, PAL shall end up with **zero annual net taxable income** (when its deductions exactly equal its gross income), as what happened in the case at bar, but also the likelihood that PAL shall incur **net loss** (when its deductions exceed its gross income). If PAL is subjected to MCIT, the provision in [PD] 1590 on net loss carry-over will be rendered nugatory. Net loss carry-over is material only in computing the annual net taxable income to be used as basis for the basic corporate income tax of PAL; but PAL will never be able to avail itself of the basic corporate

income tax option when it is in a net loss position, because it will always then be compelled to pay the necessarily higher MCIT.

Consequently, the insistence of the CIR to subject PAL to MCIT cannot be done without contravening [PD] 1520 (sic).

Between [PD] 1520 (sic)**, on one hand, which is a special law specifically governing the franchise of PAL, issued on 11 June 1978; and the NIRC of 1997, on the other, which is a general law on national internal revenue taxes, that took effect on 1 January 1998, the former prevails. The rule is that on a specific matter, the special law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former**. In addition, where there are two statutes, the earlier special and the later general – the terms of the general broad enough to include the matter provided for in the special – the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case. It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute.

x x x x

The MCIT was a new tax introduced by Republic Act No. 8424. Under the doctrine of strict interpretation, the burden is upon the CIR to primarily prove that the new MCIT provisions of the NIRC of 1997, clearly, expressly, and unambiguously extend and apply to PAL, despite the latter's existing tax exemption. To do this, the CIR must convince the Court that the MCIT is a basic corporate income tax, and is not covered by the "in lieu of all other taxes" clause of [PD] 1590. Since the CIR failed in this regard, the Court is left with no choice but to consider the MCIT as one of "all other taxes," from which PAL is exempt under the explicit provisions of its charter. (Emphasis supplied)

Based on the foregoing pronouncements, it is clear that respondent is exempt from the MCIT imposed under Section 27(E) of the NIRC of 1997, as amended. Thus, respondent cannot be held liable for the assessed deficiency MCIT of ₱326,778,723.35 for fiscal year ending 31 March 2000.

More importantly, as to petitioner's contention that respondent needs to actually pay a certain amount as basic corporate income tax or franchise tax before it can enjoy the tax exemption granted

to it since it should retain the responsibility of paying its share of the tax burden, this Court has categorically ruled in the above-cited cases that it is not the fact of tax payment that exempts it, but the exercise of its option.

Notably, in another case involving the same parties,[26] the Court further expressed that a strict interpretation of the word "pay" in Section 13 of PD 1590 would effectively render nugatory the other rights categorically conferred upon the respondent by its franchise. Hence, there being no qualification to the exercise of its options under Section 13, then respondent is free to choose basic corporate income tax, even if it would have zero liability for the same in light of its net loss position for the taxable year.

By way of reiteration, although it appears that respondent is not completely exempt from all forms of taxes under PD 1590 considering that Section 13 thereof requires it to pay, either the lower amount of the basic corporate income tax or franchise tax (which are both direct taxes), at its option, mere exercise of such option already relieves respondent of liability for all other taxes and/or duties, whether direct or indirect taxes. This is an expression of the same thought in Our ruling that, to repeat, it is not the fact of tax payment that exempts it, but the exercise of its option.

All told, the CTA *En Banc* was correct in dismissing the petition in CTA EB No. 271, and affirming the CTA Second Division's Decision and Resolution dated 22 August 2006 and 30 January 2007, respectively, in CTA Case No. 7029.

WHEREFORE, the petition is **DENIED** for lack of merit. No costs.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perlas-Bernabe, and *Leonen,*[*] *JJ.,* concur.

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[26] See *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, G.R. No. 180043, 14 July 2009, 592 SCRA 730, 740-741.

[*] Per Special Order No. 1560 dated 24 September 2013.

FIRST DIVISION

[G.R. No. 185383. September 25, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GIOVANNI OCFEMIA *y* CHAVEZ,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF PROHIBITED DRUGS; ELEMENTS, SUFFICIENTLY SHOWN IN CASE AT BAR.—** In the prosecution for the crime of illegal sale of prohibited drugs, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment thereof. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually occurred, coupled with the presentation in court of the substance seized as evidence. The prosecution herein was able to duly establish all the essential elements of the crime charged against accused-appellant. *First*, it was sufficiently shown that the PDEA and the PNP-CIDG jointly conducted a legitimate buy-bust operation against accused-appellant on February 21, 2003. PO2 Aldea, as the poseur-buyer, paid ₱500.00 to accused-appellant, who, in turn, handed to PO2 Aldea a small heat-sealed plastic sachet containing 0.0953 grams of *shabu*. *Second*, the very same sachet of *shabu* sold by accused-appellant to PO2 Aldea was presented as evidence by the prosecution during trial.
2. **ID.; ID.; ID.; CHAIN OF CUSTODY OF THE ITEMS SEIZED FROM THE ACCUSED, ESTABLISHED.—** In this case, the chain of custody of the sachet of *shabu* sold by accused-appellant could be continuously traced from its receipt by PO2 Aldea, the poseur-buyer, during the buy-bust operation; its transfer to the police laboratory for examination; it being kept in police custody while awaiting trial; and its presentation as evidence before the RTC. PO2 Aldea himself marked the said sachet of *shabu* with his initials upon arriving at the police station with the arrested accused-appellant. He also personally

submitted the same sachet of *shabu* to the PNP crime laboratory for forensic examination. When he testified before the RTC, PO2 Aldea identified the sachet of *shabu* and confirmed his initials thereon. P/SUPT Arroyo was the forensic officer who conducted the chemical examination of the contents of the sachet bearing PO2 Aldea's initials and she confirmed on the witness stand that the said contents tested positive for methamphetamine hydrochloride. Thus, the integrity and evidentiary value of the sachet of *shabu* presented in evidence against accused-appellant was properly preserved in substantial compliance with Section 21(1) of Republic Act No. 9165.

3. **ID.; ID.; ID.; PENALTY FOR ILLEGAL SALE OF *SHABU*.—** The penalty for illegal sale of *shabu*, regardless of the quantity and purity involved, under Article II, Section 5 of Republic Act No. 9165, shall be life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00). Hence, the imposition by the RTC of the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00) upon accused-appellant, likewise affirmed by the Court of Appeals, is correct.

4. **REMEDIAL LAW; EVIDENCE; DEFENSES OF FRAME-UP AND DENIAL CANNOT PREVAIL OVER THE POSITIVE TESTIMONIES OF WITNESSES COUPLED WITH EVIDENCE OF *CORPUS DELICTI*.—** [A]ccused-appellant's defense of frame-up cannot prevail over the prosecution witnesses' positive testimonies on the conduct of a legitimate buy-bust operation against accused-appellant, coupled with the presentation in court of the *corpus delicti*. The testimonies of police officers, who caught accused-appellant *in flagrante delicto*, are usually credited with more weight and credence, in the absence of evidence that they have been inspired by an improper or ill motive, as compared to the accused's defenses of denial and frame-up, which have been invariably viewed with disfavor for the same can easily be concocted. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence, which accused-appellant failed to produce in this case. As aptly pointed out by both the RTC and the Court of Appeals, accused-appellant could have bolstered his defenses by presenting witnesses who could attest that he was, in fact, a "confidential informant" or an "asset" of the police, or who could corroborate the existence of Danny

Contreras. Accused-appellant's assertion that all evidence to exculpate him is in the custody of the police is only too convenient and fails to convince the Court to waive away the requisite burden of evidence. There is absolute lack of reason or motive for the police, and even Judge Bagagñan, to turn against accused-appellant, an alleged police informant/asset, and launch a concerted and elaborate plan to put accused-appellant in jail.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Duran Narvaez and Associates for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO, *J*.:

For review is the Decision[1] dated May 27, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02481, which affirmed the Decision[2] dated August 31, 2006 of the Regional Trial Court (RTC), Branch 13, of the City of Ligao in Criminal Case No. 4594, finding accused-appellant Giovanni C. Ocfemia guilty beyond reasonable doubt of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of Republic Act No. 9165, otherwise known as the Dangerous Drugs Act of 2002.

In the Information dated April 14, 2003, accused-appellant was charged before the RTC as follows:

That at or about eight thirty o'clock in the morning of February 21, 2003, at Barangay San Rafael, Municipality of Guinobatan, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, having in his possession, custody and control methamphetamine hydrochloride commonly known as

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[1] *Rollo*, pp. 2-29; penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Noel G. Tijam and Ramon M. Bato, Jr., concurring.

[2] CA *rollo*, pp. 28-47; penned by Judge Angeles S. Vasquez.

"*shabu*," did then and there willfully, unlawfully and feloniously sell one piece of transparent plastic sachet weighing 0.0953 gram of shabu, a prohibited drug, to a poseur-buyer in consideration of the amount of Five Hundred Pesos (₱500.00), without any authority or permit from the concerned government agency to possess and sell the same.[3]

Accused-appellant pleaded not guilty when he was arraigned on May 29, 2003.[4]

The prosecution presented the testimonies of Police Superintendent (P/SUPT) Lorlie Nilo Arroyo (Arroyo),[5] Forensic Chemist of the Philippine National Police (PNP) Regional Crime Laboratory Office at Camp General Simeon Ola in Legaspi City; Police Officer (PO) 2 Martin Benedict Aldea (Aldea);[6] and PO3 Emerito Zamora (Zamora).[7] The prosecution also proffered documentary and object evidence consisting of the Request for Laboratory Examination[8] of the "[o]ne (1) pc. transparent plastic sachet containing white crystalline substance, a suspected *shabu*," prepared by Police Senior Inspector (PS/INSP) Dennis Ariston Vargas (Vargas) of the Philippine Drug Enforcement Agency (PDEA), Albay Provincial Office; the Chemistry Report No. D-067-2003[9] dated February 21, 2003 issued by P/SUPT Arroyo; three plastic sachets[10] of varying sizes – inside the small plastic sachet was a smaller plastic sachet, and inside the smaller plastic sachet was the smallest plastic sachet, containing white crystalline substance; and two pieces of ₱100.00 marked bills.[11]

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[3] Records, p. 25.

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

[5] TSN, October 2, 2003.

[6] TSN, January 30, 2004 and February 4, 2004.

[7] TSN, May 5, 2004.

[8] Records, p. 181.

[9] *Id.* at 182.

[10] Exhibits B-4 and B-5; Left in the custody of the RTC.

[11] Records, p. 7.

The entirety of the evidence for the prosecution presented the following version of events:

Based on a tip from a confidential informant, a team, headed by PS/INSP Vargas and composed of PO3 Zamora, PO2 Aldea, and other agents/officers from PDEA and the PNP Criminal Investigation and Detection Group (CIDG), conducted a buy-bust operation against accused-appellant in San Rafael, Guinobatan, Albay, on February 21, 2003. PO2 Aldea was designated to act as the poseur-buyer and was given five marked ₱100.00 bills to be used as buy-bust money.

Around 8:00 in the morning, the team, together with the informant, proceeded to accused-appellant's residence in San Rafael, Guinobatan, Albay. The team members strategically positioned themselves within the vicinity of accused-appellant's residence right before the informant and PO2 Aldea transacted with accused-appellant. The informant called out to accused-appellant who came out of his house. The informant then introduced PO2 Aldea to accused-appellant as a buyer of *shabu*. PO2 Aldea handed the five marked ₱100.00 bills to accused-appellant. Accused-appellant went inside his house and came back a few minutes later to hand a heat-sealed small plastic sachet of *shabu* to PO2 Aldea. After examining the purchased item, PO2 Aldea took off his cap from his head, the pre-arranged signal for the rest of the team that the transaction had been consummated. PO3 Zamora and the other team members rushed to the scene, apprised accused-appellant of his constitutional rights, and apprehended accused-appellant. Incidental to accused-appellant's lawful arrest, PO3 Zamora bodily frisked accused-appellant and was able to retrieve only two of the five marked ₱100.00 bills from accused-appellant's possession. Thereafter, accused-appellant was brought to the police station.

At the police station, PO2 Aldea marked with his initials the sachet of *shabu* sold to him by accused-appellant. PO2 Aldea then submitted the said sachet of *shabu* to their crime laboratory, together with PS/INSP Vargas's letter-request for chemical analysis of the same. P/SUPT Arroyo conducted the chemical

examination of the submitted specimen which tested positive for methamphetamine hydrochloride.

The defense presented the testimonies of accused-appellant[12] and his spouse, Daisy Ocfemia (Daisy),[13] and the transcript of the preliminary examination conducted by Judge Antonio C. Bagagñan (Bagagñan) of the Municipal Trial Court (MTC) of Guinobatan, Albay, on February 21, 2003.[14]

Daisy testified that her husband, accused-appellant, was engaged in the business of buying and selling of fighting cocks. Accused-appellant would usually leave their house at 6:00 in the morning and return at around 10:00 in the morning. Accused-appellant would leave again at around 3:00 in the afternoon and come home at around 9:00 or 10:00 in the evening. At around 7:00 to 8:00 in the morning of February 21, 2003, accused-appellant returned home, after accompanying their daughter to school, with two companions aboard a tricycle. Accused-appellant's companions introduced themselves as Captain Vargas and PO3 Zamora and they informed Daisy that accused-appellant would go along with them to Camp General Simeon Ola because a certain Cardona wanted to talk with accused-appellant. After that, Captain Vargas and PO3 Zamora left with accused-appellant. The following day, Daisy found out that accused-appellant was already locked up in prison allegedly for the illegal sale of *shabu*.

When accused-appellant took the witness stand, he denied the charge against him and claimed that he was framed-up by the police.

Accused-appellant averred that he was an "asset" of the police, having once joined the police in an entrapment operation in Legaspi City. On February 21, 2003, he joined the police in another buy-bust operation. At around 7:00 in the morning of

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[12] TSN, August 10, 2005 and October 6, 2005.

[13] TSN, July 13, 2005.

[14] Records, pp. 17-21.

the said date, PS/INSP Vargas, Senior Police Officer (SPO) 4 Fernando Cardona, and PO3 Zamora dropped by accused-appellant's house to ask accused-appellant to accompany them to Iriga City. Accused-appellant assented to the police officers' request and on their way to Iriga City, the police officers briefed accused-appellant about the operation. The police officers told accused-appellant that the suspect was a certain Danny Contreras (Contreras) and that accused-appellant would act as the poseur-buyer.

Accused-appellant went on to narrate that upon meeting Contreras at the latter's residence at around noontime, he handed ₱1,000.00 to Contreras. Contreras, in turn, instructed accused-appellant to wait in front of the Park View Hotel, which was about 10 meters from where PS/INSP Vargas, SPO4 Cardona, and PO3 Zamora positioned themselves. Moments later, Contreras met accused-appellant in front of the said hotel and handed to accused-appellant the *shabu.* At this point, the police officers arrested Contreras and brought him to Camp General Simeon Ola. Accused-appellant then turned over the *shabu* to SPO4 Cardona.

Accused-appellant related further that at Camp General Simeon Ola, urine samples were taken from him and Contreras. Thereafter, accused-appellant was escorted by PO3 Zamora to the PDEA to talk to PO2 Aldea. PO2 Aldea disclosed to accused-appellant that accused-appellant would be charged with illegal sale of *shabu*; that PO2 Aldea would claim to be the poseur-buyer at the purported buy-bust operation against accused-appellant; and that PO2 Aldea would testify against accused-appellant. When accused-appellant protested, PO2 Aldea simply replied that it was an order from the latter's superior which could not be refused. Subsequently, accused-appellant was brought to Judge Bagagñan's office in Guinobatan, Albay.

According to accused-appellant, Judge Bagagñan conversed first with PS/INSP Vargas, SPO4 Cardona, and PO3 Zamora. When Judge Bagagñan talked to accused-appellant, the Judge said that he had already signed a document and there was nothing more he could do. Thereafter, accused-appellant was requested

to immediately leave Judge Bagagñan's office, giving him no opportunity to ask what document the Judge had signed. SPO4 Cardona approached accused-appellant, asking the latter to please understand ("*Pare, pasensiya na.*") for he "did not want this to happen [,] it was them[,]"[15] referring to the other police officers.

The prosecution presented Judge Bagagñan, already retired by that time, as rebuttal witness. Judge Bagagñan confirmed on the witness stand that in the evening of February 21, 2003, he conducted the preliminary investigation in accused-appellant's case and that based on the evidence presented before him, he found probable cause to indict accused-appellant. Judge Bagagñan also recalled that after the preliminary investigation, accused-appellant confided that he was a police asset and that he was just being framed-up. Judge Bagagñan, however, brushed aside accused-appellant's claim believing that the same was already a matter of defense best threshed out during the trial.

On October 13, 2005, the RTC, then presided by Acting Presiding Judge William B. Volante (Volante), considered the case submitted for decision.[16]

In the meantime, the Court *en banc* approved on June 8, 2004 Administrative Matter (A.M.) No. 04-5-19-SC, entitled "Resolution Providing Guidelines in the Inventory and Adjudication of Cases Assigned to Judges who are Promoted or Transferred to Other Branches in the Same Court Level of the Judicial Hierarchy," which was reiterated and disseminated by the Office of the Court Administrator (OCA) to all trial judges for their proper observance through OCA Circular No. 90-2004. Pertinent provisions of the Resolution read:

> 3. A judge transferred, detailed or assigned to another branch shall be considered as Assisting Judge of the branch to which he was previously assigned. However, except as hereinbelow provided, the records of cases formerly assigned to him/her shall remain in his/her former branch.

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[15] TSN, August 10, 2005, p. 18.

[16] Records, p. 243.

4. The judge who takes over the branch vacated by a transferred/detailed/assigned judge shall, upon assumption of duty and within one (1) week, conduct an inventory of all pending cases in the branch. The inventory shall state the docket number, title and status of each case. The inventory shall be submitted to the Office of the Court Administrator within five (5) working days from completion thereof.

5. **Should any case be left undecided by the transferred/detailed/assigned judge, the judge conducting the inventory shall cause the issuance to the parties of a notice of transfer/detail/assignment of the judge to which the case had been assigned, with a directive for the plaintiff/s to manifest, within five (5) days from receipt of such notice, whether or not he/she desires that the transferred judge should decide the case. The desire of the plaintiff, who may opt to have the case decided by the new judge, shall be respected. However, should the defendant oppose the manifestation of the plaintiff, the new judge shall resolve the matter in accordance with these Guidelines. Should the plaintiff fail to submit such manifestation within the said 5-day period, the presumption is that he/she desires that the case be decided by the transferred judge.**

6. The manifestation of the plaintiff that the case should be decided by the transferred judge shall be forwarded to the Office of the Court Administrator which, upon receipt thereof, shall issue the proper directive. A directive requiring the transferred judge to decide the case immediately shall state any of these conditions:

   a) If the new station of the transferred judge is within the province of the judicial region of his/her former station, the case shall be decided in such station by the transferred judge who shall adjust his/her calendar to enable him/her to dispose the undecided case at his/her own expense without sacrificing efficiency in the performance of his/her duties in his/her new station.

   b) If the new station of the transferred judge is outside of the province in the judicial region of his/her former station, the records of the undecided case shall be delivered either by personal service or by registered mail, to the transferred judge and at his/her own expense.

In either case, the Office of the Court Administrator shall furnish the parties to the case with a copy of such directive and the transferred judge shall return to his former branch the records of the case with the decision that the new judge shall promulgate in his stead.

7. Should a motion for reconsideration of the decision or for new trial be filed by any party, the transferred judge shall resolve the same. However, if a motion for new trial is granted by the transferred judge, the new judge shall preside over the same, resolve the motion, and see to its final disposition. (Emphasis supplied.)

In an Order dated June 6, 2006, the RTC notified the parties that Acting Presiding Judge Volante had already been replaced by Presiding Judge Angeles S. Vasquez (Vasquez) and directed the parties to manifest within five days from notice whether they want the case to still be decided by Judge Volante, otherwise, it would already be decided by Judge Vasquez.[17] While the prosecution did not submit such a manifestation, accused-appellant filed his Manifestation[18] on July 13, 2006 informing the RTC that he wished for Judge Volante to decide the case.

On August 31, 2006, the RTC promulgated its Decision, penned by Judge Vasquez, convicting and sentencing accused-appellant of the crime charged, to wit:

WHEREFORE, the Court having been convinced of the guilt of the accused, Giovanni Ocfemia, beyond reasonable doubt hereby sentences him to suffer the penalty of **LIFE IMPRISONMENT** and a fine of Five Hundred Thousand Pesos (₱500,000.00) with subsidiary imprisonment in case of insolvency.

The accused is likewise ordered to suffer the accessory penalties as provided for by law. The prohibited drug known as *Shabu* is ordered confiscated in favor of the government and the same is ordered destroyed by the PDEA in accordance with the existing regulation.[19]

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[17] *Id.* at 248.

[18] *Id.* at 249.

[19] CA *rollo*, p. 47.

Accused-appellant appealed to the Court of Appeals, arguing that:

I

The Honorable Judge who penned the assailed Decision did not observe the guidelines laid down in A.M. No. 04-5-19-SC contained in OCA Circular No. 90-2004, hence, he has of doubtful authority to render and promulgate the same. The result is a denial of due process.

II

The prosecution failed to establish beyond reasonable doubt the "*corpus delicti*." It was error on the part of the trial court to convict the accused.

III

The trial court erred in giving credence to the testimony of Martin Benedict Aldea and Ernesto Zamora, by misapplying the rule that public officers are presumed to have regularly performed their functions.

IV

The court erred in not giving credence to the defense that there was no buy-bust operation that took place in Guinobatan, Albay, on February 21, 2003, but instead, accused was used a[s] poseur-buyer in a buy-bust operation in Iriga City on the same date.

V

The prosecution['s] evidence fell short of the required quantum of proof that the guilt of the accused must be proved beyond reasonable doubt.[20]

Following an exchange of Briefs by the parties, the Court of Appeals rendered its Decision on May 27, 2008, with the following dispositive portion:

WHEREFORE, in view of the foregoing, the decision dated August 31, 2006 of the Regional Trial Court of Ligao City, Branch 13 in Criminal Case No. 4594 is hereby **AFFIRMED**.[21]

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

[21] *Rollo*, p. 28.

Accused-appellant comes before this Court seeking the reversal of his conviction.

At the outset, accused-appellant posits that he was effectively denied due process of law. Accused-appellant points out that plaintiff-appellee failed to file its manifestation as directed in RTC Order dated June 6, 2006, giving rise to the presumption that it preferred Judge Volante to decide the case. In his own Manifestation dated July 13, 2006, accused-appellant expressed his desire that the case be decided by Judge Volante for it was said Judge who received the evidence of the parties. Under A.M. No. 04-5-19-SC, Judge Vasquez should have endorsed the case to the OCA for appropriate action, yet said Judge still proceeded to decide the case without even giving any explanation for his non-observance of the guidelines.

The Court is not persuaded.

Preceding A.M. No. 04-5-19-SC was *Re: Cases Left Undecided by Judge Sergio D. Mabunay, RTC, Branch 24, Manila*,[22] in which the Court first laid down the rules on cases left behind by a trial court judge:

> Basically, a case once raffled to a branch belongs to that branch unless reraffled or otherwise transferred to another branch in accordance with established procedure. When the Presiding Judge of that branch to which a case has been raffled or assigned is transferred to another station, he leaves behind all the cases he tried with the branch to which they belong. He does not take these cases with him even if he tried them and the same were submitted to him for decision. The judge who takes over this branch inherits all these cases and assumes full responsibility for them. He may decide them as they are his cases, unless any of the parties moves that his case be decided by the judge who substantially heard the evidence and before whom the case was submitted for decision. If a party therefore so desires, he may simply address his request or motion to the incumbent Presiding Judge who shall then endorse the request to the Office of the Court Administrator so that the latter may in turn endorse the matter to the judge who substantially heard the evidence

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[22] 354 Phil. 698, 704-706 (1998).

and before whom the case was submitted for decision. **This will avoid the "*renvoir*" of records and the possibility of an irritant between the judges concerned, as one may question the authority of the other to transfer the case to the former.** If coursed through the Office of the Court Administrator, the judge who is asked to decide the case is not expected to complain, otherwise, he may be liable for insubordination and his judicial profile may be adversely affected. Upon direction of the Court Administrator, or any of his Deputy Court Administrators acting in his behalf, the judge before whom a particular case was earlier submitted for decision may be compelled to decide the case accordingly.

We take this opportunity to remind trial judges that once they act as presiding judges or otherwise designated as acting/assisting judges in branches other than their own, cases substantially heard by them and submitted to them for decision, unless they are promoted to higher positions in the judicial ladder, may be decided by them wherever they may be if so requested by any of the parties and endorsed by the incumbent Presiding Judges through the Office of the Court Administrator. The following procedure may be followed: *Firs*t, the Judge who takes over the branch must immediately make an inventory of the cases submitted for decision left behind by the previous judge (unless the latter has in the meantime been promoted to a higher court). *Second*, the succeeding judge must then inform the parties that the previous judge who heard the case, at least substantially, and before whom it was submitted for decision, may be required to decide the case. In this event, and upon request of any of the parties, the succeeding judge may request the Court Administrator to formally endorse the case for decision to the judge before whom it was previously submitted for decision. *Third*, after the judge who previously heard the case is through with his decision, he should send back the records together with his decision to the branch to which the case properly belongs, by registered mail or by personal delivery, whichever is more feasible, for recording and promulgation, with notice of such fact to the Court Administrator.

Since the primary responsibility over a case belongs to the presiding judge of the branch to which it has been raffled or assigned, he may also decide the case to the exclusion of any other judge provided that all the parties agree in writing that the incumbent presiding judge should decide the same, or unless the judge who substantially heard the case and before whom it was submitted for decision has in the meantime died, retired or for any reason has left the service, or has

become disabled, disqualified, or otherwise incapacitated to decide the case.

The Presiding Judge who has been transferred to another station cannot, on his own, take with him to his new station any case submitted for decision without first securing formal authority from the Court Administrator. **This is to minimize, if not totally avoid, a situation of "case-grabbing."** In the same vein, when the Presiding Judge before whom a case was submitted for decision has already retired from the service, the judge assigned to the branch to take over the case submitted for decision must automatically assume the responsibility of deciding the case. (Emphases supplied.)

Eventually, the Court observed in the Whereas Clauses of A.M. No. 04-5-19-SC that despite existing administrative circulars and its Resolution in *Mabunay*, "judges who are promoted or transferred to other stations leave many undecided cases, thereby unfairly creating additional workload for judges who are subsequently appointed thereto[,]" hence, the Court resolved to adopt guidelines under which "cases assigned to judges who have been transferred, detailed or assigned to any branch within or outside the judicial region of the same court or promoted to a higher court shall be managed and decided[.]"

It is clear from the foregoing that the reason behind A.M. No. 04-5-19-SC is primarily administrative, *i.e.*, to establish an orderly system for the management and disposition of cases of a trial court in the event of transfer, reassignment, or promotion of its presiding judge. It intends to prevent conflict between the transferred judge and the new judge, and confusion as to when, where, and how case records shall be transferred and decisions shall be promulgated in such cases. It does not touch upon any jurisdictional issue and, in general, does not have any effect on the validity of the decision or resolution of either the transferred judge or the new judge.

A.M. No. 04-5-19-SC actually recognizes that both the transferred judge and the new judge can decide the case but gives consideration to the preference of the parties. Indeed, Judge Volante was the presumed choice of plaintiff-appellee and the expressed option of accused-appellant to decide Criminal

Case No. 4594. Under A.M. No. 04-5-19-SC, Judge Vasquez should have endorsed the case to the OCA, which, in turn, would have authorized Judge Volante to decide the case. Nonetheless, while Judge Vasquez may face administrative liability (after appropriate administrative proceedings) for his failure to comply with A.M. No. 04-5-19-SC, his Decision dated August 31, 2006 in Criminal Case No. 4594 is completely valid absent any showing that it had been rendered without or in excess of jurisdiction or in violation of accused-appellant's constitutional right to due process.

Contrary to accused-appellant's averment, he was not denied due process of law just because of Judge Vasquez's lapses in the observance of A.M. No. 04-5-19-SC. Worth reproducing herein are the pronouncements of the Court of Appeals on the matter:

> [C]ontrary to accused-appellant's argument, it bears to stress that he was not at all denied of due process. As held by the Supreme Court, due process means giving every contending party the opportunity to be heard and the court to consider every piece of evidence presented in their favor (*Co vs. Calimag*, 334 SCRA 20, 26 [2000]). When a party has been afforded a chance to present his or her own side, he cannot feign [denial of] due process (*Pascual vs. People*, G.R. No. 160540, March 22, 2007). As in this case, accused-appellant was sufficiently given the opportunity to be heard, to defend himself and to confront his accusers on the offense hurled against him. Hence, due process was not denied to the accused-appellant by the mere issuance of a judge of a decision based on the records despite the fact that said judge was not the one who conducted the trial [and] receive the evidence of the parties.[23]

Furthermore, the situation wherein the judge rendering the decision in a case was not the same judge who heard the case and received evidence from the parties is not new or unique. In *People v. Paling*,[24] the Court upheld the validity of such a decision, ratiocinating that:

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[23] *Rollo*, p. 17.

[24] G.R. No. 185390, March 16, 2011, 645 SCRA 627, 636-637.

The fact that the trial judge who rendered judgment was not the one who had the occasion to observe the demeanor of the witnesses during trial but merely relied on the records of the case does not render the judgment erroneous, especially where the evidence on record is sufficient to support its conclusion. Citing *People v. Competente*, this Court held in *People v. Alfredo*:

> **"The circumstance that the Judge who rendered the judgment was not the one who heard the witnesses, does not detract from the validity of the verdict of conviction.** Even a cursory perusal of the Decision would show that it was based on the evidence presented during trial and that it was carefully studied, with testimonies on direct and cross examination as well as questions from the Court carefully passed upon." (Emphasis in the original.)

Further, "it is not unusual for a judge who did not try a case in its entirety to decide it on the basis of the records on hand." This is because the judge "can rely on the transcripts of stenographic notes and calibrate the testimonies of witnesses in accordance with their conformity to common experience, knowledge and observation of ordinary men. Such reliance does not violate substantive and procedural due process of law." Considering that, in the instant case, the transcripts of stenographic notes taken during the trial were extant and complete, there was no impediment for the judge to decide the case. (Citations omitted.)

Upon review, the Court concludes that the factual findings of RTC Judge Vasquez, as affirmed by the Court of Appeals, are sufficiently supported by the evidence on record.

In the prosecution for the crime of illegal sale of prohibited drugs, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment thereof. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually occurred, coupled with the presentation in court of the substance seized as evidence.[25]

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[25] *People v. Castro*, G.R. No. 194836, June 15, 2011, 652 SCRA 393, 408.

The prosecution herein was able to duly establish all the essential elements of the crime charged against accused-appellant. *First*, it was sufficiently shown that the PDEA and the PNP-CIDG jointly conducted a legitimate buy-bust operation against accused-appellant on February 21, 2003. PO2 Aldea, as the poseur-buyer, paid ₱500.00 to accused-appellant, who, in turn, handed to PO2 Aldea a small heat-sealed plastic sachet containing 0.0953 grams of *shabu*. *Second*, the very same sachet of *shabu* sold by accused-appellant to PO2 Aldea was presented as evidence by the prosecution during trial.

Accused-appellant though protests that the prosecution failed to prove with moral certainty that the sachet of *shabu* presented before the RTC was the same one he allegedly sold during the buy-bust operations since the police officers who had initial custody and control thereof neither showed an inventory nor a photograph taken of the same; and that assuming it was marked, the marking was not immediately done after its seizure and confiscation at the place where he was apprehended. Accused-appellant contends that the police officers disregarded Section 21(1) of Republic Act No. 9165 which requires that the drugs seized must be physically inventoried and photographed immediately after seizure and confiscation in the presence of the accused or his representative or counsel, a representative from the media, the Department of Justice (DOJ), and any elected public official. On that premise, accused-appellant additionally argues that the prosecution cannot rely on the presumption of regularity in the performance of official duties by the police officers.

Accused-appellant's assertions are bereft of merit.

Jurisprudence has already decreed that the failure of the police officers to make a physical inventory, to photograph, and to mark the *shabu* at the place of arrest do not automatically render it inadmissible in evidence or impair the integrity of the chain of its custody.[26] Of particular significance to the present case is the

[26] *Imson v. People*, G.R. No. 193003, July 13, 2011, 653 SCRA 826, 834.

following discussion of the Court on Section 21(1) of Republic Act No. 9165 in *People v. Resurreccion*:[27]

Jurisprudence tells us that the failure to immediately mark seized drugs will not automatically impair the integrity of chain of custody.

The failure to strictly comply with Sec. 21(1), Art. II of RA 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the **preservation of the integrity and the evidentiary value of the seized items**, as these would be utilized in the determination of the guilt or innocence of the accused.

As we held in *People v. Cortez*, testimony about a perfect chain is not always the standard because it is almost always impossible to obtain an unbroken chain. Cognizant of this fact, the Implementing Rules and Regulations of RA 9165 on the handling and disposition of seized dangerous drugs 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:
>
> (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**

[27] G.R. No. 186380, October 12, 2009, 603 SCRA 510, 518-520.

> **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** x x x."

Accused-appellant broaches the view that SA Isidoro's failure to mark the confiscated *shabu* immediately after seizure creates a reasonable doubt as to the drug's identity. ***People v. Sanchez*, however, explains that RA 9165 does not specify a time frame for "immediate marking," or where said marking should be done:**

> **"What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of "marking" of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. Consistency with the "chain of custody" rule requires that the "marking" of the seized items – to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence – should be done** (1) **in the presence of the apprehended violator** (2) **immediately upon confiscation."**

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

In this case, the chain of custody of the sachet of *shabu* sold by accused-appellant could be continuously traced from its receipt by PO2 Aldea, the poseur-buyer, during the buy-bust operation; its transfer to the police laboratory for examination; it being kept in police custody while awaiting trial; and its

presentation as evidence before the RTC. PO2 Aldea himself marked the said sachet of *shabu* with his initials upon arriving at the police station with the arrested accused-appellant. He also personally submitted the same sachet of *shabu* to the PNP crime laboratory for forensic examination. When he testified before the RTC, PO2 Aldea identified the sachet of *shabu* and confirmed his initials thereon. P/SUPT Arroyo was the forensic officer who conducted the chemical examination of the contents of the sachet bearing PO2 Aldea's initials and she confirmed on the witness stand that the said contents tested positive for methamphetamine hydrochloride. Thus, the integrity and evidentiary value of the sachet of *shabu* presented in evidence against accused-appellant was properly preserved in substantial compliance with Section 21(1) of Republic Act No. 9165.

Lastly, accused-appellant attempts to raise doubts on the veracity of the prosecution witnesses' testimonies. He calls attention to alleged inconsistencies between the narratives of PO2 Aldea and PO3 Zamora as to the details of the buy-bust operation, such as who actually marked and gave the five ₱100.00 bills used in the said operation to PO2 Aldea or who were their companions in their respective vehicles on the way back to Camp General Simeon Ola after the operation. Also cause for suspicion, according to accused-appellant, was PO3 Zamora's purported statement, during the preliminary investigation conducted by Judge Bagagñan, that he could not even recall the name of the poseur-buyer. In contrast, accused-appellant proffers his clear and consistent defenses of denial and frame-up. He explains that he could hardly be expected to provide evidence that he was merely an informant and poseur-buyer during the buy-bust operation against Contreras since such evidence is precisely in the possession of the police. Accused-appellant argues that the RTC erred in giving credence to the evidence of the prosecution rather than that of accused-appellant; and the Court of Appeals similarly erred when it simply relied on the assessment of witnesses' credibility by the RTC, because the jurisprudential doctrine that factual findings of the trial court are binding upon the appellate courts does not apply when the

trial court judge who decided the case was not the same judge who held trial and heard the testimonies of the witnesses.

Once more, the Court is not swayed by accused-appellant's arguments.

The inconsistencies alluded to by accused-appellant in the prosecution witnesses' testimonies are trifling and pertain to minor details which do not affect any of the elements of the crime charged. Inconsistencies and discrepancies in the testimony referring to minor details and not upon the basic aspect of the crime do not diminish the witnesses' credibility. More so, an inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction.[28]

In addition, accused-appellant's defense of frame-up cannot prevail over the prosecution witnesses' positive testimonies on the conduct of a legitimate buy-bust operation against accused-appellant, coupled with the presentation in court of the *corpus delicti*. The testimonies of police officers, who caught accused-appellant *in flagrante delicto*, are usually credited with more weight and credence, in the absence of evidence that they have been inspired by an improper or ill motive, as compared to the accused's defenses of denial and frame-up, which have been invariably viewed with disfavor for the same can easily be concocted. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence,[29] which accused-appellant failed to produce in this case. As aptly pointed out by both the RTC and the Court of Appeals, accused-appellant could have bolstered his defenses by presenting witnesses who could attest that he was, in fact, a "confidential informant" or an "asset" of the police, or who could corroborate the existence of Danny Contreras. Accused-appellant's assertion that all evidence to exculpate him is in the custody of the police is only

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[28] *People v. Villahermosa*, G.R. No. 186465, June 1, 2011, 650 SCRA 256, 275-276.

[29] *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.

too convenient and fails to convince the Court to waive away the requisite burden of evidence. There is absolute lack of reason or motive for the police, and even Judge Bagagñan, to turn against accused-appellant, an alleged police informant/asset, and launch a concerted and elaborate plan to put accused-appellant in jail.

In consideration of all the foregoing, the Court finds no cogent reason to deviate from the judgment of conviction rendered against accused-appellant by the RTC and affirmed by the Court of Appeals.

The penalty for illegal sale of *shabu*, regardless of the quantity and purity involved, under Article II, Section 5 of Republic Act No. 9165, shall be life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00). Hence, the imposition by the RTC of the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00) upon accused-appellant, likewise affirmed by the Court of Appeals, is correct.

WHEREFORE, the Decision dated May 27, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02481 is **AFFIRMED *in toto*.**

SO ORDERED.

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

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[*] Per Special Order No. 1537 (Revised) dated September 6, 2013.

[**] Per Special Order No. 1545 (Revised) dated September 16, 2013.

FIRST DIVISION

[G.R. No. 197550. September 25, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARTURO ENRIQUEZ *y* DE LOS REYES,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; CHAIN OF CUSTODY OF *CORPUS DELICTI* MUST BE ESTABLISHED WITH EXACTING EVIDENCE.—** When prosecuting the sale of a dangerous drug, the following elements must be proven: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment therefor. In cases of illegal possession of dangerous drugs, the essential requisites that must be established are: (1) the accused was in possession of the dangerous drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the dangerous drug. As the dangerous drug itself constitutes the very *corpus delicti* of both offenses, its identity and integrity must definitely be shown to have been preserved. "This means that on top of the elements of possession or illegal sale, the fact that the substance [possessed or illegally sold], in the first instance, the very substance adduced in court must likewise be established with the same exacting degree of certitude as that required sustaining a conviction." Thus, the prosecution must be able to account for each link in the chain of custody over the dangerous drug, from the moment it was seized from the accused up to the time it was presented in court as proof of the *corpus delicti*. The chain of custody requirement "ensures that unnecessary doubts respecting the identity of the evidence are minimized if not altogether removed."

2. **ID.; ID.; ID.; ABSENT JUSTIFIABLE GROUND FOR NON-COMPLIANCE WITH THE REQUIREMENTS OF SECTION 21 OF R.A. 9165 CASTS REASONABLE DOUBT ON THE IDENTITY OF THE *CORPUS DELICTI*.—** While non-

compliance with the prescribed procedural requirements will not automatically render the seizure and custody of the items void and invalid, this is true only when "(i) there is a justifiable ground for such non-compliance, and (ii) the integrity and evidentiary value of the seized items are properly preserved." Thus, any divergence from the prescribed procedure must be justified and should not affect the integrity and evidentiary value of the confiscated contraband. Absent any of the said conditions, the non-compliance is an irregularity, a red flag, that casts reasonable doubt on the identity of the *corpus delicti*.

3. **ID.; ID.; ID.; CRUCIAL LINKS IN THE CHAIN OF CUSTODY, NOT ESTABLISHED IN CASE AT BAR.—** In the case at bar, not only was there no justifiable ground offered for the non-compliance with the chain of custody requirement, there was an apparent failure to properly preserve the integrity and evidentiary value of the seized items to ensure the identity of the *corpus delicti* from the time of seizure to the time of presentation in court. In other words, the prosecution's evidence failed to establish the chain that would have shown that the sachets of *shabu* presented in court were the very same items seized from Enriquez. The ***first*** crucial link in the chain of custody starts with the seizure from Enriquez of the dangerous drugs and its subsequent marking. Under the law, such marking should have been done immediately after confiscation and in the presence of the accused or his representative. While it is true that the items presented in court bore the initials of SPO2 David, who was also the poseur-buyer and primary apprehending officer, nowhere in the documentary and testimonial evidence of the prosecution can it be found when these items were actually marked and if they were marked in the presence of Enriquez or at least his representative. x x x The ***second*** link in the chain of custody is the turnover of the illegal drug by the apprehending officer to the investigating officer. Both SPO2 David and SPO2 Divina testified that after the buy-bust operation, they brought Enriquez and the seized items to the police station. However, they both failed to identify the person to whom they turned over the seized items. x x x As for the ***third*** and the ***last*** links, although records show that Chief of Police Erese signed the request for laboratory examination, he was not presented in court to testify as such. The testimony of Chief of Police Erese is indispensable because he could have provided the critical

link between the testimony of SPO2 David, and the tenor of the testimony of P/Insp. Dizon, which the parties have stipulated on. The unaccounted for whereabouts of the seized items from the time they were brought to the police station to the time they were submitted to P/Insp. Dizon for examination constitutes a clear break in the chain of custody. x x x Overall, the prosecution failed to observe the requirement that the testimonies of all persons who handled the specimen are important to establish the chain of custody.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J*.:

This is an appeal[1] of the February 11, 2011 Decision[2] of the Court of Appeals, in CA-G.R. CR.-H.C. No. 03430, which affirmed the Regional Trial Court's (RTC) February 28, 2008 Decision[3] in Criminal Case Nos. DC 03-209 and DC 03-210, wherein accused-appellant **ARTURO ENRIQUEZ *y* DE LOS REYES** (Enriquez) was found guilty beyond reasonable doubt of violating **Sections 5 and 11, Article II of Republic Act No. 9165**.

In two separate Informations[4] filed before Branch 57 of the RTC of Angeles City, Enriquez was charged with violating Sections 5 and 11, Article II of Republic Act No. 9165 or the

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[1] *Rollo*, pp. 22-24.

[2] *Id.* at 2-21; penned by Associate Justice Franchito N. Diamante with Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo, concurring.

[3] CA *rollo*, pp. 9-22; penned by Judge Omar T. Viola.

[4] Records, pp. 1-2, 12-13.

"Comprehensive Dangerous Drugs Act of 2002." The pertinent portions of the Informations, both dated June 4, 2003, are hereby quoted as follows:

Criminal Case No. DC 03-209

That on or about the 3rd day of June, 2003, in [Brgy.] Manibaug Libutad, municipality of Porac, province of Pazzzz Methylamphetamine Hydrochloride (*z*) weighing TWO GRAMS AND SIX THOUSAND ONE TEN THOUSANDTHS (2.6001g) of a gram and one (1) pc. big size heat-sealed transparent plastic sachet containing Methylamphetamine Hydrochloride (*shabu*) weighing ONE THOUSAND TWO HUNDRED TWELVE TEN THOUSANDTHS (0.1212g) of a gram, a dangerous drug.[5]

Criminal Case No. DC 03-210

That on or about the 3rd day of June, 2003, in Brgy. Manibaug Libutad, municipality of Porac, province of Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, ARTURO ENRIQUEZ *Y* DELOS REYES, without having been lawfully authorized, did then and there wilfully, unlawfully and feloniously, deliver and/or sell one (1) small size heat sealed transparent plastic sachet containing Methylamphetamine Hydrochloride (*shabu*) with an actual weight of FOUR HUNDRED TWENTY[-]TWO TEN THOUSANDTH (0.0422g) of a gram, a dangerous drug.[6]

Enriquez pleaded not guilty to both charges upon his arraignment[7] on June 19, 2003.

Trial on the merits ensued after the termination of the pre-trial conference on September 25, 2003.[8]

As culled from the records and transcript of stenographic notes, the contradictory versions of the prosecution and defense are as follows:

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[5] *Id.* at 1.

[6] *Id.* at 12.

[7] *Id.* at 23.

[8] *Id.* at 29-30.

Prosecution's Version

Sometime in May 2003, Senior Police Officer (SPO) 2 Edilberto David, SPO2 Ernesto Divina, and SPO1 Saturnino Garung received reports from the *barangay* office and other concerned citizens of drug-dealing activities in the locality of Porac, Pampanga. They immediately conducted a casing and surveillance operation to verify the reports. About four operations were carried out, on a weekly basis, which confirmed that Enriquez was indeed dealing drugs among the truck drivers and helpers within the vicinity. After confirming the reports, SPO2 David, together with one civilian asset, conducted a test-buy on June 2, 2003.[9] During the test-buy, SPO2 David's asset was able to buy ₱200.00 worth of *shabu*, which he confirmed to be so by burning it, contrary to standard police procedure.[10]

After the test-buy, SPO2 David organized a team, composed of himself, SPO2 Divina, and SPO1 Garung, to conduct a buy-bust operation.[11] On June 3, 2003, after SPO2 Divina coordinated with the Philippine Drug Enforcement Agency (PDEA) for their on-going narcotics operation,[12] their Chief of Police Ricardo Erese briefed the team at Kababayan Center No. 2, at Barangay Sta. Cruz, Porac, Pampanga. At the briefing, SPO2 David was designated as the poseur-buyer, with the other two police officers as back-ups. To purchase the *shabu*, Chief of Police Erese gave SPO2 David a ₱100-peso bill and five ₱20-peso bills, which SPO2 David marked by placing a small bar on the lower right corner of the bills. The team thereafter proceeded to Brgy. Manibaug, Libutad in Porac, Pampanga. Upon arriving at the target area at around 11:00 a.m., SPO2 David approached Enriquez, whom they spotted sitting in a *sari-sari* store, while SPO2 Divina and SPO1 Garung hid behind a dump truck parked

[9] TSN, February 26, 2004, pp. 3-4.

[10] TSN, February 3, 2005, pp. 16-19.

[11] TSN, February 26, 2004, p. 4.

[12] Exhibits Folder, Certification from PDEA.

across the store. SPO2 David called the attention of Enriquez by saying "*dalawang (2) piso*"[13] while handing him the ₱200.00. Without saying anything, Enriquez took the money and went to the back of the store. After one to two minutes, Enriquez emerged and handed SPO2 David a sachet of *shabu*. This prompted SPO2 David to put his hand at the back of his head, to signal his teammates that the sale had been consummated. Upon the execution of the pre-arranged signal, SPO2 Divina and SPO1 Garung approached the site of engagement, introduced themselves as police officers to Enriquez, and thereafter conducted a body search on him, which resulted to the discovery of a plastic game card containing one big and 45 small plastic sachets of white crystalline substance.[14] SPO2 David prepared the Confiscation Receipt for the above-seized items, then subsequently brought Enriquez to the Porac Police Station, wherein the team prepared the papers necessary in filing a case against Enriquez.[15]

As per Chemistry Report No. D-219-2003,[16] prepared by Police Inspector and Forensic Chemical Officer Divina Mallare Dizon (P/Insp. Dizon), upon the request for laboratory examination[17] submitted by Chief of Police Erese, the plastic sachets confiscated from Enriquez tested positive for methylamphetamine hydrochloride.

Defense's Version

The defense's version of the events, as quoted from Enriquez's own brief, are as follows:

In truth, Enriquez was alone, eating in an eatery in Manibaug, Porac, Pampanga, when three (3) men, all in civilian clothes, alighted from an owner-type jeep and approached him. One of the men, SPO2 David,

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[13] TSN, February 3, 2005, p. 26.

[14] Exhibits Folder, Exhibit C, "Receipt."

[15] TSN, March 2, 2004, pp. 2-6.

[16] Exhibits Folder, Exhibit D.

[17] *Id*., Exhibit E.

then poked a gun at him. The former asked Enriquez if he knew a certain truck driver who is suspected of selling *shabu*. When he denied knowledge thereof, he was immediately handcuffed and was brought to the police station for further investigation. He was detained and was told that he is being suspected of selling *shabu*.

Nora Pangilinan, a 37-year old helper of the sari-sari store, corroborated [Enriquez]'s testimony. She saw how the apprehending team rudely approached and arrested [Enriquez].[18] (Citations omitted.)

On February 28, 2008, the RTC convicted Enriquez in its Decision, the dispositive portion of which reads:

WHEREFORE, the prosecution having proven the guilt of the accused beyond reasonable doubt in the two (2) cases, the Court finds accused ARTURO ENRIQUEZ *Y* DE LO[S] REYES **GUILTY** of the offense as charged and hereby sentences him to suffer the penalty of **LIFE IMPRISONMENT** and **a fine of Php 500,000.00,** in Criminal Case No. DC 03-210 for violation of Section 5, Art. II of R.A. 9165. Accused Enriquez is also sentenced to suffer the penalty of imprisonment of **TWELVE YEARS (12) AND ONE (1) DAY**, as minimum, to **FOURTEEN (14) YEARS AND EIGHT (8) MONTHS,** as maximum, of ***Reclusion Temporal*** in Criminal Case No. DC 03-209 for violation of Section 11 of R.A. 9165 and **a fine of Php 300,000.00.**[19]

Aggrieved, Enriquez appealed[20] to the Court of Appeals, which, on February 11, 2011, affirmed the decision of the RTC.[21]

Issues

Enriquez is now before this Court, assigning[22] the same errors he presented before the Court of Appeals, to wit:

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

[19] *Id*. at 21.

[20] Records, p. 117.

[21] *Rollo*, p. 21.

[22] *Id*. at 29-32.

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE IRREGULARITY OF THE BUY-BUST OPERATION.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE WITH MORAL CERTAINTY THE IDENTITY OF THE *CORPUS DELICTI*.

III

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE ARRESTING OFFICERS' NON-COMPLIANCE WITH THE REQUIREMENTS FOR THE PROPER CUSTODY OF SEIZED DANGEROUS DRUGS UNDER REPUBLIC ACT NO. 9165.[23]

Enriquez questions the fact that despite a month-long surveillance and casing operation against him, the police operatives still opted to conduct a buy-bust operation instead of securing a warrant for his arrest.[24] Moreover, Enriquez points out, the police officer, to test the substance they allegedly recovered from him during their test-buy operation, burned such substance instead of going through the proper testing procedures.[25]

Aside from the foregoing procedural infractions, Enriquez finds it irregular that the police officers commuted to the target area instead of using their precinct's service mobile. Enriquez adds: "The lack of a service vehicle, therefore, is an irregularity that is too uncommon and virtually affects the preservation of the seized pieces of evidence."[26]

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

[24] *Id*. at 60.

[25] *Id*. at 61-63.

[26] *Id*. at 64.

Enriquez also claims that the prosecution was not able to prove with moral certainty the identity of the *corpus delicti* for failure of the police officers to comply with Section 21(1) of Republic Act No. 9165, on the custody and disposition of confiscated or seized dangerous drugs. He avers that there was neither physical inventory nor a photograph of the seized items. Moreover, Enriquez says, the markings on the confiscated items were not immediately made upon its seizure, at the place of the incident, nor were there any indication in the records that it was made in his presence. Enriquez points out that while "non-compliance x x x with Section 21 is not fatal, as police lapses, may at times occur, these errors, however, must be supported with justifiable grounds and the integrity and the evidentiary value of the seized items must be preserved."[27]

Ruling of the Court

This Court has painstakingly reviewed the records of this case and after a thorough deliberation, resolves to ***acquit*** Enriquez for the prosecution's failure to prove his guilt beyond reasonable doubt. This Court finds that the prosecution was not able to establish with moral certainty that the integrity and evidentiary value of the items confiscated from Enriquez were preserved such that they could be used as basis for Enriquez's conviction.

The Constitution[28] demands that an accused in a criminal case be presumed innocent until otherwise proven beyond reasonable doubt.

Likewise, Section 2, Rule 133 of the Rules of Court requires proof beyond reasonable doubt to justify a conviction; anything less than that entitles the accused to an acquittal.

Enriquez was charged and convicted for the sale and possession of methylamphetamine hydrochloride, more popularly known as *shabu*, in violation of Sections 5 and 11, Article II of Republic Act No. 9165, to wit:

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[27] *Id.* at 65-67.

[28] Article III, Section 14(2).

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

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) 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 controlled precursor and essential chemical, or shall act as a broker in such transactions.

x x x x

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

(1) 10 grams or more of opium;

(2) 10 grams or more of morphine;

(3) 10 grams or more of heroin;

(4) 10 grams or more of cocaine or cocaine hydrochloride;

(5) 50 grams or more of methamphetamine hydrochloride or "*shabu*;"

(6) 10 grams or more of marijuana resin or marijuana resin oil;

(7) 500 grams or more of marijuana; and

(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy," paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamide (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

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

(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantity of methamphetamine hydrochloride or "*shabu*" is ten (10) grams or more but less than fifty (50) grams;

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly

> designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

When prosecuting the sale of a dangerous drug, the following elements must be proven: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment therefor.[29] In cases of illegal possession of dangerous drugs, the essential requisites that must be established are: (1) the accused was in possession of the dangerous drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the dangerous drug.[30]

As the dangerous drug itself constitutes the very *corpus delicti* of both offenses, its identity and integrity must definitely be shown to have been preserved.[31] "This means that on top of the elements of possession or illegal sale, the fact that the substance [possessed or illegally sold], in the first instance, the very substance adduced in court must likewise be established with the same exacting degree of certitude as that required sustaining a conviction."[32] Thus, the prosecution must be able to account for each link in the chain of custody over the dangerous drug, from the moment it was seized from the accused up to the time it was presented in court as proof of the *corpus delicti*.[33] The chain of custody requirement "ensures that unnecessary

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[29] *People v. Del Rosario*, G.R. No. 188107, December 5, 2012, 687 SCRA 318, 326.

[30] *People v. Martinez,* G.R. No. 191366, December 13, 2010, 637 SCRA 791, 810.

[31] *People v. Alcuizar*, G.R. No. 189980, April 6, 2011, 647 SCRA 431, 437.

[32] *People v. Adrid*, G.R. No. 201845, March 6, 2013.

[33] *People v. Del Rosario*, *supra* note 29 at 329.

doubts respecting the identity of the evidence are minimized if not altogether removed."[34]

Paragraph 1, Section 21, Article II of Republic Act No. 9165 outlines the procedure on the chain of custody of confiscated, seized, or surrendered dangerous drugs, *viz*:

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[.]

Its 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 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

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[34] *People v. Adrid*, *supra* note 32.

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.

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,[35] which implements the Comprehensive Dangerous Drugs Act of 2002, defines "chain of custody" as follows:

Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

Describing the mechanics of the custodial chain requirement, this Court, in *People v. Cervantes*,[36] said:

As a mode 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. In context, this would ideally include

[35] Guidelines of the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment.

[36] G.R. No. 181494, March 17, 2009, 581 SCRA 762, 777.

testimony about every link in the chain, from the seizure of the prohibited drug up to the time it is offered into evidence, in such a way that everyone 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. x x x. (Citation omitted.)

Thus, the following are the links that must be established in the chain of custody in a buy-bust situation:

***First*,** the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

***Second*,** the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

***Third*,** the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

***Fourth*,** the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[37]

While non-compliance with the prescribed procedural requirements will not automatically render the seizure and custody of the items void and invalid, this is true only when "(i) there is a justifiable ground for such non-compliance, and (ii) the integrity and evidentiary value of the seized items are properly preserved."[38] Thus, any divergence from the prescribed procedure must be justified and should not affect the integrity and evidentiary value of the confiscated contraband. Absent any of the said conditions, the non-compliance is an irregularity, a red flag, that casts reasonable doubt on the identity of the *corpus delicti*.

In the case at bar, not only was there no justifiable ground offered for the non-compliance with the chain of custody requirement, there was an apparent failure to properly preserve

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[37] *People v. Magpayo*, G.R. No. 187069, October 20, 2010, 634 SCRA 441, 451.

[38] *People v. Martinez, supra* note 30 at 813.

the integrity and evidentiary value of the seized items to ensure the identity of the *corpus delicti* from the time of seizure to the time of presentation in court.[39] In other words, the prosecution's evidence failed to establish the chain that would have shown that the sachets of *shabu* presented in court were the very same items seized from Enriquez.

The ***first*** crucial link in the chain of custody starts with the seizure from Enriquez of the dangerous drugs and its subsequent marking. Under the law, such marking should have been done immediately after confiscation and in the presence of the accused or his representative. While it is true that the items presented in court bore the initials of SPO2 David, who was also the poseur-buyer and primary apprehending officer, nowhere in the documentary and testimonial evidence of the prosecution can it be found when these items were actually marked and if they were marked in the presence of Enriquez or at least his representative. Emphasizing the importance of this first link, this Court in *People v. Zakaria*,[40] pronounced:

> Crucial in proving the chain of custody is the marking of the seized dangerous drugs or other related items immediately after they are seized from the accused, for the marking upon seizure is the starting point in the custodial link that succeeding handlers of the evidence will use as reference point. Moreover, the value of marking of the evidence is to separate the marked evidence from the *corpus* of all other similar or related evidence from the time of seizure from the accused until disposition at the end of criminal proceedings, obviating switching, "planting" or contamination of evidence. A failure to mark at the time of taking of initial custody imperils the integrity of the chain of custody that the law requires. (Citation omitted.)

The ***second*** link in the chain of custody is the turnover of the illegal drug by the apprehending officer to the investigating officer. Both SPO2 David and SPO2 Divina testified that after the buy-bust operation, they brought Enriquez and the seized

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[39] *Id*. at 813-814.

[40] G.R. No. 181042, November 26, 2012, 686 SCRA 390, 403.

items to the police station. However, they both failed to identify the person to whom they turned over the seized items. Records show that the request for laboratory examination was prepared by Chief of Police Erese, and yet there is no evidence to show that he was the person who received the seized items from the apprehending officers. There is therefore a crucial missing link, *i.e.*, what happened to the seized items after they left the hands of SPO2 David and SPO2 Divina and before they came to the hands of Chief of Police Erese.

As for the ***third*** and the ***last*** links, although records show that Chief of Police Erese signed the request for laboratory examination, he was not presented in court to testify as such. The testimony of Chief of Police Erese is indispensable because he could have provided the critical link between the testimony of SPO2 David, and the tenor of the testimony of P/Insp. Dizon, which the parties have stipulated on. The unaccounted for whereabouts of the seized items from the time they were brought to the police station to the time they were submitted to P/Insp. Dizon for examination constitutes a clear break in the chain of custody. Moreover, no one testified as to how the confiscated items were handled and cared for after the laboratory examination.[41]

Overall, the prosecution failed to observe the requirement that the testimonies of all persons who handled the specimen are important to establish the chain of custody.[42] Of all the individuals who came into direct contact with or had physical possession of the *shabu* allegedly seized from Enriquez, only SPO2 David testified for the specific purpose of identifying the evidence.[43] However, his testimony miserably failed to demonstrate an unbroken chain as it ended with his identification of the money and seized items he marked and documents he

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[41] *People v. Adrid*, *supra* note 32.

[42] *People v. Somoza*, G.R. No. 197250, July 17, 2013.

[43] TSN, October 4, 2005, pp. 4-7.

signed. In effect, the custodial link ended with SPO2 David when he testified that he brought the seized items, together with Enriquez, to the police station.

Under the above premises, it is clear that there was a break in the chain of custody of the seized substances. The failure of the prosecution to establish the evidence's chain of custody is fatal to its case as we can no longer consider or even safely assume that the integrity and evidentiary value of the confiscated dangerous drug were properly preserved.[44]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 03430 dated February 11, 2011 is **REVERSED** and **SET ASIDE**. Accused-Appellant **ARTURO ENRIQUEZ *y* DELOS REYES** is hereby **ACQUITTED** in Criminal Case Nos. DC 03-209 and DC 03-210 for the failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for another lawful cause.

The Director of the Bureau of Corrections is **DIRECTED** to implement this Decision and to report to this Court on the action taken within five (5) days from receipt of this Decision.

No pronouncement as to costs.

SO ORDERED.

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

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[44] *People v. Magpayo*, *supra* note 37 at 452-453.

[*] Per Special Order No. 1537 (Revised) dated September 6, 2013.

[**] Per Special Order No. 1545 (Revised) dated September 16, 2013.

SECOND DIVISION

[G.R. No. 197813. September 25, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDWIN IBAÑEZ *y* ALBANTE and ALFREDO (FREDDIE) NULLA *y* IBAÑEZ,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT, ACCORDED RESPECT.—** Well-entrenched in jurisprudence is that the trial court's evaluation of the testimony of a witness is accorded the highest respect because of its direct opportunity to observe the witnesses on the stand and to determine if they are telling the truth or not. This opportunity enables the trial judge to detect better that thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. Thus, the trial judge's evaluation of the competence and credibility of a witness will not be disturbed on review, unless it is clear from the records that his judgment is erroneous. We have scrutinized the testimony of lone eyewitness, Rachel. Throughout her testimony, in her direct, cross and re-direct and re-cross examinations, she candidly recounted the events surrounding the killing of her father[.] x x x As the lower courts have done, we accord full faith and credence to Rachel's testimony. She was young and unschooled, but her narration of the incident was categorical, without wavering. It has no markings of a concocted story, impressed upon her by other people.

2. **ID.; ID.; ID.; LACK OF EDUCATION AND INABILITY TO READ AND TELL TIME DO NOT IMPAIR CREDIBILITY OF A CHILD WITNESS MUCH LESS RENDER HER INCOMPETENT OR INCAPABLE OF TESTIFYING.—** We cannot take Rachel's testimony lightly simply because she was a mere child when she witnessed the incident and when she gave her testimony in court. There is no showing that her mental maturity rendered her incapable of testifying and of relating the incident truthfully.

With exceptions provided in the Rules of Court, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses. That is even buttressed by the Rule on Examination of a Child Witness which specifies that every child is presumed qualified to be a witness. To rebut this presumption, the burden of proof lies on the party challenging the child's competence. Only when substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court will the court, *motu proprio* or on motion of a party, conduct a competency examination of a child. Thus, petitioners' flimsy objections on Rachel's lack of education and inability to read and tell time carry no weight and cannot overcome the clear and convincing testimony of Rachel as to who killed her father. We likewise note that the line of questioning of the defense during cross-examination on the competency of Rachel to read and tell time did not distract her in recollecting how her father was attacked by accused-appellants. From her position underneath the house of her "*Kuya* Unyo," she saw her father, Wilfredo, attacked by accused-appellants. Although she was astonished as the happening unfolded, her ability to perceive, remember, and make known her perception was not diminished.

3. **CRIMINAL LAW; MURDER; CIVIL LIABILITY.—** [W]e affirm the lower court's award of damages consistent with jurisprudence:(1) ₱50,000.00 as civil indemnity; (2) ₱25,000.00 as temperate damages; and (3) ₱50,000.00 as moral damages. Consistent with current jurisprudence, we increase the award of exemplary damages from ₱25,000.00 to ₱30,000.00.

4. **ID.; ID.; ID.; AWARD OF LOSS OF EARNING CAPACITY MUST BE SUPPORTED BY COMPETENT EVIDENCE; TESTIMONY OF THE VICTIM'S SPOUSE ALONE IS NOT SUFFICIENT.—** To obviate confusion on the award of loss of earning capacity, we reiterate herein that compensation for lost income is in the nature of damages and as such requires due proof of the damages suffered; there must be unbiased proof of the deceased's average income. In this case, we only had the testimony of Wilfredo's spouse, Rowena, who claimed that Wilfredo earned ₱400.00 to ₱500.00 daily as a doormat vendor. On more than one occasion, we have held that the bare testimony

of a deceased's mother or spouse as to the income or earning capacity of the deceased must be supported by competent evidence like income tax returns or receipts. In *People v. Caraig*, we have drawn two exceptions to the rule that "documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity," and have thus awarded damages where there is testimony that the victim was either (1) *self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work no documentary evidence is available*; or (2) *employed as a daily-wage worker earning less than the minimum wage under current labor laws*." Although Wilfredo's occupation as a doormat vendor may fall under the first exception, the minimum wage for Region III, which includes the province of Bulacan, is below ₱400.00 as per the National Wages and Productivity Commission Regional Daily Minimum Wage Rates as of August 2013. Regrettably, except for the bare assertion of Rowena, Wilfredo's spouse, we have nothing to anchor the award for loss of earning capacity. Thus, we delete the award for loss of earning capacity in the amount of ₱1,946,180.00.

LEONEN, *J.*, *concurring and dissenting opinion:*

1. **CRIMINAL LAW; MURDER; CIVIL LIABILITY; GENERAL RULE AND EXCEPTIONS ON THE AWARD OF DAMAGES FOR LOSS OF EARNING CAPACITY.—** As a *general rule*, this Court holds that "documentary evidence should be presented to substantiate a claim for loss of earning capacity but by way of *exception*, this may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work, no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws."

2. **ID.; ID.; ID.; ID.; WHERE THE EVIDENCE ON INCOME-EARNING CAPACITY OF THE VICTIM WAS NEVER DISPUTED, AN AWARD OF TEMPERATE DAMAGES WOULD BE PROPER.—** Wilfredo was a doormat vendor. His source of income was irregular and largely dependent on how many

doormats he could sell in a day, if any. These doormats were peddled. They were not highly priced. It is most likely that Wilfredo did not file income tax returns nor issue official receipts. In any case, minimum wage earners are exempt from the payment of income tax. Thus, they do not need to file an income tax return. The *ponencia* recognized that Wilfredo's occupation may fall under the first exception; that is, the deceased is self-employed and earning less than the minimum wage, and judicial notice may be taken of the fact that in his line of work, no documentary evidence is available. However, according to the *ponencia*, Rowena's claim of ₱400.00 to ₱500.00 daily income is above the minimum wage for Region III whose minimum wage is below ₱400.00. x x x The amount claimed by Wilfredo's wife does not vary too far from the minimum wage in Bulacan, Region III. In fact, it would pass for minimum wage in the National Capital Region. I am of the view that evidence presented, if seen as credible by the trial court judge, should stand in the absence of clear basis to refute it. The accused should have presented evidence to refute the evidence in chief presented. x x x The income-earning capacity of Wilfredo was never disputed. It would seem that ₱25,000.00 as temperate damages is too meager an amount for the loss suffered by Wilfredo's heirs as a result of his untimely death in 2004.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

Before us is an appeal *via* a Notice of Appeal from the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04051.[1] The appellate court affirmed *in toto* the Decision[2] of the Regional

[1] Penned by Associate Justice Magdangal M. De Leon with Associate Justices Mario V. Lopez and Rodil V. Zalameda, concurring. *Rollo*, pp. 2-16.

[2] Presided by Presiding Judge Victoria C. Fernandez-Bernardo. Records, pp. 271-290.

Trial Court (RTC), Branch 18, Malolos, Bulacan which convicted accused-appellants Edwin Ibañez *y* Albante (Edwin) and Alfredo Nulla *y* Ibañez (Alfredo) of Murder in Criminal Case No. 3517-M-2004.

Appellants Edwin and Alfredo, with Jesus Monsillo[3] *y* Taniares (Jesus), were all charged in an Information for Murder under Article 248 of the Revised Penal Code, which reads:

> The undersigned Asst. Provincial Prosecutor accuses Jesus Montisillo *y* Taniares @ Dodong, Edwin Ibañez *y* Albante and Alfredo (Freddie) Nulla *y* Ibañez of the crime of murder, penalized under the provisions of Article 248 of the Revised Penal Code, committed as follows:
>
> That on or about the 29th day of August, 2004, in the municipality of Bocaue, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a soil digger (*bareta*) and with intent to kill one Wilfredo Atendido *y* Dohenog, conspiring, confederating and helping one another did then and there willfully, unlawfully and feloniously, with evident premeditation, abuse of superior strength and treachery, attack, assault and hit with the said soil digger (*bareta*) the said Wilfredo Atendido *y* Dohenog, hitting the latter on his head, thereby inflicting upon him serious physical injuries which directly caused his death.[3a]

During arraignment, Edwin and Alfredo pleaded not guilty. Jesus, on the other hand, remained at large; the case against him was archived. Thereafter, trial ensued.

The prosecution's version was testified to by the victim's wife and daughter, in succession.

On that fateful day, Wilfredo Atendido *y* Dohenog (Wilfredo) was invited by Alfredo to a drinking session with Jesus and Edwin making them a party of four. Rachel, Wilfredo's daughter, an adolescent at the time, was underneath the house (*silong* in the vernacular) of a neighbor, three (3) meters away from

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[3] Used interchangeably with Montisillo as per CA *rollo* and RTC records.

[3a] *Id*. at 2.

the place where Wilfredo and his companions were ostensibly in merrymaking.

Rachel saw her father step away from the group to urinate. While Wilfredo relieved himself, Edwin snatched a t-shirt from a nearby clothesline, and hooded the t-shirt over the head and face of Wilfredo. Robbed of vision as his head was fully covered, Wilfredo was wrestled and pinned down by Edwin, while Alfredo boxed the left side of Wilfredo's chest. Jesus, armed with a long iron bar, swung at and hit Wilfredo in the head. Terrified, Rachel stood immobilized as she watched the attack on her father. Thereafter, she saw her mother running out of their house and crying for help.

On that same auspicious date, 29 August 2004, Rowena, Wilfredo's wife and Rachel's mother, was inside their house taking care of their youngest daughter. She heard a commotion coming from the neighboring house, about eight (8) steps away, so she rushed in that direction. Once outside their house, she saw Wilfredo prostrate on the ground covered with blood on his face and forehead. Upon reaching Wilfredo, Rowena saw accused Jesus, standing one meter away from Wilfredo, holding an iron bar. Edwin and Alfredo stood beside Jesus; Edwin held a white shirt. Forthwith, Jesus and Alfredo ran away while Edwin went home. Rowena asked for help to bring Wilfredo to the hospital. However, Wilfredo did not reach the hospital alive and was pronounced dead on arrival.

Expectedly, the defense mainly of Edwin and Alfredo, proffered an altogether different version of the events.

The two accused-appellants pointed to Jesus as the sole culprit, proclaimed their innocence and professed to being at the scene of the crime only because of their curiosity for what had occurred.

Allegedly, on that day, the two buddies were having their regular drinking session at Edwin's house when they heard a commotion outside. Curious about the ruckus, they approached and saw Wilfredo prostrate on the ground; Jesus, held an iron bar and was being held back by his sister who was shouting,

"*Tama na*[!] *Tama na*[!]." Edwin then called for a tricycle so Wilfredo could be brought to a hospital and given medical attention. Alfredo stood by and merely watched as events transpired.

To corroborate their claim of innocence, the defense called Aniceta Dosil (Aniceta) to the witness stand who testified as follows:

(1) She sold doormats for a living which she peddled on the road;
(2) On 29 August 2004, Rachel helped her in selling the doormats;
(3) On that day, they finished at around 6:00 p.m. and headed to their respective residences along the railroad track;
(4) Upon arriving at their vicinity, Aniceta witnessed the immediate aftermath of the purported fight between Jesus and Wilfredo;
(5) At that juncture, Jesus was being embraced by his sister, Marilou, and the two were two meters away from the body of Wilfredo;
(6) Marilou recounted to Aniceta that Jesus had hit Wilfredo with an iron bar, a preemptive move because Wilfredo was about to stab Jesus;
(7) While Aniceta and Marilou discussed the incident, Rachel stood and listened to them;
(8) At that time, only the four of them, Jesus, Marilou, Aniceta and Rachel, were at the place of the incident;
(9) After learning the entirety of what had transpired, Aniceta, who was afraid to get involved, and Rachel, ran to their respective houses;
(10) For the duration of the day, Aniceta did not step out of her house, neither did she volunteer information to the police when the case was investigated in the following days; and
(11) Aniceta only came forward to testify at the request of Adela Ibañez, wife of Edwin.

As previously adverted to, the trial court convicted Edwin and Alfredo of Murder. It disposed of the case, to wit:

WHEREFORE, accused Edwin Ibañez *y* Albante and Alfredo (Freddie) Nulla *y* Ibañez are hereby found GUILTY beyond reasonable doubt of the crime of murder and are hereby sentenced to suffer imprisonment of *reclusion perpetua* and to indemnify the heirs of Wilfredo D. Atendido in the amount of:

a) Fifty Thousand Pesos (₱50,000.00) as civil indemnity;
b) Twenty-Five Thousand Pesos (25,000.00) as temperate damages;
c) Fifty Thousand Pesos (₱50,000.00) as moral damages;
d) Twenty-Five Thousand Pesos (₱25,000.00) as exemplary damages; and
e) One Million Nine Hundred Forty-Six Thousand and One Hundred Eighty Pesos (₱1,946,180.00) for the unearned income of Wilfredo Atendido.[4]

On appeal, Edwin and Alfredo found no reprieve. The Court of Appeals did not deviate from the RTC's ruling and affirmed *in toto* its finding of guilt.

In this appeal, Edwin and Alfredo assign the following as errors:

I

THE [LOWER COURTS] GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE ALLEGED PROSECUTION EYEWITNESS.

II

THE [LOWER COURTS] GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO THE DEFENSE['S] EVIDENCE.

III

THE [LOWER COURTS] GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS WHEN THEIR GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[5]

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[4] *Id.* at 289-290.
[5] CA *rollo,* p. 42.

In sum, the issue is whether the accused are guilty of murder.

Edwin and Alfredo maintain their innocence and point to Jesus as the sole perpetrator of the crime. They insist that they were at the scene of the crime only because they wanted to know what the commotion was all about. They claim that, in fact, Edwin called for a tricycle so Wilfredo could be brought to a hospital. To discredit the eyewitness testimony of Rachel, they presented Aniceta who testified that she and Rachel were out on that day selling doormats and only returned at 6:00 p.m. Thus, Rachel could not have witnessed the murder of Wilfredo.

Both lower courts, however, found the testimony of Rachel credible:

> This Court finds the testimony of Rachel clear and convincing. The testimony flows from a person who was present in the place where the killing occurred. They are replete with details sufficient to shift the burden of evidence to appellants. We have no reason to doubt Rachel's credibility. Her candid account of the incident, standing alone, clearly established the components of the crime of murder. Appellants' defense of denial, not sufficiently proven, cannot overcome the conclusions drawn from said evidence. We find no cogent reason to deviate from the findings and conclusions of the trial court. Rachel's testimony was delivered in a firm, candid, and straightforward manner. There is no showing that Rachel wavered from the basic facts of her testimony, even when she was subjected to a rigorous examination.
>
> Rachel was only ten (10) years old when she witnessed the murder of the victim. She testified in open court two (2) years later. Thus, she cannot be expected to give an error-free narration of the events that happened two years earlier. The alleged inconsistencies between her sworn statement and testimony referred to by appellants do not affect her credibility. What is important is that in all her narrations she consistently and clearly identified appellants as the perpetrators of the crime. Inconsistencies between the sworn statement and the testimony in court do not militate against witness' credibility since sworn statements are generally considered inferior to the testimony in open court.[6]

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[6] *Rollo,* p. 12.

We find no error in the lower courts' disposal of the issue.

Well-entrenched in jurisprudence is that the trial court's evaluation of the testimony of a witness is accorded the highest respect because of its direct opportunity to observe the witnesses on the stand and to determine if they are telling the truth or not.[7] This opportunity enables the trial judge to detect better that thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. Thus, the trial judge's evaluation of the competence and credibility of a witness will not be disturbed on review, unless it is clear from the records that his judgment is erroneous.[8]

We have scrutinized the testimony of lone eyewitness, Rachel. Throughout her testimony, in her direct, cross and re-direct and re-cross examinations, she candidly recounted the events surrounding the killing of her father as follows:

PROS. LAGROSA:

Your Honor please, may we invoke the right of the child the provisions (*sic*) under the child witness wherein we can ask leading questions and in Tagalog.

COURT:

Anyway, the questions can be interpreted.

PROS. LAGROSA:

Only the leading questions, your Honor.

Q: You said that your father came from sleeping in your house, did you know what time of the day your father [went] to sleep?
A: I do not know because I do not know how to read time.

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[7] *People v. Cawaling,* G.R. No. 157147, 17 April 2009, 586 SCRA 1, 23-24.
[8] *Id*.

x x x x

Q: But do you know whether or when your father went to sleep[?] It was morning, noon or afternoon or nighttime or daytime?
A: "*Hapon po*." (In the afternoon.)

Q: Early afternoon, late afternoon or mid-afternoon?
A: Late in the afternoon, Your Honor. ("*bandang hapon-hapon po*.")

Q: Was it already dark?
A: Not yet, your Honor.

PROS. LAGROSA:

Q: According to you[,] your father went to sleep, where were you when your father went to sleep?
A: I was in the house, ma'am.

x x x x

Q: And when your father woke up, were you still in the house?
A: Yes, ma'am.

Q: Also inside the house?
A: Yes, ma'am.

Q: When your father woke up, what did he do?
A: All of us ate rice, ma'am. ("*Kumain po kaming lahat ng kanin.*")

Q: Can you tell us if that is already dark or still daytime?
A: It was still daytime, ma'am.

x x x x

Q: After eating rice, will you tell us what happened, if you still remember?
A: My father was called by his *compadre*, ma'am.

Q: And who was that *compadre* who called your father?
A: Freddie, ma'am.

Q: Do you know the full name of this Freddie?
A: Freddie Nulla, ma'am.

Q: Why do you know Freddie Nulla?
A: He is a *compadre* of my father, ma'am.

Q: Did you often see him in your place?
A: Yes, ma'am.

Q: Is Freddie Nulla now here in court?
A: Yes, ma'am.

Q: Will you look around and point to him?

INTERPRETER:

Witness pointed to a detention prisoner (*sic*) when asked to identify himself answered FREDDIE NULLA.

Q: Now, you said that Freddie Nulla, the *compadre*, called your father, do you still remember how he was called?
A: Yes, ma'am.

Q: How?
A: "*Pare*. *Pare*."

Q: And when your father was called, what did your father do?
A: My father followed Freddie at the back of the house of *Kuya* Edwin.

Q: At the time your father followed Freddie at the back of the house of your *Kuya* Edwin, where were you?
A: I was under the house of *Kuya* Unyo, ma'am.

Q: Now, you mentioned that your father followed Freddie at the back of the house of *Kuya* Edwin, who is this *Kuya* Edwin?

INTERPRETER:

Witness pointing to a detention prisoner who identified himself as EDWIN IBAÑEZ.

PROS. LAGROSA:

Q: You said that at that time you were under the house of *Kuya* Unyo, what is the full name of this *Kuya* Unyo, if you know?
A: I do not know, ma'am.

Q: What were you doing under the house of *Kuya* Unyo?
A: I was throwing stones, ma'am.

Q: And this house of *Kuya* Unyo, is that near or far from your house?
A: Just near our house, ma'am.

Q: Can you point a place here where you are now sitted (*sic*) up to this courtroom to show the distance between your house and the house of *Kuya* Unyo?

PROS. LAGROSA:
The witness pointed up to the wall.

ATTY. MALLILLIN[:]

Can we estimate, your Honor.

A: Just near, ma'am, 3 to 4 meters.[9]

x x x x

Q: Rachel, last time you testified that your father followed Freddie Nulla at the back of the house of *Kuya* Unyo and at that time you were under the house of *Kuya* Unyo, do you remember having stated that last time?
A: Yes, ma'am.

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[9] TSN, 26 April 2006, pp. 4-9.

Q: While you were at the house of *Kuya* Unyo, do you remember anything unusual that happened at that time?
A: When my father was being killed, ma'am.

Q: You said that your father was being killed or "*pinapatay na po si papa ko*[,]" who killed your father?
A: *Kuya* Edwin, *Kuya* Freddie and *Kuya* Dodong, ma'am.

Q: You said that *Kuya* Freddie, *Kuya* Edwin and *Kuya* Dodong were killing your father, how did *Kuya* Edwin[,] how was he killing your father as you said?
A: "*Pinuluputan po sa mukha ng damit ni Kuya* Edwin." (*Kuya* Edwin put around a piece of cloth)[.]

Q: You said that *Kuya* Edwin put around a piece of cloth on your papa, in what part of your father's body (*sic*) that cloth being put around by *Kuya* Edwin?
A: He put it around all over the face and the head, ma'am.

PROS. LAGROSA:

The witness was demonstrating by making a circling movement or motion of her hand all over the head and the face.

Q: And then what happened when *Kuya* Edwin put around that piece of cloth all over the head and face of your papa?
A: "*Itinumba po siya*."

Q: You said "*itinumba po siya*[,]" who caused your father to tumble down?
A: After *Kuya* Edwin had put around the piece of cloth on my father[,] he tumbled him down.

Q: And when your father tumbled down, what else happened?
A: *Kuya* Freddie boxed him, ma'am.

Q: Did you see in what part of your father's body was he boxed by *Kuya* Freddie?
A: Yes, ma'am.

Q: What part of his body was boxed?
A: On the left portion of the shoulder blade, ma'am.

Q: And how about *Kuya* Dodong when *Kuya* Edwin put around a piece of cloth and when *Kuya* Freddie boxed your father, where was *Kuya* Dodong at that time?
A: He was also there, ma'am.

Q: And what was he doing[,] if he was doing anything at that time?
A: "*Binareta na po 'yong papa ko sa ulo*."

COURT:

Q: What did he use *noong* "*binareta*"?
A: It is a long iron bar used in digging soil?

PROS. LAGROSA:

Q: Now, what happened after *Kuya* Dodong "*binareta*" (*sic*) your father on the head?
A: "*Nandoon pa po ako sa silong nila Kuya Unyo nakita ko nalang po nandoon na po ang nanay ko pati po mga kapatid ko tsaka na po ako lumabas*."[10]

As the lower courts have done, we accord full faith and credence to Rachel's testimony. She was young and unschooled, but her narration of the incident was categorical, without wavering. It has no markings of a concocted story, impressed upon her by other people.

The defense, accused-appellants herein, tried to further discredit Rachel's testimony by arguing that Rachel was a mere child who had studied only until the first grade of elementary school and could barely read, and did not know how to tell time.

We cannot take Rachel's testimony lightly simply because she was a mere child when she witnessed the incident and when she

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[10] TSN, 10 May 2006, pp. 2-4.

gave her testimony in court. There is no showing that her mental maturity rendered her incapable of testifying and of relating the incident truthfully.

With exceptions provided in the Rules of Court,[11] all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses. That is even buttressed by the Rule on Examination of a Child Witness which specifies that every child is presumed qualified to be a witness. To rebut this presumption, the burden of proof lies on the party challenging the child's competence. Only when substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court will the court, *motu proprio* or on motion of a party, conduct a competency examination of a child.[12] Thus, petitioners' flimsy objections on Rachel's lack of education and inability to read and tell time carry no weight and cannot overcome the clear and convincing testimony of Rachel as to who killed her father.

We likewise note that the line of questioning of the defense during cross-examination on the competency of Rachel to read and tell time did not distract her in recollecting how her father was attacked by accused-appellants. From her position underneath the house of her "*Kuya* Unyo," she saw her father, Wilfredo, attacked by accused-appellants. Although she was astonished as the happening unfolded, her ability to perceive, remember, and make known her perception was not diminished.

As regards Aniceta's version of the events that Jesus was the sole perpetrator of the crime who attacked Wilfredo only in self-defense, we easily see the fatal flaw: Aniceta arrived **after** the supposed fight between Wilfredo and Jesus, and what transpired was merely relayed to her by Jesus' sister, Marilou.

Quite apparent from Aniceta's narration of events is that she has no personal knowledge of Wilfredo's killing. Aniceta's testimony is mainly hearsay, specially on the purported fight

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[11] Rules of Court, Rule 130, Secs. 20 and 21.

[12] *People v. Hermosa*, 417 Phil. 132, 144-145 (2001).

between Wilfredo and Jesus that ended in Wilfredo's death. Aniceta's testimony as such carries no probative weight. At best, Aniceta's testimony is an independent relevant statement: offered only as to the fact of its declaration and the substance of what had been relayed to Aniceta by Marilou, not as to the truth thereof.[13]

Section 36 of Rule 130 of the Rules of Court explicitly provides:

> **SEC. 36.** *Testimony generally confined to personal knowledge; hearsay excluded.* – A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

We detect a clever, albeit transparent ploy, to pin Jesus who had already fled and is temporarily out of reach of the law. Thus, with Jesus temporarily shielded from punishment, accused-appellants freely accuse and point to him as the sole perpetrator of the crime. This cannot trump the solid testimony of Rachel on accused-appellants' direct participation in killing Wilfredo.

We likewise affirm the lower courts' appreciation of the aggravating circumstance of treachery:

> [T]he essence of treachery is the sudden and unexpected attack by an aggressor without the slightest provocation on the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor. Treachery attended the killing of the victim because he was unarmed and the attack on him was swift and sudden. He had not means and there was no time for him to defend himself. Indeed, nothing can be more sudden and unexpected than when [petitioners] Edwin and Alfredo attacked the victim. The latter did not have the slightest idea that he was going to be attacked because he was urinating and his back was turned from his assailants. The prosecution was able to establish that [petitioners'] attack on the victim was without any slightest provocation on the latter's part and that it was sudden and unexpected. This is a clear case of treachery.[14]

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[13] See *People v. Silvano*, 431 Phil. 351, 363 (2002).

[14] *Rollo*, p. 14.

Finally, we affirm the lower court's award of damages consistent with jurisprudence:[15] (1) ₱50,000.00 as civil indemnity; (2) ₱25,000.00 as temperate damages; and (3) ₱50,000.00 as moral damages. Consistent with current jurisprudence, we increase the award of exemplary damages from ₱25,000.00 to ₱30,000.00.[16] However, we delete the award of ₱1,946,180.00 representing the unearned income of Wilfredo.

To obviate confusion on the award of loss of earning capacity, we reiterate herein that compensation for lost income is in the nature of damages and as such requires due proof of the damages suffered; there must be unbiased proof of the deceased's average income.[17] In this case, we only had the testimony of Wilfredo's spouse, Rowena, who claimed that Wilfredo earned ₱400.00 to ₱500.00 daily as a doormat vendor.

On more than one occasion, we have held that the bare testimony of a deceased's mother or spouse as to the income or earning capacity of the deceased must be supported by competent evidence like income tax returns or receipts.[18]

In *People v. Caraig*,[19] we have drawn two exceptions to the rule that "documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity," and have thus awarded damages where there is testimony that the victim was either (1) *self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work no documentary evidence is available*; or (2) *employed as a daily-wage worker earning less than the minimum wage under current labor laws*."

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[15] *People v. Molina*, G.R. No. 184173, 13 March 2009, 581 SCRA 519, 542-543.

[16] *People v. Barde* G.R. No. 183094, 22 September 2010, 631 SCRA 187, 220.

[17] *People v. Ereño*, 383 Phil. 30, 46 (2000).

[18] *Id*.

[19] 448 Phil. 78, 97 (2003).

Although Wilfredo's occupation as a doormat vendor may fall under the first exception, the minimum wage for Region III, which includes the province of Bulacan, is below ₱400.00 as per the National Wages and Productivity Commission Regional Daily Minimum Wage Rates as of August 2013.[20] Regrettably, except for the bare assertion of Rowena, Wilfredo's spouse, we have nothing to anchor the award for loss of earning capacity. Thus, we delete the award for loss of earning capacity in the amount of ₱1,946,180.00.

WHEREFORE, the appeal is **DISMISSED.** The Decisions of the Court of Appeals in CA-G.R. H.C. No. 04051 and the Regional Trial Court, Branch 18, Malolos, Bulacan in Criminal Case No. 3517-M-2004 are **AFFIRMED with MODIFICATION**. The award of exemplary damages is increased from ₱25,000.00 to ₱30,000.00 and we delete the award for loss of earning capacity in the amount of ₱1,946,180.00.

SO ORDERED.

Carpio (Chairperson), del Castillo, and *Perlas-Bernabe, JJ.,* concur.

Leonen,[*] *J.,* see separate concurring and dissenting opinion.

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[20] See Wage Order No. 17, effective on 11 October 2012:

SUMMARY OF CURRENT REGIONAL DAILY MINIMUM WAGE RATES

Non-Agriculture, Agriculture
As of August 2013
(In pesos)

NON-AGRICULTURE	AGRICULTURE	
	Plantation	**Non-Plantation**
285.00 - 336.00	270.00 - 306.00	258.00 - 290.00

http://www.nwpc.dole.gov.ph/pages/statistics/stat current regional.html; last visited 9 September 2013.

[*] Per Special Order No. 1560 dated 24 September 2013.

CONCURRING and DISSENTING OPINION

LEONEN, *J.*:

I concur with the *ponencia* in its discussion affirming the lower courts in finding accused-appellants guilty beyond reasonable doubt for the crime of murder, sentencing them to suffer imprisonment of *reclusion perpetua* and to indemnify the heirs of Wilfredo D. Atendido.

I express my dissent, however, in so far as the deletion of the award for loss of earning capacity in the amount of ₱1,946,180.00. This award was taken back for having no anchor but the bare assertions of Wilfredo's wife that her husband earned ₱400.00 to ₱500.00 daily as a doormat vendor.

Section 2206 of the Civil Code provides the basis of damages for loss of earning capacity as follows:

Article 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

> (1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death.

As a *general rule*, this Court holds that "documentary evidence should be presented to substantiate a claim for loss of earning capacity but by way of *exception*, this may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work, no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws."[1]

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[1] *See Tan v. OMC Carriers Inc.,* G.R. No. 190521, January 12, 2011, 639 SCRA 471, 483 *citing Philippine Hawk Corporation v. Lee*, G.R. No.

There have been occasions when We denied an award for unearned income unsupported by evidence except for the sole testimony by the spouse of the deceased. The recent ones include *Victory Liner v. Gammad*.[2] In this case, no other evidence was presented except respondent's testimony that the deceased was Section Chief of the Bureau of Internal Revenue in Tuguegarao with an annual salary of ₱83,088.00.[3] In *People v. Oco*,[4] the wife's bare testimony that the deceased earned ₱8,000.00 monthly as a legal researcher of a private corporation was considered insufficient to justify the award.[5] Similarly, We denied the award in *People v. Caraig*[6] finding that Agustin received ₱5,000.00 monthly as a Social System employee, Raagas was compensated ₱30,000.00 monthly as president of a family-owned corporation, while Castro earned ₱7,500.00 monthly as a taxi driver.[7]

In all these cases, this Court found that none of the exceptions were present. The deceased were neither self-employed earning less than the minimum wage nor employed as daily wage workers earning less than the minimum wage. They were, in fact, capable of producing competent evidence such as income tax returns or receipts but failed to do so.

Wilfredo was a doormat vendor. His source of income was irregular and largely dependent on how many doormats he could sell in a day, if any. These doormats were peddled. They were not highly priced. It is most likely that Wilfredo did not file

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166869, February 16, 2010, 612 SCRA 576 and *Licyayo v. People* , G.R. No. 169425, March 4, 2008, 547 SCRA 598. *See also Victory Liner Inc. v. Gammad,* 486 Phil. 574, 590 (2004) *citing People v. Oco,* G.R. Nos. 137370-71, September 29, 2003,412 SCRA 190, 222.

[2] *Victory Liner Inc. v. Gammad,* 486 Phil. 574 (2004).

[3] *Id.* at 591.

[4] *People v. Oco,* 458 Phil. 815 (2003).

[5] *Id.* at 855.

[6] *People v. Caraig,* 448 Phil. 78 (2003).

[7] *Id.* at 98.

income tax returns nor issue official receipts. In any case, minimum wage earners are exempt from the payment of income tax.[8] Thus, they do not need to file an income tax return.

The *ponencia* recognized that Wilfredo's occupation may fall under the first exception; that is, the deceased is self-employed and earning less than the minimum wage, and judicial notice may be taken of the fact that in his line of work, no documentary evidence is available. However, according to the *ponencia*, Rowena's claim of ₱400.00 to ₱500.00 daily income is above the minimum wage for Region III whose minimum wage is below ₱400.00.[9]

In the 2000 case of *People v. Ereño,*[10] the victim was a self-employed fish vendor who died in 1995. This Court denied the claim for unearned income based solely on his mother's handwritten estimate that the deceased earned ₱600.00 daily during the last eight years prior to his death.[11] Even compared with today's minimum wage, this claim still exceeds the rate by a relevant margin. In the 2011 case of *Tan v. OMC Carriers*,[12] the deceased was a self-employed tailor who also died in 1995. This Court found that the claim of ₱13,000.00 as monthly income greatly exceeded the prevailing minimum wage in 1995 of ₱145.00 per day or ₱3,770.00 a month.[13]

The amount claimed by Wilfredo's wife does not vary too far from the minimum wage in Bulacan, Region III. In fact, it would pass for minimum wage in the National Capital Region.[14]

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[8] *See* Republic Act No. 8424, as amended, Sec. 24 (A)(2).

[9] *See* Wage Order No. 17. This Order was effective October 11, 2012. Available at: <http://www.nwpc.dole.gov.ph/pages/region_3/cmwr_table_r3.html>

[10] 383 Phil. 30 (2000).

[11] *People v. Ereño,* 383 Phil. 30, 45-46 (2000).

[12] *Tan v. OMC Carriers, Inc., supra* note 1.

[13] *Id.* at 483-484.

[14] *See* Wage Order No. NCR-18. This Order was effective October 4, 2013. Available at: <http://www.nwpc.dole.gov.ph/pages/ncr/cmwr_table.html>.

I am of the view that evidence presented, if seen as credible by the trial court judge, should stand in the absence of clear basis to refute it.[15] The accused should have presented evidence to refute the evidence in chief presented.

In any event, this Court has, in the past, awarded temperate damages in lieu of an award for unearned income "where earning capacity is plainly established but no evidence was presented to support the allegation of the injured party's actual income.[16] ₱200,000.00 was awarded in the 2001 case of *People v. Singh,*[17] ₱500,000.00 in the 2004 case of *Victory Liner v. Gammad*,[18] and ₱300,000.00 in the 2011 case of *Tan v. OMC Carriers*.[19]

The income-earning capacity of Wilfredo was never disputed. It would seem that ₱25,000.00 as temperate damages is too meager an amount for the loss suffered by Wilfredo's heirs as a result of his untimely death in 2004.

Thus, I concur in affirming the lower courts in finding accused-appellants guilty beyond reasonable doubt for the crime of murder, but I dissent in so far as the deletion of the award for loss of earning capacity in favor of the heirs of Wilfredo D. Atendido.

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[15] *See Jara v. People of the Philippines,* G.R. No. 172896, April 19, 2010, 618 SCRA 406, 408."x x x 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."

[16] *Tan v. OMC Carriers, Inc., supra* note 1, at 484.

[17] 412 Phil. 842, 859 (2001).

[18] *Victory Liner Inc. v. Gammad,* 486 Phil. 574, 591 (2004).

[19] *Tan v. OMC Carriers, Inc., supra* note 1, at 484-485.

FIRST DIVISION

[G.R. No. 201103. September 25, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JIMMY CEDENIO *y* PERALTA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; PHYSICAL RESISTANCE NEED NOT BE ESTABLISHED; POKING A KNIFE IS SUFFICIENT SOURCE AND CAUSE OF FEAR.—** Under Article 266-A(1)(a) of the Revised Penal Code, as amended, rape is committed when: (1) the offender had carnal knowledge of a woman; and (b) that the same was committed by using force and intimidation. In this case, the prosecution's evidence established that Cedenio was able to forcibly have carnal knowledge of AAA on October 20, 2004 after he poked her with a knife and threatened to kill her. The Court, like the CA, cannot sustain Cedenio's claim that AAA's lack of physical resistance is not a normal behavior in such cases. "Physical resistance need not be established in rape cases when intimidation is exercised upon the victim who submits against her will because of fear for her life and personal safety." If a knife on one's side is not a sufficient source and cause of fear, then what is?

2. **ID.; ID.; CIVIL LIABILITY.—** As to the civil liability**,** both the RTC and the CA ordered Cedenio to pay AAA ₱50,000.00 as civil indemnity. The CA further awarded ₱50,000.00 as moral damages. Civil indemnity is mandatory upon the finding of the fact of rape, while moral damages are proper without need of proof other than the fact of rape by virtue of the undeniable moral suffering of AAA due to rape. The amounts awarded are all in accord with prevailing jurisprudence. The Court, however, further awards exemplary damages in the amount of ₱30,000.00. The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example or correction for the public good. In addition, interest at the rate of six percent (6%) *per annum* shall be imposed on all the damages awarded, to earn from the date of the finality of the court's resolution until fully paid.

3. **REMEDIAL LAW; EVIDENCE; DEFENSE OF *ALIBI* CANNOT PROSPER IN THE ABSENCE OF CLEAR AND CONVINCING**

EVIDENCE.— Cedenio's defense of *alibi* is an inherently weak defense that is easy to fabricate. Cedenio failed to present clear and convincing evidence that he was in a place other than the *situs criminis* at the time 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. The CA noted that Cedenio's job gave him mobility and it was easy for him to go home and commit the crime; thus, his *alibi* cannot prosper.

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.*:

Appealed in this case is the Decision[1] dated July 29, 2011 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04220, affirming with modification the Decision[2] dated September 21, 2009 rendered by the Regional Trial Court (RTC) of Pasay City, Branch 119, in Criminal Case No. 04-2742 for Rape. The dispositive portion of the CA's Decision provides:

FOR THE STATED REASONS, the assailed RTC Decision convicting accused-appellant Jimmy Cedenio of the crime of rape is **AFFIRMED** with the **MODIFICATION** that, in addition to the award of [₱]50,000.00 as civil indemnity, he is **ORDERED** to pay [AAA][3] the amount of [₱]50,000.00 as moral damages.

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[1] Penned by Associate Justice Mario V. Lopez, with Associate Justices Magdangal M. De Leon and Socorro B. Inting, concurring; CA *rollo*, pp. 116-128.

[2] Issued by Judge Pedro De Leon Gutierrez; *id.* at 25-34.

[3] The name of the victim, her personal circumstances and other information which tend to establish or compromise her identity shall not be disclosed to protect her privacy and fictitious initials shall, instead, be used, in accordance with *People v. Cabalquinto*, 533 Phil. 703 (2006), and A.M. No. 04-11-09-SC dated September 19, 2006.

SO ORDERED.[4]

The evidence for the prosecution established the following: Twenty one (21)-year old AAA and accused-appellant Jimmy Cedenio (Cedenio) rented separate rooms on the same floor of a building in Pasay City. AAA lives with her boyfriend BBB and two (2) other persons, while Cedenio lives with his family. They all use a common bathroom. At around 9:30 a.m. of October 20, 2004, after her roommates left for work, AAA went back inside the room after taking a bath. She noticed that the light inside the room was on. Upon entering the room, Cedenio, from behind the door, placed his arm around her and poked a fan knife at her side. She pleaded for him not to kill or rape her but he told her that he only wanted to talk. Cedenio, however, then told her to lie down on the foam spread on the floor, and grabbed the towel wrapped around her. She pleaded with him to spare her and told him that she was having her period, to no avail. After Cedenio was able to have sex with AAA, he threatened to kill her if she tells anybody about it. With Cedenio still inside the room, AAA hurriedly dressed up and left. She went to Baclaran Mall where BBB was working and related her ordeal to him. They immediately went to the *barangay* hall to report the incident. While there, AAA saw Cedenio in the vicinity and told BBB who immediately ran after Cedenio. BBB was joined by *barangay tanods* and Cedenio was eventually collared. At that point, PO3 Herman Abanilla, who was on board a tricycle, saw the fracas, arrested Cedenio and brought him to the police headquarters.[5]

Cedenio denied the accusation against him and set up the defense of *alibi*. He claimed that he was out selling cigarettes and candies in Pasay Rotunda at the time of the incident. He went back home at around 10:30 a.m. to put down his goods and thereafter fetched his children from school. He was near the *barangay* hall in the afternoon to buy food when the *tanods* approached him and, after confirming his identity, arrested him.[6]

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[4] CA *rollo*, p. 127.

[5] *Id.* at 26-27, 117-118.

[6] *Id.* at 89, 119.

Both the RTC and the CA gave more weight and credit to the prosecution's version of the incident and did not heed Cedenio's *alibi*. Both courts did not find any reason to disbelieve AAA's testimony and ruled that Cedenio failed to establish any ill-motive on AAA's part for her to maliciously implicate him. The CA further disregarded Cedenio's claim that AAA's lack of physical resistance is contrary to common human behavior, ruling that AAA was at knife point at that instance and there is no uniform reaction from rape victims.[7] The CA thus affirmed Cedenio's conviction for Rape, the imposition of *reclusion perpetua* as penalty and the award of ₱50,000.00 as civil indemnity. The CA also awarded moral damages in the amount of ₱50,000.00.[8]

Upon review, the Court does not find any reason to overturn Cedenio's conviction of the crime of Rape.

Under Article 266-A(1)(a) of the Revised Penal Code, as amended, rape is committed when: (1) the offender had carnal knowledge of a woman; and (b) that the same was committed by using force and intimidation.[9] In this case, the prosecution's evidence established that Cedenio was able to forcibly have carnal knowledge of AAA on October 20, 2004 after he poked her with a knife and threatened to kill her. The Court, like the CA, cannot sustain Cedenio's claim that AAA's lack of physical resistance is not a normal behavior in such cases. "Physical resistance need not be established in rape cases when intimidation is exercised upon the victim who submits against her will because of fear for her life and personal safety."[10] If a knife on one's side is not a sufficient source and cause of fear, then what is?

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[7] *Id.* at 125.

[8] *Id.* at 127.

[9] *People v. Malana*, G.R. No. 185716, September 29, 2010, 631 SCRA 676, 685.

[10] *People v. Aguilar*, G.R. No. 185206, August 25, 2010, 629 SCRA 437, 449.

Moreover, Cedenio's defense of *alibi* is an inherently weak defense that is easy to fabricate.[11] Cedenio failed to present clear and convincing evidence that he was in a place other than the *situs criminis* at the time 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] The CA noted that Cedenio's job gave him mobility and it was easy for him to go home and commit the crime; thus, his *alibi* cannot prosper.[13]

The CA also correctly affirmed the imposition of *reclusion perpetua* as penalty.[14] The same should be imposed without eligibility for parole.[15]

As to the civil liability, both the RTC and the CA ordered Cedenio to pay AAA ₱50,000.00 as civil indemnity. The CA further awarded ₱50,000.00 as moral damages. Civil indemnity is mandatory upon the finding of the fact of rape, while moral damages are proper without need of proof other than the fact of rape by virtue of the undeniable moral suffering of AAA due to the rape.[16] The amounts awarded are all in accord with prevailing jurisprudence.[17]

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[11] *People v. Arpon*, G.R. No. 183563, December 14, 2011, 662 SCRA 506, 529.

[12] *Id*.

[13] CA *rollo*, p. 125.

[14] REVISED PENAL CODE, as amended, Article 266-A.

[15] Section 3 of Republic Act No. 9346 (An Act Prohibiting the Imposition of Death Penalty in the Philippines) provides that "[p]ersons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended." See also *People v. Subesa*, G.R. No. 193660, November 16, 2011, 660 SCRA 390, 403, citing *People v. Ortiz*, G.R. No. 179944, September 4, 2009, 598 SCRA 452, 457; *People v. Bulagao*, G.R. No. 184757, October 5, 2011, 658 SCRA 746, 761.

[16] *People v. Arcillas*, G.R. No. 181491, July 30, 2012, 677 SCRA 624, 637.

[17] Section 3 of Republic Act No. 9346 entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines"; *People v. Tejero,* G.R. No. 187744, June 20, 2012, 674 SCRA 244, 260.

The Court, however, further awards exemplary damages in the amount of ₱30,000.00. The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example or correction for the public good.[18] In addition, interest at the rate of six percent (6%) *per annum* shall be imposed on all the damages awarded, to earn from the date of the finality of the Court's resolution until fully paid.[19]

WHEREFORE, the appeal is hereby **DISMISSED**. The Decision dated July 29, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 04220 is **AFFIRMED**, with modifications that exemplary damages in the amount of THIRTY THOUSAND PESOS (₱30,000.00) be awarded and that the penalty of *reclusion perpetua* imposed on accused-appellant Jimmy Cedenio shall be without eligibility for parole. Moreover, the damages awarded in this case shall earn an interest at the rate of six percent (6%) *per annum* from the date of the finality of this Resolution until fully paid.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Perlas-Bernabe,[*] and *Leonen,*[**] *JJ.,* concur.

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[18] *People v. Delabajan*, G.R. No. 192180, March 21, 2012, 668 SCRA 859, 868.

[19] *People of the Philippines v. Rolando Cabungan*, G.R. No. 189355, January 23, 2013.

[*] Acting member per Special Order No. 1537 (Revised) dated September 6, 2013.

[**] Acting member per Special Order No. 1545 (Revised) dated September 16, 2013.

SECOND DIVISION

[G.R. No. 201787. September 25, 2013]

ANALITA P. INOCENCIO, substituting for RAMON INOCENCIO (Deceased), *petitioner, vs.* **HOSPICIO DE SAN JOSE,** *respondent.*

SYLLABUS

1. **CIVIL LAW; SPECIAL CONTRACTS; LEASE; LEASE CONTRACTS GENERALLY SURVIVE THE DEATH OF THE PARTIES AND CONTINUE TO BIND THE HEIRS; PRINCIPLE APPLIED IN CASE AT BAR.—** We have previously ruled that lease contracts, by their nature, are not personal. The general rule, therefore, is lease contracts survive the death of the parties and continue to bind the heirs except if the contract states otherwise. x x x Section 6 of the lease contract provides that "[t]his contract is nontransferable unless prior consent of the lessor is obtained in writing." Section 6 refers to transfers *inter vivos* and not transmissions *mortis causa.* What Section 6 seeks to avoid is for the lessee to substitute a third party in place of the lessee without the lessor's consent. x x x In any case, HDSJ also acknowledged that Ramon is its month-to-month lessee. Thus, the death of German did not terminate the lease contract executed with HDSJ, but instead continued with Ramon as the lessee.

2. **ID.; ID.; ID.; SUBLEASE CONTRACTS WERE HELD AS VALID SINCE THE ORIGINAL LEASE AGREEMENT DID NOT PROHIBIT THE SAME.—** In a sublease, the lessee becomes in turn a lessor to a sublessee. The sublessee then becomes liable to pay rentals to the original lessee. However, the juridical relation between the lessor and lessee is not dissolved. The parties continue to be bound by the original lease contract. Thus, in a sublease arrangement, there are at least three parties and two distinct juridical relations. Ramon had a right to sublease the premises since the lease contract did not contain any stipulation forbidding subleasing. Article 1650 of the Civil Code states: Art. 1650. When in the contract of lease of things there is no express prohibition, the lessee may sublet the thing leased,

in whole or in part, without prejudice to his responsibility for the performance of the contract toward the lessor. Therefore, we hold that the sublease contracts executed by Ramon were valid.

3. **ID.; ID.; ID.; TORTIOUS INTERFERENCE, NOT A CASE OF.—** We also find that HDSJ did not commit tortious interference. x x x As correctly pointed out by the Inocencios, tortious interference has the following elements: (1) existence of a valid contract; (2) knowledge on the part of the third person of the existence of the contract; and (3) interference of the third person without legal justification or excuse. The facts of the instant case show that there were valid sublease contracts which were known to HDSJ. However, we find that the third element is lacking in this case. In *So Ping Bun v. Court of Appeals,* we held that there was no tortious interference if the intrusion was impelled by purely economic motives. x x x The evidence shows that HDSJ entered into agreements with Ramon's former sublessees for purely economic reasons (payment of rentals). HDSJ had a right to collect the rentals from the sublessees upon termination of the lease contract. It does not appear that HDSJ was motivated by spite or ill will towards the Inocencios.

4. **ID.; ID.; ID.; RIGHTS AND OBLIGATIONS OF THE LESSOR AND THE LESSEE REGARDING THE IMPROVEMENTS ON THE LEASED PROPERTY UNDER ARTICLE 1678 OF THE CIVIL CODE, APPLIED.—** [W]e find that the CA erred in not applying Article 1678 of the Civil Code x x x The x x x provision applies if the improvements were: (1) introduced in good faith; (2) useful; and (3) suitable to the use for which the lease is intended, without altering the form and substance. We find that the aforementioned requisites are satisfied in this case. The buildings were constructed before German's demise, during the subsistence of a valid contract of lease. It does not appear that HDSJ prohibited German from constructing the buildings. Thus, HDSJ should have reimbursed German (or his estate) half of the value of the improvements as of 2001. If HDSJ is not willing to reimburse the Inocencios, then the latter should be allowed to demolish the buildings.

5. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; WHERE AN ACTION FOR UNLAWFUL DETAINER WAS NOT BARRED BY PRESCRIPTION.—** We also find that the action for unlawful

detainer was not barred by prescription. Section 1, Rule 70 of the Rules of Court provides that actions for unlawful detainer must be filed "within one (1) year after such unlawful deprivation or withholding of possession." In interpreting the foregoing provision, this Court, in *Republic v. Sunvar Realty Development Corporation,* held that: [T]he one-year period to file an unlawful detainer case is not counted from the expiration of the lease contract on 31 December 2002. x x x "Such one year period should be counted from the date of plaintiff's last demand on defendant to vacate the real property, because only upon the lapse of that period does the possession become unlawful." HDSJ's last demand was made on 3 March 2005, and it filed the complaint for unlawful detainer on 28 June 2005. Thus, the complaint was filed within the period provided under the Rules of Court.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez and Gatmaitan for petitioner.
Romulo Mabanta Buenaventura Sayoc and Delos Angeles for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review seeks to annul and set aside the Decision[1] dated 12 January 2012 and the Resolution[2] dated 9 May 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 117009. The Decision dismissed Analita P. Inocencio's (Analita)

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[1] *Rollo*, pp. 15-25. Penned by Associate Justice Manuel M. Barrios, with Associate Justices Juan Q. Enriquez, Jr. and Apolinario D. Bruselas, Jr., concurring.

[2] *Id.* at 27-28. Penned by Associate Justice Manuel M. Barrios, with Associate Justices Juan Q. Enriquez, Jr. and Apolinario D. Bruselas, Jr., concurring.

petition for review and affirmed with modification the Decision[3] dated 21 January 2009 of the Regional Trial Court of Pasay, Branch 119 (RTC- Pasay). The Resolution denied Analita's motion for reconsideration.

The Facts

On 1 March 1946, Hospicio de San Jose (HDSJ) leased a parcel of land located in Pasay City to German Inocencio (German).[4] The lease contract was effective for a period of one year, and was renewed for one-year periods several times. The last written contract was executed on 31 May 1951.[5] Section 6 of the lease contract provides:

> *Este contrato es intransferible, a menos que para ello se obtenga el consentimiento escrito del arrendador.* (This contract is nontransferable unless prior consent of the lessor is obtained in writing.)[6]

In 1946, German constructed two buildings on the parcel of land[7] which he subleased. He also designated his son Ramon Inocencio (Ramon) to administer the said property.[8]

On 21 September 1990, German received a letter from HDSJ informing him that the increased rentals shall take effect in November 1990 instead of August 1990, "to give [him] ample time to make the necessary rental adjustments with [his] sublessees."[9]

German passed away in 1997. Evidence on record shows that Ramon did not notify HDSJ of German's death. After

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[3] *Id.* at 146-152. Penned by Presiding Judge Pedro De Leon Gutierrez.

[4] *Id.* at 236.

[5] *Id.* at 180.

[6] *Id.* at 237.

[7] *Id.* at 240-241.

[8] *Id.* at 34.

[9] *Id.* at 261.

German's passing, Ramon collected the rentals from the sublessees, and paid the rentals to HDSJ, and the taxes on the property. On 1 March 2001, HDSJ's property administrator, Five Star Multi-Services, Inc., notified Ramon that HDSJ is terminating the lease contract effective 31 March 2001:

> We acknowledge the fact that Hospicio de San Jose has been accepting the payment of your rentals since the demise of Mr. [German] Inocencio. Hence, an implied contract of lease between the two of you exists. However, since there is no stipulation as to the period of the contract and you are paying a monthly rental to our client, the period for the lease is on a month-to-month basis (Art. 1687). Thus as of this date, your contract should expire on March 31, 2001.[10]

Ramon then sent a letter to HDSJ dated 12 March 2001, suggesting that the lease contract be renegotiated for the welfare of the sublessees occupying the parcel of land.[11] On 3 April 2001, HDSJ notified Ramon that the lease contract shall not be renewed because Ramon has "[continually] subleased the subject premises to about 20 families (in addition to a commercial establishment) x x x without the knowledge and consent of the lessor, [HDSJ]."[12] Thereafter, HDSJ refused to accept Ramon's tender of payment of rentals.[13]

On 3 March 2005, HDSJ sent a letter to Ramon: (1) reiterating its stand that the lease contract was terminated effective 31 March 2001; (2) demanding payment of ₱756,449.26 as unrealized fruits; and (3) giving him 30 days to vacate the property.[14] The sublessees were given written notices to vacate within 30 days.[15] HDSJ also posted a *Patalastas* stating that

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[10] *Id.* at 990.

[11] *Id.* at 309.

[12] *Id.* at 181.

[13] *Id.* at 255, 394.

[14] *Id.* at 256.

[15] *Id.* at 262-263, 265-266, 268-269, 271-272, 274-275, 277-278, 280-281, 283-284, 286-287, 289-290, 292-293, 295-296, 298-299, 301-302, 304-305, 307-308, 310-311, and 313-314.

it is willing to work out an amicable arrangement with the sublessees, although the latter are not considered as legal occupants or tenants of the property.[16] Because of this, some of the sublessees refused to pay rentals to Ramon.[17]

HDSJ also entered into lease contracts with: (1) Harish Chetandas on 25 May 2005;[18] (2) Enrique Negare on 12 April 2005;[19] (3) Lamberto Estefa on 25 May 2005;[20] and (4) Sofronio Chavez, Jr. on 21 May 2005.[21]

On 28 June 2005, HDSJ filed a Complaint before Branch 48 of the Metropolitan Trial Court of Pasay (MeTC-Pasay) for unlawful detainer against Ramon and his sublessees.[22] The complaint alleged that Ramon and his sublessees have been illegally occupying the leased premises since 31 March 2001. HDSJ sought the following damages:

> 17.1 Actual damages, in the amount of Php552,195.36, equivalent to the reasonable value of the use and occupation of the premises from the period of 31 March 2001 until the present [;] and
>
> 17.2 Attorney's fees in the amount of Php50,000.00, for defendants' refusal to vacate the property [and for compelling] [p]laintiff to incur expenses to protect its interest[s]. Furthermore, it is clear that defendants acted in gross and evident bad faith in refusing to satisfy [p]laintiff's plainly valid, just, and demandable claim.[23]

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[16] *Id.* at 315.

[17] *Id.* at 37.

[18] *Id.* at 205-209.

[19] *Id.* at 210-214.

[20] *Id.* at 215-219.

[21] *Id.* at 220-224.

[22] *Id.* at 716-721.

[23] *Id.* at 719-720.

In his Answer dated 1 August 2005,[24] Ramon claimed that:

(1) German was the owner of the two buildings constructed on the leased property as evidenced by the building permits obtained from the government agencies and the tax declarations covering the buildings;

(2) The Spanish lease contract, which was not translated into English or Filipino should not be admitted as evidence in view of Section 33 of Rule 133 of the Rules on Evidence;

(3) HDSJ is estopped from raising the issue of non-transferability of the lease contract because it admitted in its letter to Ramon that there is an existing lease agreement between the parties, even after German's death:

> Your Lease Contract with [HDSJ], which is an implied month-to-month contract, has to be terminated effective March 31, 2001, because by your own admission, you have continuously subleased the subject premises to about 20 families [including] a commercial establishment). This was done without the knowledge and consent of the lessor, [HDSJ], and is in violation of the Lease Contract your father signed with them.[25] x x x.

(4) There is no prohibition against subleasing in the lease contract. Thus, under Article 1650 of the Civil Code, Ramon is permitted to sublease the premises; and

(5) The letters sent by HDSJ to the Inocencios sometime in 1990 revealed that the former already knew that the premises were being subleased.

Ramon also claimed that HDSJ interfered with the contractual relations between him and his sublessees.[26]

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[24] *Id.* at 723-730.

[25] *Id.* at 181.

[26] *Id.* at 728.

While the case was being tried before the MeTC-Pasay, Ramon passed away. In an Order dated 23 August 2006, the MeTC-Pasay allowed the substitution of Ramon by his wife, Analita.[27]

The Ruling of the MeTC-Pasay

The MeTC-Pasay ruled in favor of HDSJ. In its Decision dated 22 May 2008, the MeTC-Pasay held that the lease contract could not be transmitted to Ramon as German's heir in view of the express stipulation found therein. Since there was "no lease contract between [HDSJ] and Ramon x x x the latter cannot sublease the property."[28] The dispositive portion of the MeTC-Pasay Decision reads:

> Premises considered, judgment is hereby rendered in favor of plaintiff and against defendant as follows:
>
> 1. Ordering defendant Ramon Inocencio, substituted [by] Analita P. Inocencio, and Felipe Enar, and all persons claiming rights under them to immediately vacate the premises located at 61-C Sta. Escolastica cor. F.B. Harrison St., Pasay City and to peacefully turn over the same to plaintiff;
> 2. Ordering the defendants to pay plaintiff reasonable compensation of ₱552,195.36 for the use and occupation of the property from 01 April 2001 to 31 March 2005, and the amount of ₱10,512.00 a month from 01 April 2005 up to the present, plus twelve per cent [12%] interest per annum until the premises shall have been vacated;
> 3. Ordering the defendants to pay plaintiff the amount of ₱50,000.00 as attorney's fees and costs of suit.[29]

Aggrieved, Analita filed an appeal before the RTC-Pasay.

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[27] *Id.* at 41.

[28] *Id.* at 167. Penned by Judge Catherine P. Manodon.

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

The Ruling of the RTC-Pasay

On 21 January 2009, the RTC-Pasay dismissed Analita's appeal and affirmed *in toto* the decision of the MeTC-Pasay.[30] It held that "even before the termination of the contract, [Ramon] had no right to sublease the said property due to the [intransferability] clause in the contract."[31]

Analita moved for reconsideration, but it was denied in an Order dated 25 October 2010.[32] Analita then filed a petition for review under Rule 42 of the Rules of Court before the CA.

The Ruling of the CA

The CA affirmed the decision of the RTC-Pasay but modified the award for damages. The dispositive portion of the Decision reads:

> Wherefore, foregoing considered, the assailed Decision dated 21 January 2009 of the Regional Trial Court, Branch 119, Pasay City is AFFIRMED with the MODIFICATION that the award for reasonable compensation in paragraph 2 is pegged at Five Hundred Four Thousand Five Hundred Seventy Six Pesos (₱504,576.00) representing the accumulated rentals for the period from 01 April 2001 up to 31 March 2005 with six percent (6%) interest per annum, plus the further amount of Ten Thousand Five Hundred Twelve Pesos (₱10,512.00) per month from 01 April 2005 until possession is restored to respondent, also with six percent (6%) interest per annum, up to the finality of this Decision. Thereafter, the interest shall be twelve percent (12%) until the amount is fully paid.[33]

Hence, this petition.

The Issues

The petition questions the following rulings made by the CA:

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[30] *Id.* at 152.

[31] *Id.*

[32] *Id.* at 153-157.

[33] *Id.* at 24.

(1) The sublease contracts were invalid;

(2) There was no tortious interference on the part of HDSJ;

(3) Ramon did not own the buildings erected on the leased premises;

(4) HDSJ is entitled to reasonable compensation in the amount of ₱504,576.00 and attorney's fees; and

(5) HDSJ's action for unlawful detainer was not barred by prescription.

<u>The Ruling of this Court</u>

Article 1311 of the Civil Code provides:

Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

x x x x

We have previously ruled that lease contracts, by their nature, are not personal. The general rule, therefore, is lease contracts survive the death of the parties and continue to bind the heirs except if the contract states otherwise.[34] In *Sui Man Hui Chan v. Court of Appeals*,[35] we held that:

A lease contract is not essentially personal in character. Thus, the rights and obligations therein are transmissible to the heirs. The general rule, therefore, is that heirs are bound by contracts entered into by their predecessors-in-interest except when the rights and obligations arising therefrom are not transmissible by (1) their nature, (2) stipulation or (3) provision of law. In the subject Contract of Lease, not only were there no stipulations prohibiting any transmission of rights, but its very terms

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[34] *Sui Man Hui Chan v. Court of Appeals*, 468 Phil. 244 (2004); *Heirs of Fausta Dimaculangan v. IAC*, G.R. No. 68021, 20 February 1989, 170 SCRA 393, 399.

[35] *Supra* at 252.

and conditions explicitly provided for the transmission of the rights of the lessor and of the lessee to their respective heirs and successors. The contract is the law between the parties. The death of a party does not excuse nonperformance of a contract, which involves a property right, and the rights and obligations thereunder pass to the successors or representatives of the deceased. Similarly, nonperformance is not excused by the death of the party when the other party has a property interest in the subject matter of the contract.

Section 6 of the lease contract provides that "[t]his contract is nontransferable unless prior consent of the lessor is obtained in writing."[36] Section 6 refers to transfers *inter vivos* and not transmissions *mortis causa.* What Section 6 seeks to avoid is for the lessee to substitute a third party in place of the lessee without the lessor's consent. This merely reiterates what Article 1649 of the Civil Code provides:

Art. 1649. The lessee cannot assign the lease without the consent of the lessor, unless there is a stipulation to the contrary.

In any case, HDSJ also acknowledged that Ramon is its month-to-month lessee. Thus, the death of German did not terminate the lease contract executed with HDSJ, but instead continued with Ramon as the lessee. HDSJ recognized Ramon as its lessee in a letter dated 1 March 2001:

We acknowledge the fact that Hospicio de San Jose has been accepting the payment of your rentals since the demise of Mr. [German] Inocencio. Hence, an implied contract of lease between the two of you exists. However, since there is no stipulation as to the period of the contract and you are paying a monthly rental to our client, the period for the lease is on a month-to-month basis (Art. 1687). Thus as of this date, your contract should expire on March 31, 2001.[37]

Section 6 of the lease contract requires written consent of the lessor before the lease may be assigned or transferred. In *Tamio v. Tecson*,[38] we explained the nature of an assignment of lease:

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[36] *Rollo*, p. 237.

[37] *Id.* at 990.

[38] 485 Phil. 434 (2004).

In the case of cession or assignment of lease rights on real property, there is a novation by the substitution of the person of one of the parties — the lessee. The personality of the lessee, who dissociates from the lease, disappears; only two persons remain in the juridical relation — the lessor and the assignee who is converted into the new lessee.[39]

Assignment or transfer of lease, which is covered by Article 1649 of the Civil Code, is different from a sublease arrangement, which is governed by Article 1650 of the same Code. In a sublease, the lessee becomes in turn a lessor to a sublessee. The sublessee then becomes liable to pay rentals to the original lessee. However, the juridical relation between the lessor and lessee is not dissolved. The parties continue to be bound by the original lease contract. Thus, in a sublease arrangement, there are at least three parties and two distinct juridical relations.[40]

Ramon had a right to sublease the premises since the lease contract did not contain any stipulation forbidding subleasing. Article 1650 of the Civil Code states:

Art. 1650. When in the contract of lease of things there is no express prohibition, the lessee may sublet the thing leased, in whole or in part, without prejudice to his responsibility for the performance of the contract toward the lessor.

Therefore, we hold that the sublease contracts executed by Ramon were valid.

We also find that HDSJ did not commit tortious interference. Article 1314 of the Civil Code states:

Art. 1314. Any third person who induces another to violate his contract shall be liable for damages to the other contracting party.

As correctly pointed out by the Inocencios, tortious interference has the following elements: (1) existence of a valid contract; (2) knowledge on the part of the third person of the existence of the

[39] *Id.* at 441-442.

[40] *BPI-Family Savings Bank, Inc. v. Spouses Domingo*, 538 Phil. 88 (2006).

contract; and (3) interference of the third person without legal justification or excuse.[41]

The facts of the instant case show that there were valid sublease contracts which were known to HDSJ. However, we find that the third element is lacking in this case.

In *So Ping Bun v. Court of Appeals,*[42] we held that there was no tortious interference if the intrusion was impelled by purely economic motives. In *So Ping Bun,* we explained that:

> Authorities debate on whether interference may be justified where the defendant acts for the sole purpose of furthering his own financial or economic interest. One view is that, as a general rule, justification for interfering with the business relations of another exists where the actor's motive is to benefit himself. Such justification does not exist where his sole motive is to cause harm to the other. Added to this, some authorities believe that it is not necessary that the interferer's interest outweighs that of the party whose rights are invaded, and that an individual acts under an economic interest that is substantial, not merely *de minimis*, such that wrongful and malicious motives are negatived, for he acts in self-protection. Moreover, justification for protecting one's financial position should not be made to depend on a comparison of his economic interest in the subject matter with that of others. It is sufficient if the impetus of his conduct lies in a proper business interest rather than in wrongful motives.[43]

The evidence shows that HDSJ entered into agreements with Ramon's former sublessees for purely economic reasons (payment of rentals). HDSJ had a right to collect the rentals from the sublessees upon termination of the lease contract. It does not appear that HDSJ was motivated by spite or ill will towards the Inocencios.

The Inocencios claim ownership over the buildings since these are separate and distinct from the land on which they are erected. Thus, as owners of the buildings, they have a right to lease the buildings to third persons, even after termination of the lease contract with HDSJ. To bolster their claim of ownership, the Inocencios

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[41] *Lagon v. Court of Appeals*, 493 Phil. 739 (2005).

[42] 373 Phil. 532 (1999).

[43] *Id.* at 541.

presented the following evidence: (1) the building permit;[44] (2) the receipt for the payment of the permit fee;[45] (3) the Tax Declarations; and (4) the proof of payment of insurance.[46] The Inocencios also claimed that:

[a]s the Inocencios owned the Subject Buildings, it is respectfully submitted, and it should be clear that when they entered into lease contracts with tenants for the lease of portions of the said buildings, these contracts were independent contracts of lease over their own building and not sub-leases of the parcel of land which they leased from Respondent. It is Respondent's inaccurate characterization of the leasing by the Inocencios of portions of their own building that has obfuscated the legal issues in this case and partially led to the incorrect decisions of the courts *a quo*.[47]

We do not agree. In *Duellome v. Gotico*[48] and *Caleon v. Agus Development Corporation*,[49] we held that the lease of a building includes the lease of the lot and consequently, the rentals of the building include the rentals of the lot. As correctly pointed out by HDSJ in its Comment:[50]

x x x [W]hen [the Inocencios] leased the buildings to third parties, [they] also "leased" to the third parties the plot of land on which the buildings stood — either by implied transfer of the lease covering the plot of the land, or by sublease. Either way, x x x [the Inocencios themselves] must have a valid lease contract with [HDSJ] over the land. However, when the lease contract x x x [with HDSJ] ended on 31 March 2001, [Ramon] lost his status as lessee of the land, and therefore, had no authority to transfer the lease or sublease the land. x x x.[51]

However, we find that the CA erred in not applying Article 1678 of the Civil Code which provides:

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[44] *Rollo*, p. 240.

[45] *Id.* at 241.

[46] *Id.* at 242-247.

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

[48] No. L-17846, 29 April 1963, 7 SCRA 841.

[49] G.R. No. 77365, 7 April 1992, 207 SCRA 748.

[50] *Rollo*, pp. 769-888.

[51] *Id.* at 777.

Art. 1678. If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon the termination of the lease shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary.

With regard to ornamental expenses, the lessee shall not be entitled to any reimbursement, but he may remove the ornamental objects, provided no damage is caused to the principal thing, and the lessor does not choose to retain them by paying their value at the time the lease is extinguished.

The foregoing provision applies if the improvements were: (1) introduced in good faith; (2) useful; and (3) suitable to the use for which the lease is intended, without altering the form and substance.[52]

We find that the aforementioned requisites are satisfied in this case. The buildings were constructed before German's demise, during the subsistence of a valid contract of lease. It does not appear that HDSJ prohibited German from constructing the buildings. Thus, HDSJ should have reimbursed German (or his estate) half of the value of the improvements as of 2001. If HDSJ is not willing to reimburse the Inocencios, then the latter should be allowed to demolish the buildings.

We also find that the action for unlawful detainer was not barred by prescription. Section 1, Rule 70 of the Rules of Court provides that actions for unlawful detainer must be filed "within one (1) year after such unlawful deprivation or withholding of possession." In interpreting the foregoing provision, this Court, in *Republic v. Sunvar Realty Development Corporation,*[53] held that:

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[52] Arturo Tolentino, *The Civil Code of the Philippines,* Vol. V, p. 254 citing *Imperial Insurance, Inc. v. Simon*, No. L-20796, 31 July 1965, 14 SCRA 855; *Spouses Guzman v. Court of Appeals*, 258 Phil. 410 (1989).

[53] G.R. No. 194880, 20 June 2012, 674 SCRA 320.

[T]he one-year period to file an unlawful detainer case is not counted from the expiration of the lease contract on 31 December 2002. Indeed, the last demand for petitioners to vacate is the reckoning period for determining the one-year period in an action for unlawful detainer. "Such one year period should be counted from the date of plaintiff's last demand on defendant to vacate the real property, because only upon the lapse of that period does the possession become unlawful."[54]

HDSJ's last demand was made on 3 March 2005, and it filed the complaint for unlawful detainer on 28 June 2005. Thus, the complaint was filed within the period provided under the Rules of Court.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated 12 January 2012 of the Court of Appeals in CA-G.R. SP No. 117009 is **AFFIRMED** with modification. The case is hereby **REMANDED** to the Metropolitan Trial Court of Pasay, Branch 48, for determination of the value of the improvements to be paid to the Inocencios, if Hospicio de San Jose desires to keep the improvements. Otherwise, the Inocencios shall be allowed to demolish the buildings at their expense.

SO ORDERED.

Velasco, Jr.,[*] *Perez, Perlas-Bernabe,* and *Leonen,*[**] *JJ.,* concur.

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[54] *Id.* at 343, citing *Estate of Soledad Manantan v. Somera*, G.R. No. 145867, 7 April 2009, 584 SCRA 81, 90.

[*] Designated additional member per Special Order No. 1543 dated 9 September 2013.

[**] Designated additional member per Special Order No. 1560 dated 24 September 2013.

FIRST DIVISION

[G.R. No. 202158. September 25, 2013]

ERIC ALVAREZ, substituted by ELIZABETH ALVAREZ-CASAREJOS, *petitioner, vs.* **GOLDEN TRI BLOC, INC. and ENRIQUE LEE,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; LOSS OF TRUST AND CONFIDENCE AS A VALID GROUND FOR DISMISSAL OF EMPLOYEE; EXPLAINED.—** Article 296(c) (formerly Article 279[c]) of the same Code codifies the just causes of termination, among which is the employer's loss of trust and confidence in its employee, the ground cited by GTBI in dismissing the petitioner. Loss of trust and confidence will validate an employee's dismissal only upon compliance with certain requirements, namely: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence. There are two classes of positions of trust. First, are the managerial employees whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff. The second class consists of the fiduciary rank-and-file employees, such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.

2. **ID.; ID.; ID.; ID.; REQUIREMENTS FOR LOSS OF TRUST AND CONFIDENCE TO BE A VALID GROUND FOR DISMISSAL OF A SUPERVISORY EMPLOYEE, PRESENT IN CASE AT BAR.—** It is undisputed that at the time of his dismissal, the petitioner was holding supervisory position after having risen from the ranks since the start of his employment. His position is unmistakably one imbued with trust and confidence as he is

charged with the delicate task of overseeing the operations and manpower of three stores owned by GTBI. As a supervisor, a high degree of honesty and responsibility, as compared with ordinary rank-and-file employees, was required and expected of him. The fact that he was not charged with the custody of the company's money or property is inconsequential because he belongs to the first class of employees occupying position of trust and not to the fiduciary rank and file class. The second requirement for dismissal due to loss of trust and confidence is further qualified by jurisprudence. The complained act must be work related such as would show the employee concerned to be unfit to continue working for the employer and it must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary. The analogous factual findings of the CA and the NLRC conform to the foregoing guidelines. The punching of time card is undoubtedly work related. x x x The transgression imputed to the petitioner was likewise attended with willfulness. It must be noted that the petitioner misled the labor tribunals in claiming that during his entire 12-year stint with GTBI, he was never meted with any disciplinary action. x x x The x x x evidence shows at least three (3) different offenses – ranging from tardiness, negligence in preparing inventory to dishonesty relating to his timecard – repeatedly committed by the petitioner over the years and for which he has been constantly disciplined. x x x A repetition of the same offense for which one has been previously disciplined and cautioned evinces deliberateness and willful intent; it negates mere lapse or error in judgment. While it may be assumed that the petitioner has become stubborn or has forgotten the 2003 episode, it should not work to his advantage, because either cause demonstrates his indifference to GTBI's policies on employees' conduct and discipline. Based on this consideration, taken together with his numerous other offenses, GTBI had compelling reasons to conclude that the petitioner has become unfit to remain in its employ.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Antonio Gerardo B. Collado for respondents.

DECISION

REYES, *J*.:

This is a petition for review[1] from the Decision[2] dated January 17, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 120968 dismissing the complaint for illegal dismissal filed by petitioner Eric Alvarez (petitioner) against respondents Golden Tri Bloc, Inc. (GTBI) and its owner, Enrique Lee.

The Facts

Sometime in November 1996, respondent GTBI hired the petitioner as a Service Crew in one of its Dunkin Donuts franchise store in Antipolo City, Rizal. Six (6) months later, he attained the status of a regular employee. He was thereafter promoted as Shift Leader and served as such for four (4) years. Sometime in 2001, he was again promoted as Outlet Supervisor and was assigned to three (3) Dunkin Donuts outlets located at San Roque, Cogeo and Super 8, Masinag, all in Antipolo City. He received a monthly salary of ₱10,000.00.

On May 27, 2009, the petitioner reported for duty at around 12:30 in the afternoon at Dunkin Donuts, Super 8, Masinag branch. Since his time card was at the San Roque branch, he telephoned Chastine[3] Kaye Sambo (Sambo), shift leader, and requested her to "punch-in" his time card to reflect that he is already on duty. She obliged. Roland Salindog (Salindog), the petitioner's senior officer called the Super 8, Masinag branch and verified that he has indeed reported for work.

The following day, however, the petitioner was informed by Sambo that both of them are suspended and that he had to prepare an incident report regarding his time card.

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[1] *Rollo*, pp. 10-25.

[2] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Elihu A. Ybañez and Florito S. Macalino, concurring; *id*. at 182-201.

[3] In other parts of the record, she is referred to as Christine.

In his incident report[4] dated May 29, 2009, the petitioner admitted instructing Sambo to punch-in his timecard. He explained that he went straight to and arrived at the Super 8, Masinag branch at around 12:35 p.m. He inspected the stocks in the branch and taught a certain 'Ritz' on how to prepare stocks acquisition report for June 2009. He owned up to his fault and stated that he should have instead recorded the time of his arrival by writing on the time card and that he should have brought it with him. He apologized and promised that a similar incident will not happen again.

On June 5, 2009, GTBI sent him a letter directing him to report to the main office for a dialogue on June 9, 2009 failing which would amount to the waiver of his right to be heard and the management may make a decision based only on his written explanation.[5] The dialogue pushed through. After which the petitioner was placed on preventive suspension for 30 days without pay.

On June 23, 2009, GTBI notified the petitioner of its decision to terminate his employment effective that day on the ground of loss of trust.[6]

Feeling aggrieved, the petitioner filed, on July 9, 2009, before the Labor Arbiter (LA), a complaint for illegal dismissal with claims for sick leave pay, separation pay and moral and exemplary damages.[7]

In his Position Paper,[8] the petitioner averred that in his 12 years of service with the company, he was never subjected to any disciplinary action. He argued that the ground relied upon for his termination is not applicable to him because he is a supervisor and not a managerial

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[4] *Rollo,* p. 101.

[5] *Id.* at 86.

[6] *Id.* at 102.

[7] *Id.* at 74-75.

[8] *Id.* at 76-85.

employee. He is not entrusted with the company's money or property and that his duties pertained to the preparation and submission of daily and monthly reports and organization of manpower schedules. Even assuming that the ground applies to him, it still does not validate his termination because the alleged offense is not related to his work duties. He asserted that he did not lie to or defraud GTBI because he was, in truth, already on duty as verified by his senior officer, Salindog. He contended that dismissal is not commensurate with the offense he committed considering his lengthy and satisfactory service with the company as shown in his several rank promotions.

For its part, GTBI maintained that it had justifiable reason to lose trust in and dismiss the petitioner for having committed a dishonest act punishable under the company's Code of Conduct and Discipline[9] with termination from employment.[10]

GTBI further claimed that the petitioner's dismissal from employment was attended with the requisite procedural due process. He was notified of his offense and afforded the chance to explain his side. His explanation was, however, found unacceptable and he was deemed unfit to hold the position of Outlet Supervisor because his continued employment with the company will be detrimental to its interests. The company's decision to terminate him was likewise made known to him through a notice sent on June 26, 2009.[11]

His monetary claims were debunked for lack of factual basis in as much as he is also not entitled to moral and exemplary damages since his dismissal was valid and that it was carried out without bad faith and fraud, nor was it attended with act

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[9] *Id.* at 95-97.

[10] *Id.* at 87-94.

[11] *Id*.

oppressive to labor or contrary to morals, good customs or public policy.[12]

Ruling of the Labor Arbiter

In a Decision[13] dated April 29, 2010, the LA found the petitioner to have been illegally dismissed. The LA held that the transgression imputed to the petitioner was not willful in character neither did not imply any wrongful intent so as to bring it within the ambit of gross misconduct as a just cause for termination. His wrongdoing was trivial in nature and a mere error in judgment since he acted in good faith and had no intention to defraud GTBI. Also, the offense of dishonesty stated in GTBI's Code of Conduct and Discipline imply a conscious and deliberate wrongful intent to defraud, which is not present in that ascribed to the petitioner. The LA conferred great weight to his length of service with GTBI and his unblemished record and held that such considerations render dismissal a disproportionate and harsh penalty to the mistake he committed. The LA further ruled that his reinstatement is no longer a viable option and as such, an award of separation pay, in addition to backwages, is proper computed at one (1) month salary for every year of service, with a fraction of six (6) months being considered as one (1) whole year.[14] Accordingly, the LA disposed as follows:

> WHEREFORE, premises considered, the dismissal of the [petitioner] is hereby declared illegal. Respondent Golden Tri Bloc[,] Inc. is hereby ordered to pay [the petitioner] the total amount of Two Hundred Sixty Thousand Nine Hundred Twenty[-]Nine Pesos and 49/100 ([₱]260,929.49) representing his separation pay and full backwages.

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[12] *Id.*

[13] Issued by Labor Arbiter Danna M. Castillon; *id.* at 48-52.

[14] The monetary award was computed by the LA in this manner:
Full backwages

From 5/29/09 – 4/29/10

a) Basic Pay

[₱]10,000.00 x 11 mos. [₱]110,000.00

b) 13th month pay

[₱]10,000.00/12 9,166.67

All other claims are ordered dismissed for lack of merit.

SO ORDERED.[15]

Ruling of the NLRC

Dismayed, GTBI appealed to the National Labor Relations Commission (NLRC). To bolster its position that the petitioner was not illegally dismissed, GTBI submitted records of infractions committed by the petitioner before the incident in issue, *viz*:

(1) Tardiness for which he was given corrective counseling on October 25, 1997;

(2) Product shortages for which he was sternly warned on July 12, 1999;

(3) Negligence resulting in disruption of business operations on July 29, 1999 for which he was suspended for three (3) days;

(4) Habitual tardiness for which he was given another corrective counselling on January 9, 2000;

(5) Product shortages and inconsistencies in his inventory, for which he was reprimanded on January 17, 2000;

(6) Product shortages and inconsistencies in his inventory for which he was suspended for one (1) week from January 26, 2000;

(7) Product shortages and inconsistencies in his inventory for which he was suspended for three (3) days starting May 9, 2003;

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c) SIL

[₱]10,000.00/26 x 5 x 11 mos./12	1,762.82	[₱]120,929.49
Separation Pay		
11/96-5/29/10		
[₱]10,000.00 x 14 years		[₱]140,000.00
Total		[₱]260,929.49

Id. at 52.

[15] *Id.*

(8) Dishonesty for causing a co-employee to punch-in his timecard for which he was suspended for 45 days instead of dismissal on July 4, 2003, with a stern warning that a repetition of the same offense shall be punished with dismissal;

(9) Habitual tardiness for which he was meted three (3) days suspension;

(10) Failure to punch-out for which he was suspended for three (3) days on May 16, 2004;

(11) Negligence resulting in product shortages causing disruption of business operations;

(12) Negligence resulting in product oversupply;

(13) Tardiness for which he was reprimanded;[16]

(14) Dishonesty for causing a subordinate to punch in his timecard for which he was dismissed from service effective June 23, 2009.

GTBI explained that it found no need to present the foregoing records before the LA considering that the petitioner's last offense of dishonesty was sufficiently serious to justify his dismissal.

In its Decision[17] dated December 15, 2010, the NLRC denied the appeal and held that the petitioner's act of requesting his subordinate to "punch-in" his timecard does not fall within the ambit of serious misconduct because it was not willful in character. On the contrary, the petitioner acted in good faith for reporting his arrival at the workplace. The records of petitioner's previous infractions were rejected by the NLRC since they were raised for the first time on appeal.

On motion for reconsideration, the NLRC reversed its initial ruling and gave credence to records of the petitioner's previous infractions and based thereon, found his dismissal valid. The

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[16] *Id.* at 300-313.

[17] *Id.* at 54-61.

NLRC applied the "totality rule" which states that: "the totality of infractions or number of violations committed during the period of employment shall be considered in determining the penalty to be imposed on the erring employee. The offenses committed by him should not be taken singly and separately but in their totality. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other."[18] The NLRC's Resolution[19] dated May 30, 2011 disposed thus:

WHEREFORE, Our Decision dated December 15, 2010 is hereby vacated and set aside and a new one rendered dismissing the instant Complaint for lack of merit.

SO ORDERED.[20]

On June 20, 2011, the petitioner passed away due to myocardial infarction secondary to skin tuberculosis. His sister, Elizabeth Alvarez Casajeros, survived him and she was thereby substituted in his stead in the case.[21]

Ruling of the CA

The petitioner elevated the case to the CA in a special civil action for *certiorari* under Rule 65 of the Rules of Court. In its Decision[22] dated January 17, 2012, the CA upheld the NLRC's conclusions adding that it had the power to receive evidence of the petitioner's previous infractions and based thereon there is satisfactory basis for GTBI to impose on him the ultimate penalty of dismissal. The CA disposed thus:

WHEREFORE, premises considered, the Petition is **DENIED**. No pronouncement as to costs.

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[18] *Id.* at 68, citing *Valiao v. CA*, 479 Phil. 459, 470-471 (2004).

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

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

[21] Notice of Death, *id.* at 72; Death Certificate, *id.* at 73.

[22] *Id.* at 182-201.

SO ORDERED.[23]

The petitioner moved for reconsideration,[24] but his motion was denied in CA's Resolution[25] dated May 18, 2012. Hence, the present recourse ascribing that the CA erred in upholding the evidence belatedly submitted by GTBI and in ruling that the petitioner committed serious misconduct despite the absence of a wrongful intent in the transgression that led to his dismissal.

The Court's Ruling

The petition is bereft of merit.

At the outset, it bears emphasizing that the inconsistent factual findings and conclusions of the LA and NLRC have already been addressed and settled by the CA when it affirmed the latter tribunal.[26] Hence, the Court, not being a trier of facts, ought to accord respect if not finality to the findings of the CA especially when the same are amply substantiated by the records,[27] as in this case.

Under Article 293 (formerly Article 279) of the Labor Code,[28] an employer shall not terminate the services of an employee except only for a just or authorized cause. A dismissal not anchored on a just or authorized cause is considered illegal and it entitles the employee to reinstatement or in certain instances, separation pay in lieu thereof, as well as the payment of backwages.

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[23] *Id.* at 198.

[24] *Id.* at 202-206.

[25] *Id.* at 208-209.

[26] *San Miguel Properties Philippines, Inc. v. Gucaban*, G.R. No. 153982, July 18, 2011, 654 SCRA 18, 28.

[27] *Galang v. Malasugui,* G.R. No. 174173, March 7, 2012, 667 SCRA 622, 631.

[28] Renumbered by Republic Act No. 10151 entitled "An Act Allowing the Employment of Night Workers, Thereby Repealing Articles 130 and 131 of Presidential Decree No. Four Hundred Forty-Two, As Amended, Otherwise Known as the Labor Code of the Philippines.

Article 296(c) (formerly Article 279[c]) of the same Code[29] codifies the just causes of termination, among which is the employer's loss of trust and confidence in its employee, the ground cited by GTBI in dismissing the petitioner.

Loss of trust and confidence will validate an employee's dismissal only upon compliance with certain requirements, namely: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.[30]

There are two classes of positions of trust. First, are the managerial employees whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff. The second class consists of the fiduciary rank-and-file employees, such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.[31]

It is undisputed that at the time of his dismissal, the petitioner was holding supervisory position after having risen from the ranks since the start of his employment. His position is unmistakably one imbued with trust and confidence as he is charged with the delicate task of overseeing the operations and manpower of three stores owned by GTBI. As a supervisor, a high degree of honesty and responsibility, as compared with ordinary rank-and-file employees, was required and expected of him. The fact that he was not charged with the custody of the company's money or property is inconsequential because he belongs

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[29] *Id*.

[30] *Philippine Plaza Holdings, Inc. v. Ma. Flora M. Episcope*, G.R. No. 192826, February 27, 2013.

[31] *Id*.

to the first class of employees occupying position of trust and not to the fiduciary rank and file class.

The second requirement for dismissal due to loss of trust and confidence is further qualified by jurisprudence. The complained act must be work related such as would show the employee concerned to be unfit to continue working for the employer and it must be based on a willful breach of trust and founded on clearly established facts.[32] The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary.[33]

The analogous factual findings of the CA and the NLRC conform to the foregoing guidelines. The punching of time card is undoubtedly work related. It signifies and records the commencement of one's work for the day. It is from that moment that an employee dons the cape of duties and responsibilities attached to his position in the workplace. It is the reckoning point of the employer's corresponding obligation to him – to pay his salary and provide his occupational and welfare protection or benefits. Any form of dishonesty with respect to time cards is thus no trivial matter especially when it is carried out by a supervisory employee like the petitioner.

The transgression imputed to the petitioner was likewise attended with willfulness. It must be noted that the petitioner misled the labor tribunals in claiming that during his entire 12-year stint with GTBI, he was never meted with any disciplinary action. Records, however, disprove such claim. Additional evidence were submitted by GTBI before the NLRC on appeal[34] and as correctly ruled by the CA, the same may be allowed as the rules of evidence prevailing in courts of law or equity are not controlling in labor proceedings.[35]

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[32] *Jerusalem v. Keppel Monte Bank,* G.R. No. 169564, April 6, 2011, 647 SCRA 313, 324.

[33] *Id*.

[34] *Rollo*, pp. 300-313.

[35] LABOR CODE OF THE PHILIPPINES, Article 221; *Mcdonald's (Katipunan Branch) v. Alba,* G.R. No. 156382, December 18, 2008, 574 SCRA 427.

The said evidence shows at least three (3) different offenses – ranging from tardiness, negligence in preparing inventory to dishonesty relating to his timecard – repeatedly committed by the petitioner over the years and for which he has been constantly disciplined. On July 4, 2003, the petitioner was found guilty of asking an employee to punch-in his time card for him. He was suspended for 45 days with a warning that a recurrence of the same act will merit dismissal from service.[36] He, however, disregarded this incident and the corrective intention of disciplinary action taken on him when he repeated the same act on May 27, 2009.

A repetition of the same offense for which one has been previously disciplined and cautioned evinces deliberateness and willful intent; it negates mere lapse or error in judgment. While it may be assumed that the petitioner has become stubborn or has forgotten the 2003 episode, it should not work to his advantage, because either cause demonstrates his indifference to GTBI's policies on employees' conduct and discipline. Based on this consideration, taken together with his numerous other offenses, GTBI had compelling reasons to conclude that the petitioner has become unfit to remain in its employ.

In *Merin v. NLRC,*[37] the Court ruled that in determining the sanction imposable to an employee, the employer may consider and weigh his other past infractions, thus:

> The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by petitioner should not be taken singly and separately. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other. While it may be true that petitioner was penalized for his previous infractions, this does not and should not mean that his employment record would be wiped clean of his infractions. After all, the record of an employee is a relevant

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[36] *Rollo,* p. 307.

[37] G.R. No. 171790, October 17, 2008, 569 SCRA 576.

consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty. Despite the sanctions imposed upon petitioner, he continued to commit misconduct and exhibit undesirable behavior on board. Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interests. It has the right to dismiss such an employee if only as a measure of self-protection.[38] (Citations omitted)

The NLRC and the CA were thus correct in applying the totality of infractions rule and in adjudging that the petitioner's dismissal was grounded on a just and valid cause. The standards of procedural due process were likewise observed in effecting the petitioner's dismissal. As ascertained by the NLRC and CA, GTBI sent the petitioner a Notice to Explain dated May 27, 2009. On May 29, 2009, he reported to GTBI's office and submitted his written explanation as shown in his letter bearing the same date. On August 26, 2009, he received GTBI's Notice of Termination dated June 23, 2009.[39]

WHEREFORE, premises considered, the petition is hereby **DENIED**. The Decision dated January 17, 2012 and Resolution dated May 18, 2012 of the Court of Appeals in CA-G.R. SP No. 120968 are **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Perlas-Bernabe,[*] and *Leonen,*[**] *JJ.,*concur.

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[38] *Id.* at 581-582.

[39] *See* CA's Decision dated January 17, 2012, *rollo*, pp. 194-195.

[*] Acting member per Special Order No. 1537 (Revised) dated September 6, 2013.

[**] Acting member per Special Order No. 1545 (Revised) dated September 16, 2013.

THIRD DIVISION

[G.R. No. 180427. September 30, 2013]

CRISANTA GUIDO-ENRIQUEZ, *petitioner, vs.* **ALICIA I. VICTORINO, HEIRS OF ANTONIA *VDA. DE* VICTORINO, and HON. RANDY A. RUTAQUIO, in his capacity as Acting Register of Deeds of Rizal for Morong Branch,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF JUDGMENT, APPLIED.—** As the CA had correctly ruled, the assailed August 15, 1988 Decision of the RTC had already become final and executory and under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down. While there are recognized exceptions to this doctrine, petitioner failed to prove that the instant case is among them.

2. **CIVIL LAW; LAND REGISTRATION; FAILURE TO IDENTIFY THE OCCUPANTS OF THE ADJOINING LAND IN THE APPLICATION FOR REGISTRATION IS NOT TANTAMOUNT TO DENIAL OF PETITIONER'S RIGHT TO DUE PROCESS; REASONS.—** As to the alleged denial of petitioner's right to due process due to Antonia Victorino's failure to identify petitioner as indispensable party in her application for registration, as well as to serve her with actual and personal notice, Section 15 of Presidential Decree No. 1529 simply requires that the application for registration shall "state the full names and addresses of all occupants of the land and those of the adjoining owners, if known, and, if not known, it shall state the extent of the search made to find them." A perusal of Antonia Victorino's Application shows that she enumerated the adjoining owners. She also indicated therein that, to the best of her

knowledge, no person has any interest or is in possession of the subject land. The fact that she did not identify petitioner as an occupant or an adjoining owner is not tantamount to denial of petitioner's right to due process and does not nullify the RTC Decision granting such application. Besides, the CA was correct in holding that a land registration case, like the one at bar, is a proceeding *in rem*. This Court has already ruled that in land registration proceedings, being *in rem*, there is no necessity to give personal notice to the owners or claimants of the land sought to be registered in order to vest the courts with power and authority over the *res*. Moreover, since no issue was raised as to Antonia Victorino's compliance with the prerequisites of notice and publication, she is deemed to have followed such requirements. As a consequence, petitioner is deemed sufficiently notified of the hearing of Antonia's application. Hence, she cannot claim that she is denied due process.

3. **ID.; ID.; *BONA FIDE* OCCUPANCY OF THE LOT WHEN ALREADY PROVEN IN A PRIOR CASE NEED NOT BE PROVEN ANEW IN A SUBSEQUENT CASE.—** [T]he Court notes that there is nothing repugnant between this Court's Decision in the *Guido* case and the August 15, 1988 Decision of the RTC. In fact, the former is, in effect, a ratification of the latter. The *bona fide* occupancy, which this Court, in the *Guido* case, requires to be proven in appropriate proceedings, has already been established by Antonia Victorino during the proceedings leading to the promulgation of the August 15, 1988 Decision of the RTC. To undergo another process for the purpose of proving anew the *bona fide* occupancy of Antonia Victorino, as insisted by petitioner, would be redundant and a waste of the court's as well as of the parties' precious time and resources. x x x [T]his Court gave primary importance to the fact that the respondent in [Guido case] was able to adequately prove its claim of *bona fide* occupancy over the subject lot, during the proceedings in an application for registration of title filed by its predecessors-in-interest. In the same manner, respondents have proven their *bona fide* occupancy through the application for registration of title filed by their predecessor-in-interest. Hence, there is no need for another proceeding to prove that respondents and their

predecessor-in-interest have occupied the subject lot honestly, openly and in good faith.

APPEARANCES OF COUNSEL

Eduardo J. Mariño Jr. for petitioner.
Manuel Law Office for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] and Resolution,[2] dated September 6, 2007 and October 25, 2007, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 80534.

The factual and procedural antecedents, as narrated by the CA, are as follows:

In February 1980, Antonia *Vda. De* Victorino [Antonia Victorino] filed with the Court of First Instance [CFI] of Rizal an *Application for Registration of Title* over a 10,603 square-meter lot, situated in Binangonan, Rizal (*subject lot*). Antonia Victorino alleged that she is the owner in fee simple of the subject lot which she and her late husband, Felixberto Victorino, acquired thru purchase. Antonia Victorino asserted that she and her predecessor-in-interest "*have been in open, continuous, exclusive, notorious and adversed possession and occupation*" of said land. Antonia Victorino presented the *Tax Declaration* over the said lot issued under her late husband's name.

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[1] Penned by Associate Justice Noel G. Tijam, with the concurrence of Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Sesinando E. Villon; *rollo*, pp. 60-74.

[2] Penned by Associate Justice Noel G. Tijam, with the concurrence of Associate Justices Sesinando E. Villon and Myrna Dimaranan-Vidal, *rollo*, pp. 75-77.

The Republic, thru the Director of Lands, *opposed* said application alleging that the subject lot belongs to the Republic of the Philippines, thus, "*not subject to private appropriation.*"

Per *Report*, dated July 17, 1981, of the Division of Original Registration [of the Office of the Acting Commissioner of Land Registration], it appeared that the subject lot is a portion of a large parcel of land covered by *TCT No. M-2102*, registered under the name of Antonia Guido, *et al.,* and, at the same time, overlapped with another lot which was also a subject of an application for registration. The Report likewise disclosed that a case for annulment of TCT No. 23377, the mother title of TCT No. M-2102, [was] filed by the Republic against [Guido, *et. al.,* and] was pending before the CFI, Branch X, Pasig, Metro Manila, docketed as Civil Case No. 34242 (*Guido Case*).

On September 18, 1987, the National Land Titles and Deeds Registration Administration (*Administration*) submitted a *Second Report* alleging that a Decision was rendered in the *Guido Case* in favor of [Guido, *et al.,*] which was appealed by the Republic. The Administration prayed that the decision in Antonia Victorino's application for registration *"be held in abeyance until after Transfer Certificate of Title No. 23377 and all derivative titles have been canceled by the Court, the discrepancy has been corrected and the clearances requirements are complied with."*

However, sometime in June 1988, the Chief of the Surveys Division of the [Office of the] Regional Technical Director [of the Lands Management Sector, Region IV] *informed* the Administration that the "coordinates" used by the Administration were actually erroneous and, per confirmation by the Regional Director, the lot subject of Antonia Victorino's application does not overlap with any other parcel of land.

On August 11, [1988], the RTC-Pasig proceeded with the case and *submitted* the same for resolution.

On August 15, 1988, the RTC-Pasig issued a *Decision* granting Antonia Victorino's Application. The RTC-Pasig found that the subject lot *"is not within any forest reservation nor mortgaged or encumbered in favor of any person or lending institution."* The dispositive portion of said Decision reads:

> WHEREFORE, affirming the order of general default, decision is hereby rendered confirming the title of the applicant to the

> parcel of land covered by plan PSU-04-000590, consisting of 10,603 sq.m. and ordering the registration thereof in her name as follows:
>
> ANTONIA *VDA. DE* VICTORINO, of legal age, widow, Filipino, residing at Malinao, Pasig, Metro Manila.
>
> x x x x
>
> SO ORDERED.

On November 3, 1988, the RTC-Pasig issued an *Order for the Issuance of the Decree* directing the Commissioner of the Land Registration Commission to implement the said Decision, considering the same has become final.

However, pending the resolution of the Guido Case, the Land Registration Authority held in abeyance the issuance of the decree in favor of Antonia Victorino.

Meanwhile, on November 21, 1991, the Supreme Court issued a *Decision* [*Republic v. Court of Appeals,* G.R. No. 84966, November 21, 1991, 204 SCRA 160] in [the] Guido Case in favor of [Antonia Guido, *et al.*] and declared TCT 23377 issued under the name of Guido, *et al.* true and authentic. The Supreme Court, however, took judicial notice of the fact that prior to the reconstitution of TCT 23377 in favor of [Antonia Guido, *et al.*], *"certain portions of the area were in possession of occupants who successfully obtained certificates of title over the area occupied by them ... and also (of) occupants who had not obtained certificates of title over the area possessed by them but the lengths of their possession were long enough to amount to ownership, had the land been in fact unregistered."* The High Court, thus, ruled that *"(a)lthough prescription is unavailing against (Antonina Guido, et al.) because they are holders of a valid certificate of title, the equitable presumption of laches may be applied against them for failure to assert their ownership for such an unreasonable length of time."* The dispositive portion of said Decision reads:

> ACCORDINGLY, the decision of the Court of Appeals in CA-G.R. No. 12933 is AFFIRMED subject to the herein declared superior rights of bona fide occupants with registered titles within the area covered by questioned decree and bona fide occupants therein with length of possession which had ripened

to ownership, the latter to be determined in an appropriate proceeding.

SO ORDERED.

On May 21, 2001, Private Respondent Alicia Victorino filed a *Manifestation and Motion for an Alias Order for Issuance of a Decree in the Name of the New Owner-Transferee*. Private Respondent alleged that Antonia Victorino sold the subject lot in her favor on August 1, 1995. Private Respondent likewise notified the RTC-Pasig of Antonia Victorino's death on December 7, 1995. Private Respondent prayed that, considering the decision of the Supreme Court, dated November 21, 1991, adjudicating the subject lot in favor of its lawful occupants, and the Decision of the RTC-Pasig, dated August 15, 1988, granting Antonia's application for registration over said lot, the RTC-Pasig should issue an order annotating these decisions of the Supreme Court and the RTC-Pasig in TCT M-2102 to segregate Antonia's portion. Private Respondent also prayed that an Alias Order for the Issuance of decree of registration be issued in her favor as the subject lot's new owner/transferee.

On August 8, 2002, the Land Registration Authority (*LRA*) *manifested* that the subject lot was *"deemed excluded from TCT No. 23377 of the Guidos."* The LRA alleged that it was imperative that a memorandum of the court's decision adjudicating ownership of the subject lot to Antonia Victorino be annotated in TCT M-2102 to enable the LRA to comply with the issuance of the decree.

On November 19, 2002, the RTC-Pasig issued the 1st assailed *Order* granting Private Respondent's Motion and directing the Land Registration Authority to issue the corresponding decree *"in accordance with the adjudication of (the Trial Court's) Decision dated August 15, 1988 after payment of all taxes due on the land."* The RTC-Pasig likewise ordered the Register of Deeds of Rizal, Morong Branch, to annotate on TCT M-2102 the following memorandum:

> By virtue of the decision of the Court dated August 15, 1988 in Land Reg. Case No. N-10371, LRC Record No. N-55139, Antonia *Vda. De* Victorino, applicant, plan Psu-04-000590, has been adjudicated in favor of applicant and pursuant to the decision of the Supreme Court in G.R. No. 84966, promulgated on November 21, 1991, entitled *Republic of the Philippines vs. The Court of Appeals and Antonina Guido, et al.* (204 SCRA 160), afore-said lots are excluded from this certificate of title.

On December 4, 2002, Petitioner Crisanta Guido-Enriquez filed a *Motion for Clarification* arguing that the November 19, 2002 Order varies the terms of the August 15, 1988 Decision of the RTC-Pasig. The August 15, 1988 Decision did not order the segregation of the subject lot from the lot covered by TCT M-2102, hence, the assailed Decision of November 19, 2002 ordering said segregation effectively modified the previous decision. Petitioner sought to clarify whether the August 15, 1988 Decision ordered the segregation of the subject lot and whether the Land Registration Authority has the authority to move for said segregation.

On March 6, 2003, in its 2nd assailed Order, the RTC-Pasig *denied* Petitioner's Motion for being moot and ordered the issuance of the decree in the name of Antonia *Vda. De* Victorino. Consequently, on even date, an *Alias Order for the Issuance of the Decree* which is the subject of the 3rd assailed Order was issued.

Petitioner's *Motion for Reconsideration* thereof was denied by the RTC-Pasig in the 4th assailed *Order* dated September 2, 2003.[3]

Aggrieved, herein petitioner filed a special civil action for *certiorari* with the CA.

On September 6, 2007, the CA promulgated its assailed Decision, the dispositive portion of which reads as follows:

WHEREFORE, the instant Petition for *Certiorari* is ***DENIED***. The assailed Order, dated March 6, 2003, and Order, dated September 2, 2003, of the Regional Trial Court of Pasig City, Branch 156, in Land Reg. Case No. N-10371, are hereby ***AFFIRMED***.

Accordingly, the Order, dated November 19, 2002, of the Regional Trial Court of Pasig City, Branch 156, in Land Reg. Case No. N-10371, is hereby ***AFFIRMED with MODIFICATION*** in that Private Respondent's Manifestation and Motion for An Alias Order of a Decree in the Name of the New Owner/Transferee, dated May 18, 2001, is ***GRANTED IN PART***. The prayer for the issuance of a Decree in Private Respondent's name is **DENIED**. All other dispositions therein are hereby ***AFFIRMED in toto***.

SO ORDERED.[4]

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[3] *Rollo*, pp. 61-66. (Some citations omitted; emphases in the original)

[4] *Id.* at 73. (Italics and emphasis in the original)

The CA held that:

The Honorable Supreme Court acknowledged the right of the bona fide occupant of a portion of the lot under TCT No. M-2102 and, in allowing said bona fide occupants to retain the portion of Guido's lot they are in possession of, the Supreme Court effectively segregated, albeit constructively, and reserved said occupied portions for the benefit of the occupants. The Supreme Court declared that the Guidos, *et al*. waived their right over the property in favor of *"those who possessed certain specific portions for such lengths of time as to amount to full ownership."* Antonia Victorino, thru her predecessor-in-interest, was found to have possessed a certain specific portion, PSU-04-000590, going as far back as 1933. The RTC-Pasig decreed Antonia Victorino to be a lawful occupant of the subject lot. Hence as a lawful or bona fide occupant of a portion of a parcel of land covered by [TCT No.] M-2102 of the Guidos, the annotation in [TCT No.] M-2102 and segregation of the portion of the lot granted in favor of Antonia Victorino is proper.

True, there was no categorical directive by the RTC-Pasig to segregate the subject lot from the rest of the parcel of land covered by [TCT No.] M-2101 (sic). However, We agree with Private Respondent that the segregation of the subject lot was the result of Antonia Victorino acquiring title over a portion of the said property of the Guidos. The segregation was the consequence of the grant of Antonia Victorino's application for registration.

x x x x[5]

Herein petitioner filed a Motion for Reconsideration, but the CA denied it in its assailed Resolution dated October 25, 2007.

Hence, the instant petition with the following assignment of errors:

1. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT DISMISSED THE PETITION FOR *CERTIORARI* AND PROHIBITION IN CA-G.R. SP NO. 80534 AND, AT THE SAME TIME, AFFIRMING WITH MODIFICATION THE NOVEMBER 19, 2002 ORDER ISSUED BY THE

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[5] *Id.* at 71. (Italics in the original)

HONORABLE PRESIDING JUDGE OF BRANCH 156 OF THE REGIONAL TRIAL COURT OF PASIG CITY THAT DIRECTED THE REGISTER OF DEEDS FOR RIZAL, MORONG BRANCH, TO ANNOTATE ON TRANSFER CERTIFICATE OF TITLE NO. M-2102 OF THE REGISTRY OF DEEDS FOR RIZAL, MORONG BRANCH, A MEMORANDUM WHICH, IN EFFECT, DEPRIVES PETITIONER AND THE OTHER CO-OWNERS, WITHOUT DUE PROCESS OF LAW, OF 10,603 SQUARE METERS OF THEIR LAND.

2. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT SUSTAINED THE HONORABLE PRESIDING JUDGE OF BRANCH 156 OF THE REGIONAL TRIAL COURT OF PASIG CITY IN HIS ISSUANCE OF THE MARCH 6, 2003 ORDER UPHOLDING THE NOVEMBER 19, 2002 ORDER; THE MARCH 6, 2003 ALIAS ORDER FOR THE ISSUANCE OF THE DECREE; AND, THE SEPTEMBER 2, 2003 ORDER, WHICH VARIED THE TENOR OF THE AUGUST 15, 1988 DECISION IN LAND REG. CASE NO. N-10371 AND LRC CASE NO. N-55139, ENTITLED IN RE: APPLICATION FOR REGISTRATION OF LAND TITLE, ANTONIA *VDA. DE* VICTORINO, APPLICANT.

3. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT UPHELD THE FOUR (4) ORDERS ISSUED BY THE HONORABLE PRESIDING JUDGE OF BRANCH 156 OF THE REGIONAL TRIAL COURT OF PASIG CITY, NOTWITHSTANDING THE FACT THAT THESE ORDERS ALTERED, CHANGED, MODIFIED AND DIMINISHED IN A PROCEEDING THAT IS IMPROPER FOR ALTERING, CHANGING, MODIFYING AND DIMINISHING A CERTIFICATE OF LAND TITLE.

4. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT RULED THAT THE PROCEEDING THAT WAS HELD IN CONNECTION WITH LAND REG. CASE NO. N-10371 AND LRC CASE NO. N-55139 , ENTITLED IN RE: APPLICATION FOR REGISTRATION OF LAND TITLE, ANTONIA *VDA. DE* VICTORINO, APPLICANT, AND RESULTING IN THE RENDITION OF THE AUGUST 15, 1988 DECISION RENDERED BY BRANCH 156 OF THE REGIONAL TRIAL COURT OF PASIG CITY IS THE APPROPRIATE PROCEEDING CONTEMPLATED BY THE HONORABLE COURT IN ITS NOVEMBER 21, 1991 DECISION IN G.R. NO. 84966 ENTITLED *REPUBLIC OF THE PHILIPPINES VS. COURT OF APPEALS.*

5. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR THAT DEPRIVED THE PETITIONER OF DUE PROCESS WHEN IT ALLOWED THE PRESIDING JUDGE WHO RENDERED THE AUGUST 15, 1988 DECISION IN LAND REG. CASE NO. N-10371 AND LRC CASE NO. N-55139 TO PARTICIPATE IN THE DECISION-MAKING PROCESS THAT RESULTED IN A DECISION THAT HELD THAT THE PROCEEDING IN THE REGIONAL TRIAL COURT IS THE APPROPRIATE PROCEEDING ENVISIONED IN THE NOVEMBER 21, 1991 DECISION OF THE HONORABLE COURT IN G.R. NO. 84966 ENTITLED *REPUBLIC OF THE PHILIPPINES VS. COURT OF APPEALS*.[6]

The petition lacks merit.

In her first assigned error, petitioner reiterates her argument raised before the CA that the August 15, 1988 Decision of the RTC in LRC Case No. 10371 is null and void for lack of jurisdiction as well as for denial of petitioner's right to due process.

The Court is not persuaded. As the CA had correctly ruled, the assailed August 15, 1988 Decision of the RTC had already become final and executory and under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land.[7] Any act which violates this principle must immediately be struck down.[8] While there are recognized exceptions to this doctrine,[9] petitioner failed to prove that the instant case is among them.

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[6] *Id.* at 29-30.

[7] *FGU Insurance Corporation v. Regional Trial Court of Makati City, Branch 66*, G.R. No. 161282, February 23, 2011, 644 SCRA 50, 56.

[8] *Id.*

[9] The exceptions are: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. (*Villa v. GSIS*, G.R. No. 174642, October 30, 2009, 604 SCRA 742, 750.)

Moreover, as the CA had observed, petitioner did not raise any issue regarding the supposed nullity of the subject Decision of the RTC in her Motion for Clarification[10] filed on December 4, 2002. It was only in her petition for *certiorari* filed with the CA that petitioner posited the argument that the said Decision is void.

This Court is not, likewise, persuaded by petitioner's argument, in her second and third assignment of errors, that the assailed Decision and Orders of the RTC are in derogation of the established laws and principles on land registration. More particularly, petitioner postulates that the RTC, acting as a land registration court, had no jurisdiction to entertain Antonia Victorino's application for registration of title because the lot subject of application is entirely within the boundaries of a larger tract of land which is already covered by Transfer Certificate of Title (TCT) No. M-2102. Petitioner contends that TCT No. M-2102 has become indefeasible.

This Court has already ruled in the abovementioned *Guido* case[11] that while TCT No. 23377 and its derivative titles, which include TCT No. M-2102, serve as evidence of an indefeasible title to the property in favor of the persons whose names appear therein, this Court took judicial notice of the fact that certain portions of the land covered by TCT No. 23377 either "were in possession of occupants who successfully obtained certificates of titles over the area occupied by them" or were occupied by persons "who had not obtained certificates of titles over the area possessed by them but the lengths of their possession were long enough to amount to ownership, had the land been in fact unregistered." This Court then proceeded to rule that while prescription is unavailing against the owners of the land covered by TCT No. 23377, on the ground that they are holders of a valid certificate of title, the equitable presumption of laches

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[10] See Annex "M" to Petition, CA *rollo*, pp. 70-75.

[11] *Republic of the Philippines v. Court of Appeals*, G.R. No. 84966, November 21, 1991, 204 SCRA 160.

may be applied against them for failure to assert their ownership for such an unreasonable length of time. This *pro hac vice* ruling of the Court was further based on the established fact that the abovementioned owners, by agreement with the Office of the Solicitor General, have actually waived their rights over the property subject of the said case in favor of "those who possessed and actually occupied specific portions and obtained [T]orrens [C]ertificates of [T]itles, and those who possessed certain specific portions for such length of time as to amount to full ownership."[12] This Court, thus, held that it is imperative for those possessors, whose alleged *bona fide* occupancy of specific portions of TCT No. 23377 is not evidenced by Torrens Titles, to prove their claims in an appropriate proceeding. Among these occupants was, respondents' predecessor-in-interest, Antonia Victorino who, as found by the RTC in its assailed decision has duly proven that, together with her predecessor-in-interest, she has been in public, peaceful, continuous, adverse possession against the whole world and in the concept of an owner of the subject lot for a period of more than thirty (30) years.[13]

As to the alleged denial of petitioner's right to due process due to Antonia Victorino's failure to identify petitioner as indispensable party in her application for registration, as well as to serve her with actual and personal notice, Section 15 of Presidential Decree No. 1529 simply requires that the application for registration shall "state the full names and addresses of all occupants of the land and those of the adjoining owners, if known, and, if not known, it shall state the extent of the search made to find them." A perusal of Antonia Victorino's Application[14] shows that she enumerated the adjoining owners. She also indicated therein that, to the best of her knowledge, no person has any interest or is in possession of the subject land. The fact that she did not identify petitioner as an occupant or an adjoining owner is not tantamount to denial of petitioner's right

[12] *Id.* at 180.

[13] See RTC Decision, records, Vol. I, pp. 189-191.

[14] See records, Vol. I, p. 2.

to due process and does not nullify the RTC Decision granting such application.

Besides, the CA was correct in holding that a land registration case, like the one at bar, is a proceeding *in rem*. This Court has already ruled that in land registration proceedings, being *in rem*, there is no necessity to give personal notice to the owners or claimants of the land sought to be registered in order to vest the courts with power and authority over the *res*.[15] Moreover, since no issue was raised as to Antonia Victorino's compliance with the prerequisites of notice and publication, she is deemed to have followed such requirements. As a consequence, petitioner is deemed sufficiently notified of the hearing of Antonia's application. Hence, she cannot claim that she is denied due process.

As to the fourth assigned error, the Court notes that there is nothing repugnant between this Court's Decision in the *Guido* case and the August 15, 1988 Decision of the RTC. In fact, the former is, in effect, a ratification of the latter. The *bona fide* occupancy, which this Court, in the *Guido* case, requires to be proven in appropriate proceedings, has already been established by Antonia Victorino during the proceedings leading to the promulgation of the August 15, 1988 Decision of the RTC. To undergo another process for the purpose of proving anew the *bona fide* occupancy of Antonia Victorino, as insisted by petitioner, would be redundant and a waste of the court's as well as of the parties' precious time and resources.

In regard to the above disquisition, it bears to revisit this Court's ruling in *E. Rommel Realty and Development Corporation v. Sta. Lucia Realty Development Corporation*,[16] as correctly cited by respondents. The case involves a parcel of land in the possession of the respondent therein which, like the subject property in the instant case, is part of the larger

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[15] *Acosta v. Salazar*, G.R. No. 161034, June 30, 2009, 591 SCRA 262, 270; *Ignacio v. Basilio,* 418 Phil. 256, 264 (2001).

[16] 537 Phil. 822 (2006).

tract of land covered by the same mother title, TCT No. 23377. The respondent contested the writ of possession issued by the RTC awarding possession of the subject property in favor of herein petitioner and her co-heirs. The respondent in the said case argued that its predecessors-in-interest had already proven their *bona fide* occupancy thereof during the proceedings in their application for registration of title. Adverting to this Court's ruling in the abovementioned *Guido* case, this Court held thus:

x x x x

We agree that respondent had already proven its claim in an appropriate proceeding. In L.R.C. No. 049-B, initiated by the heirs of de la Cruz (the predecessors of respondent), it was shown that the possession of applicant heirs had already ripened to ownership as of March 29, 1976. This ruling inured to respondent's benefit.

The records do not show that respondent ever obtained a certificate of title over the disputed property. Nevertheless, the right of ownership of respondent's predecessors-in-interest had been recognized. As the purchaser of the property, respondent became the owner of the property and acquired the right to exercise all the attributes of ownership, including the right to possession (*jus possidendi*). Respondent, who was in actual possession of the property before the writ of possession was implemented, possessed it as owner of the property. It can thus rightfully assert its right of possession which is among the bundle of rights enjoyed by an owner of a property under Art. 428 of the New Civil Code.

Hence, respondent can rightfully claim the superior rights we acknowledged in *Republic v. CA* and the CA correctly nullified petitioner's writ of possession insofar as it affected the property in the possession of respondent.

x x x[17]

It is evident from the above discussion that this Court gave primary importance to the fact that the respondent in the abovequoted case was able to adequately prove its claim of *bona fide* occupancy over the subject lot, during the proceedings

[17] *Id.* at 831-832. (Italics in the original)

in an application for registration of title filed by its predecessors-in-interest. In the same manner, respondents have proven their *bona fide* occupancy through the application for registration of title filed by their predecessor-in-interest. Hence, there is no need for another proceeding to prove that respondents and their predecessor-in-interest have occupied the subject lot honestly, openly and in good faith.

With respect to the last assignment of error, this Court does not agree with petitioner's contention that she was further denied due process when then CA Associate Justice Martin S. Villarama, Jr., who is now a member of this Court, was allowed to participate and vote as a member of the CA Division which rendered the presently assailed Decision, considering that he rendered the August 15, 1988 Decision of the RTC which granted Antonia Victorino's application for registration. This Court quotes, with approval, the disquisition of the CA in its October 25, 2007 Resolution, to wit:

x x x

Anent Petitioner's Motion for Clarification, Petitioner asked if the Hon. Justice Martin S. Villarama, Jr., Chairman of this Division, was the presiding Judge of the Regional Trial Court of Pasig, Branch 156, who rendered the August 15, 1988 Decision. Petitioner, thus, alleged that *"there is something seriously amiss"* which affects this Court's Decision, dated September 6, 2007.

There is nothing seriously amiss whether legally, morally or ethically about the participation of Justice Villarama, Jr.

True, Justice Villarama, Jr. was the *ponente* of the August 15, 1988 Decision [of the RTC]. Indeed, We indicated the same in Our Decision, footnote number 15, page 5 of the Decision. It is likewise true that Justices under **Section 1, Rule 137 of the Rules of Court**, are prohibited from sitting *"in any case ... in which he has presided in any inferior court when his ruling or decision is the subject of review."*

However, a careful review of the records of this case will show that although Justice Villarama, Jr. penned the August 15, 1988 [RTC] Decision, said Decision had already attained finality on or before November 3, 1988 and was not the subject of review in this Petition. Said August 15, 1988 decision, which is a final judgment, was merely

incidental or part of the "history" of the case. Attention is invited to the fact that the issues raised by Petitioner in this case revolved only on the alleged invalidity of said Alias Decree and the annotation. It is the issuance of the Decree in the name of the Private Respondent and the annotation thereof to Petitioner's title which initiated this Petition for *Certiorari*, or the Orders dated November 19, 2002, dated March 6, 2003 and dated September 2, 2003. Said orders, however, were no longer penned by then Judge Villarama, Jr. but by respondent Judge Alex L. Quiroz, Justice Villarama, Jr.'s successor. Clearly, the August 15, 1988 Decision penned by then Judge Villarama, Jr. was not in issue or under review in this Petition for which a judicial officer is prohibited from participating.

The fact alone that the issuances under review in this Petition, in effect, affirms the final and executory [RTC] decision, dated August 15, 1988, does not mean that this Court acted with partiality and without the necessary prudence in rendering Our Decision, dated September 6, 2007. Our Decision was rendered after judicious review of the law, the records and the jurisprudence.

x x x[18]

Noting that Justice Villarama no longer took part in the abovequoted Resolution of the CA, this Court finds nothing erroneous or irregular in the above ruling of the appellate court.

WHEREFORE, the instant petition for review on *certiorari* is **DENIED**. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 80534, dated September 6, 2007 and October 25, 2007, respectively, are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Reyes,[*] and *Leonen, JJ.,* concur.

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[18] *Rollo*, pp. 76-77.

[*] Designated Acting Member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 1557 dated September 19, 2013.

SECOND DIVISION

[G.R. No. 187378. September 30, 2013]

RAMONITO O. ACAAC, PETAL FOUNDATION, INC., APOLINARIO M. ELORDE, HECTOR ACAAC, and ROMEO BULAWIN, *petitioners, vs.* **MELQUIADES D. AZCUNA, JR., in his capacity as Mayor, and MARIETES B. BONALOS, in her capacity as Municipal Engineer and Building Official-Designate, both of Lopez Jaena Municipality, Misamis Occidental,** *respondents.*

SYLLABUS

POLITICAL LAW; LOCAL GOVERNMENT CODE; MUNICIPAL ORDINANCE; THE VALIDITY OF A MUNICIPAL ORDINANCE SHOULD BE UPHELD IN THE ABSENCE OF ANY CONTROVERTING EVIDENCE THAT THE PROCEDURE PRESCRIBED BY LAW WAS NOT OBSERVED IN ITS ENACTMENT.— Neither can the Court give credence to petitioners' contentions that the subject ordinance was not published nor posted in accordance with the provisions of the LGC. It is noteworthy that petitioners' own evidence reveals that a public hearing was conducted prior to the promulgation of the subject ordinance. Moreover, other than their bare allegations, petitioners failed to present any evidence to show that no publication or posting of the subject ordinance was made. In contrast, Azcuna had testified that they have complied with the publication and posting requirements. While it is true that he likewise failed to submit any other evidence thereon, still, in accordance with the presumption of validity in favor of an ordinance, its constitutionality or legality should be upheld in the absence of any controverting evidence that the procedure prescribed by law was not observed in its enactment. Likewise, petitioners had the burden of proving their own allegation, which they, however, failed to do. In the similar case of *Figuerres v. CA*, citing *United States v. Cristobal*, the Court upheld the presumptive validity of the ordinance therein despite the lack of controverting evidence on the part of the local government to show that public hearings were conducted in light of: (*a*)

the oppositor's equal lack of controverting evidence to demonstrate the local government's non-compliance with the said public hearing; and (*b*) the fact that the local government's non-compliance was a negative allegation essential to the oppositor's cause of action[.]

APPEARANCES OF COUNSEL

R.E. Lorena-Broce for petitioners.
Lel M. Blanco for respondents.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated September 30, 2008 and Resolution[3] dated March 9, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 00284-MIN which reversed and set aside the Decision[4] dated November 26, 2004 of the Regional Trial Court of Oroquieta City, Branch 2 (RTC) in Civil Case No. 4684 for injunction.

The Facts

Petitioner People's Eco-Tourism and Livelihood Foundation, Inc. (PETAL) is a non-governmental organization, founded by petitioner Ramonito O. Acaac, which is engaged in the protection and conservation of ecology, tourism, and livelihood projects within Misamis Occidental.[5] In line with its objectives, PETAL built some cottages made of indigenous materials on Capayas Island (a 1,605 square meter islet) in 1995 as well as a seminar

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[1] *Rollo,* pp. 9-22.

[2] *Id.* at 31-46. Penned by Associate Justice Ruben C. Ayson, with Associate Justices Rodrigo F. Lim, Jr. and Michael P. Elbinias, concurring.

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

[4] *Id.* at 55-71. Penned by Judge Bernadette S. Paredes-Encinareal.

[5] *Id.* at 32.

cottage in 2001[6] which it rented out to the public and became the source of livelihood of its beneficiaries,[7] among whom are petitioners Hector Acaac and Romeo Bulawin.

On April 11 and May 20, 2002, however, respondents Mayor Melquiades D. Azcuna, Jr. (Azcuna) and Building Official Marietes B. Bonalos issued separate Notices of Illegal Construction against PETAL for its failure to apply for a building permit prior to the construction of its buildings in violation of Presidential Decree No. 1096,[8] otherwise known as the "National Building Code of the Philippines," ordering it to stop all illegal building activities on Capayas Island. When PETAL failed to comply with the requirements for the issuance of a building permit, a Third and Final Notice of Illegal Construction was issued by respondents against it on July 8, 2002,[9] but still the same remained unheeded.

It was also on July 8, 2002 that the Sangguniang Bayan of Lopez Jaena (SB) adopted Municipal Ordinance No. 02, Series of 2002[10] (subject ordinance) which prohibited, among others: (*a*) the entry of any entity, association, corporation or organization inside the sanctuaries;[11] and (*b*) the construction of any structures, permanent or temporary, on the premises, except if authorized by the local government.[12] On July 12, 2002, Azcuna approved the subject ordinance; hence, the same was submitted to the Sangguniang Panlalawigan of Misamis Occidental (SP),

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[6] *Id.* at 11.

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

[8] "ADOPTING A NATIONAL BUILDING CODE OF THE PHILIPPINES (NBCP) THEREBY REVISING REPUBLIC ACT NUMBERED SIXTY-FIVE HUNDRED FORTY-ONE (R.A. No. 6541)."

[9] *Rollo*, p. 34.

[10] Records, pp. 28-29. Entitled "AN ORDINANCE ESTABLISHING CAPAYAS ISLAND AND ITS SURROUNDINGS, MANSABAY BAJO AND SIBULA AS BIRDS, FISH AND SHELLS SANCTUARY LOCATED WITHIN THE MUNICIPAL WATERS OF LOPEZ JAENA WITH A TOTAL AREA OF SIXTY THREE POINT ONE HUNDRED NINETY SEVEN (63.197) HECTARES, THREE (3) HECTARES AND THREE (3) HECTARES RESPECTIVELY."

[11] *Rollo,* pp. 33-34.

[12] Records, p. 28. See subject ordinance.

which in turn, conducted a joint hearing on the matter. Thereafter, notices were posted at the designated areas, including Capayas Island, declaring the premises as government property and prohibiting ingress and egress thereto.[13]

On August 23, 2002, a Notice of Voluntary Demolition was served upon PETAL directing it to remove the structures it built on Capayas Island. Among the reasons cited was its violation of the subject ordinance. A similar notice was also served against individual petitioners on October 25, 2002.[14]

On October 29, 2002, petitioners filed an action praying for the issuance of a temporary restraining order, injunction and damages[15] against respondents before the RTC, docketed as Civil Case No. 4684, alleging that they have prior vested rights to occupy and utilize Capayas Island. PETAL claimed that its predecessors-in-interest have been in possession thereof since 1961, with whom it entered into a Memorandum of Agreement for the operation of the said island as a camping, tourism, and recreational resort; thus, the issuance of the subject ordinance was prejudicial to their interest as they were deprived of their livelihood. Moreover, PETAL assailed the validity of the subject ordinance on the following grounds: (*a*) it was adopted without public consultation; (*b*) it was not published in a newspaper of general circulation in the province as required by Republic Act No. 7160,[16] otherwise known as "The Local Government Code of 1991" (LGC); and (*c*) it was not approved by the SP. Therefore, its implementation should be enjoined.[17]

In their Answer,[18] respondents averred that petitioners have no cause of action against them since they are not the lawful

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

[14] *Id.* at 35.

[15] *Id.* at 36.

[16] "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991."

[17] Records, p. 5.

[18] *Id.* at 76-81.

owners or lessees of Capayas Island, which was classified as timberland and property belonging to the public domain. Further, they maintained that they have complied with all the publication and hearing requirements for the passage of the subject ordinance, which was deemed approved by operation of law for failure of the SP to take any positive action thereon as provided under the LGC. As such, it is valid and enforceable.

The RTC Ruling

On November 26, 2004, the RTC rendered a Decision[19] declaring the subject ordinance as invalid/void based on the following grounds: (*a*) PETAL's protest has not been resolved and that the subject ordinance was not duly approved by the SP; (*b*) the said ordinance was not published in a newspaper of general circulation nor was it posted in public places; (*c*) Capayas Island is classified as timberland, hence, not suited to be a bird or fish sanctuary; and (*d*) the authority and control over timberlands belong to the national government, through the Department of Environment and Natural Resources (DENR).[20] Based on the foregoing, respondents were ordered, among others, to desist from closing Capayas Island to the public.[21] However, the petitioners were ordered to remove the structures they built thereon without valid building permits[22] since they were found to have no title over the disputed property.[23]

Aggrieved, respondents appealed the foregoing pronouncement before the CA, docketed as CA-G.R. CV No. 00284-MIN.

The Proceedings Before the CA

On September 30, 2008, the CA rendered a Decision[24] granting respondents' appeal.

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[19] *Rollo*, pp. 55-71.

[20] *Id.* at 67-68.

[21] *Id.* at 71.

[22] *Id.*

[23] *Id.* at 70.

[24] *Id.* at 31-46.

Contrary to the RTC's ruling, it held that the subject ordinance was deemed approved upon failure of the SP to declare the same invalid within 30 days after its submission in accordance with Section 56 of the LGC.[25] It also gave credence to Azcuna's testimony that the subject ordinance was posted and published in conspicuous places in their municipality, and in the bulletin board.[26] Moreover, public consultations were conducted with various groups before the subject ordinance was passed.[27] The CA further ruled that the Municipality of Lopez Jaena was vested with sufficient power and authority to pass and adopt the subject ordinance under Section 447 in relation to Section 16 of the LGC.[28] Therefore, it is not only the DENR that could create and administer sanctuaries.[29] Having enacted the subject ordinance within its powers as a municipality and in accordance with the procedure prescribed by law, the CA pronounced that the subject ordinance is valid.[30]

On the other hand, the CA upheld the RTC's finding that petitioners have no proprietary rights over the Capayas Island, thereby rendering their action for injunction improper.[31]

Petitioners' motion for reconsideration[32] therefrom was denied by the CA in a Resolution[33] dated March 9, 2009. Hence, the instant petition.

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[25] *Id.* at 39-40.

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

[27] *Id.* at 43.

[28] *Id.* at 42.

[29] *Id.* at 43.

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

[31] *Id.* at 45.

[32] *Id.* at 47-53.

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

The Issue Before the Court

The essential issue in this case is whether or not the subject ordinance is valid and enforceable against petitioners.[34]

The Court's Ruling

The petition lacks merit.

Section 56 of the LGC provides:

SEC. 56. Review of Component City and Municipal Ordinances or Resolutions by the Sangguniang Panlalawigan. – (a) Within three (3) days after approval, the secretary to the Sangguniang Panlungsod or Sangguniang Bayan shall forward to the Sangguniang Panlalawigan for review, copies of approved ordinances and the resolutions approving the local development plans and public investment programs formulated by the local development councils.

(b) Within thirty (30) days after receipt of copies of such ordinances and resolutions, the Sangguniang Panlalawigan shall examine the documents or transmit them to the provincial attorney, or if there be none, to the provincial prosecutor for prompt examination. The provincial attorney or provincial prosecutor shall, within a period of ten (10) days from receipt of the documents, inform the Sangguniang Panlalawigan in writing his comments or recommendations, which may be considered by the Sangguniang Panlalawigan in making its decision.

(c) If the Sangguniang Panlalawigan finds that such an ordinance or resolution is beyond the power conferred upon the Sangguniang Panlungsod or Sangguniang Bayan concerned, it shall declare such ordinance or resolution invalid in whole or in part. The Sangguniang Panlalawigan shall enter its action in the minutes and shall advise the corresponding city or municipal authorities of the action it has taken.

(d) If no action has been taken by the Sangguniang Panlalawigan within thirty (30) days after submission of such an ordinance or resolution, the same shall be presumed consistent with law and therefore valid.

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[34] *Id.* at 13.

In this case, petitioners maintain that the subject ordinance cannot be deemed approved through the mere passage of time considering that the same is still pending with the Committee on Fisheries and Aquatic Resources of the SP.[35] It, however, bears to note that more than 30 days have already elapsed from the time the said ordinance was submitted to the latter for review by the SB;[36] hence, it should be deemed approved and valid pursuant to Section 56 (d) above. As properly observed by the CA:

> Par. (d) should be read in conjunction with par. (c), in order to arrive at the meaning of the disputed word, "action." It is clear, based on the foregoing provision, that the action that must be entered in the minutes of the sangguniang panlalawigan is the declaration of the sangguniang panlalawigan that the ordinance is invalid in whole or in part. x x x.
>
> This construction would be more in consonance with the rule of statutory construction that the parts of a statute must be read together in such a manner as to give effect to all of them and that such parts shall not be construed as contradicting each other. x x x laws are given a reasonable construction such that apparently conflicting provisions are allowed to stand and given effect by reconciling them, reference being had to the moving spirit behind the enactment of the statute.[37]

Neither can the Court give credence to petitioners' contentions that the subject ordinance was not published nor posted in accordance with the provisions of the LGC.[38] It is noteworthy

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[35] See *id.* at 14-15.

[36] *Id.* at 14.

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

[38] SEC. 511. Posting and Publication of Ordinances with Penal Sanctions. – (a) ordinances with penal sanctions shall be posted at prominent places in the provincial capitol, city, municipal or Barangay hall, as the case may be, for a minimum period of three (3) consecutive weeks. Such ordinances shall also be published in a newspaper of general circulation, where available, within the territorial jurisdiction of the local government unit concerned, except in the case of Barangay ordinances. Unless otherwise provided therein, said ordinances shall take effect on the day following its publication, or at the end of the period of posting, whichever occurs later.

x x x x

that petitioners' own evidence reveals that a public hearing[39] was conducted prior to the promulgation of the subject ordinance. Moreover, other than their bare allegations, petitioners failed to present any evidence to show that no publication or posting of the subject ordinance was made. In contrast, Azcuna had testified that they have complied with the publication and posting requirements.[40] While it is true that he likewise failed to submit any other evidence thereon, still, in accordance with the presumption of validity in favor of an ordinance, its constitutionality or legality should be upheld in the absence of any controverting evidence that the procedure prescribed by law was not observed in its enactment. Likewise, petitioners had the burden of proving their own allegation, which they, however, failed to do. In the similar case of *Figuerres v. CA*,[41] citing *United States v. Cristobal*,[42] the Court upheld the presumptive validity of the ordinance therein despite the lack of controverting evidence on the part of the local government to show that public hearings were conducted in light of: (*a*) the oppositor's equal lack of controverting evidence to demonstrate the local government's non-compliance with the said public hearing; and (*b*) the fact that the local government's non-compliance was a negative allegation essential to the oppositor's cause of action:

However, it is noteworthy that apart from her bare assertions, petitioner Figuerres has not presented any evidence to show that no public hearings were conducted prior to the enactment of the ordinances in question. On the other hand, the Municipality of Mandaluyong claims that public hearings were indeed conducted before the subject ordinances were adopted, although it likewise failed to submit any evidence to establish this allegation. **However, in accordance with the presumption of validity in favor of an ordinance,**

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[39] Records, p. 60. A "dialogue-consultation" was conducted by the SB on June 13, 2002.

[40] *Rollo*, pp. 40-41.

[41] 364 Phil. 683(1999).

[42] 34 Phil. 825 (1916).

their constitutionality or legality should be upheld in the absence of evidence showing that the procedure prescribed by law was not observed in their enactment. In an analogous case, *United States v. Cristobal,* it was alleged that the ordinance making it a crime for anyone to obstruct waterways had not been submitted by the provincial board as required by §§2232-2233 of the Administrative Code. In rejecting this contention, the Court held:

> From the judgment of the Court of First Instance the defendant appealed to this court upon the theory that the ordinance in question was adopted without authority on the part of the municipality and was therefore unconstitutional. The appellant argues that there was no proof adduced during the trial of the cause showing that said ordinance had been approved by the provincial board. Considering the provisions of law that it is the duty of the provincial board to approve or disapprove ordinances adopted by the municipal councils of the different municipalities, we will assume, in the absence of proof to the contrary, that the law has been complied with. **We have a right to assume that officials have done that which the law requires them to do, in the absence of positive proof to the contrary**.

Furthermore, the lack of a public hearing is a negative allegation essential to petitioner's cause of action in the present case. **Hence, as petitioner is the party asserting it, she has the burden of proof**. Since petitioner failed to rebut the presumption of validity in favor of the subject ordinances and to discharge the burden of proving that no public hearings were conducted prior to the enactment thereof, we are constrained to uphold their constitutionality or legality.[43] (Emphases supplied, citation omitted)

All told, the Court finds no reversible error committed by the CA in upholding the validity of the subject ordinance.

In any event, petitioners have not shown any valid title[44] to the property in dispute to be entitled to its possession. Besides, the RTC's order directing the removal of the structures built by petitioners on Capayas Island without building permits was

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[43] *Figuerres v. CA*, *supra* note 41, at 692-693.

[44] *Rollo*, p. 70.

not appealed. As such, the same should now be deemed as final and conclusive upon them.

WHEREFORE, the petition is **DENIED**. The Decision dated September 30, 2008 and Resolution dated March 9, 2009 of the Court of Appeals in CA-G.R. CV No. 00284-MIN are hereby **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. Nos. 195011-19. September 30, 2013]

GREGORIO SINGIAN, JR., *petitioner, vs.* **SANDIGANBAYAN (3RD DIVISION), THE PEOPLE OF THE PHILIPPINES, and THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; DEMURRER TO EVIDENCE; NATURE.—** "A demurrer to the evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is *competent* or *sufficient* evidence to sustain the indictment or to support a verdict of guilt." "Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered

sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused."

2. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NO GRAVE ABUSE OF DISCRETION ON THE PART OF THE SANDIGANBAYAN IN DENYING PETITIONER'S DEMURRER TO EVIDENCE.—** [P]etitioner miserably failed to present an iota of evidence to show that the *Sandiganbayan* abused, much more, gravely abused, its discretion in denying petitioner's Demurrer to Evidence. We agree with the PCGG's observation that the *Sandiganbayan* arrived at its conclusion after a careful and deliberate examination and assessment of all the evidence submitted. A closer scrutiny of the assailed Resolutions would indeed show that the *Sandiganbayan* meticulously discussed both testimonial and documentary evidence presented by the prosecution. It was only after a careful analysis of the facts and evidence presented did the respondent court lay down its findings and conclusions. Based on the evidence presented, the *Sandiganbayan* was convinced that all three elements of Section 3(g), RA 3019 were satisfactorily established. It found that PNB and ISI entered into several contracts or loan transactions. The *Sandiganbayan* also assessed that petitioner conspired with his co-accused in defrauding the government considering "(1) the frequency of the loans or closeness of the dates at which they were granted; (2) the quantity of the loans granted; (3) the failure of the bank to verify and to take any action on the failure of ISI to put up additional capitalization and additional collaterals; and (4) the eventual absence of any action by the Bank to collect full payment from ISI." x x x The *Sandiganbayan* also found that the loan transactions were grossly and manifestly disadvantageous to the government. Based on the documentary evidence presented by the prosecution, it noted that ISI was undercapitalized while the loans were undercollateralized. It also noted that the government was only able to foreclose properties amounting to ₱3 million whereas ISI's indebtedness stood at more than ₱71 million. Based on the foregoing, we find no showing that "the conclusions made by the [*Sandiganbayan*] on the sufficiency of the evidence of the prosecution at the time the prosecution rested its case, [were] manifestly mistaken."

3. **CRIMINAL LAW; THE ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. 3019); ELEMENTS OF SECTION 3(g) of R.A. 3019; A PRIVATE PERSON MAY BE HELD LIABLE WITH THE PUBLIC OFFICER IF CONSPIRACY IS PROVEN; CONSPIRACY, SUFFICIENTLY ESTABLISHED IN CASE AT BAR.—** For one to be successfully prosecuted under Section 3(g) of RA 3019, the following elements must be proven: "1) the accused is a public officer; 2) the public officer entered into a contract or transaction on behalf of the government; and 3) the contract or transaction was grossly and manifestly disadvantageous to the government." However, private persons may likewise be charged with violation of Section 3 (g) of RA 3019 if they conspired with the public officer. Thus, "if there is an allegation of conspiracy, a private person may be held liable together with the public officer, in consonance with the avowed policy of the Anti-Graft and Corrupt Practices Act which is 'to repress certain acts of public officers and private persons alike which may constitute graft or corrupt practices or which may lead thereto.'" x x x The *Sandiganbayan* found that the prosecution presented sufficient or competent evidence to establish the three material elements of Section 3(g) of RA 3019. *First,* although petitioner is a private person, he was shown to have connived with his co-accused. *Second*, ISI and PNB entered into several loan transactions and credit accommodations. *Finally*, the loan transactions proved disadvantageous to the government.

APPEARANCES OF COUNSEL

Uranza & Associates for petitioner.
The Solicitor General for respondents.

D E C I S I O N

DEL CASTILLO, *J*.:

The grant or denial of a Demurrer to Evidence is left to the sound discretion of the court, and its ruling on the matter shall not be disturbed in the absence of a grave abuse of such discretion.

This Petition for *Certiorari Ad Cautelam*[1] seeks to set aside the August 5, 2010 Resolution[2] of the *Sandiganbayan* in Criminal Case Nos. 26297-26305, denying petitioner Gregorio Singian, Jr.'s Demurrer to Evidence[3] and the November 18, 2010 Resolution[4] denying reconsideration thereof.

Antecedents

The criminal cases involved in the present Petition have been the subject of a previous disposition of the Court, specifically *Singian, Jr. v. Sandiganbayan*.[5] In said case, the Court made the following recital of facts:

Atty. Orlando L. Salvador was Presidential Commission On Good Government Consultant on detail with the Presidential *Ad Hoc* Committee on Behest Loans (Committee). He was also the coordinator of the Technical Working Group composed of officers and employees of government financing institutions to examine and study the reports and recommendations of the Asset Privatization Trust relating to loan accounts in all government financing institutions. Among the accounts acted upon by the Committee were the loans granted to Integrated Shoe, Inc. (ISI) by the Philippine National Bank (PNB).

It would appear that on 18 January 1972, ISI applied for a five-year confirmed irrevocable deferred letter of credit amounting to US$2,500,000.00 (₱16,287,500.00) to finance its purchase of a complete line of machinery and equipment. The letter of credit was recommended to the PNB Board of Directors by then Senior Vice[-]President, Mr. Constantino Bautista.

On 27 January 1972, the PNB approved the loan, subject to certain stipulations. The said letter of credit was to be secured by the following collaterals: a) a second mortgage on [a] 10,367-square meter lot under

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[1] *Rollo*, pp. 3-48.

[2] *Id*. at 50-67; penned by Associate Justice Alex L. Quiroz and concurred in by Associate Justices Francisco H. Villaruz, Jr. and Samuel R. Martires.

[3] *Id*. at 74-105.

[4] *Id*. at 68-72.

[5] 514 Phil. 536 (2005).

Transfer Certificate of Title No. 218999 with improvements, machinery and equipment; b) machinery and equipment to be imported under the subject letter of credit; and c) assignment of US$0.50 per pair of shoes of ISI's export sales. It was further subjected to the following pertinent conditions: a) that the letter of credit be subject to joint and several signatures of Mr. Francisco J. Teodoro, Mrs. Leticia T. Teodoro, Marfina T. Singian, Tomas Teodoro, and Gregorio Singian, Jr.; b) that ISI, which has a paid-up capital amounting to ₱1,098,750.00 as of January 1972, shall increase its authorized capital to ₱5,000,000.00, and in the event that cash receipts do not come up to the projections, or as may be required by the bank, ISI will further increase its capitalization and the present stockholders will subscribe to their present holdings; and c) that ISI shall submit other collaterals in case the appraised value of the new machinery and equipment be insufficient.

ISI was further extended the following subsequent loan accommodations:

1. ₱1,500,000.00 on 10 February 1972 for the purchase of raw materials;

2. ₱1,000,000.00 on 18 January 1973 as export advance;

3. ₱1,500,000.00 on 21 March 1973 as export advance;

4. ₱600,000.00 on 06 March 1974 as credit line;

5. ₱2,500,000.00 renewed on 15 December 1976;

6. ₱5,000,000.00 on 19 November 1978 as export advance;

7. ₱1,500,000.00 on 04 August 1980 as export advance; and

8. ₱7,000,000.00 on 15 December 1980 also as an export advance.

The Committee found that the loans extended to ISI bore characteristics of behest loans specifically for not having been secured with sufficient collaterals and obtained with undue haste.

As a result, Atty. Orlando Salvador filed with the Office of the Ombudsman a sworn complaint dated 20 March 1996, for violation of Section 3, paragraphs (e) and (g), of Republic Act No. 3019, as

amended, against the following: Panfilo Domingo, former PNB President, Constantino Bautista, former PNB Senior Vice[-]President, Domingo Ingco, former member of the PNB Board of Directors, John Does, former members of the PNB Board of Directors, Francisco Teodoro, President of ISI, Leticia Teodoro, Vice[-]President of ISI, Marfina Singian, Incorporator of ISI, Tomas Teodoro, General Manager of ISI, and Gregorio Singian, Jr., Executive Vice[-]President of ISI. The complaint, docketed as OMB-0-96-0967, was assigned to Graft Investigation Officer I Atty. Edgar R. Navales (Investigator Navales) of the Evaluation and Preliminary Investigation Bureau (EPIB) for investigation.

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Hence, the corresponding eighteen (18) Informations against petitioner and his co-accused for violation of Section 3(e) and (g) of Rep. Act No. 3019, docketed as Criminal Cases No. 26297 to No. 26314, were filed before the Sandiganbayan and were raffled to the Third Division thereof. The eighteen (18) Informations correspond to the nine (9) loan accommodations granted to ISI, each loan being the subject of two informations alleging violations of both paragraphs of Section 3 of Rep. Act No. 3019.[6]

Thus, herein petitioner was charged with nine counts of violation of Section 3(e),[7] and another nine counts of violation of Section 3(g),[8] of Republic Act No. 3019 (RA 3019), or the Anti-Graft

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[6] *Id.* at 539-543.

[7] Section 3. Corrupt practices of public officers. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[8] g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

and Corrupt Practices Act. Docketed as Criminal Case Nos. 26297-26314, the cases involved the purported granting of behest loans by the government's Philippine National Bank (PNB) to Integrated Shoes, Inc. (ISI), in various amounts and on different dates as above-enumerated.

The Informations[9] covering Section 3(e) charged that Panfilo Domingo (Domingo), then PNB Director/President/Vice-President (Europe); Domingo C. Ingco (Ingco), then PNB Director; and Constantino Bautista (Bautista), then PNB Senior Executive Vice-President, while in the performance of their official functions and taking advantage of their official positions, conspired with private individuals, specifically officers of ISI, including petitioner, who was ISI's Executive Vice-President, in willfully, unlawfully and criminally causing undue injury to the government and giving unwarranted benefits, advantage and preference to ISI by accommodating and granting several loans and advances to the latter, despite knowing that it lacked sufficient capitalization, or failed to give adequate collateral or raise its working capital to secure the government's interest in case it failed to pay said loans, as in fact it failed to pay these loans.

On the other hand, the Informations[10] covering Section 3(g) charged the above individuals, including petitioner, with conspiring, confederating, and willfully, unlawfully and criminally entering into the above-mentioned loan transactions which are grossly and manifestly disadvantageous to the government, for lack of sufficient capitalization or adequate collateral, and for failure of ISI to raise its working capital to secure the government's interest in case it failed to pay said loans, which indeed ISI failed to pay.

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[9] *Rollo*, pp. 134-136, 140-142, 146-148, 152-154, 158-160, 164-166, 170-172, 176-178, 182-184.

[10] *Id.* at 131-133, 137-139, 143-145, 149-151, 155-157, 161-163, 167-169, 173-175, 179-181.

On January 27, 2004, petitioner entered a plea of not guilty on all counts. All the other accused were arraigned as well, except for Bautista, who passed away prior to his scheduled arraignment.

On April 29, 2005, the *Sandiganbayan* dismissed Criminal Case Nos. 26306-26314.[11] On October 6, 2007, the accused Ingco passed away; as a result, the cases against him were dismissed as well. Accused Domingo likewise passed away on June 26, 2008 resulting in an October 29, 2008 Resolution wherein the *Sandiganbayan* dropped the cases against him.

Trial with respect to the remaining cases ensued. For its testimonial evidence, the prosecution called to the stand nine witnesses:

1. Director Danilo R.V. Daniel, then Coordinator of the Technical Working Group on Behest Loans (TWG) and Director of the Research Division of the Presidential Commission on Good Government (PCGG), who testified on the investigation conducted by the TWG of the ISI account and on various documents relative thereto, including the Fourteenth (14th) Report of Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans[12] (*Ad Hoc* Committee) dated July 15, 1993 which he drafted, and which characterized the ISI account as a behest loan;[13]

2. Atty. Reginald Bacolor from the Legal Department, Privatization Management Office of the Asset Privatization Trust (APT), who testified on the deeds, documents and titles covering the foreclosed properties offered as collaterals in the ISI account and thereafter sold by the government through the APT;[14]

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[11] Covering Section 3(e) of REPUBLIC ACT NO. 3019.

[12] *Rollo*, pp. 304-309.

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

[14] *Id.* at 60.

3. Atty. Edwin Flor V. Barroga, then Deputy Registrar of Deeds of Binangonan, Rizal, who testified on the property offered as collateral by ISI, which was the subject of a prior encumbrance to the Government Service Insurance System (GSIS);[15]

4. Atty. Cinderella Benitez, Securities Counsel II of the Securities and Exchange Commission (SEC), who testified on ISI's SEC documents, specifically its capitalization and financial status. She identified certified copies of ISI's Articles of Incorporation, By-Laws, Amended Articles of Incorporation, Certificates of Increase of Capital Stock, etc.;[16]

5. Atty. Mary Ann B. Morales, SEC Securities Counsel III from its Registration and Monitoring Department, who likewise testified on ISI's SEC documents. She identified ISI's General Information Sheets, Schedule of Stockholders, Subscribed and Paid-Up Capital, Certificate of Corporate Filing/ Information, *etc*. She testified, among others, that as of 1973, ISI's subscribed capital stock was only ₱1.6 million, while its paid-up capital was merely ₱1,298,750.00;[17]

6. Cesar Luis Pargas, of the Privatization Management Office, APT, custodian of ISI's loan documents, who testified on and brought with him the loan documents, deeds, titles, notes, *etc*. covering the ISI account;[18]

7. Claro Bernardino, Senior Manager of PNB's Human Resource Group, who brought the personnel records/certificates of employment of the accused Domingo and Ingco;[19]

8. Ramonchito Bustamante, Manager of the Loans and Implementing Services Division of PNB, expert witness on

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[15] *Id*. at 61.

[16] *Id*. at 56-57.

[17] *Id*. at 58.

[18] *Id*. at 55.

[19] *Id*. at 57-58.

banking policy and PNB's loan policies, as well as ISI's loan data; and[20]

9. Stephen Tanchuling, Chief Administrative Officer of the Records Division of the Research Department of the PCGG, custodian of documents turned over to PCGG by the *Ad Hoc* Committee. He testified that his function was to authenticate documents in his custody, which consisted of records transmitted to the *Ad Hoc* Committee by different government agencies. He identified as well the Executive Summary[21] of the ISI account; the Fourteenth (14th) Report of Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans dated July 15, 1993; the Executive Summary of the *Ad Hoc* Committee Findings; and other relevant documents.[22]

For its documentary evidence, the prosecution presented the following, among others:

1) Photocopy of the Fourteenth (14th) Report of Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans[23] which listed ISI as among the corporations with loans obtained from the government or government banks (in this case, PNB) which were found to possess the characteristics of a behest loan;

2) Photocopy of an Executive Summary of Findings of the *Ad Hoc* Committee,[24] detailing the particulars of the ISI account;

3) Photocopy of the certified true copy of the January 10, 1972 Memorandum[25] from Bautista to the PNB Board of Directors, detailing Bautista's findings and recommendations regarding ISI's application for a $2.5 million (₱16,287,500.00)

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

[21] *Id.* at 295-303.

[22] *Id.* at 62.

[23] *Id.* at 305-309.

[24] *Id.* at 295-303.

[25] *Id.* at 258-268.

letter of credit for the purpose of purchasing machinery and equipment for a new shoe factory then being built in Bataan.

4) Certified photocopy of a Deed of Undertaking and Conformity to Bank Conditions[26] (Deed of Undertaking) dated March 24, 1972 executed by ISI in favor of PNB;

5) Certified photocopy of a Deed of Assignment[27] dated March 24, 1972, assigning $0.50 per pair of shoes of all export sales of ISI in favor of PNB;

6) Certified photocopy of Chattel Mortgage with Power of Attorney[28] executed by ISI in favor of PNB;

7) Certified true copy of Certificate of Filing of Certificate of Increase of Capital Stock[29] issued by the SEC dated February 6, 1974, showing that ISI increased its authorized capital stock from ₱3 million to ₱7 million; and

8) Certified true copy of the By-Laws of Integrated Pacific, Inc. (ISI's predecessor corporation).[30]

After the presentation of its testimonial and documentary evidence, the prosecution rested its case and filed its Formal Offer of Exhibits.[31] The respondent court admitted *in toto* the State's documentary exhibits.

Petitioner's Demurrer to Evidence

On February 17, 2010, petitioner, with prior leave, filed a Demurrer to Evidence[32] anchored on the following grounds: (1) lack of proof of conspiracy with any PNB official; (2) the contracts with PNB contained provisions that are beneficial,

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[26] *Id.* at 286-291.

[27] *Id.* at 292-293.

[28] See Formal Offer of Exhibits, *id.* at 197-219, at 200.

[29] *Id.* at 294.

[30] *Id.* at 272-285.

[31] *Id.* at 197-219.

[32] *Id.* at 74-105.

and not manifestly and grossly disadvantageous, to the government; (3) the loans could not be characterized as behest loans because they were secured by sufficient collaterals and ISI increased its capitalization; and (4) assuming the loans are behest loans, petitioner could not be held liable for lack of any participation.[33]

In particular, petitioner claimed that the prosecution failed to adduce evidence of conspiracy to defraud the government because his co-accused from PNB had no power to approve the alleged behest loans; that if a theory of conspiracy were to be pursued, then all the members of the PNB's Board of Directors at the time the loans and credit accommodations to ISI were approved, and not only Domingo and Ingco, should have been impleaded as they were the ones who directed PNB's affairs; that the prosecution failed to show that he exercised any kind of influence over PNB's Board of Directors in order to ensure the grant of the loans and accommodations applied for; and for failure to present evidence that the accused colluded with each other in entering into the loan agreements and accommodations.

Petitioner contended further that the contracts and agreements entered into by and between PNB and ISI were standard contracts used by PNB in its dealings with its clients; that the terms thereof were couched in words and fashioned in a manner that favored the bank; that the agreements guaranteed repayment of the loan and the putting up of sufficient collateral, and provided for interest and penalties in the event of breach, and thus were not grossly and manifestly disadvantageous to the government.

Next, petitioner argued that the subject loans were not undercollateralized; that ISI was not undercapitalized as the corresponding increase in its authorized capital stock and paid-up capital was timely made; and that the loans could not have been characterized as behest loans considering the following stipulations: a) the assets intended for acquisition through the

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[33] *Id.* at 74-76.

letter of credit would serve as the collateral therefor; b) the officers and majority stockholders of ISI were made jointly and severally liable for its obligations; c) ISI may not declare dividends while the loans are subsisting; d) PNB is given the right to designate its Comptroller in ISI; and e) even if it is assumed for the sake of argument that the subject loans were undercollateralized, this fact – standing alone – does not make for a behest loan, as the presence of at least two (2) criteria out of the eight enumerated in Presidential Memorandum Order No. 61 dated November 9, 1992 is required to characterize the loans as behest loans.

Assuming that the loan agreements are behest loans, petitioner claimed that he may not be held liable because his indictment was based solely on the Deed of Undertaking which was altered such that his name was stricken out and instead the name "Gregorio T. Teodoro" was inserted; that the accountee-mortgagor-assignor under said deed was ISI; that the obligations were assumed by ISI; that ISI had already fully complied with all its obligations under the deed; and that he was not a member of ISI's Board of Directors, which alone was tasked – as ISI's governing body – with the observance of the obligations set forth under the deed; nor may he seek to compel action thereon at a stockholders' meeting, as he is not a shareholder of ISI either.

Finally, petitioner claimed that the *Ad Hoc* Committee documents – specifically the Executive Summary and Fourteenth (14th) Report of Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans – are inadmissible for not being photocopies of the originals, but mere copies of photocopies in the custody of the PCGG; and that they were prepared and issued by individuals who have no personal knowledge of the facts and circumstances which transpired during the proceedings adverted to.

Petitioner thus prayed that as against him, Criminal Case Nos. 26297-26305 be dismissed for insufficiency of evidence.

Prosecution's Opposition

In its Opposition,[34] the prosecution insisted that conspiracy may be inferred from the following pattern of events:

a. The frequency of the loans or closeness of the dates at which they were granted;

b. The quantity of the loans granted;

c. The failure of [PNB] to verify and to take any action on [ISI's failure] to put up additional capitalization and additional collaterals; and

d. The eventual absence of any action by [PNB] to collect full payment from ISI.[35]

The prosecution noted that without ISI putting up additional capitalization or collateral, PNB kept granting loans to it, such that in 1973, its indebtedness already rose to ₱16,360,000.00 while its capital stock stood at only ₱7 million; that petitioner is intimately connected with the incorporators and officers of ISI – Leticia Teodoro is his mother-in-law, while Francisco Teodoro is his father-in-law; and Marfina Teodoro-Singian is his wife; that as of 1983, ISI's debt to PNB amounted to ₱71,847,217.00, as a result of the undercapitalized and undercollateralized loans extended to it; and that as signatory to the Deed of Undertaking, petitioner assumed the obligations of a surety.

Finally, the prosecution noted that petitioner's arguments in his Demurrer to Evidence constitute matters of defense which should be passed upon only after trial on the merits.

Ruling of the Sandiganbayan

On August 5, 2010, the *Sandiganbayan* issued the first assailed Resolution, which decreed as follows:

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[34] *Id.* at 525-539.

[35] *Id.* at 531.

WHEREFORE, considering all the foregoing, this Court **DENIES** the Demurrer to Evidence filed by accused Gregorio Singian, Jr. as the evidence for the prosecution sufficiently established the essential elements of the offense charged and overcame the presumption of innocence in favor of said accused.

SO ORDERED.[36]

Petitioner's Motion for Reconsideration[37] having been denied on November 18, 2010 by the respondent court, he filed the present Petition for *Certiorari*.

Issues

Petitioner raises the following issues:

THE RESPONDENT SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED [RESOLUTIONS] X X X CONSIDERING THAT:

I.

THE FIRST ELEMENT OF SECTION 3(G) OF R.A. 3019 IS NOT PRESENT BECAUSE THE EXISTENCE OF CONSPIRACY IS NEGATED BY THE FACT THAT THE PUBLIC OFFICERS WHO WERE RESPONSIBLE FOR GRANTING THE LOANS IN QUESTION WERE NEVER CHARGED, ACCUSED OR INCLUDED IN THE INFORMATIONS SUBJECT OF THESE CASES.

II.

EVEN IF IT IS PRESUMED, PURELY IN *GRATIA ARGUMENTIS*, THAT A CONSPIRACY ATTENDED THE GRANT OF THE QUESTIONED LOANS TO ISI, THERE IS, NEVERTHELESS, NO OVERT ACT ATTRIBUTABLE TO THE PETITIONER THAT EVEN REMOTELY JUSTIFIES HIS INCLUSION IN THE PROSECUTION'S CONSPIRACY DRAGNET.

[36] *Id.* at 67. Emphases in the original.

[37] *Id.* at 109-130.

III.

THE PROSECUTION'S EXHIBITS "C" (ALSO MARKED AS EXHIBIT "RR") AND "QQ" WHICH THE PROSECUTION FOISTED TO MAKE IT APPEAR THAT THE CREDIT ACCOMMODATIONS SUBJECT OF THE CRIMINAL CASES BELOW ARE BEHEST LOANS, DO NOT HAVE ANY PROBATIVE VALUE AND ARE COMPLETELY INADMISSIBLE BECAUSE THEY ARE UNDISPUTABLY AND BLATANTLY HEARSAY.[38]

Petitioner's Arguments

Essentially, petitioner reiterates all his arguments in his Demurrer to Evidence and Motion for Reconsideration of the respondent court's denial thereof. He emphasizes, however, that he had nothing to do with the application and grant of the questioned loans, since he was never a member of ISI's Board of Directors which, under the law and ISI by-laws, had the sole power and authority to approve and obtain loans and give collaterals to secure the same; nor is he a stockholder of ISI. Nor has it been shown from the testimonial and documentary evidence that as Executive Vice-President, he participated in ISI's loan and credit transactions, or that he actively participated in the commission of the crimes of which he is charged. Without such proof, petitioner believes that he may not be charged with conspiracy.

Petitioner adds that no evidence was presented as well to show that he had any participation in PNB's failure to verify and take action against ISI to compel it to put up additional capital and collaterals, or that he was responsible for PNB's failure to collect or secure full payment of the ISI credit.

Finally, petitioner justifies his resort to *certiorari* on the argument that the collective acts of the prosecution and the respondent court constitute a denial of his constitutional right to due process, which gives ground for the availment of the extraordinary remedy.[39]

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[38] *Id.* at 22-23.

[39] Citing *Toledo, Jr. v. People*, 174 Phil. 582 (1978).

Respondents' Arguments

In its Comment,[40] the prosecution asserts that the respondent court did not commit grave abuse of discretion in denying the Demurrer to Evidence arguing that in petitioner's case, all the elements under Section 3(g) exist to hold petitioner liable. It adds that petitioner was part of the conspiracy to defraud the government, as evidenced by his participation and signature in the Deed of Undertaking, the terms of which ISI violated and PNB failed to enforce.

On the other hand, the PCGG in its Comment[41] adopts the arguments of the prosecution and asserts that the respondent court arrived at its conclusion after careful examination of the record and the evidence, which justify a finding sustaining petitioner's indictment. It adds that all the elements of the crime under Section 3(g) have been proved, which thus justifies a denial of petitioner's Demurrer to Evidence.

Our Ruling

The Court dismisses the Petition.

Demurrer to evidence

"A demurrer to the evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is *competent* or *sufficient* evidence to sustain the indictment or to support a verdict of guilt."[42]

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[40] *Rollo*, pp. 461-497.

[41] *Id.* at 549-568.

[42] *Soriquez v. Sandiganbayan (Fifth Division)*, 510 Phil. 709, 716.

"Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused."[43]

Elements of Section 3(g), RA 3019

For one to be successfully prosecuted under Section 3(g) of RA 3019, the following elements must be proven: "1) the accused is a public officer; 2) the public officer entered into a contract or transaction on behalf of the government; and 3) the contract or transaction was grossly and manifestly disadvantageous to the government."[44] However, private persons may likewise be charged with violation of Section 3(g) of RA 3019 if they conspired with the public officer. Thus, "if there is an allegation of conspiracy, a private person may be held liable together with the public officer, in consonance with the avowed policy of the Anti-Graft and Corrupt Practices Act which is 'to repress certain acts of public officers and private persons alike which may constitute graft or corrupt practices or which may lead thereto.'"[45]

The Sandiganbayan found competent or sufficient evidence to sustain the indictment or to support a verdict of guilt for violation of Section 3(g), RA 3019

The *Sandiganbayan* found that the prosecution presented sufficient or competent evidence to establish the three material elements of Section 3(g) of RA 3019. *First,* although petitioner is a private person, he was shown to have connived with his co-accused. *Second*, ISI and PNB entered into several loan

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[43] *Gutib v. Court of Appeals*, 371 Phil. 293, 300, 305 (1999).

[44] *Nava v. Palattao*, 531 Phil. 345, 372 (2006).

[45] *Go v. Sandiganbayan*, G.R. No. 172602, April 16, 2009, 585 SCRA 404, 405-406.

transactions and credit accommodations. *Finally*, the loan transactions proved disadvantageous to the government.

There is no grave abuse of discretion on the part of the Sandiganbayan in denying petitioner's Demurrer to Evidence

At the outset, we emphasize that "[t]he resolution of a demurrer to evidence should be left to the exercise of sound judicial discretion. A lower court's order of denial shall not be disturbed, that is, the appellate courts will not review the prosecution's evidence and precipitately decide whether such evidence has established the guilt of the accused beyond a reasonable doubt, unless accused has established that such judicial discretion has been gravely abused, thereby amounting to a lack or excess of jurisdiction. Mere allegations of such abuse will not suffice."[46]

"Grave abuse of discretion is the capricious and whimsical exercise of judgment on the part of the public officer concerned which is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility."[47]

In this case, petitioner miserably failed to present an iota of evidence to show that the *Sandiganbayan* abused, much more, gravely abused, its discretion in denying petitioner's Demurrer to Evidence. We agree with the PCGG's observation that the *Sandiganbayan* arrived at its conclusion after a careful and deliberate examination and assessment of all the evidence submitted. A closer scrutiny of the assailed Resolutions would indeed show that the *Sandiganbayan* meticulously discussed both testimonial and documentary evidence presented by the

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[46] *Alarilla v. Sandiganbayan*, 393 Phil. 143, 154 (2000).

[47] *Singian, Jr. v. Sandiganbayan*, *supra* note 5 at 545-546.

prosecution.[48] It was only after a careful analysis of the facts and evidence presented did the respondent court lay down its findings and conclusions.[49]

Based on the evidence presented, the *Sandiganbayan* was convinced that all three elements of Section 3(g), RA 3019 were satisfactorily established. It found that PNB and ISI entered into several contracts or loan transactions. The *Sandiganbayan* also assessed that petitioner conspired with his co-accused in defrauding the government considering "(1) the frequency of the loans or closeness of the dates at which they were granted; (2) the quantity of the loans granted; (3) the failure of the bank to verify and to take any action on the failure of ISI to put up additional capitalization and additional collaterals; and (4) the eventual absence of any action by the Bank to collect full payment from ISI."[50] The *Sandiganbayan* ratiocinated that –

> x x x the loans subject of this case refer to not just one but several loans. The first two loans were granted in a span of two months x x x The first loan was in the amount of ₱16,287,500.00 when the capital stock of ISI amounted to only ₱1,000,000.00. This was followed by two additional loans [in] January and March 1973 x x x then another loan x x x in the following year x x x. Two years later x x x ISI obtained another loan x x x which was succeeded by an additional loan x x x. Still, ISI was granted two more loans x x x.
>
> x x x x
>
> However, all loans subject of this case were granted despite failure of ISI to raise its working capital, and to put up additional collateral. The Certificate of Filing of Amended Articles of Incorporation and the Amended Articles of Incorporation likewise show that ISI last increased its authorized capital stock to ₱7,000,000.00 on April 27, 1973, when the indebtedness of the corporation was already ₱16,360,000.00. Indeed, it would appear that inaction on the part of the PNB to notify ISI to further increase its capital and the

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[48] *Rollo*, pp. 55-62.

[49] *Id.* at 62-67.

[50] *Id.* at 63.

corresponding inaction on the part of ISI to comply with its undertaking indicate conspiracy between the accused.

Accused-movant further negates his liability by asserting that his name does not appear in the Deed of Undertaking, and neither has he signed the same. A cursory examination of the Deed, however, reveals otherwise. It also bears stressing at this point that as he has never denied his position as Executive Vice[-] President of ISI, he would undeniably have participation in its transactions, especially where loan accommodations of the corporation are concerned.[51]

The *Sandiganbayan* also found that the loan transactions were grossly and manifestly disadvantageous to the government. Based on the documentary evidence presented by the prosecution, it noted that ISI was undercapitalized while the loans were undercollateralized. It also noted that the government was only able to foreclose properties amounting to ₱3 million whereas ISI's indebtedness stood at more than ₱71 million.

Based on the foregoing, we find no showing that "the conclusions made by the [*Sandiganbayan*] on the sufficiency of the evidence of the prosecution at the time the prosecution rested its case, [were] manifestly mistaken."[52] The *Sandiganbayan* did not exercise its judgment in a whimsical or capricious manner. As we aptly held:

Given the sufficiency of the testimonial and documentary evidence against petitioner, it would, therefore, be premature at this stage of the proceedings to conclude that the prosecution's evidence failed to establish petitioner's participation in the alleged conspiracy to commit the crime. Likewise, the Court cannot, at this point, make a categorical pronouncement that the guilt of the petitioner has not been proven beyond reasonable doubt. As there is competent and sufficient evidence to sustain the indictment for the crime charged, it behooves petitioner to adduce evidence on his behalf to controvert the asseverations of the prosecution. Withal, respondent court did not gravely abuse its discretion when it found that there was a *prima*

[51] *Id.* at 63-65.

[52] *Resoso v. Sandiganbayan*, 377 Phil. 249, 257 (1999).

facie case against petitioner warranting his having to go forward with his defensive evidence.

The determination of the sufficiency or insufficiency of the evidence presented by the prosecution as to establish a *prima facie* case against an accused is left to the exercise of sound judicial discretion. Unless there is a clear showing of a grave abuse of discretion amounting to lack or excess of jurisdiction, the trial court's denial of a motion to dismiss or a demurrer to evidence may not be disturbed.[53]

Similarly, we have also ruled that:

When there is no showing of such grave abuse, *certiorari* is not the proper remedy. Rather, the appropriate recourse from an order denying a demurrer to evidence is for the court to proceed with the trial, after which the accused may file an appeal from the judgment of the lower court rendered after such trial. In the present case, we are not prepared to rule that the Sandiganbayan has gravely abused its discretion when it denied petitioner's demurrer to evidence. Public respondent found that the prosecution's evidence satisfactorily established the elements of the crime charged. Correspondingly, there is nothing in the records of this case nor in the pleadings of petitioner that would show otherwise.[54]

At this juncture, it is worth mentioning that the issues raised herein are almost the same as those raised by petitioner before the Court when he questioned the *Sandiganbayan's* denial of his Motion for Re-determination of Existence of Probable Cause.[55] In resolving petitioner's contention that he should not be made liable for ISI's failure to put up additional capitalization and collaterals because he is not a member of the Board of Directors, the Court declared that:

True, the power to increase capitalization and to offer or give collateral to secure indebtedness are lodged with the corporation's [B]oard of [D]irectors. However, this does not mean that the officers

[53] *Soriquez v. Sandiganbayan (Fifth Division)*, *supra* note 42 at 718-719.

[54] *Alarilla v. Sandiganbayan*, *supra* note 46 at 154-155.

[55] See *Singian, Jr. v. Sandiganbayan*, *supra* note 5 at 544-545.

of the corporation other than the [B]oard of [D]irectors cannot be made criminally liable for their criminal acts if it can be proven that they participated therein. In the instant case, there is evidence that petitioners participated in the loan transactions when he signed the undertaking. x x x[56]

Anent the issue regarding the sufficiency of ISI's collateral, we also declared the same to be "a matter of defense which should be best ventilated in a full-blown trial."[57] Moreover, we declared that –

Fifth. It is petitioner's view that the prosecution failed to adduce evidence that he took part in any conspiracy relative to the grant of the loan transactions. Suffice it to state that the alleged absence of any conspiracy among the accused is evidentiary in nature and is a matter of defense, the truth of which can be best passed upon after a full-blown trial on the merits.[58]

In fine, we hold that "the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits," and "the validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper."[59] Petitioner's claims and defenses in his Demurrer to Evidence can best be tackled during trial. In the presentation of his defense, he shall have the opportunity to explain or show why he should not be made liable. For example, if there is any truth to the allegation in his Demurrer of Evidence that the Deed of Undertaking was altered, or that the signature therein affixed is not his own, such that there arise serious doubts as to his participation in the execution of said document, this can be resolved only upon proof presented during trial.

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[56] *Id.* at 551.

[57] *Id.* at 550.

[58] *Id.* at 551-552.

[59] *Andres v. Justice Secretary Cuevas*, 499 Phil. 36, 49-50 (2005); see also *Lee v. KBC Bank N.V.*, G.R. No. 164673, January 15, 2010, 610 SCRA 117, 129.

Petitioner must present evidence regarding such claim, the truth of which he can demonstrate during trial. Since this Court is not a trier of facts, there is no way that this issue can be resolved by this Court at this stage of the proceedings.

In light of the foregoing, the Court finds that the respondent court did not commit grave abuse of discretion in denying petitioner's Demurrer to Evidence; it was done in the proper exercise of its jurisdiction.

WHEREFORE, the Petition is **DISMISSED**.

SO ORDERED.

Brion (Acting Chairperson), Abad,[*] *Perez,* and *Perlas-Bernabe, JJ.,* concur.

EN BANC

[A.C. No. 7922. October 1, 2013]

MARY ANN T. MATTUS, *complainant, vs.* **ATTY. ALBERT T. VILLASECA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; LAWYERS; DUTIES TO THE CLIENT.— [A] lawyer "is expected to exert his best efforts and ability to preserve his client's cause, for the unwavering loyalty displayed to his client likewise serves the ends of justice." Once a lawyer agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from

[*] Per raffle dated September 30, 2013.

his client, save by the rules of law, legally applied. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.

2. **ID.; CODE OF PROFESSIONAL RESPONSIBILITY; RULE THAT A LAWYER SHALL NOT OBTAIN EXTENSIONS OF TIME TO FILE PLEADING THEN LET THE PERIOD LAPSE WITHOUT COMPLIANCE OR EXPLANATION THEREFOR; VIOLATED IN CASE AT BAR.—** Atty. Villaseca had been grossly remiss in handling Criminal Case No. 10309-02. [He] *requested for time to file demurrer to evidence* after the prosecution had rested its case. In its order, the RTC gave him 20 days from receipt of the transcript of stenographic notes within which to file a demurrer to evidence. Atty. Villaseca, however, did not file a demurrer to evidence, without offering any explanation why he failed to do so. x x x Atty. Villaseca's actuations violated Rule 12.03 of the Code of Professional Responsibility which states that "[a] lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so."

3. **ID.; ID.; RULE THAT A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT, AND SHALL SERVE CLIENT WITH COMPETENCE, DILIGENCE AND WITHOUT NEGLECT; VIOLATED IN CASE AT BAR.—** The records further disclosed that after Atty. Villaseca's failure to file a demurrer to evidence, the RTC set the initial presentation of defense evidence. However, this hearing was postponed thrice. x x x During the [last date set for] hearing, the respondent manifested that the **defense would no longer present any evidence, and moved that he be given time to file a memorandum**. [T]he prosecution rested its case on July 1, 2004; yet Atty. Villaseca waited until March 1, 2006 *only to manifest that he would no longer present any evidence*. We are at a loss why Atty. Villaseca chose not to present any evidence for the defense, considering that the accused wanted and were ready to take the witness stand. x x x The Code of Professional Responsibility states that "[a] lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him." It further mandates that "[a] lawyer shall serve his client with competence and

diligence." It also states that "[a] lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection [therewith] shall render him liable." Atty. Villaseca's failure to present any testimonial, object or documentary evidence for the defense reveals his lack of diligence in performing his duties as an officer of the Court; it showed his indifference towards the cause of his clients. Considering that the liberty and livelihood of his clients were at stake, Atty. Villaseca should have exerted efforts to rebut the presented prosecution evidence.

4. **ID.; ID.; ID.; ID.; NEGLIGENCE INVOLVING THE VERY LIBERTY AND LIVELIHOOD OF THE CLIENT WARRANTS FIVE YEARS SUSPENSION FROM THE PRACTICE OF LAW.—** "The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts." Under the circumstances, we find that the IBP's recommended penalty of one year's suspension from the practice of law is not commensurate to Atty. Villaseca's transgressions. His incompetence and appalling indifference to his duty to his client, the courts and society indicate a high degree of irresponsibility that casts dishonor on the legal profession. x x x Atty. Villaseca's negligence in the present case had much graver implications, as the legal matter entrusted to him *involved not merely money or property, but the very liberty and livelihood of his clients*. x x x By failing to afford his clients every remedy and defense that is authorized by the law, Atty. Villaseca fell short of what is expected of him as an officer of the Court. We cannot overstress the duty of a lawyer to uphold the integrity and dignity of the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. All told, Atty. Villaseca showed a wanton and utter disregard to his clients' cause; his failure to exercise due diligence in attending to their interest in the *criminal* case caused them grave prejudice. Under the circumstances, we find a five-year suspension from the practice of law to be a sufficient and appropriate sanction against him. The increased penalty serves the purpose of protecting the interest of the Court, the legal profession and the public.

APPEARANCES OF COUNSEL

Ellen Christine W. Uy for complainant.

D E C I S I O N

***PER CURIAM*:**

Before us is a complaint for disbarment filed by complainant Mary Ann T. Mattus against Atty. Albert T. Villaseca for gross and inexcusable negligence in handling Criminal Case No. 10309-02.

Background Facts

The complainant, German Bernardo D. Mattus and Dexter Aligan were the accused in Criminal Case No. 10309-02 – a case for estafa thru falsification of public document filed in the Regional Trial Court (*RTC*), Branch 20, Imus, Cavite. The complainant and her husband, German, engaged the services of Atty. Villaseca to represent them in the proceedings. The complainant maintained that she and German were convicted due to Atty. Villaseca's gross and inexcusable negligence in performing his duties as their counsel.

In her complaint-affidavit,[1] the complainant alleged, among others, that Atty. Villaseca: (1) was often absent during court hearings but still collected appearance fees; (2) frequently sought the postponement of trial when he was present; (3) failed to ask the RTC to direct a National Bureau of Investigation expert to examine the signatures of the spouses Leslie and Zuraida Porter[2] in the special power of attorney (*SPA*); (4) failed to file a demurrer to evidence despite having been granted sufficient time by the RTC to submit one; (5) failed to present evidence on behalf of the defense, and only filed a memorandum; (6) did not inform her and German of the dates of the presentation of defense evidence and the promulgation of judgment; and (7) erroneously indicated the wrong case number in the notice of appeal. According to the complainant, Atty. Villaseca's negligence in handling the case resulted in her own and her husband's conviction.

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[1] *Rollo*, pp. 2-4.

[2] Private complainants in Criminal Case No. 10309-02.

In the Court's Resolution[3] of July 16, 2008, we required Atty. Villaseca to comment on the complaint.

On September 10, 2008, Atty. Villaseca filed his comment,[4] refuting the allegations against him. Atty. Villaseca explained that he made known to the complainant that the testimony of a handwriting expert was necessary only if the prosecution would be able to produce the original copy of the SPA. Atty. Villaseca also claimed that his absences during the hearings, as well as his numerous motions for postponement, were justified and were never intended for delay. He denied having collected appearance fees when he did not attend the scheduled hearings, and maintained that the fees he received were intended to compensate him for his services in the other cases filed by the complainant. Atty. Villaseca further claimed that he immediately corrected the case number in the notice of appeal when he discovered this error.

In a Resolution[5] dated October 15, 2008, we referred the case to the Integrated Bar of the Philippines (*IBP*) for investigation, report and recommendation.

The IBPs' Report and Recommendation

In his Report and Recommendation[6] dated September 16, 2009, Investigating Commissioner Salvador B. Hababag recommended that Atty. Villaseca be suspended for six (6) months from the practice of law.

Commissioner Hababag ruled that Atty. Villaseca's reckless and gross negligence deprived his clients of due process; his actuations in the criminal case showed utter disregard for his clients' life and liberty. Commissioner Hababag explained that Atty. Villaseca failed to file a demurrer to evidence despite the sufficient length of time that had been given to him by the

[3] *Rollo*, p. 26.

[4] *Id.* at 32-39.

[5] *Id.* at 175.

[6] *Id.* at 215-224.

RTC to submit this pleading, and waived his right to present evidence for the defense, opting instead to file a memorandum only. Commissioner Hababag concluded that Atty. Villaseca's failure to properly attend to the interests of his clients led to their conviction.

In Resolution No. XIX-2011-251[7] dated May 14, 2011, the IBP Board of Governors adopted and approved the findings of the Investigating Commissioner, but increased Atty. Villaseca's period of suspension from the practice of law from six (6) months to one (1) year.

Our Ruling

After a careful review of the records, the Court finds the evidence on record sufficient to support the IBP's findings. We, however, increase Atty. Villaseca's period of suspension from the practice of law from one (1) year to five (5) years.

We stress at the outset that a lawyer "is expected to exert his best efforts and ability to preserve his client's cause, for the unwavering loyalty displayed to his client likewise serves the ends of justice."[8] Once a lawyer agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.[9]

The records of the present case show that Atty. Villaseca had been grossly remiss in handling Criminal Case No. 10309-02.

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[7] *Id.* at 214.

[8] See *Reyes v. Atty. Vitan*, 496 Phil. 1, 5 (2005).

[9] *Augusto P. Baldado v. Atty. Aquilino A. Mejica*, A.C. No. 9120, March 11, 2013.

To recall, Atty. Villaseca *requested for time to file demurrer to evidence* after the prosecution had rested its case. In its order[10] of July 1, 2004, the RTC gave him 20 days from receipt of the transcript of stenographic notes within which to file a demurrer to evidence. Atty. Villaseca, however, did not file a demurrer to evidence, without offering any explanation why he failed to do so. As a result, the RTC issued an order[11] stating that Atty. Villaseca "is deemed to have waived his right to file the said pleading."

To our mind, Atty. Villaseca's failure to submit a demurrer to evidence to explain such omission constitutes inexcusable negligence; it showed his lack of devotion and zeal in preserving his clients' cause. We point out that nine months had lapsed from the time the RTC granted Atty. Villaseca 20 days to file the demurrer to the time it ruled that he was deemed to have waived his right to file this pleading. Clearly, Atty. Villaseca's actuations violated Rule 12.03 of the Code of Professional Responsibility which states that "[a] lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so."

The records further disclosed that after Atty. Villaseca's failure to file a demurrer to evidence, the RTC set the initial presentation of defense evidence on May 9, 2005. However, this hearing was postponed thrice: the May 9, 2005 hearing was reset to August 8, 2005 due to Atty. Villaseca's *failure to appear*;[12] the August 8, 2005 hearing was reset to November 17, 2005 upon Atty. Villaseca's motion;[13] and the November 17, 2005 hearing was reset to March 1, 2006 because of Atty. Villaseca's manifestation that his intended first witness was

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[10] *Rollo*, p. 18.

[11] *Id.* at 17.

[12] *Id.* at 15.

[13] *Id.* at 13.

unavailable.[14] During the March 1, 2006 hearing, the respondent manifested that the **defense would no longer present any evidence, and moved that he be given time to file a memorandum**.[15]

We point out that the prosecution rested its case on July 1, 2004; yet Atty. Villaseca waited until March 1, 2006 *only to manifest that he would no longer present any evidence*. We are at a loss why Atty. Villaseca chose not to present any evidence for the defense, considering that the accused wanted and were ready to take the witness stand. As a result, the testimony of the lone prosecution witness remained uncontroverted. To make matters worse, Atty. Villaseca directed German to attend the hearing on June 6, 2007 without informing him that it was already the date of the promulgation of judgment.

The Code of Professional Responsibility states that "[a] lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him."[16] It further mandates that "[a] lawyer shall serve his client with competence and diligence."[17] It also states that "[a] lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection [therewith] shall render him liable."[18]

Atty. Villaseca's failure to present any testimonial, object or documentary evidence for the defense reveals his lack of diligence in performing his duties as an officer of the Court; it showed his indifference towards the cause of his clients. Considering that the liberty and livelihood of his clients were at stake, Atty. Villaseca should have exerted efforts to rebut the presented prosecution evidence. He could have presented the complainant and/or her husband to the witness stand, instead of just opting to file a memorandum. Or, at the very least, the reason for this move should

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[14] *Id.* at 11.

[15] *Id.* at 9.

[16] Canon 17 of the Code of Professional Responsibility.

[17] Canon 18 of the Code of Professional Responsibility.

[18] Rule 18.03 of the Code of Professional Responsibility.

have been fully explained to the clients, and later to the IBP and to this Court. But no such explanation ever came. We are thus left with the stark reality that Atty. Villaseca failed to file, despite the promise made to the lower court, a demurrer to evidence. After failing in this first line of defense for his clients, it should have been incumbent upon Atty. Villaseca to present evidence for the defense, but again, he unexplainably failed to do this, leaving the lower court with no evidence to appreciate except that of the prosecution, to the detriment of his clients' cause.

We emphasize that while a lawyer has complete discretion on what legal strategy to employ in a case entrusted to him, he must present every remedy or defense within the authority of the law to support his client's cause. A memorandum, no matter how lengthy, should not be made a substitute for testimonial, object or documentary evidence, more so in a criminal case where a conviction could lead to dire consequences. In saying so, we are not insinuating that the RTC decision would have tilted in favor of the defense had Atty. Villaseca presented evidence; we simply stress that utmost fidelity and attention are demanded once counsel agrees to take the cudgels for his client's cause.

We again remind members of the bar to live up to the standards and norms expected of the legal profession by upholding the ideals and principles embodied in the Code of Professional Responsibility. A lawyer engaged to represent a client bears the responsibility of protecting the latter's interest with utmost diligence. It is his duty to serve his client with competence and diligence, and he should exert his best efforts to protect, within the bounds of the law, the interests of his client.[19] A lawyer's diligence and vigilance is more imperative in criminal cases, where the life and liberty of an accused is at stake. Verily, the entrusted privilege to practice law carries with it the corresponding duties, not only to the client, but also to the court, to the bar and to the public. As we explained in *Spouses Bautista v. Atty. Arturo Cefra*:[20]

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[19] See *Vda. de Enriquez v. Atty. San Jose*, 545 Phil. 379, 383 (2007).

[20] A.C. No. 5530, January 28, 2013, 689 SCRA 262, 268.

[T]he practice of law is a privilege bestowed by the State on those who show that they possess the legal qualifications for it. Lawyers are expected to maintain at all times a high standard of legal proficiency and morality, including honesty, integrity and fair dealing. They must perform their fourfold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms of the legal profession as embodied in the Code of Professional Responsibility.

"The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts."[21] Under the circumstances, we find that the IBP's recommended penalty of one year's suspension from the practice of law is not commensurate to Atty. Villaseca's transgressions. His incompetence and appalling indifference to his duty to his client, the courts and society indicate a high degree of irresponsibility that casts dishonor on the legal profession.

The present case finds a close forerunner in *Santeco v. Atty. Avance*,[22] where we suspended Atty. Luna B. Avance from the practice of law for five (5) years for being grossly remiss in the performance of her duties as counsel. In this cited case, the civil case entrusted to Atty. Avance was dismissed for failure to prosecute. During the pendency of her motion for reconsideration (which she had filed way beyond the reglementary period), she told her client that she would file a petition for *certiorari* before the CA to assail the dismissal of the civil case. She did not file this petition, but failed to inform her client of this omission. Moreover, Atty. Avance stopped appearing as counsel for her client without notifying the latter.

Atty. Villaseca's negligence in the present case had much graver implications, as the legal matter entrusted to him *involved not merely money or property, but the very liberty and livelihood of his clients*. We stress that the moment Atty. Villaseca agreed to handle the complainant's criminal case, he became duty-bound to serve his clients with competence and diligence, and to champion

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[21] See *Villanueva v. Gonzales*, A.C. No. 7657, February 12, 2008, 544 SCRA 410, 419.

[22] 463 Phil. 359 (2003).

their cause with whole-hearted fidelity. By failing to afford his clients every remedy and defense that is authorized by the law, Atty. Villaseca fell short of what is expected of him as an officer of the Court. We cannot overstress the duty of a lawyer to uphold the integrity and dignity of the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients.

All told, Atty. Villaseca showed a wanton and utter disregard to his clients' cause; his failure to exercise due diligence in attending to their interest in the *criminal* case caused them grave prejudice. Under the circumstances, we find a five-year suspension from the practice of law to be a sufficient and appropriate sanction against him. The increased penalty serves the purpose of protecting the interest of the Court, the legal profession and the public.

WHEREFORE, premises considered, we find Atty. Albert T. Villaseca guilty of negligence, in violation of Rules 12.03 and 18.03 and Canon 17 of the Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for five (5) years, effective upon his receipt of this Decision, and **STERNLY WARNED** that a repetition of the same or similar offense will be dealt with more severely.

Let a copy of this Decision be furnished to the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all the courts.

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-de Castro, Brion, Peralta, del Castillo, Abad, Perez, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

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

Bersamin, J., on leave.

Villarama, Jr., and *Mendoza, JJ.,* on official leave.

EN BANC

[A.M. No. P-12-3047. October 1, 2013]

OFFICE OF THE COURT ADMINISTRATOR, *petitioner, vs.* **NANCY R. LEAL, Clerk of Court II, Municipal Circuit Trial Court (MCTC)-Sta. Ignacia-Mayantoc-San Clemente-San Jose, Tarlac,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; CLERK OF COURT; ACCOUNTABLE FOR OFFICIAL RECEIPTS, PASSBOOK FOR LBP SAVINGS ACCOUNT, AND THE FIDUCIARY FUND. –** In *A.M. No. MTJ-06-1620,* we gave credence to the OCA's evaluation that a Clerk of Court "must be held liable for the missing official receipts, unaccounted official receipts, original copies of cancelled official receipts, the passbook of LBP Savings Account x x x and Supporting Documents of Fiduciary Fund Withdrawals and for the shortage incurred. **It is incumbent upon him to ensure that all the files and documents are properly filed**. x x x In fact it even underscored the fact that he was unable to meet the demands of his office. **His claims of good faith, his forgetfulness and lack of secured storage area for their files during their transfer of office could only indicate his attempt to evade punishment for his neglect of duty**."

2. **ID.; ID.; ID.; ID.; FAILURE TO RESTITUTE CASH SHORTAGE AND EXPLICATE THE SAME IS GROSS DISHONESTY, GRAVE MISCONDUCT AND MALVERSATION OF PUBLIC FUNDS.—** [Clerk of Court] Leal's failure to restitute the cash shortage amounting to ₱865,495.68 and "to adequately explain and present evidence thereon constitute **gross dishonesty, grave misconduct,** and **even malversation of public funds.**" In that same vein, Leal's acts of: a) issuance of temporary receipts; b) in making it appear that certain official receipts are cancelled but with court orders that proved otherwise; and c) withholding documents and retaining the same in her possession while the audit team was conducting its examination, constitute dishonesty and grave misconduct. "Dishonesty refers to a person's

'disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray'"; while "in grave misconduct as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest." On the other hand, "failure to deposit on time her cash collections and her shortages in the remittances of collections amount to gross neglect of duty and dishonesty."

3. **ID.; ID.; ID.; ID.; ID.; GRAVE OFFENSES AS SUCH WARRANT DISMISSAL FROM SERVICE. –** Under Section 52 of the Revised Uniform Rules on Administrative Cases in the Civil Service, dishonesty, grave misconduct and gross neglect of duty are classified as grave offenses, and merit dismissal even on their first commission. In *A.M. No. MTJ-06-1620,* the Court held that: Safekeeping of public and trust funds is essential to an orderly administration of justice. **No protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability of government funds**. The Court has not hesitated to impose the ultimate penalty on those who have fallen short of their accountabilities. Any conduct that would violate the norms of public accountability and diminish, **or even merely tend** to diminish, the faith of the people in the justice system has never been tolerated or condoned by the Court. x x x For her failure to live up to the high ethical standards expected of her as a court employee, and an Accountable Officer at that, Leal's dismissal is indeed in order.

D E C I S I O N

***PER CURIAM*:**

This administrative case arose from a financial audit conducted in the Municipal Circuit Trial Court (MCTC), Sta. Ignacia-Mayantoc-San Clemente-San Jose, Tarlac pursuant to Travel Order Number 021-2011[1] dated January 24, 2011.

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[1] *Rollo*, p. 21.

The financial audit, conducted from February 28 to March 19, 2011, was prompted by the request of the Accounting Division, Financial Management Office, Office of the Court Administrator (OCA) due to the non-submission of the monthly financial reports by Ms. Nancy R. Leal (Leal), Clerk of Court II of said MCTC. Her salaries from September 15, 2004 to May 15, 2005 were withheld due to her failure to submit the Monthly Report of Collections and Deposits.[2]

Leal has been an Accountable Officer since January 1, 1992 to October 25, 2005, and from January 1, 2009 to the present. On October 26, 2005, Leal was relieved from her duties as Accountable Officer by Judge Domingo R. Joaquin, former Acting Judge of MCTC, Sta. Ignacia- Mayantoc-San Clemente-San Jose, Tarlac. In her stead, Mr. Rodelio A. Pedroche, Court Interpreter I of the same court was designated as the Officer-in-Charge until it was ordered revoked on February 27, 2009 by Judge Stela Marie Q. Gandia-Asuncion (Judge Gandia-Asuncion), the incumbent Presiding Judge. Leal was reinstated as Accountable Officer of the same court.[3]

Among other findings, and respecting matters solely attributable to Leal, the audit revealed the following, to wit: a) there were undocumented withdrawals of cash bond deposits amounting to ₱220,000.00;[4] b) there were unreported and undeposited collections amounting to ₱1,047,400.00 which resulted in a total shortage amounting to ₱567,757.71;[5] c) delayed remittances that deprived the government of bank interest that should have been earned amounting to ₱296,809.47;[6] d) there was a shortage in the Judiciary Development Fund (JDF) amounting to ₱928.50;[7] e) certain documents were withheld

[2] *Id.* at 4.
[3] *Id.* at 22-23.
[4] *Id.* at 1.
[5] *Id.* at 6, 9.
[6] *Id.* at 9.
[7] *Id.* at 12.

and retained in Leal's possession while the audit team was conducting its examination;[8] and f) among the Official Receipts that were issued to said court, there were four (4) booklets and four (4) pieces missing which correspond to the following series of numbers: 18843701 to 18843750, 2574101 to 2574150, 2574151 to 2574200, 2574201 to 2574250, and 4063301 to 4063304.[9]

Based on the Financial Report[10] of the audit team, the OCA submitted a memorandum to the Office of the Chief Justice where it was recommended that:

1. [T]his report be **DOCKETED** as a regular administrative matter against **Ms. NANCY R. LEAL**, Clerk of Court II of the Municipal Circuit Trial Court, Sta. Ignacia-Mayantoc-San Clemente-San Jose, Tarlac;

2. **Ms. NANCY R. LEAL**, Clerk of Court II of the Municipal Circuit Trial Court, Sta. Ignacia-Mayantoc-San Clemente-San Jose, Tarlac be **DIRECTED** within ten (10) days from notice to:

2.a) **SUBMIT** to the Fiscal Monitoring Division, Court Management Office all necessary documents stated below to authorize the refund of the cash bonds amounting to **₱220,000.00**, to wit:

CASE NO.	BONDS MAN	RECEIPT NO.[.]	COURT ORDER	WITHDRAWAL	AMOUNT	CO	AR
			DATE				
Crim Case no. 995-SC (96)	Shirita Gabriel	4063367	7/21/97	08/08/97	3,000.00		x
Crim no. 27878 –27881	Maria Bagay	4063374		11/26/97	3,000.00	x	
Crim no. 1103-M	Danilo F. dela Cruz	4063374	6/5/98	06/08/98	2,000.00		x
Crim no. 1204-SI	Alberto Rana	4063383		10/26/98	2,000.00	x	x

[8] *Id.* at 8-10; TSN, March 15, 2011, pp. 4-9; *id.* at 43-48.

[9] *Id.* at 5.

[10] *Id.* at 4-19.

98-21109 MTC SAN FERNANDO PAM	Florentina B. Navarro	4063387		10/26/98	6,000.00	**x**	
1491-M	Ignacio Casco	9903959		12/04/01	6,000.00	**x**	
04-2001 Paniqui	George Cawigan	9903980		03/25/02	5,000.00	**x**	
Crim. 1423-M	Rodney Espejo	9903955		11/18/03	6,000.00	**x**	
Crim. 1423-M	Isagani Pablo	9903956		11/18/03	6,000.00	**x**	
2347-SI	Isagani Rorre	13612736		04/06/04	100,000.00	**x**	
2307-SJ	Cristina Bergonio/ Junedel Rafanan	13612733		01/11/05	6,000.00	**x**	
1847-SC	Gregorio Mangoba	9903985		02/24/05	2,000.00	**x**	
2529-SI	Noel Ubaldo	13612747		02/24/05	6,000.00	**x**	
2398-SI	Rey Ferrer	13612741		05/05/05	6,000.00	**x**	
2337-SI	Hector Agustin	13612740		05/05/05	20,000.00	**x**	
2519-SI	Simeon Tipay Opena	13612748		07/01/05	6,000.00	**x**	
2468 SI(04)	Rosalino Andres	2468		10/26/05	18,000.00	**x**	
2348-SI	Fiden I. Torre	13612739	8/11/06	08/11/06	12,000.00		**x**
2935-SJ	Region Esteban	3469203	8/10/10	08/13/10	5,000.00		**x**
Total					**220,000.00**		

Legend:AR-Acknowledgement Receipt; CO-Court Order.

2.b) **RESTITUTE** the total shortages incurred amounting to **₱865,495.68**, including the undocumented withdrawals referred to in **No. 2.a** above in case of failure to comply, broken down as follows:

Fund	**Period Covered**	**Balance of Accountability**
Fiduciary Fund (**FF**)	07/01/96 to 02/28/11	567,757.71
Judiciary Development Fund (**JDF**)	01/01/92 to 10/25/08	928.50

UNEARNED Interest due to delayed remittances **(JDF)**	07/25/03 to 11/09/05	296,809.47
TOTAL ACCOUNTABILITY		**865,495.68**

2.c) **EXPLAIN** the following findings **(a)** unreported and undeposited collections amounting to **₱1,047,400.00**; **(b)** issuing temporary receipts; **(c)** cancelled official receipts but with court orders that proved otherwise; **(d)** delayed remittances that deprived the government of the interest that should have been earned amounting to **₱296,809.47**; **(e)** **gross neglect of duty,** for failure to perform her functions and duties as an accountable officer; and **(f)** documents withheld and retained in her possession while the audit team was conducting their examination; and

2.d) **ACCOUNT** for the missing official receipts issued by the Court to the Municipal Circuit Trial Court, Sta. Ignacia-Mayantoc-San Clemente-San Jose, Tarlac, with series nos.

- 18843701 to 18843750;
- 2574101 to 2574150;
- 2574151 to 2574200;
- 2574201 to 2574250; and
- 4063301 to 4063304 (4 pieces)

3. **Ms. NANCY R. LEAL** be placed under preventive **SUSPENSION EFFECTIVE IMMEDIATELY WITHOUT** salary and other benefits;

4. **Ms. GENELYN C. GRAGASIN**, Court Stenographer I be designated as Accountable Officer of the Municipal Circuit Trial Court, Sta. Ignacia-Mayantoc-San Clemente-San Jose, Tarlac;

5. **Ms. GENELYN C. GRAGASIN** be **DIRECTED** to:

5.a) **VERIFY and ACCOUNT** the remaining fiduciary fund accounts deposited with the Municipal Treasurer's Office

(MTO), and render a report th[e]reon; and

5.b) **STRICTLY ADHERE** with the guidelines and Circulars issued by the Honorable Court with regards [sic] to the proper handling of judiciary funds;

6. **Hon. STELA MARIE Q. GANDIA-ASUNCION**, Presiding Judge, Municipal Circuit Trial Court, Sta. Ignacia-Mayantoc-San Clemente-San Jose, Tarlac be **DIRECTED** to strictly **MONITOR** the financial transactions of the court and be **REMINDED** that a repetition of the same infractions of the employees under her supervision shall be held her equally liable for the same.[11]

Forthwith, the Court issued a Resolution[12] on February 27, 2012 adopting the aforesaid memorandum and recommendations of the OCA.

Leal then filed a letter[13] on April 12, 2012 asking for an extension of sixty (60) days within which to comply with the Court's Resolution and/or submit her answer considering that the ten (10) days given to her was too short.

On May 21, 2012, Ms. Genelyn C. Gragasin submitted the Statement of Unwithdrawn Fiduciary Fund[14] in compliance with the Court Resolution.

On June 5, 2012, Leal filed another letter[15] requesting an additional extension of sixty (60) days within which to file her answer. However, on June 22, 2012, Judge Gandia-Asuncion reported that from the time Leal received a copy of the Court's Resolution dated February 27, 2012 on April 3, 2012, she ceased to report for work.[16]

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[11] *Id.* at 1-3.

[12] *Id.* at 89-92.

[13] *Id.* at 93-94.

[14] *Id.* at 97-98.

[15] *Id.* at 100-101.

[16] *Id.* at 105.

Per Resolution[17] dated July 30, 2012, the Court noted, among others, Leal's letters and granted her a non-extendible period of one hundred twenty (120) days from April 2, 2012 within which to file her answer.

On August 1, 2012, Leal filed her Answer/Letter-Compliance[18] dated July 30, 2012 with the following assertions:

1) She denies that she incurred unauthorized refund of cash bonds. To support her claim, she submitted the affidavits of the respective bondsmen acknowledging receipt of withdrawn cash bond in Criminal Case Nos. 995-SC (96), 1103-M and 1204-SI. In addition, she also attached the affidavit[19] of the *Barangay* Chairman of Poblacion East, Sta. Ignacia, Tarlac, Mr. Ricky T. Silverio (Silverio) to buttress her declaration that although the withdrawn cash bond in Criminal Case No. 2348-SI for then accused Fiden Torre was duly received by said accused's surviving spouse, it has now become an impossibility to secure the affidavit of the latter since she already migrated to the United States of America;

2) She cannot produce the court orders which authorized the withdrawals of the concerned cash bonds because she cannot avail of the records in their office. Nevertheless, she was allegedly told that some records were destroyed during typhoon Quiel, while others were destroyed by termites. She further reasoned that if the said court orders did not exist, she could not have withdrawn the subject cash bonds since "she cannot just withdraw those cash bonds without said court orders to be submitted to the depository bank";

3) She has already reported said withdrawal in her monthly report, but unfortunately, she cannot produce any proof because her files are missing. According to her, the loss may also be

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[17] *Id.* at 107-108.

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

[19] *Id.* at 119.

due to the reason that their office was not well-secured. In addition, they had to transfer office to the Police Station while the records were brought to the old Municipal Health Center, to give way to the construction of a new municipal building. The old office and even the old municipal health center where the records were transferred were infested with termites. These missing receipts were not issued or used; hence, she should not be liable;

4) She allegedly failed to deposit the collections on time because the passbook and even the receipts were lost. She added that said receipts "were only given/brought out after the audit and all were submitted to the team when she went to the Supreme Court";

5) She failed to submit her answer on time due to health reasons. In fact, up to the present, she is still suffering poor vision in spite of the series of eye operations she underwent; and

6) She begs for the Court's indulgence and prays that her suspension be recalled.

After evaluation, the OCA found Leal's explanation unsatisfactory to absolve her from any accountability and/or recall her suspension and recommended that: a) Leal be dismissed from the service with forfeiture of all retirement benefits, except earned leave credits, and with prejudice to re-employment in the government, including government-owned and controlled corporations; and b) the monetary value of Leal's accrued leave credits be applied to her monetary accountability amounting to ₱865,495.68.

The evaluation and recommendations of the OCA are well-taken.

The Answer/Letter-Compliance dated July 30, 2012 of Leal did little to help her case. The fact still remains that a cash shortage amounting to ₱865,495.68 was incurred during her period of accountability and it still remains unpaid. Further, Leal did not even offer any explanation why there are unreported

and undeposited collections; the fact that said unreported and undeposited collections reached the amount of ₱1,047,400.00 is simply appalling.

Similarly, Leal did not offer any explanation for the following as well, to wit: a) issuance of temporary receipts; b) cancelled official receipts but with court orders that proved otherwise; c) delayed remittances that deprived the government of the bank interest that should have been earned amounting to ₱296,809.47; d) gross neglect of duty, for failure to perform her functions and duties as an accountable officer; and e) withholding of documents and retaining the same in her possession while the audit team was conducting its examination.

In *A.M. No. MTJ-06-1620,*[20] we gave credence to the OCA's evaluation that a Clerk of Court "must be held liable for the missing official receipts, unaccounted official receipts, original copies of cancelled official receipts, the passbook of LBP Savings Account x x x and Supporting Documents of Fiduciary Fund Withdrawals and for the shortage incurred. **It is incumbent upon him to ensure that all the files and documents are properly filed**. x x x In fact it even underscored the fact that he was unable to meet the demands of his office. **His claims of good faith, his forgetfulness and lack of secured storage area for their files during their transfer of office could only indicate his attempt to evade punishment for his neglect of duty**."[21]

As correctly maintained by the OCA, Leal's failure to perform her duties and responsibilities as Clerk of Court has caused tremendous losses both in financial and judicial aspects. As an Accountable Officer, she is primarily tasked to remit the court funds without further delay and to manage court records

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[20] *Initial Report on the Financial Audit Conducted at the Office of the Clerk of Court (OCC), Municipal Trial Court in Cities (MTCC), Lucena City*, January 30, 2009, 577 SCRA 200.

[21] *Id.* at 219.

efficiently. Since Leal failed to offer any explanation on the foregoing audit findings, we shall consider the audit team's report as conclusive and adjudge her liability on the sole basis thereof.

Leal's failure to restitute the cash shortage amounting to ₱865,495.68 and "to adequately explain and present evidence thereon constitute **gross dishonesty, grave misconduct,** and **even malversation of public funds.**"[22] In that same vein, Leal's acts of: a) issuance of temporary receipts; b) in making it appear that certain official receipts are cancelled but with court orders that proved otherwise; and c) withholding documents and retaining the same in her possession while the audit team was conducting its examination, constitute dishonesty and grave misconduct. "Dishonesty refers to a person's 'disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray'";[23] while "in grave misconduct as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest."[24] On the other hand, "failure to deposit on time

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[22] *Office of the Court Administrator v. Saddi*, A.M. No. P-10-2818, November 15, 2010, 634 SCRA 525, 533, citing Article 217 of the REVISED PENAL CODE and *Report on the Financial Audit Conducted on the Books of Accounts of the Municipal Circuit Trial Court, Mondragon-San Roque, Northern Samar*, A.M. No. P-09-2721 (Formerly A.M. No. 09-9-162-MCTC), February 16, 2010, 612 SCRA 509, 531.

[23] *Re: Failure of Various Employees to Register Their Time of Arrival and/or Departure from Office in the Chronolog Machine*, A.M. No. 2005-21-SC, September 28, 2010, 631 SCRA 396, 409.

[24] *Civil Service Commission v. Lucas*, 361 Phil. 486, 490-491 (1999), citing *Landrito v. Civil Service Commission*, G.R. Nos. 104304-05, June 22, 1993, 223 SCRA 564.

her cash collections and her shortages in the remittances of collections amount to gross neglect of duty and dishonesty."[25]

Under Section 52 of the Revised Uniform Rules on Administrative Cases in the Civil Service, dishonesty, grave misconduct and gross neglect of duty are classified as grave offenses, and merit dismissal even on their first commission.

In *A.M. No. MTJ-06-1620,*[26] the Court held that:

> Safekeeping of public and trust funds is essential to an orderly administration of justice. **No protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability of government funds**. The Court has not hesitated to impose the ultimate penalty on those who have fallen short of their accountabilities. Any conduct that would violate the norms of public accountability and diminish, **or even merely tend** to diminish, the faith of the people in the justice system has never been tolerated or condoned by the Court. This ought to be so, as no less than the 1987 Constitution dictates:
>
> > "Public office is a public trust. Public officers and employees must **at all times be accountable** to the people, serve them with **utmost responsibility**, integrity, loyalty, and **efficiency**, act with patriotism and justice, and lead modest lives." *(Emphasis supplied)*
>
> Clerks of court are the chief administrative officers of their respective courts. As such, they are duty-bound to use skill and diligence in the performance of their officially designated functions. In *Office of the Court Administrator v. Paredes,* this Court spelled out anew the nature of the function of clerks of court:
>
> > "Clerks of court perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they are generally regarded as treasurer, accountant, guard and physical plant manager thereof. Thus,

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[25] *Office of the Court Administrator v. Bacani,* A.M. No. P-12-3099, January 15, 2013, 688 SCRA 516, 526.

[26] *Supra* note 20.

they are liable for any loss, shortage, destruction or impairment of such funds and property."

By respondent's assumption of the position of clerk of court, it is understood that he was ready and competent to do his job with utmost devotion and efficiency.[27] (Citations omitted)

For her failure to live up to the high ethical standards expected of her as a court employee, and an Accountable Officer at that, Leal's dismissal is indeed in order.

WHEREFORE, the Court resolved to:

1. **DISMISS** respondent Nancy R. Leal from the service with forfeiture of all retirement benefits, excluding accrued leave credits, with prejudice to re-employment in any government office, including government-owned and controlled corporations;

2. **DIRECT** the Leave Division, Office of the Administrative Services, Office of the Court Administrator to compute the accrued leave credits of Nancy R. Leal and forward them to the Financial Management Office, Office of the Court Administrator;

3. **DIRECT** the Financial Management Office, Office of the Court Administrator to apply the monetary value of the accrued leave credits of Nancy R. Leal, including the salaries withheld from her, to the cash shortages incurred, to wit:

Fiduciary Fund (FF)	07/01/96 to 02/28/11	567,757.71
Judiciary Development Fund (JDF)	01/01/92 to 10/25/08	928.50
UNEARNED Interest due to delayed remittances (JDF)	07/25/03 to 11/09/05	296,809.47
TOTAL ACCOUNTABILITY		**865,495.68**

[27] *Id.* at 220-222.

4. After application of the monetary value of her accrued leave credits and withheld salaries, Nancy R. Leal is **ORDERED** to restitute the balance of the said shortages;

5. **DIRECT** Judge Stela Marie Q. Gandia-Asuncion, Presiding Judge, Municipal Circuit Trial Court, Sta. Ignacia-Mayantoc-San Clemente-San Jose, Tarlac to submit an inventory of the court records which were allegedly destroyed by typhoon "Quiel" or eaten by termites;

6. **DIRECT** the Office of the Court Administrator to file the appropriate criminal charges against Nancy R. Leal; and

7. **DIRECT** the Office of the Court Administrator to conduct another financial and judicial audit in the Municipal Circuit Trial Court, Sta. Ignacia-Mayantoc-San Clemente-San Jose, Tarlac from the finality of this Decision.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, del Castillo, Abad, Perez, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Bersamin and *Mendoza, JJ.,* on official leave.

Villarama, Jr., J., on leave.

EN BANC

[A.M. No. 13-09-08-SC. October 1, 2013]

RE: REQUEST FOR GUIDANCE/CLARIFICATION ON SECTION 7, RULE III OF REPUBLIC ACT NO. 10154 REQUIRING RETIRING GOVERNMENT EMPLOYEES TO SECURE A CLEARANCE OF PENDENCY/NON-PENDENCY OF CASE/S FROM THE CIVIL SERVICE COMMISSION.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; RA NO. 10154 ON REQUIRING RETIRING GOVERNMENT EMPLOYEE TO SECURE CLEARANCE OF NON-PENDENCY OF ANY ADMINISTRATIVE CASE FROM THE CSC; NOT APPLICABLE TO RETIRING COURT PERSONNEL.—** Section 6, Article VIII of the 1987 Philippine Constitution (Constitution) exclusively vests in the Court administrative supervision over all courts and court personnel. As such, it oversees the court personnel's compliance with all laws and takes the proper administrative action against them for any violation thereof. As an adjunct thereto, it keeps in its custody records pertaining to the administrative cases of retiring court personnel. In view of the foregoing, the Court rules that the subject provision – which requires retiring government employees to secure a prior clearance of pendency/non-pendency of administrative case/s from, among others, the CSC – should not be made to apply to employees of the Judiciary. To deem it otherwise would disregard the Court's constitutionally-enshrined power of administrative supervision over its personnel. Besides, retiring court personnel are already required to secure a prior clearance of the pendency/non-pendency of administrative case/s from the Court which makes the CSC clearance a superfluous and non-expeditious requirement contrary to the declared state policy of RA 10154. To further clarify the matter, the same principles dictate that a prior clearance of pendency/non-pendency of administrative case/s from the Office of the President (albeit some court personnel are presidential appointees, *e.g.*, Supreme Court Justices) or the Office of the Ombudsman should not equally apply to retiring court personnel. Verily, the administrative supervision

of court personnel and all affairs related thereto fall within the exclusive province of the Judiciary.

2. **ID.; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIARY'S ADMINISTRATIVE SUPERVISION OF RETIRING COURT EMPLOYEES DOES NOT INCLUDE CLEARANCE FROM CRIMINAL CASES AS MAY BE REQUIRED.—** It must, however, be noted that since the Constitution only accords the Judiciary administrative supervision over its personnel, a different treatment of the clearance requirement obtains with respect to criminal cases. As such, a clearance requirement which pertains to criminal cases may be imposed by the appropriate government agency, *i.e.*, the Office of the Ombudsman, on retiring court personnel as it is a matter beyond the ambit of the Judiciary's power of administrative supervision.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Before the Court is a Memorandum dated September 18, 2013 from Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer, Office of Administrative Services of the Supreme Court, requesting guidance/clarification on the applicability to the Judiciary of Section 7, Rule III of the Implementing Rules and Regulations of Republic Act No. (RA) 10154[1] which states:

> Section 7. **Notice of Pendency of Case**. The retiring employee shall seek Clearance of Pendency/Non-Pendency of Administrative Case from his/her employer agency, Civil Service Commission (CSC), Office of the Ombudsman, or in case of presidential appointees, from the Office of the President.

Section 6,[2] Article VIII of the 1987 Philippine Constitution (Constitution) exclusively vests in the Court administrative supervision

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[1] "AN ACT REQUIRING ALL CONCERNED GOVERNMENT AGENCIES TO ENSURE THE EARLY RELEASE OF THE RETIREMENT PAY, PENSIONS, GRATUITIES AND OTHER BENEFITS OF RETIRING GOVERNMENT EMPLOYEES."

[2] Section 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

over all courts and court personnel.[3] As such, it oversees the court personnel's compliance with all laws and takes the proper administrative action against them for any violation thereof.[4] As an adjunct thereto, it keeps in its custody records pertaining to the administrative cases of retiring court personnel.

In view of the foregoing, the Court rules that the subject provision – which requires retiring government employees to secure a prior clearance of pendency/non-pendency of administrative case/s from, among others, the CSC – should not be made to apply to employees of the Judiciary. To deem it otherwise would disregard the Court's constitutionally-enshrined power of administrative supervision over its personnel. Besides, retiring court personnel are already required to secure a prior clearance of the pendency/non-pendency of administrative case/s from the Court which makes the CSC clearance a superfluous and non-expeditious requirement contrary to the declared state policy of RA 10154.[5]

To further clarify the matter, the same principles dictate that a prior clearance of pendency/non-pendency of administrative case/s from the Office of the President (albeit some court personnel are presidential appointees, *e.g.*, Supreme Court Justices) or the Office of the Ombudsman should not equally apply to retiring court personnel. Verily, the administrative supervision of court personnel and all affairs related thereto fall within the exclusive province of the Judiciary.

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[3] *Maceda v. Vasquez*, G. R. No. 102781, April 22, 1993, 221 SCRA 464, 466-467, cited in *Ampong v. Civil Service Commission, CSC-Regional Office No. 11*, G.R. No. 167916, August 26, 2008, 563 SCRA 293, 302-303.

[4] *Id.*

[5] Section 1. *Declaration of State Policy*. – It is hereby declared that it is the policy of the State to ensure the timely and expeditious release of the retirement pay, pensions, gratuities and other benefits of all retiring employees of the government. Public officers and employees who have spent the best years of their lives serving the government and the public should not be made to wait to receive benefits which are due to them under the law. Accordingly, it is hereby mandated that highest priority shall be given to the payment and/or settlement of the pensions, gratuities and/or other retirement benefits of retiring government employees.

It must, however, be noted that since the Constitution only accords the Judiciary administrative supervision over its personnel, a different treatment of the clearance requirement obtains with respect to criminal cases. As such, a clearance requirement which pertains to criminal cases may be imposed by the appropriate government agency, *i.e.*, the Office of the Ombudsman,[6] on retiring court personnel as it is a matter beyond the ambit of the Judiciary's power of administrative supervision.

WHEREFORE, the requirement of seeking a Clearance of Pendency/Non-Pendency of Administrative Case from the Civil Service Commission embodied in Section 7, Rule III of the Implementing Rules and Regulations of Republic Act No. 10154 is declared **INAPPLICABLE** to retiring employees of the Judiciary.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, del Castillo, Abad, Perez, Reyes, and *Leonen, JJ.,* concur.

Bersamin, Villarama, Jr., and *Mendoza, JJ.,* on leave.

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[6] "The authority of the Ombudsman to investigate and prosecute offenses committed by public officers and employees is founded in Section 15 and Section 11 of RA 6770. Section 15 vests the Ombudsman with the power to investigate and prosecute any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient, x x x.

x x x x

The power to investigate and to prosecute granted by law to the Ombudsman is plenary and unqualified. It pertains to *any act or omission of any public officer or employee when such act or omission appears to be illegal, unjust, improper or inefficient*. x x x." (*Uy v. Sandiganbayan*, 407 Phil. 154, 163-164 [2001].)

EN BANC

[G.R. No. 172707. October 1, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HALIL GAMBAO *y* ESMAIL, EDDIE KARIM *y* USO, EDWIN DUKILMAN *y* SUBOH, TONY ABAO *y* SULA, RAUL UDAL *y* KAGUI, THENG DILANGALEN *y* NANDING, JAMAN MACALINBOL *y* KATOL, MONETTE RONAS *y* AMPIL, NORA EVAD *y* MULOK, THIAN PERPENIAN *y* RAFON *a.k.a.* LARINA PERPENIAN and JOHN DOES,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.—** Time and again, this Court has maintained that the question of credibility of witnesses is primarily for the trial court to determine. For this reason, its observations and conclusions are accorded great respect on appeal. They are conclusive and binding unless shown to be tainted with arbitrariness or unless, through oversight, some fact or circumstance of weight and influence has not been considered. In *People v. Tañedo*, this Court had occasion to reiterate the ruling that findings of fact of the trial court pertaining to the credibility of witnesses command great respect since it had the opportunity to observe their demeanor while they testified in court.

2. **ID.; ID.; DENIAL; FAILS IN THE PRESENCE OF POSITIVE IDENTIFICATION.—** [T]he only defense the accused- appellants proffered was denial. It is established jurisprudence that denial cannot prevail over the witnesses' positive identification of the accused-appellants, more so where the defense did not present convincing evidence that it was physically impossible for them to have been present at the crime scene at the time of the commission of the crime.

3. **ID.; CRIMINAL PROCEDURE; PLEA OF GUILT TO A CAPITAL OFFENSE; MANDATE OF THE TRIAL COURT;**

RATIONALE.— [Accused-appellants] entered pleas of "guilty" to the crime of kidnapping for ransom, a capital offense. This Court, in *People v. Oden*, laid down the duties of the trial court when the accused pleads guilty to a capital offense. The trial court is mandated: (1) to conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the plea of guilt, (2) to require the prosecution to still prove the guilt of the accused and the precise degree of his culpability, and (3) to inquire whether or not the accused wishes to present evidence in his behalf and allow him to do so if he desires. The rationale behind the rule is that the courts must proceed with more care where the possible punishment is in its severest form, namely death, for the reason that the execution of such a sentence is irreversible. The primordial purpose is to avoid improvident pleas of guilt on the part of an accused where grave crimes are involved since he might be admitting his guilt before the court and thus forfeiting his life and liberty without having fully understood the meaning, significance and consequence of his plea. Moreover, the requirement of taking further evidence would aid this Court on appellate review in determining the propriety or impropriety of the plea.

4. **ID.; ID.; ID.; ID.; TO CONDUCT A SEARCHING INQUIRY INTO THE VOLUNTARINESS AND FULL COMPREHENSION OF THE CONSEQUENCES OF THE PLEA OF GUILT; GUIDELINES.—** Anent the first requisite, the searching inquiry determines whether the plea of guilt was based on a free and informed judgement. The inquiry must focus on the voluntariness of the plea and the full comprehension of the consequences of the plea. This Court finds no cogent reason for deviating from the guidelines provided by jurisprudence and thus, adopts the same: Although there is no definite and concrete rule as to how a trial judge must conduct a "searching inquiry," we have held that the following guidelines should be observed: 1. Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and (c) under what conditions he was detained and interrogated during the investigations. x x x 2. Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty. 3. Elicit

information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty. 4. Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. x x x 5. Inquire if the accused knows the crime with which he is charged and fully explain to him the elements of the crime which is the basis of his indictment. x x x 6. All questions posed to the accused should be in a language known and understood by the latter. 7. The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.

5. **ID.; ID.; ID.; IMPROVIDENT PLEA OF GUILTY WILL NOT SET ASIDE CONVICTION OF A CRIME SUFFICIENTLY EVINCED.—** As a general rule, convictions based on an improvident plea of guilt are set aside and the cases are remanded for further proceedings if such plea is the sole basis of judgement. If the trial court, however, relied on sufficient and credible evidence to convict the accused, as it did in this case, the conviction must be sustained, because then it is predicated not merely on the guilty plea but on evidence proving the commission of the offense charged. The manner by which the plea of guilty is made, whether improvidently or not, loses legal significance where the conviction can be based on independent evidence proving the commission of the crime by the accused.

6. **CRIMINAL LAW; CONSPIRACY; MAY BE INFERRED FROM THE COLLECTIVE CONDUCT OF THE PARTIES.—** Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons come to an agreement concerning a felony and decide to commit it. It has been a long standing opinion of this Court that proof of the conspiracy need not rest on direct evidence, as the same may be inferred from the collective conduct of the parties before, during or after the commission of the crime indicating a common understanding among them with respect to the commission of the offense.

7. **ID.; PERSONS CRIMINALLY LIABLE; ACCOMPLICES; ELEMENTS.—** Jurisprudence is instructive of the elements required, in accordance with Article 18 of the Revised Penal

Code, in order that a person may be considered an accomplice, namely, (1) that there be community of design; that is knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose; (2) that he cooperates in the execution by previous or simultaneous act, with the intention of supplying material or moral aid in the execution of the crime in an efficacious way; and (3) that there be a relation between the acts done by the principal and those attributed to the person charged as accomplice. x x x It has been held before that being present and giving moral support when a crime is being committed will make a person responsible as an accomplice in the crime committed. It should be noted that the accused-appellant's presence and company were not indispensable and essential to the perpetration of the kidnapping for ransom; hence, she is only liable as an accomplice. Moreover, this Court is guided by the ruling in *People v. Clemente*, *et al.*, where it was stressed that in case of doubt, the participation of the offender will be considered as that of an accomplice rather than that of a principal.

8. **ID.; KIDNAPPING FOR RANSOM; PENALTY; APPLYING RA NO. 9346, DEATH PENALTY REDUCED TO *RECLUSION PERPETUA* WITHOUT ELIGIBILITY FOR PAROLE.—** [T]his Court finds accused-appellants guilty beyond reasonable doubt as principals to the crime of kidnapping for ransom. However, pursuant to R.A. No. 9346, we modify the (death) penalty imposed by the trial court and reduce the penalty to *Reclusion Perpetua,* without eligibility for parole.

9. **ID.; ID.; ID.; RA NO. 9344 (COMPREHENSIVE JUVENILE JUSTICE AND WELFARE SYSTEM); SUSPENSION OF SENTENCE NOT AVAILABLE TO MINOR OFFENDER WHO HAS REACHED AGE OF TWENTY-ONE AT THE TIME OF CONVICTION.—** Pursuant to the passing of R.A. No. 9344, a determination of whether (minor accused Perpernian) acted with or without discernment is necessary. Considering that Perpenian acted with discernment when she was 17 years old at the time of the commission of the offense, her minority should be appreciated not as an exempting circumstance, but as a privileged mitigating circumstance pursuant to Article 68 of the Revised Penal Code. Under Section 38 of R.A. No. 9344, the suspension of sentence of a child in conflict with the law shall still be applied even if he/she is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt. Unfortunately, at the present age of 31, Perpenian can no longer

benefit from the aforesaid provision, because under Article 40 of R.A. No. 9344, the suspension of sentence can be availed of only until the child in conflict with the law reaches the maximum age of twenty-one (21) years.

10. **ID.; KIDNAPPING FOR RANSOM; PENALTY FOR AN ACCOMPLICE TO THE CRIME APPLYING ARTICLE 68 AND THE INDETERMINATE SENTENCE LAW OF THE REVISED PENAL CODE.—** Perpenian is found guilty beyond reasonable doubt as an accomplice in the crime of kidnapping for ransom. Since this Court has ruled that death as utilized in Article 71 of the Revised Penal Code shall no longer form part of the equation in the graduation of penalties pursuant to R.A. No. 9346, the penalty imposed by law on accomplices in the commission of consummated kidnapping for ransom is *Reclusion Temporal*, the penalty one degree lower than what the principals would bear (*Reclusion Perpetua*). Applying Article 68 of the Revised Penal Code, the imposable penalty should then be adjusted to the penalty next lower than that prescribed by law for accomplices. This Court, therefore, holds that as to Perpenian, the penalty of *Prision Mayor*, the penalty lower than that prescribed by law (*Reclusion Temporal*), should be imposed. Applying the Indeterminate Sentence Law, the minimum penalty, which is one degree lower than the maximum imposable penalty, shall be within the range of *Prision Correccional*; and the maximum penalty shall be within the minimum period of *Prision Mayor,* absent any aggravating circumstance and there being one mitigating circumstance. Hence, the Court imposes the indeterminate sentence of six (6) months and one (1) day of *Prision Correccional*, as minimum, to six (6) years and one (1) day of *Prision Mayor*, as maximum.

11. **ID.; PENALTY; ACCUSED WHO DIED WHILE CASE IS PENDING IS RELIEVED OF ALL PENALTIES ATTENDANT TO THE CRIME.—** In view of the death of Mandao during the pendency of this case, he is relieved of all personal and pecuniary penalties attendant to the crime, his death having occurred before rendition of final judgement.

12. **ID.; KIDNAPPING FOR RANSOM; MINIMUM CIVIL LIABILITIES WHERE DEATH PENALTY IS WARRANTED BUT NOT IMPOSABLE; TO BE APPORTIONED AMONG ALL CONVICTED ACCORDING TO PARTICIPATION IN THE CRIME.—** There is prevailing jurisprudence, on civil liabilities

arising from the commission of kidnapping for the purpose of extorting ransom from the victim or any other person under Article 267 of the Revised Penal Code. x x x [T]he amounts of indemnity and damages, where, as in this case, the penalty for the crime committed is death which, however, cannot be imposed because of the provisions of R.A. No. 9346: 1. ₱100,000.00 as civil indemnity; 2. ₱100,000.00 as moral damages which the victim is assumed to have suffered and thus needs no proof; and 3. ₱100,000.00 as exemplary damages to set an example for the public good. These amounts shall be the minimum indemnity and damages where death is the penalty warranted by the facts but is not imposable under present law. The ruling of this Court in *People v. Montesclaros* is instructive on the apportionment of civil liabilities among all the accused-appellants. The entire amount of the civil liabilities should be apportioned among all those who cooperated in the commission of the crime according to the degrees of their liability, respective responsibilities and actual participation. Hence, each principal accused-appellant should shoulder a greater share in the total amount of indemnity and damages than Perpenian who was adjudged as only an accomplice.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Benedicto M. Gonzales, Jr. for Edwin Dukilman.
R.A.V. Saguisag for Thian Perpenian.
Public Attorney's Office for Eddie Karim.

D E C I S I O N

PEREZ, *J.*:

Before this Court for Automatic Review is the Decision[1] dated 28 June 2005 of the Court of Appeals (CA) in CA-G.R.

[1] CA *rollo*, pp. 419-438; Penned by Associate Justice Eliezer R. De Los Santos with Associate Justices Eugenio S. Labitoria and Arturo D. Brion (now a member of this Court) concurring.

CR-H.C. No. 00863, which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Pasay City, Branch 109 dated 16 October 1998, finding accused-appellants Halil Gambao *y* Esmail, Eddie Karim *y* Uso, Edwin Dukilman *y* Suboh, Tony Abao *y* Sula, Raul Udal *y* Kagui, Teng Mandao *y* Haron, Theng Dilangalen *y* Nanding, Jaman Macalinbol *y* Katol, Monette Ronas *y* Ampil, Nora Evad *y* Mulok and Thian Perpenian *y* Rafon guilty beyond reasonable doubt of kidnapping for ransom as defined and penalized under Article 267 of the Revised Penal Code, as amended by Republic Act (R.A.) No. 7659.

The accused-appellants, along with an unidentified person, were charged under the criminal information[3] which reads:

Criminal Case No. 98-0928
For Kidnapping for Ransom as amended by RA 7659

That on August 12, 1998 at around 7:30 o'clock in the evening at No. 118 FB Harrison Pasay City and within the jurisdiction of this Honorable Court, the above named-accused conspiring, confederating and mutually helping one another and grouping themselves together, did then and there by force and intimidation, and the use of high powered firearms, willfully, unlawfully and feloniously take, carry away and deprive **Lucia Chan *y* Lee** of her liberty against her will for the purpose of extorting ransom as in fact a demand for ransom was made as a condition for her release amounting to FOUR HUNDRED THOUSAND PESOS (₱400,000.00) to the damage and prejudice of Lucia L. Chan in the said amount and such other amounts as may be awarded to her under the provisions of the Civil Code.

The antecedent facts were culled from the records of the case:[4]

Lucia Chan (Chan) was a fish dealer based in Manila. She usually expected fish deliveries, which were shipped by her

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[2] Records, Vol. I, pp. 282-301.

[3] *Id.* at 53.

[4] CA *rollo*, pp. 179-186.

suppliers from the provinces. Sometime in the afternoon of 11 August 1998, two persons, one of whom was identified as Theng Dilangalen (Dilangalen), went to Chan's residence at FB Harrison St., Pasay City to inquire about a certain passport alleged to have been mistakenly placed inside a box of fish to be delivered to her. Unable to locate said passport, the two left. The next morning, Dilangalen, together with another companion identified as Tony Abao (Abao), returned looking for Chan but were told that she was out. When the two returned in the afternoon, Chan informed them that the fish delivery had yet to arrive. Chan offered instead to accompany them to the airport to retrieve the box of fish allegedly containing the passport. Dilangalen and Abao declined and told Chan that they would be back later that evening.[5]

Dilangalen, accompanied by an unidentified person who remains at large, returned to Chan's residence that evening. Chan's houseboy ushered them in and Chan met them by the stairs.[6] Thereat, the unidentified companion of Dilangalen pointed his gun at Chan's son, Levy Chan (Levy), and the house companions.[7] As the unidentified man forcibly dragged Chan, her son Levy tried to stop the man by grabbing his mother's feet. Seeing this, Dilangalen pointed his gun at Levy's head forcing the latter to release his grip on Chan's feet.[8] Levy thereafter proceeded to the Pasay Police Headquarters to report the incident.[9]

Chan was forced to board a "Tamaraw FX" van.[10] After travelling for about two hours, the group stopped at a certain house. Accused-appellant Edwin Dukilman (Dukilman) warned

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[5] TSN, 6 October 1998, pp. 2-5.

[6] *Id.* at 6.

[7] *Id.*

[8] *Id.* at 7.

[9] *Id.* at 8.

[10] TSN, 5 October 1998, p. 10.

Chan not to shout as he had his gun pointed at her mouth. Chan was ordered to go with two women,[11] later identified in court by Chan as appellants Monette Ronas (Ronas) and Nora Evad (Evad).[12] Chan was brought inside a house and was made to lie down on a bed, guarded by Ronas, Evad, Dukilman and Jaman Macalinbol (Macalinbol).[13] Ronas and Evad threatened Chan that she would be killed unless she paid 20 Million Pesos.[14]

On 13 August 1998, Chan was awakened by Evad and was asked to board the "Tamaraw FX" van. After travelling for about ten minutes, the van stopped and the group alighted. Chan was brought to a room on the second floor of the house. Inside the room were three persons whom Chan identified in court as Macalinbol, Raul Udal (Udal) and Halil Gambao (Gambao).[15] Another woman, later identified as Thian Perpenian (Perpenian), arrived.[16] At about 9:00 o'clock in the evening, a man who was later identified as Teng Mandao (Mandao), entered the room with a handgun and asked Chan "*Bakit kayo nagsumbong sa pulis?*"[17] Another man, whom Chan identified in court as Eddie Karim (Karim), ordered Mandao out of the room. Karim informed Chan that he was sent by their boss to ask her how much money she has.[18] Chan was instructed to talk to her son through a cell phone and she gave instructions to her son to get the ₱75, 000.00 she kept in her cabinet.[19] The group then talked to Chan's son and negotiated the ransom amount in exchange for his mother's release. It was agreed upon that Levy was

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[11] *Id.* at 13.

[12] *Id.* at 15.

[13] *Id.* at 15-16.

[14] *Id.* at 17.

[15] *Id.* at 19-21.

[16] *Id.* at 33.

[17] *Id.* at 22.

[18] *Id.* at 23.

[19] *Id.* at 25.

to deliver ₱400,000.00 at the "Chowking" Restaurant at Buendia Avenue.[20]

Inspectors Narciso Ouano, Jr. (Inspector Ouano) and Cesar Mancao (Inspector Mancao), who were assigned at the Pasay City area to conduct the investigation regarding the kidnapping, were informed that the abductors called and demanded for ransom in exchange for Chan's release.[21] During their surveillance the following day, Inspectors Ouano and Mancao observed a Red Transport taxicab entering the route which led to the victim's residence. The inspectors observed that the occupants of the taxicab kept on looking at the second floor of the house. The inspectors and their team tailed the taxicab until Pansol, Calamba, Laguna, where it entered the Elizabeth Resort and stopped in front of Cottage 1. Convinced that the woman the team saw in the cottage was the victim, they sought clearance from Philippine Anti Organized Crime Task Force (PAOCTF) to conduct a rescue operation.[22]

On 14 August 1998, P/Insp. Vicente Arnado (Inspector Arnado) received information that the abductors acceded to a ₱400,000.00 ransom money to be delivered at "Chowking" Restaurant at Buendia Avenue at around 2:00 am. Upon learning of the information, the team immediately and strategically positioned themselves around the vicinity of the restaurant. At about 2:00 am, a light blue "Tamaraw FX" van with 4 people on board arrived. The four took the ransom money and headed towards the South Luzon Expressway. The surveillance team successfully intercepted the van and arrested the 4 men, later identified in court as Karim, Abao, Gambao and Dukilman. The team was also able to recover the ₱400,000.00 ransom.[23]

At about 5:00 o'clock in the morning of the same day, the police team assaulted Cottage No. 1, resulting in the safe rescue

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

[21] TSN, 7 October 1998, p. 12.

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

[23] TSN, 8 October 1998, pp. 4-6.

of Chan and the apprehension of seven of her abductors, later identified in court as Dilangalen, Udal, Macalinbol, Mandao, Perpenian, Evad and Ronas.[24]

During the 7 October 1998 hearing, after the victim and her son testified, Karim manifested his desire to change his earlier plea of "not guilty" to "guilty." The presiding judge then explained the consequences of a change of plea, stating: "It would mean the moment you withdraw your previous pleas of not guilty and enter a plea of guilty, the court of course, after receiving evidence, as in fact it has received the testimonies of [the] two witnesses, will [outrightly] sentence you to the penalty provided by law after the prosecution shall have finished the presentation of its evidence. Now that I have explained to you the consequences of your entering a plea of guilty, are you still desirous of entering a plea of 'guilty'?" Eddie Karim answered, "Yes."[25] On hearing this clarification, the other appellants likewise manifested, through their counsel who had earlier conferred with them and explained to each of them the consequences of a change of plea, their desire to change the pleas they entered. The trial court separately asked each of the appellants namely: Gambao, Abao, Udal, Mandao, Dilangalen, Macalinbol, Ronas and Evad if they understood the consequence of changing their pleas. All of them answered in the affirmative.[26] Similarly, Dukilman manifested his desire to change his plea and assured the trial court that he understood the consequences of such change of plea.[27] Thereupon, the trial court ordered their re-arraignment. After they pleaded guilty,[28] the trial court directed the prosecution to present evidence, which it did.

On 16 October 1998, the RTC rendered a decision convicting Gambao, Karim, Dukilman, Abao, Udal, Mandao, Dilangalen,

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[24] TSN, 7 October 1998, pp. 17-18.

[25] *Id.* at 2-3.

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

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

[28] *Id.* at 7-10.

Macalinbol, Ronas, Evad and Perpenian of Kidnapping for Ransom. Hence, they appealed to the CA.

In a Decision dated 28 June 2005, the appellate court affirmed with modifications the decision of the trial court. The dispositive portion of the CA decision reads:

> WHEREFORE, the decision of the court a *quo* finding accused-appellants HALIL GAMBAO *y* ESMAIL, EDDIE KARIM *y* USO, EDWIN DUKILMAN *y* SUBOH, TONY ABAO *y* SULA, RAUL UDAL *y* KAGUI, TENG MANDAO *y* HARON, THENG DILANGALEN *y* NANDING, JAMAN MACALINBOL *y* KATOL, MONETTE RONAS *y* AMPIL and NORA EVAD *y* MULOK guilty beyond reasonable doubt of kidnapping for ransom defined and penalized under Article 267 of the Revised Penal Code, as amended by RA 7659 and imposing upon each of them the supreme penalty of death is **AFFIRMED WITH MODIFICATION** that each of them is ordered to pay jointly and severally the victim in the amount of ₱50,000.00 by way of moral damages.
>
> It appearing that accused-appellant THIAN PERPENIAN *y* RAFON was only 17 years old at the time of the commission of the crime, she is hereby sentenced to suffer the penalty of *reclusion perpetua.*[29]

Pursuant to Section 13, Rule 124 as amended by Administrative Matter No. 00-5-03-SC, the appellate court certified the case to this Court and accordingly ordered the elevation of the records.

In a Resolution[30] dated 20 June 2006, we required the parties to file their respective supplemental briefs. The issues raised by the accused-appellants in their respective briefs, supplemental briefs and manifestations will be discussed collectively.

Insufficiency of Evidence

Accused-appellants Dukilman, Ronas, Evad would have this Court believe that the witness, Chan, was not able to positively identify them because of her failing eyesight due to old age.

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[29] CA *rollo*, pp. 436-437.

[30] *Rollo*, pp. 23-24.

This argument is bereft of merit. We note that both the trial court and the CA found Chan's testimony credible and straightforward. During her testimony, she positively identified the accused-appellants. If she had not met them before, she could not have positively identified them in open court. In fact, the participation of these accused-appellants was further established through the testimonies of the other prosecution witnesses.

Time and again, this Court has maintained that the question of credibility of witnesses is primarily for the trial court to determine. For this reason, its observations and conclusions are accorded great respect on appeal. They are conclusive and binding unless shown to be tainted with arbitrariness or unless, through oversight, some fact or circumstance of weight and influence has not been considered.[31] In *People v. Tañedo*,[32] this Court had occasion to reiterate the ruling that findings of fact of the trial court pertaining to the credibility of witnesses command great respect since it had the opportunity to observe their demeanor while they testified in court.[33] It can be observed that the briefs submitted by the accused-appellants are replete with generalities and wanting in relevant particulars. It is for this reason that we are giving full credence to the findings of the trial court regarding the credibility of witness Chan.

Perpenian likewise argued that the evidence for her conviction is insufficient. We also find her argument bereft of merit.

The testimony of Inspector Ouano, establishing Perpenian as one of the seven people apprehended when they conducted the rescue operation at around 5:00 o'clock in the morning of 14 August 1998,[34] and the positive identification of Perpenian

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[31] *People v. Montanir, et al.*, G.R. No. 187534, 4 April 2011, 647 SCRA 170, 185-186.

[32] 334 Phil. 31, 36 (1997).

[33] *People v. Yanson-Dumancas,* 378 Phil. 341, 364 (1999) citing *People v. Tañedo,* 334 Phil. 31, 36 (1997).

[34] TSN, 7 October 1998, pp. 17-18.

by Chan constituted adequate evidence working against her defense of denial.

Further, it should be noted that the only defense the accused-appellants proffered was denial. It is established jurisprudence that denial cannot prevail over the witnesses' positive identification of the accused-appellants, more so where the defense did not present convincing evidence that it was physically impossible for them to have been present at the crime scene at the time of the commission of the crime.[35]

The foregoing considered, the positive identification by Chan, the relevant testimonies of witnesses and the absence of evidence other than mere denial proffered by the defense lead this Court to give due weight to the findings of the lower courts.

Improvident Plea

As provided for by Article 267 of the Revised Penal Code, as amended by RA 7659, the penalty for kidnapping for ransom is death. A review of the records[36] shows that on 7 October 1998, the accused-appellants withdrew their plea of "not guilty" and were re-arraigned. They subsequently entered pleas of "guilty" to the crime of kidnapping for ransom, a capital offense. This Court, in *People v. Oden*,[37] laid down the duties of the trial court when the accused pleads guilty to a capital offense. The trial court is mandated:

(1) to conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the plea of guilt,

(2) to require the prosecution to still prove the guilt of the accused and the precise degree of his culpability, and

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[35] *People v. Salcedo*, G.R. No. 186523, 22 June 2011, 652 SCRA 635, 644 citing *Lumanog v. People of the Philippines*, G.R. No. 182555, 7 September 2010, 630 SCRA 42, 130-131.

[36] TSN, 7 October 1998, pp. 1-10.

[37] 471 Phil. 638 (2004).

(3) to inquire whether or not the accused wishes to present evidence in his behalf and allow him to do so if he desires.[38]

The rationale behind the rule is that the courts must proceed with more care where the possible punishment is in its severest form, namely death, for the reason that the execution of such a sentence is irreversible. The primordial purpose is to avoid improvident pleas of guilt on the part of an accused where grave crimes are involved since he might be admitting his guilt before the court and thus forfeiting his life and liberty without having fully understood the meaning, significance and consequence of his plea.[39] Moreover, the requirement of taking further evidence would aid this Court on appellate review in determining the propriety or impropriety of the plea.[40]

Anent the first requisite, the searching inquiry determines whether the plea of guilt was based on a free and informed judgement. The inquiry must focus on the voluntariness of the plea and the full comprehension of the consequences of the plea. This Court finds no cogent reason for deviating from the guidelines provided by jurisprudence[41] and thus, adopts the same:

Although there is no definite and concrete rule as to how a trial judge must conduct a "searching inquiry," we have held that the following guidelines should be observed:

1. Ascertain from the accused himself

(a) how he was brought into the custody of the law;
(b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and
(c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical

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[38] *Id.* at 648.

[39] *People v. Ernas*, 455 Phil. 829, 838 (2003).

[40] *People v. Pastor*, 428 Phil. 976, 993 (2002).

[41] *Id.* at 986-987.

harm coming from malevolent quarters or simply because of the judge's intimidating robes.

2. Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.

3. Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.

4. Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.

5. Inquire if the accused knows the crime with which he is charged and fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

6. All questions posed to the accused should be in a language known and understood by the latter.

7. The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.

It is evident from the records[42] that the aforesaid rules have not been fully complied with. The questions propounded by the

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[42] TSN, 7 October 1998, pp. 2-10.

trial court judge failed to ensure that accused-appellants fully understood the consequences of their plea. In fact, it is readily apparent from the records[43] that Karim had the mistaken assumption that his plea of guilt would mitigate the imposable penalty and that both the judge and his counsel failed to explain to him that such plea of guilt will not mitigate the penalty pursuant to Article 63 of the Revised Penal Code. Karim was not warned by the trial court judge that in cases where the penalty is single and indivisible, like death, the penalty is not affected by either aggravating or mitigating circumstances. The trial court judge's seemingly annoyed statement that a conditional plea is not allowed, as provided below, is inadequate:

> Atty. Ferrer: Your Honor please, may we be allowed to say something before the trial. For accused Eddie Karim we manifest and petition this court that he be allowed to be re-arraigned Your Honor please, considering that he will plead guilty as charged but the imposable penalty is lowered, Your Honor.
>
> Court: You cannot make a conditional plea of guilty, that is what the law says. You plead guilty, no condition attached. Conditional plea is not allowed.
>
> Atty. Ferrer: Considering, Your Honor, accused Eddie Karim is already repenting
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> Court: Nevertheless. Read the law. If you entered a plea of guilty there should be no condition attached. We cannot make that condition and dictate to the court the penalty.[44]

Although the pleas rendered, save for Perpenian's, were improvidently made, this Court will still not set aside the condemnatory judgment. Despite the trial court judge's shortcomings, we still agree with his ruling on accused-appellants' culpability.

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[43] *Id.* at 2.

[44] *Id.*

As a general rule, convictions based on an improvident plea of guilt are set aside and the cases are remanded for further proceedings if such plea is the sole basis of judgement. If the trial court, however, relied on sufficient and credible evidence to convict the accused, as it did in this case, the conviction must be sustained, because then it is predicated not merely on the guilty plea but on evidence proving the commission of the offense charged.[45] The manner by which the plea of guilty is made, whether improvidently or not, loses legal significance where the conviction can be based on independent evidence proving the commission of the crime by the accused.[46]

Contrary to accused-appellants' assertions, they were convicted by the trial court, not on the basis of their plea of guilty, but on the strength of the evidence adduced by the prosecution, which was properly appreciated by the trial court.[47] The prosecution was able to prove the guilt of the accused-appellants and their degrees of culpability beyond reasonable doubt.

Degree of Culpability

Accused-appellants Dukilman, Ronas and Evad argue in their respective briefs that conspiracy, insofar as they were concerned, was not convincingly established. Dukilman hinges his argument on the fact that he was not one of those arrested during the rescue operation based on the testimony of Inspector Ouano.[48] On the other hand, Ronas and Evad base their argument on the fact that they had no participation whatsoever in the negotiation for the ransom money.

We hold otherwise. Although Dukilman was not one of those apprehended at the cottage during the rescue operation, the

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[45] *People v. Pastor, supra* note 40 at 997.

[46] *People v. Oden*, *supra* note 37 at 649.

[47] *People v. Ceredon*, G. R. No. 167179, 28 January 2008, 542 SCRA 550, 568.

[48] TSN, 7 October 1998, pp. 17-18.

testimony of Police Inspector Arnado sufficiently established that he was one of the four people apprehended when the police intercepted the "Tamaraw FX" at the Nichols Tollgate.[49] Likewise, the testimony of Police Inspector Ouano sufficiently established that Ronas and Evad were two of those who were arrested during the rescue operation.[50] This Court has held before that to be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy.[51] Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.[52] Moreover, Chan positively identified the accused-appellants and placed all of them at the crime scenes.

Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons come to an agreement concerning a felony and decide to commit it. It has been a long standing opinion of this Court that proof of the conspiracy need not rest on direct evidence, as the same may be inferred from the collective conduct of the parties before, during or after the commission of the crime indicating a common understanding among them with respect to the commission of the offense.[53] The testimonies, when taken together, reveal the common purpose of the accused-appellants and how they were all united in its execution from beginning to end. There were testimonies proving that (1) before the incident, two of the accused-appellants kept coming back to the victim's house; (2) during the kidnapping, accused-

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[49] TSN, 8 October 1998, pp. 4-6.

[50] TSN, 7 October 1998, pp. 17-18.

[51] *People v. Basao,* G.R. No. 189820, 10 October 2012, 683 SCRA 529, 546.

[52] *Id*.

[53] *People v. De Chavez,* G.R. No. 188105, 23 April 2010, 619 SCRA 464, 478.

appellants changed shifts in guarding the victim; and (3) the accused appellants were those present when the ransom money was recovered and when the rescue operation was conducted.

Seeing that conspiracy among Gambao, Karim, Dukilman, Abao, Udal, Mandao, Dilangalen, Macalinbol, Ronas and Evad was established beyond reasonable doubt based on the proffered evidence of the prosecution, the act of one is the act of all the conspirators.

In Perpenian's Supplemental Brief,[54] she directs this Court's attention to the manifestation made by the prosecution regarding their disinterest in prosecuting, insofar as she was concerned.[55] However, pursuant to the ruling of this Court in *Crespo v. Judge Mogul*,[56] once the information is filed, any disposition of the case or dismissal or acquittal or conviction of the accused rests within the exclusive jurisdiction, competence and discretion of the courts; more so in this case, where no Motion to Dismiss was filed by the prosecution.

The trial court took note of the fact that Perpenian gave inconsistent answers and lied several times under oath during the trial.[57] Perpenian lied about substantial details such as her real name, age, address and the fact that she saw Chan at the Elizabeth Resort. When asked why she lied several times, Perpenian claimed she was scared to be included or identified with the other accused-appellants. The lying and the fear of being identified with people whom she knew had done wrong are indicative of discernment. She knew, therefore, that there was an ongoing crime being committed at the resort while she was there. It is apparent that she was fully aware of the consequences of the unlawful act.

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[54] CA *rollo*, pp. 330-357.

[55] TSN, 7 October 1998, pp. 6-7.

[56] 235 Phil. 465, 476 (1987).

[57] TSN, 8 October 1998, pp. 28-30.

As reflected in the records,[58] the prosecution was not able to proffer sufficient evidence to hold her responsible as a principal. Seeing that the only evidence the prosecution had was the testimony[59] of Chan to the effect that on 13 August 1998 Perpenian entered the room where the victim was detained and conversed with Evad and Ronas regarding stories unrelated to the kidnapping, this Court opines that Perpenian should not be held liable as a co-principal, but rather only as an accomplice to the crime.

Jurisprudence[60] is instructive of the elements required, in accordance with Article 18 of the Revised Penal Code, in order that a person may be considered an accomplice, namely, (1) that there be community of design; that is knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose; (2) that he cooperates in the execution by previous or simultaneous act, with the intention of supplying material or moral aid in the execution of the crime in an efficacious way; and (3) that there be a relation between the acts done by the principal and those attributed to the person charged as accomplice.

The defenses raised by Perpenian are not sufficient to exonerate her criminal liability. Assuming *arguendo* that she just came to the resort thinking it was a swimming party, it was inevitable that she acquired knowledge of the criminal design of the principals when she saw Chan being guarded in the room. A rational person would have suspected something was wrong and would have reported such incident to the police. Perpenian, however, chose to keep quiet; and to add to that, she even spent the night at the cottage. It has been held before that being present and giving moral support when a crime is being committed will make a person responsible as an accomplice in the crime committed.[61] It should be noted that the accused-

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[58] TSN, 7 October 1998, p. 5.

[59] *Id*.

[60] *People v. Tamayo*, 44 Phil. 38, 49 (1922).

[61] *People v. Toling*, 180 Phil. 305, 321-322 (1979).

appellant's presence and company were not indispensable and essential to the perpetration of the kidnapping for ransom; hence, she is only liable as an accomplice.[62] Moreover, this Court is guided by the ruling in *People v. Clemente*, *et al*.,[63] where it was stressed that in case of doubt, the participation of the offender will be considered as that of an accomplice rather than that of a principal.

Having admitted their involvement in the crime of kidnapping for ransom and considering the evidence presented by the prosecution, linking accused-appellants' participation in the crime, no doubt can be entertained as to their guilt. The CA convicted the accused-appellants of kidnapping for ransom and imposed upon them the supreme penalty of death, applying the provisions of Article 267 of the Revised Penal Code. Likewise, this Court finds accused-appellants guilty beyond reasonable doubt as principals to the crime of kidnapping for ransom. However, pursuant to R.A. No. 9346,[64] we modify the penalty imposed by the trial court and reduce the penalty to *Reclusion Perpetua,* without eligibility for parole.

Modification should also be made as to the criminal liability of Perpenian. Pursuant to the passing of R.A. No. 9344,[65] a determination of whether she acted with or without discernment is necessary. Considering that Perpenian acted with discernment when she was 17 years old at the time of the commission of the offense, her minority should be appreciated not as an exempting circumstance, but as a privileged mitigating circumstance pursuant to Article 68 of the Revised Penal Code.

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[62] *People v. Ubiña*, 97 Phil. 515, 534 (1955).

[63] 128 Phil. 268, 278-279 (1967).

[64] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[65] An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council Under the Department of Justice, Appropriating Funds Therefore and for Other Purposes.

Under Section 38 of R.A. No. 9344,[66] the suspension of sentence of a child in conflict with the law shall still be applied even if he/she is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt.

Unfortunately, at the present age of 31, Perpenian can no longer benefit from the aforesaid provision, because under Article 40 of R.A. No. 9344,[67] the suspension of sentence can be availed of only until the child in conflict with the law reaches the maximum age of twenty-one (21) years. This leaves the Court with no choice but to pronounce judgement. Perpenian is found guilty beyond reasonable doubt as an accomplice in the crime of kidnapping for ransom. Since this Court has ruled that death

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[66] Sec. 38. *Automatic Suspension of Sentence.* — Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: *Provided*, *however*, That suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

[67] Sec. 40 in relation to Sec. 38 of RA No. 9344.

Sec. 40. *Return of the Child in Conflict with the Law to Court.* — If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.

If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or **until the child reaches the maximum age of twenty-one (21) years** (emphasis supplied).

as utilized in Article 71 of the Revised Penal Code shall no longer form part of the equation in the graduation of penalties pursuant to R.A. No. 9346,[68] the penalty imposed by law on accomplices in the commission of consummated kidnapping for ransom is *Reclusion Temporal*, the penalty one degree lower than what the principals would bear (*Reclusion Perpetua*).[69] Applying Article 68 of the Revised Penal Code, the imposable penalty should then be adjusted to the penalty next lower than that prescribed by law for accomplices. This Court, therefore, holds that as to Perpenian, the penalty of *Prision Mayor*, the penalty lower than that prescribed by law (*Reclusion Temporal*), should be imposed. Applying the Indeterminate Sentence Law, the minimum penalty, which is one degree lower than the maximum imposable penalty, shall be within the range of *Prision Correccional*; and the maximum penalty shall be within the minimum period of *Prision Mayor,* absent any aggravating circumstance and there being one mitigating circumstance. Hence, the Court imposes the indeterminate sentence of six (6) months and one (1) day of *Prision Correccional*, as minimum, to six (6) years and one (1) day of *Prision Mayor*, as maximum.

As regards Perpenian's possible confinement in an agricultural camp or other training facility in accordance with Section 51 of R.A. 9344, this Court held in *People v. Jacinto*[70] that the age of the child in conflict with the law at the time of the promulgation of the judgment is not material. What matters is that the offender committed the offense when he/she was still of tender age. This Court, however, finds such arrangement no longer necessary in view of the fact that Perpenian's actual served term has already exceeded the imposable penalty for her offense. For such reason, she may be immediately released from detention.

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[68] *People v. Bon*, 536 Phil. 897, 940 (2006).

[69] Article 52, Revised Penal Code.

[70] G.R. No. 182239, 16 March 2011, 645 SCRA 590, 625.

We note that in the Order[71] dated 9 October 1998, the trial court admitted the documentary evidence offered by the counsel for the defense proving that the real name of Thian Perpenian is Larina Perpenian.

In view of the death of Mandao during the pendency of this case, he is relieved of all personal and pecuniary penalties attendant to the crime, his death[72] having occurred before rendition of final judgement.[73]

There is prevailing jurisprudence,[74] on civil liabilities arising from the commission of kidnapping for the purpose of extorting ransom from the victim or any other person under Article 267 of the Revised Penal Code. The persons convicted were held liable for ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱30,000.00 as exemplary damages.

We take this opportunity to increase the amounts of indemnity and damages, where, as in this case, the penalty for the crime committed is death which, however, cannot be imposed because of the provisions of R.A. No. 9346:[75]

1. ₱100,000.00 as civil indemnity;
2. ₱100,000.00 as moral damages which the victim is assumed to have suffered and thus needs no proof; and
3. ₱100,000.00 as exemplary damages to set an example for the public good.

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[71] Records, Vol. I, p. 200.

[72] *Rollo*, pp. 84 and 96.

[73] *People v. Jose*, 163 Phil. 264, 273 (1976); Article 89, Revised Penal Code.

[74] *People v. Tadah*, G.R. No. 186226, 1 February 2012, 664 SCRA 744, 748; *People v. Basao, et al.*, G.R. No. 189820, 10 October 2012, 683 SCRA 529, 551.

[75] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

These amounts shall be the minimum indemnity and damages where death is the penalty warranted by the facts but is not imposable under present law.

The ruling of this Court in *People v. Montesclaros*[76] is instructive on the apportionment of civil liabilities among all the accused-appellants. The entire amount of the civil liabilities should be apportioned among all those who cooperated in the commission of the crime according to the degrees of their liability, respective responsibilities and actual participation. Hence, each principal accused-appellant should shoulder a greater share in the total amount of indemnity and damages than Perpenian who was adjudged as only an accomplice.

Taking into account the difference in the degrees of their participation, all of them shall be liable for the total amount of ₱300,000.00 divided among the principals who shall be liable for ₱288,000.00 (or ₱32,000.00 each) and Perpenian who shall be liable for ₱12,000.00. This is broken down into ₱10,666.67 civil indemnity, ₱10,666.67 moral damages and ₱10,666.67 exemplary damages for each principal; and ₱4,000.00 civil indemnity, ₱4,000.00 moral damages and ₱4,000.00 exemplary damages for the lone accomplice.

WHEREFORE, the 28 June 2005 Decision of the Court of Appeals in CA-G.R. CR–H.C. No. 00863 is hereby **AFFIRMED WITH MODIFICATIONS.** Accused-appellants HALIL GAMBAO *y* ESMAIL, EDDIE KARIM *y* USO, EDWIN DUKILMAN *y* SUBOH, TONY ABAO *y* SULA, RAUL UDAL *y* KAGUI, THENG DILANGALEN *y* NANDING, JAMAN MACALINBOL *y* KATOL, MONETTE RONAS *y* AMPIL and NORA EVAD *y* MULOK are found guilty beyond reasonable doubt as **principals** in the crime of kidnapping for ransom and sentenced to suffer the penalty of *Reclusion Perpetua,* without eligibility of parole. Accused-appellant THIAN PERPENIAN *y* RAFON *A.K.A.* LARINA PERPENIAN is found guilty beyond reasonable doubt as

[76] G.R. No. 181084, 16 June 2009, 589 SCRA 320, 345.

accomplice in the crime of kidnapping for ransom and sentenced to suffer the indeterminate penalty of six (6) months and one (1) day of *Prision Correccional*, as minimum, to six (6) years and one (1) day of *Prision Mayor*, as maximum. Accused-appellants are ordered to indemnify the victim in the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages apportioned in the following manner: the principals to the crime shall jointly and severally pay the victim the total amount of ₱288,000.00 while the accomplice shall pay the victim ₱12,000.00, subject to Article 110 of the Revised Penal Code on several and subsidiary liability.

The Court orders the Correctional Institute for Women to immediately release THIAN PERPENIAN *A.K.A*. LARINA PERPENIAN due to her having fully served the penalty imposed on her, unless her further detention is warranted for any other lawful causes.

Let a copy of this decision be furnished for immediate implementation to the Director of the Correctional Institute for Women by personal service. The Director of the Correctional Institute for Women shall submit to this Court, within five (5) days from receipt of a copy of the decision, the action he has taken thereon.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Abad, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Brion, J., no part.

Bersamin and *Mendoza, JJ.,* on official leave.

Villarama, Jr., J., on sick leave.

FIRST DIVISION

[A.M. No. MTJ-13-1834. October 2, 2013]
(Formerly OCA I.P.I. No. 12-2541-MTJ)

JESUS D. CARBAJOSA, *complainant, vs.* **JUDGE HANNIBAL R. PATRICIO, Presiding Judge, Municipal Circuit Trial Court, President Roxas, Capiz,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; GROSS IGNORANCE OF THE LAW; MANIFESTED WHEN JUDGE CONFUSED HIMSELF WITH AUXILIARY INCIDENTS AND REFUSED TO EXECUTE AN ALREADY FINAL DECISION.—** Any delay in the full execution of a final and executory decision is repugnant to the ideal administration of justice. Hence the rule that once a judgment attains finality, it thereby becomes immutable and unalterable. The enforcement of such judgment should not be hampered or evaded; for the immediate enforcement of the parties' rights, confirmed by final judgment, is a major component of the ideal administration of justice. Our penal laws and rules of procedure, in particular, enjoin that when the judgment of conviction is already final and executory its execution is ministerial. Respondent Judge Patricio, however, demonstrated ignorance of the above rule by repeatedly refusing to execute the final and executory judgment of conviction against Bieles. x x x The rules on execution are comprehensive enough for a judge not to know how to apply them or to be confused by any auxiliary incidents. The issuance of a writ of execution for a final and executory judgment is ministerial. In other words, a judge is not given the discretion whether or not to implement the judgment. He is to effect execution without delay and supervise implementation strictly in accordance with the judgment. Judge Patricio's actuations unmistakably exhibit gross ignorance of the law.

2. **ID.; ID.; ID.; ID.; PENALTY.—** Under A.M. No. 01-8-10-SC or the Amendment to Rule 140 of the Rules of Court Re: Discipline of Justices and Judges, gross ignorance of the law is a serious

charge, punishable by a fine of more than ₱20,000.00, but not exceeding ₱40,000.00, suspension from office without salary and other benefits for more than three (3) months but not exceeding six (6) months, or dismissal from the service. Based on the attendant circumstances of this case, a fine of ₱21,000.00 is the appropriate penalty.

APPEARANCES OF COUNSEL

Emmanuel M. Delgado for complainant.

D E C I S I O N

REYES, *J.*:

This is an administrative case for *Gross Ignorance of the Law, Manifest Bias and Partiality* against Judge Hannibal R. Patricio (Judge Patricio), commenced thru a verified Complaint[1] filed before the Office of Court of Administrator (OCA) by Jesus D. Carbajosa (Carbajosa).

Carbajosa is the private complainant in Criminal Case No. 2540 for grave coercion against accused Dolores Bieles (Bieles), heard and tried before the Municipal Circuit Trial Court (MCTC) of President Roxas-Pilar, President Roxas, Capiz, in the sala of then Presiding Judge Geomer C. Delfin. The charge stemmed from Bieles' menacing and intimidating attitude in preventing Carbajosa from bringing to Iloilo City fifteen (15) sacks of milled corn by removing and unloading the same out of the latter's Efren Bus Liner.

In a Decision[2] dated August 6, 2002, the MCTC convicted Bieles of the crime charged and sentenced her to imprisonment of four (4) months and one (1) day of *arresto mayor* as minimum to six (6) months of *arresto mayor* as maximum, and ordered her to pay: (1) a fine of ₱500.00 with subsidiary imprisonment

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[1] *Rollo*, pp. 1-9.

[2] Issued by Presiding Judge Geomer C. Delfin; *id.* at 10-34.

in case of insolvency; and (2) the amount of ₱20,000.00 representing the fifteen (15) sacks of milled corn or its equivalent value as the first lien on judgment.

On appeal, the Regional Trial Court (RTC) of Roxas City, Branch 18, affirmed Bieles' conviction but modified her sentence by increasing the maximum penalty imposed to two (2) years, four (4) months and one (1) day of *prision correccional*.[3] This modified judgment was later affirmed by the Court of Appeals (CA) in a Decision[4] dated October 26, 2006 and eventually by this Court when Bieles' petition for review on *certiorari* was denied in a Resolution[5] dated August 13, 2008 for late filing and for absence of reversible error in the appealed judgment. Likewise denied was Bieles' ensuing motion for reconsideration.[6] The Court thereafter issued an Entry of Judgment[7] stating that the Resolution of August 13, 2008 has become final and executory on January 15, 2009. Undeterred, Bieles filed a Motion to Set Aside Entry of Judgment but the same was denied in the Resolution[8] dated June 1, 2009.

Meanwhile, Carbajosa filed a motion before the RTC for the remand of the case to the court of origin for proper execution. The motion was granted in the RTC's Order[9] dated December 21, 2009. Carbajosa thereafter filed a *Motion for Execution of Judgment* before the MCTC presided by herein respondent Judge Patricio. Bieles opposed the motion stating that she

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[3] RTC Decision dated January 16, 2003 issued by Judge Charlito F. Fantilanan; *id.* at 35-49.

[4] Penned by Associate Justice Agustin S. Dizon, with Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla, concurring; *id.* at 50-63.

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

[6] This Court's First Division's Resolution dated November 19, 2008; *id.* at 66.

[7] *Id.* at 67-68.

[8] *Id.* at 69.

[9] Issued by Acting Judge Esperanza Isabel E. Poco-Deslate; *id.* at 70.

sent a letter addressed to the Chief Justice, Honorable Reynato S. Puno asking for a review of her case on the merits. She claimed that the letter was favorably acted upon as evidenced by the first endorsement dated January 25, 2010 requesting the Clerk of Court of the Third Division to include the case in its agenda.[10]

Judge Patricio resolved the conflict by issuing an Order[11] dated April 7, 2010 wherein he reckoned that it will be best to hold in abeyance the resolution of Carbajosa's *Motion for Execution of Judgment* and await the result of the referral/endorsement made by the Chief Justice before a ruling on the propriety of the issuance of a writ of execution is made, *viz*:

> It is the honest belief of the undersigned, that the resolution of the issuance of the writ of execution, opposition, and objection of the parties in the above-entitled case be held in abeyance, considering that the Chief Justice of the Supreme Court had referred to the Clerk of Court of the Third Division the letter of [Bieles].
>
> The holding in abeyance of the resolution is in [deference] to the first endorsement made by the Chief Justice. The undersigned deemed it proper to first wait the result of the referral of the Chief Justice before it will rule on the propriety of the issuance of the writ of execution.[12]

On April 19, 2010, Carbajosa manifested his objection to the foregoing order and insisted on the issuance of a writ of execution averring that in the absence of any restraining order, its issuance is imperative so as not to unduly delay the administration of justice.[13]

On May 24, 2010, Judge Patricio issued an Order[14] reiterating his previous stance that there is a necessity to await the result of the referral made by the Chief Justice to the Third Division Clerk of Court, thus:

> Wherefore, the previous order of this Court granting the holding in abeyance [of] the issuance of a writ of execution still stands.

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[10] *Id.* at 104.

[11] *Id.* at 71.

[12] *Id*.

[13] Manifestation/Objection; *id.* at 72-74.

[14] *Id.* at 75.

Furnish copy of this order to the offended party, the private prosecutor, as well as [Bieles] and their counsel for their information.

SO ORDERED.[15]

Bieles thereafter moved that the property bond she initially posted be substituted by a cash bond because the former was already needed by her bondsman. The motion was vehemently opposed by Carbajosa. On May 31, 2011, Judge Patricio issued an Order[16] granting Bieles' motion explaining that the same is not covered by Section 4, Rule 114 of the Rules of Court prohibiting an accused to put up a bail bond when there is already a final and executory judgment. Judge Patricio clarified that this is not a case for the posting of a bond but rather, the substitution of one posted at the beginning stage of the case.

In the same Order, Judge Patricio disclosed that he sent a query to the OCA regarding the effect of the Chief Justice's endorsement of Bieles' letter to the implementation of the final judgment of her conviction. In an endorsement dated September 29, 2010, Deputy Court Administrator (DCA) Raul Villanueva referred his query to Atty. Wilhelmina Geronga (Atty. Geronga), Chief of the OCA-Legal Office for comment.

In a letter[17] dated September 5, 2011, Atty. Geronga informed Judge Patricio that the subject matter of his query is judicial in nature hence, beyond the mandate of the OCA. Also, as a matter of policy, the OCA refrains from rendering an opinion on matters that may later on be brought to the Court for judicial determination. Atty. Geronga suggested that the issue be resolved based on pertinent jurisprudence and relevant laws.

In the meantime, two (2) motions were awaiting Judge Patricio's ruling, *viz*: (a) Carbajosa's motion to recall the Order dated May 31, 2011 approving the substitution of Bieles' property

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[15] *Id.*

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

[17] *Id.* at 79.

bond by a cash bond; and (b) motion to suspend proceedings filed by Bieles.

Both motions were resolved in an Order[18] dated January 6, 2012. Carbajosa's motion was denied for being filed out of time while Bieles' motion to suspend proceedings was granted.

In so ruling, Judge Patricio ratiocinated that the motion to recall the Order dated May 31, 2011 can be likened to a motion for reconsideration that must be filed within fifteen (15) days from receipt of the Order sought to be reviewed. Having been filed two (2) months after June 17, 2011, the date Carbajosa received the Order dated May 31, 2011, the motion to recall is considered filed out of time.

Anent the granting of Bieles' motion to suspend proceedings, Judge Patricio again reasoned that any action on the issuance of the writ of execution should await the resolution by the Third Division of the Supreme Court on Bieles' letter as endorsed by the Chief Justice, thus:

> WHEREFORE, premises considered, the court hereby grants the instant motion to suspend proceedings filed by [Bieles] until the indorsement made by the then Chief Justice Reynato Puno for the review of this case had been resolved by said Division.
>
> Furnish copy of this order [to] the parties and counsels.
>
> SO ORDERED.[19]

These circumstances prompted Carbajosa to institute the herein administrative complaint[20] imputing gross ignorance of the law, manifest partiality and evident bad faith against Judge Patricio in continuously deferring the issuance of a writ of execution for the final and executory judgment in Criminal Case No. 2540.

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[18] *Id.* at 80-82.

[19] *Id.* at 82.

[20] *Id.* at 1-9.

In his Comment[21], Judge Patricio admitted postponing the resolution of Carbajosa's motion for the issuance of a writ of execution but he denied that he acted in bad faith and/or with partiality. He claimed that he was merely abiding by the endorsement made by the Chief Justice that the letter of accused Bieles be referred to the Third Division for action.

The administrative case was referred to the OCA for evaluation. In its Report[22] dated July 24, 2013, the OCA accorded merit to the complaint. The OCA found Judge Patricio guilty of gross ignorance of the law and recommended that he should be fined in the amount of ₱21,000.00.

We agree with the OCA's findings and recommendation.

Any delay in the full execution of a final and executory decision is repugnant to the ideal administration of justice. Hence the rule that once a judgment attains finality, it thereby becomes immutable and unalterable. The enforcement of such judgment should not be hampered or evaded; for the immediate enforcement of the parties' rights, confirmed by final judgment, is a major component of the ideal administration of justice.[23] Our penal laws and rules of procedure, in particular, enjoin that when the judgment of conviction is already final and executory its execution is ministerial.[24]

Respondent Judge Patricio, however, demonstrated ignorance of the above rule by repeatedly refusing to execute the final and executory judgment of conviction against Bieles.

The justification proffered by Judge Patricio is not well-taken. As correctly observed by the OCA, the Court's Resolution dated August 13, 2008 in G.R. No. 182956 affirming the conviction of Bieles and the Entry of Judgment dated January 15, 2009

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[21] *Id.* at 98-103.

[22] *Id.* at 109-114.

[23] *Pahila-Garrido v. Tortogo*, G.R. No. 156358, August 17, 2011, 655 SCRA 553, 558.

[24] *Bongcac v. Sandiganbayan*, G.R. Nos. 156687-88, May 21, 2009, 588 SCRA 64, 72.

evidently carried more legal and procedural significance and effect in Criminal Case No. 2540, as against the endorsement referring the letter of Bieles to the Third Division for Agenda. The endorsement did not result in a definite action on the part of the Court as it did not even remotely suggest that G.R. No. 182956 will be re-opened. Hence, there was absolutely no justifiable reason for Judge Patricio to rely on the latter and thereby thwart the basic rules on execution of judgment.

The rules on execution are comprehensive enough for a judge not to know how to apply them or to be confused by any auxiliary incidents. The issuance of a writ of execution for a final and executory judgment is ministerial. In other words, a judge is not given the discretion whether or not to implement the judgment. He is to effect execution without delay and supervise implementation strictly in accordance with the judgment. Judge Patricio's actuations unmistakably exhibit gross ignorance of the law.

Apropos are the following pronouncements in *Spouses Monterola v. Judge Caoibes, Jr.*[25] where the Court found a judge administratively liable for gross ignorance of the law when he unreasonably delayed and refused the issuance of a writ of execution for a final judgment, *viz*:

> Observance of the law, which respondent ought to know, is required of every judge. When the law is sufficiently basic, a judge owes it to his office to simply apply it; anything less than that is either deliberate disregard thereof or gross ignorance of the law. It is a continuing pressing responsibility of judges to keep abreast with the law and changes therein. Ignorance of the law, which everyone is bound to know, excuses no one— not even judges—from compliance therewith. We cannot expect a judge to deliberately disregard an unequivocal rule on execution and a doctrine laid down by the Supreme Court. Canon 4 of the Canons of Judicial Ethics requires that the judge should be studious of the principles of law. Canon 18 mandates that he should administer his office with due regard to the integrity of the system of the law itself, remembering that he is not a depository of arbitrary power, but a judge under the sanction of law. Indeed, it has been said that when the inefficiency springs from a failure to consider a basic and elemental rule, a law or

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[25] 429 Phil. 59 (2002).

principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and the title he holds or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority x x x.

While judges should not be disciplined for inefficiency on account merely of occasional mistakes or errors of judgments, it is highly imperative that they should be conversant with fundamental and basic legal principles in order to merit the confidence of the citizenry. Respondent Judge has shown lack of familiarity with our laws, rules and regulations as to undermine the public confidence in the integrity of the courts x x x.[26] (Citations omitted)

Under A.M. No. 01-8-10-SC or the Amendment to Rule 140 of the Rules of Court Re: Discipline of Justices and Judges, gross ignorance of the law is a serious charge, punishable by a fine of more than ₱20,000.00, but not exceeding ₱40,000.00, suspension from office without salary and other benefits for more than three (3) months but not exceeding six (6) months, or dismissal from the service. Based on the attendant circumstances of this case, a fine of ₱21,000.00 is the appropriate penalty.

WHEREFORE, premises considered, respondent Judge Hannibal R. Patricio, Presiding Judge, Municipal Circuit Trial Court, President Roxas-Pilar, President Roxas, Capiz is hereby **FOUND GUILTY** of Gross Ignorance of the Law and **FINED** in the amount of ₱21,000.00, with a stern **WARNING** that a repetition of the same will be dealt with more severely.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Perlas-Bernabe,[*] and *Leonen,*[**] *JJ.,* concur.

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

[*] Acting member per Special Order No. 1537 (Revised) dated September 6, 2013.

[**] Acting member per Special Order No. 1545 (Revised) dated September 16, 2013.

SECOND DIVISION

[G.R. No. 169234. October 2, 2013]

CAMP JOHN HAY DEVELOPMENT CORPORATION, *petitioner, vs.* **CENTRAL BOARD OF ASSESSMENT APPEALS, REPRESENTED BY ITS CHAIRMAN HON. CESAR S. GUTIERREZ, ADELINA A. TABANGIN, IN HER CAPACITY AS CHAIRMAN OF THE BOARD OF TAX (ASSESSMENT) APPEALS OF BAGUIO CITY, and HON. ESTRELLA B. TANO, IN HER CAPACITY AS THE CITY ASSESSOR OF THE CITY OF BAGUIO,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; LOCAL GOVERNMENT CODE OF 1991; ON REAL PROPERTY TAXES; PAYMENT UNDER PROTEST AND REMEDIES THEREFOR.—** Section 252 of RA No. 7160, also known as the Local Government Code (LGC) of 1991, categorically provides: SEC. 252. *Payment Under Protest.* – (a) **No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest." The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt**. x x x (d) **In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title Two, Book II of this Code**. Relevant thereto, the remedies referred to under Chapter 3, Title Two, Book II of RA No. 7160 or the LGC of 1991 are those provided for under Sections 226 to 231. Significant provisions pertaining to the procedural and substantive aspects of appeal before the Local Board of Assessment Appeals (LBAA) and Court Board of Assessment Appeals (CBAA), including its effect on the payment of real property taxes, follow: x x x [They] clearly sets forth the

administrative remedies available to a taxpayer or real property owner who does not agree with the assessment of the real property tax sought to be collected.

2. **STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; LITERAL APPLICATION WHERE THE LAW IS CLEAR AND PLAIN.—** The language of the law is clear. No interpretation is needed. The elementary rule in statutory construction is that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum*. From the words of a statute there should be no departure.

3. **POLITICAL LAW; LOCAL GOVERNMENT CODE OF 1991; ON REAL PROPERTY TAXES; PAYMENT UNDER PROTEST AND REMEDIES THEREFOR; PRIOR PAYMENT OF TAX REQUIRED BEFORE THE PROTEST WHICH SHOULD BE FILED WITH THE LBAA AND THEREAFTER WITH THE CBAA.—** Section 252 emphatically directs that the taxpayer/real property owner questioning the assessment should first pay the tax due before his protest can be entertained. As a matter of fact, the words "paid under protest" shall be annotated on the tax receipts. Consequently, only after such payment has been made by the taxpayer may he file a protest in writing (within thirty [30] days from said payment of tax) to the provincial, city, or municipal treasurer, who shall decide the protest within sixty (60) days from its receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid. Secondly, within the period prescribed by law, any owner or person having legal interest in the property not satisfied with the action of the provincial, city, or municipal assessor in the assessment of his property may file an appeal with the LBAA of the province or city concerned, as provided in Section 226 of RA No. 7160 or the LGC of 1991. Thereafter, within thirty (30) days from receipt, he may elevate, by filing a notice of appeal, the adverse decision of the LBAA with the CBAA, which exercises exclusive jurisdiction to hear and decide all appeals from the decisions, orders, and resolutions of the Local Boards involving contested assessments of real properties, claims for tax refund and/or tax credits, or overpayments of taxes. Significantly, in *Dr. Olivares v. Mayor Marquez,* this Court had

the occasion to extensively discuss the subject provisions of RA No. 7160 or the LGC of 1991, in relation to the impropriety of the direct recourse before the courts on issue of the correctness of assessment of real estate taxes.

4. **ID.; ID.; ID.; CLAIM FOR EXEMPTION; NOT A QUESTION OF THE ASSESSOR'S AUTHORITY TO ASSESS AND COLLECT TAX BUT PERTAINS TO THE REASONABLENESS OF THE ASSESSMENT.—** [A] claim for exemption from payment of real property taxes does not actually question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance, by the LBAA. This may be inferred from Section 206 of RA No. 7160 or the LGC of 1991which states that: SEC. 206. *Proof of Exemption of Real Property from Taxation.* - Every person by or for whom real property is declared, **who shall claim tax exemption for such property** under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents. **If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll**. In other words, by providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the above-quoted provision implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. Therefore, if the property being taxed has not been dropped from the assessment roll, taxes must be paid under protest if the exemption from taxation is insisted upon.

5. **ID.; ID.; ID.; FOR FAILURE TO DECLARE THE TRUE VALUE OF THE PROPERTY FOR TAXATION PURPOSES, THE ASSESSOR SHALL ASSESS AND DECLARE THE PROPERTY IN THE NAME OF THE DEFAULTING OWNER**

WHO IS OBLIGED TO PAY AND MAY THEREAFTER PROTEST THE SAME.— It is an accepted principle in taxation that taxes are paid by the person obliged to declare the same for taxation purposes. As discussed above, the duty to declare the true value of real property for taxation purposes is imposed upon the owner, or administrator, or their duly authorized representatives. They are thus considered the taxpayers. Hence, when these persons fail or refuse to make a declaration of the true value of their real property within the prescribed period, the provincial or city assessor shall declare the property in the name of the defaulting owner and assess the property for taxation. In this wise, the taxpayer assumes the character of a defaulting owner, or defaulting administrator, or defaulting authorized representative, liable to pay back taxes. For that reason, since petitioner herein is the declared owner of the subject buildings being assessed for real property tax, it is therefore presumed to be the person with the obligation to shoulder the burden of paying the subject tax in the present case; and accordingly, in questioning the reasonableness or correctness of the assessment of real property tax, petitioner is mandated by law to comply with the requirement of payment under protest of the tax assessed, particularly Section 252 of RA No. 7160 or the LGC of 1991.

6. **ID.; ID.; ID.; RIGHTS OF LOCAL GOVERNMENT UNITS TO COLLECT TAXES DUE, UPHELD; POWER OF COURTS TO IMPEACH TAX ASSESSMENT WITHOUT PRIOR PAYMENT, RESTRICTED.—** To reiterate, the restriction upon the power of courts to impeach tax assessment without a prior payment, under protest, of the taxes assessed is consistent with the doctrine that taxes are the lifeblood of the nation and as such their collection cannot be curtailed by injunction or any like action; otherwise, the state or, in this case, the local government unit, shall be crippled in dispensing the needed services to the people, and its machinery gravely disabled. The right of local government units to collect taxes due must always be upheld to avoid severe erosion. This consideration is consistent with the State policy to guarantee the autonomy of local governments and the objective of RA No. 7160 or the LGC of 1991 that they enjoy genuine and meaningful local autonomy to empower them to achieve their fullest development as self-reliant communities

and make them effective partners in the attainment of national goals.

7. **TAXATION; TAX EXEMPTIONS; STRICTLY CONSTRUED.—** Time and again, the Supreme Court has stated that taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and the entity that would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. Thus applying the rule of strict construction of laws granting tax exemptions, and the rule that doubts should be resolved in favor of provincial corporations, this Court holds that petitioner is considered a taxable entity in this case.

CARPIO, *J., concurring opinion:*

TAXATION; TAX EXEMPTION; JOHN HAY SPECIAL ECONOMIC ZONE (JHSEZ); GRANT BY PROCLAMATION NO. 420 OF TAX EXEMPTION AND OTHER PRIVILEGES TO JHSEZ IS VOID FOR BEING VIOLATIVE OF THE CONSTITUTION.— Republic Act No. 7227, the Bases Conversion and Development Act of 1992, was enacted on 13 March 1992. R.A. No. 7227 authorized the President to create through executive proclamation Special Economic Zones in various areas in the country, including Camp John Hay in Baguio City. President Fidel V. Ramos issued Proclamation No. 420, establishing the JHSEZ, on 5 July 1994. Section 3 of Proclamation No. 420 created a regime of tax exemption within the JHSEZ. x x x [However,] on 24 October 2003, this Court promulgated its decision in *John Hay Peoples Alternative Coalition v. Lim* (*John Hay*). We ruled against JHSEZ's tax exemptions, and declared that "under Section 12 of R.A. No. 7227 *it is only the Subic SEZ which was granted by Congress with tax exemption, investment incentives and the like*. There is no express extension of the aforesaid benefits to other SEZs *still to be created* at the time via presidential proclamation." The grant by Proclamation No. 420 of tax exemption and other privileges to JHSEZ is void for being violative of the Constitution: a law granting any tax exemption must have the concurrence of a majority of all the members of Congress, and cannot be granted by the Chief Executive alone. x x x Our decision in *John Hay* became final and executory and recorded in the Book of Entries of Judgments on 17 November 2005. x x x [Thus, because] the

tax exemption in Proclamation No. 420 was declared with finality as unconstitutional by this Court on 17 November 2005, CJHDC no longer had any legal basis for claiming tax exemption. CJHDC could then only question the correctness of the amount of the tax assessment, not the lack of legal authority by the City Assessor to impose or assess any realty tax on CJHDC. Payment under protest under Sections 231 and 252 of the Local Government Code thus applied to CJHDC as of 17 November 2005.

APPEARANCES OF COUNSEL

Rodrigo Berenguer & Guno for petitioner.
The Solicitor General for respondents.

D E C I S I O N

PEREZ, *J.*:

A claim for tax exemption, whether full or partial, does not deal with the authority of local assessor to assess real property tax. Such claim questions the correctness of the assessment and compliance with the applicable provisions of Republic Act (RA) No. 7160 or the Local Government Code (LGC) of 1991, particularly as to requirement of payment under protest, is mandatory.

Before the Court is a Petition for Review on *Certiorari* seeking to reverse and set aside the 27 July 2005 Decision[1] of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. E.B. No. 48 which affirmed the Resolutions dated 23 May 2003 and 8 September 2004 issued by the Central Board of Assessment Appeals (CBAA) in CBAA Case No. L-37 remanding the case to the Local Board of Assessment Appeals (LBAA) of Baguio City for further proceedings.

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[1] *Rollo*, pp. 47-57; Penned by Presiding Justice Ernesto D. Acosta with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez concurring.

The Facts

The factual antecedents of the case as found by the CTA *En Banc* are as follows:

In a letter dated 21 March 2002, respondent City Assessor of Baguio City notified petitioner Camp John Hay Development Corporation about the issuance against it of thirty-six (36) Owner's Copy of Assessment of Real Property (ARP), with ARP Nos. 01-07040-008887 to 01-07040-008922 covering various buildings of petitioner and two (2) parcels of land owned by the Bases Conversion Development Authority (BCDA) in the John Hay Special Economic Zone (JHSEZ), Baguio City, which were leased out to petitioner.

In response, petitioner questioned the assessments in a letter dated 3 April 2002 for lack of legal basis due to the City Assessor's failure to identify the specific properties and its corresponding assessed values. The City Assessor replied in a letter dated 11 April 2002 that the subject ARPs (with an additional ARP on another building bringing the total number of ARPs to thirty-seven [37]) against the buildings of petitioner located within the JHSEZ were issued on the basis of the approved building permits obtained from the City Engineer's Office of Baguio City and pursuant to Sections 201 to 206 of RA No. 7160 or the LGC of 1991.

Consequently, on 23 May 2002, petitioner filed with the Board of Tax Assessment Appeals (BTAA) of Baguio City an appeal under Section 226[2] of the LGC of 1991 challenging the validity

[2] SEC. 226. *Local Board of Assessment Appeals.* — Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

and propriety of the issuances of the City Assessor. The appeal was docketed as Tax Appeal Case No. 2002-003. Petitioner claimed that there was no legal basis for the issuance of the assessments because it was allegedly exempted from paying taxes, national and local, including real property taxes, pursuant to RA No. 7227, otherwise known as the Bases Conversion and Development Act of 1992.[3]

The Ruling of the BTAA

In a Resolution dated 12 July 2002,[4] the BTAA cited Section 7,[5] Rule V of the Rules of Procedure Before the LBAA, and enjoined petitioner to first comply therewith, particularly as to the payment under protest of the subject real property taxes

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[3] An Act Accelerating the Conversion of Military Reservations Into Other Productive Uses, Creating the Bases Conversion and Development Authority for this Purpose, Providing Funds Therefor and for Other Purposes.

[4] *Rollo*, pp. 100-101.

[5] Section 7. *Effect of Appeal on Collection of Taxes.* – An appeal shall not suspend the collection of the corresponding realty taxes on the real property subject of the appeal as assessed by the provincial, city or municipal assessor, without prejudice to subsequent adjustment depending upon the outcome of the appeal. An appeal may be entertained <u>but the hearing thereof shall be deferred until the corresponding taxes due on the real property subject of the appeal shall have been paid under protest or the petitioner shall have given a surety bond</u>, subject to the following conditions:

(1) The amount of the bond must not be less than the total realty taxes and penalties due as assessed by the assessor nor more than double said amount;

(2) The bond must be accompanied by a certification from the Insurance Commissioner (a) that the surety company is duly authorized to issue such bond; (b) that the surety bond is approved by and registered with said Commission; and (c) that the amount covered by the surety bond is within the writing capacity of the surety company; and

(3) The amount of the bond in excess of the surety company's writing capacity, if any, must be covered by Reinsurance Binder, in which case, a certification to this effect must likewise accompany the surety bond. (Underlining supplied)

before the hearing of its appeal. Subsequently, the BTAA dismissed petitioner's Motion for Reconsideration in the 20 September 2002 Resolution[6] for lack of merit.

Aggrieved, petitioner elevated the case before the CBAA through a Memorandum on Appeal docketed as CBAA Case No. L-37.

The Ruling of the CBAA

The CBAA denied petitioner's appeal in a Resolution dated 23 May 2003,[7] set aside the BTAA's order of deferment of hearing, and remanded the case to the LBAA of Baguio City for further proceedings subject to a full and up-to-date payment of the realty taxes on subject properties as assessed by the respondent City Assessor of Baguio City, either in cash or in bond.

Citing various cases it previously decided,[8] the CBAA explained that the deferment of hearings by the LBAA was merely in compliance with the mandate of the law. The governing provision in this case is Section 231, not Section 226, of RA No. 7160 which provides that "[a]ppeal on assessments of real property made under the provisions of this Code shall, in no case, suspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor, without prejudice to subsequent adjustment depending upon the final outcome of the appeal." In addition, as to the issue raised pertaining to the propriety of the subject assessments issued against petitioner, allegedly claimed to be a tax-exempt

[6] *Rollo*, p. 114.

[7] CTA *En Banc rollo*, pp. 30-35.

[8] *Manila Electric Company v. The Provincial Assessor of Batangas and the Provincial Board of Assessment Appeals of Batangas*, CBAA Case No. 10, 6 June 1975; *Fortune Cement Corporation v. The Board of Assessment Appeals of Batangas Province and the Provincial Assessor of Batangas*, CBAA Case No. 69, 6 July 1976; *Maxon Systems (Phils.), Inc. v. Board of Assessment Appeals of the Province of Cavite, et al.*, CBAA Case No. L-05, 15 August 1994.

entity, the CBAA expressed that it has yet to acquire jurisdiction over it since the same has not been resolved by the LBAA.

On 8 September 2004, the CBAA denied petitioner's Motion for Reconsideration for lack of merit.[9]

Undaunted by the pronouncements in the abovementioned Resolutions, petitioner appealed to the CTA *En Banc* by filing a Petition for Review under Section 11 of RA No. 1125, as amended by Section 9 of RA No. 9282, on 24 November 2004, docketed as C.T.A. EB No. 48, and raised the following issues for its consideration: (1) whether or not respondent City Assessor of the City of Baguio has legal basis to issue against petitioner the subject assessments with serial nos. 01-07040-008887 to 01-07040-008922 for real property taxation of the buildings of the petitioner, a tax-exempt entity, or land owned by the BCDA under lease to the petitioner; and (2) whether or not the CBAA, in its Resolutions dated 23 May 2003 and 8 September 2004, has legal basis to order the remand of the case to the LBAA of Baguio City for further proceedings subject to a full and up-to-date payment, in cash or bond, of the realty taxes on the subject properties as assessed by the City Assessor of the City of Baguio.[10]

The Ruling of the CTA En Banc

In the assailed Decision dated 27 July 2005,[11] the CTA *En Banc* found that petitioner has indeed failed to comply with Section 252 of RA No. 7160 or the LGC of 1991. Hence, it dismissed the petition and affirmed the subject Resolutions of the CBAA which remanded the case to the LBAA for further proceedings subject to compliance with said Section, in relation to Section 7, Rule V of the Rules of Procedure before the LBAA.

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[9] *Rollo*, pp. 155-157.

[10] *Id.* at 51.

[11] *Id.* at 47-57.

Moreover, adopting the CBAA's position, the court *a quo* ruled that it could not resolve the issue on whether petitioner is liable to pay real property tax or whether it is indeed a tax-exempt entity considering that the LBAA has not decided the case on the merits. To do otherwise would not only be procedurally wrong but legally wrong. It therefore concluded that before a protest may be entertained, the tax should have been paid first without prejudice to subsequent adjustment depending upon the final outcome of the appeal and that the tax or portion thereof paid under protest, shall be held in trust by the treasurer concerned.

Consequently, this Petition for Review wherein petitioner on the ground of lack of legal basis seeks to set aside the 27 July 2005 Decision, and to nullify the assessments of real property tax issued against it by respondent City Assessor of Baguio City.[12]

The Issue

The issue before the Court is whether or not respondent CTA *En Banc* erred in dismissing for lack of merit the petition in C.T.A. EB No. 48, and accordingly affirmed the order of the CBAA to remand the case to the LBAA of Baguio City for further proceedings subject to a full and up-to-date payment of realty taxes, either in cash or in bond, on the subject properties assessed by the City Assessor of Baguio City.

In support of the present petition, petitioner posits the following grounds: (a) Section 225 (should be Section 252) of RA No. 7160 or the LGC of 1991 does not apply when the person assessed is a tax-exempt entity; and (b) Under the doctrine of operative fact, petitioner is not liable for the payment of the real property taxes subject of this petition.[13]

Our Ruling

The Court finds the petition unmeritorious and therefore rules against petitioner.

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[12] *Id.* at 42.

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

Section 252 of RA No. 7160, also known as the LGC of 1991,[14] categorically provides:

SEC. 252. *Payment Under Protest.* – (a) **No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest." The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt**.

(b) The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.

(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.

(d) **In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title Two, Book II of this Code**. (Emphasis and underlining supplied)

Relevant thereto, the remedies referred to under Chapter 3, Title Two, Book II of RA No. 7160 or the LGC of 1991 are those provided for under Sections 226 to 231. Significant provisions pertaining to the procedural and substantive aspects of appeal before the LBAA and CBAA, including its effect on the payment of real property taxes, follow:

SEC. 226. *Local Board of Assessment Appeals.* – **Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose**, together with

[14] RA No. 7160, which took effect on 1 January 1992, repealed Presidential Decree No. 464 or the Real Property Tax Code (RPTC), as provided in Section 534 denominated as "*Repealing Clause.*"

copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

SEC. 229. *Action by the Local Board of Assessment Appeals.* – (a) The Board shall decide the appeal within one hundred twenty (120) days from the date of receipt of such appeal. The Board, after hearing, shall render its decision based on substantial evidence or such relevant evidence on record as a reasonable mind might accept as adequate to support the conclusion.

(b) In the exercise of its appellate jurisdiction, the Board shall have the powers to summon witnesses, administer oaths, conduct ocular inspection, take depositions, and issue *subpoena* and *subpoena duces tecum*. The proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts without necessarily adhering to technical rules applicable in judicial proceedings.

(c) The secretary of the Board shall furnish the owner of the property or the person having legal interest therein and the provincial or city assessor with a copy of the decision of the Board. In case the provincial or city assessor concurs in the revision or the assessment, it shall be his duty to notify the owner of the property or the person having legal interest therein of such fact using the form prescribed for the purpose. **The owner of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Board may, within thirty (30) days after receipt of the decision of said Board, appeal to the Central Board of Assessment Appeals, as herein provided. The decision of the Central Board shall be final and executory**.

SEC. 231. *Effect of Appeal on the Payment of Real Property Tax.* – **Appeal on assessments of real property made under the provisions of this Code shall, in no case, suspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor, without prejudice to subsequent adjustment depending upon the final outcome of the appeal**. (Emphasis supplied)

The above-quoted provisions of RA No. 7160 or the LGC of 1991, clearly sets forth the administrative remedies available to a taxpayer or real property owner who does not agree with the assessment of the real property tax sought to be collected.

The language of the law is clear. No interpretation is needed. The elementary rule in statutory construction is that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum*. From the words of a statute there should be no departure.[15]

To begin with, Section 252 emphatically directs that the taxpayer/real property owner questioning the assessment should first pay the tax due before his protest can be entertained. As a matter of fact, the words "paid under protest" shall be annotated on the tax receipts. Consequently, only after such payment has been made by the taxpayer may he file a protest in writing (within thirty [30] days from said payment of tax) to the provincial, city, or municipal treasurer, who shall decide the protest within sixty (60) days from its receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid.

Secondly, within the period prescribed by law, any owner or person having legal interest in the property not satisfied with the action of the provincial, city, or municipal assessor in the assessment of his property may file an appeal with the LBAA of the province or city concerned, as provided in Section 226 of RA No. 7160 or the LGC of 1991. Thereafter, within thirty (30) days from receipt, he may elevate, by filing a notice of appeal, the adverse decision of the LBAA with the CBAA, which exercises exclusive jurisdiction to hear and decide all appeals from the decisions, orders, and resolutions of the Local Boards involving contested assessments of real properties, claims for tax refund and/or tax credits, or overpayments of taxes.[16]

Significantly, in *Dr. Olivares v. Mayor Marquez,*[17] this Court had the occasion to extensively discuss the subject provisions

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[15] *Agpalo*, Statutory Construction, p. 95.

[16] Rule III, Section 1, Rules of Procedure of the Central Board of Assessment Appeals.

[17] 482 Phil. 183 (2004). Also cited in the case of *National Power*

of RA No. 7160 or the LGC of 1991, in relation to the impropriety of the direct recourse before the courts on issue of the correctness of assessment of real estate taxes. The pertinent articulations follow:

x x x A perusal of the petition before the RTC plainly shows that **what is actually being assailed is the correctness of the assessments made by the local assessor** of Parañaque on petitioners' properties. **The allegations in the said petition purportedly questioning the assessor's authority to assess and collect the taxes were obviously made in order to justify the filing of the petition with the RTC. In fact, there is nothing in the said petition that supports their claim regarding the assessor's alleged lack of authority. What petitioners raise are the following:** (1) some of the taxes being collected have already prescribed and may no longer be collected as provided in Section 194 of the Local Government Code of 1991; (2) some properties have been doubly taxed/assessed; (3) some properties being taxed are no longer existent; **(4) some properties are exempt from taxation as they are being used exclusively for educational purposes;** and (5) some errors are made in the assessment and collection of taxes due on petitioners' properties, and that respondents committed grave abuse of discretion in making the "improper, excessive and unlawful the collection of taxes against the petitioner[s]." **Moreover, these arguments essentially involve questions of fact. Hence, the petition should have been brought, at the very first instance, to the LBAA**.

Under the doctrine of primacy of administrative remedies, an error in the assessment must be administratively pursued to the exclusion of ordinary courts whose decisions would be void for lack of jurisdiction. But an appeal shall not suspend the collection of the tax assessed without prejudice to a later adjustment pending the outcome of the appeal.

Even assuming that the assessor's authority is indeed an issue, it must be pointed out that in order for the court *a quo* to resolve

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Corporation v. Province of Quezon and Municipality of Pagbilao, G.R. No. 171586, Resolution dated 25 January 2010, 611 SCRA 71, 94 wherein the Court ruled that: "[l]ike Olivarez, Napocor, by claiming exemption from realty taxation, is simply raising a question of the correctness of the assessment. A claim for tax exemption, whether full or partial, does not question the authority of local assessor to assess real property tax." (Emphasis omitted).

the petition, the issues of the correctness of the tax assessment and collection must also necessarily be dealt with.

x x x x

In the present case, the authority of the assessor is not being questioned. Despite petitioners' protestations, the petition filed before the court *a quo* primarily involves the correctness of the assessments, which are questions of fact, that are not allowed in a petition for *certiorari*, prohibition and *mandamus*. The court *a quo* is therefore precluded from entertaining the petition, and it appropriately dismissed the petition.[18] (Emphasis and underlining supplied)

By analogy, the rationale of the mandatory compliance with the requirement of "payment under protest" similarly provided under Section 64 of the Real Property Tax Code (RPTC)[19] was earlier emphasized in *Meralco v. Barlis*,[20] wherein the Court held:

We find the petitioner's arguments to be without merit. The trial court has no jurisdiction to entertain a Petition for Prohibition absent petitioner's payment under protest, of the tax assessed as required by Sec. 64 of the RPTC. **Payment of the tax assessed under protest, is a condition *sine qua non* before the trial court could assume jurisdiction over the petition and failure to do so, the RTC has no jurisdiction to entertain it.**

The restriction upon the power of courts to impeach tax assessment without a prior payment, under protest, of the taxes assessed is consistent with the doctrine that taxes are the lifeblood of the nation and as such their collection cannot be curtailed by injunction or any like action; otherwise, the state or, in this case, the local government unit, shall be crippled in dispensing the needed services to the people, and its machinery gravely disabled.

x x x

[18] *Id.* at 191-192.

[19] Presidential Decree No. 464 was repealed by RA No. 7160 on 1 January 1992, as provided under Section 534(c) thereof which states: "The provisions of x x x Presidential Decree Nos. 381, 436, **464**, 477, 526, 632, 752 and 1136 are hereby repealed and rendered of no force and effect."

[20] 410 Phil. 167, 176-181 (2001).

There is no merit in petitioner's argument that the trial court could take cognizance of the petition as it only questions the validity of the issuance of the warrants of garnishment on its bank deposits and not the tax assessment. Petitioner MERALCO in filing the Petition for Prohibition before the RTC was in truth assailing the validity of the tax assessment and collection. To resolve the petition, it would not only be the question of validity of the warrants of garnishments that would have to be tackled, but in addition the issues of tax assessment and collection would necessarily have to be dealt with too. As the warrants of garnishment were issued to collect back taxes from petitioner, the petition for prohibition would be for no other reason than to forestall the collection of back taxes on the basis of tax assessment arguments. **This, petitioner cannot do without first resorting to the proper administrative remedies, or as previously discussed, <u>by paying under protest the tax assessed</u>, to allow the court to assume jurisdiction over the petition.**

x x x

It cannot be gainsaid that petitioner should have addressed its arguments to respondent at the first opportunity - upon receipt of the 3 September 1986 notices of assessment signed by Municipal Treasurer Norberto A. San Mateo. Thereafter, it should have availed of the proper administrative remedies in protesting an erroneous tax assessment, *i.e.,* to question the correctness of the assessments before the Local Board of Assessment Appeals (LBAA), and later, invoke the appellate jurisdiction of the Central Board of Assessment Appeals (CBAA). Under the doctrine of primacy of administrative remedies, an error in the assessment must be administratively pursued to the exclusion of ordinary courts whose decisions would be void for lack of jurisdiction. But an appeal shall not suspend the collection of the tax assessed without prejudice to a later adjustment pending the outcome of the appeal. The failure to appeal within the statutory period shall render the assessment final and unappealable. **Petitioner having failed to exhaust the administrative remedies available to it, the assessment attained finality and collection would be in order**. (Emphasis and underscoring supplied)

From the foregoing jurisprudential pronouncements, it is clear that the requirement of "payment under protest" is a condition *sine qua non* before a protest or an appeal questioning the correctness of an assessment of real property tax may be entertained.

Moreover, a claim for exemption from payment of real property taxes does not actually question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance, by the LBAA. This may be inferred from Section 206 of RA No. 7160 or the LGC of 1991which states that:

SEC. 206. *Proof of Exemption of Real Property from Taxation.* — Every person by or for whom real property is declared, **who shall claim tax exemption for such property** under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents.

If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll. (Emphasis supplied)

In other words, by providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the above-quoted provision implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim.[21]

Therefore, if the property being taxed has not been dropped from the assessment roll, taxes must be paid under protest if the exemption from taxation is insisted upon.

In the case at bench, records reveal that when petitioner received the letter dated 21 March 2002 issued by respondent City Assessor, including copies of ARPs (with ARP Nos. 01-07040-008887 to 01-07040-008922) attached thereto, it filed

[21] See *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*, G.R. No. 171586, Resolution dated 25 January 2010, 611 SCRA 71, 94.

its protest through a letter dated 3 April 2002 seeking clarification as to the legal basis of said assessments, without payment of the assessed real property taxes. Afterwards, respondent City Assessor replied thereto in a letter dated 11 April 2002 which explained the legal basis of the subject assessments and even included an additional ARP against another real property of petitioner. Subsequently, petitioner then filed before the BTAA its appeal questioning the validity and propriety of the subject ARPs.

Clearly from the foregoing factual backdrop, petitioner considered the 11 April 2002 letter as the "action" referred to in Section 226 which speaks of the local assessor's act of denying the protest filed pursuant to Section 252. However, applying the above-cited jurisprudence in the present case, it is evident that petitioner's failure to comply with the mandatory requirement of payment under protest in accordance with Section 252 of the LGC of 1991 was fatal to its appeal. Notwithstanding such failure to comply therewith, the BTAA elected not to immediately dismiss the case but instead took cognizance of petitioner's appeal subject to the condition that payment of the real property tax should first be made before proceeding with the hearing of its appeal, as provided for under Section 7, Rule V of the Rules of Procedure Before the LBAA. Hence, the BTAA simply recognized the importance of the requirement of "payment under protest" before an appeal may be entertained, pursuant to Section 252, and in relation with Section 231 of the same Code as to non-suspension of collection of the realty tax pending appeal.

Notably, in its feeble attempt to justify non-compliance with the provision of Section 252, petitioner contends that the requirement of paying the tax under protest is not applicable when the person being assessed is a tax-exempt entity, and thus could not be deemed a "taxpayer" within the meaning of the law. In support thereto, petitioner alleges that it is exempted from paying taxes, including real property taxes, since it is entitled to the tax incentives and exemptions under the provisions of RA No. 7227 and Presidential Proclamation No. 420, Series of

1994,[22] as stated in and confirmed by the lease agreement it entered into with the BCDA.[23]

This Court is not persuaded.

First, Section 206 of RA No. 7160 or the LGC of 1991, as quoted earlier, categorically provides that **every person by or for whom real property is declared, who shall claim exemption from payment of real property taxes imposed against said property**, shall file with the provincial, city or municipal assessor sufficient documentary evidence in support of such claim. Clearly, the burden of proving exemption from local taxation is upon whom the subject real property is declared; thus, said person shall be considered by law as the taxpayer thereof. Failure to do so, said property shall be listed as taxable in the assessment roll.

In the present case, records show that respondent City Assessor of Baguio City notified petitioner, in the letters dated 21 March 2002[24] and 11 April 2002,[25] about the subject ARPs covering various buildings owned by petitioner and parcels of land (leased out to petitioner) all located within the JHSEZ,

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[22] Creating and Designating a Portion of the Area Covered by the Former Camp John Hay as the John Hay Special Economic Zone Pursuant to Republic Act No. 7227.

[23] *Rollo*, pp. 38-39; Petition for Review on *Certiorari*, par. 45, which allegedly provides as follows:

"Section 18. Percentage to the National Treasury – Pursuant to R.A. 7227, Section 12(c), **in lieu of paying taxes**, five percent (5%) of the Gross Income Earned by the LESSEE shall within ninety (90) days from the close of the calendar year, be paid and remitted to the following through the JPDC:

3% the National Treasury

1% the local government

1% a development fund

Total 5%"

[24] *Id.* at 59; Annex "C", of the Petition for Review on *Certiorari*.

[25] *Id.* at 61-64; Annex "E", of the Petition for Review on *Certiorari*.

Baguio City. The subject letters expressed that the assessments were based on the approved building permits obtained from the City Engineer's Office of Baguio City and pursuant to Sections 201 to 206 of RA No. 7160 or the LGC of 1991 which pertains to whom the subject real properties were declared.

Noticeably, these factual allegations were neither contested nor denied by petitioner. As a matter of fact, it expressly admitted ownership of the various buildings subject of the assessment and thereafter focused on the argument of its exemption under RA No. 7227. But petitioner did not present any documentary evidence to establish that the subject properties being tax exempt have already been dropped from the assessment roll, in accordance with Section 206. Consequently, the City Assessor acted in accordance with her mandate and in the regular performance of her official function when the subject ARPs were issued against petitioner herein, **being the owner of the buildings**, and therefore considered as the person with the obligation to shoulder tax liability thereof, if any, as contemplated by law.

It is an accepted principle in taxation that taxes are paid by the person obliged to declare the same for taxation purposes. As discussed above, the duty to declare the true value of real property for taxation purposes is imposed upon the owner, or administrator, or their duly authorized representatives. They are thus considered the taxpayers. Hence, when these persons fail or refuse to make a declaration of the true value of their real property within the prescribed period, the provincial or city assessor shall declare the property in the name of the defaulting owner and assess the property for taxation. In this wise, the taxpayer assumes the character of a defaulting owner, or defaulting administrator, or defaulting authorized representative, liable to pay back taxes. For that reason, since petitioner herein is the declared owner of the subject buildings being assessed for real property tax, it is therefore presumed to be the person with the obligation to shoulder the burden of paying the subject tax in the present case; and accordingly, in questioning the reasonableness or correctness of the assessment of real property tax, petitioner is mandated by law to comply with the requirement

of payment under protest of the tax assessed, particularly Section 252 of RA No. 7160 or the LGC of 1991.

Time and again, the Supreme Court has stated that taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and the entity that would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.[26] Thus applying the rule of strict construction of laws granting tax exemptions, and the rule that doubts should be resolved in favor of provincial corporations, this Court holds that petitioner is considered a taxable entity in this case.

Second, considering that petitioner is deemed a taxpayer within the meaning of law, the issue on whether or not it is entitled to exemption from paying taxes, national and local, including real property taxes, is a matter which would be better resolved, at the very instance, before the LBAA, for the following grounds: (a) petitioner's reliance on its entitlement for exemption under the provisions of RA No. 7227 and Presidential Proclamation No. 420, was allegedly confirmed by Section 18,[27] Article XVI of the Lease Agreement dated 19 October 1996 it entered with the BCDA. However, it appears from the records that said Lease Agreement has yet to be presented nor formally offered before any administrative or judicial body for scrutiny; (b) the subject provision of the Lease Agreement declared a condition that in order to be allegedly exempted from the payment of taxes, petitioner should have first paid and remitted 5% of the gross income earned by it within ninety (90) days from the close of the calendar year through the JPDC. Unfortunately, petitioner has neither established nor presented any evidence to show that it has indeed paid and

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[26] *FELS Energy, Inc. v. Province of Batangas, et al.* 16 February 2007, 516 SCRA 186, 207 citing *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*, G.R. No. 140230, 15 December 2005, 478 SCRA 61, 74 and *Republic v. City of Kidapawan*, G.R. No. 166651, 9 December 2005, 477 SCRA 324, 335.

[27] *Rollo,* pp. 38-39.

remitted 5% of said gross income tax; (c) the right to appeal is a privilege of statutory origin, meaning a right granted only by the law, and not a constitutional right, natural or inherent. Therefore, it follows that petitioner may avail of such opportunity only upon strict compliance with the procedures and rules prescribed by the law itself, *i.e.* RA No. 7160 or the LGC of 1991; and (d) at any rate, petitioner's position of exemption is weakened by its own admission and recognition of this Court's previous ruling that the tax incentives granted in RA No. 7227 are exclusive only to the Subic Special Economic [and Free Port] Zone; and thus, the extension of the same to the JHSEZ (as provided in the second sentence of Section 3 of Presidential Proclamation No. 420)[28] finds no support therein and therefore declared null and void and of no legal force and effect.[29] Hence, petitioner needs more than mere arguments and/or allegations contained in its pleadings to establish and prove its exemption, making prior proceedings before the LBAA a necessity.

With the above-enumerated reasons, it is obvious that in order for a complete determination of petitioner's alleged exemption from payment of real property tax under RA No. 7160 or the LGC of 1991, there are factual issues needed to be confirmed. Hence, being a question of fact, petitioner cannot do without first resorting to the proper administrative remedies, or as previously discussed, by paying under protest the tax assessed in compliance with Section 252 thereof.

Accordingly, the CBAA and the CTA *En Banc* correctly ruled that real property taxes should first be paid before any protest thereon may be considered. It is without a doubt that such requirement

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[28] The second sentence of Section 3 of Proclamation No. 420, which was declared as null and void by this Court, provides as follows: "x x x Among others, the zone (referring to JHSEZ) shall have all the applicable incentives of the Special Economic Zone under Section 12 of R.A. No. 7227 and those applicable incentives granted in the Export Processing Zones, the Omnibus Investment Code of 1987, the Foreign Investment Act of 1991, and new investment laws that may hereinafter be enacted."

[29] See *John Hay Peoples Alternative Coalition v. Lim,* 460 Phil. 530, 554 (2003).

of "payment under protest" is a condition *sine qua non* before an appeal may be entertained. Thus, remanding the case to the LBAA for further proceedings subject to a full and up-to-date payment, either in cash or surety, of realty tax on the subject properties was proper.

To reiterate, the restriction upon the power of courts to impeach tax assessment without a prior payment, under protest, of the taxes assessed is consistent with the doctrine that taxes are the lifeblood of the nation and as such their collection cannot be curtailed by injunction or any like action; otherwise, the state or, in this case, the local government unit, shall be crippled in dispensing the needed services to the people, and its machinery gravely disabled.[30] The right of local government units to collect taxes due must always be upheld to avoid severe erosion. This consideration is consistent with the State policy to guarantee the autonomy of local governments and the objective of RA No. 7160 or the LGC of 1991 that they enjoy genuine and meaningful local autonomy to empower them to achieve their fullest development as self-reliant communities and make them effective partners in the attainment of national goals.[31]

All told, We go back to what was at the outset stated, that is, that a claim for tax exemption, whether full or partial, does not question the authority of local assessor to assess real property tax, but merely raises a question of the reasonableness or correctness of such assessment, which requires compliance with Section 252 of the LGC of 1991. Such argument which may involve a question of fact should be resolved at the first instance by the LBAA.

The CTA *En Banc* was correct in dismissing the petition in C.T.A. EB No. 48, and affirming the CBAA's position that it cannot delve on the issue of petitioner's alleged non-taxability on the ground of exemption since the LBAA has not decided the case on the merits. This is in compliance with the procedural steps prescribed in the law.

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[30] *Meralco v. Barlis, supra* note 20 at 176-177.

[31] *FELS Energy, Inc. v. Province of Batangas, supra* note 26 at 208 citing CONSTITUTION, Section 25, Article II and Section 2, Article X, and RA No. 7160, Section 2(a).

WHEREFORE, the petition is **DENIED** for lack of merit. The Decision of the Court of Tax Appeals *En Banc* in C.T.A. EB No. 48 is **AFFIRMED**. The case is remanded to the Local Board of Assessment Appeals of Baguio City for further proceedings. No costs.

SO ORDERED.

Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

Carpio, J. (Chairperson), see concurring opinion.

CONCURRING OPINION

CARPIO, *J.*:

I join Justice Jose P. Perez in his denial of Camp John Hay Development Corporation's (CJHDC) petition. There is no merit in CJHDC's present petition because John Hay Special Economic Zone (JHSEZ) is not tax-exempt. Any tax protest filed by CJHDC, therefore, can only refer to the correctness of the amount of the assessment, in which case CJHDC must pay the assessed tax under protest as a condition for contesting the assessment.

A restatement of the facts is necessary to establish context.

Republic Act No. 7227, the Bases Conversion and Development Act of 1992, was enacted on 13 March 1992. R.A. No. 7227 authorized the President to create through executive proclamation Special Economic Zones in various areas in the country, including Camp John Hay in Baguio City. President Fidel V. Ramos issued Proclamation No. 420, establishing the JHSEZ, on 5 July 1994. Section 3 of Proclamation No. 420 created a regime of tax exemption within the JHSEZ.

Sec. 3. *Investment Climate in John Hay Special Economic Zone.* – Pursuant to Section 5(m) and Section 15 of Republic Act No. 7227, the John Hay Poro Point Development Corporation shall implement all necessary policies, rules and regulations governing the zone, including investment incentives, in consultation with pertinent government departments. Among others, the zone shall have all the applicable

incentives of the Special Economic Zone under Section 12 of Republic Act No. 7227 and those applicable incentives granted in the Export Processing Zones, the Omnibus Investment Code of 1987, the Foreign Investment Act of 1991, and new investment laws that may hereinafter be enacted.

CJHDC entered into a Lease Agreement with Bases Conversion Development Authority (BCDA) on 19 October 1996 for the development of JHSEZ. On 21 March 2002, the City Assessor of Baguio City issued notices of assessment to CJHDC on the properties that it leased from BCDA. In Case No. 2002-003, CJHDC questioned the assessments before the Board of Tax Assessment Appeals of Baguio City (BTAA-Baguio), and stated that it was exempted from paying taxes pursuant to Section 12(c) of R.A. No. 7227[1] and Section 3 of Proclamation No. 420.

BTAA-Baguio, in its Resolution dated 12 July 2002, directed CJHDC to comply with Section 7, Rule V of the Rules of Procedure of the Local Board of Assessment Appeals (LBAA), which entails payment of the assessed tax under protest or the issuance of a

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[1] Sec. 12. *Subic Special Economic Zone*. – x x x

(c) The provisions of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the Subic Special Economic Zone. In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone shall be remitted to the National Government, one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone to be utilized for the development of municipalities outside the City of Olongapo and Municipality of Subic, and other municipalities contiguous to the base areas.

In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter.

surety bond.[2] BTAA-Baguio dismissed for lack of merit CJHDC's motion for reconsideration in its Resolution dated 20 September 2002.

CJHDC's appeal to the Central Board of Assessment Appeals (CBAA) on 30 October 2002, docketed as Case No. L-37, resulted in a 23 May 2003 Resolution which set aside the resolution of BTAA-Baguio and remanded the case to the LBAA for further proceedings subject to a full and up-to-date payment of realty taxes on the leased properties as assessed by the City Assessor of Baguio City. The CBAA denied CJHDC's motion for reconsideration on 8 September 2004.

In the meantime, on 24 October 2003, this Court promulgated its decision in *John Hay Peoples Alternative Coalition v. Lim*[3] (*John Hay*). We ruled against JHSEZ's tax exemptions, and declared that "under Section 12 of R.A. No. 7227 *it is only the Subic SEZ*

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[2] Sec. 7. *Effect of Appeal on Collection of Taxes*. – An appeal shall not suspend the collection of the corresponding realty taxes on the real property subject of the appeal as assessed by the provincial, city or municipal assessor, without prejudice to subsequent adjustment depending upon the outcome of the appeal. An appeal may be entertained but the hearing thereof shall be deferred until the corresponding taxes due on the real property subject of the appeal shall have been paid under protest or the petitioner shall have given a surety bond, subject to the following conditions:

(1) the amount of the bond must not be less than the total realty taxes and penalties due as assessed by the assessor nor more than double said amount;

(2) the bond must be accompanied by a certification from the Insurance Commissioner (a) that the surety company is duly authorized to issue such bond; (b) that the surety bond is approved by and registered with said Commission; and (c) that the amount covered by the surety bond is within the writing capacity of the surety company; and

(3) the amount of the bond in excess of the surety company's writing capacity, if any, must be covered by Reinsurance Binder, in which case, a certification to this effect must likewise accompany the surety bond.

[3] G.R. No. 119775, 460 Phil. 530, decision promulgated on 24 October 2003; unsigned resolution promulgated on 29 March 2005; Entry of Judgment made on 17 November 2005.

which was granted by Congress with tax exemption, investment incentives and the like. There is no express extension of the aforesaid benefits to other SEZs *still to be created* at the time *via* presidential proclamation."[4] The grant by Proclamation No. 420 of tax exemption and other privileges to JHSEZ is void for being violative of the Constitution:[5] a law granting any tax exemption must have the concurrence of a majority of all the members of Congress, and cannot be granted by the Chief Executive alone.

On 5 March 2004, CJHDC filed a Motion for Leave to Intervene in *John Hay*, "alleging that it, together with its consortium partners Fil-Estate Management, Inc. and Penta Capital Investment Corporation, entered into a Lease Agreement dated October 19, 1996 with respondent BCDA for the development of the John Hay SEZ; and that it 'stands to be most affected' by this Court's Decision 'invalidating the grant of tax exemption and other financial incentives' in the John Hay SEZ since '[i]ts financial obligations and development and investment commitments under the Lease Agreement were entered into upon the premise that these incentives are valid and subsisting."[6] In an Order dated 25 May 2004, this Court granted CJHDC's Motion for Leave to Intervene and noted its Motion for Reconsideration in Intervention.

In an unsigned Resolution dated 29 March 2005, this Court denied with finality the motions for reconsideration filed in *John Hay*, including that of CJHDC. Our decision in *John Hay* became final and executory and recorded in the Book of Entries of Judgments on 17 November 2005.

While CJHDC's Motion for Leave to Intervene in *John Hay* was pending, it filed on 24 November 2004 a Petition for Review, docketed as C.T.A. E.B. No. 48, before the Court of Tax Appeals (CTA). CJHDC sought to nullify the assessments for

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[4] *Id.* at 549. Italicization in the original.

[5] Section 28(4), Art. VI of the Constitution provides that "[n]o law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of the Congress."

[6] G.R. No. 119775, Unsigned Resolution, 29 March 2005, p. 7.

real property taxation and to set aside the resolutions of the CBAA.

The CTA dismissed CJHDC's petition for lack of merit. In its Decision promulgated on 27 July 2005, the CTA stated that "[t]he remand of the case to the Local Board of Assessment Appeals for further proceedings subject to a full and up-to-date payment, either in cash or surety, of realty taxes on the subject properties as assessed by the City Assessor of Baguio City is proper pursuant to Section 252 of the Local Government Code of 1991 x x x in relation to Section 7, Rule V of the Rules of Procedure Before the Local Boards of Assessment Appeals x x x."[7] The CTA also noted that CJHDC wanted the CTA to resolve the issue of its liability for real property tax or the issue of its tax-exempt status without complying with the law and rules. The CTA agreed with the CBAA's ruling that, pursuant to Sections 231[8] and 252[9] of the Local Government Code of 1991,

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[7] *Rollo*, pp. 15-16.

[8] Sec. 231. *Effect of Appeal on the Payment of Real Property Tax*. - Appeal on assessments of real property made under the provisions of this Code shall, in no case, suspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor, without prejudice to subsequent adjustment depending upon the final outcome of the appeal.

[9] Sec. 252. *Payment Under Protest*. - (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest." The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

(b) The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.

(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.

(d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of this Code.

"[b]efore a protest may be entertained, the tax should have been first paid without prejudice to subsequent adjustment thereof depending upon the final outcome of the appeal and that the tax or portion thereof paid under protest, shall be held in trust by the treasurer concerned."[10]

CJHDC filed the present Petition for Review on *Certiorari* on 29 September 2005, after the promulgation of our Resolution in *John Hay* on 29 March 2005 and before the finality of *John Hay* on 17 November 2005.

There is no showing that CJHDC ever complied with the requirements of Section 206[11] of the Local Government Code in claiming tax exemption; hence, the City Assessor of Baguio acted well within her power to assess the subject properties. There was no need for CJHDC to wait for an assessment before submission of its proofs of tax exemption.[12] Had CJHDC submitted proofs of its tax exemption to the City Assessor, there would have been no need for CJHDC to pay under protest. CJHDC could question in court any adverse decision of the City Assessor, the Local Board of Assessment Appeals, and the Central Board of Assessment Appeals denying its tax exemption, without paying any tax assessment under protest, due to its claim of tax exemption under Proclamation No. 420.

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[10] *Rollo*, p. 17.

[11] Sec. 206. *Proof of Exemption of Real Property from Taxation*. - Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, by-laws, contracts, affidavits, certifications and mortgage deeds, and similar documents.

If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll.

[12] See *Lung Center of the Philippines v. Quezon City*, G.R. No. 144104, 29 June 2004, 433 SCRA 119.

However, once the tax exemption in Proclamation No. 420 was declared with finality as unconstitutional by this Court on 17 November 2005, CJHDC no longer had any legal basis for claiming tax exemption. CJHDC could then only question the correctness of the amount of the tax assessment, not the lack of legal authority by the City Assessor to impose or assess any realty tax on CJHDC. Payment under protest under Sections 231 and 252 of the Local Government Code thus applied to CJHDC as of 17 November 2005. Thereafter, any question by CJHDC on realty assessment can only refer to the correctness of the amount of the assessment, and not to the City Assessor's legal authority to impose or issue the assessment.

Once the non-tax-exempt status of the taxpayer is settled with finality, or if the same is not in issue, any dispute on the realty assessment only raises questions on the correctness of the amount of the assessment, thus necessitating prior payment of the assessment under protest. To repeat, any protest that CJHDC files or pursues after 17 November 2005 necessarily refers only to the correctness of the amount of the assessment, in which case CJHDC must pay the assessed tax under protest. The present petition should be denied because JHSEZ can no longer claim tax exemption, with the finality of this Court's ruling in *John Hay.* CJHDC's doctrine of operative fact argument is a defense it may raise before the Local Board of Assessment Appeals, to where this case is being remanded.

The facts in the present case are different from *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*[13] (*Napocor*). The province of Quezon assessed Mirant Pagbilao Corporation (Mirant) realty taxes for its machineries in Pagbilao, Quezon. A copy of the tax assessment was also sent to Napocor, with whom Mirant had a Build-Operate-Transfer Agreement. Napocor, and not Mirant, protested the assessment and claimed tax exemption under Section 234(c) and (e) of the

[13] G.R. No. 171586, 25 January 2010, 611 SCRA 71.

Local Government Code.[14] *Napocor* is different from the present case because *Napocor* is not a case of tax exemption by law but a case of assumption of tax by another entity – where Napocor, a tax-exempt entity, assumed by contract to pay all taxes that may be incurred (including realty taxes) by Mirant, a taxable entity. In *Napocor*, the Court held that payment of the tax under protest was required to contest the assessment.

I vote to **DENY** petitioner Camp John Hay Development Corporation's Petition for Review on *Certiorari* and **AFFIRM** the Court of Tax Appeals' Decision of 27 July 2005 remanding the case to the Local Board of Assessment Appeals subject to payment under protest of the assailed assessment.

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[14] Sec. 234. *Exemptions from Real Property Tax.* – The following are exempted from payment of real property tax:

x x x x

(c) All machineries and equipment that are actually, directly, and exclusively used by local water districts and government-owned or -controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

x x x x

(e) Machinery and equipment used for pollution control and environmental protection;

x x x x

SECOND DIVISION

[G.R. No. 181508. October 2, 2013]

OSCAR CONSTANTINO, MAXIMA CONSTANTINO, and CASIMIRA MATURINGAN, *petitioners, vs.* **HEIRS OF PEDRO CONSTANTINO, JR., represented by ASUNCION LAQUINDANUM,** *respondents.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; VOID AND INEXISTENT CONTRACTS; *IN PARI DELICTO* DOCTRINE, ELUCIDATED.—** Latin for "in equal fault," *in pari delicto* connotes that two or more people are at fault or are guilty of a crime. Neither courts of law nor equity will interpose to grant relief to the parties, when an illegal agreement has been made, and both parties stand *in pari delicto*. Under the *pari delicto* doctrine, the parties to a controversy are equally culpable or guilty, they shall have no action against each other, and it shall leave the parties where it finds them. This doctrine finds expression in the maxims "*ex dolo malo non oritur actio*" and "*in pari delicto potior est conditio defendentis.*" When circumstances are presented for the application of such doctrine, courts will take a hands off stance in interpreting the contract for or against any of the parties. x x x As a doctrine in civil law, the rule on *pari delicto* is principally governed by Articles 1411 and 1412 of the Civil Code, which state that: Article 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being *in pari delicto*, they shall have no action against each other, and both shall be prosecuted. x x x Article 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed: x x x 1. When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking; xxx xxx.

2. **ID.; ID.; ID.; ID.; RIGHTS AND OBLIGATIONS OF THE PARTIES TO A CONTRACT WITH AN ILLEGAL CAUSE OR OBJECT WHICH DOES NOT CONSTITUTE A CRIMINAL OFFENSE; APPLICATION.—** Article 1412 of the Civil Code speaks of the rights and obligations of the parties to the contract with an illegal cause or object which does not constitute a criminal offense. It applies to contracts which are void for illegality of subject matter and not to contracts rendered void for being simulated, or those in which the parties do not really intend to be bound thereby. Specifically, *in pari delicto* situations involve the parties in one contract who are both at fault, such that neither can recover nor have any action against each other.

3. **ID.; ID.; ID.; ID.; ID.; NOT APPLICABLE IN CASE AT BAR AS THERE ARE TWO VOID DEEDS THAT WILL BE VALIDATED IF *IN PARI DELICTO* IS APPLIED.—** In this case, there are two Deeds of extrajudicial assignments unto the signatories of the portions of the estate of an ancestor common to them and another set of signatories likewise assigning unto themselves portions of the same estate. The separate Deeds came into being out of an identical intention of the signatories in both to exclude their co-heirs of their rightful share in the entire estate of Pedro Sr. It was, in reality, an assignment of specific portions of the estate of Pedro Sr., without resorting to a lawful partition of estate as both sets of heirs intended to exclude the other heirs. Clearly, the principle of *in pari delicto* cannot be applied. The inapplicability is dictated not only by the fact that two deeds, not one contract, are involved, but because of the more important reason that such an application would result in the validation of both deeds instead of their nullification as necessitated by their illegality. It must be emphasized that the underlying agreement resulting in the execution of the deeds is nothing but a void agreement. Article 1409 of the Civil Code provides that: ART. 1409. The following contracts are inexistent and void from the beginning: (1) Those whose cause, object or purpose is contrary to law; morals, good customs, public order or public policy; xxx xxx xxx Corollarily, given the character and nature of the deeds as being void and inexistent, it has, as a consequence, of no force and effect from the beginning, as if it had never been entered into and which cannot be validated either by time or ratification.

4. **REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; PARTIES WHO ARE SUCCESSORS-IN-INTEREST AS "PRIVIES" IN ESTATE.—** [W]e cannot give credence to the contention of respondents that no fault can be attributed to them or that they are free from the effects of violation of any laws arising from the supposed unlawful agreement entered into between Maria Laquindanum, their predecessor-in- interest, and the other heirs, including petitioners herein, based on the fact that they are not signatories to said agreement. x x x We agree with the trial court that respondents are "privies" to Maria Laquindanum. By the term "privies" is meant those between whom an action is deemed binding although they are not literally parties to the said action. This Court, in *Correa v. Pascual*, had occasion to explain that *"privity in estate denotes the privity between assignor and assignee, donor and donee, grantor and grantee, joint tenant for life and remainderman or reversioner and their respective assignees, vendor by deed of warranty and a remote vendee or assignee. A privy in estate is one, it has been said, who derives his title to the property in question by purchase; one who takes by conveyance."* In fine, respondents, as successors-in-interest, derive their right from and are in the same position as their predecessor in whose shoes they now stand. As such successors, respondents' situation is analogous to that of a transferee *pendente lite* illustrated in *Santiago Land Development Corporation v. Court of Appeals*, reiterating *Fetalino v. Sanz.*

5. **ID.; ID.; PRE-TRIAL; RECORD OF PRE-TRIAL ADMISSION IS JUDICIAL ADMISSION; DISCUSSED.—** Judicial admissions are legally binding on the party making the admissions. Pre-trial admission in civil cases is one of the instances of judicial admissions explicitly provided for under Section 7, Rule 18 of the Rules of Court, which mandates that the contents of the pre-trial order shall control the subsequent course of the action, thereby, defining and limiting the issues to be tried. x x x We are aware that the last paragraph of Section 7, Rule 18 of the Rules of Court serves as a caveat for the rule of conclusiveness of judicial admissions – for, in the interest of justice, issues that may arise in the course of the proceedings but which may not have been taken up in the pre-trial can still be taken up. x x x In addition, Section 4 of Rule 129 of the Rules of Court, provides that: An admission, verbal or written, made by a party in the

course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. As contemplated in the aforementioned provision of the Rules of Court, the general rule regarding conclusiveness of judicial admission upon the party making it and the dispensation of proof admits of two exceptions: 1) when it is shown that the admission was made through palpable mistake, and 2) when it is shown that no such admission was in fact made. The latter exception allows one to contradict an admission by denying that he made such an admission.

6. **ID.; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSONS; EXCLUDING HEIRS IN THE SETTLEMENT OF ESTATE.—** [Considering] the stipulations made during the pre-trial conference, respondents are bound by the infirmities of the contract on which they based their right over the property subject matter thereof. Considering that the infirmities in the two deeds relate to exclusion of heirs, a circumvention of an heir's right to his or her legitime, it is apt to reiterate our ruling in *Neri v. Heirs of Hadji Yusop Uy,* disposing that: x x x **the settlement was not valid and binding upon them and consequently, a total nullity**. Further highlighting the effect of excluding the heirs in the settlement of estate [is] the case of *Segura v. Segura*. [Hence,] x x x [a]s the partition was a total nullity and did not affect the excluded heirs, it was not correct for the trial court to hold that their right to challenge the partition had prescribed after two years from its execution.

APPEARANCES OF COUNSEL

Jeffrey C. Cruz for petitioners.
Burgos and Villabert Law Office for respondents.

D E C I S I O N

PEREZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the 31 May 2007

Decision[1] of the Court of Appeals in CA-G.R. CV No. 81329, which reversed the 27 October 2003 Decision[2] of the Regional Trial Court (RTC), Branch 18 of Malolos City, Bulacan, in a complaint for Declaration of Nullity of "*Pagmamana sa Labas ng Hukuman*," Tax Declaration Nos. 96-10022-02653 & 1002655, With Prayer for a Writ of Preliminary Injunction & Damages docketed as Civil Case No. 630-M-99.

The Facts

This involves a controversy over a parcel of land claimed to be part of an estate which needed to be proportionally subdivided among heirs.

Pedro Constantino, Sr., (Pedro Sr.) ancestors of the petitioners and respondents, owned several parcels of land, one of which is an unregistered parcel of land declared for taxation purposes under Tax Declaration 20814[3] consisting of 240 square meters situated at Sta. Monica, Hagonoy, Bulacan. Pedro, Sr., upon his death, was survived by his six (6) children, namely: 1) PEDRO CONSTANTINO, JR. (Pedro Jr.), the grandfather of the respondents; 2) ANTONIA CONSTANTINO, who later died without issue; 3) CLARA CONSTANTINO, who also later died without issue; 4) BRUNO CONSTANTINO, who was survived by his 6 children including petitioner Casimira Constantino-Maturingan; 5) EDUARDO CONSTANTINO, who is survived by his daughter Maura; and 6) SANTIAGO CONSTANTINO, who was survived by his five (5) children which includes petitioner Oscar Constantino.[4]

On 17 June 1999, respondents Asuncion Laquindanum (Asuncion) and Josefina Cailipan (Josefina), great grandchildren of Pedro Sr., in representation of Pedro, Jr. filed a complaint[5]

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[1] Penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Portia Aliño-Hormachuelos and Edgardo F. Sundiam. CA *rollo*, 40-53.

[2] Penned by Judge Victoria C. Fernandez-Bernardo, records. pp. 190-194.

[3] Exhibit "F", *id.* at 10.

[4] *Id.* at 3-4.

[5] *Id.* at 2-8.

against petitioners Oscar Constantino, Maxima Constantino and Casimira Maturingan, grandchildren of Pedro Sr., for the nullification of a document denominated as "*Pagmamana sa Labas ng Hukuman*" dated 10 August 1992,[6] Tax Declaration Nos. 96-10022 (02653)[7] and 96-10022 (02655)[8] and reinstatement of Tax Declaration No. 20814[9] in the name of Pedro Sr.

In the said complaint, respondents alleged that sometime in October 1998, petitioners asserted their claim of ownership over the whole parcel of land (240 sq m) owned by the late Pedro Sr., to the exclusion of respondents who are occupying a portion thereof. Upon verification, respondents learned that a Tax Declaration No. 02010-2170-33235 in the name of petitioner Oscar Constantino and his cousin Maxima Constantino was unlawfully issued, which in effect canceled Tax Declaration No. 20814 in the name of their ancestor Pedro Sr. The issuance of the new tax declaration was allegedly due to the execution of a simulated, fabricated and fictitious document denominated as "*Pagmamana sa Labas ng Hukuman*," wherein the petitioners misrepresented themselves as the sole and only heirs of Pedro Sr. It was further alleged that subsequently, the subject land was divided equally between petitioners Oscar and Maxima resulting in the issuance of Tax Declaration No. 96-10022-02653[10] in the name of Oscar, with an area of 120 sq m and the other half in the name of Maxima covered by Tax Declaration No. 96-10022-02652.[11] The share of Maxima was eventually conveyed to her sister, petitioner Casimira in whose name a new Tax Declaration No. 96-10022-02655[12] was issued.

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[6] Exhibit "E", *id.* at 11.

[7] Exhibit "C", *id.* at 14.

[8] Exhibit "D", *id.* at 16.

[9] Exhibit "F", *id.* at 10.

[10] *Id.* at 98.

[11] *Id.* at 99.

[12] *Id.* at 101.

Thus, respondents sought to annul the "*Pagmamana sa Labas ng Hukuman*" as well as the Tax Declarations that were issued on the basis of such document.

The petitioners, on the other hand, averred in their Answer With Counterclaim[13] that Pedro Sr., upon his death, left several parcels of land, namely: 1) a lot with an area of 240 sq m covered by Tax Declaration No. 20814; 2) a lot with an area of 192 sq m also situated at Sta. Monica, Hagonoy, Bulacan, previously covered by Tax Declaration No. 9534; and 3) an agricultural land with an area of Four (4) hectares, more or less. The petitioners claimed that the document "*Pagmamana sa Labas ng Hukuman*" pertaining to the 240 sq m lot was perfectly valid and legal, as it was a product of mutual and voluntary agreement between and among the descendants of the deceased Pedro Sr.

Further, petitioners alleged that the respondents have no cause of action against them considering that the respondents' lawful share over the estate of Pedro Sr., had already been transferred to them as evidenced by the Deed of Extrajudicial Settlement with Waiver[14] dated 5 December 1968, executed by Angelo Constantino, Maria Constantino (mother of respondent Asuncion), Arcadio Constantino and Mercedes Constantino, all heirs of Pedro Jr. In the said deed, respondents adjudicated unto themselves to the exclusion of other heirs, the parcel of land with an area of 192 sq m by misrepresenting that they were "the only legitimate heirs of Pedro Sr. Thus, petitioners claimed that in the manner similar to the assailed "*Pagmamana sa Labas ng Hukuman*," they asserted their rights and ownership over the subject 240 sq m lot without damage to the respondents.

In essence, petitioners position was that the Deed of Extrajudicial Settlement with Waiver which led to the issuance of Tax Declaration No. 9534 was acquiesced in by the other heirs of Pedro Sr., including the petitioners, on the understanding

[13] *Id.* at 24-28.

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

that the respondent heirs of Pedro Jr. would no longer share and participate in the settlement and partition of the remaining lot covered by the "*Pagmamana sa Labas ng Hukuman*."

On 15 August 2000, pre-trial conference[15] was conducted wherein the parties entered into stipulations and admissions as well as identification of the issues to be litigated. Thereupon, trial on the merits ensued.

On 27 October 2003, the RTC rendered a Decision[16] in favor of the respondents finding that:

> As a result of execution of "Extrajudicial Settlement with Waiver" dated December 5, 1968 (Exh. "2") executed by the heirs of Pedro Constantino, Jr., a son of Pedro Constantino, Sr. and the subsequent execution of another deed denominated as "*Pagmamana sa Labas ng Hukuman*" dated August 10, 1992 (Exh. "E") executed by the heirs of Santiago and Bruno Constantino, also other sons of Pedro Constantino, Sr., to the exclusion of the other heirs, namely, those of ANTONIA, CLARA, and EDUARDO CONSTANTINO, both plaintiffs and defendants acted equally at fault. They are *in pari delicto*, whereby the law leaves them as they are and denies recovery by either one of them. (See: *Yu Bun Guan v. Ong,* 367 SCRA 559). Parties who are equally guilty cannot complain against each other. (*Sarmiento v. Salud,* 45 SCRA 213.)
>
> Supplementing the law on the matter, that is, the provision of Article 19 of the New Civil Code whereby 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, is the legal maxim that "he who comes to court to demand equity must come with clean hands." (*LBC Express, Inc. v. Court of Appeals*, 236 SCRA 602).
>
> Although, plaintiffs-heirs of Pedro Constantino, Jr., including Asuncion Laquindanum and Josefina Cailipan, are not parties or signatories to the "Extrajudicial Settlement with Waiver" dated December 5, 1968, they are successors-in-interest of Pedro Constantino, Jr. They are considered "privies" to said deed, and are

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

[16] *Id.* at 190-194.

bound by said extrajudicial settlement. (See: *Cabresos v. Tiro,* 166 SCRA 400). In other words, they are "PRIVIES IN ESTATE". (*Correa v. Pascual*, 99 Phil. 696, 703).

Consequently, plaintiffs are now estopped from claiming otherwise. (See: *PNB v. CA*, 94 SCRA 357). They are estopped to share in the real property subject matter of this case. In fine, they are not entitled to the reliefs prayed for. (*Communication Materials & Design, Inc. v. CA*, 260 SCRA 673).

With respect to alleged damages claimed by plaintiffs against defendants in their Complaint and counterclaim for damages by defendants against plaintiffs in their Answer, both claims are hereby dismissed for lack of valid factual and legal foundations.

Disposition

WHEREFORE, in view of the foregoing premises and disquisition, the deed denominated as "*Pagmamana sa Labas ng Hukuman*" of August 10, 1992 and Tax Declaration No. 96-10022-02653 in the name of Oscar Constantino and Tax Declaration No. 96-10022-02655 in the name of Casimira C. Maturingan (from Maxima Constantino to Casimira C. Maturingan) stand. Plaintiffs' Complaint for nullification thereof with damages is hereby DISMISSED.[17]

Not convinced, the respondents appealed the aforequoted decision to the Court of Appeals (CA) raising, among others, the erroneous application by the trial court of the doctrine of "*in pari delicto*" in declaring the validity of the document "*Pagmamana sa Labas ng Hukuman*."

In its 31 May 2007 Decision,[18] the CA ruled in favor of the respondents heirs of Pedro, Jr., declaring that the "Extrajudicial Settlement with Waiver" dated 5 December 1968 they executed covering the 192 sq m lot actually belongs to Pedro Jr., hence, not part of the estate of Pedro Sr. The CA rationated in this wise:

The 192 square meters lot which was adjudicated in the "Extrajudicial Settlement with Waiver" dated 5 December 1968 among

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[17] *Id.* at 193-194.

[18] *Rollo*, pp. 32-45.

the heirs of Pedro Jr. namely Angelo, Maria, Arcadio and Mercedes is a property belonging to Pedro Jr. although there is a typographical error in that the name of Pedro Jr. was inadvertently typed only as *Pedro Constantino*. It is clear from the reading of the document that a typographical error was committed because the four (4) children of Pedro Jr. by Felipa dela Cruz were specifically identified. Further, during the presentation of evidence of the plaintiffs-appellants, it was rebutted that Pedro Sr. had six (6) legitimate children namely: Pedro Jr., Antonia, Clara, Santiago, Bruno and Eduardo[19] and Pedro Jr. had four (4).[20]

Thus, the CA went on to state that the respondents, heirs of Pedro Jr., did not adjudicate the 192 sq m lot unto themselves to the exclusion of all the other heirs of Pedro Sr. Rather, the adjudication in the document entitled "Extrajudicial Settlement with Waiver" dated 5 December 1968 pertains to a different property and is valid absent any evidence to the contrary. Hence, it is erroneous for the trial court to declare the parties *in pari delicto*.

The Issue

The petitioners now question the said ruling assigning as error, among others, the failure of the CA to appreciate the existence of misrepresentation in both documents, thereby ignoring the propriety of the application of the *in pari delicto* doctrine. Likewise assailed is the erroneous disregard by the CA of stipulations and admissions during the pre-trial conference on which the application of the doctrine of *in pari delicto* was based.

Our Ruling

Latin for "in equal fault," *in pari delicto* connotes that two or more people are at fault or are guilty of a crime. Neither courts of law nor equity will interpose to grant relief to the parties, when an illegal agreement has been made, and both

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[19] TSN, 23 October 2000, pp. 4-7.

[20] *Rollo*, page 41.

parties stand *in pari delicto*.[21] Under the *pari delicto* doctrine, the parties to a controversy are equally culpable or guilty, they shall have no action against each other, and it shall leave the parties where it finds them. This doctrine finds expression in the maxims "*ex dolo malo non oritur actio*" and "*in pari delicto potior est conditio defendentis.*"[22]

When circumstances are presented for the application of such doctrine, courts will take a hands off stance in interpreting the contract for or against any of the parties. This is illustrated in the case of *Packaging Products Corporation v. NLRC*,[23] where this Court pronounced that:

> This Court cannot give positive relief to either petitioner or respondent because we are asked to interpret and enforce an illegal and immoral arrangement. (See Articles 1409, 1411, and 1412 of the Civil Code). Kickback arrangements in the purchase of raw materials, equipment, supplies and other needs of offices, manufacturers, and industrialists are so widespread and pervasive that nobody seems to know how to eliminate them. x x x.
>
> Both the petitioners and the private respondent are *in pari delicto*. Neither one may expect positive relief from courts of justice in the interpretation of their contract. The courts will leave them as they were at the time the case was filed.[24]

As a doctrine in civil law, the rule on *pari delicto* is principally governed by Articles 1411 and 1412 of the Civil Code, which state that:

> Article 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being *in pari delicto*, they shall have no action against each other, and both shall be prosecuted.
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> xxx xxx

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[21] A law Dictionary, Adapted to the Constitution and Laws of the United States. By John Bouvier. Published 1856.

[22] *Ubarra v. Mapalad*, A.M. No. MTJ-91-622, 22 March 1993, 220 SCRA 224, 235.

[23] 236 Phil. 225 (1987).

[24] *Id.* at 234-235.

Article 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

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1. When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;

xxx xxx.

The petition at bench does not speak of an illegal cause of contract constituting a criminal offense under Article 1411. Neither can it be said that Article 1412 finds application although such provision which is part of Title II, Book IV of the Civil Code speaks of contracts in general, as well as contracts which are null and void *ab initio* pursuant to Article 1409 of the Civil Code – such as the subject contracts, which as claimed, are violative of the mandatory provision of the law on legitimes.

We do not dispute that herein parties, through the Deeds they separately executed deprived each other of rightful shares in the two lots subject of the separate contracts – that is, if the two (2) parcels of land subject matter thereof, form part of the estate of the late Pedro Sr.

It is asserted by the petitioners that their execution in 1992 of the contract denominated as "*Pagmamana sa Labas ng Hukuman*" which excluded other heirs of Pedro Sr., was with an underlying agreement with the other heirs including Maria Constantino, daughter of Pedro Jr. and grandmother of respondents.[25] The agreement was for the other heirs to recognize the 192 square meters lot subject matter of the "Extrajudicial Settlement with Waiver" executed in 1968 as the share of the heirs of Pedro Sr. in the estate of Pedro Sr., Petitioners respected such agreement, as in fact, Maria Laquindanum and that of her heirs, herein respondents, were not disturbed in their

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[25] Answer with Counterclaim filed by defendants, herein petitioners, records, pp. 24-28.

possession or ownership over the said parcel of land; thus, the heirs of Pedro Jr. were said to have acquiesced[26] to the "*Pagmamana sa Labas ng Hukuman*" and the underlying agreement and therefore they have no recourse or reason to question it taking cue from the doctrine of *in pari delicto*. This was the basis of the trial court's findings that respondents are now estopped from claiming otherwise.[27]

We find that the trial court erroneously applied the doctrine.

This is not to say, however, that the CA was correct in upholding the validity of the contract denominated as "*Pagmamana sa Labas ng Hukuman*." The CA decision being, likewise, based on *pari delicto*, is also incorrect.

Finding the inapplicability of the *in pari delicto* doctrine, We find occasion to stress that Article 1412 of the Civil Code that breathes life to the doctrine speaks of the rights and obligations of the parties to the contract with an illegal cause or object which does not constitute a criminal offense. It applies to contracts which are void for illegality of subject matter and not to contracts rendered void for being simulated,[28] or those in which the parties do not really intend to be bound thereby. Specifically, *in pari delicto* situations involve the parties in one contract who are both at fault, such that neither can recover nor have any action against each other.

In this case, there are two Deeds of extrajudicial assignments unto the signatories of the portions of the estate of an ancestor common to them and another set of signatories likewise assigning unto themselves portions of the same estate. The separate Deeds came into being out of an identical intention of the signatories in both to exclude their co-heirs of their rightful share in the entire estate of Pedro Sr. It was, in reality, an assignment of specific portions of the estate of Pedro Sr., without resorting

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[26] *Id.* at 26.

[27] Page 5 of the Decision dated 27 October 2003, *id.* at 194.

[28] Lecture Notes on Civil Code by Professor Ruben F. Balane, p. 352.

to a lawful partition of estate as both sets of heirs intended to exclude the other heirs.

Clearly, the principle of *in pari delicto* cannot be applied. The inapplicability is dictated not only by the fact that two deeds, not one contract, are involved, but because of the more important reason that such an application would result in the validation of both deeds instead of their nullification as necessitated by their illegality. It must be emphasized that the underlying agreement resulting in the execution of the deeds is nothing but a void agreement. Article 1409 of the Civil Code provides that:

ART. 1409. The following contracts are inexistent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law; morals, good customs, public order or public policy;

x x x x x x x x x

Corollarily, given the character and nature of the deeds as being void and inexistent, it has, as a consequence, of no force and effect from the beginning, as if it had never been entered into and which cannot be validated either by time or ratification.[29]

That said, we cannot give credence to the contention of respondents that no fault can be attributed to them or that they are free from the effects of violation of any laws arising from the supposed unlawful agreement entered into between Maria Laquindanum, their predecessor-in-interest, and the other heirs, including petitioners herein, based on the fact that they are not signatories to said agreement, thus, the lack of any binding effect to them. Respondents argued and set forth as an issue during the trial that they were not signatories to any of the contract or privies to such an arrangement. It is not disputed, however, that respondents are successors-in-interest of Maria Laquindanum, one of the signatories in the Extrajudicial Settlement

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[29] *Civil Code of the Philippines*, Vol. IV, Tolentino, 1973 Ed., p. 592, also cited in *Tongoy v. Court of Appeals*, 208 Phil. 95, 113 (1983).

with Waiver who was also allegedly in agreement with the petitioners.

On this note, We agree with the trial court that respondents are "privies" to Maria Laquindanum. By the term "privies" is meant those between whom an action is deemed binding although they are not literally parties to the said action.[30] This Court, in *Correa v. Pascual*,[31] had occasion to explain that *"privity in estate denotes the privity between assignor and assignee, donor and donee, grantor and grantee, joint tenant for life and remainderman or reversioner and their respective assignees, vendor by deed of warranty and a remote vendee or assignee. A privy in estate is one, it has been said, who derives his title to the property in question by purchase; one who takes by conveyance."* In fine, respondents, as successors-in-interest, derive their right from and are in the same position as their predecessor in whose shoes they now stand. As such successors, respondents' situation is analogous to that of a transferee *pendente lite* illustrated in *Santiago Land Development Corporation v. Court of Appeals*,[32] reiterating *Fetalino v. Sanz*[33] where this Court held:

> As such, he stands exactly in the shoes of his predecessor in interest, the original defendant, and is bound by the proceedings had in the case before the property was transferred to him. He is a proper, but not an indispensable, party as he would, in any event, have been bound by the judgment against his predecessor.[34]

Thus, any condition attached to the property or any agreement precipitating the execution of the Deed of Extrajudicial Settlement with Waiver which was binding upon Maria Laquindanum is applicable to respondents who merely succeeded Maria.

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[30] *Cabresos v. Judge Tiro*, 248 Phil. 631, 636-637 (1988).

[31] 99 Phil. 696, 703 (1956) quoting 50 C.J., 407 and 33 Words and Phrases, 800.

[32] 334 Phil. 741, 747 (1997).

[33] 44 Phil. 691(1923).

[34] *Id.* at 694.

This notwithstanding, it must however be shown that the Deed of Extrajudicial Settlement with Waiver, referred to a property owned by Pedro Sr. There is such basis from the facts of this case.

The records show that apart from respondent Asuncion Laquindanums's statement that the parcel of land subject matter of the Deed of Extrajudicial Settlement with Waiver is not part of the estate of Pedro Sr., their common ancestor, no other evidence was offered to support it. The CA in giving credence to the respondents' claim, merely relied on the alleged typographical error in the Deed. The basis for the CA's conclusion was the inclusion of the wife of Pedro Jr. and that of their children, which the CA considered as proof that the property was owned by Pedro Jr. and not part of the estate of Pedro Sr. As pointed out by the petitioners, the mention of the names of the children of Pedro Jr. in the Extrajudicial Settlement is not proof that the subject of the deed is the property of Pedro Jr. Meant to exclude all the other heirs of Pedro Sr., only the children of Pedro Jr. appeared in the Extrajudicial Settlement as heirs.

Weak as the reasoning is, the CA actually contradicted the admissions made no less by the respondents during the pre-trial conference where they stipulated that the land covered by Tax Declaration No. 9534 consisting of 192 sq. m belongs to Pedro Sr.[35]

A portion of the admission and stipulations made by both parties during the pre-trial is hereunder quoted, thus:

Respondents' admissions:

"1. **That the land covered by Tax Declaration No. 9534 previously owned by Pedro Constantino, Sr. was transferred to Maria Constantino under Tax Declaration No. 9535**; (highlighting ours)

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[35] Records, pp. 70-71.

1. The existence of Extrajudicial Settlement with Waiver per Doc. No. 319, Page No. 44, Book No. 11, Series of 1968 by Notary Public Romerico Flores, Jr."

Clearly, the above stipulation is an admission against respondents' interest of the fact of ownership by Pedro Sr. of the 192 sq m lot covered by Tax Declaration No. 9534, which was transferred to respondents' mother, the daughter of Pedro Jr. Such that, in one of the issues submitted to be resolved by the trial court, this was included: "Whether or not the "Deed of Extrajudicial Settlement with Waiver" is enforceable against the plaintiffs, thus curing the legal infirmities, if any, of the "*Pagmamana sa Labas ng Hukuman*"[36] – an issue earlier mentioned.

Judicial admissions are legally binding on the party making the admissions. Pre-trial admission in civil cases is one of the instances of judicial admissions explicitly provided for under Section 7, Rule 18 of the Rules of Court, which mandates that the contents of the pre-trial order shall control the subsequent course of the action, thereby, defining and limiting the issues to be tried. In *Bayas, et al. v. Sandiganbayan, et al.*,[37] this Court emphasized that:

> Once the stipulations are reduced into writing and signed by the parties and their counsels, they become binding on the parties who made them. **They become judicial admissions of the fact or facts stipulated**.[38] Even if placed at a disadvantageous position, a party may not be allowed to rescind them unilaterally, it must assume the consequences of the disadvantage.[39] (Highlighting ours)

Moreover, in *Alfelor v. Halasan*,[40] this Court declared that:

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[36] *Id.* at 71.

[37] 440 Phil. 54 (2002).

[38] *Id.* at 69, citing *Schreiber v. Rickert*, 50 NE 2d 879, 13 October 1943.

[39] *Id.*

[40] 520 Phil. 982 (2006).

A party who judicially admits a fact cannot later challenge the fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy. Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded.[41] (Citations omitted)

We are aware that the last paragraph of Section 7, Rule 18 of the Rules of Court serves as a caveat for the rule of conclusiveness of judicial admissions – for, in the interest of justice, issues that may arise in the course of the proceedings but which may not have been taken up in the pre-trial can still be taken up.

Section 7, Rule 18 of the Rules of Court reads:

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

In addition, Section 4 of Rule 129 of the Rules of Court, provides that:

An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

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[41] *Id.* at 991.

As contemplated in the aforementioned provision of the Rules of Court, the general rule regarding conclusiveness of judicial admission upon the party making it and the dispensation of proof admits of two exceptions: 1) when it is shown that the admission was made through palpable mistake, and 2) when it is shown that no such admission was in fact made. The latter exception allows one to contradict an admission by denying that he made such an admission.[42]

However, respondents failed to refute the earlier admission/ stipulation before and during the trial. While denying ownership by Pedro Sr. of the 192 sq m lot, respondent Asuncion Laquindanum, when placed on the stand, offered a vague explanation as to how such parcel of land was acquired by Pedro Jr. A portion of her testimony[43] is hereto reproduced as follows:

"ATTY. DOMINGO:

Q: Do you know if as part of the estate of the late Pedro Constantino, Sr. is another parcel of land also situated at Sta. Maria, Hagonoy, Bulacan with an area of 192 square meters?

A: It is not owned by Pedro Constantino, Sr., sir. It is our property owned by Pedro Constantino, Jr. that was inherited by my mother Maria Constantino.

Q: And ***do you know how Pedro Constantino, Jr. acquired that parcel of land,*** the one that you mentioned a while ago?

A: ***Kinagisnan ko na po yong lupang yon pagkabata pa na yon e amin***." (Highlighting ours)

The above assertion of denial is simply a self-serving declaration unsupported by evidence. This renders conclusive the stipulations made during the pre-trial conference. Consequently, respondents are bound by the infirmities of the contract on which they based their right over the property subject matter thereof. Considering

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[42] *Florentino Atillo, III v. Court of Appeals, et al.*, 334 Phil. 546, 552 (1997).

[43] TSN, 23 November 2000, p. 6.

that the infirmities in the two deeds relate to exclusion of heirs, a circumvention of an heir's right to his or her legitime, it is apt to reiterate our ruling in *Neri v. Heirs of Hadji Yusop Uy,*[44] disposing that:

> Hence, in the execution of the Extra-Judicial Settlement of the Estate with Absolute Deed of Sale in favour of spouses Uy, all the heirs of Anunciation should have participated. Considering that Eutropia and Victoria were admittedly **excluded and that then minors Rosa and Douglas were not properly represented therein, the settlement was not valid and binding upon them and consequently, a total nullity**. (Highlighting ours)

Further highlighting the effect of excluding the heirs in the settlement of estate, the case of *Segura v. Segura*,[45] elucidated thus:

> It is clear that Section 1 of Rule 74 does not apply to the partition in question which was null and void as far as the plaintiffs were concerned. The rule covers only partition. The partition in the present case was invalid because it excluded six of the nine heirs who were entitled to equal shares in the partitioned property. Under the rule "no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof." As the partition was a total nullity and did not affect the excluded heirs, it was not correct for the trial court to hold that their right to challenge the partition had prescribed after two years from its execution x x x.

In light of the foregoing, while both parties acted in violation of the law on legitimes, the *pari delicto* rule, expressed in the maxims *"Ex dolo malo non oritur action" and "in pari delicto potior est condition defendentis,"* which refuses remedy to either party to an illegal agreement and leaves them where they are, <u>does not apply in this case</u>. (Underline supplied)[46] As held in *De Leon v. CA*:[47]

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[44] G.R. No. 194366, 10 October 2012, 683 SCRA 553, 560.

[45] *Id.* at 561 citing *Segura v. Segura* 247-A Phil. 449, 456 (1988).

[46] *De Leon v. Court of Appeals*, G.R. No. 80965, 6 June 1990, 186 SCRA 345, 359.

[47] *Id.*

In the ultimate analysis, therefore, both acted in violation of laws. However, the *pari delicto* rule expressed in the maxims "*Ex dolo malo non oritur action*" and "*In pari delicto potior est condition defendentis*," which refuses remedy to either party to an illegal agreement and leaves them where they are does not apply in this case.

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Since the Letter-Agreement was repudiated before the purpose has been accomplished and to adhere to the *pari delicto* rule in this case is to put a premium to the circumvention of the laws, positive relief should be granted to Macaria. Justice would be served by allowing her to be placed in the position in which she was before the transaction was entered into.

Accordingly, in order not to put a premium to the circumvention of the laws as contemplated by the parties in the instant case, we must declare both contracts as void. Indeed, any circumvention of the law cannot be countenanced.[48]

WHEREFORE, the 31 May 2007 Decision of the Court of Appeals in CA-G.R. CV No. 81329 is hereby **REVERSED.** The *Pagmamana sa Labas ng Hukuman* and Extrajudicial Settlement with Waiver are hereby declared void without prejudice to the partition of the estate of Pedro Constantino Sr. with the full participation of all the latter's heirs.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

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[48] *Magsalin v. National Organization of Working Men, et al.*, 451 Phil. 254, 262 (2003).

SECOND DIVISION

[G.R. No. 188385. October 2, 2013]

BENITO E. LORENZO, *petitioner, vs.* **GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) and DEPARTMENT OF EDUCATION (DepEd),** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; SICKNESS; REQUISITES FOR THE SICKNESS AND RESULTING DEATH TO BE COMPENSABLE.—** Sickness, as defined under Article 167 (1) Chapter I, Title II, Book IV of the Labor Code of the Philippines refers to "any illness definitely accepted as an occupational disease listed by the Employees' Compensation Commission, or any illness caused by employment, subject to proof that the risk of contracting the same is increased by working conditions. In cases of death, such as in this case, Section 1(b), Rule III of the Rules Implementing P.D. No. 626, as amended, requires that for the sickness and the resulting disability or death to be compensable, the claimant must show: (1) that it is the result of an occupational disease listed under Annex "A" of the Amended Rules on Employees' Compensation with the conditions set therein satisfied; or (2) that the risk of contracting the disease is increased by the working conditions.

2. **ID.; ID.; ID.; ID.; REQUIREMENT THAT DEATH IS THE RESULT OF OCCUPATIONAL DISEASE LISTED UNDER THE RULES; LEUKEMIA IS AN OCCUPATIONAL DISEASE BUT NOT COMPENSABLE FOR A SCHOOL TEACHER WHO WAS NOT EXPOSED TO ANESTHETICS.—** Rosario's disease is occupational, which fact, however, does not result in compensability in view of the fact that [she] was not an operating room personnel. As correctly pointed out by the ECC, the coverage of leukemia as an occupational disease relates to one's employment as an operating room personnel ordinarily exposed to anesthetics. In the case of petitioner's wife, the nature of her occupation does not indicate exposure to anesthetics nor does it increase the risk of developing Chronic Myelogenous Leukemia. There was no

showing that her work involved frequent and sufficient exposure to substances established as occupational risk factors of the disease. Thus, the need for the petitioner to sufficently establish that his wife's job as a teacher exposed her to substances similar to anesthetics in an environment similar to an "operating room." This leans on the precept that the awards for compensation cannot rest on speculations and presumptions.

BRION, *J., separate concurring opinion:*

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT ARE NOT ALLOWED.—** [The Court] cannot review questions of fact in a Rule 45 petition. As a general rule, the factual findings of the appellate court are conclusive and binding on the parties when supported by substantial evidence, and are not reviewable by this Court. "Moreover, findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but finality when affirmed by the [CA]." However, we may probe and resolve questions of fact in a Rule 45 petition as exceptions to the general rule, to wit: x x x None of these exceptions are present in this case.

2. **LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; SICKNESS; LEUKEMIA IS COMPENSABLE DISEASE ONLY AMONG OPERATING ROOM PERSONNEL EXPOSED TO ANESTHETICS; OTHERWISE, LEUKEMIA MUST BE BASED ON INCREASED RISK DOCTRINE.—** There are two classifications of "sickness" under Article 167(l), Chapter I, Title II, Book IV of the Labor Code. The first classification is any illness definitely accepted as an occupational disease listed by the ECC. **The second classification is any illness caused by employment <u>subject to proof</u> that the risk of contracting the same is increased by working conditions.** In the current case, Benito's claim for death benefits under the first classification cannot prosper because Annex A of the Amended Rules on Employees' Compensation lists leukemia as a compensable disease *only among operating room personnel due to anesthetics*. Consequently, Benito can only successfully base his claim on the basis of the increased risk doctrine under the second classification.

3. **ID.; ID.; ID.; CLAIMS FOR COMPENSATION; THE BURDEN OF PROOF REQUIRED IS SUBSTANTIAL EVIDENCE;**

CONGRUENT THERETO IS THE CONSIDERATION THAT IT IS THE TRUST FUND THAT SUFFERS IF BENEFITS ARE PAID TO CLAIMANTS WHO ARE NOT ENTITLED UNDER THE LAW.— In our new Labor Code, the degree of proof required in claims for compensation is merely substantial evidence, which means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Substantial evidence is not equivalent to direct causal relation. What the law requires is merely a reasonable connection between the illness and the working conditions. Congruent with the required degree of proof is the consideration that *it is the trust fund that suffers if benefits are paid to claimants who are not entitled under the law.* **The reason is that the trust fund's integrity would be endangered if we inadvertently or recklessly include diseases not covered by law.** It is thus this Court's duty to ensure the stability of the fund and make certain that the system can pay benefits when due to all who are entitled and in the increased amounts fixed by law. My concurrence with the *ponencia* lies on my position **that the liberal interpretation of employees' compensation does not dispense with the requirement that the employee or his family should present substantial proof that his risk of contracting an illness was increased by his working conditions.** In other words, this Court cannot rely on Benito's mere enumeration of chemicals to which Rosario was allegedly exposed *precisely because exposure to these chemicals is not inherent in the nature of her profession*. We cannot take judicial notice that teachers are constantly exposed to chemicals because this would open the floodgates for thousands of unwarranted similar claims and deplete the trust fund. To reiterate, Rosario was a teacher, and not a factory worker, an anesthesiologist or a chemist. x x x On this point, I would wish to emphasize the settled rule that this Court cannot rely on surmises and conjectures in awarding claims for compensation. x x x This Court **as a court of law** should not presume the existence of an otherwise non-existent proof. **If we show compassion for the victims of diseases not covered by law, we then ignore the need to show *a greater concern* for the trust fund to which the tens of millions of employees and their families look for compensation whenever covered accidents, salary and deaths occur.**

4. ID.; ID.; ID.; ID.; APPLICABLE RULE IS THE CASE OF *RARO V. ECC*, THAT PRESUMPTIONS OF COMPENSABILITY AND AGGRAVATION NO LONGER APPLY WHERE CLAIMANT

CANNOT PROVE WORK-CONNECTION OF THE ILLNESS.— *Raro* is the landmark case where we finally settled that the presumptions of compensability and aggravation no longer apply in the present Labor Code. In that case, we denied Zaida Raro's claim for benefits on the ground that there was no substantial evidence that would show that her employment as a clerk in the Bureau of Mines and Geo-Sciences increased her risk of contracting brain tumor. We emphasized that the Labor Code requires "the claimant *to prove a positive thing* – the illness was caused by employment and the risk of contracting the disease is increased by the working conditions." **We thus unequivocably abandoned the presumptions of compensability and aggravation in cases where the claimant cannot prove the work-connection of the illness because its cause is unknown. x x x** ***The Supreme Court Still Adheres to Raro.***

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondents.
GSIS Law Office for GSIS.

D E C I S I O N

PEREZ, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks the reversal of the 24 February 2009 Decision[1] and 11 June 2009 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 104853, affirming the 23 June 2008 Decision[3] of the Employees Compensation Commission (ECC),

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[1] *Rollo*, pp. 96-103; Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Remedios A. Salazar-Fernando and Fernanda Lampas Peralta concurring.

[2] *Id.* at 120-121.

[3] *Id.* at 44-48; Penned by Executive Director Benjamin C. Vitasa.

denying the petitioner's claim for death benefits under Presidential Decree (P.D.) No. 626, as amended, otherwise known as the Employees' Compensation Law.

The Facts

This case emanates from a simple claim for Employees' Compensation death benefits filed by the petitioner, surviving spouse of Rosario D. Lorenzo (Rosario), a Government Service Insurance System (GSIS) member with GSIS Policy No. CM-56244, who during her lifetime served as Elementary Teacher I at the Department of Education (DepEd) for a period covering 2 October 1984 to 27 December 2001.

The records of the benefit claim which was docketed as ECC Case No. GM-18068-0307-08, show that on 1 October 2001, Rosario was admitted at the Medical City Hospital due to Hematoma on the Tongue, Left Inner Lip and Right Cheek with Associated Gingival Bleeding.[4] It appears that prior to her hospitalization, she was previously diagnosed by the same hospital for Chronic Myelogenous Leukemia and was in fact confined therein on 31 July 2001 because of Pneumonia which was a result of immuno-compromise secondary to leukemia. Rosario's health condition was confirmed by means of a bone marrow examination which showed "hypercellular aspirate with marked myeloid hyperplasia."

There was no other document on record indicating any past medical, family and personal or social history of Rosario. On 27 December 2001, Rosario died of Cardio-Respiratory Arrest due to Terminal Leukemia.[5]

Petitioner, being the surviving spouse, claimed for Employees Compensation death benefits from the GSIS. It was denied on the ground that the GSIS Medical Evaluation and Underwriting Department (MEUD) found Rosario's ailments and cause of death, Cardio-respiratory Arrest Secondary to Terminal Leukemia,

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[4] *Id.* at 37; Annex "C".

[5] *Id.* at 41; Annex "F".

a non-occupational diseases contemplated under P.D. No. 626, as amended.

Unconvinced, petitioner elevated his Employee's Compensation claim to the ECC for review and reconsideration under the Amended Rules on Employees' Compensation provided in P.D. No. 626.

Upon review, the ECC found the denial of petitioner's claim to be in order, stating that:

> ***Leukemia*** is listed as an occupational disease under P.D. 626, as amended. Under, Annex "A," Item No. 15 of the Amended Rules on Employees' Compensation, ***Leukemia*** is considered compensable among operating room personnel due to exposure to anesthetics.
>
> Considering the above-stated medical facts and the conditions for compensability under P.D. 626, as amended, the denial by the System of appellant's claim for EC Death Benefits is proper.
>
> This Commission believes that the deceased's ***Chronic Myelogenous Leukemia*** is a result of a defective genetic expression in expanding **hematopoietic stem cells** (or blood cell precursors) resulting in the uncontrolled production of abnormal blood cells. ***"The diagnosis of Chronic Myelogenous Leukemia is established by reciprocal translocation between chromosomes 9 and 12. This translocation results in the head-to-tail fusion of the breakpoint cluster region (BCR) gene on chromosome 22q11 with the ABL gene located on chromosome 34. Untreated, the disease is characterized by the inevitable transition from a chronic phase to an accelerated phase and on to blastic crisis."*** (Harrison's Principles of Internal medicine, 16th Ed., Vol. I, pp. 637).
>
> The nature of the deceased's occupation does not increase the risk of developing ***Chronic Myelogenous Leukemia*** because the work does not show frequent and sufficient exposure to substances established as occupational risk factors of the disease. Further, several non-occupational factors can also increase the risk of this disease. **"There is a marked increase in the incidence of leukemia with age, and there is also a childhood peak which occurs around two to four years of age. Certain immulogic conditions, some of which are hereditary, appear to predispose to leukemia. Ionizing radiation and benzene exposure are established environment and occupational causes of leukemia."** (Encyclopedia of Occupational

Health and Safety: International Labor Organization, Geneva, 4th Ed., pp. 1, 4).[6]

Aggrieved, petitioner filed a petition for review of the decision of the ECC with the CA.

In a Decision promulgated on February 24, 2009, the CA affirmed the decision of ECC. The *fallo* of the decision reads:

> **WHEREFORE**, in the light of the foregoing, the instant petition for review is DISMISSED. The assailed decision is AFFIRMED.[7]

The CA ruled that under the present law, leukemia, while listed as an occupational disease, is compensable only among operating room personnel due to exposure to anesthetics.[8] Being a school teacher who is not exposed to anesthetics, Rosario's disease, though listed under Annex "A" may not be compensable, unless, petitioner could prove that his wife's risk of contracting the disease was increased by the latter's working conditions, which the petitioner failed to do.

The CA went on to state that petitioner has not presented any medical information on the cause of his wife's illness, which could help in determining the causal connection between Rosario's ailment and her alleged exposure to muriatic acid, floor wax and paint–hardly considered as radiation exposure which may cause *chronic myeloid leukemia*.

Petitioner now seeks relief in this Court *via* a petition for review on *certiorari* insisting, *inter alia*, on the error allegedly committed by the CA in failing to appreciate that P.D. No 626, as amended, is a social legislation whose primordial purpose is to provide meaningful protection to the working class against the hazards of disability, illness and other contingencies resulting in the loss of income. Such that, the ECC, SSS and GSIS as the official agents charged by law to implement social justice

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

[7] *Id.* at 102.

[8] Amended Rules on Employees Compensation Annex "A" (17).

guaranteed by the Constitution, should adopt a liberal attitude in favor of the employee in deciding claims for compensability.

We are called to decide whether or not the ailment of the late Rosario Lorenzo is compensable under the present law on employees' compensation.

This Court's Ruling

We find the Petition unmeritorious.

Sickness, as defined under Article 167[9] (1) Chapter I, Title II, Book IV of the Labor Code of the Philippines refers to "any illness definitely accepted as an occupational disease listed by the Employees' Compensation Commission, or any illness caused by employment, subject to proof that the risk of contracting the same is increased by working conditions.

In cases of death, such as in this case, Section 1(b), Rule III of the Rules Implementing P.D. No. 626, as amended, requires that for the sickness and the resulting disability or death to be compensable, the claimant must show: (1) that it is the result of an occupational disease listed under Annex "A" of the Amended Rules on Employees' Compensation with the conditions set therein satisfied; or (2) that the risk of contracting the disease is increased by the working conditions.

Section 2(a), Rule III of the said Implementing Rules, on the other hand, defines occupational diseases as those listed in Annex "A" when the nature of employment is as described therein. The listed diseases are therefore qualified by the conditions as set forth in the said Annex "A", hereto quoted:

OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

(1) The employee's work must involve the risks described herein;

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[9] The Article embodies the amendment of Title II, Book IV on Employees' Compensation and State Insurance Fund of the Labor Code by P.D No. 626.

(2) The disease was contracted as a result of the employee's exposure to the described risks;

(3) The disease was contracted within a period of exposure and under such other factors necessary to contract it;

(4) There was no notorious negligence on the part of the employee.

x x x x

Occupational Disease	**Nature of Employment**
x x x	
15. Leukemia and Lymphoma	Among operating room personnel due to anesthetics

Gauging from the above, the ECC was correct in stating that, contrary to the earlier finding of the MEUD of the GSIS, Rosario's disease is occupational, which fact, however, does not thereby result in compensability in view of the fact that petitioner's wife was not an operating room personnel.

As correctly pointed out by the ECC, the coverage of leukemia as an occupational disease relates to one's employment as an operating room personnel ordinarily exposed to anesthetics. In the case of petitioner's wife, the nature of her occupation does not indicate exposure to anesthetics nor does it increase the risk of developing Chronic Myelogenous Leukemia. There was no showing that her work involved frequent and sufficient exposure to substances established as occupational risk factors of the disease.[10] Thus, the need for the petitioner to sufficently establish that his wife's job as a teacher exposed her to substances similar to anesthetics in an environment similar to an "operating room."[11]

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[10] *Rollo*, p. 47; ECC Decision.

[11] The ECC denied compensability based on non-compliance with the conditions that: 1) Rosario's work must involve the risks described; 2) The disease was contracted as a result of the employee's exposure to the described risks; 3) The disease was contracted within a period of exposure and under such other factors necessary to contract it; and 4) There was no notorious negligence on the part of the employee.

This leans on the precept that the awards for compensation cannot rest on speculations and presumptions.[12]

Indeed, following the specific mandate of P.D. No. 626, as amended, and its Implementing Rules, the petitioner must have at least provided sufficient basis, if not medical information which could help determine the causal connection between Rosario's ailment and her exposure to muriatic acid, floor wax and paint as well as the rigors of her work. Instead, petitioner merely insists on the supposition that the disease might have been brought about by the harmful chemicals of floor wax and paint aggravated by the fact that the Manggahan Elementary School is just along the highway which exposed Rosario to smoke belched by vehicles, all contributing to her acquisition of the disease.

We find such factors insufficient to demonstrate the probability that the risk of contracting the disease is increased by the working conditions of Rosario as a public school teacher; enough to support the claim of petitioner that his wife is entitled to employees compensation. Petitioner failed to show that the progression of the disease was brought about largely by the conditions in Rosario's work. Not even a medical history or records was presented to support petitioner's claim.

In *Sante v. Employees' Compensation Commission,*[13] we held that "x x x x a claimant must submit such proof as would constitute a *reasonable basis* for concluding either that the conditions of employment of the claimant caused the ailment or that such working conditions had aggravated the risk of contracting that ailment. What kind and quantum of evidence would constitute an adequate basis for a reasonable man x x x to reach one or the other conclusion, can obviously be determined only on a case-to-case basis. That evidence must, however, be real and substantial, and not merely apparent, for the duty

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[12] *Jimenez v. Court of Appeals*, 520 Phil. 20, 36-37 (2006).

[13] 256 Phil. 319, 327 (1989).

to prove work-causation or work-aggravation imposed by existing law is real x x x not merely apparent."

At most, petitioner solely relies on a possibility that the demands and rigors of Rosario's job coupled with exposure to chemicals in paint or floor wax could result or contribute to contracting leukemia. This is but a bare allegation no different from a mere speculation. As we held in *Raro v. Employees Compensation Commission:*[14]

> The law, as it now stands requires the claimant to prove a *positive thing* – the illness was caused by employment and the risk of contracting the disease is increased by the working conditions. To say that since the proof is not available, therefore, the trust fund has the obligation to pay is contrary to the legal requirement that *proof* must be adduced. The existence of otherwise non-existent proof cannot be presumed.

It is well to stress that the principles of "presumption of compensability" and "aggravation" found in the old Workmen's Compensation Act is expressly discarded under the present compensation scheme. As illustrated in the said *Raro* case, the new principle being applied is a system based on social security principle; thus, the introduction of "proof of increased risk." As further declared therein:

> The present system is also administered by social insurance agencies – the Government Service Insurance Syatem and Social Security System – under the Employees Compensation Commission. The intent was to restore a sensible equilibrium between the employer's obligation to pay workmen's compensation and the employee's right to receive reparation for work-connected death or disability.[15]

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[14] 254 Phil. 846, 852 (1989).

[15] *Id.* at 853 citing *Sulit v. Employees' Compensation Commission*, 187 Phil. 317 (1980); *Armeña v. ECC, et al*., 207 Phil. 726 (1983); *Erese v. Employees' Compensation Commission*, 222 Phil. 491 (1985); *De Jesus v. ECC*, 226 Phil. 33 (1986); *Sarmiento v. Employees' Compensation Commission,* 244 Phil. 323 (1988).

The case of *Sarmiento v. Employees' Compensation Commission,*[16] cited in *Raro* case, elaborates, thus:

x x x x

The new law establishes a state insurance fund built up by the contributions of employers based on the salaries of their employees. The injured worker does not have to litigate his right to compensation. No employer opposes his claim. There is no notice of injury nor requirement of controversion. The sick worker simply files a claim with a new neutral Employees' Compensation Commission which then determines on the basis of the employee's supporting papers and medical evidence whether or not compensation may be paid. The payment of benefits is more prompt. The cost of administration is low. The amount of death benefits has also been doubled.

On the other hand, the employer's duty is only to pay the regular monthly premiums to the scheme. It does not look for insurance companies to meet sudden demands for compensation payments or set up its own fund to meet these contingencies. It does not have to defend itself from spuriously documented or long past claims.

The new law applies the social security principle in the handling of workmen's compensation. The Commission administers and settles claims from a fired under its exclusive control. The employer does not intervene in the compensation process and it has no control, as in the past, over payment of benefits. The open ended Table of Occupational Diseases requires no proof of causation. A covered claimant suffering from an occupational disease is automatically paid benefits.

Since there is no employer opposing or fighting a claim for compensation, the rules on presumption of compensability and controversion cease to have importance. The lopsided situation of an employer versus one employee, which called for equalization through the various rules and concepts favoring the claimant, is now absent. (Emphasis supplied).

All told, this is not to say, however, that this Court is unmindful of the claimant's predicament. While we sympathize with the petitioner, it is important to note that such sympathy must be

[16] 244 Phil. 323, 327-328 (1988).

balanced by the equally vital interest of denying undeserving claims for compensation.[17] Compassion for the victims of diseases not covered by the law ignores the need to show a greater concern for the trust fund to which the tens of millions of workers and their families look to for compensation whenever covered accidents, diseases and deaths occur.[18]

In light of the foregoing, we are constrained to declare the non-compensability of petitioner's claim, applying the provisions of the law and jurisprudence on the purpose of the law.

WHEREFORE, the petition is hereby **DENIED.** The 24 February 2009 Decision and 11 June 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 104853 are **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), del Castillo, and *Perlas-Bernabe, JJ.,* concur.

Brion, J., see concurring opinion.

SEPARATE CONCURRING OPINION

BRION, *J.*:

I concur with the *ponencia* that petitioner Benito E. Lorenzo is not entitled to receive death benefits under Presidential Decree No. (*PD*) 626 (The Employees' Compensation Law) for the demise of his wife, Rosario Lorenzo. I submit this Separate Concurring Opinion to state my own views and observations on the factual issue – whether Rosario's working conditions increased her risk of contracting leukemia – at hand.

I base my concurrence with the *ponencia's* conclusions on the following grounds:

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[17] *Riño v. Employees' Compensation Commission*, 387 Phil. 612, 620 (2000).

[18] *Id.* citing *Government Service Insurance System v. Court of Appeals*, 296 SCRA 514, 531-532, 25 September 1998.

a) This Court cannot review the uniform factual findings of the Government Service Insurance System *(GSIS)*, the Employees' Compensation Commission *(ECC)* and the Court of Appeals *(CA)* that there is no reasonable connection between Rosario's leukemia and her employment as a teacher in a Rule 45 petition for review on *certiorari.*

b) Benito failed to adduce substantial evidence that would show that Rosario's working conditions increased her risk of contracting leukemia. The presumptions of compensability and aggravation that subsisted during the effectivity of Act No. 3428 (The Workmen's Compensation Act) no longer apply under PD 442 (The Labor Code of the Philippines), as amended by PD 626.

As a general rule, the Supreme Court can only review questions of law in a petition for review on certiorari

While I agree with the *ponencia's* conclusion, I am of the position that this Court should have denied the petition on the mere ground that it cannot review questions of fact in a Rule 45 petition. As a general rule, the factual findings of the appellate court are conclusive and binding on the parties when supported by substantial evidence, and are not reviewable by this Court.[1] "Moreover, findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but finality when affirmed by the [CA]."[2] However, we may probe and resolve questions of fact in a Rule 45 petition as exceptions to the general rule, to wit:

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[1] *New City Builders, Inc. v. NLRC,* 499 Phil. 207, 212-213 (2005), citing *The Insular Life Assurance Company, Ltd. v. Court of Appeals,* G.R. No. 126850, April 28, 2004, 428 SCRA 79.

[2] *Gatus v. Social Security System,* G.R. No. 174725, January 26, 2011, 640 SCRA 553, 564, citing *Ortega v. Social Security Commission,* G.R. No. 176150, June 25, 2008, 555 SCRA 353.

(1) when the findings are grounded entirely on speculation, surmises or conjectures;

(2) when the inference made is manifestly mistaken, absurd or impossible;

(3) when there is grave abuse of discretion;

(4) when the judgment is based on a misapprehension of facts;

(5) when the findings of facts are conflicting;

(6) when in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;

(7) when the findings are contrary to the trial court;

(8) when the findings are conclusions without citation of specific evidence on which they are based;

(9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent;

(10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and

(11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[3]

None of these exceptions are present in this case. Thus, the *ponencia* should have restrained itself from reviewing the factual issue at hand because this is beyond the Court's scope of review. The *ponencia* should not have reviewed and evaluated the pieces of evidence all over again in the present case.

Benito failed to show by substantial evidence that Rosario's risk of

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[3] *New City Builders, Inc. v. NLRC, supra* note 1, at 213.

contracting leukemia was increased by her working conditions

Despite my apprehension to the *ponencia's* review of the factual issue in this case, I fully agree with the *ponencia* that Benito failed to adduce substantial evidence that would show that Rosario's working conditions increased her risk of contracting leukemia. Benito's assertion that Rosario's leukemia was aggravated by her exposure to harmful chemicals, contained in muriatic acid, floor wax and paint, and to the smoke belch of the vehicles which passed along Manggahan Elementary School is insufficient to establish substantial evidence required by law, as fully discussed below.

A. The Presumptions of Compensability and Aggravation are Abandoned in the Present Labor Code

There are two classifications of "sickness" under Article 167(l), Chapter I, Title II, Book IV of the Labor Code.[4] The first classification is any illness definitely accepted as an occupational disease listed by the ECC. **The second classification is any illness caused by employment <u>subject to proof</u> that the risk of contracting the same is increased by working conditions.** In the current case, Benito's claim for death benefits under the first classification cannot prosper because Annex A of the Amended Rules on Employees' Compensation lists leukemia as a compensable disease *only among operating room personnel due to anesthetics*.[5]

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[4] Article 167 (l2), Chapter I, Title II, Book IV of the Labor Code provides:

"Sickness" means any illness definitely accepted as an occupational disease listed by the Commission, or any illness caused by employment subject to proof that the risk of contracting the same is increased by working conditions. For this purpose, the Commission is empowered to determine and approve occupational diseases and work-related illnesses that may be considered compensable based on peculiar hazards of employment.

[5] Annex A of the Amended Rules on Employees' Compensation provides:

Consequently, Benito can only successfully base his claim on the basis of the increased risk doctrine under the second classification.

During the effectivity of Act No. 3428,[6] the Court adhered to presumptions of compensability and aggravation in applying the increased risk doctrine. The law presumed that the claim for compensation falls within the provisions of the law if the illness arose out of and in the course of employment. In effect, the employee did not have to prove the causation between the illness and the working conditions under the old law. In other words, the employer had the burden of proving that the employee's illness did not arise out of or in the course of employment. Necessarily, the employee or his family had to litigate his right to compensation against the employer who would oppose the claim.[7]

On January 1, 1975, PD 442, as amended by PD 626, discarded these presumptions and, instead, adopted a system based on

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OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

(1) The employee's work must involve the risks described herein;

(2) The disease was contracted as a result of the employee's exposure to the described risks;

(3) The disease was contracted within a period of exposure and under such other factors necessary to contract it;

(4) There was no notorious negligence on the part of the employee.

x x x x

Occupational Diseases	Nature of Employment
x x x x	
15. Leukemia and lymphoma	Among operating room personnel due to anesthetics

[6] The Workmen's Compensation Act took effect on June 10, 1928.

[7] *Raro v. Employees' Compensation Commission,* 254 Phil. 846, 853-855 (1989); and *Jimenez v. Court of Appeals,* 520 Phil. 20, 33-35 (2006), citing *Orate v. Court of Appeals,* 447 Phil. 654, 660 (2003).

social security principles.[8] Currently, this system is administered by social insurance agencies — the GSIS and the Social Security System — under the ECC. In this setup, we have a social insurance scheme where employers pay regular premiums to a trust fund. In turn, claims are paid from the trust fund to those who can prove entitlement under the law.[9]

Unlike the old law, the employee does not have to litigate his right to compensation under the present Labor Code. The employee or his family simply files a claim with the ECC which determines whether compensation may be paid. **The lopsided situation between the employer and the employee is now absent since the former no longer opposes the latter's claim for compensation. <u>Thus, presumptions of compensability and aggravation cease to have importance and are no longer applicable in claims for compensation.</u>**[10]

B. The Burden of Proof Required in Claims for Compensation is Substantial Evidence

In our new Labor Code, the degree of proof required in claims for compensation is merely substantial evidence, which means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[11] Substantial evidence is not equivalent to direct causal relation. What the law requires is merely a reasonable connection between the illness and the working conditions.[12]

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[8] The ECC was created under PD 442 on November 1, 1974. It, however, became operational with the issuance of PD 626 which took effect on January 1, 1975. PD 626 amended Title II of Book IV on Employees' Compensation and State Insurance Fund of PD 442.

[9] *Raro v. Employees' Compensation Commission, supra* note 7, at 853.

[10] *Id.* at 853-854, citing *Sarmiento v. Employees' Compensation Commission,* 244 Phil. 323.

[11] RULES OF COURT, Rule 133, Section 5.

[12] *Government Service Insurance System v. Besitan,* G.R. No. 178901, November 23, 2011, 661 SCRA 186, 194.

Congruent with the required degree of proof is the consideration that *it is the trust fund that suffers if benefits are paid to claimants who are not entitled under the law.* **The reason is that the trust fund's integrity would be endangered if we inadvertently or recklessly include diseases not covered by law.** It is thus this Court's duty to ensure the stability of the fund and make certain that the system can pay benefits when due to all who are entitled and in the increased amounts fixed by law.[13]

My concurrence with the *ponencia* lies on my position **that the liberal interpretation of employees' compensation does not dispense with the requirement that the employee or his family should present substantial proof that his risk of contracting an illness was increased by his working conditions.** In other words, this Court cannot rely on Benito's mere enumeration of chemicals to which Rosario was allegedly exposed *precisely because exposure to these chemicals is not inherent in the nature of her profession*. We cannot take judicial notice that teachers are constantly exposed to chemicals because this would open the floodgates for thousands of unwarranted similar claims and deplete the trust fund. To reiterate, Rosario was a teacher, and not a factory worker, an anesthesiologist or a chemist. Thus, in *Bravo v. ECC,*[14] we pronounced that mere enumeration of chemicals to which Evelio Bravo was allegedly exposed and reliance on the probability that those chemicals caused his cancer of the colon do not meet the substantial evidence required by law.

On this point, I would wish to emphasize the settled rule that this Court cannot rely on surmises and conjectures in awarding claims for compensation. For this Court to allow Benito's claim on the ground that medical experts cannot trace the exact etiology of leukemia is contrary to the legal requirement that substantial proof must be adduced. This Court **as a court of law** should

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[13] *Raro v. Employees' Compensation Commission, supra* note 7, at 855.

[14] 227 Phil. 93 (1986).

not presume the existence of an otherwise non-existent proof.[15] **If we show compassion for the victims of diseases not covered by law, we then ignore the need to show *a greater concern* for the trust fund to which the tens of millions of employees and their families look for compensation whenever covered accidents, salary and deaths occur.**[16]

C. Nemaria v. Employees' Compensation Commission is not the Controlling Doctrine in the Present Case

In his petition, Benito posits that the Court should apply *Nemaria v. Employees' Compensation Commission (Nemaria)*[17] to the present case. To briefly summarize the highlights of that case, Rosario Nemaria, a teacher, died of severe abdominal pains, anorexia, weight loss and jaundice, indicative of liver cancer, duodenal ulcer and breast cancer. Her illness was discovered in 1978. Subsequently, her spouse, Flaviano Nemaria, filed a claim for death benefits based on the theory of increased risk with the GSIS. The GSIS and the ECC denied the claim on the ground that the predisposing factors deemed largely responsible for the development of her illnesses were not peculiar to her employment as a teacher.

In a decision dated October 28, 1987, the Court found the petition meritorious. It stated that the uncertainty on Rosario Nemaria's cause of illness cannot eliminate the probability that her cancer was work-connected. It theorized that it is possible that she ate food with hepatic carcinogens while working in a far-flung rural area. **It declared that a claimant must show a reasonable connection between the illness and the working conditions in cases <u>where the cause of the illness can be determined or proved.</u> However, a claimant is not duty bound to prove the work-connection <u>where the cause of the illness is unknown</u>**

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[15] *Raro v. Employees' Compensation Commission, supra* note 7, at 852.

[16] *Id.* at 856.

[17] 239 Phil. 160 (1987).

or cannot be ascertained. For certainly, the law cannot demand an impossibility.[18]

Contrary to Benito's position, we cannot apply *Nemaria* to the present case. ***First***, although the factual circumstances of that case occurred during the effectivity of the present Labor Code, we applied the presumptions of compensability and aggravation in that case because we took account of the possibility that her cancer developed prior to January 1, 1975 or during the effectivity of Act No. 3428. ***Second***, we **expressly abandoned** *Nemaria* in *Raro v. Employees' Compensation Commission (Raro),* an ***en banc*** **ruling** which was promulgated on April 27, 1989. We thus stated in *Raro:*

> For the guidance of the administrative agencies and practicing lawyers concerned, this decision expressly supersedes the decisions in *Panotes v. Employees' Compensation Commission* [128 SCRA 473 (1984)]; *Mercado v. Employees' Compensation Commission* [127 SCRA 664 (1984)]; *Ovenson v. Employees' Compensation Commission* [156 SCRA 21 (1987)]; ***Nemaria v. Employees' Compensation Commission* [155 SCRA 166 (1987)]** and other cases with conclusions different from those stated above.[19] (emphasis ours; italics supplied)

Raro is the landmark case where we finally settled that the presumptions of compensability and aggravation no longer apply in the present Labor Code. In that case, we denied Zaida Raro's claim for benefits on the ground that there was no substantial evidence that would show that her employment as a clerk in the Bureau of Mines and Geo-Sciences increased her risk of contracting brain tumor. We emphasized that the Labor Code requires "the claimant *to prove a positive thing* – the illness was caused by employment and the risk of contracting the disease is increased by the working conditions."[20] **We thus unequivocably abandoned the presumptions of compensability and aggravation in cases where the claimant cannot prove the work-connection of the illness because its cause is unknown.**

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[18] *Id.* at 167.

[19] *Supra* note 7, at 856.

[20] *Id.* at 852; italics supplied.

D. The Supreme Court Still Adheres to Raro

Subsequently, this Court promulgated *GSIS v. Court of Appeals, et al.* (*GSIS*)[21] on January 28, 2008. The case, **a First Division ruling**, reverted to presumptions of compensability and aggravation in cases where the cause of the illness was unknown. In that case, Abraham Cate was employed as a member of the Philippine Navy in 1974. Thereafter, he transferred to the Philippine Constabulary in 1986. He was subsequently absorbed as a member of the Philippine National Police from 1991 until his retirement in 1994. In 1993, Abraham suffered from Osteoblastic Osteosarcoma which eventually resulted in his demise in 1994.

Prior to his death, Abraham filed a claim for income benefits with the GSIS. He alleged that he was exposed to virus when he did some dirty jobs during his stint in the Philippine Navy. However, the GSIS denied his claim on the ground that there was no proof that his duties increased his risk of contracting Osteoblastic Osteosarcoma. Subsequently, Abraham's surviving spouse and two children appealed the denial to the ECC. The ECC, however, affirmed the GSIS' denial of the claim.

On appeal, the CA reversed the ECC ruling. In so ruling, the CA cited the dissenting opinions of Justices Abraham Sarmiento and Edgardo Paras in *Raro.* It stated that Abraham's failure to present evidence showing the work-connection of his illness was due to the absence of available proof. It held that to deny compensation to Osteoblastic Osteosarcoma victims for their inability to produce proof is unrealistic.

The Court **adopted** the CA's position and affirmed the CA's ruling. It declared:

> **Considering, however, that it is practically undisputed that under the present state of science, the proof referred by the law to be presented by the deceased private respondent claimant was unavailable**

[21] 566 Phil. 361 (2008).

and impossible to comply with, the condition must be deemed as not imposed.

For this reason, the CA held, thus:

x x x x

> It is not the intention of this decision to challenge the wisdom of the *Raro* case. What is being hoped for is to have a second look on the issue of compensability of those inflicted with osteosarcoma or like disease, where the origin or cause is still virtually not ascertained. The protection of the stability and integrity of the State Insurance Fund against non-compensable claims, is much to be desired. Nonetheless, to allow the presumption of compensability to Osteosarcoma victims, will not adversely prejudice such state policy. xxx. We believe that in the meantime that osteosarcoma's cause and origin are not yet unearthed, the benefit of the doubt should be resolved in favor of the claim.
>
> **In main, We subscribe to the more compassionate and humane considerations contained in the dissenting opinions of Justices Sarmiento and Paras in the same Raro case** xxx.

Stated otherwise, before the amendment, the law simply did not allow compensation for the ailment of respondent. It is under this set-up that the Raro case was decided. However, as the ECC decision noted, the law was amended and now "the present law on compensation allows certain diseases to be compensable if it is sufficiently proven that the risk of contracting is increased by the working conditions." It, therefore, now allows compensation subject to requirement of proving by sufficient evidence that the risk of contracting the ailment is increased by the working conditions.

As earlier noted, however, in the specific case of respondent, the requirement is impossible to comply with, given the present state of scientific knowledge. **The obligation to present such as an impossible evidence must, therefore, be deemed void.** Respondent, therefore, is entitled to compensation, consistent with the social legislation's intended beneficial purpose.[22] (emphases and underscores ours; citations omitted)

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[22] *Id.* at 368-371.

In so ruling, the Court reverted to the discarded presumptions of compensability and aggravation in cases where the cause of the illness was unknown. However, *GSIS* is merely a stray case which did not overturn *Raro,* for the following reasons:

First, Section 4(3), Article 8 of the 1987 Constitution provides that "no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed **except by the court sitting *en banc*.**" Consequently, *GSIS* which is a division ruling cannot overturn *Raro* which is an *en banc* ruling.

Second, the Court erred when it stated in *GSIS* that *Raro* was decided during the effectivity of Act No. 3428. As we have discussed earlier, *Raro* was decided under the present Labor Code. It is also the landmark case which specifically declared that the claimant must show a positive proof where the cause of the illness is unknown. Furthermore, what *Raro* requires is the presentation of substantial evidence and not impossible evidence. As we have explained, the claimant is not required to show a direct causal link between the illness and the working conditions where the cause of the illness is unknown.

Third, Article 167(l), Chapter I, Title II, Book IV of the Labor Code clearly provides that reliance on the increased risk doctrine is **subject to proof** that the risk of contracting the illness is increased by working conditions. Indeed, this Court cannot revive the discarded presumptions of compensability and aggravation lest we engage in judicial legislation.

Lastly, there is no reason for the Court to revert to the lenient rule established in *Nemaria* because the current scheme in the Philippines remains an insurance system.

Our recent promulgation of *Government Service Insurance System v. Bernadas* (*Bernadas*)[23] on February 11, 2010 confirms my stand that this Court still adheres to the doctrine laid down

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[23] G.R. No. 164731, February 11, 2010, 612 SCRA 221.

in *Raro*. In *Bernadas*, we stated that Rosalinda Bernadas has the burden of proving that her profession as a teacher increased her risk of contracting melanoma, a cancer of the skin. We observed that Rosalinda failed to show that she had a chronic long-term exposure to the sun like farmers, fishermen, or lifeguards.

This is not to say, however, that we are abandoning the liberality of the law in favor of labor, with the rejection of the presumptions of compensability and aggravation. No less than the Constitution itself, under the social justice policy, calls for a liberal and sympathetic approach to legitimate appeals of disabled public servants.[24] However, what we are emphasizing in the present case is that this liberality does not dispense with the legal requirement that a claimant should establish his entitlement to benefits under PD 626 by substantial evidence. To rule that awards of compensation can rest on speculations would result in the drain of the trust fund that is specifically created for the protection of labor.

For all these reasons, I vote to deny the petition.

SECOND DIVISION

[G.R. No. 190016. October 2, 2013]

FREDERICK VENTURA, MARITES VENTURA-ROXAS, and PHILIP VENTURA (HEIRS OF DECEASED DOLORES C. VENTURA), *petitioners, vs.* **HEIRS OF SPOUSES EUSTACIO T. ENDAYA and TRINIDAD L. ENDAYA, namely,**

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[24] *GSIS v. CA,* 349 Phil. 357, 365 (1998), citing *Diopenes v. GSIS,* G.R. No. 96844, January 23, 1992, 205 SCRA 331.

TITUS L. ENDAYA, ENRICO L. ENDAYA, and JOSEPHINE ENDAYA-BANTUG,[1] *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RIGHT TO APPEAL UPHELD WHERE NOTICE OF ASSAILED DECISION WAS NOT VALIDLY SERVED, DEPRIVING THE PARTY THE OPPORTUNITY TO FILE A MOTION FOR RECONSIDERATION.—** [T]he CA erroneously sent the notice of the assailed August 18, 2006 Decision to petitioners at **No. 2**, Barangay San Martin de Porres, Parañaque City, instead of their address of record, *i.e.*, **Marian Road 2***,* Brgy. San Martin de Porres, Parañaque, Metro Manila and thus, was returned unserved for the reason "insufficient address." The notices of the Entry of Judgment and the transmittal letter to the Clerk of Court of the RTC indicate this fact. As such, there was clearly no proper and valid service of the said CA Decision which deprived petitioners of the opportunity to file a motion for reconsideration before the CA and/or further appeal to the Court. Verily, it would be unjust and unfair to allow petitioners to suffer the adverse effects of the premature entry of judgment made by the CA. Therefore, the Court deems it prudent to set aside the foregoing entry and upholds petitioners' right to appeal.
2. **CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT TO SELL; ELUCIDATED.—** A contract to sell is defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the latter upon his fulfillment of the conditions agreed upon, *i.e.*, the full payment of the purchase price and/or compliance with the other obligations stated in the contract to sell. Given its contingent nature, the failure of the prospective buyer to make full payment and/or abide by his

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[1] Deceased spouses Eustacio T. Endaya and Trinidad L. Endaya were substituted by their children, Titus L. Endaya, Enrico L. Endaya, and Josephine Endaya-Bantug. See Omnibus Motion i. For Substitution of Parties; and ii. For leave to File and Admit Comment dated January 15, 2010 (*rollo,* pp. 277-324). See also Court's Resolution dated July 26, 2010 (*id.* at 373).

commitments stated in the contract to sell prevents the obligation of the prospective seller to execute the corresponding deed of sale to effect the transfer of ownership to the buyer from arising. As discussed in *Sps. Serrano and Herrera v. Caguiat*: A contract to sell is akin to a conditional sale where the efficacy or obligatory force of the vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event, so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed. x x x.

3. **ID.; ID.; ID.; ID.; DISTINGUISHED FROM CONDITIONAL CONTRACT OF SALE.—** [W]hile the quality of contingency inheres in a contract to sell, the same should not be confused with a conditional contract of sale. In a contract to sell, the fulfillment of the suspensive condition will not automatically transfer ownership to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale. On the other hand, in a conditional contract of sale, the fulfillment of the suspensive condition renders the sale absolute and the previous delivery of the property has the effect of automatically transferring the seller's ownership or title to the property to the buyer.

APPEARANCES OF COUNSEL

Policarpio Pañgulayan & Azura Law Office for petitioners.
Meer Meer and Meer for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[2] is the Decision[3] dated August 18, 2006 of the Court of Appeals (CA)

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[2] *Id.* at 3-31.

[3] *Id.* at 39-45. Penned by Associate Justice Santiago Javier Ranada, with Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino, concurring.

in CA-G.R. CV No. 68465 which reversed and set aside the Decision[4] dated August 7, 2000 of the Regional Trial Court of Parañaque City, Branch 258 (RTC) in Civil Case No. 96-0500, dismissing petitioners' complaint for specific performance seeking to compel respondents to execute a deed of sale over the properties subject of this case.

The Facts

On June 29, 1981, Dolores Ventura (Dolores) entered into a Contract to Sell[5] (contract to sell) with spouses Eustacio and Trinidad Endaya (Sps. Endaya) for the purchase of two parcels of land covered by Transfer Certificates of Title (TCT) Nos. 392225[6] and (343392) S-67975[7] (subject properties), denominated as Lots 8 and 9, Block 3, situated in Marian Road II, Marian Park[8] (now Barangay San Martin de Porres),[9] Parañaque City, Metro Manila.

The contract to sell provides that the purchase price of ₱347,760.00 shall be paid by Dolores in the following manner: (*a*) downpayment of ₱103,284.00 upon execution of the contract; and (*b*) the balance of ₱244,476.00 within a 15-year period (payment period), plus 12% interest per annum (p.a.) on the outstanding balance and 12% interest p.a. on arrearages. It further provides that all payments made shall be applied in the following order: *first*, to the reimbursement of real estate taxes and other charges; *second*, to the interest accrued to the date of payment; *third*, to the amortization of the principal obligation;

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[4] *Id.* at 191-199. Penned by Judge Raul E. De Leon.

[5] *Id.* at 65-68.

[6] In the name of Rafael Lucido who is married to Cirila E. Lucido (records, Vol. 1, p. 432). The said title was cancelled on December 22, 1993 with the issuance of TCT No. 77366 in the name of respondent Eustacio T. Endaya (*id.* at 433).

[7] In the name of respondent Eustacio T. Endaya; *id.* at 434-435.

[8] *Rollo*, p. 72.

[9] Created under Presidential Decree No. 1324, entitled "Creating Barangay San Martin De Porres In The Municipality Of Parañaque, Metro-Manila," dated April 3, 1978.

and *fourth*, to the payment of any other accessory obligation subsequently incurred by the owner in favor of the buyer. It likewise imposed upon Dolores the obligation to pay the real property taxes over the subject properties, or to reimburse Sps. Endaya for any tax payments made by them, plus 1% interest per month. Upon full payment of the stipulated consideration, Sps. Endaya undertook to execute a final deed of sale and transfer ownership over the same in favor of Dolores.[10]

Meanwhile, Dolores was placed in possession of the subject properties and allowed to erect a building thereon.[11] However, on April 10, 1992, before the payment period expired, Dolores passed away.[12]

On November 28, 1996, Dolores' children, Frederick Ventura, Marites Ventura-Roxas, and Philip Ventura (petitioners), filed before the RTC a Complaint[13] and, thereafter, an Amended Complaint[14] for specific performance, seeking to compel Sps. Endaya to execute a deed of sale over the subject properties. In this regard, they averred that due to the close friendship between their parents and Sps. Endaya, the latter did not require the then widowed Dolores to pay the downpayment stated in the contract to sell and, instead, allowed her to pay amounts as her means would permit. The payments were made in cash as well as in kind,[15] and the same were recorded by respondent Trinidad herself in a passbook[16] given to Dolores to evidence the receipt of said payments. As of June 15, 1996, the total payments made by Dolores and petitioners amounted to ₱952,152.00, which is more than the agreed purchase price of

[10] *Rollo*, pp. 65-68.

[11] *Id.* at 59.

[12] *Id.* at 175. See Certificate of Death.

[13] *Id.* at 46-49.

[14] *Id.* at 57-62. Dated February 11, 1997.

[15] Petitioners alleged that payments made by Dolores in kind were all valued by Trinidad herself; see Amended Complaint; *id.* at 58.

[16] *Id.* at 69-71.

₱347,760.00, including the 12% interest p.a. thereon computed on the outstanding balance.[17] However, when petitioners demanded[18] the execution of the corresponding deed of sale, Sps. Endaya refused.

For their part, Sps. Endaya filed their Answer,[19] admitting the execution and genuineness of the contract to sell and the passbook. However, they countered that Dolores did not pay the stipulated downpayment and remitted only a total of 22 installments. After her death in 1992, petitioners no longer remitted any installment. Sps. Endaya also averred that prior to Dolores' death, the parties agreed to a restructuring of the contract to sell whereby Dolores agreed to give a "bonus" of ₱265,673.93 and to pay interest at the increased rate of 24% p.a. on the outstanding balance. They further claimed that in April 1996, when the balance of the purchase price stood at ₱1,699,671.69, a final restructuring of the contract to sell was agreed with petitioners, fixing the obligation at ₱3,000,000.00. Thereafter, the latter paid a total of ₱380,000.00 on two separate occasions,[20] leaving a balance of ₱2,620,000.00. In any event, Sps. Endaya pointed out that the automatic cancellation clause under the foregoing contract rendered the same cancelled as early as 1981 with Dolores' failure to make a downpayment and to faithfully pay the installments;[21] hence, petitioners' complaint for specific performance must fail. In addition, Sps. Endaya interposed a counterclaim for the alleged unpaid balance of ₱2,620,000.00, plus damages, attorney's fees and costs of suit.[22]

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[17] *Id.* at 59.

[18] *Id.* at 75. Letter dated June 28, 1996.

[19] *Id.* at 79-93. Dated April 3, 1997.

[20] Covered by Philippine National Bank Manager's Checks dated April 29, 1996 and June 5, 1996 in the amounts of ₱200,000.00 and ₱180,000.00, respectively; *id.* at 173.

[21] *Id.* at 87-90.

[22] *Id.* at 90-92.

In their Reply with Answer to Counterclaim,[23] petitioners denied the existence of any restructuring of the contract to sell, invoking[24] the Dead Man's Statute[25] and the Statute of Frauds.[26] In turn, Sps. Endaya filed a Rejoinder,[27] challenging the inapplicability of the foregoing principles since the case was not filed against an estate or an administrator of an estate, and in view of the partial performance of the contract to sell.[28]

While the oral depositions of Sps. Endaya were taken at the 4th Municipal Circuit Trial Court of Malvar-Balete, Batangas

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[23] *Id.* at 114-121. Dated May 6, 1997.

[24] *Id.* at 117.

[25] Section 23, Rule 130 of the Rules of Court provides:

Sec. 23. *Disqualification by reason of death or insanity of adverse party*. — Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind.

[26] Article 1403(2)(e) of the Civil Code provides in part:

Art. 1403. The following contracts are unenforceable, unless they are ratified:

x x x x

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum, thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

x x x x

(e) An agreement of the leasing for a longer period than one year, or for the sale of real property or of an interest therein;

x x x x

[27] *Rollo*, pp. 122-128. Filed on May 30, 1997.

[28] *Id.* at 124.

on account of their frailty and old age, they, however, did not make a formal offer of their depositions and documentary evidence. Hence, the case was submitted for decision on the basis of the petitioners' evidence.[29]

The RTC Ruling

In a Decision[30] dated August 7, 2000, the RTC found that petitioners were able to prove by a preponderance of evidence the fact of full payment of the purchase price for the subject properties.[31] As such, it ordered Sps. Endaya to execute a deed of absolute sale covering the sale of the subject properties in petitioners' favor and to pay them attorney's fees and costs of suit.[32] Dissatisfied, Sps. Endaya elevated the matter to the CA.

The CA Ruling and Subsequent Proceedings

In a Decision[33] dated August 18, 2006 (August 18, 2006 Decision), the CA reversed and set aside the RTC ruling. It found that petitioners were not able to show that they fully complied with their obligations under the contract to sell. It observed that aside from the payment of the purchase price and 12% interest p.a. on the outstanding balance, the contract to sell imposed upon petitioners the obligations to pay 12% interest p.a. on the arrears and to reimburse Sps. Endaya the amount of the pertinent real estate taxes due on the subject properties, which the former, however, totally disregarded as shown in their summary of payments.[34]

Meanwhile, counsel for petitioners, Atty. German A. Gineta, passed away on June 12, 2006,[35] hence, the notice of the August

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[29] See RTC Decision dated August 7, 2000; *id.* at 197.

[30] *Id.* at 191-199.

[31] *Id.* at 197.

[32] *Id.* at 199.

[33] *Id.* at 39-45.

[34] *Id.* at 44.

[35] See Certificate of Death; *id.* at 254.

18, 2006 Decision sent to him was returned unserved.[36] On the other hand, the notice sent to petitioners at No. 2, Barangay San Martin de Porres, Parañaque City, was likewise returned unserved for the reason "insufficient address."[37] Nonetheless, the CA deemed the service of the said notice to them as valid and complete as of March 9, 2007 pursuant to Section 8,[38] Rule 13 of the Rules of Court (Rules). Accordingly, it directed[39] the Division Clerk of Court to issue the corresponding Entry of Judgment. An Entry of Judgment[40] was, thus, made in the CA Book of Entries of Judgments certifying that the August 18, 2006 Decision became final and executory on March 25, 2007. The records were thereafter remanded[41] to the RTC.

In July 2009, respondent Titus Endaya, heir of Sps. Endaya,[42] demanded[43] petitioners to vacate the subject properties, which they refused.

On November 10, 2009, petitioners filed the instant petition invoking the benevolence of the Court to set aside the CA's August 18, 2006 Decision and, instead, reinstate the RTC Decision in the interest of substantial justice. They claimed that they

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[36] For the reason "deceased"; CA *rollo*, p. 77.

[37] *Id.* at 87.

[38] Sec. 8. *Substituted service*. – If service of pleadings, motions, notices, resolutions, orders and other papers cannot be made under the two preceding sections, the office and place of residence of the party or his counsel being unknown, **service may be made by delivering the copy to the clerk of court, with proof of failure of both personal service and service by mail**. The service is complete at the time of such delivery. (Emphasis supplied)

[39] See Resolution dated August 23, 2007; CA *rollo*, p. 89.

[40] *Rollo*, p. 330.

[41] *Id.* at 331.

[42] Records show that Trinidad passed away on January 31, 2002, while Eustacio died on October 23, 2003; *id.* at 332-333.

[43] Mentioned in the final demand letter dated August 23, 2009; *id.* at 252-253.

had no knowledge of the demise of their counsel; therefore, they were unable to file a timely motion for reconsideration before the CA or the proper petition before the Court. Further, they contend that they have proven full payment of the purchase price within the payment period as required by the contract to sell.

For their part, the heirs of Sps. Endaya (respondents) objected[44] to the belated filing of the petition long after the said CA Decision had lapsed into finality, especially as the petition raised factual issues that are improper in a petition for review on *certiorari* under Rule 45 of the Rules. In any case, they countered that the CA correctly held that petitioners failed to fully comply with their obligations under the contract to sell; thus, respondents are under no obligation to execute any deed of sale over the subject properties in favor of petitioners.

On September 22, 2010, the Court gave due course to the petition and required the parties to file their respective memoranda,[45] which they duly submitted.

The Issues Before the Court

The principal issues in this case are: (*a*) whether or not petitioners' right to appeal before the Court should be upheld; and (*b*) whether or not respondents should execute a deed of sale over the subject properties in favor of petitioners.

The Court's Ruling

The petition is partly meritorious.

Anent the first issue, it is observed that the CA erroneously sent the notice of the assailed August 18, 2006 Decision to petitioners at **No. 2**, Barangay San Martin de Porres, Parañaque City, instead of their address of record, *i.e.*, **Marian Road 2**, Brgy. San Martin de Porres, Parañaque, Metro Manila[46] and thus, was returned

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[44] See Comment (On Petition for Review on *Certiorari*) dated October 27, 2009; *id.* at 285-326.

[45] *Id.* at 400.

[46] *Id.* at 57.

unserved for the reason "insufficient address."[47] The notices of the Entry of Judgment[48] and the transmittal letter[49] to the Clerk of Court of the RTC indicate this fact. As such, there was clearly no proper and valid service of the said CA Decision which deprived petitioners of the opportunity to file a motion for reconsideration before the CA and/or further appeal to the Court. Verily, it would be unjust and unfair to allow petitioners to suffer the adverse effects of the premature entry of judgment made by the CA. Therefore, the Court deems it prudent to set aside the foregoing entry and upholds petitioners' right to appeal.

Nevertheless, with respect to the second issue, a thorough review of the records reveals no sufficient reason to warrant the reversal of the CA's August 18, 2006 Decision dismissing petitioners' complaint for specific performance which sought to enforce the contract to sell and to compel respondents to execute a deed of sale over the subject properties.

A contract to sell is defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the latter upon his fulfillment of the conditions agreed upon, *i.e.*, the full payment of the purchase price[50] and/or compliance with the other obligations stated in the contract to sell. Given its contingent nature, the failure of the prospective buyer to make full payment[51] and/or abide by his commitments stated in the contract to sell prevents the obligation of the prospective seller to execute the corresponding deed of sale to effect the transfer of ownership to the buyer from arising. As discussed in *Sps. Serrano and Herrera v. Caguiat*:[52]

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[47] CA *rollo*, p. 87.

[48] *Id.* at 330.

[49] *Id.* at 331.

[50] *Nabus v. Pacson*, G.R. No. 161318, November 25, 2009, 605 SCRA 334, 350, citing *Coronel v. CA*, 331 Phil. 294, 310 (1996).

[51] See *Nabus v. Pacson*, *id.* at 353.

[52] 545 Phil. 660 (2007).

A contract to sell is akin to a conditional sale where the efficacy or obligatory force of the vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event, so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed. x x x.[53]

To note, while the quality of contingency inheres in a contract to sell, the same should not be confused with a conditional contract of sale. In a contract to sell, the fulfillment of the suspensive condition will not automatically transfer ownership to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale.[54] On the other hand, in a conditional contract of sale, the fulfillment of the suspensive condition renders the sale absolute and the previous delivery of the property has the effect of automatically transferring the seller's ownership or title to the property to the buyer.[55]

Keeping with these principles, the Court finds that respondents had no obligation to petitioners to execute a deed of sale over the subject properties. As aptly pointed out by the CA, aside from the payment of the purchase price and 12% interest p.a. on the outstanding balance, the contract to sell likewise imposed upon petitioners the obligation to pay the real property taxes over the subject properties as well as 12% interest p.a. on the arrears.[56] However, the summary of payments[57] as well as the statement

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[53] *Id.* at 667.

[54] *Coronel v. CA*, 331 Phil. 294, 311 (1996).

[55] "In a conditional contract of sale, however, **upon the fulfillment of the suspensive condition, the sale becomes absolute** and this will definitely affect the seller's title thereto. In fact, if there had been previous delivery of the subject property, the seller's ownership or title to the property is automatically transferred to the buyer such that, the seller will no longer have any title to transfer to any third person x x x." (*id.*; emphasis supplied)

[56] *Rollo*, p. 44.

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

of account[58] submitted by petitioners clearly show that only the payments corresponding to the principal obligation and the 12% interest p.a. on the outstanding balance were considered in arriving at the amount of ₱952,152.00. The Court has examined the petition[59] as well as petitioners' memorandum[60] and found no justifiable reason for the said omission. Hence, the reasonable conclusion would therefore be that petitioners indeed failed to comply with all their obligations under the contract to sell and, as such, have no right to enforce the same. Consequently, there lies no error on the part of the CA in reversing the RTC Decision and dismissing petitioners' complaint for specific performance seeking to compel respondents to execute a deed of sale over the subject properties.

WHEREFORE, the Entry of Judgment in CA-G.R. CV No. 68465 is hereby **LIFTED.** The Decision dated August 18, 2006 of the Court of Appeals in the said case is, however, **AFFIRMED**.

SO ORDERED.

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

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[58] The same was prepared by Horacio C. Calma, a Certified Public Accountant who conducted an audit of the summary payments made by petitioners; see *rollo*, pp. 176-176-A; see also records, Vol. 2, pp. 806-812.

[59] *Rollo*, pp. 3-32.

[60] *Id.* at 402-427.

FIRST DIVISION

[G.R. No. 196051. October 2, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JADE CUAYCONG *y* REMONQUILLO,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES.—** Jurisprudence tells us that 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 since the credibility of a rape victim is not diminished, let alone impaired, by minor inconsistencies in her testimony. We have also declared that inconsistencies in the testimonies of witnesses, when referring only to minor details and collateral matters, do not affect the substance of their declaration, their veracity or the weight of their testimonies, moreover, they do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the assailants.

2. **ID.; ID.; FACTUAL FINDINGS OF THE TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.—** We find that the circumstance that two other judges heard the testimonies of BBB, the medico-legal officer, and a portion of AAA's testimony to be of no moment. The fact remains that the trial court judge who penned the RTC decision had the opportunity to also observe AAA's demeanor on the stand, as well as that of three other prosecution witnesses and all the defense witnesses. In any event, the Court has likewise minutely scrutinized the evidence on record and we have found no basis to overturn the factual findings of the trial court as affirmed by the Court of Appeals.

3. **ID.; ID.; ILL MOTIVE; NOT APPRECIATED AGAINST THE MOTHER OF THE VICTIM IN RAPE CASE.—** As for appellant's allegations and insinuations regarding ill motive on the part of AAA's mother, BBB, absent concrete supporting

evidence, this argument has failed to convince us that the trial court's assessment of the credibility of the victim and her supporting witnesses was tainted with arbitrariness or blindness to a fact of consequence. In this case, we uphold the legal doctrine which states that it is unnatural for a parent, more so for a mother, to use her offspring as an engine of malice especially if it will subject her child to humiliation, disgrace and even stigma attendant to a prosecution for rape, if she were not motivated solely by the desire to incarcerate the person responsible for her child's defilement. Likewise, we reiterate the principle that no young girl, such as AAA, would concoct a sordid tale, on her own or through the influence of BBB as per appellant's intimation, undergo an invasive medical examination then subject herself to the stigma and embarrassment of a public trial, if her motive was other than a fervent desire to seek justice. x x x Moreover, it is worthy to note that AAA broke down in tears when she was narrating the ordeal that she endured in the hands of appellant. We have established in jurisprudence that the crying of a victim during her testimony is evidence of the truth of the rape charges because the display of such emotion indicates the pain that the victim feels when asked to recount her traumatic experience. Thus, not unlike the minor inconsistencies in her testimony, this barefaced expression of grief serves only to strengthen AAA's credibility.

4. **CRIMINAL LAW; RAPE; FINDINGS OF SHALLOW HYMENAL LACERATION DOES NOT NEGATE RAPE.—** With regard to appellant's assertion that Dr. Carpio's testimony indicated that the shallow hymenal laceration present in AAA's vagina rules out the probability of any penetration by a male sexual organ and could only have been caused by the insertion of a finger, we rule that the said testimony does not negate the occurrence of rape. A perusal of the transcript would reveal that the same medico-legal officer did not totally discount the possibility of rape and, in fact, he admitted that he was not competent to conclude what really caused the shallow hymenal laceration. x x x During cross-examination by defense counsel, Dr. Carpio even gave the inference that partial penetration of the penis could have caused the shallow hymenal laceration found inside AAA's vagina. x x x Jurisprudence states that carnal knowledge as an element of rape does not require full penetration since all that is necessary for rape to be consummated is for the penis

of the accused to come into contact with the lips of the pudendum of the victim. Moreover, it is equally settled that hymenal rupture, vaginal laceration or genital injury is not indispensable because the same is not an element of the crime of rape.

5. **REMEDIAL LAW; EVIDENCE; EXPERT TESTIMONY IS MERELY CORROBORATIVE AND NOT ESSENTIAL FOR CONVICTION.—** [E]xpert testimony is merely corroborative in character and not essential to conviction since an accused can still be convicted of rape on the basis of the sole testimony of the private complainant. In other words, the medico-legal officer's testimony cannot be considered to possess comparative weight to that of the victim's assertions of rape and, thus, can be disregarded without affecting the finding of guilt imposed upon the accused.

6. **ID.; ID.; DENIAL; WEAK DEFENSE THAT WILL NOT PREVAIL IN THE ABSENCE OF SUFFICIENT CORROBORATION.—** With respect to appellant's denial of all the charges against him, we ascribe no weight to such an assertion considering that his claim lacked sufficient corroboration. We have consistently stated in jurisprudence that denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility because 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. **REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENTS; UNDER THE VARIANCE DOCTRINE, ACCUSED CHARGED WITH RAPE CAN BE FOUND GUILTY OF THE LESSER CRIME OF ACTS OF LASCIVIOUSNESS.—** [F]ollowing the variance doctrine embodied in Section 4, in relation to Section 5, Rule 120, Rules of Criminal Procedure, appellant [charged with rape] can be found guilty of the lesser crime of acts of lasciviousness. Said provisions read: SEC. 4. *Judgment in case of variance between allegation and proof.* – When there is a variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which

is included in the offense proved. SEC. 5. *When an offense includes or is included in another.* – An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitutes the latter. And an offense charged is necessarily included in the offense proved when the essential ingredients of the former constitute or form part of those constituting the latter. Indeed, acts of lasciviousness or *abusos dishonestos* are necessarily included in rape. On the basis of the foregoing disquisition, we affirm the conviction of appellant of one (1) count of statutory rape for which he is to suffer the penalty of *reclusion perpetua* and one (1) count of act of lasciviousness for which he is to suffer an indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. The award of damages is likewise affirmed.

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 Us is an appeal from the Decision[1] dated November 25, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03619, entitled *People of the Philippines v. Jade Cuaycong y Remonquillo*, which affirmed with modification the Joint Decision[2] dated July 25, 2008 of the Regional Trial Court of Las Piñas City, Branch 254 in Criminal Case Nos. 02-0575 and 02-0576. The trial court found appellant Jade Cuaycong

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[1] *Rollo*, pp. 2-18; penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Mario L. Guariña III and Rodil V. Zalameda, concurring.

[2] CA *rollo*, pp. 43-56.

y Remonquillo guilty beyond reasonable doubt of the crime of two counts of statutory rape as defined and penalized under Article 266-A, paragraph 1, in relation to Article 266-B, paragraph 6(5) of the Revised Penal Code. However, the Court of Appeals modified this to one count of statutory rape under the aforesaid penal provisions and one count of acts of lasciviousness as defined and penalized under Article 336 of the Revised Penal Code.

The pertinent portions of the two Informations both dated July 9, 2002 and which charge appellant with the felony of statutory rape read:

[In Criminal Case No. 02-0575]

That on or about the 4th day of July 2002, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA[3]], seven (7)[-]year old girl, against her will and consent.[4]

[In Criminal Case No. 02-0576]

That on or about during the month of June 2001, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA], seven (7)[-]year old girl, against her will and consent.[5]

Appellant pleaded "NOT GUILTY" to both charges when he was arraigned on August 27, 2002.[6]

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[3] In line with jurisprudence, fictitious initials are used in lieu of the victim-survivor's real name. The personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate families or household members, are also not disclosed. (*See People v. Cabalquinto*, 533 Phil. 703 [2006].)

[4] Records, p. 2.

[5] *Id.* at 207.

[6] *Id.* at 30.

The testimonies and the evidence presented by both sides were summed in the assailed July 25, 2008 Joint Decision of the trial court in this wise:

> [AAA] was born on August 20, 1994 (Exh. "A") and is the daughter of [BBB] from a previous relationship. [Appellant] became [BBB]'s partner and they lived together, tagging along [AAA], who was then 7 years old, at the former's residence at Real St., Aldana Plaza, Las Piñas City. Their relationship produced a son, named [DDD] born on January 22, 2002. Eight (8) months, after the birth of their son, they transferred residence and lived at Bernabe Compound, Pulang Lupa, of the same city.
>
> [BBB] worked as a Guest Relation Officer (GRO) at the Buendia Kia Karaoke Bar from 9:00 p.m. to 10:00 a.m. While [BBB] was at work, the [appellant] would take care of [AAA] and their son.
>
> On July 4, 2002 at about 10:00 o'clock in the evening, [AAA] and her brother was asleep. She felt that [appellant] laid himself beside her and started to remove her shorts. She told him not to remove it but [appellant] did not listen. [Appellant] also removed his pants, afterwards, he laid on top of her and kissed her. Then he inserted his penis to her vagina and kept it inside for a long time. [AAA] felt pain and cried. [Appellant] threatened to kill her mother if she will not keep quiet. Then she saw that her vagina was bleeding.
>
> With the light coming from the adjacent house of their neighbor, [AAA] had a good glance at [appellant's] sex organ. She described it as long as a ballpen or about five centimeters in length, brown and big.
>
> The following day, [AAA] went to the house of [CCC], sister of her mother. [CCC]'s house was also located at the same Bernabe Compound near [AAA]'s house. [CCC] noticed that [AAA], unlike before, was unhappy and could not walk straight. She asked [AAA] what was the matter with her but the child just shook her head and did not answer. [CCC] even asked her what breakfast she wanted but the child did not answer instead she cried. Then she excused herself and went to the comfort room. While she was inside the comfort room, [CCC] heard her shouting. [CCC] asked her why she shouted and, [AAA] replied that her vagina was painful. [CCC] and her son [EEE] immediately ran towards the comfort room. Inside the comfort room, [CCC] saw fresh blood coming from [AAA]'s vagina. [CCC] asked [AAA] who touched her and the child said "Jade".

[CCC] decided to bring [AAA] to the nearby Health Center of Bernabe Compound. At the Center, a certain Dr. Norma Velasco saw [AAA] and found out that [AAA] had a hymenal laceration. Without issuing however any medical certification to that effect, Dr. Velasco referred [CCC] and [AAA] to the District Hospital at Pulanglupa, Las Piñas City.

Meanwhile, Dr. Velasco called the Women's Desk and Children's Welfare Section of the Las Piñas City Police Headquarters and reported the matter. Upon receipt of the report, P/S Insp Marilyn Samarita, head of the Section, immediately radioed SPO1 Fernando Gasgonia and PO2 Edmund Alfonso and instructed them to proceed to Bernabe Health Center. At the Health Center, SPO1 Gasgonia and PO2 Alfonso talked to [CCC] and [AAA] and thereafter together with the two, proceeded to the house of the [appellant]. Reaching the house, the police officers saw the [appellant] and [BBB] seated beside each other. Everything seemed normal between them. The police officers arrested the [appellant] after [AAA] had pointed to him. Bringing along [AAA], [BBB], [CCC] and the [appellant], the police officers proceeded to their headquarters and turned over the [appellant] to P/S Insp Samarita.

Upon learning what happened to her daughter and with a referral from the police station, [BBB] brought her to the crime laboratory in Camp Crame, where [AAA] underwent genital examination. The Medico-Legal Report No. M-2000-02 issued by Medico-Legal Officer of the PNP Crime Laboratory, Police Chief Inspector Pierre Paul F. Carpio contains, among others, a finding that reads: *Hymen; shallow fresh laceration at 3 o'clock position*. [AAA] was also seen to have warts in the vagina and was advised to proceed to the PGH-Child Protection Unit. At the Philippine General Hospital, they had [AAA] examined and thereafter, set her for the removal of the warts after the bleeding. The procedure took place on August 6, 2002 (Exhs. "C" and "C-1").

With the medical findings, PO2 Lucia C. Conmigo, also of the Women's Desk and Children's Welfare Section, prepared the investigation reports (Exhibit "G") and on the basis thereof, two counts of statutory rape were filed against the [appellant].

[AAA] likewise recalled that the same thing happened to her, at night, sometime in the month of June 2001 at the store which they also utilized as their residence. At that time, [AAA] was tending their store while the [appellant] was then sleeping beside her brother. When [appellant] woke up, he approached her and removed her shorts and

standing from behind, he inserted his penis to her anus. She felt pain and cried, so that [appellant] was forced to stop. She also disclosed the incident to [CCC].

The [appellant] denied the accusations hurled against him. He could not have raped [AAA] in June 2001 because he and [BBB] were not yet living-in together. [BBB] and her daughter [AAA] were then staying with the former's mother and siblings at Bernabe Compound, Pulanglupa, Las Piñas City while he lived with his parents at Plaza Quezon, also of the same city. In order to get to their place, [appellant] has to take a jeep for a ride.

In denying having raped [AAA] on July 4, 2002, [appellant] alleged that at around 6 o'clock in the evening, he went to visit his parents and returned home at around 10 o'clock in the evening. His coming home late made [BBB] furious since he could have come home earlier that night to take care of his son and [AAA], so she can go to work on time. Nonetheless, [BBB] left for work just the same. Not long after, [BBB] left the house, the [appellant] saw [AAA] scratching her vagina. To relieve her of the itchiness, he ordered her to wash her vagina. Instead of obeying him, [AAA] cried and threatened him by saying "*magsusumbong ako*". Irritated, [appellant] stood up and dragged her outside the house and closed the door. [AAA] nevertheless did what the [appellant] told her to do. After washing her vagina, she entered the house and then laid herself to sleep on the floor beside her brother. [Appellant] also laid himself at the other side of [DDD] who at that time was sick.

[Appellant] woke up at around 9 o'clock in the morning of the following day, July 5, 2002. He was about to fix their bed, when two policemen arrived. The policemen invited him to go with them to the District Hospital because somebody wanted to talk to him. Before [appellant] could go with the policemen, [BBB] arrived. Together with [BBB] who was also invited by the policemen to go with them, [appellant] boarded the police mobile car. He was brought to the emergency room of the Las Piñas City District Hospital where he was asked by the policemen to sign a white paper which the [appellant] claimed he did not know, and he refused. From the Hospital, he was brought to the police sub-station at Zapote where [appellant] was again asked by the policemen to just admit the complaint; however, the policemen did not tell him what the complaint was. [Appellant] again refused. From the sub-station, [appellant] was brought by the

policemen to the Women's Desk and Children's Welfare Section of the Las Piñas City Police Headquarters.

After several days at the police headquarters, [appellant] was finally brought to the Office of the City Prosecutor of Las Piñas City and it was only during this time that the [appellant] learned that he was being charged of rape by [AAA].

[Appellant] surmised that the reason why [BBB] and [AAA] charged him was to get rid of him as he was jobless and that [BBB] also wanted to live with her new lover, a German national named Jester, who offered to bring her and [AAA] abroad to become citizens of his country. [Appellant] had not personally met this German national but he knew of their relationship from the text messages which [appellant] read on [BBB]'s cellphone. They quarreled most of the time because of other men with whom [BBB] used to flirt. However, [appellant] knew that [BBB] could do anything she wanted with her life because she was not married to him.

To support the theory that the charges were just based on a concocted story, the [appellant] presented his father, Jesus Cuaycong. He testified that when he learned that his son was detained, he immediately went to [BBB] to inquire what happened. During their conversation, he alleged that [BBB] admitted that the charges against his son were just [a] concoction of her mother and in due time, she would certainly arrange for their dismissal. While he was talking with [BBB], Jesus saw [AAA] playing outside their house like any normal child.[7]

At the end of the trial, the RTC convicted appellant on two counts of statutory rape under Article 266-A, paragraph 1, in relation to Article 266-B, paragraph 6(5) of the Revised Penal Code. The dispositive portion of the assailed July 25, 2008 Joint Decision of the trial court reads:

WHEREFORE, premises considered, there being proof beyond reasonable doubt that herein accused, JADE CUAYCONG *y* REMONQUILLO, has committed two (2) counts of Rape with the private complainant who at that time was under 12 years of age, defined and penalized under Article 266-A, paragraph 1, in relation to Article

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[7] CA *rollo*, pp. 44-47.

266-B, 6th paragraph (5) of the Revised Penal Code, as amended by Republic Act No. 8353, the Court pronounced him GUILTY and accordingly, sentenced him to suffer the penalty of *RECLUSION PERPETUA,* for each case.

Accused is likewise ordered to pay private complainant [AAA], for each count of rape, Php75,000.00 as civil indemnity; Php75,000.00 as moral damages and Php25,000.00 as exemplary damages. Cost against the accused.[8]

Appellant then submitted his case for review to the Court of Appeals. However, the appellate court denied his appeal and affirmed with modifications the ruling of the trial court. We quote the dispositive portion of the assailed November 25, 2010 Decision of the Court of Appeals here:

WHEREFORE, in the light of the foregoing, we **DENY** the instant appeal. The Joint Decision appealed from is **AFFIRMED** with the modifications that the award of exemplary damages in Criminal Case No. 02-0575 is increased to ₱30,000.00, the penalty of *reclusion perpetua* and the other monetary awards are maintained; and that in Criminal Case No. 02-0576, the appellant is found guilty beyond reasonable doubt of the crime of acts of lasciviousness for which he is sentenced to suffer an indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum and that he is ordered to pay AAA ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages and ₱15,000.00 as exemplary damages.[9]

The Court of Appeals affirmed appellant's conviction of the felony of statutory rape in Criminal Case No. 02-0575. However, it did not uphold the conviction in Criminal Case No. 02-0576 because, while the Information alleged rape by carnal knowledge, the prosecution was able to prove rape by sexual assault since the rape incident at issue involved penile penetration of the victim's anus. Citing the seminal case of *People v. Abulon*,[10]

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[8] *Id.* at 56.

[9] *Rollo*, p. 18.

[10] 557 Phil. 428 (2007).

the Court of Appeals modified the conviction of appellant from a charge of statutory rape to a charge of acts of lasciviousness.

Having lost in both the trial and appellate courts, appellant comes to us for a final appeal relying on the same assignment of error in his Appellant's Brief, to wit:

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED.[11]

Appellant argues that the credibility of the victim in this case is very much suspect considering the following purportedly inconsistent facets of her testimony: (1) the description of how the victim was supposedly raped; (2) the total number of instances of rape committed against her by appellant; (3) the uncertainty of whether or not the victim saw appellant's penis; and (4) the doubt with respect to whether or not the victim was able to touch appellant's sexual organ.

Appellant further highlights the testimony of Dr. Pierre Paul Carpio (Dr. Carpio), the medico-legal officer who examined AAA, to the effect that the victim informed him that the accused inserted his finger into her vagina as contradictory to AAA's testimony.

The petition is without merit.

Appellant's contention that the inconsistencies found in the victim's testimony warrant a finding of exculpating reasonable doubt deserves scant consideration.

Jurisprudence tells us that 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 since the credibility of a rape victim is not diminished, let alone impaired, by minor inconsistencies in her testimony.[12] We have also declared that inconsistencies in

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[11] CA *rollo*, p. 72.

[12] *People v. Laurino*, G.R. No. 199264, October 24, 2012, 684 SCRA 612, 619.

the testimonies of witnesses, when referring only to minor details and collateral matters, do not affect the substance of their declaration, their veracity or the weight of their testimonies, moreover, they do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the assailants.[13]

In the case at bar, the alleged inconsistencies in AAA's testimony do not deviate from the fact that AAA categorically identified appellant as the one who raped her on July 4, 2002 and earlier sexually assaulted her sometime in June of the year 2001. The inconsistent statements pointed out by appellant merely affect minor and tangential aspects of AAA's testimony which do not significantly alter the integrity of her narrative concerning the incidents of rape and sexual assault which are the subject matter of this case.

With regard to the credibility of AAA's declarations against appellant as well as that of other prosecution witnesses, we see no cogent reason to veer away from the jurisprudential principle of affording great respect and even finality to the trial court's assessment of the credibility of witnesses. In *People v. Morante,*[14] we elaborated on this often reiterated doctrine in this manner:

[W]hen the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality. The trial judge has the advantage of observing the witness' deportment and manner of testifying. Her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" are all useful aids for an accurate determination of a witness' honesty and sincerity. The trial judge, therefore, can better determine if witnesses are telling the truth, being

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[13] *People v. De los Reyes*, G.R. No. 177357, October 17, 2012, 684 SCRA 260, 276.

[14] G.R. No. 187732, November 28, 2012, 686 SCRA 602, 612 citing *People v. Arpon*, G.R. No. 183563, December 14, 2011, 662 SCRA 506, 523.

in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where said findings are sustained by the [Court of Appeals]. (Emphases omitted.)

We find that the circumstance that two other judges heard the testimonies of BBB, the medico-legal officer, and a portion of AAA's testimony to be of no moment. The fact remains that the trial court judge who penned the RTC decision had the opportunity to also observe AAA's demeanor on the stand, as well as that of three other prosecution witnesses and all the defense witnesses. In any event, the Court has likewise minutely scrutinized the evidence on record and we have found no basis to overturn the factual findings of the trial court as affirmed by the Court of Appeals.

As for appellant's allegations and insinuations regarding ill motive on the part of AAA's mother, BBB, absent concrete supporting evidence, this argument has failed to convince us that the trial court's assessment of the credibility of the victim and her supporting witnesses was tainted with arbitrariness or blindness to a fact of consequence.

In this case, we uphold the legal doctrine which states that it is unnatural for a parent, more so for a mother, to use her offspring as an engine of malice especially if it will subject her child to humiliation, disgrace and even stigma attendant to a prosecution for rape, if she were not motivated solely by the desire to incarcerate the person responsible for her child's defilement.[15]

Likewise, we reiterate the principle that no young girl, such as AAA, would concoct a sordid tale, on her own or through the influence of BBB as per appellant's intimation, undergo an invasive medical examination then subject herself to the stigma and embarrassment of a public trial, if her motive was other than a

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[15] *People v. Batula*, G.R. No. 181699, November 28, 2012, 686 SCRA 575, 588.

fervent desire to seek justice. We explained this rule, yet again, in *People v. Garcia*[16] where we held:

> Testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction. (Citations omitted.)

Moreover, it is worthy to note that AAA broke down in tears when she was narrating the ordeal that she endured in the hands of appellant.[17] We have established in jurisprudence that the crying of a victim during her testimony is evidence of the truth of the rape charges because the display of such emotion indicates the pain that the victim feels when asked to recount her traumatic experience.[18] Thus, not unlike the minor inconsistencies in her testimony, this barefaced expression of grief serves only to strengthen AAA's credibility.

With regard to appellant's assertion that Dr. Carpio's testimony indicated that the shallow hymenal laceration present in AAA's vagina rules out the probability of any penetration by a male sexual organ and could only have been caused by the insertion of a finger, we rule that the said testimony does not negate the occurrence of rape. A perusal of the transcript would reveal that the same medico-legal officer did not totally discount the possibility of rape and, in fact, he admitted that he was not competent to conclude what really caused the shallow hymenal laceration. The pertinent portion of Dr. Carpio's testimony reads:

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[16] G.R. No. 200529, September 19, 2012, 681 SCRA 465, 477-478.

[17] TSN, December 5, 2005, p. 18.

[18] *People v. Batula, supra* note 15 at 585.

[PROSECUTOR MONTESA]

Q In your professional opinion, was the minor whom you examined a victim of sexual abuse or rape?
A Sir, I am not in a position to qualify if it is a rape or a sexual abuse.

Q I am asking your opinion?
A As per examination, there is a recent loss of virginity and as per statistics in Crame, in our examination, that finding laceration, it is usually related to sexual abuse or rape.[19]

During cross-examination by defense counsel, Dr. Carpio even gave the inference that partial penetration of the penis could have caused the shallow hymenal laceration found inside AAA's vagina, to wit:

[ATTY. SION]

Q In your expert opinion Mr. Witness, if in the event a penis is inserted would it cause a shallow fresh laceration at 3 o'clock position?
A It de[p]ends [on] the penetration, Ma'am.

Q A full penetration, Mr. Witness?
A A full penetration will cause deeper laceration.

Q Not shallow laceration?
A Yes, Ma'am. It will cause more laceration with the hymen and it is very post fourchette the open parts of the genital at the lower and it is more fragile. It is usually abraded or lacerated if penis was inserted.

Q But in this case that part of the vagina was preserve[d]?
A Yes, Ma'am.[20]

Jurisprudence states that carnal knowledge as an element of rape does not require full penetration since all that is necessary for rape to be consummated is for the penis of the accused to

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[19] TSN, June 22, 2005, pp. 15-16.

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

come into contact with the lips of the pudendum of the victim.[21] Moreover, it is equally settled that hymenal rupture, vaginal laceration or genital injury is not indispensable because the same is not an element of the crime of rape.[22]

Anent Dr. Carpio's testimony that AAA told him that a finger, not a penis, was inserted inside her vagina,[23] we rule that this does not seriously affect AAA's credibility nor diminish the straightforward and consistent statements that she made in open court which tells otherwise. During AAA's lengthy direct examination by the prosecutor and, especially, during her strenuous cross-examination by defense counsel, she never wavered from her conviction that, on July 4, 2002, appellant inserted his penis inside her sex organ. The relevant portions of AAA's testimony during her cross-examination are reproduced here:

[ATTY. SION]

Q And in fact, you said that it was inserted because you can feel that something was inserted into your vagina?
A Yes, Ma'am.

Q And you were sure that it was the penis of your Kuya Jade?
A Yes, Ma'am.

x x x x

Q During the last incident on July 4, 2002, you were very certain that the penis of the accused was inserted into your vagina?
A Yes, Ma'am.

x x x x

Q But the truth is that the accused has repeatedly inserted his entire penis into your vagina during those times?
A Yes, Ma'am.[24]

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[21] *People v. Abrencillo*, G.R. No. 183100, November 28, 2012, 686 SCRA 592, 598.

[22] *People v. Soria*, G.R. No. 179031, November 14, 2012, 685 SCRA 483, 505.

[23] TSN, June 22, 2005, p. 11.

[24] TSN, May 11, 2006, pp. 12-19.

In addition, we have previously ruled that expert testimony is merely corroborative in character and not essential to conviction since an accused can still be convicted of rape on the basis of the sole testimony of the private complainant.[25] In other words, the medico-legal officer's testimony cannot be considered to possess comparative weight to that of the victim's assertions of rape and, thus, can be disregarded without affecting the finding of guilt imposed upon the accused.

It is settled in jurisprudence that in a prosecution for rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing and consistent with human nature and the normal course of things.[26] We agree with the findings of the trial court, which was affirmed by the Court of Appeals, that AAA's testimony clearly and convincingly narrated the details of how she was raped by appellant. The significant snippets of her testimony read:

[PROSECUTOR MONTESA]

Q You said that at that time you were sleeping, what happen[ed] next after that?
A He lay beside me.

Q Who lay beside you, AAA?
A Jade, sir.

Q And after Jade lay beside you, what happen[ed] next?
A He removed my short[s].

Q And then what else did he do, if any?
A He laid on top of me.

Q And after he laid on top of you, what else happen[ed]?
A (no answer)

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[25] *People v. Colorado*, G.R. No. 200792, November 14, 2012, 685 SCRA 660, 673.

[26] *People v. Viojela,* G.R. No. 177140, October 17, 2012, 684 SCRA 241,251.

x x x x

[COURT]

Q According to you when the accused went to you he removed your shorts, is this true?
A Yes, your honor.

Q Now, when he was removing your shorts, did you say anything?
A Yes, your honor.

Q What did you tell him?
A That he should not remove my shorts.

x x x x

Q Now, what did the accused do to his pants after he laid on top of you?
A He removed also the pants.

x x x x

Q Now, according to you[,] Kuya Jade removed his pants and he laid on top of you, now, what did Kuya Jade do to you after he removed his pants?
A "*Tinusok niya ang kanyang titi sa akin*."

x x x x

[PROSECUTOR MONTESA]

Q What part of your body was the organ "*tinusok*"? Was it "*tinusok sa* private part or pepe"?
A Yes, in my "pepe".

Q And what else did he do after he, as you said, "*tinusok*" his private organ to your "pepe"?
A He was kissing me.

Q And after that, what happened next?
A And he told me to keep quiet.

Q And did you say anything to him after he told you to keep quiet?

A He said I should keep silent or else he will kill my Mama.[27]

With respect to appellant's denial of all the charges against him, we ascribe no weight to such an assertion considering that his claim lacked sufficient corroboration. We have consistently stated in jurisprudence that denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility because 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.[28]

As for the Court of Appeals' ruling that the charge of rape in Criminal Case No. 02-0576 should be downgraded to an act of lasciviousness, we find no justification to disturb the same. As correctly cited by the Court of Appeals, it was settled in *Abulon* that:

In view of the material differences between the two modes of rape, the first mode is not necessarily included in the second, and *vice versa*. Thus, since the charge in the Information in Criminal Case No. SC-7424 is rape through carnal knowledge, appellant cannot be found guilty of rape by sexual assault although it was proven, without violating his constitutional right to be informed of the nature and cause of the accusation against him.

However, following the variance doctrine embodied in Section 4, in relation to Section 5, Rule 120, Rules of Criminal Procedure, appellant can be found guilty of the lesser crime of acts of lasciviousness. Said provisions read:

SEC. 4. *Judgment in case of variance between allegation and proof.* – When there is a variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

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[27] TSN, December 5, 2005, pp. 15-31.

[28] *People v. Colorado*, *supra* note 25 at 672.

> SEC. 5. *When an offense includes or is included in another.* – An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitutes the latter. And an offense charged is necessarily included in the offense proved when the essential ingredients of the former constitute or form part of those constituting the latter.

Indeed, acts of lasciviousness or *abusos dishonestos* are necessarily included in rape.[29]

On the basis of the foregoing disquisition, we affirm the conviction of appellant of one (1) count of statutory rape for which he is to suffer the penalty of *reclusion perpetua* and one (1) count of act of lasciviousness for which he is to suffer an indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. The award of damages is likewise affirmed.

WHEREFORE, premises considered, the Decision dated November 25, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03619, finding appellant Jade Cuaycong in Criminal Case Nos. 02-0575 and 02-0576, is hereby **AFFIRMED** with **MODIFICATION** that appellant is ordered to pay the private offended party interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment.

No pronouncement as to costs.

SO ORDERED.

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

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[29] *People v. Abulon, supra* note 10 at 455.

[*] Per Special Order No. 1537 (Revised) dated September 6, 2013.

[**] Per Special Order No. 1545 (Revised) dated September 16, 2013.

FIRST DIVISION

[G.R. No. 197832. October 2, 2013]

ANITA RAMIREZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; PERIOD.—** Section 6, Rule 122 of the Revised Rules of Criminal Procedure provides for the period when an appeal from a judgment or final order in a criminal case should be taken, *viz*: 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 motions has been served upon the accused or his counsel at which time the balance of the period begins to run.

2. **ID.; ID.; ID.; A STATUTORY PRIVILEGE THAT MUST COMPLY WITH THE REQUIREMENTS OF THE LAW.—** [A] judgment of conviction [that] has already attained finality cannot be modified or set aside anymore in accordance with Section 7, Rule 120 of the Revised Rules of Criminal Procedure. x x x The Court has already stressed that "the right to appeal is not a natural right and is not part of due process. It is merely a statutory privilege, and may be exercised only in accordance with the law. The party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost."

3. **ID.; ID.; ID.; PERIOD FOR PERFECTING AN APPEAL MAY BE RELAXED UNDER MERITORIOUS GROUNDS; DOES NOT INCLUDE NEGLIGENCE OF COUNSEL AND CLIENT.—** In exceptional cases, the Court has relaxed the period for perfecting an appeal on grounds of substantial justice or when there are other special and meritorious circumstances and issues. x x x The petitioner, however, failed to present any exceptional, special or meritorious circumstance that will excuse the belated filing

of her notice of appeal. As correctly ruled by the CA, her assertion that her counsel on record failed to communicate to her the status of her case is a "tenuous and implausible" excuse. The rule is that the omission or negligence of counsel binds the client. This is truer if the client did not make a periodic check on the progress of her case. In this case, aside from heaving the fault entirely on her counsel, the petitioner did not even attempt to show that she exercised diligent efforts in making sure that she is brought up to date as regards the status of her case or the steps being taken by her counsel in the defense of her case. x x x While the Court commiserates with the petitioner's loss, "the bare invocation of the 'interest of substantial justice' is not a magic wand that will automatically compel this Court to suspend procedural rules." Strict compliance with the Rules of Court is indispensable for the orderly and speedy disposition of justice. The Rules must be followed; otherwise, they will become meaningless and useless.

APPEARANCES OF COUNSEL

Lucas C. Carpio, Jr. for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

REYES, *J.*:

In this petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, petitioner Anita Ramirez (petitioner) seeks the reversal of the Court of Appeals (CA) Resolutions dated January 31, 2011[2] and June 30, 2011[3] in CA-G.R. CR No. 33099, denying her "Most Deferential Omnibus Motion to Admit Notice of Appeal and Post Bond on Appeal".

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[1] *Rollo*, pp. 11-23.

[2] Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Fernanda Lampas Peralta and Amy C. Lazaro-Javier, concurring; *id.* at 26-35.

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

The Facts

On January 5, 2009, the Regional Trial Court (RTC) of Quezon City, Branch 97 convicted the petitioner and one Josephine Barangan (Barangan) of the crime of Estafa in Criminal Case No. Q-01-100212. After several re-settings, the judgment was finally promulgated on March 25, 2009 and warrants of arrests were accordingly issued. According to the petitioner, she failed to attend the promulgation of judgment as she had to attend to the wake of her father.[4]

Three (3) months after, or on June 6, 2009, the petitioner filed an Urgent *Ex-parte* Motion to Lift Warrant of Arrest and to Reinstate Bail Bond, which was denied by the RTC in its Order dated October 7, 2009.[5]

Aggrieved, the petitioner filed the motion to admit notice of appeal and to post bond with the CA, asking for the reversal of the RTC Order dated October 7, 2009. She subsequently filed her notice of appeal on November 17, 2010.[6] The OSG, for its part, did not oppose the petitioner's belated filing of the notice of appeal but objected to her application for the posting of a bond pending appeal.[7]

In Resolution[8] dated January 31, 2011, the CA denied the omnibus motion. The petitioner filed a motion for reconsideration, which was denied by the CA in Resolution[9] dated June 30, 2011. In denying the omnibus motion, the CA ruled that the petitioner failed to file the notice of appeal within the 15-day reglementary period prescribed by the Rules, reckoned from

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

[5] *Id.* at 14.

[6] *Id.* at 68.

[7] *Id.* at 29.

[8] *Id.* at 26-35.

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

the date of notice of the RTC's judgment of conviction, as she filed her notice of appeal with the CA only on November 17, 2010. The CA opined that as early as June 10, 2009, the petitioner was already aware of the RTC judgment; however, she opted to file a motion to lift the warrant of arrest. As such, the judgment of conviction against her has attained finality. The CA also opined that since the petitioner knew she could not attend the promulgation of judgment on March 25, 2009, she should have exerted earnest efforts to confer with her counsel to request for its re-setting. Failing to do so, the CA considered her absence without justifiable cause a blatant disrespect of the judicial process.[10] Thus, the CA denied her application for provisional liberty in view of the finality of the judgment of conviction against her.

Hence, this petition.

The petitioner wants the Court to take note of the fact that the OSG did not object to the belated filing of her notice of appeal with the CA. The petitioner also attributes such lapse to her counsel whom she expected to take care of her legal concerns. She claims that her counsel did not apprise her of the status of the case and that it would have been unforgivable for her not to pay her last respects to her deceased father. She also maintains that since the CA would also be reviewing Barangan's appeal, it would serve the interest of substantial justice if the CA were to admit the petitioner's appeal. She also seeks the application of the exceptional cases where the Court admitted a belated appeal.[11]

In its Comment,[12] the OSG contends that the petitioner is bound by the negligence of her counsel. It also manifests that while it did not object to her appeal being heard by the CA, it is now withdrawing such position given the petitioner's continued

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[10] *Id.* at 33.

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

[12] *Id.* at 65-79.

refusal to submit to the jurisdiction of the RTC despite the CA's denial of her omnibus motion.

The petition is devoid of merit.

Section 6, Rule 122 of the Revised Rules of Criminal Procedure provides for the period when an appeal from a judgment or final order in a criminal case should be taken, *viz*:

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 motions has been served upon the accused or his counsel at which time the balance of the period begins to run.

In this case, the judgment convicting the petitioner of the crime of Estafa was promulgated on March 25, 2009. Instead of filing a notice of appeal within fifteen (15) days from the promulgation or notice of judgment, the petitioner filed with the RTC a motion to lift warrant of arrest and to reinstate bail bond three (3) months later. It was only in November 2010 or more than a year later since the RTC denied her motion that the petitioner filed with the CA her motion to admit notice of appeal. At that point, her judgment of conviction has already attained finality and cannot be modified or set aside anymore in accordance with Section 7, Rule 120 of the Revised Rules of Criminal Procedure.[13] Thus, the CA did not commit any reversible error in denying the petitioner's motion inasmuch as by the time the petitioner filed the same, the appellate court was already bereft of any jurisdiction to entertain the motion. The Court has already stressed that "the right to appeal is not a natural right and is not part of due process. It is merely a statutory privilege, and may be exercised only in accordance with the law. The party who seeks to avail of the same must

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[13] *See Tamayo v. People*, G.R. No. 174698, July 28, 2008, 560 SCRA 312, 322.

comply with the requirements of the Rules. Failing to do so, the right to appeal is lost."[14]

In exceptional cases, the Court has in fact relaxed the period for perfecting an appeal on grounds of substantial justice or when there are other special and meritorious circumstances and issues.[15] Thus, in *Remulla v. Manlongat*,[16] the Court considered the one-day late filing of the prosecution's notice of appeal as excusable given the diligent efforts exerted by the private prosecutor in following up its filing with the public prosecutor.

The petitioner, however, failed to present any exceptional, special or meritorious circumstance that will excuse the belated filing of her notice of appeal. As correctly ruled by the CA, her assertion that her counsel on record failed to communicate to her the status of her case is a "tenuous and implausible" excuse.[17] The rule is that the omission or negligence of counsel binds the client. This is truer if the client did not make a periodic check on the progress of her case.[18] In this case, aside from heaving the fault entirely on her counsel, the petitioner did not even attempt to show that she exercised diligent efforts in making sure that she is brought up to date as regards the status of her case or the steps being taken by her counsel in the defense of her case.

Moreover, the petitioner should have seen to it that, at the very least, communication was sent to the trial court to inform the presiding judge of the demise of her father and that she could not be present during the promulgation of judgment as

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[14] *Dimarucot v. People*, G.R. No. 183975, September 20, 2010, 630 SCRA 659, 668.

[15] *Remulla v. Manlongat*, 484 Phil. 832, 838-839 (2004).

[16] 484 Phil. 832 (2004).

[17] *Rollo,* p. 32.

[18] *Mapagay v. People*, G.R. No. 178984, August 19, 2009, 596 SCRA 470, 478.

she had to attend to his funeral arrangements; or, as stated by the CA, "she should have filed a motion for the resetting of the promulgation to another date."[19] In *Neplum, Inc. v. Orbeso*,[20] the Court affirmed the lower court's refusal to give due course to the notice of appeal filed by the petitioner therein, stating that "all that petitioner had to do was to file a simple notice of appeal — a brief statement of its intention to elevate the trial court's Decision to the CA. x x x Parties and their counsels are presumed to be vigilant in protecting their interests and must take the necessary remedies without delay and without resort to technicalities."[21]

While the Court commiserates with the petitioner's loss, "the bare invocation of 'the interest of substantial justice' is not a magic wand that will automatically compel this Court to suspend procedural rules."[22] Strict compliance with the Rules of Court is indispensable for the orderly and speedy disposition of justice. The Rules must be followed; otherwise, they will become meaningless and useless.[23]

WHEREFORE, the petition is **DENIED** for lack of merit.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Perlas-Bernabe,[*] and *Leonen,*[**] *JJ.,* concur.

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[19] *Rollo*, p. 33.

[20] 433 Phil. 844 (2002).

[21] *Id.* at 867.

[22] *Supra* note 18.

[23] *Supra* note 14, at 668-669.

[*] Acting member per Special Order No. 1537 (Revised) dated September 6, 2013.

[**] Acting member per Special Order No. 1545 (Revised) dated September 16, 2013.

SECOND DIVISION

[G.R. No. 200740. October 2, 2013]

LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD, JAIME JACOB, as Chairman of the LTFRB, ARTHUR SAIPUDIN, MELCHOR FRONDA, NIDA QUIBIC, LILIA COLOMA, CYNTHIA DIA, GLENN ZARAGOZA and JOEL BOLANO, in their respective capacities as Chairman, Vice-Chairman and Members of the Special Bids and Awards Committee, *petitioners, vs.* **STRONGHOLD INSURANCE COMPANY, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR PROHIBITION; ELUCIDATED.—** The writ of prohibition lies upon a showing that the assailed proceedings "are [conducted] without or in excess of x x x jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction." It is the extra-jurisdictional nature of the contested proceedings that grounds the issuance of the writ, enjoining a tribunal or officer from further acting on the matter before it.

2. **ID.; ID.; ID.; STANDARD OF ISSUANCE THEREOF IS *"GRAVE"* ABUSE OF DISCRETION; ELUCIDATED.—** [T]he standard under Rule 65 for the issuance of the writ of prohibition is "*grave* abuse of discretion" and not mere "abuse of discretion." The difference is not a simple matter of semantics. The writs governed by Rule 65 – *certiorari*, *mandamus*, and prohibition – are extraordinary remedies designed to correct not mere errors of judgment (*i.e.*, in the appreciation of facts or interpretation of law) but errors of jurisdiction (*i.e.*, lack or excess of jurisdiction). Unlike the first category of errors which the lower tribunal commits in the exercise of its jurisdiction, the latter class of errors is committed by a lower tribunal devoid of jurisdiction or, alternatively, for exercising jurisdiction in an "arbitrary or despotic manner."

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; MATCHING CLAUSE; "RIGHT TO MATCH" AND "RIGHT TO TOP" THE HIGHEST BIDDER ARE GENERALLY INVALID STIPULATIONS IN PUBLIC BIDDING; EXCEPTIONS.— The Matching Clause contains what is referred to in contract law as the right of first refusal or the "right to match." Such stipulations grant to a party the right to offer the **same** amount as the highest bid to beat the highest bidder. "Right to match" stipulations are different from agreements granting to a party the so-called "right to top." Under the latter arrangement, a party is accorded the right to offer a **higher** amount, usually a fixed sum or percentage, to beat the highest bid. In the field of public contracts, these stipulations are weighed with the taint of invalidity for contravening the policy requiring government contracts to be awarded through public bidding. Unless clearly falling under statutory exceptions, government contracts for the procurement of goods or services are required to undergo public bidding "to protect the public interest by giving the public the best possible advantages thru open competition." The inclusion of a right of first refusal in a government contract executed post-bidding, as here, negates the essence of public bidding because the stipulation "gives the winning bidder an x x x advantage over the other bidders who participated in the bidding x x x." Moreover, a "right of first refusal," or "right to top," whether granted to a bidder or non-bidder, discourages other parties from submitting bids, narrowing the number of possible bidders and thus preventing the government from securing the best bid. These clauses escape the taint of invalidity only in the narrow instance where the right of first refusal (or "right to top") is founded on the beneficiary's "interest on the *object* over which the right of first refusal is to be exercised" (such as a "tenant with respect to the land occupied, a lessee *vis-à-vis* the property leased, a stockholder as regards shares of stock, and a mortgagor in relation to the subject of the mortgage") and the government stands to benefit from the stipulation. Thus, we upheld the validity of a "right to top" clause allowing a private stockholder in a corporation to top by 5% the highest bid for the shares disposed by the government in that corporation. Under the joint venture agreement creating the corporation, a party had the right of first refusal in case the other party disposed its shares. The government, the disposing party in the joint venture

agreement, benefitted from the 5% increase in price under the "right to top," on outcome better than the right of first refusal.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Abesamis Law Offices for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

We review[1] the ruling[2] of the Court of Appeals annulling a government bidding to accredit providers of accident insurance to operators of passenger public utility vehicles.

The Facts

Petitioner Land Transportation Franchising and Regulatory Board (LTFRB) is the government agency charged with the regulation of franchises of land-based public utility vehicles. To implement the law[3] requiring operators of passenger public utility vehicles to obtain accident insurance policies, LTFRB created the Passenger Personal Accident Insurance Program

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Decision dated 20 February 2012, penned by Associate Justice Edwin D. Sorongon with Associate Justices Noel G. Tijam and Romeo F. Barza, concurring.

[3] Section 374 of Presidential Decree No. 612 (Insurance Code of the Philippines), as amended by Presidential Decree Nos. 1455 and 1814, provides:

It shall be unlawful for any land transportation operator or owner of a motor vehicle to operate the same in the public highways unless there is in force in relation thereto a policy of insurance or guaranty in cash or surety bond issued in accordance with the provisions of this chapter to indemnify the death, bodily injury, and/or damage to property of a third-party or passenger, as the case may be, arising from the use thereof.

(Program). Under the Program, LTFRB will accredit two groups of insurance providers, selected through open bidding, to provide insurance policies to public utility vehicle operators, covering their passengers against accident-related risks.

Following a bidding conducted in 2005, LTFRB accredited Universal Transport Solutions, Inc. (UNITRANS) as one of the two[4] groups of insurance providers. Respondent Stronghold Insurance Company, Inc. (Stronghold) was the lead insurer of UNITRANS. LTFRB's five-year contract with UNITRANS, embodied in a Memorandum of Agreement dated 15 September 2005 (First MOA), contained the following clause (Matching Clause):

> WHEREAS, after the expiration of the contract for accreditation, all facilities used by the accredited management groups shall be donated to the government. In consideration, however, of the initial investment and the assumption of initial risk, *the two management groups herein shall be given the right to match the best bid/proposal in event another management group qualifies at the end of the term of this agreement*.[5] (Emphasis supplied)

Shortly before the First MOA expired on 16 September 2010 and after its term was extended until 18 November 2011, LTFRB thrice opened bidding for the accreditation of new insurance providers, the first two biddings having been cancelled by the Department of Transportation and Communication (DOTC), LTFRB's mother agency.[6] In each round of bidding, LTFRB required, under the relevant Terms of Reference (Reference), minimum peso capitalization for the lead and member insurers as follows:

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[4] The other group was Philippine Accident Managers, Inc. (PAMI) with UCPB General Insurance Company, Inc., as lead insurer.

[5] *Rollo*, p. 75.

[6] The records do not disclose the cause for the cancellation of the first bidding. The second, however, was cancelled to allow DOTC to "come up with a sound and defensible policy" on passenger insurance (*id.* at 140).

Minimum Capitalization (millions)	First Reference	Second Reference	Third Reference
Lead Insurer	250	500	250
Member Insurer	250	500	125

Unlike in the First and Second References which allowed aggregation of the group members' capital to comply with the capitalization threshold, the Third Reference reckoned compliance with the minimum capital requirement for the lead and member insurers singly or on a "per insurer" basis. The Third Reference also required a minimum of ten members for each group of insurers, the same number in the Second Reference but half of that in the First Reference.

Stronghold participated in all three biddings but failed to qualify in the third because its group only had six members and its minimum capitalization, as lead insurer, was only ₱140 million (below the minimum of ₱250 million). Consequently, LTFRB excluded Stronghold's group from the pool of qualified bidders.

Before LTFRB could select the winning bids, Stronghold sought a writ of prohibition from the Court of Appeals to enjoin LTFRB from opening the bid documents of participating bidders and to nullify the bidding proceedings. Stronghold theorized that "per insurer" basis for reckoning compliance with the minimum capital requirement under the Third Reference violated not only its right of first refusal under the First MOA but also its right to equal protection under the Constitution. The thread of Stronghold's argument ran:

5.3.a) Under the 1st [Reference], the AGGREGATE minimum paid-up capital requirement for the lead company and its member insurance companies was TWO HUNDRED FIFTY MILLION (PhP 250,000,000.00) PESOS.

5.3.b) Under the 2nd [Reference], the AGGREGATE minimum paid-up capital requirement x x x for the lead company and its member insurance companies is FIVE HUNDRED MILLION (PhP 500,000,000.00) PESOS.

5.3.c) Petitioner and its member insurance companies are compliant with this paid-up requirement either under the 1st TOR or 2nd TOR because the Department of Finance and Insurance Commission's minimum paid-up requirement for any insurance company to operate is ONE HUNDRED TWENTY-FIVE MILLION (PhP 125,000,000.00) PESOS. With twenty (20) insurance companies under the 1st TOR, the aggregate minimum paid-up capital of petitioner and his group is TWO BILLION FIVE HUNDRED MILLION (PhP 2,500,000,000.00) PESOS. On the other hand, with ten (10) insurance companies under the 2nd [Reference], the aggregate minimum paid-up capital of petitioner and his group, conservatively assuming only ten (10) companies, is ONE BILLION TWO HUNDRED FIFTY MILLION (PhP 1,250,000,000.00) PESOS.

5.[3].d) Under the 3rd [Reference], however, petitioner and its group were ELIMINATED and OUTRIGHT[LY] DISQUALIFIED because the minimum paid-up capital requirement for the lead company **alone** was changed to TWO HUNDRED FIFTY MILLION (PHP 250,000,000.00) PESOS, whereas, the minimum paid-up capital requirement for each of the member insurance companies was ONE HUNDRED TWENTY-FIVE MILLION (PhP 125,000,000.00) PESOS. There are about eighty-seven (87) insurance companies in the Philippines and only eighteen (18) out of these companies have a minimum paid-up capital of Two Hundred Fifty Million (PhP 250,000,000.00) Pesos and above. The 3rd [Reference], therefore, is clearly discriminatory against petitioner and those similarly situated in violation of the equal protection clause guaranteed by the Constitution and a clear violation of petitioner's right as lead company and qualified participating bidder under the earlier [References].[7] (Emphasis in the original)

Notwithstanding Stronghold's prayer for the issuance of a temporary injunctive order against LTFRB, the Court of Appeals merely required the latter to file comment. This allowed LTFRB to declare the winners of the bidding and sign the contract with two new groups of insurers under a Memorandum of Agreement dated 17 November 2011 (Second MOA), effective for two years.

LTFRB prayed for the dismissal of Stronghold's petition on procedural and substantive grounds. LTFRB contended that at

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[7] *Id.* at 165-166.

the time Stronghold filed its petition, the bid documents of the participating bidders were already opened, hence mooting Stronghold's prayer to enjoin their opening. On the merits, LTFRB argued that Stronghold's exclusion from the third round of bidding was grounded on its failure to comply with the terms of the Third Reference which LTFRB issued in the proper exercise of its regulatory powers.

The Ruling of the Court of Appeals

The Court of Appeals found merit in Stronghold's petition and nullified the third round of bidding. Consequently, it enjoined LTFRB from enforcing the Second MOA "until x x x Stronghold x x x shall have been given the chance to exercise its right to match the best bidder."

Resolving the threshold issue of the propriety of issuing a writ of prohibition despite the opening of the bid documents, the Court of Appeals held that dismissing the petition for mootness "would render [it] inutile in protecting the rights of x x x litigants who were undeniably denied due course."[8]

On the merits, the Court of Appeals, while recognizing LTFRB's power to prescribe the terms of the bidding for the Program's insurers, found LTFRB's exclusion of Stronghold from the third round of bidding for non-compliance with the terms of the Third Reference tainted with grave abuse of discretion:

> Insofar as the 3rd [Reference] is concerned, the contending parties agree that x x x Stronghold failed to qualify because it lacked the requisite capitalization. While We agree that the government should be left to exercise its discretion in setting the qualifications of private entities desiring to engage in business with it, We are of the opinion, however, that the government does not have the unbridled discretion to set aside its obligation under the September 15, 2005 MOA. x x x To our mind, Stronghold's group had already acquired a property right which the LTFRB cannot just set aside without due process of law.

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[8] *Id.* at 63.

We are convinced that the LTFRB had *abused its discretion* when it unceremoniously released the 3rd [Reference] without considering the legal ramifications on the terms of the MOA. It must be emphasized that the last "WHEREAS clause" had given the right to the private entities therein to match the bid of any winning bidder in the next bidding process. In fine, when the LTFRB unwittingly issued the 3rd [Reference] which in effect foreclosed the right of Stronghold and its group from participating in the bidding and selection process, it went beyond its discretionary authority. x x x.

On the basis of the foregoing, We x x x hold that the proceedings taken under the [Third Reference] are unconstitutional x x x. Further, it is our considered opinion that the [Third Reference] was released and made effective in due haste. Thus, the [Third Reference] *was issued with grave abuse of discretion* amounting to lack or excess of jurisdiction.[9] x x x. (Emphasis supplied)

The Court of Appeals no longer passed upon Stronghold's claim of denial of equal protection.

In this petition, LTFRB argues that the Court of Appeals erred in finding it liable for grave abuse of discretion in disqualifying Stronghold from the third round of bidding. LTFRB maintains that there was nothing irregular in Stronghold's exclusion from the bidding as such was due to Stronghold's failure to qualify under the Third Reference. LTFRB also contests the Court of Appeals' holding that Stronghold's disqualification violated its right of first refusal under the Matching Clause of the First MOA.[10]

Stronghold prays for the denial of the petition and the affirmance of the Court of Appeals' ruling.

On 30 July 2012, we issued a temporary restraining order as prayed for by LTFRB, enjoining the enforcement of the Court of Appeals' ruling.

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

[10] LTFRB raises the alternative argument that Stronghold has no personality to invoke the Matching Clause because the right of first refusal was given to the two "management groups" under the First MOA, namely UNITRANS and PAMI.

The Issue

The question is whether the Court of Appeals erred in issuing the writ of prohibition, annulling LTFRB's bidding to select the second batch of insurers under its Program.

The Court's Ruling

We hold that it was error for the Court of Appeals to issue the writ of prohibition; hence, we set aside its ruling.

LTFRB Committed No Grave Abuse of Discretion

The writ of prohibition lies upon a showing that the assailed proceedings "are [conducted] without or in excess of x x x jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction."[11] It is the extra-jurisdictional nature of the contested proceedings that grounds the issuance of the writ, enjoining a tribunal or officer from further acting on the matter before it.

In its petition before the Court of Appeals, Stronghold made no claim that LTFRB lacked jurisdiction to implement the Program or to issue the References for each round of bidding to set the parameters for the accreditation of insurance providers. Rather, it rested its case on the theory that LTFRB acted with grave abuse of discretion amounting to lack or excess of jurisdiction when LTFRB required in the Third Reference a minimum capital requirement on a "per insurer" basis. Stronghold's case therefore, rises or falls on the question whether such act of LTFRB amounts to "grave abuse of discretion."

The Court of Appeals answered in the affirmative, holding that "LTFRB had *abused its discretion* when it unceremoniously released the 3rd Reference without considering the legal ramifications on the terms of the [First] MOA." In the same breath, it concluded that "the [T]hird [Reference] was released and made effective in undue haste x x x thus it was issued with *grave abuse of discretion* amounting to lack or excess of jurisdiction." This is error, procedurally and substantially.

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[11] Section 2, Rule 65, 1997 Rules of Civil Procedure.

In the first place, the standard under Rule 65 for the issuance of the writ of prohibition is "*grave* abuse of discretion" and not mere "abuse of discretion." The difference is not a simple matter of semantics. The writs governed by Rule 65 – *certiorari*, *mandamus*, and prohibition – are extraordinary remedies designed to correct not mere errors of judgment (*i.e.*, in the appreciation of facts or interpretation of law) but errors of jurisdiction (*i.e.*, lack or excess of jurisdiction). Unlike the first category of errors which the lower tribunal commits in the exercise of its jurisdiction, the latter class of errors is committed by a lower tribunal devoid of jurisdiction or, alternatively, for exercising jurisdiction in an "arbitrary or despotic manner."[12] By conflating "abuse of discretion" with "grave abuse of discretion," the Court of Appeals failed to follow the rigorous standard of Rule 65, diluting its office of correcting only jurisdictional errors.

Further, LTFRB committed no abuse of discretion, much less a grave one, in disqualifying Stronghold from the third round of bidding. It is not disputed that Stronghold did not meet the minimum capitalization required for a lead insurer under the Third Reference, leaving LTFRB no choice but to disqualify it. To find fault in its exclusion, Stronghold charges LTFRB with committing grave abuse of discretion in abandoning the aggregated mode to reckon compliance with the minimum capitalization requirement under the First and Second References and in adopting the new non-aggregated, "per insurer" basis under the Third Reference. In short, Stronghold questions the change in the *manner* by which the minimum capitalization of lead and member insurers is determined under the Third Reference.

We are hard-pressed to see how any grave or even simple abuse of discretion attended LTFRB's policy determination. The Third Reference, which screens providers of accident insurance for passengers of public utility vehicles mandated

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[12] *Presidential Commission on Good Government v. Silangan Investors and Managers, Inc.*, G.R. Nos. 167055-56, 25 March 2010, 616 SCRA 382, 397, citing *Garcia, Jr. v. Court of Appeals*, G.R. No. 185132, 24 April 2009, 586 SCRA 799.

by law, is simply the result of LTFRB's proper exercise of its power under its charter to "formulate, promulgate, administer, implement and enforce rules and regulations on land transportation public utilities."[13] True, the effect of the minimum capitalization rule under the Third Reference is to make the lead insurer of any participating group raise at least ₱250 million capital on its own (as it can no longer rely on the pooled capital of its group). As LTFRB explains, however, this scheme "ensure[s] that the accredited providers are able *to cover all potential claims* arising out of the insurance policies issued pursuant to the [Program], for *the protection of the general riding public*."[14] We find this policy basis eminently reasonable.

We take judicial notice that as of the end of last year (2012), LTFRB had issued a total of 260,026 franchises to bus, jeepney and taxi operators covering 312,703 units.[15] These units transport millions of Filipino commuters all over the country who avail of their services day and night, all year round. The sheer scale of these beneficiaries of LTFRB's insurance program and their constant exposure to accident-related risks furnish reasonable basis for LTFRB's capitalization scheme. It ensures the operation of a financially sound mandatory passenger insurance system. As a measure partaking of the state's police power to promote public safety and public welfare, the Third Reference need only be tested by this liberal standard of reasonableness.[16]

Nor is there basis for the Court of Appeals' finding on LTFRB's alleged grave abuse of discretion for releasing the

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[13] Under Section 5(k) of Executive Order No. 202.

[14] *Rollo*, p. 41 (Emphasis supplied).

[15] Posted at the LTFRB website http://ltfrb.gov.ph/media/downloadable/Distribution_of_Land_Transportation_Services-for_web.pdf (last visited on 12 September 2013).

[16] The use of the standard of reasonableness to weigh claims of substantive due process rights violation (as here), on one hand, and the validity of police power measures, on the other, is illustrated in *Ermita-Malate Hotel & Motel Operators Association, Inc. v. The City Mayor of Manila*, 128 Phil. 473 (1967).

Third Reference "in undue haste." The records disclose that the "Invitation to Apply for Accreditation under the [Program]" for the Second MOA was published in a newspaper of general circulation on 23 September 2011, one month before the scheduled opening of bids.[17] The following day, 24 September 2011, LTFRB's "Invitation to Bid" was posted on the website of the Philippine Government Electronic Procurement System.[18] Subsequently, the Third Reference and Selection Criteria were made available to interested bidders. Eight groups, including Stronghold's, purchased the Third Reference and related documents. On the day of the opening of bids, 24 October 2011, five groups were able to submit complete accreditation documents. Instead of doing so, Stronghold merely gave an undertaking to submit its complete documentation "as soon as possible."[19] When it did, it still failed to comply with the terms of the Third Reference as its group only had six members and its minimum capital fell short by ₱110 million. Clearly, it was not the alleged "hasty" issuance of the Third Reference but Stronghold's difficulty in forming a consortium of ten members, each compliant with the minimum capital requirement.

The Matching Clause in the First MOA Void

The Matching Clause in the First MOA, which Stronghold invokes as basis for its right to participate in the third round of bidding, provides:

> [T]he two management groups herein shall be given the right to match the best bid/proposal in event another management group qualifies at the end of the term of this agreement[.]

The Court of Appeals sustained Stronghold's claim, effectively reading the Matching Clause to vest in Stronghold not only "the right to match the best bid/proposal in event another management group qualifies at the end of the term of this agreement," but also the prerogative not to comply with the terms of the succeeding bidding. We find it unnecessary to pass upon the correctness of

[17] *Rollo*, p. 143.

[18] *Id.* at 144.

[19] *Id.* at 156.

the Court of Appeals' construction of the Matching Clause. It is, in the first place, void.

The Matching Clause contains what is referred to in contract law as the right of first refusal or the "right to match." Such stipulations grant to a party the right to offer the **same** amount as the highest bid to beat the highest bidder. "Right to match" stipulations are different from agreements granting to a party the so-called "right to top." Under the latter arrangement, a party is accorded the right to offer a **higher** amount, usually a fixed sum or percentage, to beat the highest bid.

In the field of public contracts, these stipulations are weighed with the taint of invalidity for contravening the policy requiring government contracts to be awarded through public bidding.[20] Unless clearly falling under statutory exceptions, government contracts for the procurement of goods or services are required to undergo

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[20] Such policy has a long statutory history in this jurisdiction:

[P]ublic bidding in government contracts has been observed in this jurisdiction since the time of the Philippine Commission:

> Bidding was introduced in the Philippines by the American Laws on Public Bidding until finally Act No. 22 (1900) of the Philippine Commission was enacted which became the first law on public bidding in this jurisdiction. This was followed by several related Acts such as Act Nos. 74(1901), 82(1901) and 83(1901) culminating in the promulgation by President Quezon on February 3, 1936, of Executive Order No. 16 declaring as a general policy that public bidding must be the means adopted in the purchase of supplies, materials and equipment except on very extraordinary cases and with his prior approval. These Acts and Executive Order as well as the rules and regulations promulgated pertinent thereto were later incorporated in the Administrative Code and in subsequent Public Works Acts, although with slight modifications. Up to the present, this policy and medium still hold both in procurement and construction contracts of the government, and the latest enactment relative thereto is Presidential Decree No. 1594 (1978) and its Implementing Rules and Regulations.

As early as 1936, then President Quezon declared as a matter of general policy that Government contracts for public service or for furnishing supplies, materials and equipment to the Government should be subjected to public bidding. There were a number of amendments, the latest of which,

public bidding[21] "to protect the public interest by giving the public the best possible advantages thru open competition."[22] The inclusion of a right of first refusal in a government contract executed post-bidding, as here, negates the essence of public bidding because the stipulation "gives the winning bidder an x x x advantage over the other bidders who participated in the bidding x x x."[23] Moreover, a "right of first refusal," or "right to top," whether granted to a bidder or non-bidder, discourages other parties from submitting bids, narrowing the number of possible bidders and thus preventing the government from securing the best bid.

These clauses escape the taint of invalidity only in the narrow instance where the right of first refusal (or "right to top") is founded on the beneficiary's "interest on the *object* over which the right of first refusal is to be exercised"[24] (such as a "tenant with respect to the land occupied, a lessee *vis-à-vis* the property leased, a stockholder as regards shares of stock, and a mortgagor in relation to the subject of the mortgage"[25]) and the government stands to

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Executive Order No. 40 dated June 1, 1963 of President Diosdado Macapagal, reiterated the directive that no government contract for public service or for furnishing supplies, materials and equipment to the government or any of its branches, agencies or instrumentalities, shall be entered into without public bidding except for very extraordinary reasons to be determined by a Committee constituted thereunder. Of more recent date is Executive Order No. 301, S. 1987, issued by President Corazon Aquino, which prescribed the guidelines for decentralization of negotiated contracts. Section 1 of this issuance reiterated the legal requirement of public bidding for the award of contracts for public services and for furnishing supplies, materials and equipment to the government, and expressly specified the exceptions thereto. (*Manila International Airport Authority v. Mabunay*, 379 Phil. 833, 842-843 [2000] [internal citations omitted]).

[21] For the procurement of goods and consulting services, see Republic Act No. 9184 (Government Procurement Reform Act). For contracts involving "public services or for furnishing supplies, materials and equipment to the government," see Section 1 of Executive Order No. 301, 26 July 1987.

[22] *National Food Authority v. Court of Appeals*, 323 Phil. 558, 574 (1996).

[23] *Power Sector Assets and Liabilities Management Corporation v. Pozzolanic Philippines, Inc.*, G.R. No. 183789, 24 August 2011, 656 SCRA 214, 232.

[24] *Id.* at 234 (Emphasis supplied).

[25] *Id.* at 235-236.

benefit from the stipulation. Thus, we upheld the validity of a "right to top" clause allowing a private stockholder in a corporation to top by 5% the highest bid for the shares disposed by the government in that corporation.[26] Under the joint venture agreement creating the corporation, a party had the right of first refusal in case the other party disposed its shares. The government, the disposing party in the joint venture agreement, benefitted from the 5% increase in price under the "right to top," on outcome better than the right of first refusal.

The Matching Clause in this case does not fall under this narrow exception. The First MOA (and for that matter the Second MOA) was a contract for the procurement of *services*; hence, there is no "object" over which Stronghold can claim an interest which the Matching Clause protects. Nor did the government benefit from the inclusion of the Matching Clause in the First MOA. The Matching Clause was added in the First MOA "in consideration, x x x of the initial investment and the assumption of initial risk" of the two accredited management groups. These "initial investment" and "initial risk," however, are inherent in the business of providing accident insurance to public utility vehicle operators, which the bidders for the First MOA, including Stronghold's group UNITRANS, logically took into account when they submitted their bids to LTFRB. The government was under no obligation to reward the accredited insurers' investment and risk-taking with a right of first refusal stipulation at the expense of denying the public the benefits public bidding brings, and did bring, to select the insurance providers in the Second MOA.

WHEREFORE, we **GRANT** the petition. The Decision dated 20 February 2012 of the Court of Appeals is **SET ASIDE**.

The temporary restraining order issued on 30 July 2012 is made permanent.

SO ORDERED.

Brion, del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[26] *JG Summit Holdings, Inc. v. Court of Appeals*, G.R. No. 124293, 24 September 2003, 412 SCRA 10 (Resolution).

THIRD DIVISION

[G.R. No. 201109. October 2, 2013]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOVI PORNILLOS *y* HALLARE,** *appellant.*

SYLLABUS

CRIMINAL LAW; DANGEROUS DRUGS ACT (R.A. NO. 9165); CHAIN OF CUSTODY RULE; DEEMED BROKEN WHEN SEIZED 0.4 GRAM OF *SHABU* WAS SHORT BY .01796 GRAM WHEN SUBMITTED FOR LABORATORY TESTING.— [T]the PDEA report to the Provincial Prosecutor's Office, the booking sheet and arrest report, the Certificate of Inventory, and the laboratory examination request all put down the seized *shabu* as weighing 0.4 gram. The forensic chemist reported and testified, however, that the police actually submitted only 0.2204 gram of *shabu* for laboratory testing, short by 0.1796 gram from what the police inventoried. x x x [T]he percentage of loss was not that small x x x the prosecution has three theories x x x But these are mere speculations x x x [that] cannot overcome the concrete evidence that what was seized was not what was forensically tested. This implies tampering of the prosecution evidence. The Court cannot affirm the conviction of Pornillos on compromise evidence.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
David & De Guia Law Office for appellant.

D E C I S I O N

ABAD, *J*.:

The main issue in this drugs case centers on the wide discrepancy between the weight of the substance seized from the accused and the weight of the substance subject of forensic test.

The Facts and the Case

The Provincial Prosecutor of Camarines Sur charged Jovi Hallare Pornillos (Pornillos) before the Regional Trial Court (RTC) of Iriga City in Criminal Case IR-6733 with selling 0.2204 gram of *shabu* in violation of Section 5, Article II of Republic Act (R.A.) 9165.

The prosecution's version is that on May 14, 2004 Capt. Dennis Vargas briefed his police team on a buy-bust operation it was to carry out against Pornillos. He handed two ₱500.00 bills to PO2 Leonardo Garcia, whom he designated as poseur buyer. PO2 Garcia marked the bills with his initials, "LMG," and recorded their serial numbers in their logbook.[1]

Arriving at Nabua, Camarines Sur, on May 15, 2004, the team cased the area. The police informant, with PO2 Garcia in tow, approached Pornillos' house then knocked on the door. Pornillos opened it and asked the informant if he was there for *shabu*. PO2 Garcia replied that he wanted to buy ₱1,000.00 worth of *shabu*. Pornillos handed over the *shabu* and got the money. PO2 Garcia then identified himself and arrested Pornillos. The rest of the team converged on them. After apprising Pornillos of his rights, Capt. Vargas frisked him and seized the marked money in his pocket. PO2 Garcia marked the *shabu* in the plastic sachet with his initials "LMG" and turned over the same to the evidence custodian, PO1 Danilo Prianes.[2]

The arresting team brought Pornillos to the PDEA office.[3] Capt. Vargas and PO2 Garcia prepared the inventory in the presence of Pornillos, the media representative from DZGB, and the *Barangay* Chairman of Ems Barrio, Legaspi City, Irma Trivianes.[4] PO1 Prianes took pictures of the proceedings.[5] PSI

[1] TSN, April 26, 2005, pp. 3-4.

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

[3] TSN, June 27, 2005, p. 29.

[4] Exhibit "G-2".

[5] Exhibits "J" to "J-5".

Vargas then made a request for the laboratory examination of the seized substance.[6] The examination yielded positive results for methamphetamine hydrochloride.[7]

Pornillos' version, on the other hand, is that he was sleeping in his room on May 15, 2004 when his wife woke him up. When he went out into the dining room, he there saw PO2 Aldea, PO2 Garcia, and another man. They asked him for his source of *shabu*. When he could not give them a name, PO2 Garcia handcuffed him. Capt. Vargas entered the dining room from the back door and frisked Pornillos. He got his wallet that had ₱6,000.00 in it. He took out two ₱500.00 bills and handed these to PO2 Garcia. The officers took his cellphone and flashlight.[8]

The police brought Pornillos, along with his wife and child, to Camp Simeon Ola. Along the way, they asked him again to name a *shabu* seller but he denied knowing any seller. At the police camp, Pornillos denied ownership of the small plastic sachet shown him.[9] Later, Capt. Vargas demanded ₱80,000.00 in exchange for his release.[10]

Celestino Tañamor testified that on May 15, 2004, he was drinking with his uncles about five meters from Pornillos' house when two men arrived looking for Pornillos. One of Tañamor's companion accompanied them to Pornillos' house. A little while later, Tañamor saw a handcuffed Pornillos emerge from his house with the others. Three more men arrived and they all left with Pornillos.[11]

On September 12, 2007 the RTC found Pornillos guilty beyond reasonable doubt of selling 0.2204 grams of *shabu* in Violation of Sec. 5, Article II of R.A. 9165, sentenced him to life imprisonment, and ordered him to pay a fine of ₱500,000.00.[12]

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[6] TSN, April 26, 2005, p. 11.
[7] Exhibit "A".
[8] TSN, July 17, 2006, pp. 3-8.
[9] *Id.* at 13-14.
[10] TSN, July 24, 2006, p. 5.
[11] TSN, May 29, 2006, pp. 4-6, 8, 11.
[12] Penned by Presiding Judge Alfredo D. Agawa.

The Court of Appeals (CA) affirmed[13] the RTC Decision in CA-G.R. CR-HC 03027. It found, like the RTC, the testimonies of PO2 Garcia, PO2 Aldea, and PI Clemen worthy of belief. The prosecution, said the CA, established all the elements of the offense. Pornillos' denial and claim of frame-up could not overcome the positive testimonies of the police officers involved in the buy-bust operation. The police immediately marked the seized items for proper identification and had these inventoried in the presence of Pornillos, a representative of the media, and an elective official as required by Section 21. It has been held that conducting the inventory at the nearest police station constitutes compliance with the law.[14]

But the CA is in error in one important point. It said that the chain of custody of the seized drugs does not appear to be unbroken. But the PDEA report to the Provincial Prosecutor's Office,[15] the booking sheet and arrest report,[16] the Certificate of Inventory,[17] and the laboratory examination request[18] all put down the seized *shabu* as weighing 0.4 gram. The forensic chemist reported and testified, however, that the police actually submitted only 0.2204 gram of *shabu* for laboratory testing, short by 0.1796 gram from what the police inventoried.

In *People v. Aneslag*,[19] the Information alleged that the accused sold 240 grams of *shabu* but the forensic test showed that the drugs weighed only 230 grams, short by 10 grams. The prosecution offered a sound explanation for the 4.16% loss. The trial court ordered two separate tests of the subject *shabu* packs. As a consequence the two chemists took out separate samples from each of the seized packs of *shabu*, resulting in the weight loss.

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[13] *Rollo*, pp. 2-10. Penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Rosmari D. Carandang and Ramon R. Garcia.

[14] *Marquez v. People*, G.R. No. 197207, March 13, 2013.

[15] Records, p. 5.

[16] *Id.* at 7.

[17] *Id.* at 15.

[18] Exhibit "E".

[19] G.R. No. 185386, November 21, 2012, 686 SCRA 150.

Here, however, the percentage of loss was not that small. The content of the sachet was inventoried at 0.4 gram but yielded only 0.2204 gram during the laboratory test, short by 0.1796 gram. It suffered a loss of 45% or nearly half of the original weight. The prosecution has three theories: only two chemists served the entire region giving rise to possible error; the police and the crime laboratory used different weighing scales; and the failure of the laboratory to take into account the weight of the sachet container.[20] But these are mere speculations since none of those involved was willing to admit having committed weighing error. Speculations cannot overcome the concrete evidence that what was seized was not what was forensically tested. This implies tampering with the prosecution evidence. The Court cannot affirm the conviction of Pornillos on compromised evidence.

WHEREFORE, the Court **GRANTS** the appeal, **SETS ASIDE** the Decision of the Court of Appeals dated November 18, 2010 in CA-G.R. CR-HC 03027 as well as the Decision of the Regional Trial Court of Iriga City, Branch 35 in Criminal Case IR-6733, and **ACQUITS** the accused-appellant Jovi Pornillos *y* Hallare of the crime charged on ground of reasonable doubt.

The Court orders his immediate **RELEASE** from custody unless he is being held for some other lawful cause and **ORDERS** the Director of the Bureau of Corrections to immediately implement this Decision and to inform the Court within five days from its receipt of the date appellant was actually released from confinement. Costs *de oficio*.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Reyes,[*] and *Leonen, JJ.,* concur.

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[20] TSN, April 26, 2005, p. 51.

[*] Designated Acting Member, in lieu of Associate Justice Jose C. Mendoza, per Special Order 1557 dated September 19, 2013.

FIRST DIVISION

[G.R. No. 202868. October 2, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MICHAEL ESPERA *y* CUYACOT,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; MAY BE COMMITTED BY SEXUAL INTERCOURSE OR BY SEXUAL ASSAULT.—** Under Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, rape may be committed in two ways: x x x either by sexual intercourse under paragraph 1 or by sexual assault under paragraph 2. Rape by sexual intercourse is a crime committed by a man against a woman. The central element is carnal knowledge and it is perpetrated under any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1. On the other hand, rape by sexual assault contemplates two situations. *First*, it may be committed by a man who inserts his penis into the mouth or anal orifice of another person, whether a man or a woman, under any of the attendant circumstances mentioned in paragraph 1. *Second*, it may be committed by a person, whether a man or a woman, who inserts any instrument or object into the genital or anal orifice of another person, whether a man or a woman, under any of the four circumstances stated in paragraph 1.

2. **REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; PLAINTIFF MUST PROVE BEYOND REASONABLE DOUBT NOT ONLY EACH ELEMENT OF THE CRIME BUT ALSO THE IDENTITY OF THE ACCUSED AS THE CRIMINAL.—** An accused enjoys the presumption of innocence until and unless his/her guilt is proven beyond reasonable doubt. The fundamental law guarantees him/her that right. The presumption of innocence in favor of the accused behooves the People of the Philippines, as the plaintiff in criminal cases, to prove beyond reasonable doubt not only each element of the crime but also the identity of the accused as the criminal. It requires this Court, in reviewing criminal cases, to carefully determine and establish the following: ***[F]irst***, the identification of the accused as perpetrator of the

crime, taking into account the credibility of the prosecution witness who made the identification as well as the prosecution's compliance with legal and constitutional standards; and ***second***, all the elements constituting the crime were duly proven by the prosecution to be present. x x x. Proving the identity of the accused as the malefactor is the prosecution's primary responsibility. Thus, in every criminal prosecution, the identity of the offender, like the crime itself, must be established by proof beyond reasonable doubt. Indeed, the first duty of the prosecution is not to prove the crime but to prove the identity of the criminal, for even if the commission of the crime can be established, there can be no conviction without proof of identity of the criminal beyond reasonable doubt.

3. **CRIMINAL LAW; RAPE BY SEXUAL ASSAULT COMMITTED WITH THE USE OF A DEADLY WEAPON; PENALTY.—** Under Article 266-B of the Revised Penal Code, as amended, whenever rape by sexual assault is committed with the use of a deadly weapon, the penalty shall be *prision mayor* to *reclusion temporal*, or a duration of 6 years and 1 day to 20 years. As there was no attendant aggravating or mitigating circumstance, the imposable penalty is the medium period of the said duration, that is, from 10 years, 8 months and 1 day to 15 years and 4 months, pursuant to Articles 64 and 65 of the Revised Penal Code, as amended. Applying the Indeterminate Sentence Law, the minimum term shall be within *prision correccional* (which ranges from 6 months and 1 day to six years), the penalty next lower to *prision mayor*, and the maximum term shall be within the imposable penalty stated above.

4. **ID.; RAPE BY SEXUAL INTERCOURSE COMMITTED WITH THE USE OF A DEADLY WEAPON; PENALTY.—** Under Article 266-B of the Revised Penal Code, as amended, whenever rape by sexual intercourse is committed with the use of a deadly weapon, the penalty shall be *reclusion perpetua* to death. As there was no attendant aggravating or mitigating circumstance, the RTC and the Court of Appeals were correct in sentencing the appellant to the lesser penalty of *reclusion perpetua* pursuant to Article 63(2) of the Revised Penal Code, as amended.

5. **ID.; RAPE; CIVIL PENALTIES.—** As to the award of damages, the grant to Ana of ₱30,000.00 civil indemnity, ₱30,000.00 moral damages and ₱30,000.00 exemplary damages for the rape by

sexual assault committed against her is proper. Likewise, the amounts of ₱50,000.00 civil indemnity, ₱50,000.00 moral damages and ₱30,000.00 exemplary damages for the rape by sexual intercourse committed against her are proper and conform with current case law. These amounts shall be subject to legal interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid, pursuant to prevailing jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This an appeal from the Decision[1] dated July 28, 2011 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00923 denying the appeal of the appellant Michael Espera and affirming (with modification of the damages awarded) the Omnibus Decision[2] dated September 21, 2007 of the Regional Trial Court (RTC) of Talibon, Bohol, Branch 52 in Criminal Case Nos. 99-511 and 99-512, which found the appellant guilty of the crimes of rape by sexual assault and rape by sexual intercourse.

The following Informations were filed against the appellant:

A. In Criminal Case No. 99-511

That on or about the 26th day of January, 1999 in the municipality of Ubay, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with criminal intent and with the use of force, threat and intimidation by using a deadly

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[1] *Rollo*, pp. 3-20; penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Pampio A. Abarintos and Myra V. Garcia-Fernandez, concurring.

[2] CA *rollo*, pp. 44-60.

weapon – a short firearm, did then and there willfully, unlawfully and feloniously insert his penis into the mouth of the victim [Ana[3]] against her will and without her consent; to the damage and prejudice of the victim.

Acts committed contrary to the provisions of Art. 266-A[,] par. 2, in relation to Article 266-B of R.A. No. 8353.[4]

B. In Criminal Case No. 99-512

That on or about the 26th day of January, 1999 in the municipality of Ubay, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with criminal intent and with the use of force, threat and intimidation by using a deadly weapon – a short firearm, did then and there willfully, unlawfully and feloniously drag and push the victim [Ana] to the ground and with lewd designs, have sexual intercourse with the victim against her will and without her consent; to the damage and prejudice of the victim.

Acts committed contrary to the provisions of Art. 266-A[,] No. 1, in relation to Article 266-B of R.A. No. 8353 and of R.A. No. 7659.[5]

The appellant pleaded not guilty to both charges when arraigned.[6] Pre-trial was conducted and, thereafter, trial ensued.

The prosecution established that at around 11:30 in the evening of January 26, 1999, Ana and "Susie,"[7] Ana's co-worker at the "Get Well Clinic"[8] at Fatima, Ubay, Bohol decided to share a

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[3] In consonance with *People v. Cabalquinto* (533 Phil. 703 [2006]), the real name of the victim has been withheld and a fictitious name has been used instead to protect her privacy.

[4] Records (Crim. Case No. 99-511), p. 57.

[5] *Id.* (Crim. Case No. 99-512), p. 1.

[6] *Id.* at 15; Order dated August 29, 2003.

[7] This is in accordance with *Cabalquinto*, *supra* note 3, which directs that "the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well those of their immediate family or household members, shall not be disclosed."

[8] Again, this is pursuant to *Cabalquinto*. (Please see immediately preceding note.)

ride as they were both residents of "Barangay Ekis"[9] in Ubay, Bohol. They hailed a tricycle at the junction of the provincial road and the *barangay* road, some 50 meters away from the clinic. Streetlights illuminated the area. There was also light coming from the nearby chapel and the houses in the vicinity. As was her wont, Susie beamed a flashlight on the front part of the tricycle. She recognized the driver, the appellant in this case, as one of her husband's friends. Ana recognized the driver by face, although she did not know his name. She noticed that he was wearing a red polo shirt and *maong* pants.[10]

Upon reaching Barangay Ekis, Susie was the first to disembark as Ana's house was some 150 to 250 meters farther down the unpaved sloping road. Ana asked the driver to stop the tricycle when they were near her house but he kept on driving, telling her that the tricycle's brakes were not working. The tricycle finally stopped at the quarry site. The appellant asked Ana to get off as the tricycle purportedly ran out of gas. She offered to pay her fare but he did not accept it on account of his failure to bring Ana home.[11]

As Ana was tracing her way home under a bright moonlight,[12] she heard the rustling of another person's pants behind her. She realized she was being followed. She turned around. She saw the appellant, naked from the waist up, with his red polo shirt now covering his face. She saw a gun in his hand. She ran away from him and shouted for help. He ran after her and immediately caught her. He covered her mouth and pointed the gun on her head. He threatened to kill her if she shouted.[13] She recognized his voice — it was the voice of the tricycle driver.[14] She tried to ward of his hands but she lost her balance

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[9] This is also pursuant to *Cabalquinto*. (Please see note 7.)

[10] *Rollo*, p. 6.

[11] *Id*.

[12] TSN, May 5, 2004, p. 8.

[13] *Rollo*, pp. 6-7.

[14] TSN, March 15, 2005, p. 31.

in the process and fell to the ground. She tried to kick him but he overpowered her. He punched her in the upper part of her stomach. She felt pain. She pretended to lose consciousness, hoping that he would leave her.[15] She was wrong.

The appellant dragged Ana by the hair to a more secluded place. After he pushed her to the ground, she tried to stand up but he boxed her several times. She cried and begged him to stop. Her pleas fell on deaf ears. He forcefully undressed her, removing her pants, shirt and bra. He pinned her to the ground with his hands. He then stood and removed his pants and underwear. He rubbed his body against her. He then knelt and placed his groin on her face. He ordered her to suck his manhood. She refused but he punched her again in the upper part of her stomach and forced his organ inside her mouth.[16]

After inserting his organ in Ana's mouth, the appellant forcibly opened her legs and inserted his fingers in her vagina. She cried but he continued to ignore her pleas and again threatened to kill her.[17] He commanded her to guide his sex organ to hers, she initially refused but was left no choice when he pointed the gun at her head.[18] He then forcefully penetrated her, causing her to shout because of extreme pain. This enraged the appellant, prompting him to bite her lips and lower jaw.[19]

After ravishing Ana, the appellant asked her if she knew him and if she remembered the markings of his tricycle. She denied both, fearing that he might kill her if she would tell him the truth. Finished with his dastardly deed, he repeated his threat to kill her. He ordered her to remove her shirt and to

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[15] *Rollo*, p. 7.

[16] *Id*.

[17] *Id*.

[18] Sworn statement of Ana dated January 28, 1999, Exhibit "A" of the prosecution and Exhibit "2" of the appellant, p. 2. (Records [Criminal Case No. 99-511], p. 10.)

[19] *Rollo*, pp. 7-8.

blindfold herself with it. He commanded her to remain seated on the ground until after 15 minutes from the time he had started the tricycle. She did as told. When she sensed that he was already gone, she immediately stood up, wrapped her body with a *malong* and went home.[20]

On the next day, Ana told her mother about what happened to her.[21] And on the day after that, when Susie visited her to ask why she did not report at the clinic, Ana told Susie that she was raped by the driver of the tricycle who brought them to Barangay Ekis two nights ago.[22]

Thereafter, Ana had herself examined by a doctor. The medical examination revealed that she suffered multiple contusions, lacerations and abrasions on different parts of her body. In particular, she had contusions in the right side of her face, from the jaw to the temple and at the base of the right ear. She had bruise on the right forehead. She also had contusions below her lower left breast and lower chest. She had a laceration running from the jaw to the lower lip and a wound indicating a bite mark in her upper lip. There was marked tenderness in the upper part of her stomach and there were fingernail marks in her right shoulder, left wrist and in her back. Her labia were lacerated, her hymen was ruptured and dead spermatozoa were found in her vagina.[23]

Thereafter, Ana was assisted by her parents in reporting the matter to the authorities.[24] When she saw the appellant at the police station, she recognized him although he cut his hair and shaved his beard. And when she heard his voice, she became more certain that he was her assailant and,[25] with that realization,

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[20] *Id.*

[21] *Id.*

[22] TSN, April 5, 2005, p. 12.

[23] Records (Crim. Case No. 99-511), p. 19; Medical Certificate dated January 28, 1999, Exhibit "E".

[24] *Rollo*, p. 8.

[25] TSN, March 15, 2005, pp. 11-12.

she could only cry and was unable to say anything.[26] Subsequently, the appellant suddenly left Ubay, Bohol without informing anyone where he went. He was finally apprehended in Pampanga in August 2003.[27]

The appellant admitted that he was a tricycle driver. In his defense, he claimed that he lives in Fatima, Ubay, 1 ½ kilometers away from the crime scene.[28] At the time of the alleged incident, he was in his house sleeping. In fact, he was already sleeping by 6:00 in the evening as he drank alcohol in the market earlier that day. He woke up at around 8:00 in the morning of the following day; he noticed nothing unusual.[29]

Sometime after January 26, 1999, the appellant was invited by authorities to the police station. There, he met Ana for the first time. He was informed that he is among the suspects in connection with the rape of Ana. He was also informed that when Ana was asked if he was the culprit, she did not say anything but simply cried.[30]

The appellant further stated that he did not drive the tricycle on January 29, 1999 because the owner would use it for the Ubay town fiesta. After the town fiesta, the appellant left for Manila to look for a better paying job. He was subsequently hired as a security guard and he was arrested while he was at his post as security guard at Jollibee in Dau, Pampanga.[31]

After hearing the parties, the trial court gave credence to Ana's account of her harrowing experience in a "richly detailed testimony, delivered in a clear, forthright and straightforward manner."[32] The results of the medical examination describing

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[26] *Rollo*, p. 9.

[27] *Id.* at 8.

[28] TSN, June 13, 2006, p. 15.

[29] *Rollo*, p. 9.

[30] *Id.*

[31] *Id.*

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

the injuries Ana suffered underscored the truthfulness of her story. Her positive identification of the appellant as her assailant negated his alibi. His sudden flight from Ubay, Bohol also indicated guilt on his part.[33] Thus, in an Omnibus Decision dated September 21, 2007, the RTC found the appellant guilty beyond reasonable doubt of the crimes of rape by sexual assault and rape by sexual intercourse, both of which were committed with the use of deadly weapon. The dispositive portion of the decision reads:

> WHEREFORE, in Criminal Case No. 99-511 the Court finds the accused guilty beyond reasonable doubt of rape under Art. 266-A, paragraph 2 in relation to Art. 266-B of the Revised Penal Code, as amended by R.A. No. 8353 and hereby sentences him to suffer the penalty of 4 years and 2 months of *prision correccional* to 14 years, 8 months and 1 day of *reclusion temporal* with all the accessory penalties of the law, with costs.
>
> In Criminal Case No. 99-512 the Court likewise finds the accused guilty beyond reasonable doubt of rape under Art. 266-A, paragraph 1 in relation to Art. 266-B of the Revised Penal Code, as amended by RA No. 8353 and sentences him to suffer the penalty of *reclusion perpetua,* with costs.
>
> The accused is further ordered to pay the offended party the amount of ₱50,000 as civil indemnity and ₱50,000 as moral damages in each of the two cases.[34]

The appellant appealed his case to the Court of Appeals. He asserted that the trial court erred in convicting him despite the fact that his guilt was not proven beyond reasonable doubt.[35] He mentioned various matters to make his point: the identity of the alleged perpetrator of the crime was doubtful; the prosecution failed to prove that it was the appellant who was driving the tricycle on the night of the alleged rape and that it was the appellant who raped Ana; the darkness of

[33] *Id.*

[34] *Rollo*, p. 60.

[35] *Id.* at 10.

the night prevented Ana from seeing clearly and recognizing her attacker; Ana's behavior and reaction before, during and after the alleged rape was questionable, in particular, she did not shout when she was being chased by her rapist, she did not do anything to prevent the assault against her, she did not call for help or attempt to free herself when she had the opportunity; and, the medical certificate neither stated nor proved the appellant's involvement in the rape of Ana.[36]

The Court of Appeals, however, agreed with the RTC that it was proven beyond reasonable doubt that the appellant violated Article 266-A(2) and committed rape by sexual assault against Ana when he placed his penis into her mouth after poking a gun at her head and punching her. The Court of Appeals also agreed with the RTC that it was proven beyond reasonable doubt that the appellant violated Article 266-A(1)(a) and committed rape by sexual intercourse against Ana when he had carnal knowledge of her against her will through force and intimidation. The medical findings detailing the injuries inflicted upon Ana further confirm the commission of the crimes against her.[37]

The Court of Appeals rejected the contentions of the appellant and upheld the finding of the RTC that his victim had positively identified him as her assailant. The prosecution established that Susie and Ana recognized the appellant's face when they boarded his tricycle because the place was illuminated by streetlights and light from the nearby chapel and the houses in the area. Moreover, when Susie beamed her flashlight at the tricycle, Ana had the opportunity to recognize the appellant as the driver and to notice that he was wearing denim pants and a red polo shirt.[38]

The Court of Appeals also pointed out that Ana identified the appellant not only by his appearance but also by the sound

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[36] *Id.* at 10-11.

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

[38] *Id.* at 15.

of his voice. She remembered his voice when he was negotiating with her and Susie for a ride to Barangay Ekis, when Susie disembarked from the tricycle, and when he told her that the tricycle's fuel had gone empty. Ana's positive identification of the accused-appellant as her assaulter negated the appellant's denial and alibi.[39]

The appellate court found no merit in the appellant's claim that Ana's failure to shout for help and to repel the assault of her rapist eroded her credibility and made her allegation of sexual intercourse against her will unbelievable. The appellate court noted Ana's consistent testimony that she ran away and shouted for help but the appellant caught her, covered her mouth, pointed his gun at her and threatened to kill her; that she fought against him, even when she was already on the ground, but he mercilessly punched her; that she cried and begged him to stop but he ignored her and threatened her again; and, that she shouted because of pain when he forcefully inserted his penis into her vagina.[40]

Finally, the Court of Appeals modified the appellant's civil liability. It awarded Ana ₱30,000.00 civil indemnity, ₱30,000.00 moral damages and ₱30,000.00 exemplary damages for the rape by sexual assault in Criminal Case No. 99-511, and ₱50,000.00 civil indemnity, ₱50,000.00 moral damages and ₱30,000.00 exemplary damages for the rape by sexual intercourse in Criminal Case No. 99-512.[41]

Thus, in a Decision dated July 28, 2011, the Court of Appeals denied the appeal of the appellant and affirmed the Omnibus Decision dated September 21, 2007 of the RTC which found the appellant guilty of the crimes of rape by sexual assault and rape by sexual intercourse committed against Ana. The decretal portion of the Decision dated July 28, 2011 reads:

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[39] *Id.* at 15-16, 18.

[40] *Id.* at 17.

[41] *Id.* at 19.

WHEREFORE, the appeal is **DENIED**. The assailed Decision is **AFFIRMED** with **MODIFICATIONS**. As thus modified, accused-appellant in Criminal Case No. 99-512 is ordered to pay the private complainant [Ana] ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages. In Criminal Case No. 99-511, accused-appellant is ordered to pay private complainant [Ana] ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages.[42]

Hence, this appeal where the appellant adopts in full and reiterates the contents and substance of the brief which he filed in the Court of Appeals.[43] Thus, the appellant continues to insist that his guilt was not proven beyond reasonable doubt and his case basically rests on what he believes to be his victim's highly doubtful identification of him as the perpetrator of the crime.

The appeal fails.

Under Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353,[44] rape may be committed in two ways:

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;

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

[43] *Id.* at 30-32; Manifestation in Lieu of Supplemental Brief.

[44] ANTI-RAPE LAW OF 1997.

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.

As the felony is defined under Article 266-A, rape may be committed either by sexual intercourse under paragraph 1 or by sexual assault under paragraph 2.[45]

Rape by sexual intercourse is a crime committed by a man against a woman. The central element is carnal knowledge and it is perpetrated under any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1.[46]

On the other hand, rape by sexual assault contemplates two situations. *First*, it may be committed by a man who inserts his penis into the mouth or anal orifice of another person, whether a man or a woman, under any of the attendant circumstances mentioned in paragraph 1. *Second*, it may be committed by a person, whether a man or a woman, who inserts any instrument or object into the genital or anal orifice of another person, whether a man or a woman, under any of the four circumstances stated in paragraph 1.

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[45] *People v. Abulon*, 557 Phil. 428, 453-454 (2007).

This case distinguishes the two modes of committing rape as follows:

"(1) In the first mode [rape by sexual intercourse], the offender is always a man, while in the second [rape by sexual assault], the offender may be a man or a woman;

(2) In the first mode, the offended party is always a woman, while in the second, the offended party may be a man or a woman;

(3) In the first mode, rape is committed through penile penetration of the vagina, while the second is committed by inserting the penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person; and

(4) The penalty for rape under the first mode is higher than that under the second." (*Id.* at 454.)

[46] *People v. Soria*, G.R. No. 179031, November 14, 2012, 685 SCRA 483, 497.

This Court agrees with the trial and the appellate courts that the crime of rape by sexual assault was committed against Ana when a man's sex organ was forcibly inserted into her mouth after poking a gun at her head and punching her. This Court also agrees with the trial and the appellate courts that the crime of rape by sexual intercourse was committed against Ana when a man had carnal knowledge of her after delivering fist blows on her stomach, pointing a gun at her, and threatening to kill her. The physical evidence, particularly the medical report detailing the various injuries inflicted upon Ana, confirms the truth of Ana's story.

There is no question that the man who violated the person and dignity of Ana had his face covered by a red polo shirt. The appellant asserts that the prosecution failed to establish his identity as the author of the crimes, that he is the man with the covered face.

He is wrong.

An accused enjoys the presumption of innocence until and unless his/her guilt is proven beyond reasonable doubt. The fundamental law guarantees him/her that right.[47] The presumption of innocence in favor of the accused behooves the People of the Philippines, as the plaintiff in criminal cases, to prove beyond reasonable doubt not only each element of the crime but also the identity of the accused as the criminal. It requires this Court, in reviewing criminal cases, to carefully determine and establish the following:

> ***[F]irst***, the identification of the accused as perpetrator of the crime, taking into account the credibility of the prosecution witness who made the identification as well as the prosecution's compliance with legal and constitutional standards; and ***second***, all the elements constituting the crime were duly proven by the prosecution to be present. x x x.[48]

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[47] Section 14(2), Article III of the 1987 Constitution provides that "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

[48] *People v. Rodrigo,* G.R. No. 176159, September 11, 2008, 564 SCRA 584, 597.

Proving the identity of the accused as the malefactor is the prosecution's primary responsibility. Thus, in every criminal prosecution, the identity of the offender, like the crime itself, must be established by proof beyond reasonable doubt. Indeed, the first duty of the prosecution is not to prove the crime but to prove the identity of the criminal, for even if the commission of the crime can be established, there can be no conviction without proof of identity of the criminal beyond reasonable doubt.[49]

Here, the prosecution's evidence on the identity of the appellant as the offender is clear and unmistakable.

Ana and Susie positively identified the appellant as the driver of the tricycle in red polo shirt, which ferried them to Barangay Ekis on that fateful night of January 26, 1999. Instead of bringing Ana home, appellant brought her to the quarry in the pretext that the tricycle's brakes malfunctioned and the vehicle subsequently ran out of gas. Consequently, Ana was placed in a vulnerable situation that enabled the appellant to commit the crime charged. As Ana started to walk home from the quarry, appellant took off his red shirt and covered his face with it and then followed her with a gun in his hand. She ran when she noticed him and he ran after her until he caught her. He poked his gun at her, repeatedly threatened her, mercilessly hit her and raped her twice, first by sexual assault and then by sexual intercourse. His lust satiated, he went back to his tricycle and drove away. She recognized him as the one who raped her when he was presented to her at the police station two days after the incident, although he already cut his hair and shaved his beard. And she positively identified him in open court when she gave her testimony.

While the appellant attempts to hide his identity in the blackness of the night, his identity has been revealed and the darkness that is his cover has been dispelled by the categorical testimonies

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[49] *People v. Caliso*, G.R. No. 183830, October 19, 2011, 659 SCRA 666, 675.

of Susie and Ana that, while it was late into the night when they boarded the appellant's tricycle at the junction, they saw his face because the place was illuminated by light from lamp posts and the nearby chapel as well as from the houses in the vicinity. Moreover, Susie beamed her flashlight at the tricycle, giving Ana an opportunity to recognize the appellant as the driver and to notice that he was wearing denim pants and a red polo shirt, which was the same red polo shirt he used to cover his face. In other words, the tricycle driver in the red polo shirt was the same man whose face was covered with a red polo shirt — Ana's rapist — the appellant.

The Court of Appeals correctly ruled that Ana identified the appellant not only by his appearance but also by the sound of his voice. She remembered his voice when he was negotiating with her and Susie for a ride to Barangay Ekis, when Susie disembarked from the tricycle and when he told her that the tricycle's brakes malfunctioned and, later on, that the tricycle's fuel had gone empty. It was the same voice that repeatedly threatened to kill her, ordered her to take him in her mouth, asked her whether she recognized him and his tricycle, and directed her not to leave the scene of the crime until after he was gone for some time. And when she met him at the police station, despite his attempt to prevent her from recognizing him by cutting his hair and shaving his beard, it was the same voice that made her recognize him and made her cry out of fear.

Ana's testimony is clear, categorical, consistent and credible. Under its evidentiary weight, the appellant's denial and alibi collapse and crumble.

Thus, beyond reasonable doubt, the crimes of rape by sexual assault and rape by sexual intercourse committed against Ana have been established. Beyond reasonable doubt, too, it is the appellant who committed the said crimes.

Under Article 266-B of the Revised Penal Code, as amended, whenever rape by sexual assault is committed with the use of a deadly weapon, the penalty shall be *prision mayor* to *reclusion*

temporal, or a duration of 6 years and 1 day to 20 years. As there was no attendant aggravating or mitigating circumstance, the imposable penalty is the medium period of the said duration, that is, from 10 years, 8 months and 1 day to 15 years and 4 months, pursuant to Articles 64 and 65 of the Revised Penal Code, as amended. Applying the Indeterminate Sentence Law, the minimum term shall be within *prision correccional* (which ranges from 6 months and 1 day to six years), the penalty next lower to *prision mayor*, and the maximum term shall be within the imposable penalty stated above. Hence, the RTC and the Court of Appeals correctly imposed on the appellant the indeterminate sentence of 4 years and 2 months of *prision correccional* as minimum and 14 years, 8 months and 1 day of *reclusion temporal* as maximum for the crime of rape by sexual assault committed against Ana with the use of a hand gun, a deadly weapon.

Under Article 266-B of the Revised Penal Code, as amended, whenever rape by sexual intercourse is committed with the use of a deadly weapon, the penalty shall be *reclusion perpetua* to death. As there was no attendant aggravating or mitigating circumstance, the RTC and the Court of Appeals were correct in sentencing the appellant to the lesser penalty of *reclusion perpetua* pursuant to Article 63(2) of the Revised Penal Code, as amended.[50]

As to the award of damages, the grant to Ana of ₱30,000.00 civil indemnity, ₱30,000.00 moral damages and ₱30,000.00 exemplary damages for the rape by sexual assault committed against her is proper.[51] Likewise, the amounts of ₱50,000.00 civil indemnity, ₱50,000.00 moral damages and ₱30,000.00 exemplary damages for the rape by sexual intercourse committed

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[50] *See Sison v. People*, G.R. No. 187229, February 22, 2012, 666 SCRA 645, 667. Besides, the imposition of the death penalty is now prohibited under Republic Act No. 9346.

[51] *See People v. Soria*, *supra* note 46 at 508.

against her are proper and conform with current case law.[52] These amounts shall be subject to legal interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid, pursuant to prevailing jurisprudence.[53]

While no amount of money may really be sufficient to fully compensate the loss of innocence and deprivation of dignity that Ana suffered in the ruthless hands of the appellant, the above amounts may somehow ease her suffering and help her move on to rebuild her life and reclaim her dignity. Finally, this Court commends her courage and strength of spirit in her quest for justice under the law.

WHEREFORE, the Decision dated July 28, 2011 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00923 affirming with modifications the Omnibus Decision dated September 21, 2007 of the Regional Trial Court of Talibon, Bohol, Branch 52 in Criminal Case Nos. 99-511 and 99-512 is hereby **AFFIRMED with MODIFICATION** insofar as legal interest at the rate of six percent (6%) *per annum* is imposed on all amounts of damages awarded to the private offended party from the date of finality of this judgment until fully paid.

SO ORDERED.

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

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[52] *People v. Penilla*, G.R. No. 189324, March 20, 2013; *People v. Saludo*, G.R. No. 178406, April 6, 2011, 647 SCRA 374, 397.

[53] *Sison v. People*, *supra* note 50 at 667.

[*] Per Special Order No. 1537 (Revised) dated September 6, 2013.

[**] Per Special Order No. 1545 (Revised) dated September 16, 2013.

SECOND DIVISION

[G.R. No. 202920. October 2, 2013]

RICHARD CHUA, *petitioner, vs.* **THE EXECUTIVE JUDGE, METROPOLITAN TRIAL COURT, MANILA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY TO BE FILED WITH THE APPROPRIATE TRIAL COURT, WHERE THE ASSAILED ORDERS ARE NOT FINAL.—** The assailed orders are not, technically, *final orders* that are appealable, let alone the proper subjects of an appeal by *certiorari*. The assailed orders do not, at least for the moment, completely dispose of the B.P. 22 cases filed before the MeTC. The correct remedy for the petitioner, in view of the unavailability of an appeal or any other remedy in the ordinary course of law, is a *certiorari* petition under Rule 65 of the Rules of Court. But then again, the petitioner should have filed such a petition, not directly with this Court, but before the appropriate Regional Trial Court pursuant to the *principle of hierarchy of courts.*

2. **ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; COMMITTED WHEN JUDGE REFUSED PETITIONER'S MOTION TO PAY ON A PER CASE BASIS INSTEAD OF THE TOTAL AMOUNT OF ₱540,668.00, AS FILING FEES OF 40 COUNTS OF VIOLATION OF BP BLG. 22 FILED AGAINST ONE PARTY.—** [P]etitioner filed before the Executive Judge of the MeTC a motion entitled "*Urgent Motion to Allow Private Complainant to Pay Filing Fee on a Per Case Basis*" (*Urgent Motion*). In it, petitioner reiterated his request that he be allowed to pay filing fees on a per case basis instead of being required to pay the total amount of filing fees (₱540,668.00 for 40 counts of violation of BP Blg. 22) in its entirety. [T]he Executive Judge issued an Order denying petitioner's *Urgent Motion*. x x x We see nothing wrong or illegal in granting petitioner's request. The Executive Judge erred when she treated the entire ₱540,668.00 as one indivisible obligation, when that figure was nothing but the sum of individual filing fees due for each count of violation of BP Blg. 22 filed before the MeTC. Granting petitioner's request would not constitute a

deferment in the payment of filing fees, for the latter clearly intends to pay *in full* the filing fees of some, albeit not all, of the cases filed. Filing fees, when required, are assessed and become due for each initiatory pleading filed. In criminal actions, these pleadings refer to the information filed in court. In the instant case, there are a total of forty (40) counts of violation of BP Blg. 22 that was filed before the MeTC. And each of the forty (40) was, in fact, assessed its filing fees, *individually*, based on the amount of check one covers. Under the rules of criminal procedure, the filing of the forty (40) counts is equivalent to the filing of forty (40) different informations, as each count represents an independent violation of BP Blg. 22. Filing fees are, therefore, due for each count and may be paid for each count *separately*. x x x That all forty (40) counts of violation of BP Blg. 22 all emanated from a single complaint filed in the OCP is irrelevant. The fact remains that there are still forty (40) counts of violation of BP Blg. 22 that were filed before the MeTC and, as a consequence, forty (40) individual filing fees to be paid. Neither would the consolidation of all forty (40) counts make any difference. Consolidation unifies criminal cases involving related offenses only for purposes of trial. Consolidation does not transform the filing fees due for each case consolidated into one indivisible fee. Allowing petitioner to pay for the filing fees of *some* of the forty (40) counts of violation of BP Big. 22 filed before the MeTC, will concededly result into the absolute non-payment of the filing fees of the rest. The fate of the cases which filing fees were not paid, however, is already the concern of the MeTC.

APPEARANCES OF COUNSEL

King & Adorio Law Offices for petitioner.

D E C I S I O N

PEREZ, *J.*:

At bench is a Petition for Review on *Certiorari*,[1] assailing the Orders[2] dated 26 June 2012 and 26 July 2012 of the Executive

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

[2] *Rollo*, pp. 21-22 and 24. The 26 June 2012 Order was issued by Acting Executive Judge Ma. Ruby B. Camarista, while the 26 July 2012 Order was issued by Executive Judge Marlina M. Manuel.

Judge of the Metropolitan Trial Court (MeTC), Manila, in UDK Nos. 12001457 to 96.

The facts:

On 13 January 2012, herein petitioner Richard Chua filed before the Office of the City Prosecutor (OCP) of Manila, a complaint charging one Letty Sy Gan of forty (40) counts of violation of Batas Pambansa Bilang (BP Blg.) 22 or the *Bouncing Checks Law*.[3] After conducting preliminary investigation, the OCP found probable cause and, on 22 March 2012, filed forty (40) counts of violation of BP Blg. 22 before the MeTC.[4]

Consequently, the MeTC informed petitioner that he has to pay a total of ₱540,668.00 as filing fees for all the forty (40) counts of violation of BP Blg. 22.[5] Finding the said amount to be beyond his means, petitioner consulted with the MeTC clerk of court to ask whether he could pay filing fees on a per case basis instead of being required to pay the total filing fees for all the BP Blg. 22 cases all at once.[6] The MeTC clerk of court opined that petitioner could not.[7] Petitioner was thus unable to pay any filing fees.

Due to non-payment of the required filing fees, the MeTC designated the forty (40) counts of violation of BP Blg. 22 as undocketed cases under UDK Nos. 12001457 to 96. Subsequently, the OCP moved for consolidation of the said cases.[8]

On 18 April 2012, petitioner filed before the Executive Judge of the MeTC a motion entitled "*Urgent Motion to Allow Private*

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[3] The complaint was docketed in the OCP as I.S. No. XV-07-INV—12A-00329.

[4] *Rollo*, p. 21.

[5] *Id.*

[6] *Id.* at 5.

[7] *Id.*

[8] *Id.* at 24.

Complainant to Pay Filing Fee on a Per Case Basis" (*Urgent Motion*).[9] In it, petitioner reiterated his request that he be allowed to pay filing fees on a per case basis instead of being required to pay the total amount of filing fees in its entirety.

On 26 June 2012, the Executive Judge issued an Order denying petitioner's *Urgent Motion*. In rebuffing petitioner's *Urgent Motion*, the Executive Judge of the MeTC ratiocinated that granting petitioner's plea would constitute a *deferment* in the payment of filing fees that, in turn, contravenes Section 1(b) of the Rule 111 of the Rules of Court.[10]

Petitioner moved for reconsideration, but to no avail.

Hence, this appeal.

OUR RULING

Prefatorily, it must be pointed out that petitioner availed of the wrong remedy in assailing the Orders dated 26 June 2012 and 26 July 2012 of the Executive Judge of the MeTC *via* the present petition for review on *certiorari*. The assailed orders are not,

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[9] *Id.* at 21.

[10] *Id.* at 22. Section 1(b) of Rule 111 of the Rules of Court provides:

(b) The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.

Upon filing of the aforesaid joint criminal and civil actions, the offended party shall pay **in full** the filing fees based on the amount of the check involved, which shall be considered as the actual damages claimed. Where the complaint or information also seeks to recover liquidated, moral, nominal, temperate or exemplary damages, the offended party shall pay additional filing fees based on the amounts alleged therein. If the amounts are not so alleged but any of these damages are subsequently awarded by the court, the filing fees based on the amount awarded shall constitute a first lien on the judgment. (Emphasis supplied)

Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with section 2 of this Rule governing consolidation of the civil and criminal actions.

technically, *final orders* that are appealable,[11] let alone the proper subjects of an appeal by *certiorari*.[12] The assailed orders do not, at least for the moment, completely dispose of the B.P. 22 cases filed before the MeTC.

The correct remedy for the petitioner, in view of the unavailability of an appeal or any other remedy in the ordinary course of law, is a *certiorari* petition under Rule 65 of the Rules of Court.[13] But then again, the petitioner should have filed such a petition, not directly with this Court, but before the appropriate Regional Trial Court pursuant to the *principle of hierarchy of courts*.[14]

In the weightier interest of substantial justice, however, this Court forgives such procedural lapses and treats the instant appeal as a *certiorari* petition filed properly before this Court. To this Court, the *grave abuse of discretion* on the part of the Executive Judge was patent on the undisputed facts of this case and is serious enough to warrant a momentary deviation from the procedural norm.

Thus, We come to the focal issue of whether the Executive Judge of the MeTC committed *grave abuse of discretion*, in light of the facts and circumstances herein obtaining, in refusing petitioner's request of paying filing fees on a per case basis.

We answer in the affirmative. We grant the petition.

In proposing to pay filing fees on a per case basis, petitioner was not trying to evade or deny his obligation to pay for the filing fees for all forty (40) counts of violation of BP Blg. 22 filed before the MeTC. He, in fact, acknowledges such obligation. He, in fact, admits that he is incapable of fulfilling such obligation in its entirety.

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[11] See *Miranda v. Court of Appeals*, 163 Phil. 285, 321-322 (1976).

[12] Section 1, Rule 45 of the Rules of Court.

[13] Section 1, Rule 65 of the Rules of Court.

[14] See *Jumaquio v. Villarosa*, G.R. No. 165924, 19 January 2009, 576 SCRA 204, 209.

Rather, what petitioner is asking is that he at least be allowed to pursue *some* of the cases, the filing fees of which he is capable of financing. Petitioner manifests that, given his current financial status, he simply cannot afford the filing fees for *all* the forty (40) BP Blg. 22 cases.

We see nothing wrong or illegal in granting petitioner's request.

First. The Executive Judge erred when she treated the entire ₱540,668.00 as one indivisible obligation, when that figure was nothing but the sum of individual filing fees due for each count of violation of BP Blg. 22 filed before the MeTC. Granting petitioner's request would not constitute a *deferment* in the payment of filing fees, for the latter clearly intends to pay *in full* the filing fees of some, albeit not all, of the cases filed.

Filing fees, when required, are assessed and become due for each initiatory pleading filed.[15] In criminal actions, these pleadings refer to the information filed in court.

In the instant case, there are a total of forty (40) counts of violation of BP Blg. 22 that was filed before the MeTC. And each of the forty (40) was, in fact, assessed its filing fees, *individually*, based on the amount of check one covers.[16] Under the rules of criminal procedure, the filing of the forty (40) counts is equivalent to the filing of forty (40) different informations, as each count represents an independent violation of BP Blg. 22.[17] Filing fees are, therefore, due for each count and may be paid for each count *separately*.

Second. In an effort to justify her refusal of petitioner's request, the Executive Judge further argues that since all forty (40) counts of violation of BP Blg. 22 were brought about by a single complaint

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[15] *See* Section 1 of Rule 141 of the Rules of Court.

[16] *See* Section 1(b) of Rule 111 of the Rules of Court. *See* also *Rollo,* p. 55.

[17] *See* Section 13, Rule 110 of the Rules of Court.

filed before the OCP and are now consolidated before the court, the payment of their filing fees should be made for *all* or none at all.[18]

That all forty (40) counts of violation of BP Blg. 22 all emanated from a single complaint filed in the OCP is irrelevant. The fact remains that there are still forty (40) counts of violation of BP Blg. 22 that were filed before the MeTC and, as a consequence, forty (40) individual filing fees to be paid.

Neither would the consolidation of all forty (40) counts make any difference. Consolidation unifies criminal cases involving related offenses only for purposes of trial.[19] Consolidation does not transform the filing fees due for each case consolidated into one indivisible fee.

Third. Allowing petitioner to pay for the filing fees of *some* of the forty (40) counts of violation of BP Blg. 22 filed before the MeTC, will concededly result into the absolute non-payment of the filing fees of the rest. The fate of the cases which filing fees were not paid, however, is already the concern of the MeTC.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The assailed Orders dated 26 June 2012 and 26 July 2012 of the Executive Judge of the Metropolitan Trial Court, Manila, in UDK Nos. 12001457 to 96 are **ANNULLED** and **SET ASIDE**. The Metropolitan Trial Court, Manila, is hereby directed to accept payments of filing fees in UDK Nos. 12001457 to 96 on a per information basis.

No costs.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

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[18] *Rollo*, pp. 48-49.

[19] *See* Section 22 of Rule 119 of the Rules of Court.

INDEX

INDEX

ACTIONS

Jurisdiction — Jurisdiction of the court or tribunal over the nature and subject matter of an action is conferred by law. (Pua *vs*. Citibank, N.A., G.R. No. 180064, Sept. 16, 2013) p. 1

Ordinary civil action — Trial courts cannot make a declaration of heirship in an ordinary civil action, for matters relating to filiation and heirship must be ventilated in a special proceeding instituted precisely for the purpose of determining such rights. (Bagayas *vs*. Bagayas, G.R. Nos. 187308 & 187517, Sept. 18, 2013) p. 91

ADMINISTRATIVE LAW

Requiring retiring government employee to secure clearance of non-pendency of any administrative case from Civil Service Commission — Not applicable to retiring court employees. (*Re*: Request for Guidance/Clarification on Section 7, Rule III of R.A. No. 10154 Requiring Retiring Government Employees to Secure a Clearance of Non-Pendency of any Administrative Case from the Civil Service Commission. A.M. No. 13-09-08-SC, Oct. 01, 2013) p. 503

ADMISSIONS

Judicial admission — The general rule regarding conclusiveness of judicial admission upon the party making it and the dispensation of proof admits of two exceptions: (1) when it is shown that the admission was made through palpable mistake, and (2) when it is shown that no such admission was in fact made. (Constantino *vs*. Heirs of Pedro Constantino, Jr., G. R. No. 181508, Oct. 02, 2013) p. 575

ALIBI

Defense of — Accused must prove that that it is physically impossible for him to be at the scene of the crime at the time of its commission. (People *vs*. Cedenio, G.R. No. 201103, Sept. 25, 2013) p. 393

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Entering into a contract disadvantageous to the government — The following elements must be proven: (1) the accused is a public officer; (2) the public officer entered into a contract or transaction n behalf of the government; and (3) the contract or transaction was grossly and manifestly disadvantageous to the government. (Singian, Jr. *vs*. Sandiganbayan, G.R. Nos. 195011-19, Sept. 30, 2013) p. 455

APPEALS

Perfection of appeal — Period for perfecting an appeal may be relaxed under meritorious grounds but does not include negligence of counsel and client. (Ramirez *vs*. People, G.R. No. 197832, Oct. 02, 2013) p. 653

Period to appeal — An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from. (Ramirez *vs*. People, G.R. No. 197832, Oct. 02, 2013) p. 653

Right to appeal — Neither a natural right nor a part of due process. (Ramirez *vs*. People, G.R. No. 197832, Oct. 02, 2013) p. 653

— Upheld where notice of assailed decision was not validly served, depriving the party the opportunity to file a motion for reconsideration. (Ventura *vs*. Heirs of Sps. Eustacio and Trinidad Endaya, G.R. No. 190016, Oct. 02, 2013) p. 621

ATTORNEYS

Attorney-client relationship — Once a lawyer agrees to take up the cause of his client, the lawyer owes fidelity to such case and must always be mindful of the trust and confidence reposed in him. (Mattus *vs*. Atty. Villaseca, A.C. No. 7922, Oct. 01, 2013) p. 478

Code of Professional Responsibility — A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so. (Mattus *vs*. Atty. Villaseca, A.C. No. 7922, Oct. 01, 2013) p. 478

Gross negligence — Negligence involving the very liberty and livelihood of the client warrants five (5) years suspension from the practice of law. (Mattus *vs*. Atty. Villaseca, A.C. No. 7922, Oct. 01, 2013) p. 478

Unauthorized practice of law — Committed in case a person practised law without signing the Roll of Attorneys. (*In Re*: Petition to Sign in the Roll of Attorneys of Michael A. Medado, B.M. No. 2540, Sept. 24, 2013) p. 286

CERTIORARI

Grave abuse of discretion — Committed in case the Secretary of Labor relied on the unaudited financial statement submitted by an employer in determining the wage award and failure to indicate the actual data upon which the wage award was based. (Asia Brewery, Inc. *vs*. Tunay na Pagkakaisa ng mga Manggagawa sa Asia [TPMA], G.R. Nos. 171594-96, Sept. 18, 2013) p. 33

— Committed when a judge refused petitioner to pay on a per case basis instead of the total amount of filing fees for 40 counts of violation of B.P. Blg. 22 filed against a party. (Chua *vs*. The Executive Judge, MeTC, Manila, G.R. No. 202920, Oct. 02, 2013) p. 698

— 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. Aldover *vs*. CA, G.R. No. 167174, Sept. 23, 2013) p. 205

— Not committed when the appellate court, in issuing a writ of preliminary injunction, the parties were amply heard on. *(Id.)*

Petition for — Not the proper remedy to review the intrinsic correctness of the Court of Appeals' ruling; it is limited to the determination of whether the appellate court committed grave abuse of discretion in rendering its decision. (Sps. Aldover *vs*. CA, G.R. No. 167174, Sept. 23, 2013) p. 205

— Petition for the assailed order of the Metropolitan Trial Court should be filed before the appropriate Regional Trial Court pursuant to the principle of hierarchy of courts. (Chua *vs*. The Executive Judge, MeTC, Manila, G.R. No. 202920, Oct. 02, 2013) p. 698

CLERKS OF COURT

Gross dishonesty — Committed in case of failure to remit collections upon demand by the court. (Office of the Court Administrator *vs*. Leal, A.M. No. P-12-3047, Oct. 01, 2013) p. 489

Gross dishonesty, gross misconduct and malversation of public funds — Warrants dismissal from service. (Office of the Court Administrator *vs*. Leal, A.M. No. P-12-3047, Oct. 01, 2013) p. 489

Liabilities of — She must be held liable for the missing official receipts, unaccounted official receipts, original copies of cancelled official receipts, the passbook of the Land Bank Savings Account, and supporting documents of Fiduciary fund withdrawals and for the shortage incurred. (Office of the Court Administrator *vs*. Leal, A.M. No. P-12-3047, Oct. 01, 2013) p. 489

COMPREHENSIVE AGRARIAN REFORM PROGRAM (R.A. NO. 6657)

Coverage — Does not include lands devoted to livestock, poultry and swine raising. (Dep't. of Agrarian Reform *vs*. CA, G.R. No. 170018, Sept. 23, 2013) p. 232

— In order to be entitled to exclusion/exemption, it must be shown that the land is exclusively devoted to livestock, swine or poultry as of the effectivity of the Act or on June 15, 1988, to prevent any fraudulent declaration of areas supposedly used for these purposes as well as to protect the rights of agrarian beneficiaries therein. *(Id.*

— The determination of land's classification as either an agricultural or industrial land and whether or not the land falls under the agrarian reform exemption falls within the competence and jurisdiction of the Secretary of Agrarian Reform. *(Id.)*

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule — Absent justifiable ground for compliance with the rule casts reasonable doubt on the identity of the *corpus delicti*. (People *vs*. Enriquez, G.R. No. 197550, Sept. 25, 2013) p. 352

— Deemed broken when seized 0.4 gram of shabu was short by .01796 gram when submitted for laboratory testing. (People *vs*. Pornillos, G.R. No. 201109, Oct. 02, 2013) p. 675

— Prosecution must prove the following links: (1) the seizure and marking, if practicable of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination, and (4) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. (People *vs*. Enriquez, G.R. No. 197550, Sept. 25, 2013) p. 352

— The chain of custody must be proved by the prosecution to ensure the preservation of the integrity and evidentiary value of the seized item. (People *vs*. Ocfemia, G.R. No. 185383, Sept. 25, 2013) p. 330

Illegal possession of dangerous drugs — The following elements must be present: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. (People *vs.* Enriquez, G.R. No. 197550, Sept. 25, 2013) p. 352

Illegal sale of dangerous drugs — The following elements must be established: (1) the identities of the buyer and the seller, the object and consideration of the sale; and (3) the delivery to the buyer of thing sold and receipt by the seller of the payment therefor. (People *vs.* Ocfemia, G.R. No. 185383, Sept. 25, 2013) p. 330

— The penalty, regardless of the quantity and purity involved, shall be life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. *(Id.)*

COMPREHENSIVE JUVENILE JUSTICE AND WELFARE SYSTEM (R.A. NO. 9344)

Suspension of sentence — Not available to a minor offender who has reached the age of twenty-one (21) years at the time of conviction. (People *vs.* Gambao, G.R. No. 172707, Oct. 01, 2013) p. 507

CONSPIRACY

Existence of — Must be proven during the trial with the same quantum of evidence as the felony subject of the agreement of the parties either by direct or circumstantial evidence before, during and after the commission of the felony to achieve a common design or purpose. (People *vs.* SPO1 Alawig, G.R. No. 187731, Sept. 18, 2013) p. 104

— Present if two or more persons agree to commit a felony and decide to commit it. *(Id.)*

— Proved by the concerted acts of the accused before, during, and after the incident that show unity of purpose and design. *(Id.)*

CONTEMPT

Indirect contempt — A person may not be held liable for indirect contempt for engaging in unauthorized practice of law in the absence of a formal charge. (*In Re*: Petition to Sign in the Roll of Attorneys of Michael A. Medado, B.M. No. 2540, Sept. 24, 2013) p. 286

CONTRACTS

In pari delicto doctrine — Rights and obligations of the parties to the contract with an illegal cause or object which does not constitute a criminal offense applies to contracts which are void for illegality of subject matter and not to contracts rendered void for being simulated, or those in which the parties do not really intend to be bound thereby. (Constantino *vs*. Heirs of Pedro Constantino, Jr., G.R. No. 181508, Oct. 02, 2013) p. 575

— The parties to a controversy are equally culpable or guilty, they shall have no action against each other, and it shall leave the parties where it finds them. *(Id.)*

Matching clause — Such stipulation grants to a party the right to offer the same amount as the highest bid to beat the highest bidder. (Land Transportation Franchising and Regulatory Board *vs*. Stronghold Insurance Co., Inc., G.R. No. 200740, Oct. 02, 2013) p. 660

CO-OWNERSHIP

Application — Rules on co-ownership govern the property regime of a man and a woman without the benefit of marriage. (Salas, Jr. *vs*. Aguila, G.R. No. 202370, Sept. 23, 2013) p. 274

DAMAGES

Actual damages — There must be competent proof of the actual amount of loss. (People *vs*. SPO1 Alawig, G.R. No. 187731, Sept. 18, 2013) p. 104

Exemplary damages — Awarded in case an aggravating or qualifying circumstance attended the commission of the crime. (People *vs*. Alinao, G.R. No. 191256, Sept. 18, 2013) p. 133

Loss of earning capacity — Awarded to the heirs of a victim of murder as a consequence of his untimely death. (People *vs*. SPO1 Alawig, G.R. No. 187731, Sept. 18, 2013) p. 104

— Must be proved by documentary evidence, not merely by the self-serving testimony of the widow. (People *vs*. Ibañez, G.R. No. 197813, Sept. 25, 2013) p. 370

Moral damages — Awarded in cases of murder and homicide without need of allegation and proof other than the death of the victim. (People *vs*. SPO1 Alawig, G.R. No. 187731, Sept. 18, 2013) p. 104

DECLARATORY RELIEF

Action for — The following are the requisites: (1) the subject matter of the controversy must be a deed, will, contract, or other written instrument, statute, executive order or regulation, or ordinance; (2) the terms of said documents and the validity thereof are doubtful and require judicial construction; (3) there must have been no breach of the documents in question; (4) there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; (5) the issue must be ripe for judicial determination; and (6) adequate relief is not available through other means or other forms of action or proceeding. (Rep. of the Phils. *vs*. Roque, G.R. No. 204603, Sept. 24, 2013) p. 294

Justiciable controversy — Refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. (Rep. of the Phils. *vs*. Roque, G.R. No. 204603, Sept. 24, 2013) p. 294

DEMURRER TO EVIDENCE

Nature — An objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. (Singian, Jr. *vs*. Sandiganbayan, G.R. Nos. 195011-19, Sept. 30, 2013) p. 455

— Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances. *(Id.)*

— The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. *(Id.)*

DENIAL OF THE ACCUSED

Defense of — Cannot prevail over the positive and categorical testimony of the witness. (People *vs*. Cuaycong, G.R. No. 196051, Oct. 02, 2013) p. 633

(People *vs*. Ocfemia, G.R. No. 185383, Sept. 25, 2013) p. 330

— Cannot prevail over the positive identification of the witness. (People *vs*. Gambao, G.R. No. 172707, Oct. 01, 2013) p. 507

DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE)

Power of arbitral award of the Secretary of Labor — The Secretary committed grave abuse of discretion when he relied on the unaudited financial statement submitted by an employer in determining the wage award and failure to indicate the actual data upon which the wage award was based. (Asia Brewery, Inc. *vs*. Tunay na Pagkakaisa ng mga Manggagawa sa Asia [TPMA]. G.R. Nos. 171594-96, Sept. 18, 2013) p. 33

EMPLOYEES' COMPENSATION

Occupational diseases — Include leukemia but not compensable for a school teacher who was not exposed to anesthetics. (Lorenzo *vs*. GSIS, G.R. No. 188385, Oct. 02, 2013) p. 596

Sickness — Refers to any illness definitely accepted as an occupational disease listed by the Employees' Compensation Commission, or any illness caused by employment, subject to proof that the risk of contracting the same is increased by working conditions. (Lorenzo *vs*. GSIS, G.R. No. 188385, Oct. 02, 2013) p. 596

EMPLOYER-EMPLOYEE RELATIONSHIP

Management prerogatives — Include the right to dismiss its erring employees. (Moya *vs*. First Solid Rubber Industries, Inc., G.R. No. 184011, Sept. 18, 2013) p. 77

EMPLOYMENT, TERMINATION OF

Loss of trust and confidence as a ground — Dismissed employee is not entitled to separation pay. (Moya *vs*. First Solid Rubber Industries, Inc., G.R. No. 184011, Sept. 18, 2013) p. 77

— Guidelines to be observed are: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence. (Alvarez *vs*. Golden Tri Bloc, Inc., G.R. No. 202158, Sept. 25, 2013) p. 415

— Position of trust includes managerial employees and fiduciary rank-and-file employees. *(Id.)*

— Premised on the fact that an employee concerned holds a position of trust and confidence. (Moya *vs*. First Solid Rubber Industries, Inc., G.R. No. 184011, Sept. 18, 2013) p. 77

— The act complained of must be work-related such as would show the employee concerned to be unfit to continue working for the employer. (Alvarez *vs*. Golden Tri Bloc, Inc., G.R. No. 202158, Sept. 25, 2013) p. 415

(Moya *vs*. First Solid Rubber Industries, Inc., G.R. No. 184011, Sept. 18, 2013) p. 77

Separation pay — An employee who has been dismissed for any just cause is not entitled to separation pay; an erring employee could not benefit under the cloak of social justice in the award of separation pay. (Moya *vs.* First Solid Rubber Industries, Inc., G.R. No. 184011, Sept. 18, 2013) p. 77

EVIDENCE

Circumstantial evidence — To warrant conviction of an accused, it is required that: (1) there is more than one circumstance; (2) the fact from which the circumstances arose are duly established in court; and (3) the circumstances form an unbroken chain of events leading to the fair conclusion of the culpability of the accused for the crime for which he is convicted. (People *vs.* SPO1 Alawig, G.R. No. 187731, Sept. 18, 2013) p. 104

Flight of the accused — Fact that accused did not flee may be a badge of innocence, nevertheless, it is not a sufficient ground to exculpate him from his proven criminal liability. (People *vs.* SPO1 Alawig, G.R. No. 187731, Sept. 18, 2013) p. 104

Identification of the accused — Once a person knows another through association, identification becomes an easy task even from a considerable distance. (People *vs.* Alinao, G.R. No. 191256, Sept. 18, 2013) p. 133

Preponderance of evidence — The party making an allegation in a civil case has the burden of proving it by preponderance of evidence. (Salas, Jr. *vs.* Aguila, G.R. No. 202370, Sept. 23, 2013) p. 274

EVIDENT PREMEDITATION

As a qualifying circumstance — Its essence is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment. (People *vs.* Alinao, G.R. No. 191256, Sept. 18, 2013) p. 133

— Not appreciated when the lapse of time from the moment the victim was fetched until the shooting was not considered sufficient for accused to reflect upon the consequences of his act. (People *vs*. SPO1 Alawig, G.R. No. 187731, Sept. 18, 2013) p. 104

— The following elements must be proved: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused has clung to his determination; and (3) sufficient lapse of time between the determination and execution to allow him to reflect upon the consequence of his act. (People *vs*. Alinao, G.R. No. 191256, Sept. 18, 2013) p. 133

EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE (R.A. NO. 3135)

Application — The operation of the Act does not entirely discount the application of Section 7, Rule 86 of the Rules of Court, or vice versa; rather the two complement each other within their respective spheres of operation. (Heirs of the Late Spouses Flaviano and Salud Maglasang, *vs*. Manila Banking Corp., G.R. No. 171206, Sept. 23, 2013) p. 256

Venue — The stipulated venue and that provided under the Act can be applied alternatively. (Heirs of the Late Spouses Flaviano and Salud Maglasang, *vs*. Manila Banking Corp., G.R. No. 171206, Sept. 23, 2013) p. 256

FORCIBLE ABDUCTION

Commission of — Absorbed in the crime of rape. (People *vs*. Cayanan, G.R. No. 200080, Sept. 18, 2013) p. 168

FRAME-UP

Defense of — Cannot prevail over positive testimonies of witnesses with evidence of *corpus delicti*. (People *vs*. Ocfemia, G.R. No. 185383, Sept. 25, 2013) p. 330

INCOME TAX

Corporate income tax of Philippine Airlines, Inc. (PAL) — During the lifetime of the franchise of PAL, its taxation shall be strictly governed by two (2) fundamental rules, to wit: (1) it shall pay the government either the basic corporate income tax or franchise tax, whichever is lower; and (2) the tax paid by PAL, under either of these alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges, except only real property tax. (Commission of Internal Revenue *vs*. Philippine Airlines, Inc., G.R. No. 179259, Sept. 25, 2013) p. 309

— Shall be based on its annual net taxable income; computed in accordance with the NIRC of 1997, as amended; P.D. No. 1529 also explicitly authorizes PAL, in the computation of its basic corporate income tax, to: (1) depreciate its assets twice as fast the normal rate of depreciation; and (2) carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss. *(Id.)*

— What exempts PAL from minimum corporate income tax is not the fact of payment but the exercise of its option. *(Id.)*

INTERVENTION

Complaint-in-intervention — A person who has no legal interest in the matter of litigation has no right to intervene. (Salas, Jr. *vs*. Aguila, G.R. No. 202370, Sept. 23, 2013) p. 274

JUDGES

Gross inefficiency — Manifested when a judge confused himself with auxiliary incidents and refused to execute an already final decision. (Carbajosa *vs.* Judge Patricio, A.M. No. MTJ-13-1834, Oct. 02, 2013) p. 534

JUDGMENT

Immutability of judgment doctrine — A judgment that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect even if the

modification is meant to correct erroneous conclusion of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. (Guido-Enriquez *vs*. Victorino, G.R. No. 180427, Sept. 30, 2013) p. 429

Variance doctrine — Accused charged with rape can be found guilty of the lesser crime of acts of lasciviousness. (People *vs*. Cuaycong, G.R. No. 196051, Oct. 02, 2013) p. 633

JUDICIAL DEPARTMENT

Administrative supervision of retiring court employees — Does not include clearance from criminal cases as may be required. (*Re*: Request for Guidance/Clarification on Section 7, Rule III of R.A. No. 10154 Requiring Retiring Government Employees to Secure a Clearance of Non-Pendency of any Administrative Case from the Civil Service Commission, A.M. No. 13-09-08-SC, Oct. 01, 2013) p. 503

KIDNAPPING FOR RANSOM

Imposable penalty— Applying R.A. No. 9346, death penalty is reduced to *reclusion perpetua* without eligibility for parole. (People *vs*. Gambao, G.R. No. 172707, Oct. 01, 2013) p. 507

— Rule in case of an accomplice, applying Article 68 of the Revised Penal Code and the Indeterminate Sentence Law. *(Id.)*

LAND REGISTRATION ACT (ACT NO. 496)

Application for — Failure to identify the occupants of the adjoining land in the application for registration is not tantamount to denial of due process to the said occupants. (Guido-Enriquez *vs*. Victorino, G.R. No. 180427, Sept. 30, 2013) p. 429

Torrens title — Generally a conclusive evidence of the ownership of the land referred to, because there is a strong presumption that it is valid and regularly issued. (Salas, Jr. *vs*. Aguila, G.R. No. 202370, Sept. 23, 2013) p. 274

— What cannot be collaterally attacked is the certificate of title and not the title itself. (Bagayas *vs*. Bagayas, G.R. Nos. 187308 & 187517, Sept. 18, 2013) p. 91

LEASE

Contract of lease — Generally survives the death of the parties and continue to bind the heirs unless the contract states otherwise. (Inocencio *vs*. Hospicio de San Jose, G.R. No. 201787, Sept. 25, 2013) p. 399

Rights and obligations on improvement on the leased property — Lessee has the right to the improvements made if the improvements were: (1) introduced in good faith; (2) useful; and (3) suitable to the use for which the lease is intended, without altering the form and substance. (Inocencio *vs*. Hospicio de San Jose, G.R. No. 201787, Sept. 25, 2013) p. 399

Sublease contract — Considered valid if the original lease agreement did not prohibit the same. (Inocencio *vs*. Hospicio de San Jose, G.R. No. 201787, Sept. 25, 2013) p. 399

LIBEL

Case of — Within the jurisdiction of the Regional Trial Court. (Boto *vs*. Sr. Asst. Prosecutor Villena, A.C. No. 9684, Sept. 18, 2013) p. 24

LOCAL GOVERNMENT CODE OF 1991 (R.A. NO. 7160)

Municipal ordinance — Its validity should be upheld in the absence of any controverting evidence that the procedure prescribed by law was not observed in its enactment. (Acaac *vs*. Azcuna, G.R. No. 187378, Sept. 30, 2013) p. 445

Power to collect tax — The restriction upon the power of the court to impeach tax assessment without prior payment, under protest, of the taxes assessed is consistent with the doctrine that taxes are the lifeblood of the nation and as such collection cannot be curtailed by injunction or any like action. (Camp John Hay Dev't. Corp. *vs*. Central Board of Assessment Appeals, G.R. No. 169234, Oct. 02, 2013) p. 543

MURDER

Civil liabilities of accused — Accused shall be liable for: (1) civil indemnity 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 *vs*. Ibañez, G.R. No. 197813, Sept. 25, 2013) p. 370

OBLIGATIONS, EXTINGUISHMENT OF

Novation — A subsequent obligation extinguishes a previous one through substitution either by changing the object or principal condition by substituting another in place of the debtor, or by subrogating a third person into the right. (Phil. Reclamation Authority *vs*. Romago, Inc., G.R. No. 174665, Sept. 18, 2013) p. 64

— Requires: (1) the existence of a previous valid obligation; (2) the agreement of all parties to the new contract; (3) the extinguishment of the old contract; and (4) the validity of the new one. *(Id.)*

PARTIES TO CIVIL ACTIONS

Parties-in-interest — In cases of illegal disbursement of public funds, a vice governor has an interest to the case, as a taxpayer and as a public official to represent the interest of his constituents. (Remulla *vs*. Gov. Maliksi, G.R. No. 171633, Sept. 18, 2013) p. 55

Privies — A privy in estate is one who derives his title to the property in question by purchase; one who takes by conveyance. (Constantino *vs*. Heirs of Pedro Constantino, Jr., G. R. No. 181508, Oct. 02, 2013) p. 575

— Means those between whom an action is deemed binding although they are not literally parties to the said action. *(Id.)*

PARTITION

Action for — The settlement of the issue of ownership is the first stage in an action for partition. (Salas, Jr. *vs*. Aguila, G.R. No. 202370, Sept. 23, 2013) p. 274

PENALTIES, EXTINGUISHMENT OF

Death of the accused — Criminal liability is totally extinguished, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before the final judgment. (People *vs*. Gambao, G.R. No. 172707, Oct. 01, 2013) p. 507

PERSONS CRIMINALLY LIABLE

Accomplice — Elements required in order that a person may be considered as accomplice are: (1) that there be community of design; that is knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose; (2) that he cooperates in the execution by previous or simultaneous act, with the intention of supplying material or moral aid in the execution of the crime in an efficacious way; and (3) that there be a relation between the acts done by the principal and those attributed to the person charged as accomplice. (People *vs*. Gambao, G.R. No. 172707, Oct. 01, 2013) p. 507

PLEADINGS

Verification and Certificate of Non-forum Shopping — Secretary's certificate as proof of authority for an individual named in it to represent a corporation is sufficient compliance. (LBL Industries, Inc. *vs*. City of Lapu-lapu, G.R. No. 201760, Sept. 16, 2013) p. 11

PLEAS

Plea of guilty — Will not set aside conviction of a crime sufficiently evinced. (People *vs*. Gambao, G.R. No. 172707, Oct. 01, 2013) p. 507

Plea of guilty to a capital offense — Duties of the trial court when the accused pleads guilty to a capital offense, it is mandated: (1) to conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the plea of guilt; (2) to require the prosecution to still prove the guilt of the accused and the precise degree of his culpability, and (3) to inquire whether or not the accused wishes to present evidence in his behalf and allow him to do so if he desires. (People *vs*. Gambao, G.R. No. 172707, Oct. 01, 2013) p. 507

PRELIMINARY INJUNCTION

Writ of — For issuance of a writ, the following requisites must concur, to wit: (1) that the invasion of the right is material and substantial; (2) that the right of complainant is clear and unmistakable; and (3) that there is an urgent and paramount necessity for the writ to prevent serious damage. (Sps. Aldover *vs*. CA, G.R. No. 167174, Sept. 23, 2013) p. 205

— The precipitate demolition of a person's house would constitute material and substantial invasion of their right which cannot be remedied under any standard compensation. *(Id.)*

PRE-TRIAL

Motion to set the case for pre-trial — If the plaintiff fails to file a motion to set the case for pre-trial within five (5) days from the filing of a reply, the duty to set the case for pre-trial falls upon the Branch Clerk of Court. (LBL Industries, Inc. *vs*. City of Lapu-lapu, G.R. No. 201760, Sept. 16, 2013) p. 11

Pre-trial admission — Pre-trial admission in civil cases is one of the instances of judicial admission explicitly provided for under Sec. 7, Rule 18 of the Rules of Court, which mandates that the contents of the pre-trial order shall control the subsequent course of the action, thereby defining and limiting the issues to be tried. (Constantino *vs*. Heirs of Pedro Constantino, Jr., G. R. No. 181508, Oct. 02, 2013) p. 575

PROHIBITION

Writ of — Lies upon a showing that the assailed proceedings are conducted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. (Land Transportation Franchising and Regulatory Board *vs*. Stronghold Insurance Co., Inc., G.R. No. 200740, Oct. 02, 2013) p. 660

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Summary proceedings under Section 108 of — Contemplates only corrections or insertions of mistakes which are only clerical and not controversial issues. (Bagayas *vs*. Bagayas, G.R. Nos. 187308 & 187517, Sept. 18, 2013) p. 91

PROSECUTORS

Duties — A prosecutor's primary duty is not simply to convict but to see that justice is done. (Boto *vs*. Sr. Asst. Prosecutor Villena, A.C. No. 9684, Sept. 18, 2013) p. 24

Ignorance of the law — Committed by failure of prosecutor to apply the basic rule on jurisdiction. (Boto *vs*. Sr. Asst. Prosecutor Villena, A.C. No. 9684, Sept. 18, 2013) p. 24

PUBLIC OFFICERS AND EMPLOYEES

Dishonesty — Refers to a person's disposition to lie, cheat, deceive, defraud, untrustworthiness, lack of integrity, lack of honesty, probity or integrity in principle, lack of fairness and straightforwardness; disposition to defraud, deceive or betray. (Office of the Court Administrator *vs*. Leal, A.M. No. P-12-3047, Oct. 01, 2013) p. 489

Grave misconduct — Element of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest. (Office of the Court Administrator *vs*. Leal, A.M. No. P-12-3047, Oct. 01, 2013) p. 489

RAPE

Commission of — Absorbs forcible abduction. (People *vs*. Cayanan, G.R. No. 200080, Sept. 18, 2013) p. 168

— Civil and moral damages are awarded to rape victim without need of proof other than the fact of rape. (People *vs*. Espera, G.R. No. 202868, Oct. 02, 2013) p. 680

(People *vs*. Cedenio, G.R. No. 201103, Sept. 25, 2013) p. 393

(People *vs*. Frias, G.R. No. 203068, Sept. 18, 2013) p. 173

— Elements of rape are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force and intimidation, or when the victim is deprived of reason or otherwise unconscious or when the victim is 12 years of age. *(Id.)*

(People *vs*. Espenilla, G.R. No. 192253, Sept. 18, 2013) p. 153

— Imposable penalty in case it is committed with the use of a deadly weapon shall be *reclusion temporal* to death. (People *vs*. Espera, G.R. No. 202868, Oct. 02, 2013) p. 680

— Not negated by absence of vaginal laceration. (People *vs*. Cuaycong, G.R. No. 196051, Oct. 02, 2013) p. 633

— Physical resistance need not be established; poking a knife is sufficient source and cause of fear. (People *vs*. Cedenio, G.R. No. 201103, Sept. 25, 2013) p. 393

— Rape can be committed either through sexual intercourse or through sexual assault. (People *vs*. Espera, G.R. No. 202868, Oct. 02, 2013) p. 680

Prosecution of rape case — Credible testimony of rape victim may be the basis of conviction. (People *vs*. Espenilla, G.R. No. 192253, Sept. 18, 2013) p. 153

— Delay in reporting rape incidents, in the face of threats of physical violence cannot be taken against the victim. (People *vs*. Frias, G.R. No. 203068, Sept. 18, 2013) p. 173

(People *vs*. Espenilla, G.R. No. 192253, Sept. 18, 2013) p. 153

— Medical evidence in rape cases is not indispensable. (People *vs*. Bacatan, G.R. No. 203315, Sept. 18, 2013) p. 187

— No sane girl would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not in truth been a victim of rape and impelled to seek justice for the wrong done to her. (People *vs.* Cuaycong, G.R. No. 196051, Oct. 02, 2013) p. 633

(People *vs.* Frias, G.R. No. 203068, Sept. 18, 2013) p. 173

— Recantation cannot prevail over the positive declaration of rape. (People *vs.* Espenilla, G.R. No. 192253, Sept. 18, 2013) p. 153

— Victim's failure to seek help cannot be taken against her; a rape victim's actions are oftentimes overwhelmed by fear rather than by reason. (People *vs.* Bacatan, G.R. No. 203315, Sept. 18, 2013) p. 187

Qualified rape — Physical resistance need not be established in rape case when threats and intimidation are employed and the victim submits herself to the embrace of her rapist because of fear. (People *vs.* Frias, G.R. No. 203068, Sept. 18, 2013) p. 173

— Punishable by *reclusion perpetua* without eligibility of parole. *(Id.)*

Rape by sexual assault — Elements of the crime are: (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: (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 the following circumstances: (a) by using force or 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 (4) when the woman is under 12 years of age or demented. (People *vs.* Espera, G.R. No. 202868, Oct. 02, 2013) p. 680

— Imposable penalty in case it is committed with the use of a deadly weapon shall *be prision mayor* to *reclusion temporal*, or a duration of six (6) years and one (1) day to twenty (20) years. *(Id.)*

Sweetheart defense — Even if it were true that accused and the victim were sweethearts, a love affair does not justify rape. (People *vs*. Bacatan, G.R. No. 203315, Sept. 18, 2013) p. 187

— Must be proven by compelling evidence; independent proof is required such as tokens, mementos, love letters, notes, photographs, and the like. *(Id.)*

(People *vs*. Frias, G.R. No. 203068, Sept. 18, 2013) p. 173

(People *vs*. Cayanan, G.R. No. 200080, Sept. 18, 2013) p. 168

REAL PROPERTY TAX

Claim for exemption from — Does not actually question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor. (Camp John Hay Dev't. Corp. *vs*. Central Board of Assessment Appeals, G.R. No. 169234, Oct. 02, 2013) p. 543

Payment under protest — No protest shall be entertained unless the taxpayer first pays the tax. (Camp John Hay Dev't. Corp. *vs*. Central Board of Assessment Appeals, G.R. No. 169234, Oct. 02, 2013) p. 543

— The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt. *(Id.)*

Person liable — The duty to declare the true value of real property for taxation purposes is imposed upon the owner, or administrator, or their duly authorized representatives and in case of failure or refusal to declare within the prescribed period, the provincial or city assessor shall declare the property in the name of the defaulting owner

and assess the property for taxation. (Camp John Hay Dev't. Corp. *vs*. Central Board of Assessment Appeals, G.R. No. 169234, Oct. 02, 2013) p. 543

RIGHTS OF THE ACCUSED

Presumption of innocence — Prevails in the absence of proof beyond reasonable doubt as plaintiff must prove not only each element of the crime but also the identity of the accused in a crime. (People *vs*. Espera, G.R. No. 202868, Oct. 02, 2013) p. 680

SALES

Contract to sell — A bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the latter upon his fulfillment of the condition agreed upon, *i.e.* the full payment of the purchase price and/or compliance with the other obligations stated in the contract to sell. (Ventura *vs*. Heirs of Sps. Eustacio and Trinidad Endaya, G.R. No. 190016, Oct. 02, 2013) p. 621

— As distinguished from conditional contract of sale, the fulfillment of the suspensive condition will not automatically transfer ownership to the buyer although the property may have been previously delivered to him, while in conditional contract of sale, the fulfillment of the suspensive condition renders the sale absolute and the previous delivery of the property has the effect of automatically transferring the seller's ownership or title to the property to the buyer. *(Id.)*

SECURITIES REGULATION CODE (R.A. NO. 8799)

Violation of — Cases which pertain to civil liabilities from violations of the requirements for offer to sell or the sale of securities as well as other civil suits shall be exclusively brought before the Regional Trial Court. (Pua *vs*. Citibank, N.A., G.R. No. 180064, Sept. 16, 2013) p. 1

SELF-DEFENSE

As a justifying circumstance — The burden is upon the accused to prove clearly and sufficiently the elements of self-defense. (People *vs*. SPO1 Alawig, G.R. No. 187731, Sept. 18, 2013) p. 104

SETTLEMENT OF ESTATE OF DECEASED PERSON

Claim against estate — Cover all secured claims, whether by mortgage or any other form of collateral, which a creditor may enforce against the estate. (Heirs of the Late Spouses Flaviano and Salud Maglasang *vs*. Manila Banking Corp., G.R. No. 171206, Sept. 23, 2013) p. 256

— Three (3) remedies/options that a secured creditor may alternatively adopt for the satisfaction of the indebtedness are: (1) waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim; (2) foreclose the mortgage judicially and prove the deficiency as an ordinary claim; and (3) rely on the mortgage exclusively, or other security and foreclose the same before it is barred by prescription, without the right to file a claim for any deficiency; these remedies are distinct, independent and mutually exclusive from each other; thus, the election of one effectively bars the exercise of the other. *(Id.)*

STATUTORY CONSTRUCTION

Statutes — If the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. (Camp John Hay Dev't. Corp. *vs*. Central Board of Assessment Appeals, G.R. No. 169234, Oct. 02, 2013) p. 543

TAX DEDUCTIONS

Construction — Being in the nature of tax exemption, that tax deductions are to be construed in *strictissimi juris* against the taxpayer is well settled. (Camp John Hay Dev't. Corp. *vs.* Central Board of Assessment Appeals, G.R. No. 169234, Oct. 02, 2013) p. 543

TREACHERY

As a qualifying circumstance — Established by the number or severity of the wounds received by the victim who was rendered immobile and without any real opportunity to defend himself other than feebly raising his arm to ward off the attack. (People *vs*. SPO1 Alawig, G.R. No. 187731, Sept. 18, 2013) p. 104

UNLAWFUL DETAINER

Action for — Must be filed within one (1) year after such unlawful deprivation or withholding of possession. (Inocencio *vs*. Hospicio de San Jose, G.R. No. 201787, Sept. 25, 2013) p. 399

— One (1) year prescriptive period should be counted from the date of plaintiff's last demand on defendant to vacate the real property, because only upon the lapse of that period does the possession become unlawful. *(Id.)*

VENUE

Venue for criminal and civil action for damages in cases of written defamation — Shall be filed simultaneously or separately with the RTC of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense. (Boto *vs*. Sr. Asst. Prosecutor Villena, A.C. No. 9684, Sept. 18, 2013) p. 24

WITNESSES

Credibility of — Findings of trial court are not disturbed on appeal, especially when they are affirmed by the Court of Appeals; exceptions. (People *vs*. Cuaycong, G.R. No. 196051, Oct. 02, 2013) p. 633

(People *vs*. Gambao, G.R. No. 172707, Oct. 01, 2013) p. 507

(People *vs*. Ibañez, G.R. No. 197813, Sept. 25, 2013) p. 370

(People *vs*. Bacatan, G.R. No. 203315, Sept. 18, 2013) p. 187

(People *vs*. Alinao, G.R. No. 191256, Sept. 18, 2013) p. 133

— Imperfection or inconsistencies on details which are neither material nor relevant to the case do not detract from the credibility of the testimony of the witnesses much less justify the total rejection of the same. (People *vs*. Cuaycong, G.R. No. 196051, Oct. 02, 2013) p. 633

— Lack of education and inability to read and tell time do not impair the credibility of a child much less render her incompetent or incapable of testifying. (People *vs*. Ibañez, G.R. No. 197813, Sept. 25, 2013) p. 370

— Not impaired by delay in revealing the identity of the perpetrators of a crime, especially where sufficient explanation is given. (People *vs*. Alinao, G.R. No. 191256, Sept. 18, 2013) p. 133

Expert witness — Testimony of an expert witness is merely corroborative and not essential for conviction. (People *vs*. Cuaycong, G.R. No. 196051, Oct. 02, 2013) p. 633

CITATION

Page

I. LOCAL CASES

Abaya *vs.* Ebdane, Jr., G.R. No. 167919, Feb. 14, 2007,
515 SCRA 720, 758 62
Acosta *vs.* Salazar, G.R. No. 161034, June 30, 2009,
591 SCRA 262, 270 441
Aguirre *vs.* Rana, 451 Phil. 428, 435 (2003) 292
Alarilla *vs.* Sandiganbayan, 393 Phil. 143, 154 (2000) 473, 476
Alfelor *vs.* Halasan, 520 Phil. 982 (2006) 591
Almeda *vs.* Bathala Marketing Industries, Inc.,
566 Phil. 458, 467 (2008) 304
Ampong *vs.* Civil Service Commission, CSC-Regional
Office No. 11, G.R. No. 167916, Aug. 26, 2008,
563 SCRA 293, 302-303 505
Anak Mindanao Party-List Group *vs.* Ermita,
558 Phil. 338, 351 (2007) 307
Andres *vs.* Justice Secretary Cuevas,
499 Phil. 36, 49-50 (2005) 477
Ang Tibay *vs.* Court of Industrial Relations,
69 Phil. 635, 644 (1940) 51
Arcelona *vs.* CA, G.R. No. 102900, Oct. 2, 1997,
280 SCRA 20, 51 62
Armeña *vs.* ECC, et al., 207 Phil. 726 (1983) 606
Asetre *vs.* Asetre, G.R. No. 171536, April 7, 2009,
584 SCRA 471, 486-487 122
Asia United Bank *vs.* Goodland Company, Inc.,
G.R. No. 188051, Nov. 22, 2010, 635 SCRA 637, 646 227
Association of Integrated Security Force of Bislig
(AISFB)-ALU *vs.* CA, 505 Phil. 10, 25 (2005) 86-87
Atillo, III *vs.* CA, et al., 334 Phil. 546, 552 (1997) 593
Australian Professional Realty, Inc. *vs.* Municipality
of Padre Garcia, Batangas Province, G.R. No. 183367,
Mar. 14, 2012, 668 SCRA 253, 261-262 230
Baldado *vs.* Mejica, A.C. No. 9120, Mar. 11, 2013 483
Bank of America *vs.* American Realty Corporation,
378 Phil. 1279 (1999) 268
Bank of the Philippine Islands *vs.* Icot, G.R. No. 168061,
Oct. 12, 2009, 603 SCRA 322 228

Page

Barcenas *vs.* Alvero, A.C. No. 8159, 23 April 2010, 619 SCRA 1, 11 291
Baviera *vs.* Paglinawan, G.R. Nos. 168380 and 170602, Feb. 8, 2007, 515 SCRA 170 6-7
Bayas, et al. *vs.* Sandiganbayan, et al., 440 Phil. 54 (2002) 591
Bongcac *vs.* Sandiganbayan, G.R. Nos. 156687-88, May 21, 2009, 588 SCRA 64, 72 540
Borbajo *vs.* Hidden View Homeowners, Inc., G.R. No. 152440, Jan. 31, 2005, 450 SCRA 315 101
BPI-Family Savings Bank, Inc. *vs.* Spouses Domingo, 538 Phil. 88 (2006) 410
Bravo *vs.* ECC, 227 Phil. 93 (1986) 614
Buenaventura *vs.* CA, 494 Phil. 264 (2005) 285
Bug-atan *vs.* People, G.R. No. 175195, Sept. 15, 2010, 630 SCRA 537, 556 151
Cabresos *vs.* Judge Tiro, 248 Phil. 631, 636-637 (1988) 589
Caleon *vs.* Agus Development Corporation, G.R. No. 77365, April 7, 1992, 207 SCRA 748 412
Cambaliza *vs.* Cristal-Tenorio, 478 Phil. 378 (2004) 293
Catapusan *vs.* CA, 332 Phil. 586 (1996) 281
Cebu Metro Pharmacy, Inc. *vs.* Euro-Med Laboratories Philippines, Inc., G.R. No. 164757, Oct. 18, 2010, 633 SCRA 320 18
Chavez *vs.* Judicial and Bar Council, G.R. No. 202242, July 17, 2012, 676 SCRA 579 250
Chavez *vs.* PCGG, 360 Phil. 133, 155-156 (1998) 307
Chua Huat *vs.* CA, 276 Phil. 1, 18 (1991) 303
City Government of Tagaytay *vs.* Guerrero, G.R. Nos. 140743 & 140745, Sept. 17, 2009, 600 SCRA 33, 58-59 104
Civil Service Commission *vs.* Lucas, 361 Phil. 486, 490-491 (1999) 499
Co *vs.* CA, G.R. No. 100776, Oct. 28, 1993, 227 SCRA 444 250
Commissioner of Internal Revenue *vs.* Philippine Airlines, Inc., 535 Phil. 95 (2006) 316, 322
    Philippine Airlines, Inc., G.R. No. 180066, July 7, 2009, 592 SCRA 237, 250 322

Page

Philippine Airlines, Inc., G.R. No. 180043,
July 14, 2009, 592 SCRA 730, 740-741 329
Philippine Long Distance Telephone Company,
G.R. No. 140230, Dec. 15, 2005, 478 SCRA 61, 74 564
Constantino, Jr. *vs.* Cuisia, G.R. No. 106064,
Oct. 13, 2005, 472 SCRA 505,518-519 62
Coronel *vs.* CA, 331 Phil. 294, 310-311 (1996) 630-631
Correa *vs.* Pascual, 99 Phil. 696, 703 (1956) 589
Crespo *vs.* Judge Mogul, 235 Phil. 465, 476 (1987) 526
Dapar *vs.* Biascan, G.R. No. 141880, Sept. 27, 2004,
439 SCRA 179, 197 98
DAR *vs.* Estate of Pureza Herrera, G.R. No. 149837,
July 8, 2005, 463 SCRA 107, 123-124 254
Oroville Development Corp., 548 Phil. 51, 58 (2007) 248
Sutton, G.R. No. 162070, Oct. 19, 2005,
473 SCRA 392, 400 .... 247-248, 250
Dayot *vs.* Shell Chemical Company (Phils.), Inc.,
552 Phil. 602 (2007) 228-229
De Jesus *vs.* ECC, 226 Phil. 33 (1986) 606
De Leon *vs.* CA, G.R. No. 80965, June 6, 1990,
186 SCRA 345, 359 594
De Leon *vs.* Rehabilitation Finance Corp.,
146 Phil. 862 (1970) 283
Dela Rosa *vs.* Heirs of Juan Valdez, G.R. No. 159101,
July 27, 2011, 654 SCRA 467, 480 226
Development Bank of the Philippines *vs.* Prime
Neighborhood Association, G.R. Nos. 175728,
178914, May 8, 2009, 587 SCRA 582 228
Dimarucot *vs.* People, G.R. No. 183975, Sept. 20, 2010,
630 SCRA 659, 668 658
Diño *vs.* Diño, G.R. No. 178044, Jan. 19, 2011,
640 SCRA 178 284
Diopenes *vs.* GSIS, G.R. No. 96844, Jan. 23, 1992,
205 SCRA 331 620
Duellome *vs.* Gotico, G.R. No. L-17846,
April 29, 1963, 7 SCRA 841 412

Page

E. Rommel Realty and Development Corporation *vs.* Sta. Lucia Realty Development Corporation, 537 Phil. 822 (2006) 441
Eastern Shipping Lines, Inc. *vs.* CA, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95 76
Enriquez *vs.* Enriquez, G.R. No. 139303, Aug. 25, 2005, 468 SCRA 77, 84 10
Erese *vs.* Employees' Compensation Commission, 222 Phil. 491 (1985) 606
Ermita-Malate Hotel & Motel Operators Association, Inc. *vs.* The City Mayor of Manila, 128 Phil. 473 (1967) 670
Estate of Soledad Manantan *vs.* Somera, G.R. No. 145867, April 7, 2009, 584 SCRA 81, 90 414
FELS Energy, Inc. *vs.* Province of Batangas, et al., Feb. 16, 2007, 516 SCRA 186, 207 .... 564, 566
Fetalino *vs.* Sanz, 44 Phil. 691(1923) 589
FGU Insurance Corporation *vs.* Regional Trial Court of Makati City, Branch 66, G.R. No. 161282, Feb. 23, 2011, 644 SCRA 50, 56 438
Figuerres *vs.* CA, 364 Phil. 683(1999) 453-454
Galang *vs.* Malasugui, G.R. No. 174173, Mar. 7, 2012, 667 SCRA 622, 631 424
Garces *vs.* People, G.R. No. 173858, July 17, 2007, 527 SCRA 827, 835 172
Garcia, Jr. *vs.* CA, G.R. No. 185132, April 24, 2009, 586 SCRA 799 669
Garcillano *vs.* House of Representatives Committees on Public Information, Public Order and Safety, National Defense and Security, Information and Communications Technology, and Suffrage and Electoral Reforms, G.R. Nos. 170338 & 179275, Dec. 23, 2008, 575 SCRA 170, 185 62
Gatus *vs.* Social Security System, G.R. No. 174725, Jan. 26, 2011, 640 SCRA 553, 564 609
Go *vs.* Sandiganbayan, G.R. No. 172602, April 16, 2009, 585 SCRA 404, 405-406 472
Golangco *vs.* CA, 347 Phil. 771, 778 (1997) 20

Page

Government Service Insurance System *vs.* Bernadas (Bernadas), G.R. No. 164731, Feb.11, 2010, 612 SCRA 221 619
Besitan, G.R. No. 178901, Nov. 23, 2011, 661 SCRA 186, 194 613
CA, 296 SCRA 514, 531-532, Sept. 25, 1998 608
CA, 349 Phil. 357, 365 (1998) 620
CA, et al. (GSIS), 566 Phil. 361 (2008) 617
Goya, Inc. *vs*. Goya, Inc. Employees Union-FFW, G.R. No. 170054, Jan. 21, 2013, 689 SCRA 1, 9 87
Guingona, Jr. *vs.* CA, 354 Phil. 415, 427 (1998) 308
Gutib *vs.* CA, 371 Phil. 293, 300, 305 (1999) 472
Heirs of Fausta Dimaculangan *vs.* IAC, G.R. No. 68021, Feb. 20, 1989, 170 SCRA 393, 399 408
Heirs of Teofilo Gabatan *vs.* CA, G.R. No. 150206, Mar. 13, 2009, 581 SCRA 70, 78-79 103
Heirs of Velasquez *vs*. CA, 382 Phil. 438 (2000) 281
Ignacio *vs.* Basilio, 418 Phil. 256, 264 (2001) 441
Imperial Insurance, Inc. *vs*. Simon, G.R. No. L-20796, July 31, 1965, 14 SCRA 855 413
Imson *vs.* People, G.R. No. 193003, July 13, 2011, 653 SCRA 826, 834 346
In re: Pablo Y. Sen. *vs*. Republic of the Philippines, 96 Phil. 987 (1955) 305
Initial Report on the Financial Audit Conducted at the Office of the Clerk of Court (OCC), Municipal Trial Court in Cities (MTCC), Lucena City, Jan. 30, 2009, 577 SCRA 200 498
Jara *vs*. People of the Philippines, G.R. No. 172896, April 19, 2010, 618 SCRA 406, 408 392
Jarantilla, Jr. *vs*. Jarantilla, G.R. No. 154486, Dec. 1, 2010, 636 SCRA 299, 319 101
Jerusalem *vs.* Keppel Monte Bank, G.R. No. 169564, April 6, 2011, 647 SCRA 313, 324 426
JG Summit Holdings, Inc. *vs.* CA, G.R. No. 124293, Sept. 24, 2003, 412 SCRA 10 674
Jimenez *vs.* CA, 520 Phil. 20, 33-37 (2006) 605, 612

Page

Joaquino *vs.* Reyes, G.R. No. 154645, July 13, 2004,
434 SCRA 260, 274 103
John Hay Peoples Alternative Coalition *vs.* Lim,
460 Phil. 530, 554 (2003) 565
Jumaquio *vs.* Villarosa, G.R. No. 165924, Jan. 19, 2009,
576 SCRA 204, 209 702
Junio *vs.* Garilao, G.R. No. 147146, July 29, 2005,
465 SCRA 173 249
La Naval Drug Corporation *vs.* CA, G.R. No. 103200,
Aug. 31, 1994, 236 SCRA 78, 90 31
Lacbayan *vs.* Samoy, Jr., G.R. No. 165427, Mar. 21, 2011,
645 SCRA 677 .... 100, 281
Lacson *vs.* San Jose-Lacson, G.R. Nos. L-23482, L-23767,
and L-24259, Aug. 30, 1968, 24 SCRA 837, 848 10
Lagon *vs.* CA, 493 Phil. 739 (2005) 411
Land Bank of the Philippines *vs.* Cacayuran,
G.R. No. 191667, April 17, 2013 62
Continental Watchman Agency, Inc.,
465 Phil. 607, 610 (2004) 230
Poblete, G.R. No. 196577, Feb. 25, 2013, 691 SCRA 613 283
Landrito *vs.* Civil Service Commission, G.R. Nos. 104304-05,
June 22, 1993, 223 SCRA 564 ` 499
Lee *vs.* KBC Bank N.V., G.R. No. 164673, Jan. 15, 2010,
610 SCRA 117, 129 477
Licyayo *vs.* People, G.R. No. 169425, Mar. 4, 2008,
547 SCRA 598 390
Litam *vs.* Espiritu, 100 Phil. 364 (1956) 283
Lumanog *vs.* People, G.R. No. 182555, Sept. 7, 2010,
630 SCRA 42, 130-131 520
Lung Center of the Philippines *vs.* Quezon City,
G.R. No. 144104, June 29, 2004, 433 SCRA 119 572
Luz Farms *vs.* DAR Secretary, G.R. No. 86889,
Dec. 4, 1990, 192 SCRA 51 239
Maceda *vs.* Vasquez, G. R. No. 102781, April 22, 1993,
221 SCRA 464, 466-467 505
Machado *vs.* Gatdula, G.R. No. 156287, Feb. 16, 2010,
612 SCRA 546, 559 8

Page

Magno *vs.* People, G.R. No. 171542, April 6, 2011,
647 SCRA 362, 371 8
Magsalin *vs.* National Organization of Working
Men, et al., 451 Phil. 254, 262 (2003) 595
Malinta, Inc. vs. Luyaban, 544 Phil. 500, 505 (2007) 272
Mamba *vs.* Lara, G.R. No. 165109, Dec. 14, 2009,
608 SCRA 149, 162-163 62-63
Manuel *vs.* People, 512 Phil. 818, 836 (2005) 291
Mapagay *vs.* People, G.R. No. 178984, Aug. 19, 2009,
596 SCRA 470, 478 658
Marquez *vs.* People, G.R. No. 197207, Mar. 13, 2013 678
Mcdonald's (Katipunan Branch) *vs.* Alba,
G.R. No. 156382, Dec. 18, 2008, 574 SCRA 427 426
Mediserv, Inc. *vs.* CA, G.R. No. 161368, April 5, 2010,
617 SCRA 284 18
Meralco *vs.* Barlis, 410 Phil. 167, 176-181 (2001) 558, 566
Meralco *vs.* Sec. Quisumbing, 361 Phil. 845 (1999)....................... 47
Mercado-Fehr *vs.* Bruno Fehr, 460 Phil. 445 (2003) 284
Merin *vs.* NLRC, G.R. No. 171790, Oct. 17, 2008,
569 SCRA 576 427
Metropolitan Bank & Trust Company *vs.* Absolute
Management Corporation, G.R. No. 170498, Jan. 9, 2013,
688 SCRA 225, 237 266
Milestone Farms, Inc. *vs.* Office of the President,
G.R. No. 182332, Feb. 23, 2011, 644 SCRA 217, 239 248
Miranda *vs.* CA, 163 Phil. 285, 321-322 (1976) 702
Montecillo *vs.* Reynes, 434 Phil. 456 (2002) 283
Municipality of Biñan *vs.* Garcia, G.R. No. 69260,
Dec. 22, 1989, 180 SCRA 576 99
Nabus *vs.* Pacson, G.R. No. 161318, Nov. 25, 2009,
605 SCRA 334, 350 630
National Food Authority *vs.* CA, 323 Phil. 558, 574 (1996) 673
National Power Corporation *vs.* Province of Quezon and
Municipality of Pagbilao, G.R. No. 171586, Jan. 25, 2010,
611 SCRA 71, 94 .... 557, 573, 560
Nava *vs.* Palattao, 531 Phil. 345, 372 (2006) 472
Nemaria *vs.* Employees' Compensation Commission,
239 Phil. 160 (1987) 615

Page

Neplum, Inc. *vs.* Orbeso, 433 Phil. 844 (2002) 659
Neri *vs.* Heirs of Hadji Yusop Uy, G.R. No. 194366,
Oct. 10, 2012, 683 SCRA 553, 560 594
New City Builders, Inc. *vs.* NLRC,
499 Phil. 207, 212-213 (2005) 609-610
New Japan Motors, Inc. *vs.* Perucho,
165 Phil. 636 (1976) 20
Noe-Lacsamana *vs.* Busmente, A.C. No. 7269,
Nov. 23, 2011, 661 SCRA 1 293
Ocampo *vs.* Ocampo, 471 Phil. 519 (2004) 281
Office of the Court Administrator *vs.* Bacani,
A.M. No. P-12-3099, Jan. 15, 2013, 688 SCRA 516, 526 500
Office of the Court Administrator *vs.* Saddi,
A.M. No. P-10-2818, Nov. 15, 2010, 634 SCRA 525, 533 499
Olave *vs.* Mistas, G.R. No. 155193, Nov. 26, 2004,
444 SCRA 479 20
Olivares *vs.* Mayor Marquez, 482 Phil. 183 (2004) 556
Orate *vs.* CA, 447 Phil. 654, 660 (2003) 612
Ortega *vs.* Social Security Commission, G.R. No. 176150,
June 25, 2008, 555 SCRA 353 609
Packaging Products Corporation *vs.* NLRC,
236 Phil. 225 (1987) 585
Pahila-Garrido *vs.* Tortogo, G.R. No. 156358, Aug. 17, 2011,
655 SCRA 553, 558 540
Pasno *vs.* Ravina, 54 Phil. 378 (1990) 269
Paz *vs.* Republic, G.R. No. 157367, Nov. 23, 2011,
661 SCRA 74, 81 102
People *vs.* Abrencillo, G.R. No. 183100, Nov. 28, 2012,
686 SCRA 592, 597-598 .... 165, 203, 648
Abulon, 557 Phil. 428, 453-454 (2007) 642, 652, 692
Adajio, 397 Phil. 354, 371-372 (2000) 182
Adrid, G.R. No. 201845, Mar. 6, 2013 .... 363-364, 368
Aguilar, G.R. No. 185206, Aug. 25, 2010,
629 SCRA 437, 449 396
Alcuizar, G.R. No. 189980, April 6, 2011,
647 SCRA 431, 437 363
Alverio, G.R. No. 194259, Mar. 16, 2011,
645 SCRA 658 201

Page

Amodia, G.R. No. 173791, April 7, 2009,
584 SCRA 518, 535 149
Aneslag, G.R. No. 185386, Nov. 21, 2012,
686 SCRA 150 678
Arcillas, G.R. No. 181491, July 30, 2012,
677 SCRA 624, 637 397
Arnaiz, 538 Phil. 479, 497 (2006) 182
Arpon, G.R. No. 183563, Dec. 14, 2011,
662 SCRA 506, 523, 529 .... 397, 644
Balais, G.R. No. 173242, Sept. 17, 2008,
565 SCRA 555, 568 127
Baldo, G.R. No. 175238, Feb. 24, 2009,
580 SCRA 225, 232 198
Banig, G.R. No. 177137, Aug. 23, 2012,
679 SCRA 133, 149 185
Barde G.R. No. 183094, Sept. 22, 2010,
631 SCRA 187, 209, 220 .... 147, 387
Basao, et al., G.R. No. 189820, Oct. 10, 2012,
683 SCRA 529, 546, 551 .... 525, 531
Batula, G.R. No. 181699, Nov. 28, 2012,
686 SCRA 575, 583, 588 .... 164, 645-646
Bayani, 331 Phil. 169 (1996) 183
Benipayo, G.R. No. 154473, April 24, 2009,
586 SCRA 420, 431 29
Berondo, Jr. G.R. No. 177827, Mar. 30, 2009,
582 SCRA 547, 552, 554-555 .... 131, 150
Bon, 536 Phil. 897, 915, 940 (2006) 184, 530
Buates, 455 Phil. 688, 702 (2003) 183
Buban, G.R. No. 172710, Oct. 9, 2009,
603 SCRA 205, 223-224 199
Bulagao, G.R. No. 184757, Oct. 5, 2011,
658 SCRA 746, 761 .... 166, 397
Cabalquinto, 533 Phil. 703 (2006) 156, 170, 177, 191, 394
Cabungan, G.R. No. 189355, Jan. 23, 2013 .... 172, 185-186, 398
Caliso, G.R. No. 183830, Oct. 19, 2011,
659 SCRA 666, 675 694
Caraig, 448 Phil. 78, 97 (2003) 390, 387

Page

Casta, G.R. No. 172871, Sept. 16, 2008,
565 SCRA 341, 361 131
Castro, G.R. No. 194836, June 15, 2011,
652 SCRA 393, 408 345
Cawaling, G.R. No. 157147, April 17, 2009,
586 SCRA 1, 23-24 379
Ceredon, G. R. No. 167179, Jan. 28, 2008,
542 SCRA 550, 568 524
Cervantes, G.R. No. 181494, Mar. 17, 2009,
581 SCRA 762, 777 365
Clemente, et al., 128 Phil. 268, 278-279 (1967) 528
Colorado, G.R. No. 200792, Nov. 14, 2012,
685 SCRA 660, 673 .... 649, 651
Combate, G.R. No. 189301, Dec. 15, 2010,
638 SCRA 797, 823 204
Corpuz, G.R. No. 175836, Jan. 30, 2009,
577 SCRA 465, 471 182
Dahilig, G.R. No. 187083, June 13, 2011,
651 SCRA 778, 788 171
De Chavez, G.R. No. 188105, April 23, 2010,
619 SCRA 464, 478 525
De los Reyes, G.R. No. 177357, Oct. 17, 2012,
684 SCRA 260, 276, 279 .... 165, 644
Deauna, 435 Phil. 141 (2002) 166
Dejillo, et al., G.R. No. 185005, Dec. 10, 2012 203
Del Castillo, G.R. No. 180925, Aug. 20, 2008,
562 SCRA 752, 760 130
Del Rosario, G.R. No. 188107, Dec. 5, 2012,
687 SCRA 318, 326 363
Delabajan, G.R. No. 192180, Mar. 21, 2012,
668 SCRA 859, 868 .... 185-186, 398
Delos Reyes, G.R. No. 177357, Oct. 17, 2012,
684 SCRA 260, 279 200
Dominguez, Jr., G.R. No. 180914, Nov. 24, 2010,
636 SCRA 134, 163 172
Duavis, G.R. No. 190861, Dec. 7, 2011,
661 SCRA 775, 784 151

Page

Dulay, 401 Phil. 400, 413 (2000) 131
Dumadag, G.R. No. 176740, June 22, 2011,
652 SCRA 535, 544, 547-548 .... 182, 201
Ereño, 383 Phil. 30, 45-46 (2000) 387, 391
Eribal, 364 Phil. 829, 840 (1999) 130
Ernas, 455 Phil. 829, 838 (2003) 521
Estoya, G.R. No. 200531, Dec. 5, 2012,
687 SCRA 376, 386-387 165
Gaffud, Jr., G.R. No. 168050, Sept. 19, 2008,
566 SCRA 76, 85 122
Garcia, G.R. No. 200529, Sept. 19, 2012,
681 SCRA 465, 477-478 646
Grefiel, G.R. No. 77228, Nov. 13, 1992,
215 SCRA 596, 608-609 183
Hermosa, 417 Phil. 132, 144-145 (2001) 385
Iligan, 369 Phil. 1005, 1041 (1999) 130
Iroy, G.R. No. 187743, Mar. 3, 2010,
614 SCRA 245, 253 172
Jacinto, G.R. No. 182239, Mar. 16, 2011,
645 SCRA 590, 625 530
Jose, 163 Phil. 264, 273 (1976) 531
Laurino, G.R. No. 199264, Oct. 24, 2012,
684 SCRA 612, 619 643
Lazaro, Jr., G.R. No. 186418, Oct. 16, 2009,
604 SCRA 250, 269 350
Lopez, G.R. No. 188902, Feb. 16, 2011,
643 SCRA 524, 529 132
Magbanua, G.R. No. 176265, April 30, 2008,
553 SCRA 698, 704 201
Magpayo, G.R. No. 187069, Oct. 20, 2010,
634 SCRA 441, 451 .... 366, 369
Malana, G.R. No. 185716, Sept. 29, 2010,
631 SCRA 676, 685 396
Manchu, G.R. No. 181901, Nov. 29, 2008,
572 SCRA 752, 759 121
Manjares, G.R. No. 185844, Nov. 23, 2011,
661 SCRA 227, 242 161

Page

Martinez, G.R. No. 191366, Dec. 13, 2010,
637 SCRA 791, 810 .... 363, 366
Mateo, G.R. Nos. 147678-87, July 7, 2004,
433 SCRA 640, 653-658 .... 190, 196
Mirandilla, Jr., G.R. No. 186417, July 27, 2011,
654 SCRA 761, 772 198
Molina, G.R. No. 184173, Mar. 13, 2009,
581 SCRA 519, 542-543 387
Montanir, et al., G.R. No. 187534, April 4, 2011,
647 SCRA 170, 185-186 519
Montefalcon, 364 Phil. 646, 656 (1999) 184
Montesclaros, G.R. No. 181084, June 16, 2009,
589 SCRA 320, 345 532
Morante, G.R. No. 187732, Nov. 28, 2012,
686 SCRA 602, 612 644
Nardo, 405 Phil. 826, 842 (2001) 166
Navarette, Jr., G.R. No. 191365, Feb. 22, 2012,
666 SCRA 689, 704 184
Nueva, G.R. No. 173248, Nov. 3, 2008,
570 SCRA 449, 465-466 .... 127, 129
Oco, G.R. Nos. 137370-71, Sept. 29, 2003,
412 SCRA 190, 222, 458 Phil. 815 (2003) 390
Oden, 471 Phil. 638 (2004) 520, 524
Olesco, G.R. No. 174861, April 11, 2011,
647 SCRA 461, 469-470 .... 171, 199
Ortiz, G.R. No. 179944, Sept. 4, 2009,
598 SCRA 452, 457 397
Osianas, G.R. No. 182548, Sept. 30, 2008,
567 SCRA 319, 329 121
Paling, G.R. No. 185390, Mar. 16, 2011,
645 SCRA 627, 636-637, 644 .... 152, 344
Paraiso, 402 Phil. 372, 382 (2001) 150
Pastor, 428 Phil. 976, 993 (2002) 521, 524
Penilla, G.R. No. 189324, Mar. 20, 2013 697
Perez, G.R. No. 191265, Sept. 14, 2011,
657 SCRA 734, 739 181
Pondivila, G.R. No. 188969, Feb. 27, 2013 131

Page

Rarugal, G.R. No. 188603, Jan. 16, 2013 132
Resurreccion, G.R. No. 186380, Oct. 12, 2009,
603 SCRA 510, 518-520 347
Rodrigo, G.R. No. 176159, Sept. 11, 2008,
564 SCRA 584, 597 693
Sabadlab, G.R. No. 175924, Mar. 14, 2012,
668 SCRA 237, 248-249 .... 172, 203
Salcedo, G.R. No. 186523, June 22, 2011,
652 SCRA 635, 644 520
Saludo, G.R. No. 178406, April 6, 2011,
647 SCRA 374, 393, 397 .... 183, 697
Sapigao, Jr., G.R. No. 178485, Sept. 4, 2009,
598 SCRA 416, 425-426 147
Silvano, 431 Phil. 351, 363 (2002) 386
Singh, 412 Phil. 842, 859 (2001) 392
Somoza, G.R. No. 197250, July 17, 2013 368
Soria, G.R. No. 179031, Nov. 14, 2012,
685 SCRA 483, 497, 505 .... 648, 692, 696
Subesa, G.R. No. 193660, Nov. 16, 2011,
660 SCRA 390, 403 397
Sumingwa, G.R. No. 183619, Oct. 13, 2009,
603 SCRA 638 166
Tadah, G.R. No. 186226, Feb. 1, 2012,
664 SCRA 744, 748 531
Tamayo, 44 Phil. 38, 49 (1922) 527
Tañedo, 334 Phil. 31, 36 (1997) 519
Tejero, G.R. No. 187744, June 20, 2012,
674 SCRA 244, 259-260 .... 203, 397
Teodoro, G.R. No. 175876, Feb. 20, 2013 166
Toling, 180 Phil. 305, 321-322 (1979) …. 527
Ubiña, 97 Phil. 515, 534 (1955) 528
Veloso *y* Rama, G.R. No. 188849, Feb. 13, 2013 186
Villahermosa, G.R. No. 186465, June 1, 2011,
650 SCRA 256, 275-276 350
Viojela, G.R. No. 177140, Oct. 17, 2012,
684 SCRA 241, 251 .... 164, 167, 649
Yanson-Dumancas, 378 Phil. 341, 364 (1999) 519

Page

Zakaria, G.R. No. 181042, Nov. 26, 2012,
686 SCRA 390, 403 367
Perez *vs*. Philippine National Bank,
124 Phil. 260 (1966) 269-270
Philippine Hawk Corporation *vs.* Lee, G.R. No. 166869,
Feb. 16, 2010, 612 SCRA 576 389-390
Philippine Long Distance Telephone Co. *vs.* NLRC,
247 Phil. 641, 649 (1988) 89
Philippine National Bank *vs.* CA, 412 Phil. 807 (2001) 267
Philippine National Bank *vs.* CA, 424 Phil. 757 (2002) 228
Philippine Plaza Holdings, Inc. *vs*. Episcope,
G.R. No. 192826, Feb. 27, 2013 425
Philippine Savings Bank *vs.* Spouses Mañalac, Jr.,
496 Phil. 671, 686 (2005) 73
Philippine Veterans Bank *vs.* Valenzuela,
G.R. No. 163530, Mar. 9, 2011, 645 SCRA 66 103
Power Sector Assets and Liabilities Management
Corporation *vs.* Pozzolanic Philippines, Inc.,
G.R. No. 183789, Aug. 24, 2011, 656 SCRA 214, 232 673
Presidential Commission on Good Government *vs.*
Silangan Investors and Managers, Inc.,
G.R. Nos. 167055-56, Mar. 25, 2010, 616 SCRA 382, 397 669
Province of North Cotabato *vs.* Government of the
Republic of the Philippines Peace Panel on
Ancestral Domain (GRP), G.R. Nos. 183591, 183752,
Oct. 14, 2008, 568 SCRA 402 62
Public Estates Authority *vs*. Uy,
423 Phil. 407, 418 (2001) 73
Radio Philippines Network, Inc. *vs.* Yap,
G.R. No. 187713, Aug. 1, 2012, 678 SCRA 148, 164 86
Raro *vs*. Employees' Compensation Commission,
254 Phil. 846, 852-855 (1989) 606, 612-615
Re: Cases Left Undecided by Judge Sergio D. Mabunay,
RTC, Branch 24, Manila, 354 Phil. 698, 704-706 (1998) 341
Re: Failure of Various Employees to Register Their
Time of Arrival and/or Departure from Office in the
Chronolog Machine, A.M. No. 2005-21-SC,
Sept. 28, 2010, 631 SCRA 396, 409 499

Page

Remulla *vs.* Manlongat, 484 Phil. 832, 838-839 (2004) 658
Reno Foods, Inc. *vs.* Nagkakaisang Lakas ng
Manggagawa (NLM) – Katipunan, G.R. No. 164016,
Mar. 15, 2010, 615 SCRA 240 90
Report on the Financial Audit Conducted on the Books
of Accounts of the Municipal Circuit Trial Court,
Mondragon-San Roque, Northern Samar,
A.M. No. P-09-2721 (Formerly A.M. No. 09-9-162-MCTC),
Feb. 16, 2010, 612 SCRA 509, 531 499
Republic *vs.* CA, G.R. No. 84966, Nov. 21, 1991,
204 SCRA 160 439
City of Kidapawan, G.R. No. 166651, Dec. 9, 2005,
477 SCRA 324, 335 564
Sunvar Realty Development Corporation,
G.R. No. 194880, June 20, 2012, 674 SCRA 320 413
Resoso *vs.* Sandiganbayan, 377 Phil. 249, 257 (1999) 475
Restaurante Las Conchas *vs.* Llego,
372 Phil. 697 (1999) 40, 45
Reyes *vs.* De Leon, 126 Phil. 710, 717 (1967) 229
Reyes *vs.* Vitan, 496 Phil. 1, 5 (2005) 483
Riño *vs.* Employees' Compensation Commission,
387 Phil. 612, 620 (2000) 608
Rodriguez *vs.* CA, G.R. No. 184589, June 13, 2013 283
Samson *vs.* Fiel-Macaraig, G.R. No. 166356,
Feb. 2, 2010, 611 SCRA 345 20
San Miguel Brewery Sales Force Union (PTGWO) *vs.*
Hon. Ople, 252 Phil. 27, 31 (1989) 87
San Miguel Corporation *vs.* Layoc, Jr.,
562 Phil. 670, 687 (2007) 87
San Miguel Properties Philippines, Inc. *vs.* Gucaban,
G.R. No. 153982, July 18, 2011, 654 SCRA 18, 28 424
Sante *vs.* Employees' Compensation Commission,
256 Phil. 319, 327 (1989) 605
Santeco *vs.* Avance, 463 Phil. 359 (2003) 487
Santiago Land Development Corporation *vs.* CA,
334 Phil. 741, 747 (1997) 589
Sarmiento *vs.* Employees' Compensation Commission,
244 Phil. 323, 327-328 (1988) 606-607, 613

Page

Segura *vs.* Segura 247-A Phil. 449, 456 (1988) 594
Seguritan *vs.* People, G.R. No. 172896, April 19, 2010,
618 SCRA 406 182
Shipside, Incorporated *vs.* CA, 404 Phil. 981 (2001) 18
Singian, Jr. *vs.* Sandiganbayan,
514 Phil. 536 (2005) 458, 473, 476
Sison *vs.* People, G.R. No. 187229, Feb. 22, 2012,
666 SCRA 645, 667 .... 185, 696-697
So Ping Bun *vs.* CA, 373 Phil. 532 (1999) 411
Soriquez *vs.* Sandiganbayan (Fifth Division),
510 Phil. 709, 716 .... 471, 476
Spouses Bautista *vs.* Cefra, A.C. No. 5530,
Jan. 28, 2013, 689 SCRA 262, 268 486
Spouses Bautista *vs.* Pilar Development Corporation,
371 Phil. 533, 541 (1999) 73
Spouses Guzman *vs.* CA, 258 Phil. 410 (1989) 413
Spouses Monterola *vs.* Judge Caoibes, Jr.,
429 Phil. 59 (2002) 541
Spouses Serrano, et al. *vs.* Caguiat, 545 Phil. 660 (2007) 630
St. James College of Parañaque *vs.* Equitable PCI Bank,
G.R. No. 179441, Aug. 9, 2010, 627 SCRA 328, 344 227
St. Michael's Institute *vs.* Santos, 422 Phil. 723 (2001) 84
Sui Man Hui Chan *vs.* CA, 468 Phil. 244 (2004) 408
Sulit *vs.* Employees' Compensation Commission,
187 Phil. 317 (1980) 606
Tagle *vs.* Equitable PCI Bank, G.R. No. 172299,
April 22, 2008, 552 SCRA 424, 436 225-226
Tamayo *vs.* People, G.R. No. 174698, July 28, 2008,
560 SCRA 312, 322 657
Tamio *vs.* Tecson, 485 Phil. 434 (2004) 409
Tan *vs.* Balajadia, 519 Phil. 632 (2006) 292
Tan *vs.* OMC Carriers Inc., G.R. No. 190521,
Jan. 12, 2011, 639 SCRA 471, 483, 487 .... 76, 389, 391-392
Tapay *vs.* Bancolo, A.C. No. 9604, Mar. 20, 2013 293
Tapuroc *vs.* Loquellano *Vda. de* Mende,
541 Phil. 93 (2007) 96
Tavera-Luna, Inc. *vs.* Nable, 67 Phil. 340, 344 (1939) 303

Page

The Coca-Cola Export Corporation *vs.* Gacayan,
G.R. No. 149433, June 22, 2011, 652 SCRA 463, 470 87
The Insular Life Assurance Company, Ltd. *vs.* CA,
G.R. No. 126850, April 28, 2004, 428 SCRA 79 609
Tirazona *vs.* Philippine EDS Techno-Service, Inc.
(PET, Inc.), G.R. No. 169712, 20 Jan. 2009,
576 SCRA 625, 628-629 88
Toledo, Jr. *vs.* People, 174 Phil. 582 (1978) 470
Tolentino *vs.* Board of Accountancy, 90 Phil. 83 (1951) 305
Tongoy *vs.* CA, 208 Phil. 95, 113 (1983) 58
Torrevillas *vs.* Navidad, A.M. No. RTJ-06-1976
[Formerly OCA I.P.I. No. 03-1857], April 29, 2009,
587 SCRA 39, 56 31
Toyota Motor Phils. Corp. Workers Association *vs.*
NLRC, 562 Phil. 759, 810-811 (2007) 89
Ubarra *vs.* Mapalad, A.M. No. MTJ-91-622,
Mar. 22, 1993, 220 SCRA 224, 235 585
Uichico *vs.* National Labor Relations Commission,
339 Phil. 242 (1997) 45
Unilever Philippines, Inc. *vs.* Rivera, G.R. No. 201701,
June 3, 2013 88
United States *vs.* Cristobal, 34 Phil. 825 (1916) 453
Urbanes, Jr. *vs.* CA, 407 Phil. 856, 867 (2001) 231
Uy *vs.* Javellana, A.M. No. MTJ-07-1666 [Formerly
A.M. OCA-IPI No. 05-1761-MTJ], Sept. 5, 2012,
680 SCRA 13, 35 31
Uy *vs.* Sandiganbayan, 407 Phil. 154, 163-164 (2001) 506
Valdes *vs.* RTC, Branch 102, Quezon City,
328 Phil. 1289 (1996) 285
Valiao *vs.* CA, 479 Phil. 459, 470-471 (2004) 423
Vda. de Enriquez *vs.* San Jose, 545 Phil. 379, 383 (2007) 486
Velarde *vs.* Social Justice Society, G.R. No. 159357,
April 28, 2004, 428 SCRA 283, 291 305
Vicar International Construction, Inc. *vs.* FEB Leasing
and Finance Corp., 496 Phil. 467, 475 (2005) 18
Victory Liner, Inc. *vs.* Gammad,
486 Phil. 574, 590-591 (2004) 390, 392

Page

Villa *vs.* GSIS, G.R. No. 174642, Oct. 30, 2009,
604 SCRA 742, 750 438
Villanueva *vs.* CA, 471 Phil. 394 (2004) 283
Cherdan Lending Investors Corporation,
G.R. No. 177881, Oct. 13, 2010, 633 SCRA 173, 183 229
Gonzales, A.C. No. 7657, Feb. 12, 2008,
544 SCRA 410, 419 487
Wooden *vs.* Civil Service Commission,
508 Phil. 500, 515 (2005) 291
Yabut *vs.* Manila Electric Company, G.R. No. 190436,
Jan. 16, 2012, 663 SCRA 92, 106 88
Yu *vs.* Reyes-Carpio, G.R. No. 189207,
June 15, 2011, 652 SCRA 341, 348 303

II. FOREIGN CASES

Schreiber *vs.* Rickert, 50 NE 2d 879, Oct. 13, 1943 591

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I. LOCAL AUTHORITIES

A. CONSTITUTION

1987 Constitution
Art. II, Sec. 25 566
Art. III, Sec. 14 (2) 360, 693
Art. VIII, Sec. 6 504
Art. X, Sec. 2 566
Art. XIII, Sec. 3 49

B. STATUTES

Act
Act No. 3135 .... 265, 268, 270, 273
Sec. 2 272
Act No. 3428 .... 609, 612, 616, 619

Page

Act No. 4103 (Indeterminate Sentence Law), as amended 203, 298, 397
Batas Pambansa
B.P. Blg. 22 (Bouncing Checks Law) 700, 702-703
Civil Code, New
Art. 433 228
Art. 1311 408
Art. 1314 410
Art. 1403 (2)(e) 626
Art. 1409 .... 586, 588
Art. 1411 585-586
Art. 1412 585-587
Art. 1649 409-410
Art. 1650 .... 405, 410
Art. 1678 412
Art. 2206 131
Art. 2229 .... 186, 398
Code of Professional Responsibility
Canon 6.01 32
Canon 9 292
Canon 12 32
Canon 17 .... 485, 488
Canon 18, Rule 18.03 .... 485, 488
Executive Order
E.O. No. 40 (Series of 1992), Sec. 3 66
E.O. No. 202, Sec. 5 (k) 670
Family Code
Art. 46 277
Art. 147 284
Labor Code
Art. 167 603
(1) 611, 619
Art. 221 426
Art. 263 (g) 35, 46
Arts. 279, 293 424
Art. 282 90

Page

Local Government Code
Sec. 56 450-451
Secs. 231, 252 .... 571, 573
Sec. 234 (c), (e) 573
Sec. 447 in relation to Sec. 16 450
National Internal Revenue Code, 1997
Sec. 27 319
Sec. 27 (E) 314, 328
(1) 316, 318
Secs. 34 (F), 39 (D) 322
Penal Code, Revised
Art. 8 .... 122, 525
Art. 18 527
Arts. 52, 71 530
Art. 63 .... 185, 523
par. 2 .... 131, 696
Arts. 64-65 696
Art. 68 528
Art. 89 531
Art. 125 299-300
Art. 217 499
Art. 248 .... 131, 137, 374
Art. 266-A 157, 177, 181, 197, 203
par. 1 .... 185, 396, 641
Art. 266-B 184, 203, 695-696
par. 6 (5) 637, 641
Art. 266-D 157
Art. 267 .... 514, 520, 528, 531
Art. 335 .... 156, 161
Art. 336 637
Art. 360 29
Presidential Decree
P.D. Nos. 381, 436, 464, 477, 526 558
P.D. No. 442 .... 609, 612-613
P.D. No. 464 (Real Property Tax Code), Sec. 64 558
Sec. 534 554
P.D. No. 532 298

Page

P.D. No. 612 (Insurance Code of the Philippines),
Sec. 374 662
P.D. No. 626 (Employees' Compensation Law),
as amended 600-601, 605, 609, 612
P.D. No. 1324 623
P.D. No. 1455 662
P.D. No. 1529 (Property Registration Decree),
Sec. 15 440
Sec. 108 .... 96, 98, 101-104
P.D. No. 1590 321
Sec. 13 .... 313, 315, 329
P.D. Nos. 1613, 1866 298
P.D. No. 1814 662
Proclamation
Proc. No. 420 .... 561, 564, 572-573
Sec. 3 .... 565, 567-568
Republic Act
R.A. No. 1125, as amended 315
Sec. 11 552
R.A. No. 3019, Sec. 3 (e) 460, 462
Sec. 3 (g) 460, 472
R.A. Nos. 5207, 6235 298
R.A. No. 6657 (Comprehensive Agrarian Reform
Law of 1988) 242
Sec. 4 247
Sec. 16 (e) 238
Sec. 19 237
Sec. 73 (c) 249, 251
(e) 243
R.A. No. 6969 298
R.A. No. 7160 (Local Government
Code of 1991) 448, 548, 555
Sec. 2 (a) 566
Sec. 201 .... 549, 563
Sec. 206 .... 549, 560, 562-563
Sec. 226 .... 549, 551, 556
Sec. 231 551
Sec. 252 .... 552-554, 564

Page

Sec. 467 (a) 60
R.A. No. 7227 .... 550, 561, 567
Sec. 2 65
Sec. 12 (c) 568-569
R.A. No. 7659 513
R.A. No. 8353 (Anti-Rape Law of 1997) 156, 161, 691
R.A. No. 8424 317
Sec. 24 (A)(2) 391
R.A. No. 8799 (Securities Regulation Code) 4
R.A. No. 9165, Art. II, Sec. 5 .... 332, 351, 354, 360, 676
Sec. 11 .... 354, 360
Sec. 21 (1) 346-347, 349, 360, 364
R.A. No. 9282, Sec. 9 552
Sec. 18 315
R.A. No. 9344 528
Sec. 38 529
Sec. 40 529
R.A. No. 9346 .... 528, 530, 696
Sec. 3 .... 131, 185, 203, 397
R.A. No. 9372 (Human Rights Security
Act of 2007) 297, 301, 303
R.A. No. 10151 424
Revised Rules of Evidence
Rule 133, Sec. 33 405
Revised Rules on Criminal Procedure
Rule 120, Sec. 7 657
Rule 122, Sec. 6 657
Rules of Court, Revised
Rule 3, Sec. 2 63
Rule 15, Sec. 4 22
Rule 17, Sec. 3 20
Rule 18, Sec. 1 20
Sec. 7 592
Rule 19, Sec. 1 284
Rule 39, Sec. 33 227
Rule 42 407
Rule 45 .... 578, 599, 629, 699
Sec. 1 702

Page

Rule 47 60
Rule 65 .... 214, 423
Sec. 1 702
Rule 70, Sec. 1 413
Rule 71, Sec. 3 (e) 292
Rule 72, Sec. 2 266
Rule 86, Sec. 7 264-266
Rule 90, Sec. 1 264
Rule 110, Sec. 13 703
Rule 111, Sec. 1 (b) 701, 703
Rule 119, Sec. 22 704
Rule 129, Sec. 4 592
Rule 130, Secs. 20-21 385
Sec. 23 626
Sec. 36 386
Rule 133, Sec. 1 282
Sec. 2 360
Sec. 5 613
Rule 140 542
Rule 141, Sec. 1 703
Rules on Civil Procedure, 1997
Rule 45 .... 276, 662
Rule 65, Sec. 2 668
Securities Regulation Code
Sec. 53 8
Secs. 56-61, 63 .... 5, 9-10
Sec. 62 9

C. OTHERS

Implementing Rules and Regulations of R.A. No. 10154
Rule III, Sec. 7 .... 504, 506
Omnibus Rules Implementing the Labor Code
Bok VI, Rule I, Sec. 7 88
Revised Uniform Rules on Administrative Cases in the Civil Service
Sec. 52 500

Page

Rules Implementing P.D. No. 626
Rule III, Sec. 1 (b) 603

D. BOOKS
(Local)

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Special Civil Actions Rule 57-71, p. 193 (1999) 305
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BOOKS

50 C.J.S., 407 589