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SUPREME COURT OF THE PHILIPPINES

EN BANC

[IPI No. 12-203-CA-J. December 10, 2013]
(Formerly A.M. No. 12-8-06-CA)

RE: LETTERS OF LUCENA B. RALLOS, FOR ALLEGED ACTS/INCIDENTS/OCCURENCES RELATIVE TO THE RESOLUTION(S) ISSUED IN CA-G.R. SP NO. 06676 BY COURT OF APPEALS EXECUTIVE JUSTICE PAMPIO ABARINTOS and ASSOCIATE JUSTICES RAMON PAUL HERNANDO and VICTORIA ISABEL PAREDES.

[A.M. No. 12-9-08-CA. December 10, 2013]

RE: COMPLAINT FILED BY LUCENA B. RALLOS AGAINST JUSTICES GABRIEL T. INGLES, PAMELA ANN MAXINO, and CARMELITA S. MANAHAN.

SYLLABUS

1. LEGAL ETHICS; JUSTICES; ADMINISTRATIVE COMPLAINTS ARE NOT PROPER REMEDIES TO ASSAIL THE ALLEGED ERRONEOUS RESOLUTIONS OF THE COURT OF APPEALS' JUSTICES.— Considering that the assailed conduct under both complaints referred to the performance of their judicial functions by the respondent Justices, we feel compelled to dismiss the complaints for being improper

remedies. We have consistently held that an administrative or disciplinary complaint is not the proper remedy to assail the judicial acts of magistrates of the law, particularly those related to their adjudicative functions. Indeed, any errors should be corrected through appropriate judicial remedies, like appeal in due course or, in the proper cases, the extraordinary writs of *certiorari* and prohibition if the errors were jurisdictional. Having the administrative or disciplinary complaint be an alternative to available appropriate judicial remedies would be entirely unprocedural. In *Pitney v. Abrogar*, the Court has forthrightly expressed the view that extending the immunity from disciplinary action is a matter of policy, for "[t]o hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment."

2. ID.; ID.; ALLEGATIONS OF BIAS, NEGLIGENCE OR IMPROPER MOTIVES AGAINST JUSTICES MUST BE SUBSTANTIATED; THE QUESTIONED RESOLUTIONS WERE NOT TAINTED WITH BIAS, NEGLIGENCE OR IMPROPER MOTIVES.— [T]he respondent Justices concerned promulgated the questioned resolutions with prudence and fairness, and upon due consideration of the surrounding circumstances. Contrary to the posture of Rallos, therefore, the respondent Justices' issuance of the questioned resolutions was not tainted by bias, negligence or any improper motives. Moreover, the respondent Justices conducted a hearing before issuing the writ of preliminary injunction in favor of Cebu City. In that hearing, the counsels of the parties attended, and were granted ample opportunity to argue for their respective sides.

3. ID.; ID.; ID.; WHERE VOLUNTARY INHIBITION OF A JUSTICE DID NOT ESTABLISH IMPROPRIETY AND BIAS.— If, at that stage of the proceedings in CA-G.R. CEB SP. No. 06676, Justice Abarintos believed himself to be capacitated to take part, the Court is in no position to dispute his capacity to do so in the absence of any clear and persuasive showing by Rallos that he would not be objective and impartial as far as the issues and the parties were concerned. Indeed, at that stage of the proceedings, any decision to voluntarily inhibit was primarily a matter of conscience and sound discretion on his part. x x x Thus, based on the guidelines set in Section 1,

Rule 137 of the *Rules of Court*, the participation of Justice Abarintos in the initial stage of the proceedings in CA-G.R. CEB SP. No. 06676 despite having previously inhibited himself in CA-G.R. CEB SP. No. 06364 could not be held as improper under the circumstances. In any event, Justice Abarintos subsequently saw the need for his voluntary inhibition when CA-G.R. CEB SP. No. 06676 came to be assigned to him following the transfer to Manila of Justice Paredes. His voluntary inhibition occurred on June 7, 2012. What is noteworthy is that Rallos could have filed a motion for his inhibition if she considered the participation of Justice Abarintos in CA-G.R. CEB SP. No. 06676 as improper. That she raises the issue of his inhibition only before this Court in this administrative proceeding leaves the Court no choice but to regard her imputation of impropriety and bias against him as a mere afterthought considering that she does so only after the CA had issued the writ of preliminary injunction sought by Cebu City. x x x The fact that Justice Hernando voluntarily inhibited himself after writing the assailed resolutions did not establish his bias against Rallos and her co-heirs considering that the inhibition was for the precise objective of eliminating suspicions of undue influence. The justification of Justice Hernando was commendable, and should be viewed as a truly just and valid ground for his self-disqualification as a judicial officer in a specific case.

4. ID.; ID.; TWO KINDS OF INHIBITION OF JUSTICES, EXPLAINED; A PARTY-LITIGANT WHO DESIRES TO BE INFORMED OF THE INHIBITION MUST FILE A MOTION.— [T]here are two kinds of inhibition, the mandatory and the voluntary. In mandatory inhibition, the disqualified Justice must notify the Raffle Committee and the Members of the Division of the decision to inhibit. In voluntary inhibition, the inhibiting Justice must inform the other Members of the Division, the Presiding Justice, the Raffle Committee, and the Division Clerk of Court of the decision to inhibit and the reason for the inhibition. There is nothing in Rule V or in any other part of the *Internal Rules of the Court of Appeals* that specifically requires that the party-litigants be informed of the mandatory or voluntary inhibition of a Justice. Nevertheless, a party-litigant who desires to be informed of the inhibition of a Justice and of the reason for the inhibition must file a

motion for inhibition in the manner provided under Section 3, Rule V of the *Internal Rules of the Court of Appeals*, *supra*. Upon the filing of the motion, the party-litigant becomes entitled to be notified of the CA's action on the motion for inhibition and of the reasons for the action. Likewise, the party-litigant may seek the reconsideration or may appeal to the Court any action on the part of the CA on the motion for inhibition or motion for reconsideration. Alas, Rallos did not submit a motion for the inhibition of any of the respondent Justices.

5. ID.; ID.; ID.; PARTIES ARE NOW ENTITLED TO BE NOTIFIED OF ANY MANDATORY DISQUALIFICATION OR VOLUNTARY INHIBITION OF THE JUSTICE WHO HAS PARTICIPATED IN ANY ACTION OF THE COURT.— [T]he Court holds, conformably with the urging of Justice Arturo D. Brion, that henceforth all the parties in any action or proceedings should be immediately notified of any mandatory disqualification or voluntary inhibition of the Judge or Justice who has participated in any action of the court, stating the reason for the mandatory disqualification or voluntary inhibition. The requirement of notice is a measure to ensure that the disqualification or inhibition has not been resorted to in order to cause injustice to or to prejudice any party or cause.

D E C I S I O N

BERSAMIN, *J.*:

Judicial officers cannot be subjected to administrative disciplinary actions for their performance of duty in good faith.

Antecedents

In Civil Case No. CEB-20388 of the Regional Trial Court in Cebu City (RTC), the Heirs of Vicente Rallos, one of whom is complainant Lucena B. Rallos (Rallos), and other parties collectively referred to as Vicente Rallos, *et al*. sought just compensation from the city government of Cebu City (Cebu City) for two parcels of land pertaining to the estate that Cebu City had been maintaining as public roads without their consent. On January 14, 2000, the RTC (Branch 9) rendered its decision

holding Cebu City liable to pay just compensation to the Heirs of Vicente Rallos, *et al.*; and directing the creation of a board of commissioners that would determine the amount of just compensation.[1] Cebu City sought the reconsideration of the decision, but its motion was denied.[2]

Upon submission by the board of commissioners of its report on the just compensation, the RTC rendered another decision on July 24, 2001 ordering Cebu City to compensate the Heirs of Vicente Rallos, *et al*. in the amount of ₱34,905,000.00 for the parcels of land plus interest of 12% *per annum* computed from the date of the decision until fully paid; ₱50,000.00 as attorney's fees; and ₱50,000.00 as litigation expenses.[3]

The RTC granted the motion of the Heirs of Vicente Rallos, *et al*. for the execution pending appeal of the July 24, 2001 decision. In implementing the execution pending appeal, the RTC issued three separate orders, all dated December 21, 2001. Both parties sought the reconsideration of the orders dated December 21, 2001.[4] On March 21, 2002, the RTC issued its consolidated order resolving the motions for reconsideration of the parties.[5]

Both parties appealed to the Court of Appeals (CA), Visayas Station. The Heirs of Vicente Rallos, *et al*. assailed the July 24, 2001 decision and the March 21, 2002 consolidated order of the RTC. On its part, Cebu City challenged the decisions of January 14, 2000, July 24, 2001, and March 21, 2002.

On May 29, 2007, the CA promulgated its decision dismissing the appeal of Cebu City for its failure to file a record on appeal.[6]

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[1] *Rollo* (A.M. No. 12-9-08-CA) pp. 31-47.

[2] *Id*. at 48-50.

[3] *Id*. at 51-55.

[4] *Id*. at 56-68.

[5] *Id*. at 69-74.

[6] *Id*. at 75-93.

Cebu City moved for a reconsideration, but the CA denied its motion in the resolution promulgated on August 30, 2007. Thence, Cebu City filed its petition for review in this Court (G.R. No. 179662), but the Court denied the petition for review.[7]

The Heirs of Vicente Rallos, *et al*. thereafter moved in the RTC for the execution of the July 24, 2001 decision and the March 21, 2002 consolidated order. The RTC granted the motion. Subsequently, however, upon finding that the RTC had erred in executing the decision and the consolidated order, the Heirs of Vicente Rallos, *et al*. lodged an appeal with the CA, Visayas Station, to compel the RTC to comply strictly with the tenor of the decision and the consolidated order (CA-G.R. CEB SP. No. 04418).

On June 11, 2010, the CA decided CA-G.R. CEB SP. No. 04418 by requiring the RTC to execute the RTC's July 24, 2001 decision and its March 21, 2002 consolidated order strictly in accordance with their tenor.[8] After its motion for reconsideration was denied, Cebu City appealed by petition for review (G.R. No. 194111). However, the Court denied Cebu City's appeal on December 6, 2010.[9]

On motion for execution by the Heirs of Vicente Rallos, *et al*., the RTC directed on September 23, 2011 the issuance of a writ of execution in accordance with the ruling in CA-G.R. CEB SP. No. 04418.[10] In reaction, Cebu City presented an omnibus motion to quash the writ of execution and to lift the notice of garnishment, but the RTC denied the omnibus motion through its orders of October 26, 2011,[11] January 26, 2012,[12] and February 27, 2012.

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[7] *Id*. at 94-95.

[8] *Id*. at 99-110.

[9] *Id*. at 111.

[10] *Id*. at 113-114.

[11] *Id*. at 115-116.

[12] *Id*. at 117.

On March 26, 2012, Cebu City brought in the CA, Visayas Station, a petition for the annulment of the RTC's decisions of January 14, 2000 and July 24, 2001, and the consolidated order dated March 21, 2002 (CA-G.R. CEB SP. No. 06676), alleging that Vicente Rallos and his heirs had been obliged under a compromise agreement called *convenio*, as approved on October 18, 1940 by the Court of First Instance of the Province of Cebu (CFI) in Civil Case No. 616 and Civil Case No. 626, to donate, cede, and transfer the parcels of land in question to Cebu City; that Cebu City should not be made to pay just compensation for the parcels of land in question despite the final and executory decision in Civil Case No. CEB-20388 because of the ruling by the CFI in Civil Case No. 616 and Civil Case No. 626 to the effect that the parcels of land in question had been donated to Cebu City; and that the concealment of the existence of the *convenio* by the Heirs of Vicente Rallos, including Rallos, during the proceedings in Civil Case No. CEB-20388 constituted extrinsic fraud, which was "unmasked" only when Cebu City discovered the existence of the *convenio* in 2011.[13] Accordingly, Cebu City sought the nullification of the RTC decisions and consolidated order; and the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction "to prevent the hasty, if not unlawful release of government funds."[14]

CA-G.R. CEB SP. No. 06676 was raffled to the 18th Division of the CA, Visayas Station, whose members then were respondents Justice Pampio A. Abarintos, as the Chairman, Justice Ramon Paul L. Hernando, as the Senior Member, and Justice Victoria Isabel A. Paredes, as the Junior Member.[15] On March 28, 2012, the 18th Division, through Justice Hernando, promulgated a resolution directing Cebu City to rectify certain defects in its petition, to wit:

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[13] *Id.* at 168-189.

[14] *Id.* at 187.

[15] *Id.* at 140.

Perusal of the above-captioned Petition for Annulment of Final Decision/s and Order/s, with prayer for the issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction (WPI), reveals the following infirmities:

1. Copy of Sangguniang Panlungsod Resolution No. 12-1330-2011 that is attached to the Petition, while ostensibly a certified true copy, is in fact just a photocopy.

2. Atty. Joseph L. Bernaldez, the Notary Public in both the Verification/Certification of Non-Forum Shopping and Affidavit of Good Faith, did not indicate therein his notarial commission number and the province/city where he is commissioned, in violation of Sec. 2, Rule VIII of the 2004 Rules on Notarial Practice.

3. Atty. Marie Velle P. Abella, the Notary Public in the Affidavit of Service did not reflect therein the province/city where she is commissioned as a notary public, in violation of Sec. 2, Rule VIII of the 2004 Rules on Notarial Practice.

Petitioner is **DIRECTED** to **RECTIFY** the foregoing defects within ten (10) days from notice. Meanwhile, the Court shall hold in abeyance any action on the Petition and TRO application pending compliance with the order of rectification of defects.[16]

Cebu City complied with the resolution on April 12, 2012.[17]

Through the *Manifestation with Urgent Motion for the Issuance of a Temporary Restraining Order* filed on April 4, 2012, Cebu City informed the CA of its receipt of the *Notice to Parties of Sale on Execution* that set the sale on April 10, 2012 and April 17, 2012; and alleged that the sale on execution could render the proceedings in CA-G.R. CEB SP. No. 06676 moot and academic.[18]

Acting on the aforesaid urgent motion of Cebu City, the CA, through Justice Hernando, issued a TRO on April 13, 2012, *viz*:

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

[17] *Id.* at 206-208.

[18] *Id.* at 197-199.

Proceeding now to the supplication for the issuance of a Temporary Restraining Order (TRO) by the petitioner, the Court perceives more than adequate grounds for its grant. Firstly, is there urgency involved on the matter, as an execution sale has been scheduled not just on April 10, 2012 but also on April 17, 2012. Secondly, if such sale pushes through, it may well render moot the proceedings before this Court. Thirdly, there appears, at least preliminarily, a right on the part of petitioner that needs protection, that is, its right not to be deprived of its property if the fraud it alleges – that of concealment of the *convenio* – is unmasked to be such. Thus, grave or irreparable injury may therefore be suffered, in Our estimation at this stage of the proceedings, by the petitioner should a TRO be not forthcoming.

The Court now therefore resolves to **GRANT** the petitioner's application for a TRO, effective for sixty (60) days from notice by respondents. By virtue of the TRO, the respondents or anyone acting in their behalf, are enjoined from executing the Decision dated January 14, 2000 and July 24, 2001, the Order dated February 9, 2001, Consolidated Order dated December 21, 2001 and Order dated February 27, 2012 of respondent court, the Regional Trial Court, Branch 9 of Cebu City and from causing the release of any funds of the petitioner in satisfaction thereof.

Petitioner is **DIRECTED** to post the corresponding TRO Bond, herein fixed at Php 1 Million, within ten (10) days from notice. The TRO issued by the Court shall be effective immediately upon receipt by respondents. However, the failure of the petitioner to comply with the posting of the bond within the ten-day period shall result in the lifting of the restraining order.[19]

Cebu City posted the required TRO bond of ₱1,000,000.00.[20]

On April 23, 2012, Justice Hernando inhibited from further participation in CA-G.R. CEB SP. No. 06676.[21] During the raffle of April 24, 2012, CA-G.R. CEB SP. No. 06676 was assigned to Justice Paredes, with Justice Gabriel T. Ingles being designated as the new third member.[22]

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[19] *Id*. at 207.

[20] *Id*. at 142.

[21] *Id*. at 209.

[22] *Id*. at 142.

On April 26, 2012, the CA set the hearing on Cebu City's application of the writ of preliminary injunction on May 23, 2012.[23]

On May 7, 2012, the Heirs of Vicente Rallos moved to set aside the April 13, 2012 resolution; to lift the TRO; and to dismiss the petition for annulment.[24]

On May 23, 2012, the CA held the hearing on Cebu City's application for the writ of preliminary injunction. The counsels for both parties attended the hearing, where the Heirs of Vicente Rallos moved to be allowed to submit their formal offer of exhibits in support of their opposition to the issuance of the writ of preliminary injunction. The CA granted their motion, and further directed the parties to submit their respective memoranda.[25]

On June 5, 2012, CA-G.R. CEB SP. No. 06676 was assigned to Justice Abarintos in view of the intervening transfer of Justice Paredes to Manila.[26] However, two days later, Justice Abarintos inhibited himself from further participation in CA-G.R. CEB SP. No. 06676.[27]

By the raffle conducted on June 7, 2012, CA-G.R. CEB SP. No. 06676 was next assigned to Justice Edgardo L. Delos Santos, while Justice Carmelita S. Manahan was designated as the new third member of the Division.[28] On June 14, 2012, however, Justice Delos Santos also inhibited himself from participation in the case.[29] Thus, CA-G.R. CEB SP. No. 06676 was assigned by raffle to Justice Ingles, who was designated as the Chairman of the 18th Division for purposes of the case.

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[23] *Id*.

[24] *Id*.

[25] *Id.* at 210-255.

[26] *Id.* at 143.

[27] *Id.* at 256.

[28] *Id.* at 143.

[29] *Id.* at 257.

Justice Pamela Ann Abella Maxino and Justice Manahan were assigned, respectively, as the Senior and the Junior Members of the Division.[30]

On June 26, 2012, the CA granted Cebu City's application for the writ of preliminary injunction, to wit:

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A writ of preliminary injunction issues to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Its sole office is to preserve the status quo until the merits of the case can be heard fully. To be entitled to a writ of injunction, a party must establish the following requisites: (a) the right of the complainant is clear and unmistakable; (b) the invasion of the right sought to be protected is material and substantial; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage.

We find the foregoing requisites satisfied.

First, the initial evidence satisfactorily demonstrates petitioner's clear and unmistakable right as a beneficiary or prospective donee in a *Convenio* executed on September 22, 1940. Petitioner submitted as exhibit in its application for WPI, the Decision of the Court of First Instance of the Province of Cebu, 8th Judicial District dated October 18, 1940. The Decision reproduced *verbatim* the judicially-approved *Convenio*, which provided for a stipulation *pour autrui* in petitioner's favor, whereby Lots 485-D and 485-E, the subjects of Civil Case No. CEB-20388, were supposed to be donated and transferred to it by respondent's predecessor, Father Vicente Rallos. The *Convenio* also provided that should petitioner not accept the donation, the road lots would still be for public use.

Respondents question the authenticity of the Decision embodying the *Convenio* since the same is purportedly unsigned. This challenge shall be fully contended with when we evaluate the merits of the petition, but at this juncture, suffice it to say that our inclination to regard the Decision as authentic, for purposes of resolving the propriety of the herein ancillary remedy, is anchored on these reasons: (1) the 1940 decision is more than thirty (30) years old; and (2) it was produced from a custody in which it would be naturally found

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[30] *Id.* at 143.

if genuine. Respondents' counsel, Atty. Glenn Cañete, admitted during the hearing that he personally went to RTC Branch 9, and found out for himself that indeed, there is a copy of the said Decision in the records of the court. Moreover, respondent Maurillo Rallos, likewise, attested in his Affidavit that he personally went to the Offcie (sic) of the RTC Clerk of Court and upon personally examining its records, saw for himself that the decision was actually in the custody of the clerk.

Second, the invasion of petitioner's right sought to be protected is material and substantial. It appears, from the sampling of evidence, that respondents deliberately suppressed *Convenio* when they lodged Civil Case No. CEB-20388, seeking for forfeiture of improvements and payment of fair market value with damages, litigation expenses and attorneys fees, against petitioner. The non-disclosure of the *Convenio* resulted in the violation of petitioner's right to for it is now made to pay, with the use of public funds, just compensation for properties that were supposed to be donated and transferred to it without cost. In fact, petitioner already paid Fifty Six Million One Hundred Ninety Six thousand, three hundred sixty nine and 42/100 Pesos (₱56,196,369.42) in 2001 and 2009.

Third, there is urgent and paramount necessity for the writ to prevent serious damage. In propounding its application for WPI, petitioner alleged that public respondent issued an Order (Order) dated February 27, 2012, directing : 1) the depositary banks of the City of Cebu to release to the Sheriff, certifications as to the correct account numbers under petitioner's name in order to cater to the final judgment in Civil Case No. CEB-20388; (2) the plaintiffs to demand the Sangguniang Panlungsod to enact the appropriation ordinance; and (3) the depositary banks to release the amount for the satisfaction of the money judgment upon presentment of the appropriation ordinance. In a Manifestation with Urgent Motion it subsequently filed, petitioner informed this Court that it had received the following from the sheriff: (1) Notice to Parties of Sale on Execution; (b) (sic) Notice of Execution Sale at Public Auction; and (3) Amended Writ of Execution.

To date, the foregoing issuances have not been recalled, such that, when the limited life of the previously granted TRO expires, the sheriff can proceed with garnishing petitioner's bank deposits and selling its patrimonial property described in the Notice of Execution Sale of Public Auction. The involvement of public funds and property justifies the urgency and necessity of the issuance of a WPI to prevent serious damage to petitioner. It is best to preserve

the *status quo* pending the final determination of this case, otherwise, whatever Decision hereon will be rendered ineffectual and nugatory.

WHEREFORE, premises considered, let a Writ of Preliminary Injunction issue enjoining respondents, their successors, agents, representatives, assigns, and any and all persons acting under their supervision, direction and on their behalf, from executing the Decisions dated January 14, 2000 and July 24, 2001, the Order dated Febraury 9, 2001, Consolidated Order dated December 21, 2001 and Order dated February 27, 2012 of the respondent court, the Regional Trial Court, Branch 9, Cebu City, and from causing the release of any funds, or the auction of property/ies of petitioner in satisfaction thereof, until further orders from the Court.[31]

The Heirs of Vicente Rallos moved for the reconsideration of the grant of the application for the writ of preliminary injunction.[32]

On August 10, 2012, the Court received the letter-complaint from Rallos requesting an investigation of the allegedly unlawful and unethical conduct of Justice Abarintos, Justice Hernando and Justice Paredes as Members of the 18th Division in dealing with CA-G.R. CEB SP. No. 06676.[33] On August 30, 2012, the Court received another letter from Rallos requesting permission to amend her letter-complaint and to admit her attached amended letter-complaint.[34] The Court docketed the amended letter-complaint as A.M. No. 12-8-06-CA.[35]

On September 12, 2012, the Court received an affidavit-complaint from Rallos, whereby she also charged Justice Ingles, Justice Maxino and Justice Manahan with administrative and criminal offenses. The Court docketed the affidavit-complaint as A.M. No. 12-9-08-CA.[36]

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[31] *Id.* at 118-121.

[32] *Id.* at 146.

[33] *Rollo* (IPI No. 12-203-CA-J), pp. 1-7.

[34] *Id.* at 23-31.

[35] *Id.* at 35.

[36] *Rollo* (A.M. No. 12-9-08-CA), pp. 4-30.

On September 18, 2012, the Court promulgated a resolution in A.M. No. 12-9-08-CA requiring Justice Ingles, Justice Maxino and Justice Manahan to comment on the affidavit-complaint of Rallos, and consolidating A.M. No. 12-9-08-CA with A.M. No. 12-8-06-CA.[37]

On December 13, 2012, the Court received the joint comment/answer of Justice Ingles, Justice Maxino and Justice Manahan, whereby they prayed for the dismissal of the charges in A.M. No. 12-9-08-CA for lack of merit.[38]

On January 8, 2013, the Court re-docketed A.M. No. 12-8-06-CA as OCA I.P.I. No. 12-203-CA-J, and ordered Justice Abarintos, Justice Hernando and Justice Paredes to comment on the letter-complaint.[39] They separately complied, but all of them prayed for the dismissal of the letter-complaint for lack of merit.[40]

Charges in IPI No. 12-203-CA-J
(formerly A.M. No. 12-8-06-CA)

In her amended letter, Rallos averred that the issuance of the March 28, 2012 resolution in CA-G.R. CEB SP. No. 06676 directing the rectification of the "fatal" defects of the petition for the issuance of the TRO had been erroneous; that the fatally defective petition should instead be outrightly dismissed inasmuch as the decisions and the consolidated order thereby sought to be annulled had been already affirmed by the Court in G.R. No. 179662 and G.R. No. 194111; that Cebu City should carry the responsibility for making its petition compliant with the *Rules of Court*; that the respondent Justices had thus acted as legal consultants of Cebu City; and that it was a matter of public knowledge that petitions filed in the CA were being routinely dismissed even for minor deficiencies.[41]

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[37] *Id.* at 137.

[38] *Id.* at 139-163.

[39] *Rollo* (IPI No. 12-203-CA-J), p. 37.

[40] *Id.* at 47-51, 55-59, and 68-70.

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

Rallos contended that it was improper for Justice Abarintos to have participated in CA.G.R. CEB SP. No. 06676 despite having previously inhibited himself in CA-G.R. CEB SP. No. 06364, because Cebu City was the petitioner and the Heirs of Vicente Rallos were the respondents in both cases; that Justice Abarintos did not have "the cold impartiality of a neutral judge" to determine CA-G.R. CEB SP. No. 06676; that the "appearance of impropriety" became more apparent when Justice Abarintos and several other Justices inhibited themselves from participation in CA-G.R. CEB SP. No. 06676; and that Justice Hernando was biased because he inhibited himself in CA-G.R. CEB SP. No. 06676 immediately after rendering the March 28, 2012 and April 13, 2012 resolutions.[42]

Rallos argued that litigants in the CA had the right to be informed of the inhibition of the Justices, and to object if the inhibition was invalid; that a Justice could not simply inhibit from a case because doing so would raise doubts on the integrity of the judicial process; and that the inhibitions of the respondent Justices raised the suspicion of manipulation wherein the Justices who were unwilling to issue the writ of preliminary injunction sought by Cebu City were forced to inhibit themselves in order that other Justices sympathetic towards Cebu City could be put in their places.

Rallos prayed that the respondent Justices be held administratively and criminally liable, and in the meantime be temporarily suspended to avoid influencing the investigation of the letter-complaint; and that the CA be directed to furnish her with the list of inhibitions and replacements of the respondent Justices in CA-G.R. SP No. 06676, and the grounds for the inhibitions and replacements.[43]

Allegations in A.M. No. 12-9-08-CA

Rallos asserted that respondent Justice Ingles, Justice Maxino and Justice Manahan had "knowingly disobeyed" the resolutions

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

[43] *Id*. at 29-31.

promulgated on December 5, 2007 in G.R. No. 179662 and on December 6, 2010 in G.R. No. 194111 by their issuance of the June 26, 2012 resolution granting Cebu City's application for the writ of preliminary injunction; that the issuance constituted serious misconduct and a violation of Article 206 of the *Revised Penal Code*, Republic Act No. 6713 and Republic Act No. 3019; that the issuance of the writ of preliminary injunction was on the basis of the *convenio*, a document that had not been formally offered in evidence by Cebu City during the hearing for the issuance of writ of preliminary injunction; that even had the *convenio* been formally offered in evidence, it should still not have been considered because: (1) it was only a machine copy and was even unsigned; (2) Cebu City was not a party to the *convenio*; and (3) the supposed donation to Cebu City was void because it had not been accepted in a public document by Cebu City during the lifetime of the purported donor.[44]

Rallos further asserted that the June 26, 2012 resolution reflected the negligence and bias of the respondent Justices because: (1) it enjoined the execution of orders dated February 9, 2001 and December 21, 2001 allegedly issued in Civil Case No. CEB-20388 that did not exist in fact; (2) it stopped the execution of the order dated February 27, 2012 that was still the subject of a motion for reconsideration; (3) it unduly interfered with the Court's rulings in G.R. No. 194111 and G.R. No. 179662; and (4) it unduly interfered with the final and executory orders issued in Civil Case No. CEB-20388.[45] She maintained that the CA was barred from entertaining Cebu City's petition and application for the issuance of the writ of preliminary injunction because Cebu City had previously appealed the decisions rendered on January 14, 2000 and July 24, 2001 as well as the consolidated order of March 21, 2002 (CA-G.R. CV No. 76656) but had lost the appeal; and that respondent Justices violated her right to have the Court's resolutions in G.R. No. 179662 and G.R. No. 194111 executed

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[44] *Rollo* (A.M. No. 12-9-08-CA), pp. 14-19.

[45] *Id*. at 18-20.

without undue delay, thereby denying to her the fruits of her court victory.

As relief, Rallos prayed that the respondent Justices be held guilty of serious misconduct, and meted the penalty of removal from office and perpetual disqualification from holding office or employment in the Government; that they be further criminally prosecuted for violating Republic Act No. 6713, Republic Act No. 3019, and Article 206 of the *Revised Penal Code*; that they be disbarred for violating the *Code of Judicial Conduct* and the *Code of Professional Responsibility*; and that they be transferred to other CA stations and be prohibited from participating in cases where she was a party.[46]

Ruling

We dismiss both administrative complaints for their lack of basis.

1.

Administrative complaints are not proper remedies to assail alleged erroneous resolutions of respondent Justices

Considering that the assailed conduct under both complaints referred to the performance of their judicial functions by the respondent Justices, we feel compelled to dismiss the complaints for being improper remedies. We have consistently held that an administrative or disciplinary complaint is not the proper remedy to assail the judicial acts of magistrates of the law, particularly those related to their adjudicative functions. Indeed, any errors should be corrected through appropriate judicial remedies, like appeal in due course or, in the proper cases, the extraordinary writs of *certiorari* and prohibition if the errors were jurisdictional. Having the administrative or disciplinary complaint be an alternative to available appropriate judicial remedies would be entirely unprocedural.[47] In *Pitney v. Abrogar*,[48] the Court has

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[46] *Id.* at 20-28.

[47] *Cruz v. Iturralde*, A.M. RTJ No. 03-1775, April 30, 2003, 402 SCRA 65, 71-72.

[48] A.M. No. RTJ-03-1748, November 11, 2008, 415 SCRA 377, 382.

forthrightly expressed the view that extending the immunity from disciplinary action is a matter of policy, for "[t]o hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment."

In addition, the Court reminds that the disregard of the policy by Rallos would result in the premature filing of the administrative complaints – a form of abuse of court processes.[49]

In IPI No. 12-203-CA-J, Rallos clearly wanted to challenge the resolutions promulgated on March 28, 2012 and April 13, 2012. Although she should have filed motions for reconsideration *vis-à-vis* such resolutions in due course, she filed a motion for reconsideration only with respect to the resolution of April 13, 2012. Her resorting to the filing of the letter-complaint instead of the motion for reconsideration *vis-à-vis* the March 28, 2012 resolution was improper because she could not substitute the administrative to the proper judicial recourse. Anent the April 13, 2012 resolution, she should have waited for the action of the CA on her motion for reconsideration, and should the motion be eventually denied, her proper remedy was to appeal.

In A.M. No. 12-9-08-CA, although Rallos had moved for the reconsideration of the June 26, 2012 resolution, she did not anymore wait for the resolution of the motion for reconsideration. Instead, she filed the complaint-affidavit. That, too, was impermissible, because her appropriate recourse was to await the resolution of the motion for reconsideration and then to appeal should the CA deny the motion. It is to be mentioned, too, that the CA had not yet resolved Cebu City's main suit for the annulment of judgment on the merits; hence, it was premature and unprocedural for her to insist that the respondent Justices could have already ruled on the grounds for annulment. That resolution should be awaited because the issue on the validity and effectiveness of the *convenio* would precisely still require the CA's appreciation of the *convenio* as evidence. Nor were

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[49] *Hilado v. Reyes*, A.M. No. RTJ-05-1910, April 15, 2005, 456 SCRA 146, 162.

the principle of immutability of judgment and the applicability of any law or jurisprudence to bar Cebu City's action for annulment of judgment already in effect, considering that the CA still had to discharge its adjudicatory function respecting the matter of the validity and effectiveness of the *convenio*.

2.

Truth of the allegations of bias, negligence or improper motives against respondent Justices cannot be presumed but must be substantiated

In their comment/answer regarding the issuance of the March 28, 2012 resolution, the respondent Justices declared that they had resolved not to outrightly dismiss the petition of Cebu City despite its several defects because: (1) the defects had been minor or non-essential; (2) the petition had alleged the discovery of the *convenio* that would supposedly show that Cebu City should not be obliged to expend the huge amount of public funds to compensate the Heirs of Vicente Rallos; (3) the petition must be decided on the merits rather than on technicality because the release of a huge amount of public funds would be involved; (4) the rules of procedure should not be utilized as tools to defeat justice; and (5) even with the foregoing being weighty enough, they had still imposed the condition that any action on the petition and the application for the TRO application would be held in abeyance pending compliance with the order for the rectification of the defects.

As to the April 13, 2012 resolution, the respondent Justices stated:

> 3. The CA Resolution granting the TRO was issued based on the appellate court's fair and objective estimation that indeed, there was a compelling and urgent ground for its grant. The Sheriff of the Regional Trial Court was in the act of implementing the lower court's writ of execution on the properties of the applicant and there was, at that point, a necessity to stop the implementation, particularly since Cebu City had shown at least at that stage of the proceedings, that the Rallos heirs had conveniently withheld from it the existence of a Deed of Donation *(Convenio)* whereby the Rallos family had

previously donated the property that was subsequently expropriated by Cebu City.

4. In short, the impression of the appellate court at the time is why should Cebu City be made to pay just compensation by the Rallos heirs for the expropriation of their property which had been donated by the Rallos family to Cebu City in the first place? This circumstance, in the appellate court's fair and objective view, justified the grant of the injunctive relief. Otherwise, the Rallos heirs, which includes the complainant, would unduly enrich themselves at the expense of Cebu City and essentially swindle it of its assets (that were about to be executed upon by the RTC Sheriff) when they acceded to the expropriation of their property that should have been delivered by them to the city as a piece of donated property. x x x.[50]

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Furthermore, the grant or denial of a temporary restraining order is discretionary on the part of the court. The matter is judicial in nature, and as such, the party's remedy if prejudiced by the orders of a judge/justice given in the course of a trial, is the proper reviewing court, and not with the OCA by means of an administrative complaint.[51]

With regard to the June 26, 2012 resolution, the respondent Justices elucidated in their comment/answer:

Indeed, the judgment sought to be executed is already final, and the general rule is that, as there is nothing left to be done the final judgment has to be executed or enforced. This rule, however, is not absolute. It admits of exceptions, to wit:

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In the instant case, the stay of execution of the judgment paying just compensation to petitioner for the properties in litigation is warranted by the fact that there is still a pending case regarding the ownership of the said properties, docketed as *CA-G.R. SP No. 06364* entitled *City of Cebu vs. Lucena B. Rallos, et al.* In that case, the City of Cebu seeks to nullify the 13 October 1998 Order in Spec. Proc. No. 107-R entitled *"Testate Estate of Vicente Rallos, deceased,*

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[50] *Rollo* (IPI No. 12-203-CA-J), p. 69.

[51] *Id.* at 49.

Vicente Gullas, Executor", with prayer to direct the administratix of the testate estate of Vicente Rallos to execute a deed of donation thereby donating the disputed lots in favour of the City of Cebu, pursuant to a "*convenio"*. x x x

It bears stressing that the cases before the respondent justices involve public funds, more specifically, city funds to be used in the delivery of basic services to constituents of the City of Cebu. As defined "public funds are those moneys belonging to the State or to any political subdivision of the State; more specifically, taxes, customs duties and moneys raised by operation of law for the support of the government or for the discharge of its obligations." For this reason alone, there is the need to protect government funds – for which the City of Cebu is accountable, and this should not be jeopardized through the supposed violation by the city government of petitioner's right to enjoy the fruits of the final judgment in her favour when government protection can be done and is being done without adverse effects to petitioner's rights should the case be eventually resolved in her favour.

Indeed, to go ahead with the execution when there are matters involving the ownership of the subject properties that need to be threshed out may prove to be detrimental to the interest of the government and public, as well. That is precisely why the courts are directed to proceed with extreme prudence and caution in satisfying judgements involving public funds. "In Administrative Circular No. 10-2000 dated 25 October 2000, all judges of lower courts were advised to exercise utmost caution, prudence and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies and local government units. Judges, thus, cannot indiscriminately issue writs of execution against the government to enforce money judgments."

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Therefore, pending determination as to who has legal right to the subject properties, there is a patent, imperative need to be provisionally enjoin execution to prevent release of public funds or sale of any of the city's property for payment of just compensation, or, to restrain acts that may render moot and academic the judgment or order that may be rendered in this case.[52]

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[52] *Rollo* (A.M. No. 12-9-08-CA), pp. 152-154.

A reading of them easily shows that the questioned resolutions exhaustively explained their factual and legal bases. Apparently, the respondent Justices concerned promulgated the questioned resolutions with prudence and fairness, and upon due consideration of the surrounding circumstances. Contrary to the posture of Rallos, therefore, the respondent Justices' issuance of the questioned resolutions was not tainted by bias, negligence or any improper motives.

Moreover, the respondent Justices conducted a hearing before issuing the writ of preliminary injunction in favor of Cebu City. In that hearing, the counsels of the parties attended, and were granted ample opportunity to argue for their respective sides.

Anent the voluntary inhibitions of the respondent Justices concerned, it serves well to note that Section 1, Rule 137 of the *Rules of Court* set standing guidelines for that purpose. The guidelines have required just and valid causes to justify voluntary inhibitions. Thereby, the discretion to decide whether to voluntarily inhibit or not could not be unfettered, for, as fittingly said in *Abrajano v. Heirs of Augusto F. Salas, Jr.*:[53]

> x x x. The rule on inhibition and disqualification of judges is laid down in Sec. 1, Rule 137 of the Rules of Court:
>
> > Sec. 1. *Disqualification of judges*.—No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

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[53] G.R. No. 158895, February 16, 2006, 482 SCRA 476.

> A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

Thus stated, the rule contemplates two kinds of inhibition: *compulsory disqualification* assumes that a judge cannot actively or impartially sit on a case for the reasons stated in the first paragraph, while *voluntary inhibition* under the second paragraph leaves to the judge's discretion whether he should desist from sitting in a case for other just and valid reasons with only his conscience to guide him.

The issue of voluntary inhibition is primarily a matter of conscience and sound discretion on the part of the judge. This discretion is an acknowledgement of the fact that judges are in a better position to determine the issue of inhibition, as they are the ones who directly deal with the parties-litigants in their courtrooms. The decision on whether he should inhibit himself, however, must be based on his rational and logical assessment of the circumstances prevailing in the case brought before him.

The rule does not give the judge the unfettered discretion to decide whether he should desist from hearing a case. The inhibition must be for just and valid causes. The mere imputation of bias, partiality and prejudgment will not suffice in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor. The disqualification of a judge cannot be based on mere speculations and surmises or be predicated on the adverse nature of the judge's rulings towards the movant for inhibition.[54] (Bold underscoring supplied for emphasis)

Rallos contends that Justice Abarintos improperly participated in CA.G.R. CEB SP. No. 06676 despite having previously inhibited himself in CA-G.R. CEB SP. No. 06364, which had involved Cebu City as the petitioner and the Heirs of Vicente Rallos as the respondents, on the ground that some of the siblings and relatives of Rallos were his friends.[55]

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[54] *Id.* at 486-488.

[55] *Rollo* (IPI No. 12-203-CA-J), p. 50.

We disagree with the contention of Rallos.

It appears that Rallos, in her capacity as the administratix of the estate of Vicente Rallos, had submitted in Special Proceeding No. 1017-R entitled *Testate Estate of Vicente Rallos, deceased; Vicente Gullas, Executor* a supplemental inventory of the properties of the estate that included the two parcels of land that were later the subject of CA.G.R. CEB SP. No. 06676. The probate court issued an order on October 13, 1998 directing the transfer of the properties listed in the supplemental inventory to Rallos and her co-heirs. Feeling aggrieved, Cebu City appealed to the CA to nullify the October 13, 1998 order, and also to pray that Rallos as the administratix of the testate estate of Vicente Rallos be directed to execute a deed of donation respecting the disputed lots in favor of Cebu City pursuant to the *convenio* (CA-G.R. CEB SP. No. 06364).

To recall, the resolution of March 28, 2012 concerned the preliminary matter of having Cebu City comply with the deficiencies of its petition in CA-G.R. CEB SP. No. 06676, while the resolution of April 13, 2012 involved the issuance of the TRO to prevent the execution of the decisions and the consolidated order by the RTC that would probably render the consideration and adjudication of CA-G.R. CEB SP. No. 06676 moot and academic. If, at that stage of the proceedings in CA-G.R. CEB SP. No. 06676, Justice Abarintos believed himself to be capacitated to take part, the Court is in no position to dispute his capacity to do so in the absence of any clear and persuasive showing by Rallos that he would not be objective and impartial as far as the issues and the parties were concerned. Indeed, at that stage of the proceedings, any decision to voluntarily inhibit was primarily a matter of conscience and sound discretion on his part. The discretion, according to *Abrajano v. Heirs of Augusto F. Salas, Jr., supra*, "is an acknowledgement of the fact that judges are in a better position to determine the issue of inhibition, as they are the ones who directly deal with the parties-litigants in their courtrooms," provided the decision is based on a "rational and logical assessment of the circumstances prevailing in the case brought before him." Thus, based on the guidelines set in Section 1, Rule 137 of the *Rules of Court*, the

participation of Justice Abarintos in the initial stage of the proceedings in CA-G.R. CEB SP. No. 06676 despite having previously inhibited himself in CA-G.R. CEB SP. No. 06364 could not be held as improper under the circumstances.

In any event, Justice Abarintos subsequently saw the need for his voluntary inhibition when CA-G.R. CEB SP. No. 06676 came to be assigned to him following the transfer to Manila of Justice Paredes. His voluntary inhibition occurred on June 7, 2012. What is noteworthy is that Rallos could have filed a motion for his inhibition if she considered the participation of Justice Abarintos in CA-G.R. CEB SP. No. 06676 as improper. That she raises the issue of his inhibition only before this Court in this administrative proceeding leaves the Court no choice but to regard her imputation of impropriety and bias against him as a mere afterthought considering that she does so only after the CA had issued the writ of preliminary injunction sought by Cebu City.

Rallos charges Justice Hernando with bias because he voluntarily inhibited himself in CA-G.R. CEB SP. No. 06676 only after the promulgation of the March 28, 2012 and April 13, 2012 resolutions.[56]

Again, we cannot agree with Rallos.

In the notice he sent to the CA Raffle Committee, Justice Hernando stated the reasons why he decided to inhibit himself from the case, to wit:

> It has come to the attention of the undersigned that prior to the official issuance of the Court's Order dated April 13, 2012 in the above-cited case which granted petitioner's prayer for a Temporary Restraining Order, an alleged representative of the petitioner's City Legal Office attempted to secure a copy of said Order, citing a purported instruction from the u[n]dersigned to the City Legal Office to procure it. For the record, the undersigned strongly accentuates that he never did so, nor is he familiar, either personally or by acquaintance, with the fellow in question.

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

This event has now rendered it completely untenable for the undersigned to participate in the proceedings concerning this case if only to obviate suspicions of undue influence by him, or by the petitioner itself. Hence, I am voluntarily inhibiting myself from this litigation. May I therefore request for its re-raffle to another Justice to replace me as *ponente*.[57]

The fact that Justice Hernando voluntarily inhibited himself after writing the assailed resolutions did not establish his bias against Rallos and her co-heirs considering that the inhibition was for the precise objective of eliminating suspicions of undue influence. The justification of Justice Hernando was commendable, and should be viewed as a truly just and valid ground for his self-disqualification as a judicial officer in a specific case.

Rallos insists that she was entitled to be informed about the inhibitions of the Justices and about their reasons for the inhibitions.

Rule V of the 2009 *Internal Rules of the Court of Appeals* expressly provides the rules on inhibition of Justices, *viz*:

Rule V

INHIBITION OF JUSTICES

Section 1. *Mandatory Inhibition of Justices*. – When a Justice is disqualified under any of the grounds enumerated in the first paragraph of Sec. 1, Rule 137 of the Rules of Court and in Rule 3.12 of the Code of Judicial Conduct, he/she shall immediately notify the Raffle Committee and the members of his/her Division.

SEC. 2. *Voluntary Inhibition of a Justice*. – An inhibition of a Justice, whether mandatory or voluntary, must be made within ten (10) working days from his/her discovery of a just and valid reason to inhibit.

Copies of the action of the Justice shall be furnished to the other members of the Division, the Presiding Justice, the Raffle Committee and the Division Clerk of Court.

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[57] *Id*. at 71.

SEC. 3. *Motion to Inhibit a Division or a Justice*. – A motion for inhibition must be in writing and under oath and shall state the grounds therefor.

A motion for inhibition of a Division or a Justice must be acted upon by the Division or the Justice concerned, as the case may be, within ten (10) working days from its/his/her receipt thereof except when there is an application for a temporary restraining order, in which case, the motion must be acted upon immediately.

No motion for inhibition of a Justice or Division will be granted after a decision on the merits or substance of the case has been rendered or issued by any Division except for a valid or just reason, *e.g.* allegation of corrupt motives. [Pursuant to AM No. 02-6-13-CA dated June 19, 2007 of the Supreme Court].

One who files a motion for inhibition without basis and manifestly for delay may be cited in contempt of court. A lawyer who assists in the filing of such baseless and dilatory motion may be referred by the Justice concerned or by the Court *motu proprio* to the Supreme Court for appropriate disciplinary action.

SEC. 4. *Action on Inhibition*. – The action on the inhibition shall be attached to the *rollo* and paged.

SEC. 5. *Right of Replacement*. – When a Justice inhibits himself/herself from a case, the Justice to whom it is raffled may replace it with another case of similar nature and status, subject to Sec. 4 (c), Rule III.

As the foregoing rules indicate, there are two kinds of inhibition, the mandatory and the voluntary. In mandatory inhibition, the disqualified Justice must notify the Raffle Committee and the Members of the Division of the decision to inhibit. In voluntary inhibition, the inhibiting Justice must inform the other Members of the Division, the Presiding Justice, the Raffle Committee, and the Division Clerk of Court of the decision to inhibit and the reason for the inhibition. There is nothing in Rule V or in any other part of the *Internal Rules of the Court of Appeals* that specifically requires that the party-litigants be informed of the mandatory or voluntary inhibition of a Justice.

Nevertheless, a party-litigant who desires to be informed of the inhibition of a Justice and of the reason for the inhibition must file a motion for inhibition in the manner provided under Section 3, Rule V of the *Internal Rules of the Court of Appeals*, *supra*. Upon the filing of the motion, the party-litigant becomes entitled to be notified of the CA's action on the motion for inhibition and of the reasons for the action. Likewise, the party-litigant may seek the reconsideration or may appeal to the Court any action on the part of the CA on the motion for inhibition or motion for reconsideration. Alas, Rallos did not submit a motion for the inhibition of any of the respondent Justices.

We do not subscribe to Rallos' suggestion that the series of inhibitions in CA-G.R. SP No. 06676 constituted a scheme to favor Cebu City. She presented no proof to validate her suggestion. In fact, she herself conceded that she was thereby only voicing out her suspicion of an irregularity. To stress, their good faith and regularity in the performance of official duties, which are strong presumptions under our laws, should prevail unless overcome by contrary proof. Worth noting in that regard is that there was even no valid reason that could have prohibited the Justices charged in A.M. No. 12-9-08-CA from participating in CA-G.R. SP No. 06676. It serves well to consider, too, that none of the respondent Justices charged in IPI No. 12-203-CA-J is anymore participating in CA-G.R. SP No. 06676; and that the respondent Justices charged in A.M. No. 12-9-08-CA were chosen by raffle as required under pre-existing rules and regulations to replace the Justices who had meanwhile voluntarily inhibited themselves from further participation for valid reasons.

The foregoing notwithstanding, the Court holds, conformably with the urging of Justice Arturo D. Brion, that henceforth all the parties in any action or proceedings should be immediately notified of any mandatory disqualification or voluntary inhibition of the Judge or Justice who has participated in any action of the court, stating the reason for the mandatory disqualification or voluntary inhibition. The requirement of notice is a measure

to ensure that the disqualification or inhibition has not been resorted to in order to cause injustice to or to prejudice any party or cause.

WHEREFORE, the Court **DISMISSES** the administrative complaints against Court of Appeals Associate Justice Pampio A. Abarintos, Associate Justice Ramon Paul L. Hernando, Associate Justice Victoria Isabel A. Paredes, Associate Justice Gabriel T. Ingles, Associate Justice Pamela Ann Maxino and Associate Justice Carmelita S. Manahan for their lack of merit and substance.

The Court **DIRECTS** that henceforth all the parties in any action or proceedings shall be notified within five (5) days of the mandatory disqualification or voluntary inhibition of a Judge or Justice who has participated in any action of the court, stating the reason or reasons for the mandatory disqualification or voluntary inhibition.

The Court Administrator is **ORDERED** to disseminate this decision to all courts of the Philippines for their guidance and strict compliance.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

EN BANC

[IPI No. 12-205-CA-J. December 10, 2013]

RE: VERIFIED COMPLAINT OF TOMAS S. MERDEGIA AGAINST HON. VICENTE S.E. VELOSO, ASSOCIATE JUSTICE OF THE COURT OF APPEALS, RELATIVE TO CA G.R. SP No. 119461.

[A.C. No. 10300. December 10, 2013]

RE: RESOLUTION DATED OCTOBER 8, 2013 IN OCA IPI No. 12-205-CA-J AGAINST ATTY. HOMOBONO ADAZA II.

SYLLABUS

1. LEGAL ETHICS; JUSTICES; AN ADMINISTRATIVE COMPLAINT AGAINST A JUSTICE CANNOT AND SHOULD NOT BE A SUBSTITUTE FOR APPEAL OR OTHER JUDICIAL REMEDIES AGAINST AN ASSAILED DECISION OR RULING; THE PROPER REMEDY TO ASSAIL THE DENIAL OF THE MOTION FOR INHIBITION IS TO FILE A PETITION FOR *CERTIORARI*.— As Atty. Adaza himself admitted, he prepared the administrative complaint ***after*** Justice Veloso refused to inhibit himself from a case he was handling. The complaint and the motion for inhibition were both based on the same main cause: the alleged partiality of Justice Veloso during the oral arguments of Merdegia's case. ***The resolution dismissing the motion for inhibition should have disposed of the issue of Justice Veloso's bias***. While we do not discount the fact that it was Justice Veloso who penned the resolution denying the motion for inhibition, we note that he was allowed to do this under the 2009 Internal Rules of the Court of Appeals. ***Had*** *Merdegia* ***and Atty. Adaza doubted the legality of this resolution, the proper remedy would have been to file a petition for certiorari assailing the order denying the motion for inhibition***. The settled rule is that administrative complaints against justices cannot and should not substitute for appeal and other judicial remedies against an assailed decision or ruling.

2. ID.; ID.; CIRCUMSTANCES CONSIDERED BY THE COURT IN DECIDING ADMINISTRATIVE CASES AGAINST ERRING JUDGES OR JUSTICES.— To be sure, deciding administrative cases against erring judges is not an easy task. We have to strike a balance between the need for accountability and integrity in the Judiciary, on the one hand, with the need to protect the independence and efficiency of the Judiciary from vindictive and enterprising litigants, on the other. Courts should not be made to bow down to the wiles of litigants who bully judges into inhibiting from cases or deciding cases in their favor, but neither should we shut our doors from litigants brave enough to call out the corrupt practices of people who decide the outcome of their cases. Indeed, litigants who feel unjustly injured by malicious and corrupt acts of erring judges and officials should not be punished for filing administrative cases against them; neither should these litigants be unjustly deterred from doing so by a wrong signal from this Court that they would be made to explain why they should not be cited for contempt when the complaints they filed prove to be without sufficient cause.

3. ID.; ATTORNEYS; FILING A FRIVOLOUS ADMINISTRATIVE COMPLAINT AGAINST MEMBERS OF JUDICIARY CONSTITUTES AN IMPROPER CONDUCT THAT TENDS TO DEGRADE THE ADMINISTRATION OF JUSTICE, AND IS PUNISHABLE FOR INDIRECT CONTEMPT.— What tipped the balance against Atty. Adaza, in this case, is the totality of the facts of the case that, when read together with the administrative complaint he prepared, shows that his complaint is merely an attempt to malign the administration of justice. We note Atty. Adaza's penchant for filing motions for inhibition throughout the case: ***first***, against Judge Ma. Theresa Dolores C. Gomez Estoesta of the Regional Trial Court of Manila, who issued an order unfavorable to his client; and ***second***, against all the justices of the Court of Appeals division hearing his appeal, for alleged bias during the oral arguments on his case. These indicators, taken together with the baseless administrative complaint against Justice Veloso after he penned an order adverse to Atty. Adaza's client, disclose that there was more to the administrative complaint than the report of legitimate grievances against members of the Judiciary. In *Re: Verified Complaint of Engr. Oscar L. Ongjoco, etc.,* we cited a litigant

in indirect contempt of court for his predisposition to indiscriminately file administrative complaints against members of the Judiciary. We held that this conduct degrades the judicial office, interferes with the due performance of their work for the Judiciary, and thus constitutes indirect contempt of court. Applying this principle to the present case, we hold that Atty. Adaza's acts constitute an improper conduct that tends to degrade the administration of justice, and is thus punishable for indirect contempt under Section 3(d), Rule 71 of the Rules of Court.

4. ID.; ID.; CONTEMPT PROCEEDINGS AND DISCIPLINARY ACTIONS AGAINST A LAWYER, DISTINGUISHED AND EXPLAINED.— While the two proceedings can proceed simultaneously with each other, a contempt proceeding cannot substitute for a disciplinary proceeding for erring lawyers, and *vice versa*. There can be no substitution between the two proceedings, as contempt proceedings against lawyers, as officers of the Court, are different in nature and purpose from the discipline of lawyers as legal professionals. The two proceedings spring from two different powers of the Court. The Court, in exercising its power of contempt, exercises an implied and inherent power granted to courts in general. Its existence is essential to the preservation of order in judicial proceedings; to the enforcement of judgments, orders and mandates of courts; and, consequently, in the administration of justice; thus, it may be instituted against any person guilty of acts that constitute contempt of court. Further, jurisprudence describes a contempt proceeding as penal and summary in nature; hence, legal principles applicable to criminal proceedings also apply to contempt proceedings. A judgment dismissing the charge of contempt, for instance, may no longer be appealed in the same manner that the prohibition against double jeopardy bars the appeal of an accused's acquittal. In contrast, a disciplinary proceeding against an erring lawyer is *sui generis* in nature; it is neither purely civil nor purely criminal. Unlike a criminal prosecution, a disciplinary proceeding is not intended to inflict punishment, but to determine whether a lawyer is still fit to be allowed the privilege of practicing law. It involves an investigation by the Court of the conduct of its officers, and has, for its primary objective, public interest. Thus, unlike a contempt proceeding, the acquittal of the lawyer from a

disciplinary proceeding cannot bar an interested party from seeking reconsideration of the ruling. Neither does the imposition of a penalty for contempt operate as *res judicata* to a subsequent charge for unprofessional conduct. Contempt proceedings and disciplinary actions are also governed by different procedures. Contempt of court is governed by the procedures under Rule 71 of the Rules of Court, whereas disciplinary actions in the practice of law are governed by Rules 138 and 139 thereof.

APPEARANCES OF COUNSEL

Adaza Adaza & Adaza for complainant.

R E S O L U T I O N

BRION, *J.*:

On October 8, 2013, we issued a Resolution[1] dismissing the administrative complaint of Tomas S. Merdegia against Court of Appeals Associate Justice Vicente S.E. Veloso. In this same Resolution, we also directed Atty. Homobono Adaza II, Merdegia's counsel, to show cause why he should not be cited for contempt.

After considering Atty. Adaza's explanation,[2] we find his account insufficient, and find him guilty of indirect contempt.

According to Atty. Adaza, he should not be punished for indirect contempt as he was merely performing his duty as Merdegia's counsel when he assisted him in preparing the administrative complaint against Justice Veloso. Atty. Adaza asserted that both he and his client observed Justice Veloso's partiality during the oral arguments, but instead of immediately filing an administrative complaint against him, he counseled Merdegia to first file a Motion to Inhibit Justice Veloso from the case. However, upon finding that Justice Veloso refused

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[1] *Rollo*, pp. 494-498.

[2] *Id.* at 518-521.

to inhibit himself, Merdegia repeated his request to file an administrative complaint against Justice Veloso, to which Atty. Adaza acceded. Thus, Atty. Adaza pleaded that he should not be faulted for assisting his client, especially when he also believes in the merits of his client's case.

Atty. Adaza's explanation, read together with the totality of the facts of the case, fails to convince us of his innocence from the contempt charge.

As Atty. Adaza himself admitted, he prepared the administrative complaint ***after*** Justice Veloso refused to inhibit himself from a case he was handling. The complaint and the motion for inhibition were both based on the same main cause: the alleged partiality of Justice Veloso during the oral arguments of Merdegia's case. ***The resolution dismissing the motion for inhibition should have disposed of the issue of Justice Veloso's bias***. While we do not discount the fact that it was Justice Veloso who penned the resolution denying the motion for inhibition, we note that he was allowed to do this under the 2009 Internal Rules of the Court of Appeals.[3] ***Had*** *Merdegia* ***and Atty. Adaza doubted the legality of this resolution, the proper remedy would have been to file a petition for certiorari assailing the order denying the motion for inhibition***. The settled rule is that administrative complaints against justices cannot and should not substitute for appeal and other judicial remedies against an assailed decision or ruling.[4]

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[3] Section 3, Rule V, of the 2009 Internal Rules of the Court of Appeals provides:

Sec. 3. Motion to Inhibit a Division or a Justice. — A motion for inhibition must be in writing and under oath and shall state the grounds therefor.

A motion for inhibition of a Division or a Justice **must be acted upon by the Division or the Justice concerned, as the case may be**, within ten (10) working days from its/his/her receipt thereof except when there is an application for a temporary restraining order, in which case, the motion must be acted upon immediately.

[4] *Maylas, Jr. v. Judge Sese*, 529 Phil. 594, 598 (2006).

While a lawyer has a duty to represent his client with zeal, he must do so within the bounds provided by law.[5] He is also duty-bound to impress upon his client the propriety of the legal action the latter wants to undertake, and to encourage compliance with the law and legal processes.[6]

A reading of Merdegia's administrative complaint[7] shows an apparent failure to understand that cases are not always decided in one's favor, and that an allegation of bias must stem from an extrajudicial source other than those attendant to the merits and the developments in the case.[8] In this light, we cannot but attribute to Atty. Adaza the failure to impress upon his client the features of our adversarial system, the substance of the law on ethics and respect for the judicial system, and his own failure to heed what his duties as a professional and as an officer of the Court demand of him in acting for his client before our courts.

To be sure, deciding administrative cases against erring judges is not an easy task. We have to strike a balance between the need for accountability and integrity in the Judiciary, on the one hand, with the need to protect the independence and efficiency of the Judiciary from vindictive and enterprising litigants, on the other. Courts should not be made to bow down to the wiles of litigants who bully judges into inhibiting from cases or deciding cases in their favor, but neither should

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[5] Canon 19 of the Code of Professional Responsibility provides:

Canon 19 – A lawyer shall represent his client with zeal within the bounds of the law.

[6] Canon 1 of the Code of Professional Responsibility provides:

Canon 1 – A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes.

xxx

Rule 1.02 - A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

[7] *Rollo*, pp. 2-19.

[8] *Soriano v. Angeles*, 393 Phil. 769, 779 (2000).

we shut our doors from litigants brave enough to call out the corrupt practices of people who decide the outcome of their cases. Indeed, litigants who feel unjustly injured by malicious and corrupt acts of erring judges and officials should not be punished for filing administrative cases against them; neither should these litigants be unjustly deterred from doing so by a wrong signal from this Court that they would be made to explain why they should not be cited for contempt when the complaints they filed prove to be without sufficient cause.

What tipped the balance against Atty. Adaza, in this case, is the totality of the facts of the case that, when read together with the administrative complaint he prepared, shows that his complaint is merely an attempt to malign the administration of justice. We note Atty. Adaza's penchant for filing motions for inhibition throughout the case: ***first***, against Judge Ma. Theresa Dolores C. Gomez Estoesta of the Regional Trial Court of Manila, who issued an order unfavorable to his client; and ***second***, against all the justices of the Court of Appeals division hearing his appeal, for alleged bias during the oral arguments on his case. These indicators, taken together with the baseless administrative complaint against Justice Veloso after he penned an order adverse to Atty. Adaza's client, disclose that there was more to the administrative complaint than the report of legitimate grievances against members of the Judiciary.

In *Re: Verified Complaint of Engr. Oscar L. Ongjoco, etc.*,[9] we cited a litigant in indirect contempt of court for his predisposition to indiscriminately file administrative complaints against members of the Judiciary. We held that this conduct degrades the judicial office, interferes with the due performance of their work for the Judiciary, and thus constitutes indirect contempt of court. Applying this principle to the present case, we hold that Atty. Adaza's acts constitute an improper conduct that tends to degrade the administration of justice, and is thus punishable for indirect contempt under Section 3(d), Rule 71 of the Rules of Court.

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[9] A.M. OCA IPI No. 11-184-CA-J, January 31, 2012, 664 SCRA 465.

As a final note, Atty. Adaza's contemptuous conduct may also be subject to disciplinary sanction as a member of the bar.[10] If we do not now proceed at all against Atty. Adaza to discipline him, we are prevented from doing so by our concern for his due process rights. Our Resolution of October 8, 2013 only asked him to show cause why he should not be cited in contempt, and not why he should not be administratively penalized. To our mind, imposing a disciplinary sanction against Atty. Adaza through a contempt proceeding violates the basic tenets of due process as a disciplinary action is independent and separate from a proceeding for contempt. A person charged of an offense, whether in an administrative or criminal proceeding, must be informed of the nature of the charge against him, and given ample opportunity to explain his side.[11]

While the two proceedings can proceed simultaneously with each other,[12] a contempt proceeding cannot substitute for a disciplinary proceeding for erring lawyers,[13] and *vice versa*. There can be no substitution between the two proceedings, as contempt proceedings against lawyers, as officers of the Court, are different in nature and purpose from the discipline of lawyers as legal professionals. The two proceedings spring from two different powers of the Court.

The Court, in exercising its power of contempt, exercises an implied and inherent power granted to courts in general.[14] Its

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[10] *Zaldivar v. Sandiganbayan*, 248 Phil. 542, 544, 584 (1988).

[11] *Espiña v. Cerujano, et al.*, 573 Phil. 254, 261-262 (2008).

[12] The two proceedings, while inherently different, may simultaneously be pursued against the erring lawyer, similar to what we did in *Zaldivar v. Sandiganbayan*, *supra* note 10. In that case we asked then Tanodbayan Raul Gonzales to show cause why he should not be cited in contempt and be subjected to administrative sanctions. The dispositive of our decision in that case found him guilty of both contempt and gross misconduct as an officer of the court and a member of the bar.

[13] *People v. Godoy*, 312 Phil. 977, 1032-1033 (1995).

[14] *People v. Judge Estenzo*, 159-A Phil. 483, 487 (1975).

existence is essential to the preservation of order in judicial proceedings; to the enforcement of judgments, orders and mandates of courts; and, consequently, in the administration of justice;[15] thus, it may be instituted against any person guilty of acts that constitute contempt of court.[16] Further, jurisprudence describes a contempt proceeding as penal and summary in nature; hence, legal principles applicable to criminal proceedings also apply to contempt proceedings. A judgment dismissing the charge of contempt, for instance, may no longer be appealed in the same manner that the prohibition against double jeopardy bars the appeal of an accused's acquittal.[17]

In contrast, a disciplinary proceeding against an erring lawyer is *sui generis* in nature; it is neither purely civil nor purely criminal. Unlike a criminal prosecution, a disciplinary proceeding is not intended to inflict punishment, but to determine whether a lawyer is still fit to be allowed the privilege of practicing law. It involves an investigation by the Court of the conduct of its officers, and has, for its primary objective, public interest.[18] Thus, unlike a contempt proceeding, the acquittal of the lawyer from a disciplinary proceeding cannot bar an interested party from seeking reconsideration of the ruling. Neither does the imposition of a penalty for contempt operate as *res judicata* to a subsequent charge for unprofessional conduct.[19]

Contempt proceedings and disciplinary actions are also governed by different procedures. Contempt of court is governed by the procedures under Rule 71 of the Rules of Court, whereas disciplinary actions in the practice of law are governed by Rules 138 and 139 thereof.[20]

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[15] *Masangcay v. Comelec*, 116 Phil. 355, 358 (1962).

[16] Rules of Court, Rule 71, Section 1 and Section 3.

[17] *Insurance Commissioner v. Globe Assurance Co., Inc., et al.*, 197 Phil. 192, 194-195 (1982).

[18] *In re Almacen*, 142 Phil. 353 (1970).

[19] *People v. Godoy*, *supra* note 13, at 1033.

[20] *Id.* at 1033.

IN THESE LIGHTS, the Court finds Atty. Homobomo Adaza II **GUILTY OF INDIRECT CONTEMPT** for filing a frivolous suit against Court of Appeals Associate Justice Vicente S.E. Veloso, and hereby sentences him to pay, within the period of fifteen days from the promulgation of this judgment, a fine of ₱5,000.00. The respondent is also **WARNED** that further similar misbehavior on his part may be a ground for the institution of disciplinary proceedings against him.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

EN BANC

[A.M. No. 13-04-03-SC. December 10, 2013]

RE: NOMINATION OF ATTY. LYNDA CHAGUILE, IBP IFUGAO PRESIDENT, AS REPLACEMENT FOR IBP GOVERNOR FOR NORTHERN LUZON, DENIS B. HABAWEL

[A.M. No. 13-05-08-SC. December 10, 2013]

RE: ALLEGED NULLITY OF THE ELECTION OF IBP SOUTHERN LUZON GOVERNOR VICENTE M. JOYAS AS IBP EXECUTIVE VICE PRESIDENT [FOR 2011-2013]

[A.M. No. 13-06-11-SC. December 10, 2013]

RE: LETTER-REQUEST OF THE NATIONAL SECRETARY OF THE IBP RE PROPOSED OATH-TAKING BEFORE THE SUPREME COURT OF THE ELECTED IBP REGIONAL GOVERNORS AND THE EXECUTIVE VICE PRESIDENT FOR THE TERM 2013 TO 2015

SYLLABUS

1. REMEDIAL LAW; INTEGRATED BAR OF THE PHILIPPINES (IBP); BOARD OF GOVERNORS; VACANCY IN THE BOARD NEED NOT ACTUALLY AND LITERALLY EXIST AT THE PRECISE MOMENT BEFORE A SUCCESSOR MAY BE IDENTIFIED.— Indeed, it is not only erroneous but also absurd to insist that a vacancy must actually and literally exist at the *precise* moment that a successor to an office is identified. Where a vacancy is anticipated with reasonable certainty — as when a term is ending or the effectivity of a resignation or a retirement is forthcoming — it is but reasonable that those who are in a position to designate a replacement act promptly. New officials are elected before the end of an incumbent's term; replacements are recruited (and even trained) ahead of an anticipated resignation or retirement. This is necessary to ensure the smooth and effective functioning of an office. Between prompt and lackadaisical action, the former is preferable. It is immaterial that there is an identified successor-in-waiting so long as there are no simultaneous occupants of an office.

2. ID.; ID.; ID.; SUCCESSOR OF THE RESIGNED IBP GOVERNOR MUST BE ELECTED BY THE DELEGATES OF THE CONCERNED REGION AND MUST NOT BE CHOSEN BY THE IBP BOARD ON THE BASIS OF "TRADITION".— [T]he third paragraph of Section 44 of the IBP By-Laws clearly provides that "the delegates from the region shall by majority, elect a successor from among the members of the Chapter to which the resigned governor is a member." There is no ambiguity in this text. We are surprised that the IBP — an institution expected to uphold the rule of

law — has chosen to rely on "tradition" to validate its action. The IBP Board of Governors arrogated unto itself a power which is vested in the delegates of the concerned IBP region. This arrogation is a manifest violation of the clear and unmistakable terms of the IBP's By-Laws. We cannot countenance this. No amount of previous practice or "tradition" can validate such a patently erroneous action. It is, therefore, clear that Atty. Chaguile's designation as IBP Governor for Northern Luzon is tainted with irregularity, and therefore, invalid.

3. ID.; ID.; ID.; AN IBP GOVERNOR WHO ASSUMED OFFICE BY VIRTUE OF A "TRADITION" OR A PROCESS TAINTED WITH IRREGULARITY MAY BE CONSIDERED A *DE FACTO* OFFICER IN ORDER TO ADDRESS AN EXIGENCY.— [T]he circumstances under which Atty. Chaguile's nomination was approved and under which Atty. Chaguile subsequently assumed the role of IBP Governor for Northern Luzon are sufficient to induce a *general* belief that she was properly the IBP Governor for Northern Luzon and that her actions in this office were properly invoked. Having said these, we agree with a point raised by Atty. Ubano. As with statutes, the IBP By-Laws' "violation or non-observance [ought] not be excused by disuse, or custom, or practice to the contrary." We do not validate the IBP Board of Governors' erroneous practice. To reiterate our earlier words: "We cannot countenance this. No amount of previous practice or "tradition" can validate such a patently erroneous action." Nonetheless, even as we decry the IBP Board of Governor's reliance on "tradition," we do not lose sight of the fact, palpable and immutable, that Atty. Chaguile has so acted as IBP Governor for Northern Luzon. Thankfully, our legal system has an established means through which we are able to avert the "chaos that would result from multiple and repetitious [challenges to] every action taken by [an] official whose claim to office could be open to question." It is strictly in view of this that we make a determination that Atty. Chaguile was the *de facto* IBP Governor for Northern Luzon. We are not validating a wrong; we are merely addressing an exigency.

4. ID.; ID.; ID.; ID.; ALL OFFICIAL ACTIONS OF A *DE FACTO* IBP GOVERNOR ARE DEEMED VALID, BINDING, AND EFFECTIVE.— Having established that Atty. Chaguile was

the IBP Governor for Northern Luzon in a *de facto* capacity, we turn to the validity of her actions as a *de facto* officer. To reiterate, one that is *de facto* is "illegitimate but in effect." Thus, it is settled that "the acts of the *de facto* officer are just as valid for all purposes as those of a *de jure* officer, in so far as the public or third persons who are interested therein are concerned." This is necessary so as to protect the sanctity of their dealings with those relying on their ostensible authority: "[t]hird persons x x x cannot always investigate the right of one assuming to hold an important office. They have a right to assume that officials apparently qualified and in office are legally such." Accordingly, we hold that all official actions of Atty. Chaguile as *de facto* IBP Governor for Northern Luzon must be deemed valid, binding, and effective, as though she were the officer validly appointed and qualified for the office. It follows that her participation and vote in the election for IBP EVP held on May 22, 2013 are in order.

5. ID.; ID.; ID.; ID.; ID.; CIRCUMSTANCES IN CASE AT BAR FAILED TO SHOW ANY REASON TO INVALIDATE THE ELECTION OF THE IBP EXECUTIVE VICE PRESIDENT.— [W]e fail to see how the election could have been tainted with the presiding officer's absolute lack of independence, manifest bias and prejudice, patent hostility, and inordinate haste. We find no reason to invalidate the election.

VELASCO, JR., *J., dissenting opinion*:

1. REMEDIAL LAW; INTEGRATED BAR OF THE PHILIPPINES (IBP); BOARD OF GOVERNORS; THE DESIGNATION OF AN IBP GOVERNOR PURSUANT TO A "TRADITION" WAS INVALID AND ILLEGAL.— It is well to note that even the IBP BoG recognizes that "it is delegates of the concerned IBP region who have the right to elect a successor" for the position of governor. Nevertheless, notwithstanding the express mandate of the aforementioned Section 44 of the IBP By-Laws, the IBP BoG still chose to deviate therefrom. By citing "tradition" as a justification for its actions, the IBP BoG, in effect, admits that, indeed, it did not comply with the required process of filling up the vacancy for the position of IBP Governor and had deliberately disregarded the IBP By-Laws. To my mind, this "tradition" or practice as the IBP claims,

even if done repeatedly and consistently, cannot hold sway in light of the express and clear provisions provided by the IBP By-Laws. As in an ordinary statute, the "violation or non-observance" of the IBP By-Laws "shall not be excused by disuse, or custom or practice to the contrary." The IBP BoG, more than anyone else, should be the first to abide with and encourage obedience to the provisions of the IBP By-Laws. It should not, as it could not, simply rely on what it believes is a "tradition" in the IBP to defeat a clear provision of the IBP By-Laws. Mere expediency will not excuse legal shortcuts. Hence, contrary to its position, the **IBP BoG is without authority to elect and designate Atty. Chaguile as replacement for Atty. Habawel**. The IBP By-Laws has, in no uncertain terms, vested this authority and right in favor of the delegates from the region where the vacancy occurred – which, in this case, should be the delegates from IBP Northern Luzon. Thus, by arrogating unto itself the right to choose the governor for IBP Northern Luzon, the IBP BoG overstepped the boundaries of its authority and had effectively deprived the concerned delegates of their right to choose and elect the Governor who should represent them in the board. There is likewise no basis for the IBP BoG – in fact, it does not even have the right – to assume that even if the choice of a replacement were left to the delegates of Northern Luzon, the likelihood is that Atty. Chaguile would have been elected. Furthermore, it must be emphasized that the IBP By-Laws was promulgated with this Court's approval. Hence, any change thereto or non-compliance therewith, constitutes a violation and travesty of this Court's supervisory authority over the Integrated Bar. Foregoing considered, there is no doubt that the designation of Atty. Chaguile as successor of IBP Northern Luzon Governor Atty. Habawel is **invalid** and **illegal**.

2. ID.; ID.; ID.; ID.; WHERE THE APPOINTMENT OF AN IBP GOVERNOR WAS VOID *AB INITIO,* HE CANNOT BE CONSIDERED AS A *DE FACTO* OFFICER; HE FAILED TO MEET ALL THE REQUISITES TO BE CONSIDERED AS A *DE FACTO* IBP GOVERNOR.— [C]ontrary to the conclusion in the *ponencia*, the essential elements to be a *de facto* officer are, to me, indisputably absent. Withal, Atty. Chaguile cannot be considered as such officer for any or a mix of the following reasons: *First*, there could be NO color

of authority for Atty. Chaguile's designation as IBP Governor of Northern Luzon since her **designation as governor is void on its face.** As erstwhile stated, Sections 44 of the IBP By-Laws clearly, unambiguously, and categorically provides that the authority to choose, elect and fill up the position of IBP Governor belongs to the delegates of the IBP Northern Luzon. Since it was the IBP BoG who made and approved the nomination, Atty. Chaguile's appointment as IBP Governor is void *ab initio* and hence, was made **without any semblance of authority**. It does not depict any "color of authority" but rather shows absolute **absence of authority**. x x x Thus, the second requisite is not satisfied. *Second,* Atty. Chaguile took *actual physical possession* of the subject office in **bad faith**. Being an officer of the Integrated Bar and, at that time, the incumbent chapter president of IBP Ifugao, she knew very well, or ought to have known, that under the third paragraph of Section 44 of the IBP By-Laws, the successor of a resigned governor is *elected by the delegates* of the concerned IBP Region, and NOT merely appointed or designated by IBP BoG. However, despite her presumptive awareness of this rule, Atty. Chaguile still deliberately and openly defied the said provision. On this score alone, it cannot be said that Atty. Chaguile had assumed the position as IBP Governor in good faith. There can be no quibbling that Atty. Chaguile was aware of the strong objections against her appointment by the IBP Western Visayas Region and, more importantly, of the majority of the incumbent delegates of IBP Northern Luzon. x x x Despite the foregoing adverse reactions to her appointment as successor-governor for Northern Luzon Region, Atty. Chaguile *still* had the audacity of assuming the position and performing the duties and functions as IBP Governor. x x x Consequently, the third requisite is likewise not satisfied. *Lastly,* the public and the stakeholders, specifically, the majority of the delegates of the IBP Northern Luzon Region for the term 2011 to 2013 never acquiesced in Atty. Chaguile's *ultra vires* appointment as successor governor. To reiterate, the majority of the delegates had expressed their "strong objection/opposition" to Atty. Chaguile's appointment and even passed a resolution calling for an election to choose Atty. Habawel's successor. It is thus clear that Atty. Chaguile utterly failed to meet the *second, third* and *fourth* requisites to be considered as a *de facto* IBP

Governor. Consequently, all her actions, including her supposed vote in favor of Atty. Joyas for the position of IBP EVP for term 2011-2013, should be treated as **invalid, illegal and hence, *without* any legal force and effect.**

3. ID.; ID.; ID.; ID.; ID.; THE ELECTION OF IBP EXECUTIVE VICE PRESIDENT WAS NOT VALID; REASONS.— As mandated by paragraph 2, Section 47 of the IBP By-Laws, to be validly elected as EVP, the candidate must obtain *at least five (5) votes*. Given that Atty. Chaguile's vote is without legal force and effect, Atty. Joyas for all intents and purposes only obtained four (4) valid votes, or **one (1) valid vote short** of the required five (5) votes threshold. ***Thus, the inevitable conclusion is that Atty. Vicente M. Joyas, IBP Governor for Southern Luzon, was NOT validly elected as IBP EVP on May 22, 2013.*** Furthermore, the May 22, 2013 election for the position of IBP EVP for the term 2011-2013 is tainted with infirmities which the *ponencia* obviously has overlooked. *First,* the presiding officer of the said EVP election – who was, at the same time, the chair of the Comelec – was devoid of authority to preside over the said EVP election. x x x *Second*, the Presiding Officer of the EVP election on May 22, 2013 lacked independence essential to a fair and credible EVP election. As appointee of one of the EVP candidates, his independence was compromised at the very inception.

APPEARANCES OF COUNSEL

Pacifico A. Agabin for IBP Board of Governors.

R E S O L U T I O N

LEONEN, *J.*:

This is yet another controversy involving the leadership of the Integrated Bar of the Philippines (IBP) that could have been resolved at the Integrated Bar of the Philippines' level but was instead referred to this Court, taking away precious resources that could have been better applied to resolve other conflicts for the public interest.

The consolidated cases involve two Administrative Matters. The first Administrative Matter (A.M. No. 13-04-03-SC) arose from a Motion filed by Atty. Marlou B. Ubano, IBP Governor for Western Visayas. Atty. Ubano sought to invalidate or have this Court declare as *ultra vires* the portion of the March 21, 2013 Resolution of the IBP Board of Governors which approved the nomination of Atty. Lynda Chaguile as replacement of IBP Governor for Northern Luzon, Denis B. Habawel. The second Administrative Matter arose from another Motion filed by Atty. Ubano who sought to nullify the May 22, 2013 election for IBP Executive Vice President (EVP) and restrain Atty. Vicente M. Joyas from discharging the duties of IBP EVP/Acting President. In a Resolution dated June 18, 2013, this Court consolidated the second Administrative Matter with the first.

A.M. No. 13-04-03-SC

The first Administrative Matter is an incident arising from: (1) A.M. No. 09-5-2-SC (*In the Matter of the Brewing Controversies in the Election in the Integrated Bar of the Philippines, Atty. Marven B. Daquilanea, Movant-Intervenor; Presidents of IBP Chapter in Western Visayas Region, Intervenors; IBP Capiz Chapter, Intervenor*); and (2) A.C. No. 8292 (*Attys. Marcial M. Magsino, Manuel M. Maramba, and Nasser Marohomsalic v. Attys. Rogelio A. Vinluan, Abelardo C. Estrada, Bonifacio T. Barandon, Jr., Evergisto S. Escalon, and Raymund Jorge A. Mercado*).

On March 27, 2013, Atty. Marlou B. Ubano, IBP Governor for Western Visayas, filed a Motion (Original Motion) in relation to A.M. No. 09-5-2-SC. Atty. Ubano sought to invalidate or have this Court declare as *ultra vires* the portion of the March 21, 2013 Resolution of the IBP Board of Governors which approved the nomination of Atty. Lynda Chaguile as the replacement of IBP Governor for Northern Luzon, Denis B. Habawel.

In this Original Motion, Atty. Ubano noted that on December 4, 2012, this Court approved an amendment to Article I, Section 4 of the IBP By-Laws which considers as *ipso facto* resigned from his or her post any official of the Integrated Bar of the Philippines who files a Certificate of Candidacy for any elective public office. Under the amended By-Laws, the resignation takes effect on the starting date of the official campaign period.[1]

Atty. Ubano alleged that the IBP Governor for Northern Luzon, Denis B. Habawel, filed a Certificate of Candidacy to run for the position of Provincial Governor of the Province of Ifugao on or before October 5, 2012, and that on or before December 21, 2012, IBP President, Roan Libarios, filed a Certificate of Substitution to run as a substitute congressional candidate for the First District of Agusan del Norte.[2]

Atty. Ubano further alleged that "[i]n light of the impending *ipso facto* resignation of Pres. Libarios on 30 March 2013,"[3] the IBP Board of Governors agreed to constitute a five (5)-member Executive Committee (Ex Com) to "prevent hiatus in the leadership of the IBP."[4] The Executive Committee was "tasked to temporarily administer the affairs of the IBP without prejudice to the outcome of the Honorable Court's resolution of the pending incident."[5] Atty. Ubano also alleged that Atty. Habawel nominated Atty. Lynda Chaguile, IBP Ifugao Chapter President, as his successor to the position of IBP Governor for Northern Luzon.[6]

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[1] *Rollo*, A.M. No. 13-04-03-SC, p. 2, Motion to Declare as Ultra Vires or Invalid (Re: Portion of IBP [Board of Governors] Omnibus Resolution dated 21 March 2013 Approving the Nomination of Atty. Chaguile, IBP Ifugao President, as replacement of IBP Governor for Northern Luzon Denis B. Habawel).

[2] *Id*. at 1-2.

[3] *Id*. at 2.

[4] *Id*.

[5] *Id*. at 2-3.

[6] *Id*. at 3.

Atty. Ubano claimed that Atty. Libarios began "dictating the tenor of the IBP [Board of Governors] Resolution about the creation of Ex Com"[7] and, without prior deliberation and voting, declared that the Board of Governors approved the succession of Atty. Chaguile as IBP Governor for Northern Luzon. Atty. Ubano, together with two (2) other IBP Governors, allegedly objected. However, when the matter was put to a vote, the other governors, Atty. Habawel included, approved Atty. Chaguile's replacement of Atty. Habawel as IBP Governor for Northern Luzon.[8]

In this Original Motion, Atty. Ubano challenged the IBP Board of Governor's approval of Atty. Chaguile's succession as IBP Governor for Northern Luzon on two grounds:

> First, there was, as yet, no vacancy. Atty. Habawel was himself present at the meeting where his replacement was named. There was, therefore, no need to name a replacement.[9]
>
> Second, the right to elect the successor of a resigned IBP Governor is vested, not in the IBP Board of Governors, but in the delegates of the concerned region; thus, the IBP Board of Governors' approval of the nominee to succeed Atty. Habawel is *ultra vires*.[10] In support of this second ground, Atty. Ubano cited the third paragraph of Section 44 of the IBP By-Laws:
>
> Sec. 44. Removal of members. x x x
>
> x x x [x]
>
> In case of any vacancy in the office of Governor for whatever cause, the delegates from the region shall by majority vote, elect a successor from among the members of the Chapter to which

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[7] *Id*.

[8] *Id*. at 2-3.

[9] *Id*. at 4.

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

the resigned governor is a member to serve as governor for the unexpired portion of the term.[11]

In a Resolution dated April 2, 2013, this Court resolved to treat this Original Motion as an Administrative Matter separate from A.M. No. 09-5-2-SC and A.C. No. 8292. It was re-docketed as A.M. No. 13-04-03-SC. This Court required the IBP Board of Governors to file its Comment.

In its Comment, the IBP Board of Governors assailed the first ground raised by Atty. Ubano by saying that it was not necessary for a position to be absolutely vacant before a successor may be appointed or elected.[12] As for the second ground, the IBP Board of Governors argued that it has been the "tradition"[13] of the Integrated Bar of the Philippines that "where the unexpired term is only for a very short period of time, it is usually the Board of Governors which appoint [sic] a replacement or an officer in charge to serve the unexpired term."[14] The IBP Board of Governors cited seven (7) precedents attesting to this "tradition":

1. On January 24, 1979, the IBP Board of Governors "unanimously resolved to designate Jose F. Lim, Vice President of the IBP Samar Chapter, [as] acting Governor and *ex-officio* Vice President for Eastern Visayas in view of the absence of Gov. Juan G. Figueroa."[15]

2. On June 1, 1984, the IBP Board of Governors approved the replacements of two (2) governors who resigned to run in the Batasang Pambansa elections:

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[11] *Id*. at 5.

[12] *Id*. at 22.

[13] *Id*. at 23.

[14] *Id*.

[15] *Id*. at 24 *citing* excerpts from the Minutes of the January 24, 1979 IBP Board of Governors Meeting, Annex "H" of the Comment, *rollo*, p. 54.

a. The President of the IBP Baguio-Benguet Chapter, Reynaldo A. Cortes, was elected by the IBP Board of Governors to replace Gov. Honorato Aquino who himself nominated Cortes;

b. "The President of the IBP Southern Leyte Chapter, Porfirio P. Siaynco, was elected by the Board to replace Gov. Cirilo Montejo."[16]

3. On January 27, 1989, the IBP Board of Governors "elected Nancy Sison Roxas, Treasurer of the House of Delegates, as Governor for Central Luzon" in lieu of Cesar L. Paras, who passed away.[17]

4. On October 7, 1991, Governor for Eastern Mindanao, Teodoro Palma Gil, who was previously appointed as a Regional Trial Court (RTC) judge, recommended that Teodoro Nano, Jr., President of the IBP Davao Oriental Chapter, be his replacement.[18] On November 8, 1991, Nano was eventually elected by the IBP Board of Governors as Governor for Eastern Mindanao.[19]

5. On September 26, 1998, the IBP "Board of Governors confirmed the designation of Teofilo S. Pilando, Jr. as Governor for Northern Luzon, to serve the unexpired portion of the term of Gov. Roy S. Pilando, who ran for public office."[20]

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[16] *Id. citing* excerpts from the Minutes of the June 1, 1984 IBP Board of Governors Meeting, Annex "G" of the Comment, *rollo*, p. 52.

[17] *Id. citing* excerpts from the Minutes of the January 27, 1989 IBP Board of Governors Meeting, Annex "F" of the Comment, *rollo*, pp. 50-51.

[18] *Id.* at 23-24 *citing* excerpts from the Minutes of the October 7, 1991 IBP Board of Governors Meeting, Annex "D" of the Comment, *rollo*, p. 46.

[19] *Id.* at 24 *citing* excerpts from the Minutes of the November 8, 1991 IBP Board of Governors Meeting, Annex "E" of the Comment, *rollo*, p.48.

[20] *Id.* at 23 *citing* excerpts from the Minutes of the September 26, 1998 IBP Board of Governors Meeting, Annex "C" of the Comment, *rollo*, pp. 44-45.

6. On September 12, 2002, the IBP Board of Governors "resolved to appoint acting Governor Rogelio Velarde as regular Governor of Southern Luzon Region after learning of the death of the regular Governor, Josefina S. Angara."[21]

7. On August 17, 2006, the IBP Board of Governors "appointed Abelardo C. Estrada as OIC for IBP Northern Luzon [in lieu of] Silvestre H. Bello who was facing a disqualification case as Governor of IBP Northern Luzon."[22]

In his Reply, Atty. Ubano questioned the IBP Board of Governors' claim that it is not necessary for a position to be absolutely vacant before a successor may be appointed or elected. Citing the third paragraph of Section 44 of the IBP By-Laws' use of the word "vacancy" (*i.e.*, "any *vacancy* in the office of Governor") and "resignation" (*i.e.*, "*resigned* governor"), Atty. Ubano claimed that the text of the By-Laws is "abundantly clear and unequivocal that there must be first a "vacancy" or a prior resignation before the delegates of the Region can lawfully elect a successor x x x."[23]

Atty. Ubano likewise challenged the precedents cited by the IBP Board of Governors and claimed that no such tradition of appointing the successor of a resigned governor existed.[24] He pointed out that prior to its amendment in March 2, 1993, the IBP By-Laws had allowed the IBP Board of Governors to elect, and not appoint, "a successor of a resigned Governor."[25] However, the amended By-Laws now require that a successor be elected

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[21] *Id.* at 23 *citing* excerpts from the Minutes of the September 12, 2002 IBP Board of Governors Meeting, Annex "B" of the Comment, *rollo*, pp. 42-43.

[22] *Id*. at 23 *citing* excerpts from the Minutes of the August 17, 2006 IBP Board of Governors Meeting, Annex "A" of the Comment, *rollo*, pp. 40-41.

[23] *Id.* at 148.

[24] *Id.* at 149.

[25] *Id*.

by the delegates of the concerned region.[26] Even if it were true that the IBP Board of Governors had a tradition of appointing the successor of a resigned governor, the tradition cannot be validated in view of the first paragraph of Article 7 of the Civil Code which reads:

> Article 7. Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary.[27]

Meanwhile, on April 23, 2013, Atty. Ubano filed another Motion (Urgent Motion to Defer/Restrain Performance of Duties as Successor Governor of IBP Northern Luzon Region) seeking to prevent Atty. Chaguile from exercising the functions of IBP Governor for Northern Luzon.

This Court also received on May 16, 2013 an undated Resolution purportedly signed by delegates of the IBP Northern Luzon Region. The signatories called for an election on May 18, 2013 to name Atty. Habawel's successor.

On May 20, 2013, these same signatories filed before this Court their Opposition to Atty. Chaguile's nomination. As with the second ground cited by Atty. Ubano in his Original Motion, this Opposition was anchored on the third paragraph of Section 44 of the IBP By-Laws.

Also on May 20, 2013, Atty. Ubano filed a "Motion for Leave to File Reply with Very Urgent Motion to Restrain Atty. Chaguile from Voting in the EVP Election on 22 May 2013."[28] Attached to the Motion was his "Reply with Very Urgent Motion to Restrain Atty. Chaguile from Voting in the EVP Election on 22 May 2013."[29] Atty. Ubano also sent a letter to Associate

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[26] *Id.* at 150-151.

[27] *Id.* at 151.

[28] *Id.* at 97-98.

[29] *Id.* at 99-109.

Justice Mariano C. del Castillo "pray[ing] and beg[ging] the indulgence of the Honorable Court to immediately restrain Atty. Lynda Chaguile from voting in the IBP [Executive Vice President] Election to be held on 22 May 2013."[30]

In a Resolution dated June 4, 2013, this Court required the IBP Board of Governors to file its Comment on Atty. Ubano's (1) Urgent Motion to Defer/Restrain Performance of Duties as Successor Governor of IBP Northern Luzon Region; (2) Motion for Leave to File Reply; and (3) Reply. It also required the IBP Board of Governors to comment on the Opposition filed by the signatories purporting to be the delegates of the IBP Northern Luzon Region.

On July 8, 2013, the IBP Board of Governors filed a Compliance (*i.e.*, Comment in Compliance) with this Court's June 4, 2013 Resolution.

With respect to Atty. Ubano's Urgent Motion to Defer/Restrain Performance of Duties as Successor Governor of IBP Northern Luzon Region, the IBP Board of Governors pointed out that Atty. Chaguile's term expired on June 30, 2013.[31]

As to the Opposition filed by signatories purporting to be the delegates of the IBP Northern Luzon Region, the IBP Board of Governors alleged that the term of the House of Delegates of Northern Luzon for 2011 to 2013 expired on March 31, 2013. As such, the Opposition signed by the purported delegates was *ultra vires*, and therefore, null and void.[32] The IBP Board of Governors pointed out that "[t]he issue about the eligibility of Atty. Lynda Chaguile as replacement Governor for Atty. Denis B. Habawel was traversed over in the Comment x x x dated April 24, 2013."[33]

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[30] *Id.* at 112.

[31] *Id.* at 174.

[32] *Id.* at 175.

[33] *Id.*

A.M. No. 13-05-08-SC

The second Administrative Matter assails the conduct of the May 22, 2013 election of the IBP Executive Vice President (EVP). In this election, Atty. Vicente M. Joyas was elected IBP Governor for Southern Luzon.

On May 31, 2013, Atty. Ubano filed an Urgent Omnibus Motion to (1) nullify the May 22, 2013 IBP Executive Vice President election and (2) restrain Atty. Vicente M. Joyas from discharging the duties of EVP/Acting President. This Motion was docketed as A.M. No. 13-05-08-SC. In this Court's Resolution dated June 18, 2013, this Administrative Matter was consolidated with A.M. No. 13-04-03-SC (the first Administrative Matter).

Atty. Ubano sought to nullify the May 22, 2013 election on two (2) grounds:

> First, he claimed that the IBP election of the EVP was marred by inordinate haste, grave irregularities, patent hostility, manifest bias and prejudice, as well as the presiding officer's absolute lack of independence.[34]
>
> Second, he claimed that the election violated Section 47 of the IBP By-Laws which requires that the EVP be elected by a vote of at least five (5) Governors. Atty. Ubano emphasized that Atty. Chaguile's vote in favor of Atty. Joyas was invalid, as Atty. Chaguile's appointment as governor was itself *ultra vires*, and therefore, void *ab initio*.

Section 47 of the IBP By-Laws, as amended pursuant to this Court's Resolution dated April 11, 2013 in A.M. No. 09-5-2-SC and A.C. No. 8292, now reads:

> Sec. 47. Election of National President Executive Vice President. – The Integrated Bar of the Philippines shall have a President, an Executive Vice President, and nine (9) regional Governors. The Governors shall be *ex-officio* Vice President for their respective regions.

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[34] *Id*.

The Board of Governors shall elect the President and Executive Vice President from among themselves each by a vote of at least five (5) Governors. Upon expiration of the term of the President, the Executive Vice-President shall automatically succeed as President.

In the Compliance that the IBP Board of Governors filed in A.M. No. 13-04-03-SC, it addressed Atty. Ubano's allegations as follows:

1. On the conduct of the election

    a. The Report on the Conduct of Election filed by the Regional Trial Court-Pasig Executive Judge (and Supreme Court Designated Observer)[35] indicates that Atty. Ubano's objection to the appointment of the presiding officer was thoroughly discussed and properly put to a vote.[36] Further, there is no factual basis for claiming that the presiding officer was not independent. Atty. Ubano was also noted to have been allowed the most number of interventions and the longest time spent for deliberations.[37]

    b. Atty. Ubano was properly ruled out of order when he moved that the elections be moved to a later date and when he objected to the participation of Atty. Chaguile.[38]

2. On the supposed invalidity of Atty. Chaguile's vote, the IBP Board of Governors pointed out that, as of the time of the election, there was no basis for invalidating the vote.[39]

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[35] *Id.* at 187-191.

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

[37] *Id.* at 178.

[38] *Id.* at 177.

[39] *Id.* at 178.

Stripped of technical maneuverings and legal histrionics, we are called to rule upon the validity of Atty. Lynda Chaguile's appointment as IBP Governor for Northern Luzon in lieu of Atty. Denis B. Habawel. The resolution of this matter is decisive of the validity of her acts as IBP Governor for Northern Luzon — including her participation in the election of the IBP EVP.

Likewise, we are asked to review the conduct of the election for the IBP EVP. We must determine whether the election was attended by irregularities, biases, and prejudice that would invalidate its results.

We note that certain issues raised in several Motions filed as part of the first Administrative Matter have been rendered moot and academic.

In the first Administrative Matter, Atty. Ubano sought to (1) declare as *ultra vires* or as invalid the portion of the IBP Board of Governors Omnibus Resolution dated March 21, 2013 which approved the nomination of Atty. Chaguile as IBP Governor for Northern Luzon in lieu of Atty. Denis Habawel and (2) restrain Atty. Chaguile from exercising the functions of IBP Governor for Northern Luzon, among which was voting in the May 22, 2013 election for IBP EVP. Also in the first Administrative Matter, several signatories purporting to be the delegates of the IBP Northern Luzon Region opposed Atty. Chaguile's nomination on substantially the same grounds as Atty. Ubano.

As pointed out by the IBP Board of Governors in its Compliance, "the term of Atty. Lynda Chaguile as Governor for Northern Luzon expired on June 30, 2013."[40] A new Governor for Northern Luzon, Atty. Oliver Cachapero, was elected.[41] As Atty. Chaguile is no longer serving as IBP Governor for Northern Luzon, the matter of ousting or restraining Atty. Chaguile from

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[40] *Id.* at 174.

[41] *Id. citing* the Agreement between candidates Atty. Edwin Betguen and Atty. Oliver Cachapero, Annex "A" of the Compliance, *rollo*, p. 183 and Excerpts from the Minutes of the Meeting of the Board of Governors Held on May 31, 2013, Annex "B" of the Compliance, *rollo*, p. 185.

exercising the functions of such office is no longer an available relief.

As we have explained in *Pormento v. Estrada*:[42]

> As a rule, this Court may only adjudicate actual, ongoing controversies. The Court is not empowered to decide moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the result as to the thing in issue in the case before it. In other words, when a case is moot, it becomes non-justiciable.
>
> An action is considered "moot" when it no longer presents a justiciable controversy because the issues involved have become academic or dead or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties. There is nothing for the court to resolve as the determination thereof has been overtaken by subsequent events.[43]

However, we recognize that the validity of Atty. Chaguile's appointment as Governor for Northern Luzon affects the validity of her actions as the occupant of this office, especially her participation in the IBP Board of Governors' election of the IBP EVP, which is the subject of the second Administrative Matter.

Atty. Ubano cited two grounds as bases for claiming that the IBP Board of Governors improperly approved Atty. Chaguile's succession as Governor for Northern Luzon. First, there was no vacancy at the time of Atty. Chaguile's designation. Atty. Habawel was then still Governor for Northern Luzon, and there was no need to name a replacement yet. Second, the IBP Board of Governors acted *ultra vires* or beyond its competence considering that the third paragraph of Section 44 of the IBP By-Laws vests the right to elect the successor of a resigned IBP governor in the delegates of the concerned region and not in the IBP Board of Governors.

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[42] G.R. No. 191988, August 31, 2010, 629 SCRA 530.

[43] *Id*. at 533-534 citing *Honig v. Doe*, 484 U.S. 305 (1988) and *Santiago v. Court of Appeals*, 348 Phil. 792 (1998).

On the first ground, we sustain the position of the IBP Board of Governors.

Indeed, it is not only erroneous but also absurd to insist that a vacancy must actually and literally exist at the *precise* moment that a successor to an office is identified. Where a vacancy is anticipated with reasonable certainty — as when a term is ending or the effectivity of a resignation or a retirement is forthcoming — it is but reasonable that those who are in a position to designate a replacement act promptly. New officials are elected before the end of an incumbent's term; replacements are recruited (and even trained) ahead of an anticipated resignation or retirement. This is necessary to ensure the smooth and effective functioning of an office. Between prompt and lackadaisical action, the former is preferable. It is immaterial that there is an identified successor-in-waiting so long as there are no simultaneous occupants of an office.

On the second ground, the third paragraph of Section 44 of the IBP By-Laws clearly provides that "the delegates from the region shall by majority, elect a successor from among the members of the Chapter to which the resigned governor is a member." There is no ambiguity in this text. We are surprised that the IBP — an institution expected to uphold the rule of law — has chosen to rely on "tradition" to validate its action.

The IBP Board of Governors arrogated unto itself a power which is vested in the delegates of the concerned IBP region. This arrogation is a manifest violation of the clear and unmistakable terms of the IBP's By-Laws. We cannot countenance this. No amount of previous practice or "tradition" can validate such a patently erroneous action. It is, therefore, clear that Atty. Chaguile's designation as IBP Governor for Northern Luzon is tainted with irregularity, and therefore, invalid.

Nevertheless, following the adoption of the IBP Board of Governors Omnibus Resolution dated March 21, 2013 at the time Atty. Ubano filed the Original Motion and up until June

30, 2013 when her "term x x x expired,"[44] Atty. Chaguile acted as and performed the functions of the IBP Governor for Northern Luzon. This is an *accomplished fact* which no amount of legal abstraction can undo. It is in this context, with the backdrop of this consummated truth, that we rule on the Administrative Matters before us. Given these circumstances, we hold that Atty. Chaguile took on the role of IBP Governor for Northern Luzon in a *de facto* capacity.

De facto means "in point of fact."[45] To speak of something as being *de facto* is, thus, to say that it is "[a]ctual [or] existing in fact"[46] as opposed to "[e]xisting by right or according to law,"[47] that is, *de jure*. Being factual though not being founded on right or law, *de facto* is, therefore, "illegitimate but in effect."[48]

The concept of a *de facto* officer was explained in *Civil Service Commission v. Joson, Jr.*:[49]

> The broad definition of what constitutes an officer *de facto* was formulated by Lord Holt in *Parker v. Kent*, and reiterated by Lord Ellenborough and full King's Bench in 1865 in *Rex v. Bedford Level*, "One who has the reputation of being the officer he assumes and yet is not a good officer in point of law." A *de facto* officer is one who is in possession of the office and discharging its duties under color of authority. By color of authority is meant that derived from an election or appointment, **however irregular or informal**, so that the incumbent is not a mere volunteer.[50] (Emphasis and underscoring supplied)

A *de facto* officer is distinguished form a *de jure* officer, as follows:

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[44] *Rollo*, p. 174.

[45] *BLACK'S LAW DICTIONARY* 448 (Eighth Ed., 2004).

[46] *Id*.

[47] *Id.* at 458.

[48] *Id.* at 448.

[49] 473 Phil. 844 (2004).

[50] *Id.* at 858-859 citing *State v. Oates*, 57 N.W. 296 (1983).

The difference between the basis of the authority of a *de jure* officer and that of a *de facto* officer is that one rests on right, the other on reputation. It may be likened to the difference between character and reputation. One is the truth of a man, the other is what is thought of him.[51]

Moreover, as against a mere usurper, "[i]t is the color of authority, not the color of title that distinguishes an officer *de facto* from a usurper."[52] Thus, a mere usurper is one "who takes possession of [an] office and undertakes to act officially without any color of right or authority, either actual or apparent."[53] A usurper is no officer at all.[54]

The expanse of the *de facto* doctrine was established early in the development of our jurisprudence. In *Luna v. Rodriguez*,[55] the doctrine was established to contemplate situations

where the duties of the office were exercised: (*a*) Without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people, without inquiry, to submit to or invoke his action, supposing him to be the officer he assumes to be; (*b*) under color of a known or valid appointment or election, where the officer has failed to conform to some precedent requirement or condition, for example, a failure to take the oath or give a bond, or similar defect; (*c*) under color of a known election or appointment, **void** because the officer was not eligible, or because there was a **want of power in the electing or appointing body**, or by reason of some defect or irregularity in its exercise, such ineligibility, want of power or defect being unknown to the public; and (*d*) under color of an election, or appointment, by or pursuant

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[51] *Id.* at 859 citing *Ridout v. State*, 30 S.W. 2d. 255 (1930).

[52] *Id.* citing *Ekern v. McGovern*, 142 N.W. 595 (1913).

[53] H. S. DE LEON and H. M. DE LEON, JR., *THE LAW ON PUBLIC OFFICERS AND ELECTION LAW*, 112 (2008) *citing* 63A Am. Jur. 2d 1082.

[54] *Id.*

[55] 37 Phil. 186 (1917) citing *State v. Carroll*, 38 Conn., 449; *Wilcox v. Smith*, 5 Wendell [N. Y.], 231; 21 Am. Dec., 213; *Sheehan's Case*, 122 Mass., 445; 23 Am. Rep., 323.

to a public unconstitutional law, before the same is adjudged to be such.[56] (Emphases and underscoring supplied)

This coverage, affirmed and reiterated in subsequent jurisprudence,[57] unequivocally includes officers whose election is void because the body that elected (or otherwise designated) them lacked the capacity to do so. This is precisely the situation in this case: The power to elect an IBP Governor is lodged in the delegates of the concerned region, not in the IBP Board of Governors; yet the IBP Board of Governors approved Atty. Chaguile's nomination as IBP Governor for Northern Luzon.

To be a *de facto* officer, all of the following elements must be present:

1) There must be a *de jure* office;

2) There must be color of right or general acquiescence by the public; and

3) There must be actual physical possession of the office in good faith.[58] (Underscoring supplied)

In the present case, there is no dispute that a *de jure* office — that of IBP Governor for Northern Luzon — exists.

Neither is there any dispute that Atty. Chaguile took possession of and performed the functions of such office. In fact, the Motions submitted as part of the first Administrative Matter were precisely intended to put a stop to her performance of these functions.

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[56] *Id*. at 192 citing *State v. Carroll*, 38 Conn., 449; *Wilcox v. Smith*, 5 Wendell [N. Y.], 231; 21 Am. Dec., 213; *Sheehan's Case*, 122 Mass., 445; 23 Am. Rep., 323.

[57] *Aparri v. Court of Appeals*, 212 Phil. 215, 223 (1984) and *Flores v. Drilon*, G.R. No. 104732, June 22, 1993, 223 SCRA 568, 582.

[58] *Tuanda v. Sandiganbayan*, 319 Phil. 460, 472 (1995) citing H. S. DE LEON and H. M. DE LEON, JR., *THE LAW ON PUBLIC OFFICERS AND ELECTION LAW*, 87-88 (1990).

Likewise, Atty. Chaguile took possession of and performed the functions of the IBP Governor for Northern Luzon through a process, albeit "irregular or informal, so that [she] is not a mere volunteer,"[59] that is, not through her own actions but through those of the IBP Board of Governors. Thus, she did so under "color of authority," as defined in settled jurisprudence (*e.g.*, *Civil Service Commission v. Joson, Jr.*,[60] *Dimaandal v. Commission on Audit*,[61] and *Dennis A.B. Funa v. Acting Secretary of Justice Alberto C. Agra*).[62]

The IBP Board of Governors' approval was secured through a process that it characterized as a "tradition," allowing it to appoint a replacement for an officer who vacates his or her office shortly before his or her term expires. It cited seven (7) cases, spanning a period of more than twenty-six (26) years, in which this tradition was exercised. Of these, three (3) occurred after the March 2, 1993 amendment of the IBP By-Laws which requires that a successor governor be elected by the delegates of the concerned region. Thus, the "tradition" persisted even after the amended By-Laws had vested the power to elect a replacement in the delegates of the concerned region.

Being in violation of the IBP By-Laws (as amended on March 2, 1993), this supposed tradition cannot earn our imprimatur. Be that as it may, in all of the occasions cited by the IBP Board of Governors, the authority of replacement

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[59] *Civil Service Commission v. Joson, Jr.*, 473 Phil. 844, 859 (2004). See also *Dimaandal v. Commission on Audit*, 353 Phil. 525, 534 (1998) citing PHILIPPINE LAW DICTIONARY, p. 192 and *Dennis A.B. Funa v. Acting Secretary of Justice Alberto C. Agra*, G.R. No. 191644, February 19, 2013, 691 SCRA 196, 224 citing *Civil Service Commission v. Joson, Jr.*, G.R. No. 154674, May 27, 2004, 429 SCRA 773, 786-787 and *Dimaandal v. Commission on Audit*, 353 Phil. 525, 534 (1998).

[60] 473 Phil. 844 (2004).

[61] 353 Phil. 525, 534 (1998) citing PHILIPPINE LAW DICTIONARY, p. 162.

[62] G.R. No. 191644, February 19, 2013, 691 SCRA 196, 224 citing *Civil Service Commission v. Joson, Jr.*, G.R. No. 154674, May 27, 2004, 429 SCRA 773, 786-787 and *Dimaandal v. Commission on Audit*, 353 Phil. 525, 534 (1998).

governors was derived from a process, which, though irregular, enabled them to act as *and be accepted* as governors. It was with this backdrop that Atty. Chaguile herself was designated as IBP Governor for Northern Luzon. Illumined by this context, the color of authority or right under which Atty. Chaguile became IBP Governor for Northern Luzon is all the more stark.

This same color of authority or right negates any insinuation that Atty. Chaguile assumed office out of her own design or contrivance; that is, that she did so in bad faith. She precisely relied on established practice, now established as invalid but nevertheless historically accepted.

Atty. Ubano alleged that then IBP President Roan Libarios imposed upon the IBP Board of Governors the approval of Atty. Chaguile's nomination; that Atty. Habawel wrongly participated in the vote to approve Atty. Chaguile's nomination; and that the IBP Board of Governors itself violated the IBP By-Laws. Yet, he failed to allege that Atty. Chaguile was *herself* a party to any scheme or artifice that might have been designed so that she would be able to secure the IBP Governorship for Northern Luzon. Furthermore, no evidence was presented to show that there was coercion imposed on the other governors of the Integrated Bar of the Philippines.

We note that on May 16, 2013, signatories claiming to be delegates of the IBP Northern Luzon Region submitted to this Court a copy of an undated Resolution calling for an election to name Atty. Denis B. Habawel's successor as IBP Governor for Northern Luzon. We also note that on May 20, 2013, the same individuals submitted their Opposition to Atty. Chaguile's nomination as Atty. Habawel's replacement. On the basis of this, there appears to be a ground for arguing that there was no "general acquiescence by the public"[63] to Atty. Chaguile's having replaced Atty. Habawel.

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[63] *Tuanda v. Sandiganbayan*, 319 Phil. 460, 472 (1995) citing H. S. DE LEON and H. M. DE LEON, JR., *THE LAW ON PUBLIC OFFICERS AND ELECTION LAW*, 87-88 (1990).

The second requisite for being a *de facto* officer, as spelled out in *Tuanda v. Sandiganbayan*,[64] reads: "There must be color of right or general acquiescence by the public."[65] Clearly, the requisite is stated in the alternative. Color of right also suffices. We have already discussed how Atty. Chaguile took on the role of IBP Governor for Northern Luzon with color of right (or authority).

We fail to see how the action of six (6) individuals[66] sustains the assertion that the public never acquiesced to Atty. Chaguile's having replaced Atty. Habawel. The requisite speaks of "general acquiescence." To be "general" is not to be "absolute." It is to speak of a commonality that exists *for the most part* but not necessarily *entirely*. It admits of exceptions. That there are those who count themselves as objectors merely attests to their existence. It does not, in and of itself, repudiate that which may generally exist. Thus, to equate the action of a handful of active objectors with the utter lack of "general acquiescence" would be *non sequitur*.

Granting that these six (6) individuals are in fact the legitimate delegates of the IBP Northern Luzon Region and even if we disregard their sheer number, they still fail to represent or embody the "public." They are direct participants, having been the individuals whose right to elect the IBP Governor for Northern Luzon was supposedly undermined. Precisely, their being direct participants – meaning, persons whose supposed rights were violated – makes them actual parties to the controversy. That they themselves chose to file an Opposition and submit themselves to this Court's adjudication of this case evidences their own acknowledgement of this.

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[64] *Id*.

[65] *Id*. at 472 *citing* H. S. DE LEON and H. M. DE LEON, JR., *THE LAW ON PUBLIC OFFICERS AND ELECTION LAW*, 87-88 (1990).

[66] Two of those whose names are indicated in the Resolution and Opposition, Francis B. Calsiyao and Franklin B. Calpito, did not actually sign the Resolution and Opposition.

The *de facto* doctrine was devised to benefit the public. On the validity of actions made by *de facto* officers, it is settled that "the acts of the *de facto* officer are just as valid for all purposes as those of a *de jure* officer, in so far as the public or third persons who are interested therein are concerned."[67] This is premised on the reality that "[t]hird persons x x x cannot always investigate the right of one assuming to hold an important office. They have a right to assume that officials apparently qualified and in office are legally such."[68]

The third party affected by the nature of the assumption into office by Atty. Chaguile is the mass of lawyers belonging to the Integrated Bar of the Philippines. Again, the whole legal profession becomes witness to how the selection of its leaders has practically become annual intramurals of both political and legal controversy. In our April 11, 2013 Resolution in A.M. No. 09-5-2-SC and A.C. No. 8292, we observed that this has brought about disenchantment within the ranks of the Integrated Bar of the Philippines. In truth, many suspect that these elections are contests between exclusive groups that maneuver to find allies year in and year out to control the helm of this mandatory lawyers' organization.

The disposition we give to this case is also partly to quiet these conflicts and to deny any reward to further legal controversy. After all, in our April 11, 2013 Resolution in A.M. No. 09-5-2-SC and A.C. No. 8292, we created a permanent Committee for IBP Affairs "to primarily attend to the problems and needs of a very important professional body and to make recommendation for its improvement and strengthening."[69]

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[67] *Funa v. Agra, supra* note 62, at 224 citing F. R. MECHEM, *A TREATISE ON THE LAW OF PUBLIC OFFICES AND OFFICERS* 10, 218 (1890); *Topacio v. Ong*, G.R. No. 179895, December 18, 2008, 574 SCRA 817, 829-830.

[68] H. S. DE LEON and H. M. DE LEON, JR., *THE LAW ON PUBLIC OFFICERS AND ELECTION LAW* 120 (2008) *citing* 63A Am. Jur. 2d 1098-1099.

[69] *In the Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines,* A.M. No. 09-5-2-SC, April 11, 2013, 696 SCRA 8, 46 and *Magsino v. Vinluan,* A.C. No. 8292, April 11, 2013, 696 SCRA 8, 46.

Should that initiative still fail, this Court should seriously review the present modality of the Integrated Bar. Instead of individual membership, a more functional alternative might be organizational membership. This means that voluntary organizations such as the Free Legal Assistance Group (FLAG), the Alternative Law Groups (ALG), the Philippine Bar Association (PBA), the U.P. Women Lawyers' Circle (WILOCI), and other organizations can coalesce and nominate leaders to comprise a council. Thus, every lawyer will have a mature choice to determine which of these organizations best represents his or her interests. This harmonizes better with their right to free association.

All considered, the circumstances under which Atty. Chaguile's nomination was approved and under which Atty. Chaguile subsequently assumed the role of IBP Governor for Northern Luzon are sufficient to induce a *general* belief that she was properly the IBP Governor for Northern Luzon and that her actions in this office were properly invoked.

Having said these, we agree with a point raised by Atty. Ubano. As with statutes, the IBP By-Laws' "violation or non-observance [ought] not be excused by disuse, or custom, or practice to the contrary."[70] We do not validate the IBP Board of Governors' erroneous practice. To reiterate our earlier words: "We cannot countenance this. No amount of previous practice or "tradition" can validate such a patently erroneous action."

Nonetheless, even as we decry the IBP Board of Governor's reliance on "tradition," we do not lose sight of the fact, palpable and immutable, that Atty. Chaguile has so acted as IBP Governor for Northern Luzon. Thankfully, our legal system has an established means through which we are able to avert the "chaos that would result from multiple and repetitious [challenges to] every action taken by [an] official whose claim to office could be open to question."[71] It is strictly in view of this that

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[70] CIVIL CODE, Art. 7.

[71] H. S. DE LEON and H. M. DE LEON, JR., *THE LAW ON PUBLIC OFFICERS AND ELECTION LAW*, 110 (2008) citing 63A Am. Jur. 2d 1081.

we make a determination that Atty. Chaguile was the *de facto* IBP Governor for Northern Luzon. We are not validating a wrong; we are merely addressing an exigency.

Having established that Atty. Chaguile was the IBP Governor for Northern Luzon in a *de facto* capacity, we turn to the validity of her actions as a *de facto* officer.

To reiterate, one that is *de facto* is "illegitimate but in effect."[72] Thus, it is settled that "the acts of the *de facto* officer are just as valid for all purposes as those of a *de jure* officer, in so far as the public or third persons who are interested therein are concerned."[73] This is necessary so as to protect the sanctity of their dealings with those relying on their ostensible authority: "[t]hird persons x x x cannot always investigate the right of one assuming to hold an important office. They have a right to assume that officials apparently qualified and in office are legally such."[74]

Accordingly, we hold that all official actions of Atty. Chaguile as *de facto* IBP Governor for Northern Luzon must be deemed valid, binding, and effective, as though she were the officer validly appointed and qualified for the office. It follows that her participation and vote in the election for IBP EVP held on May 22, 2013 are in order.

We now proceed to the points raised by Atty. Ubano assailing the conduct of the May 22, 2013 election for the IBP EVP.

The Report on the Conduct of Election prepared by this Court's designated observer, Executive Judge Danilo S. Cruz, reveals that Atty. Ubano's objections were properly and thoroughly discussed. He was given a considerable length of time to air

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[72] *BLACK'S LAW DICTIONARY* 448 (Eighth Ed., 2004).

[73] *Funa v. Agra*, *supra* note 59, at 10 and 224 citing F. R. MECHEM, *A TREATISE ON THE LAW OF PUBLIC OFFICES AND OFFICERS* 10, 218 (1890); *Topacio v. Ong*, G.R. No. 179895, December 18, 2008, 574 SCRA 817, 829-830.

[74] H. S. DE LEON and H. M. DE LEON, JR., *THE LAW ON PUBLIC OFFICERS AND ELECTION LAW*, 120 (2008) citing 63A Am. Jur. 2d 1098-1099.

and argue his points. It was only after thorough discussions that Atty. Ubano's Motion to postpone the elections — which he insisted on raising even when the body was in the process of nominating candidates for the position of EVP — was declared out of order.[75] Atty. Ubano himself was then nominated for IBP EVP.[76] He accepted his nomination subject to the resolution of his Motion for Reconsideration in A.M. No. 09-5-2-SC and A.C. No. 8292, as well as the resolution of the first Administrative Matter.[77]

Before the members of the IBP Board of Governors placed their votes, Atty. Ubano had sought to have Atty. Chaguile's ballot segregated and sealed pending the resolution of his Motion for Reconsideration in A.M. No. 09-5-2-SC and A.C. No. 8292, as well as the resolution of the first Administrative Matter. His Motion was denied.[78] Votes were then cast, followed by tally and canvassing. After the votes had been tallied, Atty. Vicente M. Joyas received five (5) votes while Atty. Ubano received four (4) votes. The Certificate of Election was then prepared, certified by the presiding officer and noted by this Court's observer.[79]

Atty. Ubano was accorded more than an ample opportunity to argue his position. More importantly, his position was amply considered by the body. Another IBP governor, IBP Greater Manila Governor Dominic C. M. Solis, even initially supported Atty. Ubano's insistence that the election be postponed, but Atty. Solis subsequently withdrew his support.[80]

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[75] *Rollo*, A.M. No. 13-04-03-SC, p. 187, Report on the Conduct of Election of the Executive Vice President of the Integrated Bar of the Philippines for 2011-2013 on May 22, 2013, Annex "D" of the Compliance.

[76] *Id.* at 190.

[77] *Id.*

[78] *Id.*

[79] *Id.* at 191.

[80] *Id.* at 190.

In his Urgent Omnibus Motion which gave rise to the second Administrative Matter, Atty. Ubano made an issue out of Atty. Vicente M. Joyas' having designated IBP National Secretary Nasser A. Marohomsalic as Chairman of the Commission on Elections considering that Atty. Joyas supposedly lacked the authority to do so. Atty. Ubano made much of Atty. Joyas' status as IBP Governor for Southern Luzon. Atty. Ubano, however, lost sight of the fact that Atty. Joyas was likewise the Chairman of the IBP Executive Committee.

The Report on the Conduct of Election prepared by Executive Judge Danilo S. Cruz recalls the pertinent events as follows:

> The election was scheduled at 11 A.M. Chairman Joyas called the meeting to order at 11:05 A.M. National Secretary Marohomsalic certified that all members of the Board were notified of the election schedule and that with the presence of five (5) members of the Board,[81] there was a quorum. The Chairman placed on record that the undersigned Court Observer was in attendance.
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> Chairman Joyas said the meeting was for the purpose of electing the EVP for 2011-2013 and designated the COMELEC for the election, thus: Secretary Marohomsalic as Chairman, Atty. Rosario T. Setlas-Reyes, as second member, and IBP Head Executive Assistant Aurora G. Geronimo as third member and recorder of the proceedings. Chairman Joyas then relinquished the Chair to COMELEC Chairman Nasser A. Marohomsalic.[82]

Atty. Ubano's own description of the circumstances leading to the creation of the Executive Committee states:

> In light of the impending *ipso facto* resignation of Pres. Libarios on 30 March 2013 which is the start of the official campaign period, the IBP [Board of Governors] discussed a mechanism to prevent hiatus [sic] in the leadership of the IBP. After debate and deliberation, it was agreed to constitute a five (5)[-]member Executive Committee

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[81] Other members arrived at later times.

[82] *Id.* at 187.

("Ex Com") tasked to temporarily administer the affairs of the IBP x x x.[83]

From Atty. Ubano's description of the Executive Committee's function, it is evident that its principal purpose is to ensure that the functions of the IBP National President shall continue to be performed despite IBP National President Roan Libarios' resignation. Conformably with the Omnibus Resolution creating the Executive Committee, Atty. Vicente M. Joyas was designated as the Executive Committee Chairman. It is pursuant to this designation and the Executive Committee's general function that Atty. Joyas designated the Commission on Elections for the election of the IBP EVP.

Further, Section 50 (d) of the IBP By-Laws provides:

> (d) Secretary: The Secretary shall attend all meetings of the Board of Governors, and keep a record of all the proceedings thereof; prepare and maintain a register of all members of the Integrated Bar; notify national officers as well as members of national committees of their election or appointment; cause to be prepared the necessary official ballots for the election of Governors; and perform such other duties as are assigned to him by these By-Laws, by the President and by the Board of Governors. (Underscoring supplied)

As IBP National Secretary, Atty. Marohomsalic may, therefore, properly perform such other duties assigned to him by the IBP National President. Thus, Atty. Vicente M. Joyas, acting for the IBP Executive Committee (in his capacity as its Chairman) and pursuant to the Executive Committee's purpose of ensuring that the functions of the IBP National President shall continue to be performed, was in a position to designate the IBP National Secretary to perform a duty other than those explicitly articulated in the IBP By-Laws. As regards this case, that duty was to be

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[83] *Id*. at 2-3, Motion to Declare as *Ultra Vires* or Invalid (Re: Portion of IBP [Board of Governors] Omnibus Resolution dated 21 March 2013 Approving the Nomination of Atty. Chaguile, IBP Ifugao President, as replacement of IBP Governor for Northern Luzon Denis B. Habawel).

the duty of the Chairman of the Commission on Elections. In turn, it was in his capacity as Commission on Elections Chairman that Atty. Marohomsalic presided over the conduct of the election.

In sum, we fail to see how the election could have been tainted with the presiding officer's absolute lack of independence, manifest bias and prejudice, patent hostility, and inordinate haste.[84] We find no reason to invalidate the election.

The Integrated Bar of the Philippines has long been beset by leadership crises. Our April 11, 2013 Resolution in A.M. No. 09-5-2-SC and A.C. No. 8292 — the same cases from which the subject matter of this Resolution arose — chronicled the long, acrimonious history of the leadership of the Integrated Bar of the Philippines. It is, at the very least, strange that the Integrated Bar has suffered these episodes while other lawyers' organizations have not. Again, it is worthwhile to consider if there are other means of integrating the members of the Bar — alternative ways that might enable the Integrated Bar to satisfy its objectives more effectively, democratize its leadership, and minimize its need to seek the intervention of this Court.

The leadership of our Integrated Bar must find a better way of resolving its conflicts other than elevating these matters to this Court. It cannot fail to show maturity in resolving its own conflicts. It behooves the members of the legal profession to avoid being so litigious that they lose sight of the primordial public interests that must be upheld in every case and conflict that is raised to the level of this Court.

Otherwise, the Integrated Bar of the Philippines will continue to alienate its mass membership through political contestations that may be viewed as parochial intramurals from which only a few lawyers benefit. It will be generations of leaders who model needless litigation and wasted time and energy. This is not what an integrated bar of a noble profession should be.

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[84] *Id.* at 175.

WHEREFORE, the Motion to Declare dated March 27, 2013 as *Ultra Vires* or Invalid the Urgent Motion to Defer/Restrain Performance of Duties as Successor Governor of IBP Northern Luzon Region dated April 22, 2013 and the Very Urgent Motion to Restrain Atty. Chaguile from Voting in the EVP Election on May 22, 2013 dated May 20, 2013 filed by Atty. Marlou B. Ubano are **DENIED** for being moot and academic.

We **DECLARE** that Atty. Lynda Chaguile was indeed a *de facto* officer during her tenure as IBP Governor for Northern Luzon and that her acts as *de facto* officer — including her having voted in the May 22, 2013 election for the Executive Vice President of the Integrated Bar of the Philippines — are valid, binding, and effective. The Urgent Omnibus Motion to (1) Nullify the EVP Election on May 22, 2013 and (2) Restrain Gov. Vicente M. Joyas of Southern Luzon Region from Discharging the Duties of EVP/Acting President until the Final Resolution of the Issues is **DENIED**.

Let a copy of this Resolution be given to the Supreme Court Oversight Committee on the Integrated Bar of the Philippines reorganized by virtue of Memorandum Order No. 20-2013 on June 13, 2013 for its proper advice.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Carpio and *del Castillo, JJ.,* join the dissent of *J.* Velasco, Jr.

Velasco, Jr., see dissenting opinion.

DISSENTING OPINION

VELASCO, JR., *J.*:

With due respect to my esteemed colleague, Justice Leonen, I am constrained to register my dissent.

The Cases

These consolidated cases are off-shoots of *A.M. No. 09-5-2-SC*, entitled "*In Re: Brewing Controversies in the Elections in the Integrated Bar of the Philippines*." (Brewing Case)

A.M. No. 13-04-03-SC

On March 27, 2013, in connection with the in the Brewing Case, Atty. Marlou Ubano (Atty. Ubano), the IBP Governor for Western Visayas, filed a "*Motion to Declare as Ultra Vires or Invalid Re: Portion of IBP BOG Omnibus Resolution dated 21 March 2013 Approving the Nomination of Atty. (Lynda) Chaguile, IBP Ifugao President, as replacement of IBP Governor for Northern Luzon Denis B. Habawel.*" In its April 2, 2013 Resolution, this Court, finding it necessary to discuss the issues raised in the said motion independently of the Brewing Case, *re-docketed* the motion as a separate administrative matter.

In the said motion, Atty. Ubano essentially assails the approval by the IBP Board of Governors (IBP BoG) of the nomination of Atty. Chaguile, IBP Ifugao Chapter President, as replacement of IBP Governor for Northern Luzon Denis B. Habawel (Atty. Habawel), who, on October 5, 2012, filed a Certificate of Candidacy (CoC) for the position of Governor of the Province of Ifugao

Under Section 4, Article I of the IBP By-Laws:

> x x x A Delegate, **Governor**, officer or employee of the Integrated Bar, or an officer or employee of any Chapter thereof who **files a certificate of candidacy for any elective public office** shall be considered ***ipso facto* resigned** from his position from the date of the **start of the official campaign period.** x x x (emphasis supplied)

Following the above provision, Atty. Habawel is deemed *ipso facto* resigned from his post as IBP Governor for Northern Luzon, his resignation taking effect at the start of the official campaign period for the May 13, 2013 elections, which is on March 30, 2013.

In obvious anticipation of the resulting vacancy, the majority of the IBP BoG, in a meeting held on March 21, 2013, presided by then IBP National President Roan Libarios, approved the nomination and designation of Atty. Chaguile as replacement of Atty. Habawel. The designation process occurred over the objections of Atty. Ubano and Governors Manuel L. Enage, Jr. (Atty. Enage) and Israelito P. Torreon (Atty. Torreon) of IBP Eastern Visayas and IBP Eastern Mindanao, respectively. In said meeting, Atty. Habawel took part in the deliberation and in fact nominated Atty. Chaguile as his replacement.

It is against the foregoing backdrop that Atty. Ubano has assailed the entire process undertaken by the majority of the IBP BoG. He asserts that the foregoing acts of the IBP BoG are *ultra vires* because: **(1)** as of the time of the IBP BoG's approval, *Atty. Habawel still occupied the office of the Governor for IBP Northern Luzon* and hence, *there was no vacancy*;[1] and **(2)** the right and prerogative to elect a successor of a resigned governor belong exclusively to the delegates of the concerned region, not with IBP BoG,[2] as provided under paragraph 3 of Section 44 of the IBP By-Laws:

> In case of any **vacancy** in the office of Governor for whatever cause, **the delegates from the region shall by majority vote, elect a successor from among the members of the Chapter** to which the **resigned** governor is a member to serve as governor for the unexpired portion of the term.[3] (emphasis supplied)

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[1] Par. 2, Atty. Ubano's March 27, 2013 *"Motion to Declare as Ultra Vires or Invalid (Re: Portion of IBP BOG Omnibus Resolution dated 21 March 2013 Approving the Nomination of Atty. (Lynda) Chaguile, IBP Ifugao President, as replacement of IBP Governor for Northern Luzon Denis B. Habawel."*

[2] Par. 3, *id.*

[3] As amended pursuant to Supreme Court Resolution dated March 2, 1993.

In its Comment, the IBP BoG counters that "it is not necessary that a position be absolutely vacant before the election or appointment of the successor"[4] and "as long as there is an imminent resignation or impending termination of the term of office, the successor maybe chosen."[5] IBP BoG added that:

> 7. While it is true that it is the delegates of the concerned IBP region who have the right to elect a successor, the **tradition** in the IBP has been that, where the unexpired term in **only for a very short period of time**, it is **usually the Board of Governors** which appoint a replacement or an officer in charge to serve the unexpired term."[6] (emphasis supplied)

The IBP BoG further argued, "In any case, even if the choice of a replacement were left to the delegates of Northern Luzon, the **likelihoodis that Atty. Chaguile would have been elected**."[7]

Meanwhile, on April 23, 2013, Atty. Ubano, in a bid to stop Atty. Chaguile from succeeding Atty. Habawel, filed an "*Urgent Motion to Defer/Restrain Performance of Duties as Successor Governor of IBP Northern Luzon Region.*"

On May 16, 2013, this Court received a purported copy of the *Resolution* signed by the following delegates of IBP Northern Luzon calling for the election of the successor of Atty. Habawel: (1) Conde Claro C. Venus, President of IBP Abra, (2) Mariano R. Nalupta Jr., President of IBP Ilocos Norte, (3) Francisca M. Claver, Vice-President of IBP Baguio-Benguet, (4) Jose Rosario Jimenez, President of IBP Ilocos Sur, (5) Neriza M. Dasig-Cacatian, President of IBP Isabela, and (6) Abraham F. Datlag, President of IBP La Union. Attached therewith is a photo static copy of the same resolution purportedly signed by (7) Orlando D. Beltran, President of IBP Cagayan and (8) Leslie D. Costales, Acting President of IBP Nueva Vizcaya.

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[4] Par. 4, p. 1, April 30, 2013 *Comment* of the IBP Board of Governors.

[5] Par. 5, p.2, *id.*

[6] Par. 7, *id.*

[7] Par. 8, *id.*

On May 20, 2013, the same delegates of the IBP Northern Luzon filed an *Opposition* against the nomination and approval of Atty. Chaguile's appointment and called for the election of Atty. Habawel's replacement, *viz*:

> 2. We express our **strong objection/ opposition to the IBP Board of Governors' nomination and approval of Atty. Chaguile**, then IBP Ifugao Chapter President-elect, as replacement of Atty. Habawel considering that under paragraph 3, Section 44 of the IBP By-Laws, the Delegates of the concerned IBP Region, not the IBP Board of Governors, have the sole right to elect a successor of the resigned governor. (emphasis supplied)

On the same date, Atty. Ubano filed his "*Motion for Leave to File Reply with Very Urgent Motion to Restrain Atty. Chaguile from Voting in the EVP Election on 22 May 2013.*"

A.M. No. 13-04-08-SC

This brings us to the second interrelated case, the antecedent facts of which are summarized in the *"Report on the Conduct of Election of the Executive Vice President of the Integrated Bar of the Philippines for 2011 -2013"* (Cruz Report) submitted by Judge Danilo S. Cruz,[8] this Court's designated observer of the said elections:

> The meeting for the purpose of electing the IBP EVP for term 2011-2013 was scheduled at 11 o'clock in the morning of May 22, 2013. It was originally scheduled on May 18, 2013 but was reset upon Atty. Ubano's request.
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> Initially, at the start of the said proceedings, only five (5) IBP Governors were present, namely: Atty. Joyas, Atty. Dominic C.M. Solis (Atty. Solis), Atty. Olivia Velasco-Jacoba (Atty. Velasco-Jacoba), Atty. Florendo B. Opay (Atty. Opay) and Atty. Chaguile.
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> Considering that there is already a quorum, Atty. Joyas proceeded to call the meeting to order. As Chairman of the Execom[9], Atty.

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[8] Pursuant to Administrative Order No. 107-2013 dated May 20, 2013.

[9] Since the incumbent IBP National President Atty. Roan Libarios also filed his CoC for the position of Representative for the First District of Agusan del Norte during the May 2013 Elections, he is likewise deemed resigned as

Joyas then designated the following as members of the election committee (Comelec): IBP National Secretary Nasser Marohomsalic (Atty. Marohomsalic) as Chairman, Atty. Rosario T. Setias-Reyes (Atty. Setias-Reyes) as second member and IBP Head Executive Assistant Aurora Geronimo (Geronimo) as third member. Atty. Joyas also relinquished in favor of Atty. Marohomsalic his post as Presiding Officer.

A few minutes later, Atty. Enage and Atty. Torreon arrived.

Atty. Marohomsalic then proceeded to call for the nomination for the position of IBP EVP for term 2011-2013. Atty. Solis rose to nominate Atty. Joyas. This was seconded by Atty. Velasco-Jacoba. Atty. Joyas then accepted the nomination.

Atty. Ubano then arrived and was followed by Atty. Leonor Gerona-Romeo (Atty. Gerona-Romeo).

Atty. Ubano then questioned the authority of Atty. Marohomsalic to act as Chairman. He also questioned the authority of Atty. Joyas as Chairman of the IBP Execom to designate the Presiding Officer for purposes of the EVP election. He reasoned that in the absence of the IBP National President and EVP, it is the Court which has the authority to designate the Presiding Officer.

When the issue was placed into a vote, the majority of the IBP BoG decided to retain the authority of Atty. Marohomsalic as Presiding Officer and Chairman of the Comelec.

Atty. Ubano then manifested that he had a pending petition before the Court to declare as *ultra vires* or invalid the election of Atty. Chaguile as governor for IBP Northern Luzon and that in view thereof, he moved for the deferment of the IBP EVP election and wait for the decision of the Court on the matter. Atty. Solis interdicted and said that in order to maintain civil and collegial atmosphere in the Board, he is in favor of Atty. Ubano's proposal to postpone the election.

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of March 30, 2013 or the start of the campaign period. Considering that at that time, there is still no IBP EVP for term 2011-2013, who should, under the IBP By-Laws, may serve as Acting President, the IBP BoG created an IBP Executive Committee (Execom) to handle the affairs of the IBP pending the election of IBP EVP. In this regard, Atty. Joyas was elected Chairman of the IBP Execom.

Atty. Marohomsalic was about to call for division of the BoG on Atty. Ubano's motion to postpone the election when Atty. Joyas raised a point of order and countered that since they are already in the process of nomination, it will be out of order to entertain another motion. Atty. Marohomsalic then said that he stands corrected and declared Atty. Ubano's motion out of order. Atty. Ubano pressed his motion but to no avail.

Atty. Enage then rose to nominate Atty. Ubano for the position of IBP EVP for term 2011-2013.

Atty. Ubano accepted his nomination with a qualification that it is subject to the resolution of the pending motion before the Court. He also manifested his objection to the participation of Atty. Chaguile in the said election.

The voting by secret balloting proceeded and after the votes were tallied, **Atty. Joyas received five (5) votes while Atty. Ubano garnered four (4) votes.** (underscoring added)

Atty. Ubano has expressed the belief that the fifth vote of Atty. Joyas came from Atty. Chaguile because according to him, when he (Atty. Urbano) approached Atty. Chaguile, the latter made a suggestion that had Atty. Ubano not raised the issue against the validity of her appointment as governor, she would have voted differently.[10]

Arguing that Atty. Chaguile's designation as IBP Governor was illegal and invalid, and hence, the invalidity too of her vote in favor of Atty. Joyas, Atty. Ubano filed an *Urgent Omnibus Motion* to nullify the election for EVP Election on May 22, 2013 and to restrain Atty. Joyas from discharging the duties of EVP/Acting President until the final resolution of the issues.

In its June 18, 2013 Resolution, this Court ordered the consolidation of these cases.

Issues

(1) Whether the designation of Atty. Lynda Chaguile, the President-elect of IBP Ifugao Chapter, as successor of

[10] Par. 1.23, p. 6, Atty. Ubano's May 31, 2013 *"Urgent Omnibus Motion."*

IBP Northern Luzon Governor Atty. Denis B. Habawel, is legal, valid and in accordance with the IBP By-Laws?

(2) Assuming that the Atty. Chaguile's designation is invalid and illegal, can she be considered a *de facto* officer, thereby clothing her actions, including the vote cast in favor of Atty. Joyas for the position of IBP EVP for term 2011-2013, as valid?

(3) Whether Atty. Vicente M. Joyas, IBP Governor for Southern Luzon, was validly elected as IBP EVP on May 22, 2013 and thus, should serve as IBP President for term 2013-2015?

Discussion

First Issue:
The designation of Atty. Lynda Chaguile as successor of IBP Northern Luzon Governor Atty. Denis B. Habawel was NOT in accordance with the IBP By-Laws and, hence, INVALID and ILLEGAL

Section 44 of the IBP By-Laws provides:

> In case of any **vacancy** in the office of Governor for whatever cause, **the delegates from the region shall by majority vote, elect a successor from among the members of the Chapter** to which the **resigned** governor is a member to serve as governor for the unexpired portion of the term.[11] (emphasis supplied)

The foregoing provision is clear as it is simple. It is the **delegates from the concerned region, *i.e.*, IBP Northern Luzon**, and *not the IBP BoG*, who should decide and elect the replacement of Atty. Habawel.

The IBP BoG, on the other hand, argues that it has been a "tradition" in the IBP for the BoG to choose the replacement in cases where the term would be for a short period of time.

The IBP BoG posture is untenable and without basis.

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[11] As amended pursuant to Supreme Court Resolution dated March 2, 1993.

It is well to note that even the IBP BoG recognizes that "it is delegates of the concerned IBP region who have the right to elect a successor"[12] for the position of governor. Nevertheless, notwithstanding the express mandate of the aforementioned Section 44 of the IBP By-Laws, the IBP BoG still chose to deviate therefrom. By citing "tradition" as a justification for its actions, the IBP BoG, in effect, admits that, indeed, it did not comply with the required process of filling up the vacancy for the position of IBP Governor and had deliberately disregarded the IBP By-Laws.

To my mind, this "tradition" or practice as the IBP claims, even if done repeatedly and consistently, cannot hold sway in light of the express and clear provisions provided by the IBP By-Laws. As in an ordinary statute, the "violation or non-observance" of the IBP By-Laws "shall not be excused by disuse, or custom or practice to the contrary."[13] The IBP BoG, more than anyone else, should be the first to abide with and encourage obedience to the provisions of the IBP By-Laws. It should not, as it could not, simply rely on what it believes is a "tradition" in the IBP to defeat a clear provision of the IBP By-Laws. Mere expediency will not excuse legal shortcuts.

Hence, contrary to its position, the **IBP BoG is without authority to elect and designate Atty. Chaguile as replacement for Atty. Habawel**. The IBP By-Laws has, in no uncertain terms, vested this authority and right in favor of the delegates from the region where the vacancy occurred – which, in this case, should be the delegates from IBP Northern Luzon. Thus, by arrogating unto itself the right to choose the governor for IBP Northern Luzon, the IBP BoG overstepped the boundaries of its authority and had effectively deprived the concerned delegates of their right to choose and elect the Governor who should represent them in the board.

There is likewise no basis for the IBP BoG – in fact, it does not even have the right – to assume that even if the choice of

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[12] Par. 4, p. 2, April 30, 2013 *Comment* of the IBP Board of Governors.

[13] CIVIL CODE, Art. 7.

a replacement were left to the delegates of Northern Luzon, the likelihood is that Atty. Chaguile would have been elected.

Furthermore, it must be emphasized that the IBP By-Laws was promulgated with this Court's approval. Hence, any change thereto or non-compliance therewith, constitutes a violation and travesty of this Court's supervisory authority over the Integrated Bar.

Foregoing considered, there is no doubt that the designation of Atty. Chaguile as successor of IBP Northern Luzon Governor Atty. Habawel is **invalid** and **illegal**.

Second Issue:
Atty. Chaguile CANNOT be considered a *de facto* officer

The *ponencia* correctly observed that the third paragraph of Section 44 of the IBP By-Laws expressly and unambiguously states that *"the **delegates** from the region shall by majority vote, **elect a successor** from among the members of the Chapter to which the resigned governor is a member to serve as governor for the unexpired portion of the term"* and expressed surprise that *"the IBP – an institution expected to uphold the rule of law – has chosen to rely on `tradition' to validate its action."* In the same breath, however, it considered Atty. Chaguile as a *de facto* officer, thereby ratifying as valid her supposedly unauthorized actions, including her swing vote in favor of Atty. Joyas for the position of IBP EVP for term 2011-2013.

I am constrained to disagree.

A *de facto* officer is one who assumed office "under a color of a known appointment or election, void because the officer was not eligible or because there was a want of power in the electing body, or by reasons of some defect or irregularity in its exercise, such ineligibility, want of power, or defect being unknown to the public."[14] His or her "acts, though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid so far as they involve the interest of the public

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[14] *Aparri v. Court of Appeals*, No. L-30057, January 31, 1984, 127 SCRA 231, 329; citing *State v. Caroll*, 38 Conn. 449, 9 Am. Rep 409.

and third persons,where the duties of the office were exercised under color of a known election or appointment, void because the officer was not eligible, or because there was a want of power in the electing or appointing body, or by reason of some defect or irregularity in its exercise, such ineligibility, want of power or defect being unknown to the public."[15]

Funa v. Acting Secretary of Justice Alberto C. Agra[16] gave the following definition of the term *de facto* officer and the effects of his actions:

> A *de facto* officer is one who derives his appointment from **one having colorable authority to appoint**, if the office is an appointive office, and whose **appointment is valid on its face**. He may also be one who is in possession of an office, and is discharging its duties under color of authority, by which is meant authority derived from an appointment, however irregular or informal, so that the incumbent is not a mere volunteer. Consequently, the acts of the *de facto* officer are just as valid for all purposes as those of a *de jure* officer, in so far as the public or third persons who are interested therein are concerned. (emphasis supplied)

Thus, the essential elements of *de facto* officership are:

(1) There must be a *de jure* office;
(2) There must be **color of right or authority**;
(3) There must be actual physical possession of the **office in good faith**; and
(4) There must be a **general acquiescence by the public or recognition by the public who deals with him of his authority as holder of the position**.[17]

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[15] *Flores v. Drilon*, G.R. No. 104732, June 22, 1993, 223 SCRA 568, 582; citing *State v. Caroll*, 38 Conn., 449; *Wilcox v. Smith*, 5 Wendell (N.Y.), 321; 21 Am. Dec., 213; Sheehan's Case, 122 Mass, 445, 23 Am. Rep., 323. Boldface supplied.

[16] G.R. No. 191644, February 19, 2013; citing *Dimaandal v. Commission on Audit*, G.R. No. 122197, June 26, 1998, 291 SCRA 322, 330; *The Civil Service Commission v. Joson, Jr.*, G.R. No. 154674, May 27, 2004, 429 SCRA 773, 786-787.

[17] Agpalo, R., *Administrative Law, Law on Public Officers and Election Law*, 2005 Ed., p. 342.

The *de facto* doctrine is predicated on the rationale that "public interest demands that acts of persons holding, under color of title, an office created by a valid statute be, likewise, deemed valid insofar as the public – as distinguished from the officer in question – is concerned. Indeed, "it is far more cogently acknowledged that the *de facto* doctrine has been formulated, not for the protection of the *de facto* officer principally, but rather for the protection of the public and individuals who get involved in the official acts of persons discharging the duties of an office without being lawful officers."[18]

Here, contrary to the conclusion in the *ponencia*, the essential elements to be a *de facto* officer are, to me, indisputably absent. Withal, Atty. Chaguile cannot be considered as such officer for any or a mix of the following reasons:

First, there could be NO color of authority for Atty. Chaguile's designation as IBP Governor of Northern Luzon since her **designation as governor is void on its face.**

As erstwhile stated, Sections 44 of the IBP By-Laws clearly, unambiguously, and categorically provides that the authority to choose, elect and fill up the position of IBP Governor belongs to the delegates of the IBP Northern Luzon. Since it was the IBP BoG who made and approved the nomination, Atty. Chaguile's appointment as IBP Governor is void *ab initio* and hence, was made **withoutany semblance of authority**. It does not depict any "color of authority" but rather shows absolute **absence of authority**.

Indeed, a "*de facto*" officer need not show that he/she was elected or appointed in its strict sense, for a showing of a color of right to the office suffices. In fact, even without a known appointment or election, the *de facto* doctrine comes into play if the duties of the office were exercised under such *circumstances of reputation or acquiescence as were calculated to induce*

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[18] *Monroy v. Court of Appeals*, No. L-23258, July 1, 1967, 20 SCRA 620, 626.

people, without inquiry, to submit to or invoke his action, supposing him to be the officer he assumed to be."[19] Here, even the delegates of IBP Northern Luzon – in fact, a majority of them – which Atty. Chaguile is supposed to represent, expressed not only their *nonacquiescence* but their ***"strong opposition/ objection"*** against her appointment.

Thus, the second requisite is not satisfied.

Second, Atty. Chaguile took *actual physical possession* of the subject office in **bad faith**.

Being an officer of the Integrated Bar and, at that time, the incumbent chapter president of IBP Ifugao, she knew very well, or ought to have known, that under the third paragraph of Section 44 of the IBP By-Laws, the successor of a resigned governor is *elected by the delegates* of the concerned IBP Region, and NOT merely appointed or designated by IBP BoG. However, despite her presumptive awareness of this rule, Atty. Chaguile still deliberately and openly defied the said provision. On this score alone, it cannot be said that Atty. Chaguile had assumed the position as IBP Governor in good faith.

There can be no quibbling that Atty. Chaguile was aware of the strong objections against her appointment by the IBP Western Visayas Region and, more importantly, of the majority of the incumbent delegates of IBP Northern Luzon. These objections were echoed in the May 20, 2013 *Opposition* against her designation filed by the eight (8) delegates, representing the majority, of the IBP Northern Luzon Region and in a Resolution passed by the same delegates calling for the election to choose the successor of Atty. Habawel.

Despite the foregoing adverse reactions to her appointment as successor-governor for Northern Luzon Region, Atty. Chaguile *still* had the audacity of assuming the position and performing the duties and functions as IBP Governor.

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[19] *Concurring Opinion* of J. Carpio-Morales in *Funa v. Ermita*, G.R. No. 184740, February 11, 2010.

Good faith and prudence dictate that Atty. Chaguile should have exercised restraint and circumspection by refraining from performing the duties and responsibilities of a lawfully elected governor until this Court shall have resolved the issues. No prejudice would have been caused to any party since the IBP BoG still had a quorum to transact business and the delegates of the IBP Northern Luzon Region had already taken concrete steps to fill the vacancy.

Consequently, the third requisite is likewise not satisfied.

Lastly, the public and the stakeholders, specifically, the majority of the delegates of the IBP Northern Luzon Region for the term 2011 to 2013 never acquiesced in Atty. Chaguile's *ultra vires* appointment as successor governor. To reiterate, the majority of the delegates had expressed their "strong objection/opposition" to Atty. Chaguile's appointment and even passed a resolution calling for an election to choose Atty. Habawel's successor.

It is thus clear that Atty. Chaguile utterly failed to meet the *second*, *third* and *fourth* requisites to be considered as a *de facto* IBP Governor. Consequently, all her actions, including her supposed vote in favor of Atty. Joyas for the position of IBP EVP for term 2011-2013, should be treated as **invalid, illegal and hence, *without* any legal force and effect.**

Third Issue:
Atty. Vicente M. Joyas, IBP Governor for Southern Luzon, was NOT validly elected as IBP EVP on May 22, 2013

As stated previously, during the May 22, 2013 IBP EVP election for term 2011-2013, Atty. Ubano got four (4) votes. On the other hand, Atty. Joyas obtained five (5) votes – **his fifth vote coming from Atty. Chaguile.** This is where the invalidity of Atty. Joyas' election comes in.

As mandated by paragraph 2, Section 47 of the IBP By-Laws, to be validly elected as EVP, the candidate must obtain *at least five (5) votes*. Given that Atty. Chaguile's vote is without legal

force and effect, Atty. Joyas for all intents and purposes only obtained four (4) valid votes, or **one (1) valid vote short** of the required five (5) votes threshold.

Thus, the inevitable conclusion is that Atty. Vicente M. Joyas, IBP Governor for Southern Luzon, was NOT validly elected as IBP EVP on May 22, 2013.

Furthermore, the May 22, 2013 election for the position of IBP EVP for the term 2011-2013 is tainted with infirmities which the *ponencia* obviously has overlooked.

First, the presiding officer of the said EVP election – who was, at the same time, the chair of the Comelec – was devoid of authority to preside over the said EVP election.

In the *Cruz Report*, it appears that it was Atty. Joyas, the Chairman of the IBP Execom and a candidate for the IBP EVP position, who appointed Atty. Marohomsalic as Presiding Officer of the EVP election.[20] Notably, it was also Atty. Joyas who appointed Atty. Marohomsalic as chairman of the Comelec for the said election.[21]

Again, this is a violation of the IBP By-Laws as Section 50 mandates that it is the national president who is authorized to "preside at all meetings of the Board of Governors," including the election of an incoming EVP. In the absence, incapacity or resignation of the national president, it is the incumbent EVP who is authorized to preside over board meetings as well as the election of the incoming EVP. In the absence of both the national president and the EVP, it is this Court, in the exercise of its power of supervision, which is authorized to designate a presiding officer of an EVP election to ensure a fair, honest and credible election to choose the future head of the IBP. Consequently, it was highly improper and appalling for Atty. Joyas to appoint Atty. Marohomsalic.

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[20] May 27, 2013 *Report on the Conduct of Election of the Executive Vice President of the Integrated Bar of the Philippines for 2011 -2013 on May 22, 2013,* p.1.

[21] *Id*.

Also, neither the IBP Execom nor the IBP BoG can make such appointment. In fact, the appointment of the Presiding Officer in an EVP election is not among the specific "functions of the board" provided under Section 41 of the IBP By-Laws. It must likewise be remembered that in the Resolution dated December 14, 2010 in A.M. No. 09-5-2-SC (*In Re: Brewing Controversies in the Elections in the Integrated Bar of the Philippines*) and A.C. No. 8292 (*Attys. Marcial M. Magsino, et al. v. Atty. Rogelio A. Vinluan, et al.*), this Court had the occasion to nullify the EVP election presided over by EVP Vinluan "for **lack of authority to preside over the election** and for lack of quorum."

Second, the Presiding Officer of the EVP election on May 22, 2013 lacked independence essential to a fair and credible EVP election. As appointee of one of the EVP candidates, his independence was compromised at the very inception.

It must be noted that, as stated in the Cruz Report, Atty. Ubano has objected to the conduct of the IBP EVP elections and had pleaded to postpone the same pending the resolution by this Court of his motions to declare as *ultra vires* the approval of the nomination of Atty. Chaguile as replacement of IBP Governor for Northern Luzon Denis B. Habawel, and to restrain her from the performance of duties as such, and to disallow her to vote in the said IBP EVP Election.

In spite of these seemingly valid objections, Atty. Marohomsalic was instantly swayed by Atty. Joyas to overrule the same, as shown by the following excerpts of the Cruz Report:

> Governor Solis interdicted and said that in fairness to Governor Ubano, and to maintain civil and collegial atmosphere in the Board, he is in favor of Governor Ubano's proposal to postpone the election.
>
> **The Chairman was about to call for a division of the house** on the motion to postpone the election when Governor Joyas raised a point of order. He said that as the body is now in the process of nomination, it will be out of order to entertain another motion.

The Comelec Chairman said he stands corrected and declared Governor Ubano's motion out of order.[22] (emphasis supplied)

Moreover, an inherent conflict-of-interest situation existed when the presiding officer of the EVP election served at the same time as the chair of the Comelec of the said election. As Comelec chair, he and/or his members prepared the election paraphernalia, prescribed the rules governing the conduct of the EVP election, tallied, canvassed and certified the election results. As presiding officer at the same time, he conducted the election, resolved and ruled on motions and objections in the course of the election and validated the election results. There was never a check whether the respective functions of the Presiding Officer and Comelec had been honestly and faithfully done in the interest of fair, honest and credible election.

The *ponencia*, in claiming that "Atty. Ubano was accorded more than ample opportunity to argue his position," utterly misses the point. The crux of the issue was contextually whether the presiding officer – and Chair of the Comelec at the same time– conducted the EVP election and ruled on the various motions and objections fairly, objectively and independently. As explained earlier, he did not.

Conclusion

A wrong cannot be corrected by doing another wrong. To repeat, the provisions of the IBP By-laws as to who should choose the IBP Northern Luzon delegates representative in the IBP BoG are clear. Consequently, to clothe the actions and the vote of Atty. Chaguile with validity under the mantle of the *de facto* doctrine, as the *ponencia* wants it to be, would be to disregard and tolerate the blatant violations of the IBP By-Laws. This will set a very dangerous precedent as it would create the impression that this Court is keen in tolerating and encouraging malfeasance and deviation from the IBP By-Laws.

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[22] Judge Danilo S. Cruz's May 27, 2013 *Report on the Conduct of Election of the Executive Vice President of the Integrated Bar of the Philippines for 2011 -2013 on May 22, 2013*, p. 4.

In view of the foregoing, I vote to **GRANT** the:

(1) "Motion to Declare as Ultra Vires or Invalid Re: Portion of IBP BOG Omnibus Resolution dated 21 March 2013 Approving the Nomination of Atty. Chaguile, IBP Ifugao President, as replacement of IBP Governor for Northern Luzon Denis B. Habawel" dated March 27, 2013; and

(2) "Urgent Omnibus Motion to Nullify the EVP Election on 22 May 2013."

and accordingly:

(1) declare as **NULL** and **VOID** the proceeding during the IBP EVP Election for term 2011-2013 held on May 22, 2013;

(2) declare as **NULL** and **VOID *AB INITIO*** Atty. Chaguile's designation as IBP Governor for Northern Luzon;

(3) declare as **NULL** and **VOID** the **election of Atty. Joyas** as IBP EVP for term 2011, for his failure to obtain the required affirmative vote of at least five (5) Members of the IBP BoG;

(4) order Atty. Joyas is to **relinquish** his post as IBP National President for the term 2013-2015 pending the election of the EVP for term 2011-2013. In the meantime, IBP EVP Rosario T. Setias-Reyes will act as Acting National President until such time that the EVP for term 2011-2013 shall have been elected.

(5) order the *delegates of the IBP Northern Luzon for term 2011–2013* to **RECONVENE** and **ELECT** the **IBP Governor for Northern Luzon for term 2011–2013**, who in turn, is authorized to cast his or her vote for the position of IBP EVP for term 2011-2013;

(6) order the *Members of IBP BoG for term 2011-2013, **including** the elected IBP Governor for Northern Luzon for term 2011–2013 chosen by the concerned delegates,* to **RECONVENE** and **ELECT** the **IBP EVP for term 2011-2013**, who would serve as IBP National President for term 2013-2015.

EN BANC

[G.R. No. 159110. December 10, 2013]

VALENTINO L. LEGASPI, *petitioner, vs.* **CITY OF CEBU, T.C. (TITO) SAYSON and RICARDO HAPITAN,** *respondents.*

[G.R. No. 159692. December 10, 2013]

BIENVENIDO P. JABAN, SR., and BIENVENIDO DOUGLAS LUKE BRADBURY JABAN, *petitioners, vs.* **COURT OF APPEALS, CITY OF CEBU, CITY MAYOR ALVIN GARCIA, SANGGUNIANG PANLUNSOD OF CITY OF CEBU, HON. RENATO V. OSMEÑA, AS PRESIDING OFFICER OF THE SANGGUNIANG PANLUNSOD, AND CITOM CHAIRMAN ALAN GAVIOLA, AS CITOM CHIEF, CITOM TRAFFIC ENFORCER E. A. ROMERO, and LITO GILBUENA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF AN ORDINANCE; THE ENACTMENT OF ORDINANCE NO. 1664, WHICH AUTHORIZED THE IMMOBILIZATION OF VEHICLES VIOLATING TRAFFIC RULES, WAS WITHIN THE CORPORATE POWERS OF THE LOCAL GOVERNMENT OF THE CITY OF CEBU.— Was the enactment of Ordinance No. 1664 within the corporate powers of the LGU of the City of Cebu? The answer is in the affirmative. Indeed, with no issues being hereby raised against the formalities attendant to the enactment of Ordinance No. 1664, we presume its full compliance with the test in that regard. Congress enacted the LGC as the implementing law for the delegation to the various LGUs of the State's great powers, namely: the police power, the power of eminent domain, and the power of taxation. The LGC was fashioned to delineate the specific parameters and

limitations to be complied with by each LGU in the exercise of these delegated powers with the view of making each LGU a fully functioning subdivision of the State subject to the constitutional and statutory limitations. In particular, police power is regarded as "the most essential, insistent and the least limitable of powers, extending as it does 'to all the great public needs.'" It is unquestionably "the power vested in the legislature by the constitution, to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subject of the same." According to Cooley: "[The police power] embraces the whole system of internal regulation by which the state seeks not only to preserve the public order and to prevent offences against itself, but also to establish for the intercourse of citizens with citizens, those rules of good manners and good neighborhood which are calculated to prevent the conflict of rights and to insure to each the uninterrupted enjoyment of his own, so far as it is reasonably consistent with the right enjoyment of rights by others." In point is the exercise by the LGU of the City of Cebu of delegated police power. x x x The CA opined, and correctly so, that vesting cities like the City of Cebu with the legislative power to enact traffic rules and regulations was expressly done through Section 458 of the LGC, and also generally by virtue of the General Welfare Clause embodied in Section 16 of the LGC.

2. ID.; ID.; ID.; ORDINANCE NO. 1664 MET THE SUBSTANTIVE TESTS OF DUE PROCESS AS WELL AS WITH THE REQUIREMENTS OF FAIRNESS AND REASONABLENESS, AND ITS CONSISTENCY WITH PUBLIC POLICY.— The first substantive requirement for a valid ordinance is the adherence to the constitutional guaranty of due process of law. x x x The guaranty of due process of law is a constitutional safeguard against any arbitrariness on the part of the Government, whether committed by the Legislature, the Executive, or the Judiciary. x x x In *City of Manila v. Laguio, Jr.*, the Court expounded on the aspects of the guaranty of due process of law as a limitation on the acts of government, *viz*: x x x Substantive due process, as that phrase connotes, asks whether the government has an adequate

reason for taking away a person's life, liberty, or property. In other words, substantive due process looks to whether there is sufficient justification for the government's action. Case law in the United States (U.S.) tells us that whether there is such a justification depends very much on the level of scrutiny used. For example, if a law is in an area where only rational basis review is applied, substantive due process is met so long as the law is rationally related to a legitimate government purpose. But if it is an area where strict scrutiny is used, such as for protecting fundamental rights, then the government will meet substantive due process only if it can prove that the law is necessary to achieve a compelling government purpose. x x x Judged according to the foregoing enunciation of the guaranty of due process of law, the contentions of the petitioners cannot be sustained. Even under strict scrutiny review, Ordinance No. 1664 met the substantive tests of validity and constitutionality by its conformity with the limitations under the Constitution and the statutes, as well as with the requirements of fairness and reason, and its consistency with public policy. To us, the terms *encroachment* and *obstacles* used in Section 458 of the LGC, *supra*, were broad enough to include illegally parked vehicles or whatever else obstructed the streets, alleys and sidewalks, which were precisely the subject of Ordinance No. 1664 in avowedly aiming to ensure "a smooth flow of vehicular traffic in all the streets in the City of Cebu at all times" (Section 1). x x x Considering that traffic congestions were already retarding the growth and progress in the population and economic centers of the country, the plain objective of Ordinance No. 1664 was to serve the public interest and advance the general welfare in the City of Cebu. Its adoption was, therefore, in order to fulfill the compelling government purpose of immediately addressing the burgeoning traffic congestions caused by illegally parked vehicles obstructing the streets of the City of Cebu.

3. ID.; ID.; ID.; ORDINANCE NO. 1664 DID NOT VIOLATE THE REQUIREMENTS OF PROCEDURAL DUE PROCESS; IMMOBILIZATION OF ILLEGALLY PARKED VEHICLES BY CLAMPING THE TIRES IS AKIN TO THOSE INSTANCES WHERE NOTICE AND HEARING MAY BE DISPENSED WITH AND THE ABSENCE OF THESE REQUIREMENTS WOULD NOT NECESSARILY

AMOUNT TO DENIAL OF DUE PROCESS.— Notice and hearing are the essential requirements of procedural due process. Yet, there are many instances under our laws in which the absence of one or both of such requirements is not necessarily a denial or deprivation of due process. Among the instances are the cancellation of the passport of a person being sought for the commission of a crime, the preventive suspension of a civil servant facing administrative charges, the distraint of properties to answer for tax delinquencies, the padlocking of restaurants found to be unsanitary or of theaters showing obscene movies, and the abatement of nuisance *per se*. Add to them the arrest of a person *in flagrante delicto*. The clamping of the petitioners' vehicles pursuant to Ordinance No. 1664 (and of the vehicles of others similarly situated) was of the same character as the aforecited established exceptions dispensing with notice and hearing. As already said, the immobilization of illegally parked vehicles by clamping the tires was necessary because the transgressors were not around at the time of apprehension. Under such circumstance, notice and hearing would be superfluous. Nor should the lack of a trial-type hearing prior to the clamping constitute a breach of procedural due process, for giving the transgressors the chance to reverse the apprehensions through a timely protest could equally satisfy the need for a hearing. In other words, the prior intervention of a court of law was not indispensable to ensure a compliance with the guaranty of due process.

APPEARANCES OF COUNSEL

Evangeline T. Abatayo and Lyndon B.J. Basan for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The goal of the decentralization of powers to the local government units (LGUs) is to ensure the enjoyment by each of the territorial and political subdivisions of the State of a genuine and meaningful local autonomy. To attain the goal, the National Legislature has devolved the three great inherent

powers of the State to the LGUs. Each political subdivision is thereby vested with such powers subject to constitutional and statutory limitations.

In particular, the *Local Government Code* (LGC) has expressly empowered the LGUs to enact and adopt ordinances to regulate vehicular traffic and to prohibit illegal parking within their jurisdictions. Now challenged before the Court are the constitutionality and validity of one such ordinance on the ground that the ordinance constituted a contravention of the guaranty of due process under the Constitution by authorizing the immobilization of offending vehicles through the clamping of tires. The challenge originated in the Regional Trial Court (RTC) at the instance of the petitioners – vehicle owners who had borne the brunt of the implementation of the ordinance – with the RTC declaring the ordinance unconstitutional, but it has now reached the Court as a consolidated appeal taken in due course by the petitioners after the Court of Appeals (CA) reversed the judgment of the RTC.

Antecedents

On January 27, 1997 the Sangguniang Panlungsod of the City of Cebu enacted Ordinance No. 1664 to authorize the traffic enforcers of Cebu City to immobilize any motor vehicle violating the parking restrictions and prohibitions defined in Ordinance No. 801 (*Traffic Code of Cebu City*).[1] The pertinent provisions of Ordinance No. 1664 read:

> Section 1. POLICY – It is the policy of the government of the City of Cebu to immobilize any motor vehicle violating any provision of any City Ordinance on Parking Prohibitions or Restrictions, more particularly Ordinance No. 801, otherwise known as the Traffic Code of Cebu City, as amended, in order to have a smooth flow of vehicular traffic in all the streets in the City of Cebu at all times.
>
> Section 2. IMMOBILIZATION OF VEHICLES – Any vehicle found violating any provision of any existing ordinance of the City of Cebu which prohibits, regulates or restricts the parking of vehicles shall

[1] Records (Vol. 1), pp. 146-149.

be immobilized by clamping any tire of the said violating vehicle with the use of a denver boot vehicle immobilizer or any other special gadget designed to immobilize motor vehicles. For this particular purpose, any traffic enforcer of the City (regular PNP Personnel or Cebu City Traffic Law Enforcement Personnel) is hereby authorized to immobilize any violating vehicle as hereinabove provided.

Section 3. PENALTIES – Any motor vehicle, owner or driver violating any ordinance on parking prohibitions, regulations and/or restrictions, as may be provided under Ordinance No. 801, as amended, or any other existing ordinance, shall be penalized in accordance with the penalties imposed in the ordinance so violated, provided that the vehicle immobilizer may not be removed or released without its owner or driver paying first to the City Treasurer of Cebu City through the Traffic Violations Bureau (TVB) all the accumulated penalties for all prior traffic law violations that remain unpaid or unsettled, plus the administrative penalty of Five Hundred Pesos (₱500.00) for the immobilization of the said vehicle, and receipts of such payments presented to the concerned personnel of the bureau responsible for the release of the immobilized vehicle, unless otherwise ordered released by any of the following officers:

a) Chairman, CITOM
b) Chairman, Committee on Police, Fire and Penology
c) Asst. City Fiscal Felipe Belciña

3.1 Any person who tampers or tries to release an immobilized or clamped motor vehicle by destroying the denver boot vehicle immobilizer or other such special gadgets, shall be liable for its loss or destruction and shall be prosecuted for such loss or destruction under pain or penalty under the Revised Penal Code and any other existing ordinance of the City of Cebu for the criminal act, in addition to his/her civil liabilities under the Civil Code of the Philippines; Provided that any such act may not be compromised nor settled amicably extrajudicially.

3.2 Any immobilized vehicle which is unattended and constitute an obstruction to the free flow of traffic or a hazard thereof shall be towed to the city government impounding area for safekeeping and may be released only after the provision of Section 3 hereof shall have been fully complied with.

3.3 Any person who violates any provision of this ordinance shall, upon conviction, be penalized with imprisonment of not less than one (1) month nor more than six (6) months or of a fine of not less than Two Thousand Pesos (₱2,000.00) nor more than Five Thousand Pesos (₱5,000.00), or both such imprisonment and fine at the discretion of the court.[2]

On July 29, 1997, Atty. Bienvenido Jaban (Jaban, Sr.) and his son Atty. Bienvenido Douglas Luke Bradbury Jaban (Jaban, Jr.) brought suit in the RTC in Cebu City against the City of Cebu, then represented by Hon. Alvin Garcia, its City Mayor, the Sangguniang Panlungsod of Cebu City and its Presiding Officer, Hon. Renato V. Osmeña, and the chairman and operatives or officers of the City Traffic Operations Management (CITOM), seeking the declaration of Ordinance No. 1644 as unconstitutional for being in violation of due process and for being contrary to law, and damages.[3] Their complaint alleged that on June 23, 1997, Jaban Sr. had properly parked his car in a paying parking area on Manalili Street, Cebu City to get certain records and documents from his office;[4] that upon his return after less than 10 minutes, he had found his car being immobilized by a steel clamp, and a notice being posted on the car to the effect that it would be a criminal offense to break the clamp;[5] that he had been infuriated by the immobilization of his car because he had been thereby rendered unable to meet an important client on that day; that his car was impounded for three days, and was informed at the office of the CITOM that he had first to pay ₱4,200.00 as a fine to the City Treasurer of Cebu City for the release of his car;[6] that the fine was imposed without any court hearing and without due process of law, for he was not even told why his car had been immobilized; that he had undergone a similar incident of clamping of his car on the early

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[2] *Id*.

[3] *Id*. at 1-10.

[4] *Id*. at 3.

[5] *Id*.

[6] *Id*. at 4.

morning of November 20, 1997 while his car was parked properly in a parking lot in front of the San Nicolas Pasil Market in Cebu City without violating any traffic regulation or causing any obstruction; that he was compelled to pay ₱1,500.00 (itemized as ₱500.00 for the clamping and ₱1,000.00 for the violation) without any court hearing and final judgment; that on May 19, 1997, Jaban, Jr. parked his car in a very secluded place where there was no sign prohibiting parking; that his car was immobilized by CITOM operative Lito Gilbuena; and that he was compelled to pay the total sum of ₱1,400.00 for the release of his car without a court hearing and a final judgment rendered by a court of justice.[7]

On August 11, 1997, Valentino Legaspi (Legaspi) likewise sued in the RTC the City of Cebu, T.C. Sayson, Ricardo Hapitan and John Does to demand the delivery of personal property, declaration of nullity of the *Traffic Code of Cebu City*, and damages.[8] He averred that on the morning of July 29, 1997, he had left his car occupying a portion of the sidewalk and the street outside the gate of his house to make way for the vehicle of the *anay* exterminator who had asked to be allowed to unload his materials and equipment from the front of the residence inasmuch as his daughter's car had been parked in the carport, with the assurance that the unloading would not take too long;[9] that while waiting for the *anay* exterminator to finish unloading, the phone in his office inside the house had rung, impelling him to go into the house to answer the call; that after a short while, his son-in-law informed him that unknown persons had clamped the front wheel of his car;[10] that he rushed outside and found a traffic citation stating that his car had been clamped by CITOM representatives with a warning that the unauthorized removal of the clamp would subject the remover to criminal charges;[11]

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[7] *Id*.

[8] Records (Vol. 2), pp. 1-10.

[9] *Id.* at 1-2.

[10] *Id*. at 2.

[11] *Id*. at 3.

and that in the late afternoon a group headed by Ricardo Hapitan towed the car even if it was not obstructing the flow of traffic.[12]

In separate answers for the City of Cebu and its co-defendants,[13] the City Attorney of Cebu presented similar defenses, essentially stating that the traffic enforcers had only upheld the law by clamping the vehicles of the plaintiffs;[14] and that Ordinance No. 1664 enjoyed the presumption of constitutionality and validity.[15]

The cases were consolidated before Branch 58 of the RTC, which, after trial, rendered on January 22, 1999 its decision declaring Ordinance No. 1664 as null and void upon the following ratiocination:

> In clear and simple phrase, the essence of due process was expressed by Daniel Webster as a "law which hears before it condemns". In another case[s], "procedural due process is that which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial." It contemplate(s) notice and opportunity to be heard before judgment is rendered affecting ones (sic) person or property." In both procedural and substantive due process, a hearing is always a pre-requisite, hence, the taking or deprivation of one's life, liberty or property must be done upon and with observance of the "due process" clause of the Constitution and the non-observance or violation thereof is, perforce, unconstitutional.
>
> Under Ordinance No. 1664, when a vehicle is parked in a prohibited, restrycted (sic) or regulated area in the street or along the street, the vehicle is immobilized by clamping any tire of said vehicle with the use of a denver boot vehicle immobilizer or any other special gadget which immobilized the motor vehicle. The violating vehicle is immobilized, thus, depriving its owner of the use thereof at the sole determination of any traffic enforcer or regular PNP personnel or Cebu City Traffic Law Enforcement Personnel. The vehicle immobilizer cannot be removed or released without the owner or

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[12] *Id*.

[13] Records (Vol. 1), pp. 14-27 and Records (Vol. 2), pp. 16-22.

[14] Records (Vol. 1), p. 20 and Records (Vol. 2), p. 18.

[15] Records (Vol. 1), p. 21.

driver paying first to the City Treasurer of Cebu through the Traffic Violations Bureau all the accumulated penalties of all unpaid or unsettled traffic law violations, plus the administrative penalty of ₱500.00 and, further, the immobilized vehicle shall be released only upon presentation of the receipt of said payments and upon release order by the Chairman, CITOM, or Chairman, Committee on Police, Fire and Penology, or Asst. City Fiscal Felipe Belcina. It should be stressed that the owner of the immobilized vehicle shall have to undergo all these ordeals at the mercy of the Traffic Law Enforcer who, as the Ordinance in question mandates, is the arresting officer, prosecutor, Judge and collector. Otherwise stated, the owner of the immobilized motor vehicle is deprived of his right to the use of his/her vehicle and penalized without a hearing by a person who is not legally or duly vested with such rights, power or authority. The Ordinance in question is penal in nature, and it has been held;

x x x x x x x x x

WHEREFORE, premised (sic) considered, judgment is hereby rendered declaring Ordinance No. 1664 unconstitutional and directing the defendant City of Cebu to pay the plaintiff Valentino Legaspi the sum of ₱110,000.00 representing the value of his car, and to all the plaintiffs, Valentino L. Legaspi, Bienvenido P. Jaban and Bienvenido Douglas Luke Bradbury Jaban, the sum of ₱100,000.00 each or ₱300,000.00 all as nominal damages and another ₱100,000.00 each or ₱300,000.00 all as temperate or moderate damages. With costs against defendant City of Cebu.

SO ORDERED.[16] (citations omitted)

The City of Cebu and its co-defendants appealed to the CA, assigning the following errors to the RTC, namely: (*a*) the RTC erred in declaring that Ordinance No. 1664 was unconstitutional; (*b*) granting, *arguendo*, that Ordinance No. 1664 was unconstitutional, the RTC gravely erred in holding that any violation prior to its declaration as being unconstitutional was irrelevant; (*c*) granting, *arguendo*, that Ordinance No. 1664 was unconstitutional, the RTC gravely erred in awarding damages to the plaintiffs; (*d*) granting, *arguendo*, that the plaintiffs were entitled to damages, the damages awarded were

[16] *Rollo* (G.R. No. 159692), pp. 47-49.

excessive and contrary to law; and (*e*) the decision of the RTC was void, because the Office of the Solicitor General (OSG) had not been notified of the proceedings.

On June 16, 2003, the CA promulgated its assailed decision,[17] overturning the RTC and declaring Ordinance No. 1664 valid, to wit:

> The principal thrust of this appeal is the constitutionality of Ordinance 1664. Defendants-appellants contend that the passage of Ordinance 1664 is in accordance with the police powers exercised by the City of Cebu through the Sangguniang Panlungsod and granted by RA 7160, otherwise known as the Local Government Code. A thematic analysis of the law on municipal corporations confirms this view. As in previous legislation, the Local Government Code delegates police powers to the local governments in two ways. Firstly, it enumerates the subjects on which the Sangguniang Panlungsod may exercise these powers. Thus, with respect to the use of public streets, Section 458 of the Code states:
>
> > Section 458 (a) The sangguniang panlungsod, as the legislative branch of the city, x x x shall x x x
> >
> > (5) (v) Regulate the use of streets, avenues, alleys, sidewalks, bridges, park and other public places and approve the construction, improvement, repair and maintenance of the same; establish bus and vehicle stops and terminals or regulate the use of the same by privately owned vehicles which serve the public; regulate garages and the operation of conveyances for hire; designate stands to be occupied by public vehicles when not in use; regulate the putting up of signs, signposts, awnings and awning posts on the streets; and provide for the lighting, cleaning and sprinkling of streets and public places;
> >
> > (vi) Regulate traffic on all streets and bridges; prohibit encroachments or obstacles thereon and, when necessary in the interest of public welfare, authorize the removal of encroachments and illegal constructions in public places.
>
> It then makes a general grant of the police power. The scope of the legislative authority of the local government is set out in Section 16, to wit:

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[17] *Id*. at 51-60.

> Section 16. General Welfare. – Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare.

This provision contains what is traditionally known as the general welfare clause. As expounded in *United States vs. Salaveria,* 39 Phil. 102, the general welfare clause has two branches. One branch attaches itself to the main trunk of municipal authority, and relates to such ordinances and regulations as may be necessary to carry into effect and discharge the powers and duties conferred upon the municipal council by law. The second branch of the clause is much more independent of the specific functions of the council, and authorizes such ordinances as shall seem necessary and proper to provide for health, safety, prosperity and convenience of the municipality and its inhabitants.

In a vital and critical way, the general welfare clause complements the more specific powers granted a local government. It serves as a catch-all provision that ensures that the local government will be equipped to meet any local contingency that bears upon the welfare of its constituents but has not been actually anticipated. So varied and protean are the activities that affect the legitimate interests of the local inhabitants that it is well-nigh impossible to say beforehand what may or may not be done specifically through law. To ensure that a local government can react positively to the people's needs and expectations, the general welfare clause has been devised and interpreted to allow the local legislative council to enact such measures as the occasion requires.

Founded on clear authority and tradition, Ordinance 1664 may be deemed a legitimate exercise of the police powers of the Sangguniang Panlungsod of the City of Cebu. This local law authorizes traffic enforcers to immobilize and tow for safekeeping vehicles on the streets that are illegally parked and to release them upon payment of the announced penalties. As explained in the preamble, it has become necessary to resort to these measures because of the traffic congestion caused by illegal parking and the inability of existing penalties to curb it. The ordinance is designed to improve traffic conditions in the City of Cebu and thus shows a real and substantial relation to the welfare, comfort and convenience of the people of Cebu. The only restrictions to an ordinance passed under the general

welfare clause, as declared in *Salaveria*, is that the regulation must be reasonable, consonant with the general powers and purposes of the corporation, consistent with national laws and policies, and not unreasonable or discriminatory. The measure in question undoubtedly comes within these parameters.

Upon the denial of their respective motions for reconsideration on August 4, 2003, the Jabans and Legaspi came to the Court via separate petitions for review on *certiorari*. The appeals were consolidated.

Issues

Based on the submissions of the parties, the following issues are decisive of the challenge, to wit:

1. Whether Ordinance No. 1664 was enacted within the ambit of the legislative powers of the City of Cebu; and
2. Whether Ordinance No. 1664 complied with the requirements for validity and constitutionality, particularly the limitations set by the Constitution and the relevant statutes.

Ruling

The petitions for review have no merit.

A.
Tests for a valid ordinance

In *City of Manila v. Laguio, Jr.*,[18] the Court restates the tests of a valid ordinance thusly:

The tests of a valid ordinance are well established. A long line of decisions has held that for an ordinance to be valid, it must not only be within the corporate powers of the local government unit to enact and must be passed according to the procedure prescribed by law, it must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory;

[18] G.R. No. 118127, April 12, 2005, 455 SCRA 308.

(4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable.[19]

As jurisprudence indicates, the tests are divided into the formal (*i.e.*, whether the ordinance was enacted within the corporate powers of the LGU, and whether it was passed in accordance with the procedure prescribed by law), and the substantive (*i.e.*, involving inherent merit, like the conformity of the ordinance with the limitations under the Constitution and the statutes, as well as with the requirements of fairness and reason, and its consistency with public policy).

B.
Compliance of Ordinance No. 1664 with the formal requirements

Was the enactment of Ordinance No. 1664 within the corporate powers of the LGU of the City of Cebu?

The answer is in the affirmative. Indeed, with no issues being hereby raised against the formalities attendant to the enactment of Ordinance No. 1664, we presume its full compliance with the test in that regard. Congress enacted the LGC as the implementing law for the delegation to the various LGUs of the State's great powers, namely: the police power, the power of eminent domain, and the power of taxation. The LGC was fashioned to delineate the specific parameters and limitations to be complied with by each LGU in the exercise of these delegated powers with the view of making each LGU a fully functioning subdivision of the State subject to the constitutional and statutory limitations.

In particular, police power is regarded as "the most essential, insistent and the least limitable of powers, extending as it does

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[19] *Id*. at 326, citing *Tatel v. Municipality of Virac*, G.R. No. L-40243, March 11, 1992, 207 SCRA 157, 161; *Solicitor General v. Metropolitan Manila Authority*, G.R. No. 102782, December 11, 1991, 204 SCRA 837, 845; *Magtajas v. Pryce Properties Corporation, Inc.*, G.R. No. 111097, July 20, 1994, 234 SCRA 255, 266-267.

'to all the great public needs.'"[20] It is unquestionably "the power vested in the legislature by the constitution, to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subject of the same."[21] According to Cooley: "[The police power] embraces the whole system of internal regulation by which the state seeks not only to preserve the public order and to prevent offences against itself, but also to establish for the intercourse of citizens with citizens, those rules of good manners and good neighborhood which are calculated to prevent the conflict of rights and to insure to each the uninterrupted enjoyment of his own, so far as it is reasonably consistent with the right enjoyment of rights by others."[22]

In point is the exercise by the LGU of the City of Cebu of delegated police power. In *Metropolitan Manila Development Authority v. Bel-Air Village Association, Inc.*,[23] the Court cogently observed:

> It bears stressing that police power is lodged primarily in the National Legislature. It cannot be exercised by any group or body of individuals not possessing legislative power. **The National Legislature, however, may delegate this power to the President and administrative boards as well as the lawmaking bodies of municipal corporations or local government units. Once delegated, the agents can exercise only such legislative powers as are conferred on them by the national lawmaking body.** (emphasis supplied)

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[20] *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, No. L-24693, July 31, 1967, 20 SCRA 849, 857-858.

[21] Chief Justice Shaw, in *Commonwealth v. Alger*, 7 Cush. 53, 85, 61 Mass 53.

[22] *Constitutional Limitations*, p. 572.

[23] G.R. No. 135962, March 27, 2000, 328 SCRA 836, 843-844; see also *Gancayco v. City Government of Quezon City*, G.R. No. 177807, October 11, 2011, 658 SCRA 853, 863.

The CA opined, and correctly so, that vesting cities like the City of Cebu with the legislative power to enact traffic rules and regulations was expressly done through Section 458 of the LGC, and also generally by virtue of the General Welfare Clause embodied in Section 16 of the LGC.[24]

Section 458 of the LGC relevantly states:

Section 458. Powers, Duties, Functions and Composition. – (a) The sangguniang panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code, and shall:

x x x x x x x x x

(5) **Approve ordinances which shall ensure the efficient and effective delivery of the basic services and facilities as provided for under Section 17 of this Code, and in addition to said services and facilities, shall**:

x x x x x x x x x

(v) **Regulate the use of streets, avenues, alleys, sidewalks, bridges, parks and other public places and approve the construction, improvement repair and maintenance of the same; establish bus and vehicle stops and terminals or regulate the use of the same by privately-owned vehicles which serve the public; regulate garages and operation of conveyances for hire; designate stands to be occupied**

[24] Section 16. *General Welfare.*- Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

by public vehicles when not in use; regulate the putting up of signs, signposts, awnings and awning posts on the streets; and provide for the lighting, cleaning and sprinkling of streets and public places;

(vi) **Regulate traffic on all streets and bridges; prohibit encroachments or obstacles thereon and, when necessary in the interest of public welfare, authorize the removal of encroachments and illegal constructions in public places;** (emphasis supplied)

The foregoing delegation reflected the desire of Congress to leave to the cities themselves the task of confronting the problem of traffic congestions associated with development and progress because they were directly familiar with the situations in their respective jurisdictions. Indeed, the LGUs would be in the best position to craft their traffic codes because of their familiarity with the conditions peculiar to their communities. With the broad latitude in this regard allowed to the LGUs of the cities, their traffic regulations must be held valid and effective unless they infringed the constitutional limitations and statutory safeguards.

C.
Compliance of Ordinance No. 1664 with the substantive requirements

The first substantive requirement for a valid ordinance is the adherence to the constitutional guaranty of due process of law. The guaranty is embedded in Article III, Section 1 of the Constitution, which ordains:

Section 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

The guaranty of due process of law is a constitutional safeguard against any arbitrariness on the part of the Government, whether committed by the Legislature, the Executive, or the Judiciary. It is a protection essential to every inhabitant of the country, for, as a commentator on Constitutional Law has vividly written:[25]

[25] Cruz, *Constitutional Law*, 2007 Ed., pp. 100-101.

x x x. If the law itself unreasonably deprives a person of his life, liberty, or property, he is denied the protection of due process. If the enjoyment of his rights is conditioned on an unreasonable requirement, due process is likewise violated. Whatsoever be the source of such rights, be it the Constitution itself or merely a statute, its unjustified withholding would also be a violation of due process. Any government act that militates against the ordinary norms of justice or fair play is considered an infraction of the great guaranty of due process; and this is true whether the denial involves violation merely of the procedure prescribed by the law or affects the very validity of the law itself.

In *City of Manila v. Laguio, Jr.*,[26] the Court expounded on the aspects of the guaranty of due process of law as a limitation on the acts of government, *viz*:

> This clause has been interpreted as imposing two separate limits on government, usually called "procedural due process" and "substantive due process."
>
> Procedural due process, as the phrase implies, refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. Classic procedural due process issues are concerned with that kind of notice and what form of hearing the government must provide when it takes a particular action.
>
> Substantive due process, as that phrase connotes, asks whether the government has an adequate reason for taking away a person's life, liberty, or property. In other words, substantive due process looks to whether there is sufficient justification for the government's action. Case law in the United States (U.S.) tells us that whether there is such a justification depends very much on the level of scrutiny used. For example, if a law is in an area where only rational basis review is applied, substantive due process is met so long as the law is rationally related to a legitimate government purpose. But if it is an area where strict scrutiny is used, such as for protecting fundamental rights, then the government will meet substantive due process only if it can prove that the law is necessary to achieve a compelling government purpose.

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[26] *Supra* note 18.

The police power granted to local government units must always be exercised with utmost observance of the rights of the people to due process and equal protection of the law. Such power cannot be exercised whimsically, arbitrarily or despotically as its exercise is subject to a qualification, limitation or restriction demanded by the respect and regard due to the prescription of the fundamental law, particularly those forming part of the Bill of Rights. Individual rights, it bears emphasis, may be adversely affected only to the extent that may fairly be required by the legitimate demands of public interest or public welfare. Due process requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty and property.[27]

The Jabans contend that Ordinance No. 1664, by leaving the confiscation and immobilization of the motor vehicles to the traffic enforcers or the regular personnel of the Philippine National Police (PNP) instead of to officials exercising judicial authority, was violative of the constitutional guaranty of due process; that such confiscation and immobilization should only be after a hearing on the merits by courts of law; and that the immobilization and the clamping of the cars and motor vehicles by the police or traffic enforcers could be subject to abuse.

On his part, Legaspi likewise contends that Ordinance No. 1664 violated the constitutional guaranty of due process for being arbitrary and oppressive; and that its provisions conferring upon the traffic enforcers the absolute discretion to be the enforcers, prosecutors, judges and collectors all at the same time were vague and ambiguous.[28] He reminds that the grant of police powers for the general welfare under the LGC was not unlimited but subject to constitutional limitations;[29] and that these consolidated cases should not be resolved differently from the resolution of a third case assailing the validity of Ordinance No. 1664 (Astillero case), in which the decision of the same RTC declaring Ordinance No. 1664 as unconstitutional had

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[27] *Id.* at 330-331.

[28] *Rollo* (G.R. No. 159110), pp. 12-13.

[29] *Id.* at 15.

attained finality following the denial of due course to the appeal of the City of Cebu and its co-defendants.

Judged according to the foregoing enunciation of the guaranty of due process of law, the contentions of the petitioners cannot be sustained. Even under strict scrutiny review, Ordinance No. 1664 met the substantive tests of validity and constitutionality by its conformity with the limitations under the Constitution and the statutes, as well as with the requirements of fairness and reason, and its consistency with public policy.

To us, the terms *encroachment* and *obstacles* used in Section 458 of the LGC, *supra*, were broad enough to include illegally parked vehicles or whatever else obstructed the streets, alleys and sidewalks, which were precisely the subject of Ordinance No. 1664 in avowedly aiming to ensure "a smooth flow of vehicular traffic in all the streets in the City of Cebu at all times" (Section 1). This aim was borne out by its Whereas Clauses, *viz*:

> WHEREAS, the City of Cebu enacted the Traffic Code (Ordinance No. 801) as amended, provided for Parking Restrictions and Parking Prohibitions in the streets of Cebu City;
>
> **WHEREAS**, **despite the restrictions and prohibitions of parking on certain streets of Cebu City, violations continued unabated due, among others, to the very low penalties imposed under the Traffic Code of Cebu City**;
>
> **WHEREAS, City Ordinance 1642 was enacted in order to address the traffic congestions caused by illegal parkings in the streets of Cebu City;**
>
> **WHEREAS, there is a need to amend City Ordinance No.1642 in order to fully address and solve the problem of illegal parking and other violations of the Traffic Code of Cebu City**;[30] (emphasis supplied)

Considering that traffic congestions were already retarding the growth and progress in the population and economic centers

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[30] Records (Vol. 1), p. 146.

of the country, the plain objective of Ordinance No. 1664 was to serve the public interest and advance the general welfare in the City of Cebu. Its adoption was, therefore, in order to fulfill the compelling government purpose of immediately addressing the burgeoning traffic congestions caused by illegally parked vehicles obstructing the streets of the City of Cebu.

Legaspi's attack against the provisions of Ordinance No. 1664 for being vague and ambiguous cannot stand scrutiny. As can be readily seen, its text was forthright and unambiguous in all respects. There could be no confusion on the meaning and coverage of the ordinance. But should there be any vagueness and ambiguity in the provisions, which the OSG does not concede,[31] there was nothing that a proper application of the basic rules of statutory construction could not justly rectify.

The petitioners further assert that drivers or vehicle owners affected by Ordinance No. 1664 like themselves were not accorded the opportunity to protest the clamping, towing, and impounding of the vehicles, or even to be heard and to explain their side prior to the immobilization of their vehicles; and that the ordinance was oppressive and arbitrary for that reason.

The adverse assertions against Ordinance No. 1664 are unwarranted.

Firstly, Ordinance No. 1664 was far from oppressive and arbitrary. Any driver or vehicle owner whose vehicle was immobilized by clamping could protest such action of a traffic enforcer or PNP personnel enforcing the ordinance. Section 3 of Ordinance No. 1664, *supra*, textually afforded an administrative escape in the form of permitting the release of the immobilized vehicle upon a protest directly made to the Chairman of CITOM; or to the Chairman of the Committee on Police, Fire and Penology of the City of Cebu; or to Asst. City Prosecutor Felipe Belciña – officials named in the ordinance itself. The release could be ordered by any of such officials even without the payment of

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[31] *Rollo* (G.R. No. 159110), p. 143.

the stipulated fine. That none of the petitioners, albeit lawyers all, resorted to such recourse did not diminish the fairness and reasonableness of the escape clause written in the ordinance. Secondly, the immobilization of a vehicle by clamping pursuant to the ordinance was not necessary if the driver or vehicle owner was around at the time of the apprehension for illegal parking or obstruction. In that situation, the enforcer would simply either require the driver to move the vehicle or issue a traffic citation should the latter persist in his violation. The clamping would happen only to prevent the transgressor from using the vehicle itself to escape the due sanctions. And, lastly, the towing away of the immobilized vehicle was not equivalent to a summary impounding, but designed to prevent the immobilized vehicle from obstructing traffic in the vicinity of the apprehension and thereby ensure the smooth flow of traffic. The owner of the towed vehicle would not be deprived of his property.

In fine, the circumstances set forth herein indicate that Ordinance No. 1664 complied with the elements of fairness and reasonableness.

Did Ordinance No. 1664 meet the requirements of procedural due process?

Notice and hearing are the essential requirements of procedural due process. Yet, there are many instances under our laws in which the absence of one or both of such requirements is not necessarily a denial or deprivation of due process. Among the instances are the cancellation of the passport of a person being sought for the commission of a crime, the preventive suspension of a civil servant facing administrative charges, the distraint of properties to answer for tax delinquencies, the padlocking of restaurants found to be unsanitary or of theaters showing obscene movies, and the abatement of nuisance *per se*.[32] Add to them the arrest of a person *in flagrante delicto*.[33]

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[32] Cruz, *op. cit.*, note 25, at 119.

[33] Section 5(a), Rule 113, *Rules of Court*.

The clamping of the petitioners' vehicles pursuant to Ordinance No. 1664 (and of the vehicles of others similarly situated) was of the same character as the aforecited established exceptions dispensing with notice and hearing. As already said, the immobilization of illegally parked vehicles by clamping the tires was necessary because the transgressors were not around at the time of apprehension. Under such circumstance, notice and hearing would be superfluous. Nor should the lack of a trial-type hearing prior to the clamping constitute a breach of procedural due process, for giving the transgressors the chance to reverse the apprehensions through a timely protest could equally satisfy the need for a hearing. In other words, the prior intervention of a court of law was not indispensable to ensure a compliance with the guaranty of due process.

To reiterate, the clamping of the illegally parked vehicles was a fair and reasonable way to enforce the ordinance against its transgressors; otherwise, the transgressors would evade liability by simply driving away.

Finally, Legaspi's position, that the final decision of the RTC rendered in the Astillero case declaring Ordinance No. 1664 unconstitutional bound the City of Cebu, thereby precluding these consolidated appeals from being decided differently, is utterly untenable. For one, Legaspi undeservedly extends too much importance to an irrelevant decision of the RTC – irrelevant, because the connection between that case to these cases was not at all shown. For another, he ignores that it should be the RTC that had improperly acted for so deciding the Astillero case despite the appeals in these cases being already pending in the CA. Being the same court in the three cases, the RTC should have anticipated that in the regular course of proceedings, the outcome of the appeal in these cases then pending before the CA would ultimately be elevated to and determined by no less than the Court itself. Such anticipation should have made it refrain from declaring Ordinance No. 1664 unconstitutional, for a lower court like itself, appreciating its position in the

"interrelation and operation of the integrated judicial system of the nation," should have exercised a "becoming modesty" on the issue of the constitutionality of the same ordinance that the Constitution required the majority vote of the Members of the Court sitting *en banc* to determine.[34] Such "becoming modesty" also forewarned that any declaration of unconstitutionality by an inferior court was binding only on the parties, but that a declaration of unconstitutionality by the Court would be a precedent binding on all.[35]

WHEREFORE, the Court **DENIES** the petitions for review on *certiorari* for their lack of merit; **AFFIRMS** the decision promulgated on June 16, 2003 by the Court of Appeals; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

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[34] Bernas, *The 1987 Constitution of the Republic of the Philippines – A Commentary*, 2009 Edition, at p. 996, citing *People v. Vera*, 65 Phil. 56 (1937).

[35] *Id*.

EN BANC

[G.R. No. 184621. December 10, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **MARIA FE ESPINOSA CANTOR,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; DECLARATION OF PRESUMPTIVE DEATH; COURT'S JUDGMENT IN THE JUDICIAL PROCEEDINGS FOR DECLARATION OF PRESUMPTIVE DEATH IS FINAL AND UNAPPEALABLE.— The Family Code was explicit that the court's judgment in summary proceedings, such as the declaration of presumptive death of an absent spouse under Article 41 of the Family Code, shall be immediately final and executory. x x x With the judgment being final, it necessarily follows that it is no longer subject to an appeal, the dispositions and conclusions therein having become immutable and unalterable not only as against the parties but even as against the courts. Modification of the court's ruling, no matter how erroneous is no longer permissible. The final and executory nature of this summary proceeding thus prohibits the resort to appeal.

2. ID.; ID.; ID.; ID.; PETITION FOR *CERTIORARI* UNDER RULE 65 LIES TO ASSAIL THE FINAL ORDER OF THE TRIAL COURT IN A SUMMARY PROCEEDING FOR DECLARATION OF PRESUMPTIVE DEATH.— A losing party in this proceeding, however, is not entirely left without a remedy. While jurisprudence tells us that no appeal can be made from the trial court's judgment, an aggrieved party may, nevertheless, file a petition for *certiorari* under Rule 65 of the Rules of Court to question any abuse of discretion amounting to lack or excess of jurisdiction that transpired.

3. ID.; ID.; ID.; REQUISITES FOR THE DECLARATION OF PRESUMPTIVE DEATH; THE PRESENT SPOUSE HAS THE BURDEN OF PROOF TO ESTABLISH THE PRESENCE OF ALL THE REQUISITES.— Before a judicial declaration of presumptive death can be obtained, it must be

shown that the prior spouse had been absent for four consecutive years and the present spouse had a well-founded belief that the prior spouse was already dead. Under Article 41 of the Family Code, there are four (4) essential requisites for the declaration of presumptive death: 1. That the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391, Civil Code; 2. That the present spouse wishes to remarry; 3. **That the present spouse has a well-founded belief that the absentee is dead;** and 4. That the present spouse files a summary proceeding for the declaration of presumptive death of the absentee. x x x The burden of proof rests on the present spouse to show that all the requisites under Article 41 of the Family Code are present. Since it is the present spouse who, for purposes of declaration of presumptive death, substantially asserts the affirmative of the issue, it stands to reason that the burden of proof lies with him/her. He who alleges a fact has the burden of proving it and mere allegation is not evidence.

4. ID.; ID.; ID.; THE FAMILY CODE IMPOSES A STRICTER STANDARD FOR DECLARATION OF PRESUMPTIVE DEATH; REQUIREMENT OF WELL-FOUNDED BELIEF, EXPLAINED.— Article 41 of the Family Code, compared to the old provision of the Civil Code which it superseded, imposes a **stricter standard**. It requires a "*well-founded belief*" that the absentee is *already dead* before a petition for declaration of presumptive death can be granted. x x x Thus, mere absence of the spouse (even for such period required by the law), lack of any news that such absentee is still alive, failure to communicate or general presumption of absence under the Civil Code would not suffice. This conclusion proceeds from the premise that Article 41 of the Family Code places upon the present spouse the burden of proving the additional and more stringent requirement of "*well-founded belief*" which can only be discharged upon a showing of proper and honest-to-goodness inquiries and efforts to ascertain not only the absent spouse's whereabouts but, more importantly, that the absent spouse is still alive or is already dead. x x x The law did not define what is meant by "well-founded belief." It depends upon the circumstances of each particular case. Its determination, so to speak, remains on a case-to-case basis.

To be able to comply with this requirement, the present spouse must prove that his/her belief was the result of **diligent and reasonable efforts and inquiries** to locate the absent spouse and that based on these efforts and inquiries, he/she believes that under the circumstances, the absent spouse is already dead. **It requires exertion of active effort (not a mere passive one).**

5. ID.; ID.; ID.; CIRCUMSTANCES SHOWING THAT THE PRESENT SPOUSE FELL SHORT OF THE "STRINGENT STANDARD" AND THE REQUIRED DEGREE OF DILIGENCE TO ESTABLISH WELL-FOUNDED BELIEF THAT THE ABSENT SPOUSE WAS ALREADY DEAD.— In the case at bar, the respondent's "well-founded belief" was anchored on her alleged "earnest efforts" to locate Jerry x x x[.] These efforts, however, fell short of the "stringent standard" and degree of diligence required by jurisprudence for the following reasons: ***First***, the respondent did not actively look for her missing husband. x x x ***Second***, she did not report Jerry's absence to the police nor did she seek the aid of the authorities to look for him. x x x ***Third***, she did not present as witnesses Jerry's relatives or their neighbors and friends, who can corroborate her efforts to locate Jerry. x x x ***Lastly***, there was no other corroborative evidence to support the respondent's claim that she conducted a diligent search. Neither was there supporting evidence proving that she had a well-founded belief other than her bare claims that she inquired from her friends and in-laws about her husband's whereabouts. In sum, the Court is of the view that the respondent merely engaged in a "passive search" where she relied on uncorroborated inquiries from her in-laws, neighbors and friends. **She failed to conduct a diligent search** because her alleged efforts are insufficient to form a well-founded belief that her husband was already dead. As held in *Republic of the Philippines v. Court of Appeals (Tenth Div.),* "[w]hether or not the spouse present acted on a well-founded belief of death of the absent spouse depends upon the inquiries to be drawn from a great many circumstances occurring before and after the disappearance of the absent spouse and the nature and extent of the inquiries made by [the] present spouse."

6. ID.; ID.; ID.; STRICT STANDARD APPROACH IS CONSISTENT WITH THE STATE'S POLICY TO PROTECT AND STRENGTHEN MARRIAGE; IT IS PRESCRIBED FOR THE BENEFIT OF THE PRESENT SPOUSE.— The application of this stricter standard becomes even more imperative if we consider the State's policy to protect and strengthen the institution of marriage. Since marriage serves as the family's foundation and since it is the state's policy to protect and strengthen the family as a basic social institution, marriage should not be permitted to be dissolved at the whim of the parties. In interpreting and applying Article 41, this is the underlying rationale – to uphold the sanctity of marriage. x x x The requisite judicial declaration of presumptive death of the absent spouse (and consequently, the application of a stringent standard for its issuance) is also for the present spouse's benefit. It is intended to protect him/her from a criminal prosecution of bigamy under Article 349 of the Revised Penal Code which might come into play if he/she would prematurely remarry *sans* the court's declaration. Upon the issuance of the decision declaring his/her absent spouse presumptively dead, the present spouse's good faith in contracting a second marriage is effectively established. The decision of the competent court constitutes sufficient proof of his/her good faith and his/her criminal intent in case of remarriage is effectively negated. Thus, for purposes of remarriage, it is necessary to strictly comply with the stringent standard and have the absent spouse judicially declared presumptively dead.

VELASCO, JR., *J., concurring opinion*:

CIVIL LAW; FAMILY CODE; DECLARATION OF PRESUMPTIVE DEATH; REQUIREMENT OF "WELL-FOUNDED BELIEF," NOT ESTABLISHED BY THE PRESENT SPOUSE.— I fully agree that whether or not one has a "well-founded belief" that his or her spouse is dead depends on the unique circumstances of each case and that there is no set standard or procedure in determining the same. It is my opinion that Maria Fe failed to conduct a search with such diligence as to give rise to a "well-founded belief" that her husband is dead. Further, the circumstances of Jerry's departure and

Maria Fe's behavior after he left make it difficult to consider her belief a well-founded one. To reiterate, Maria Fe's alleged "well-founded" belief arose when: (1) Jerry's relatives and friends could not give her any information on his whereabouts; and (2) she did not find Jerry's name in the patients' directory whenever she went to a hospital. To my mind, Maria Fe's reliance on these alone makes her belief weak and flimsy rather than "well-founded." Further, it appears that Maria Fe did not actively look for her husband in hospitals and that she searched for Jerry's name in these hospitals' list of patients merely as an afterthought. x x x Maria Fe's search for Jerry was far from diligent. At the very least, Maria Fe should have looked for Jerry in the places he frequented. Moreover, she should have sought the assistance of the *barangay* or the police in searching for her husband, like what could be reasonably expected of any person with a missing spouse or loved one. These very basic things, she did not do. It may have been advantageous, too, if Maria Fe approached the media for help or posted photos of Jerry in public places with requests for information on his whereabouts. While I agree that We cannot ask the impossible from a spouse who was abandoned, it is not too much to expect the foregoing actions from someone who has lost a spouse.

LEONEN, *J., dissenting opinion*:

1. CIVIL LAW; FAMILY CODE; DECLARATION OF PRESUMPTIVE DEATH; REMEDIES AVAILABLE TO ANNUL THE JUDGMENT OF THE TRIAL COURT IN A SUMMARY PROCEEDING FOR THE DECLARATION OF PRESUMPTIVE DEATH OF AN ABSENT SPOUSE.— I agree that *certiorari* lies as a remedy to annul a judgment in proceedings for the declaration of presumptive death of an absent spouse where grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Regional Trial Court is clearly and convincingly shown. A petition for the declaration of presumptive death of an absent spouse for the purpose of contracting a subsequent marriage is a summary proceeding. x x x [A]petition for the declaration of presumptive death of an absent spouse is a summary proceeding; more so, judgments of a trial court relating to such petitions shall be considered immediately final and executory. However, while

a trial court's judgment relating to a petition for the declaration of presumptive death of an absent spouse is considered immediately final and executory, the Office of the Solicitor General is not entirely without remedy to assail the propriety of a trial court's judgment. Where the judgment is attended by grave abuse of discretion amounting to lack or excess of jurisdiction, the Office of the Solicitor General may file with the Court of Appeals a petition for *certiorari* under Rule 65 and have the judgment annulled. Should the Court of Appeals still render an adverse decision, the Office of the Solicitor General may then file a petition for review on *certiorari* under Rule 45 with this court.

2. ID.; ID.; ID.; STRICT STANDARDS SHOULD NOT BE IMPOSED UPON THE PRESENT SPOUSE IN EVALUATING HIS OR HER EFFORTS TO SEARCH FOR THE ABSENT SPOUSE.— I disagree with the position that "well-founded belief" should be interpreted as an imposition of stringent standards in evaluating the efforts and inquiries made by the present spouse in ascertaining the absent spouse's status and whereabouts. "Well-founded belief" should be based on the circumstances of each case. It should not be based on a prior limited enumeration of what acts indicate a "well-founded belief." In cases for declaration of presumptive death under Article 41 of the Family Code, we cannot ask the impossible from a spouse who was abandoned. x x x Belief is a state of mind and can only be ascertained in reference to a person's overt acts. In making such an evaluation, one must evaluate a case on the basis of its own merits – cognizant of its unique facts, context, and other nuances – rather than be compelled to satisfy a pre-conceived determination of what acts are sufficiently indicative of the belief being ascertained. A belief is well-founded when a person has reasonable basis for holding on to such belief. It is to say that such belief is not arbitrary and whimsical. Such belief must, thus, be evaluated on the basic and uncomplicated standard of rationality. In declaring a person presumptively dead, a court is called upon to sustain a *presumption*. It is not called upon to conclude on verity or to establish actuality. In so doing, a court infers despite an acknowledged uncertainty. Thus, to insist on such demanding and extracting evidence as to practically require enough *proof*

of a well-founded belief, as the Office of the Solicitor General suggests, is to insist on an inordinate, intemperate, and non-rational standard. x x x The majority agrees with the Office of the Solicitor General. The majority views Maria Fe's efforts as a mere "passive search" that is short of the diligent search required to form a well-founded belief that her husband was already dead. Maria Fe exerted the best efforts to ascertain the location of her husband but to no avail. She bore the indignity of being left behind. She suffered the indifference of her husband. Such indifference was not momentary. She anguished through years of never hearing from him. x x x To require more from Maria Fe who did what she could, given the resources available to her, is to assert the oppressiveness of our laws. It is to tell her that she has to suffer from causes which she cannot understand for more years to come. It should be in the public interest to assume that Jerry, or any husband for that matter, as a matter of moral and legal obligation, would get in touch with Maria Fe even if only to tell her that he is alive. It behooves this court not to have pre-conceived expectations of a standard operating procedure for spouses who are abandoned. Instead, it should, with the public interest in mind and human sensitivity at heart, understand the domestic situation. x x x While it may be true that it would have been *ideal* for Maria Fe to have exerted more exceptional efforts in locating her husband, the hypothetical issue of what else she could have done or ought to have done should not diminish the import of her efforts. It is for Maria Fe to resort to the courses of action permitted to her given her stature and means. We are called upon to make an appreciation of the *reasonable*, not of the *exceptional*. In adjudicating this case, this court must ground itself on what is *real*, not dwell on a projected *ideal*.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Eliordo U. Ocena for respondent.

D E C I S I O N

BRION, *J.*:

The petition for review on *certiorari*[1] before us assails the decision[2] dated August 27, 2008 of the Court of Appeals (*CA*) in CA-G.R. SP No. 01558-MIN which affirmed the order[3] dated December 15, 2006 of the Regional Trial Court (*RTC*), Branch 25, Koronadal City, South Cotabato, in SP Proc. Case No. 313-25, declaring Jerry F. Cantor, respondent Maria Fe Espinosa Cantor's husband, presumptively dead under Article 41 of the Family Code.

The Factual Antecedents

The respondent and Jerry were married on September 20, 1997. They lived together as husband and wife in their conjugal dwelling in Agan Homes, Koronadal City, South Cotabato. Sometime in January 1998, the couple had a violent quarrel brought about by: (1) the respondent's inability to reach "sexual climax" whenever she and Jerry would have intimate moments; and (2) Jerry's expression of animosity toward the respondent's father.

After their quarrel, Jerry left their conjugal dwelling and this was the last time that the respondent ever saw him. Since then, she had not seen, communicated nor heard anything from Jerry or about his whereabouts.

On May 21, 2002, or more than four (4) years from the time of Jerry's disappearance, the respondent filed before the RTC a petition[4] for her husband's declaration of presumptive death, docketed as SP Proc. Case No. 313-25. She claimed that she had a well-founded belief that Jerry was already dead. She

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[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 9-31.

[2] *Id.* at 33-41.

[3] *Id.* at 42-47.

[4] *Id.* at 48.

alleged that she had inquired from her mother-in-law, her brothers-in-law, her sisters-in-law, as well as her neighbors and friends, but to no avail. In the hopes of finding Jerry, she also allegedly made it a point to check the patients' directory whenever she went to a hospital. All these earnest efforts, the respondent claimed, proved futile, prompting her to file the petition in court.

The Ruling of the RTC

After due proceedings, the RTC issued an order granting the respondent's petition and declaring Jerry presumptively dead. It concluded that the respondent had a well-founded belief that her husband was already dead since more than four (4) years had passed without the former receiving any news about the latter or his whereabouts. The dispositive portion of the order dated December 15, 2006 reads:

> WHEREFORE, the Court hereby declares, as it hereby declared that respondent Jerry F. Cantor is presumptively dead pursuant to Article 41 of the Family Code of the Philippines without prejudice to the effect of the reappearance of the absent spouse Jerry F. Cantor.[5]

The Ruling of the CA

The case reached the CA through a petition for *certiorari*[6] filed by the petitioner, Republic of the Philippines, through the Office of the Solicitor General (*OSG*). In its August 27, 2008 decision, the CA dismissed the petitioner's petition, finding no grave abuse of discretion on the RTC's part, and, accordingly, fully affirmed the latter's order, thus:

> WHEREFORE, premises foregoing (sic), the instant petition is hereby DISMISSED and the assailed Order dated December 15, 2006 declaring Jerry F. Cantor presumptively dead is hereby AFFIRMED *in toto*.[7]

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[5] *Id.* at 47.

[6] Under Rule 65 of the Rules of Court.

[7] *Rollo*, p. 40.

The petitioner brought the matter *via* a Rule 45 petition before this Court.

The Petition

The petitioner contends that *certiorari* lies to challenge the decisions, judgments or final orders of trial courts in petitions for declaration of presumptive death of an absent spouse under Rule 41 of the Family Code. It maintains that although judgments of trial courts in summary judicial proceedings, including presumptive death cases, are deemed immediately final and executory (hence, not appealable under Article 247 of the Family Code), this rule does not mean that they are not subject to review on *certiorari*.

The petitioner also posits that the respondent did not have a well-founded belief to justify the declaration of her husband's presumptive death. It claims that the respondent failed to conduct the requisite diligent search for her missing husband. Likewise, the petitioner invites this Court's attention to the attendant circumstances surrounding the case, particularly, the degree of search conducted and the respondent's resultant failure to meet the strict standard under Article 41 of the Family Code.

The Issues

The petition poses to us the following issues:

(1) Whether *certiorari* lies to challenge the decisions, judgments or final orders of trial courts in petitions for declaration of presumptive death of an absent spouse under Article 41 of the Family Code; and

(2) Whether the respondent had a well-founded belief that Jerry is already dead.

The Court's Ruling

We grant the petition.

a. On the Issue of the Propriety of Certiorari as a Remedy

Court's Judgment in the Judicial Proceedings for Declaration of Presumptive Death Is Final and Executory, Hence, Unappealable

The Family Code was explicit that the court's judgment in summary proceedings, such as the declaration of presumptive death of an absent spouse under Article 41 of the Family Code, shall be immediately final and executory.

Article 41, in relation to Article 247, of the Family Code provides:

> Art. 41. A marriage contracted by any person during subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present has a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.
>
> For the purpose of contracting the subsequent marriage under the preceding paragraph the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.
>
> Art. 247. The judgment of the court shall be immediately final and executory. [underscores ours]

With the judgment being final, it necessarily follows that it is no longer subject to an appeal, the dispositions and conclusions therein having become immutable and unalterable not only as against the parties but even as against the courts.[8] Modification

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[8] *Philippine National Bank v. Spouses Bernard and Cresencia Marañon,* G.R. No. 189316, July 1, 2013.

of the court's ruling, no matter how erroneous is no longer permissible. The final and executory nature of this summary proceeding thus prohibits the resort to appeal. As explained in *Republic of the Phils. v. Bermudez-Lorino*,[9] the right to appeal is not granted to parties because of the express mandate of Article 247 of the Family Code, to wit:

> **In Summary Judicial Proceedings under the Family Code, there is no reglementary period within which to perfect an appeal, precisely because judgments rendered thereunder, by express provision of [Article] 247, Family Code, *supra*, are "immediately final and executory."** It was erroneous, therefore, on the part of the RTC to give due course to the Republic's appeal and order the transmittal of the entire records of the case to the Court of Appeals.
>
> **An appellate court acquires no jurisdiction to review a judgment which, by express provision of law, is immediately final and executory.** As we have said in *Veloria vs. Comelec*, "the right to appeal is not a natural right nor is it a part of due process, for it is merely a statutory privilege." **Since, by express mandate of Article 247 of the Family Code, all judgments rendered in summary judicial proceedings in Family Law are "immediately final and executory," the right to appeal was not granted to any of the parties therein**. The Republic of the Philippines, as oppositor in the petition for declaration of presumptive death, should not be treated differently. It had no right to appeal the RTC decision of November 7, 2001. [emphases ours; italics supplied]

Certiorari Lies to Challenge the Decisions, Judgments or Final Orders of Trial Courts in a Summary Proceeding for the Declaration of Presumptive Death Under the Family Code

A losing party in this proceeding, however, is not entirely left without a remedy. While jurisprudence tells us that no appeal can be made from the trial court's judgment, an aggrieved party

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[9] 489 Phil. 761, 767 (2005).

may, nevertheless, file a petition for *certiorari* under Rule 65 of the Rules of Court to question any abuse of discretion amounting to lack or excess of jurisdiction that transpired.

As held in *De los Santos v. Rodriguez, et al.,*[10] the fact that a decision has become final does not automatically negate the original action of the CA to issue *certiorari*, prohibition and *mandamus* in connection with orders or processes issued by the trial court. *Certiorari* may be availed of where a court has acted without or in excess of jurisdiction or with grave abuse of discretion, and where the ordinary remedy of appeal is not available. Such a procedure finds support in the case of *Republic v. Tango,*[11] wherein we held that:

> This case presents an opportunity for us to settle the rule on appeal of judgments rendered in summary proceedings under the Family Code and accordingly, refine our previous decisions thereon.
>
> Article 238 of the Family Code, under Title XI: SUMMARY JUDICIAL PROCEEDINGS IN THE FAMILY LAW, establishes the rules that govern summary court proceedings in the Family Code:
>
> "ART. 238. Until modified by the Supreme Court, the procedural rules in this Title shall apply in all cases provided for in this Code requiring summary court proceedings. Such cases shall be decided in an expeditious manner without regard to technical rules."
>
> In turn, Article 253 of the Family Code specifies the cases covered by the rules in chapters two and three of the same title. It states:
>
> "ART. 253. The foregoing rules in Chapters **2** and 3 hereof shall likewise govern **summary proceedings** filed under Articles **41**, 51, 69, 73, 96, 124 and 217, insofar as they are applicable." (Emphasis supplied.)
>
> In plain text, Article 247 in Chapter 2 of the same title reads:
>
> "ART. 247. The judgment of the court shall be immediately final and executory."

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[10] 130 Phil. 459, 464 (1968).

[11] G.R. No. 161062, July 31, 2009, 594 SCRA 560, 566-567.

By express provision of law, the judgment of the court in a summary proceeding shall be immediately final and executory. As a matter of course, it follows that no appeal can be had of the trial court's judgment in a summary proceeding for the declaration of presumptive death of an absent spouse under Article 41 of the Family Code. **It goes without saying, however, that an aggrieved party may file a petition for *certiorari* to question abuse of discretion amounting to lack of jurisdiction. Such petition should be filed in the Court of Appeals in accordance with the Doctrine of Hierarchy of Courts.** To be sure, even if the Court's original jurisdiction to issue a writ of *certiorari* is concurrent with the RTCs and the Court of Appeals in certain cases, such concurrence does not sanction an unrestricted freedom of choice of court forum. [emphasis ours]

Viewed in this light, we find that the petitioner's resort to *certiorari* under Rule 65 of the Rules of Court to question the RTC's order declaring Jerry presumptively dead was proper.

b. On the Issue of the Existence of Well-Founded Belief

The Essential Requisites for the Declaration of Presumptive Death Under Article 41 of the Family Code

Before a judicial declaration of presumptive death can be obtained, it must be shown that the prior spouse had been absent for four consecutive years and the present spouse had a well-founded belief that the prior spouse was already dead. Under Article 41 of the Family Code, there are four (4) essential requisites for the declaration of presumptive death:

1. That the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391, Civil Code;
2. That the present spouse wishes to remarry;
3. **That the present spouse has a well-founded belief that the absentee is dead;** and

4. That the present spouse files a summary proceeding for the declaration of presumptive death of the absentee.[12]

The Present Spouse Has the Burden of Proof to Show that All the Requisites Under Article 41 of the Family Code Are Present

The burden of proof rests on the present spouse to show that all the requisites under Article 41 of the Family Code are present. Since it is the present spouse who, for purposes of declaration of presumptive death, substantially asserts the affirmative of the issue, it stands to reason that the burden of proof lies with him/her. He who alleges a fact has the burden of proving it and mere allegation is not evidence.[13]

Declaration of Presumptive Death Under Article 41 of the Family Code Imposes a Stricter Standard

Notably, Article 41 of the Family Code, compared to the old provision of the Civil Code which it superseded, imposes a **stricter standard**. It requires a *"well-founded belief"* that the absentee is *already dead* before a petition for declaration of presumptive death can be granted. We have had occasion to make the same observation in *Republic v. Nolasco,*[14] where we noted the crucial differences between Article 41 of the Family Code and Article 83 of the Civil Code, to wit:

Under Article 41, the time required for the presumption to arise has been shortened to four (4) years; however, there is need for a judicial declaration of presumptive death to enable the spouse present to remarry. Also, Article 41 of the Family Code imposes a **stricter**

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[12] *Republic v. Nolasco,* G.R. No. 94053, March 17, 1993, 220 SCRA 20, 25-26; emphasis ours.

[13] *Guidangen v. Wooden,* G.R. No. 174445, February 15, 2012, 666 SCRA 119, 131.

[14] *Supra* note 12, at 25; emphases ours, italics supplied, citations omitted.

standard than the Civil Code: Article 83 of the Civil Code merely requires either that there be *no news that such absentee is still alive*; or the absentee is *generally considered to be dead* and *believed to be so by the spouse present*, or is *presumed dead* under Articles 390 and 391 of the Civil Code. **The Family Code, upon the other hand, prescribes as *"well founded belief"* that the absentee is *already dead* before a petition for declaration of presumptive death can be granted.**

Thus, mere absence of the spouse (even for such period required by the law), lack of any news that such absentee is still alive, failure to communicate or general presumption of absence under the Civil Code would not suffice. This conclusion proceeds from the premise that Article 41 of the Family Code places upon the present spouse the burden of proving the additional and more stringent requirement of "*well-founded belief*" which can only be discharged upon a showing of proper and honest-to-goodness inquiries and efforts to ascertain not only the absent spouse's whereabouts but, more importantly, that the absent spouse is still alive or is already dead.[15]

The Requirement of Well-Founded Belief

The law did not define what is meant by "well-founded belief." It depends upon the circumstances of each particular case. Its determination, so to speak, remains on a case-to-case basis. To be able to comply with this requirement, the present spouse must prove that his/her belief was the result of **diligent and reasonable efforts and inquiries** to locate the absent spouse and that based on these efforts and inquiries, he/she believes that under the circumstances, the absent spouse is already dead. **It requires exertion of active effort (not a mere passive one).**

To illustrate this degree of "diligent and reasonable search" required by the law, an analysis of the following relevant cases is warranted:

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[15] *Republic of the Philippines v. Court of Appeals (Tenth Div.),* 513 Phil. 391, 397-398 (2005).

i. Republic of the Philippines v. Court of Appeals (Tenth Div.)[16]

In *Republic of the Philippines v. Court of Appeals (Tenth Div.)*,[17] the Court ruled that the present spouse failed to prove that he had a well-founded belief that his absent spouse was already dead before he filed his petition. His efforts to locate his absent wife allegedly consisted of the following:

(1) He went to his in-laws' house to look for her;

(2) He sought the *barangay* captain's aid to locate her;

(3) He went to her friends' houses to find her and inquired about her whereabouts among his friends;

(4) He went to Manila and worked as a part-time taxi driver to look for her in malls during his free time;

(5) He went back to Catbalogan and again looked for her; and

(6) He reported her disappearance to the local police station and to the NBI.

Despite these alleged "earnest efforts," the Court still ruled against the present spouse. The Court found that he failed to present the persons from whom he allegedly made inquiries and only reported his wife's absence after the OSG filed its notice to dismiss his petition in the RTC.

The Court also provided the following criteria for determining the existence of a "well-founded belief" under Article 41 of the Family Code:

> The belief of the present spouse **must be the result of proper and honest to goodness inquiries and efforts to ascertain the whereabouts of the absent spouse and whether the absent spouse is still alive or is already dead**. Whether or not the spouse present acted on a well-founded belief of death of the absent spouse depends upon the inquiries to be drawn from a great many circumstances

[16] *Ibid*.

[17] *Ibid*.

occurring before and after the disappearance of the absent spouse and **the nature and extent of the inquiries made by [the] present spouse**.[18]

ii. Republic v. Granada[19]

Similarly in *Granada*, the Court ruled that the absent spouse failed to prove her "well-founded belief" that her absent spouse was already dead prior to her filing of the petition. In this case, the present spouse alleged that her brother had made inquiries from their relatives regarding the absent spouse's whereabouts. The present spouse did not report to the police nor seek the aid of the mass media. Applying the standards in *Republic of the Philippines v. Court of Appeals (Tenth Div.)*,[20] the Court ruled against the present spouse, as follows:

> Applying the foregoing standards to the present case, petitioner points out that respondent **Yolanda did not initiate a diligent search to locate her absent husband. While her brother Diosdado Cadacio testified to having inquired about the whereabouts of Cyrus from the latter's relatives, these relatives were not presented to corroborate Diosdado's testimony.** In short, respondent was allegedly not diligent in her search for her husband. Petitioner argues that if she were, she would have sought information from the Taiwanese Consular Office or assistance from other government agencies in Taiwan or the Philippines. She could have also utilized mass media for this end, but she did not. Worse, she failed to explain these omissions.

iii. Republic v. Nolasco[21]

In *Nolasco*, the present spouse filed a petition for declaration of presumptive death of his wife, who had been missing for more than four years. He testified that his efforts to find her consisted of:

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[18] *Id.* at 397-398; emphases ours.

[19] G.R. No. 187512, June 13, 2012, 672 SCRA 432, 444-445; emphasis ours.

[20] *Supra* note 15.

[21] *Supra* note 12.

(1) Searching for her whenever his ship docked in England;

(2) Sending her letters which were all returned to him; and

(3) Inquiring from their friends regarding her whereabouts, which all proved fruitless.

The Court ruled that the present spouse's investigations were too sketchy to form a basis that his wife was already dead and ruled that the pieces of evidence only proved that his wife had chosen not to communicate with their common acquaintances, and not that she was dead.

iv. The present case

In the case at bar, the respondent's "well-founded belief" was anchored on her alleged "earnest efforts" to locate Jerry, which consisted of the following:

(1) She made inquiries about Jerry's whereabouts from her in-laws, neighbors and friends; and

(2) Whenever she went to a hospital, she saw to it that she looked through the patients' directory, hoping to find Jerry.

These efforts, however, fell short of the "stringent standard" and degree of diligence required by jurisprudence for the following reasons:

First, the respondent did not actively look for her missing husband. It can be inferred from the records that her hospital visits and her consequent checking of the patients' directory therein were unintentional. She did not purposely undertake a diligent search for her husband as her hospital visits were not planned nor primarily directed to look for him. This Court thus considers these attempts insufficient to engender a belief that her husband is dead.

Second, she did not report Jerry's absence to the police nor did she seek the aid of the authorities to look for him. While a finding of well-founded belief varies with the nature of the situation in which the present spouse is placed, under present conditions,

we find it proper and prudent for a present spouse, whose spouse had been missing, to seek the aid of the authorities or, at the very least, report his/her absence to the police.

Third, she did not present as witnesses Jerry's relatives or their neighbors and friends, who can corroborate her efforts to locate Jerry. Worse, these persons, from whom she allegedly made inquiries, were not even named. As held in *Nolasco*, the present spouse's bare assertion that he inquired from his friends about his absent spouse's whereabouts is insufficient as the names of the friends from whom he made inquiries were not identified in the testimony nor presented as witnesses.

Lastly, there was no other corroborative evidence to support the respondent's claim that she conducted a diligent search. Neither was there supporting evidence proving that she had a well-founded belief other than her bare claims that she inquired from her friends and in-laws about her husband's whereabouts.

In sum, the Court is of the view that the respondent merely engaged in a "passive search" where she relied on uncorroborated inquiries from her in-laws, neighbors and friends. **She failed to conduct a diligent search** because her alleged efforts are insufficient to form a well-founded belief that her husband was already dead. As held in *Republic of the Philippines v. Court of Appeals (Tenth Div.),*[22] "[w]hether or not the spouse present acted on a well-founded belief of death of the absent spouse depends upon the inquiries to be drawn from a great many circumstances occurring before and after the disappearance of the absent spouse and the nature and extent of the inquiries made by [the] present spouse."

Strict Standard Approach Is Consistent with the State's Policy to Protect and Strengthen Marriage

In the above-cited cases, the Court, fully aware of the possible collusion of spouses in nullifying their marriage, has consistently applied the "strict standard" approach. This is to ensure that a

[22] *Supra* note 15, at 398.

petition for declaration of presumptive death under Article 41 of the Family Code is not used as a tool to conveniently circumvent the laws. Courts should never allow procedural shortcuts and should ensure that the stricter standard required by the Family Code is met. In *Republic of the Philippines v. Court of Appeals (Tenth Div.)*,[23] we emphasized that:

> In view of the summary nature of proceedings under Article 41 of the Family Code for the declaration of presumptive death of one's spouse, **the degree of due diligence set by this Honorable Court in the above-mentioned cases in locating the whereabouts of a missing spouse must be strictly complied with**. There have been times when Article 41 of the Family Code had been resorted to by parties wishing to remarry knowing fully well that their alleged missing spouses are alive and well. It is even possible that those who cannot have their marriages xxx declared *null* and *void* under Article 36 of the Family Code resort to Article 41 of the Family Code for relief because of the xxx summary nature of its proceedings.

The application of this stricter standard becomes even more imperative if we consider the State's policy to protect and strengthen the institution of marriage.[24] Since marriage serves as the family's foundation[25] and since it is the state's policy to protect and strengthen the family as a basic social institution,[26] marriage should not be permitted to be dissolved at the whim of the parties. In interpreting and applying Article 41, this is the underlying rationale – to uphold the sanctity of marriage. *Arroyo, Jr. v. Court of Appeals*[27] reflected this sentiment when we stressed:

> [The] protection of the basic social institutions of marriage and the family in the preservation of which the State has the strongest interest; the public policy here involved is of the most fundamental kind.

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[23] *Id.* at 396; emphasis ours, italics supplied.

[24] *Ibid*.

[25] *Ibid*.

[26] CONSTITUTION, Article II, Section 12.

[27] G.R. Nos. 96602 and 96715, November 19, 1991, 203 SCRA 750, 761.

In Article II, Section 12 of the Constitution there is set forth the following basic state policy:

> The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution.

Strict Standard Prescribed Under Article 41 of the Family Code Is for the Present Spouse's Benefit

The requisite judicial declaration of presumptive death of the absent spouse (and consequently, the application of a stringent standard for its issuance) is also for the present spouse's benefit. It is intended to protect him/her from a criminal prosecution of bigamy under Article 349 of the Revised Penal Code which might come into play if he/she would prematurely remarry *sans* the court's declaration.

Upon the issuance of the decision declaring his/her absent spouse presumptively dead, the present spouse's good faith in contracting a second marriage is effectively established. The decision of the competent court constitutes sufficient proof of his/her good faith and his/her criminal intent in case of remarriage is effectively negated.[28] Thus, for purposes of remarriage, it is necessary to strictly comply with the stringent standard and have the absent spouse judicially declared presumptively dead.

Final Word

As a final word, it has not escaped this Court's attention that the strict standard required in petitions for declaration of presumptive death has not been fully observed by the lower courts. We need only to cite the instances when this Court, on review, has consistently ruled on the sanctity of marriage and reiterated that anything less than the use of the strict standard necessitates a denial. To rectify this situation, lower courts are now expressly put on notice of the strict standard this Court requires in cases under Article 41 of the Family Code.

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[28] *Manuel v. People*, 512 Phil. 818, 836 (2005).

WHEREFORE, in view of the foregoing, the assailed decision dated August 27, 2008 of the Court of Appeals, which affirmed the order dated December 15, 2006 of the Regional Trial Court, Branch 25, Koronadal City, South Cotabato, declaring Jerry F. Cantor presumptively dead is hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-de Castro, Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr., J., see concurring opinion.

Abad and *Mendoza, JJ.*, join the dissenting opinion of *J.* Leonen.

Leonen, J., see dissenting opinion.

CONCURRING OPINION

VELASCO, JR., *J.*:

I vote for the granting of the petition.

The facts of this case are simple. Sometime in January 1998, Jerry F. Cantor (Jerry) left his wife, Maria Fe Espinosa Cantor (Maria Fe), after a violent quarrel. Since then, Maria had not seen or heard from him.

After more than four (4) years of not seeing or hearing from Jerry, Maria Fe filed a petition for the declaration of presumptive death of her husband with the Regional Trial Court, Branch 25, Koronadal City, South Cotabato (RTC). In sum, Maria Fe alleged that she conducted a diligent search for her husband and exerted earnest efforts to find him. She allegedly inquired from her mother-in-law, brothers-in-law, sisters-in-law, neighbors, and friends but no one could tell her where Jerry was. Whenever she went to a hospital, she made it a point to look through the patients' directory, hoping to find Jerry. On

the basis of the foregoing, Maria Fe claimed that she had a well-founded belief that her husband, Jerry, was already dead.

The RTC granted her petition and thus declared Jerry as presumptively dead pursuant to Article 41 of the Family Code. The Court of Appeals affirmed *in toto* the RTC Decision and held that there had been no grave abuse of discretion on the part of the RTC in having declared Jerry presumptively dead. Dissatisfied with the ruling of the Court of Appeals (CA), the Office of the Solicitor General (OSG) filed the present Petition for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure arguing that Maria Fe did not have a well-founded belief that Jerry was dead.

I fully agree that whether or not one has a "well-founded belief" that his or her spouse is dead depends on the unique circumstances of each case and that there is no set standard or procedure in determining the same. It is my opinion that Maria Fe failed to conduct a search with such diligence as to give rise to a "well-founded belief" that her husband is dead. Further, the circumstances of Jerry's departure and Maria Fe's behavior after he left make it difficult to consider her belief a well-founded one.

To reiterate, Maria Fe's alleged "well-founded" belief arose when: (1) Jerry's relatives and friends could not give her any information on his whereabouts; and (2) she did not find Jerry's name in the patients' directory whenever she went to a hospital. To my mind, Maria Fe's reliance on these alone makes her belief weak and flimsy rather than "well-founded."

Further, it appears that Maria Fe did not actively look for her husband in hospitals and that she searched for Jerry's name in these hospitals' list of patients merely as an afterthought. Moreover, it may be sensed from the given facts that her search was not intentional or planned. This may be noted from the fact that whenever Maria Fe went to a hospital, she made it a point to look through the patients' directory, hoping to find Jerry. Verily, it is as if she searched the patient's directory only when she was in a hospital by coincidence.

Maria Fe's search for Jerry was far from diligent. At the very least, Maria Fe should have looked for Jerry in the places he frequented. Moreover, she should have sought the assistance of the *barangay* or the police in searching for her husband, like what could be reasonably expected of any person with a missing spouse or loved one. These very basic things, she did not do. It may have been advantageous, too, if Maria Fe approached the media for help or posted photos of Jerry in public places with requests for information on his whereabouts. While I agree that We cannot ask the impossible from a spouse who was abandoned, it is not too much to expect the foregoing actions from someone who has lost a spouse.

This Court has been consistent in its strict application of Article 41 of the Family Code. This is clear in the cases cited in the *ponencia* where the Court, notwithstanding the evidence on the efforts of the present spouse to search for the absent spouse, still found that the present spouse's search was not diligent enough and that the said spouse failed to prove that he or she had a well-founded belief that the absent spouse was already dead. I would like to share my observation that compared to Maria Fe, the present spouses in the said cases exerted similar, or if not, even more effort in their searches, and presented similar evidence to prove the same. Yet, the Court found their efforts and evidence wanting.

For instance, in *Republic v. Court of Appeals and Alegro*,[1] respondent Alegro testified that when his wife Lea went missing, he asked Lea's parents as well as their friends if they knew where she was. He stated that he went to Manila to search for her among her friends and would even look for her in malls. Alegro reported Lea's disappearance to the local police station and the National Bureau of Investigation. Despite these efforts, this Court held that Alegro failed to prove that he had a well-founded belief, before he filed his petition in the RTC, that his spouse was already dead. The Court explained:

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[1] G.R. No. 159614, December 9, 2005, 477 SCRA 277.

In this case, the respondent failed to present a witness other than Barangay Captain Juan Magat. The respondent even failed to present Janeth Bautista or Nelson Abaenza or any other person from whom he allegedly made inquiries about Lea to corroborate his testimony. On the other hand, the respondent admitted that when he returned to the house of his parents-in-law on February 14, 1995, his father-in-law told him that Lea had just been there but that she left without notice.

The respondent declared that Lea left their abode on February 7, 1995 after he chided her for coming home late and for being always out of their house, and told her that it would be better for her to go home to her parents if she enjoyed the life of a single person. Lea, thus, left their conjugal abode and never returned. Neither did she communicate with the respondent after leaving the conjugal abode because of her resentment to the chastisement she received from him barely a month after their marriage. What is so worrisome is that, the respondent failed to make inquiries from his parents-in-law regarding Lea's whereabouts before filing his petition in the RTC. It could have enhanced the credibility of the respondent had he made inquiries from his parents-in-law about Lea's whereabouts considering that Lea's father was the owner of Radio DYMS.

The respondent did report and seek the help of the local police authorities and the NBI to locate Lea, but it was only an afterthought. He did so only after the OSG filed its notice to dismiss his petition in the RTC.[2]

Similarly, in *Republic v. Nolasco*,[3] this Court ruled in favor of the Republic and agreed with the position of the OSG that the respondent therein failed to establish that he had a well-founded belief that his absent wife was dead. In this case, Nolasco, who was a seaman, went back home to Antique upon learning that his wife left their conjugal abode. He testified that no one among their friends could tell him where his wife was. He claimed that his efforts to look for her whenever his ship docked in England proved fruitless and also stated that all the letters he had sent to his missing spouse at an address in

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[2] *Id*. at 284-285.

[3] G.R. No. 94053, March 17, 1993, 220 SCRA 20.

Liverpool, England, the address of the bar where they met, were all returned to him. This Court believed that Nolasco failed to conduct a search for his missing wife with such diligence as to give rise to a "well-founded belief" that she is dead. In the said case, it was held:

> In the case at bar, the Court considers that the investigation allegedly conducted by respondent in his attempt to ascertain Janet Monica Parker's whereabouts is too sketchy to form the basis of a reasonable or well-founded belief that she was already dead. When he arrived in San Jose, Antique after learning of Janet Monica's departure, instead of seeking the help of local authorities or of the British Embassy, he secured another seaman's contract and went to London, a vast city of many millions of inhabitants, to look for her there.
>
> "Q: After arriving here in San Jose, Antique, did you exert efforts to inquire the whereabouts of your wife:
> A: Yes, Sir.
> Court:
> How did you do that?
> A: I secured another contract with the ship and we had a trip to London and I went to London to look for her I could not find her (sic)."
>
> Respondent's testimony, however, showed that he confused London for Liverpool and this casts doubt on his supposed efforts to locate his wife in England. The Court of Appeals' justification of the mistake, to wit:
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> ". . . Well, while the cognoscente (sic) would readily know the geographical difference between London and Liverpool, for a humble seaman like Gregorio the two places could mean one — place in England, the port where his ship docked and where he found Janet. Our own provincial folks, every time they leave home to visit relatives in Pasay City, Kalookan City. or Parañaque, would announce to friends and relatives, 'We're going to Manila.' This apparent error in naming of places of destination does not appear to be fatal,"

is not well taken. There is no analogy between Manila and its neighboring cities, on one hand, and London and Liverpool, on the other, which, as pointed out by the Solicitor-General, are around

three hundred fifty (350) kilometers apart. We do not consider that walking into a major city like Liverpool or London with a simple hope of somehow bumping into one particular person there — which is in effect what Nolasco says he did — can be regarded as a reasonably diligent search.

The Court also views respondent's claim that Janet Monica declined to give any information as to her personal background even after she had married respondent too convenient an excuse to justify his failure to locate her. The same can be said of the loss of the alleged letters respondent had sent to his wife which respondent claims were all returned to him. Respondent said he had lost these returned letters, under unspecified circumstances.

Neither can this Court give much credence to respondent's bare assertion that he had inquired from their friends of her whereabouts, considering that respondent did not identify those friends in his testimony. The Court of Appeals ruled that since the prosecutor failed to rebut this evidence during trial, it is good evidence. But this kind of evidence cannot, by its nature, be rebutted. In any case, admissibility is not synonymous with credibility. As noted before, there are serious doubts to respondent's credibility. Moreover, even if admitted as evidence, said testimony merely tended to show that the missing spouse had chosen not to communicate with their common acquaintances, and not that she was dead.

Also, in *Republic v. Granada*,[4] while the Court denied the petition of the OSG on procedural grounds and consequently upheld the declaration of presumptive death of the missing husband, this Court agreed with the OSG's assertion that the respondent therein was not diligent in her search for her husband when she, just like Maria Fe in this case, merely inquired about the whereabouts of his spouse from the latter's relatives and failed to seek information and assistance from government agencies and the mass media. The Court held:

Applying the foregoing standards to the present case, petitioner points out that respondent Yolanda did not initiate a diligent search to locate her absent husband. While her brother Diosdado Cadacio

[4] G.R. No. 187512, June 13, 2012, 672 SCRA 432.

testified to having inquired about the whereabouts of Cyrus from the latter's relatives, these relatives were not presented to corroborate Diosdado's testimony. In short, respondent was allegedly not diligent in her search for her husband. Petitioner argues that if she were, she would have sought information from the Taiwanese Consular Office or assistance from other government agencies in Taiwan or the Philippines. She could have also utilized mass media for this end, but she did not. Worse, she failed to explain these omissions.

The Republic's arguments are well-taken. Nevertheless, we are constrained to deny the Petition.

The RTC ruling on the issue of whether respondent was able to prove her "well-founded belief" that her absent spouse was already dead prior to her filing of the Petition to declare him presumptively dead is already final and can no longer be modified or reversed. Indeed, "[n]othing is more settled in law than that when a judgment becomes final and executory, it becomes immutable and unalterable. The same may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law."[5]

Were it not for the finality of the RTC ruling, the declaration of presumptive death should have been recalled and set aside for utter lack of factual basis.

It is the policy of the State to protect and preserve marriage. Courts should be ever mindful of this policy and, hence, must exercise prudence in evaluating petitions for declaration of presumptive death of an absent spouse. Otherwise, spouses may easily circumvent the policy of the laws on marriage by simply agreeing that one of them leave the conjugal abode and never return again.

[5] *Id*. at 445.

DISSENTING OPINION

LEONEN, *J.*:

> *"Love cannot endure indifference. It needs to be wanted. Like a lamp it needs to be fed out of the oil of another's heart or its flames burn low."*
>
> *Henry Ward Beecher*

I dissent.

A wife, abandoned with impunity, also deserves to be happy.

The Case

Through this Rule 45 petition for review on *certiorari*, the Office of the Solicitor General for the Republic of the Philippines prays that the decision[1] of the Court of Appeals be reversed and set aside and that a new judgment be entered annulling and setting aside the order[2] of the Regional Trial Court, Branch 25, Koronadal City, South Cotabato.

On May 21, 2002, Maria Fe Espinosa Cantor filed a petition[3] for the declaration of presumptive death of her husband, Jerry F. Cantor.[4] She claimed that she had a well-founded belief that her husband was already dead since four (4) years had lapsed without Jerry making his presence known to her.

Trial began after the Regional Trial Court found Maria Fe's petition sufficient in form and substance.

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[1] This order was dated August 27, 2008 and docketed under CA-G.R. SP. No. 01558-MIN, *rollo*, p. 33.

[2] This order was dated December 15, 2006, *rollo*, p. 42.

[3] *Rollo*, pp. 48-50. This petition was docketed as Special Proceeding No. 313-25.

[4] This petition falls under Article 41 of the Family Code.

According to their Certificate of Marriage,[5] Maria Fe and Jerry were married on September 20, 1997 at the Christ the King Cathedral in Koronadal City, South Cotabato. They lived together in their conjugal dwelling in Agan Homes, Koronadal City, South Cotabato.[6]

In her petition, Maria Fe alleges that sometime in January 1998, she and Jerry had a violent quarrel in their house. During the trial, she admitted that the quarrel had to do with her not being able to reach her "climax" whenever she would have sexual intercourse with Jerry. Maria Fe emphasized that she even suggested to him that he consult a doctor, but Jerry brushed aside this suggestion. She also said that during the quarrel, Jerry had expressed animosity toward her father, saying "I will not respect that old man outside."[7]

Jerry left after their quarrel.[8] Since then, Maria Fe had not seen or heard from him. On May 21, 2002 after more than four (4) years without word from Jerry, Maria Fe filed her petition with the Regional Trial Court.

Maria Fe exerted "earnest efforts x x x to locate the whereabouts or actual address of [Jerry]."[9] She inquired from her mother-in-law, brothers-in-law, sisters-in-law, neighbors, and friends, but no one could tell her where Jerry had gone.[10] Whenever she went to a hospital, she would check the patients' directory, hoping to find Jerry.[11]

On December 15, 2006, the Regional Trial Court issued an order granting her petition declaring Jerry presumptively dead. The Regional Trial Court agreed that she had a well-founded

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[5] *Rollo*, p. 51.

[6] *Id.* at 34 and 44.

[7] *Id.* at 45.

[8] *Id.* at 48.

[9] *Id.* at 49.

[10] *Id.* at 34.

[11] *Id.*

belief that Jerry was dead. It declared that Jerry had not been heard from and his fate uncertain and whereabouts unknown for more than four (4) years at the time Maria Fe's petition was filed. When the Regional Trial Court issued its order, Jerry had been absent for eight (8) years.

The *fallo* of the Regional Trial Court's order[12] reads:

> WHEREFORE, the Court hereby declares, as it hereby declared [sic] that respondent Jerry F. Cantor is presumptively dead pursuant to Article 41 of the Family Code of the Philippines without prejudice to the effect of the reappearance of the absent spouse Jerry F. Cantor.[13]

Not satisfied with the Regional Trial Court's order, the Republic of the Philippines through the Office of the Solicitor General filed a petition for *certiorari* with the Court of Appeals.

In a decision dated August 27, 2008, the Court of Appeals affirmed *in toto* the Regional Trial Court's order dated December 15, 2006. The Court of Appeals held that there was no grave abuse of discretion on the part of the Regional Trial Court in having declared Jerry presumptively dead. The Court of Appeals also emphasized "that by express mandate of Article 247 of the Family Code, all judgments rendered in summary judicial proceedings in Family Law are 'immediately final and executory' upon notice to the parties; hence, no longer appealable."[14]

Still dissatisfied with the ruling of the Court of Appeals, the Office of the Solicitor General filed the present petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure.

The Office of the Solicitor General argued that a petition for *certiorari* lies to challenge decisions, judgments or final orders of trial courts in petitions for the declaration of presumptive

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[12] *Id.* at 42. This order was dated December 15, 2006.

[13] *Id.* at 47.

[14] *Id.* at 35.

death of a missing or absent spouse. The Office of the Solicitor General agreed that under Article 247 of the Family Code, decisions and final orders of trial courts in petitions for the declaration of the presumptive death of a missing or absent spouse are immediately final and executory, and therefore, cannot be appealed. However, the Office of the Solicitor General disagreed with the assertion that judgments or decisions in these cases can no longer be reviewed by the higher courts. It maintained that even though judgments or final orders in summary judicial proceedings such as presumptive death cases are no longer appealable, they may still be reviewed by the Court of Appeals, and, ultimately, by this court.[15]

The Office of the Solicitor General pointed out that "appeal" and "*certiorari*" are not synonymous remedies. By filing a petition for *certiorari* before the Court of Appeals, it could not be considered to have "appealed" the challenged order of the Regional Trial Court. A petition for *certiorari* under Rule 65 is not, in its strict sense, an appeal. It is an original action and a mode of review under which the Court of Appeals may re-examine the challenged order to determine whether it was rendered in accordance with law and established jurisprudence. Hence, judgments of trial courts in presumptive death cases are not immutable because such decisions may be reviewed by higher courts. The only possible recourse of a losing party in summary judicial proceedings is a petition for *certiorari* under Rule 65.[16]

The Office of the Solicitor General likewise argued that Maria Fe did not have a well-founded belief that Jerry was dead. It claimed that she failed to conduct a diligent search for her missing husband. Its theory was that Jerry consciously chose not to return to their conjugal home and that he chose not to communicate with Maria Fe. The Office of the Solicitor General claimed that it was possible that Jerry did not want to be found and that he chose to live in a place where even his

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[15] *Id*. at 16.

[16] *Id*. at 17-19.

family and friends could not reach him. From the perspective of the Office of the Solicitor General, it was Jerry's choice to disappear; thus, in all likelihood, he was not dead.

The Office of the Solicitor General claimed that Article 41 of the Family Code requires more than the absence of the missing spouse for him or her to be declared presumptively dead. There must be events, circumstances, and reasons sufficient in themselves to at least support the proposition that the absentee spouse is already dead. Absence *per se* is not enough.

The Office of the Solicitor General capitalized on the failure of Maria Fe to give the names of relatives and friends she had approached when she testified. It asserted that she failed to present them at the witness stand.[17] Moreover, the Office of the Solicitor General assailed the description of her husband as "not really healthy" when he left the conjugal dwelling. It characterized this description as being "too vague to even support the speculation that Jerry is already dead."[18]

On June 26, 2009, Maria Fe filed her comment on the Office of the Solicitor General's petition. She argued that there was no factual or legal basis for the Office of the Solicitor General to seek a reversal of the Court of Appeal's decision. She asserted that the declaration of Jerry's death was in order as it was in accord or consistent with established facts, as well as with law and jurisprudence on the matter.

This court is asked to decide on the following issues:

1. Whether *certiorari* lies to challenge decisions, judgments or final orders of trial courts in petitions for the declaration of presumptive death of a missing person or absent spouse; and
2. Whether Maria Fe has a well-founded belief that Jerry is already dead.

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[17] *Id.* at 24.

[18] *Id.* at 23.

Certiorari lies as a remedy to annul the judgment of a trial court in summary proceedings for the declaration of presumptive death of an absent spouse

I agree that *certiorari* lies as a remedy to annul a judgment in proceedings for the declaration of presumptive death of an absent spouse where grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Regional Trial Court is clearly and convincingly shown.

A petition for the declaration of presumptive death of an absent spouse for the purpose of contracting a subsequent marriage is a summary proceeding. Article 41 of the Family Code is clear on this point:

> Art. 41. A marriage contracted by any person during subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present has a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.
>
> For the purpose of contracting the subsequent marriage under the preceding paragraph the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

Articles 238, 247, and 252 of Title XI of the Family Code (Summary Judicial Proceedings in the Family Law) provide:

> Art. 238. Until modified by the Supreme Court, the procedural rules provided for in this Title shall apply as regards separation in fact between husband and wife, abandonment by one of the other, and incidents involving parental authority.
>
> Art. 247. The judgment of the court shall be immediately final and executory.

Art. 252. The rules in Chapter 2 hereof shall also govern summary proceedings under this Chapter insofar as they are applicable. (n)

From these provisions, it is clear that a petition for the declaration of presumptive death of an absent spouse is a summary proceeding; more so, judgments of a trial court relating to such petitions shall be considered immediately final and executory.

However, while a trial court's judgment relating to a petition for the declaration of presumptive death of an absent spouse is considered immediately final and executory, the Office of the Solicitor General is not entirely without remedy to assail the propriety of a trial court's judgment. Where the judgment is attended by grave abuse of discretion amounting to lack or excess of jurisdiction, the Office of the Solicitor General may file with the Court of Appeals a petition for *certiorari* under Rule 65 and have the judgment annulled. Should the Court of Appeals still render an adverse decision, the Office of the Solicitor General may then file a petition for review on *certiorari* under Rule 45 with this court. This is what the Office of the Solicitor General did in this case.

Any doubt on this matter was settled in *Republic v. Granada*:[19]

At any rate, four years after *Jomoc*, this Court settled the rule regarding appeal of judgments rendered in summary proceedings under the Family Code when it ruled in *Republic v. Tango*:

> "This case presents an opportunity for us to settle the rule on appeal of judgments rendered in summary proceedings under the Family Code and accordingly, refine our previous decisions thereon.
>
> Article 238 of the Family Code, under Title XI: SUMMARY JUDICIAL PROCEEDINGS IN THE FAMILY LAW, establishes the rules that govern summary court proceedings in the Family Code:

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[19] G.R. No. 187512, June 13, 2012, 672 SCRA 432. [Second Division, per Sereno, J.]

> ART. 238. Until modified by the Supreme Court, the procedural rules in this Title shall apply in all cases provided for in this Code requiring summary court proceedings. Such cases shall be decided in an expeditious manner without regard to technical rules.

In turn, Article 253 of the Family Code specifies the cases covered by the rules in chapters two and three of the same title. It states:

> ART. 253. The foregoing rules in Chapters 2 and 3 hereof shall likewise govern summary proceedings filed under Articles 41, 51, 69, 73, 96, 124 and 217, insofar as they are applicable. (Emphasis supplied.)

In plain text, Article 247 in Chapter 2 of the same title reads:

> ART 247. The judgment of the court shall be immediately final and executory.

By express provision of law, the judgment of the court in a summary proceeding shall be immediately final and executory. As a matter of course, it follows that no appeal can be had of the trial court's judgment in a summary proceeding for the declaration of presumptive death of an absent spouse under Article 41 of the Family Code. It goes without saying, however, that an aggrieved party may file a petition for *certiorari* to question abuse of discretion amounting to lack of jurisdiction. Such petition should be filed in the Court of Appeals in accordance with the Doctrine of Hierarchy of Courts. To be sure, even if the Court's original jurisdiction to issue a writ of *certiorari* is concurrent with the RTCs and the Court of Appeals in certain cases, such concurrence does not sanction an unrestricted freedom of choice of court forum. From the decision of the Court of Appeals, the losing party may then file a petition for review on *certiorari* under Rule 45 of the Rules of Court with the Supreme Court. This is because the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal."

In sum, under Article 41 of the Family Code, the losing party in a summary proceeding for the declaration of presumptive death may file a petition for *certiorari* with the CA on the ground that, in

rendering judgment thereon, the trial court committed grave abuse of discretion amounting to lack of jurisdiction. From the decision of the CA, the aggrieved party may elevate the matter to this Court via a petition for review on *certiorari* under Rule 45 of the Rules of Court.[20]

Strict standards should not be imposed upon the present spouse in evaluating his or her efforts to search for the absent spouse

However, I disagree with the position that "well-founded belief" should be interpreted as an imposition of stringent standards in evaluating the efforts and inquiries made by the present spouse in ascertaining the absent spouse's status and whereabouts. "Well-founded belief" should be based on the circumstances of each case. It should not be based on a prior limited enumeration of what acts indicate a "well-founded belief."

In cases for declaration of presumptive death under Article 41 of the Family Code, we cannot ask the impossible from a spouse who was abandoned. In interpreting this provision, we must keep in mind that both spouses are under many obligations in the Family Code,[21] all of which require their presence.

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[20] *Id.* at 440-441.

[21] Title III

Rights and Obligations Between Husband and Wife

Art. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

Art. 69. The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide.

The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.

Art. 70. The spouses are jointly responsible for the support of the family. The expenses for such support and other conjugal obligations shall be paid from the community property and, in the absence thereof, from the income or fruits of their separate properties. In case of insufficiency

Article 41 of the Family Code provides:

Art. 41. A marriage contracted by any person during subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present has a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

From the text of Article 41, there are two substantive requirements and two procedural requirements for a spouse to be declared presumptively dead for the purpose of remarriage.

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or absence of said income or fruits, such obligations shall be satisfied from the separate properties.

Art. 71. The management of the household shall be the right and the duty of both spouses. The expenses for such management shall be paid in accordance with the provisions of Article 70.

Art. 72. When one of the spouses neglects his or her duties to the conjugal union or commits acts which tend to bring danger, dishonor or injury to the other or to the family, the aggrieved party may apply to the court for relief.

Art. 73. Either spouse may exercise any legitimate profession, occupation, business or activity without the consent of the other. The latter may object only on valid, serious, and moral grounds.

In case of disagreement, the court shall decide whether or not:

(1) The objection is proper, and

(2) Benefit has occurred to the family prior to the objection or thereafter. If the benefit accrued prior to the objection, the resulting obligation shall be enforced against the separate property of the spouse who has not obtained consent.

The foregoing provisions shall not prejudice the rights of creditors who acted in good faith.

The two substantive requirements are the following: first, the absent spouse has been missing for four (4) consecutive years or two (2) consecutive years if the disappearance occurred under circumstances where there is danger of death per Article 391 of the Civil Code; second, the present spouse has a well-founded belief that the absent spouse is dead.

The two procedural requirements are the following: first, the present spouse files a summary proceeding for the declaration of presumptive death of the absent spouse; second, there is the underlying intent of the present spouse to remarry.

In this case, it is necessary to interpret what is meant by "well-founded belief."

We said in *Republic of the Philippines v. Court of Appeals and Alegro*:[22]

> The spouse present is, thus, burdened to prove that his spouse has been absent and that he has a well-founded belief that the absent spouse is already dead before the present spouse may contract a subsequent marriage. The law does not define what is meant by a well-grounded belief. Cuello Callon writes that "*es menester que su creencia sea firme se funde en motivos racionales.*"
>
> Belief is a state of the mind or condition prompting the doing of an overt act. It may be proved by direct evidence or circumstantial evidence which may tend, even in a slight degree, to elucidate the inquiry or assist to a determination probably founded in truth. Any fact or circumstance relating to the character, habits, conditions, attachments, prosperity and objects of life which usually control the conduct of men, and are the motives of their actions, was, so far as it tends to explain or characterize their disappearance or throw light on their intentions, competence evidence on the ultimate question of his death.
>
> The belief of the present spouse must be the result of proper and honest to goodness inquiries and efforts to ascertain the whereabouts of the absent spouse and whether the absent spouse is still alive or is already dead. Whether or not the spouse present acted on a well-founded belief of death of the absent spouse depends

[22] 513 Phil. 391 (2005).

upon the inquiries to be drawn from a great many circumstances occurring before and after the disappearance of the absent spouse and the nature and extent of the inquiries made by present spouse.[23]

Applying its construction of what constitutes a "well-founded belief" in *Republic v. Nolasco*,[24] this court reversed the Regional Trial Court and Court of Appeals decisions which declared an absent spouse presumptively dead as the present spouse was deemed to have "failed to conduct a search for his missing wife with such diligence as to give rise to a 'well-founded belief' that she is dead."[25] In 2005, *Republic of the Philippines v. Court of Appeals and Alegro*,[26] which relied heavily on *Nolasco*, likewise held that "the respondent failed to prove that he had a well-founded belief x x x that his spouse x x x was already dead."[27] In the 2012 case of *Republic v. Granada*,[28] while this court denied the Office of the Solicitor General's petition on procedural grounds, this court nevertheless favorably considered the Office of the Solicitor General's assertions that "respondent was allegedly not diligent in her search for her husband."[29]

Belief is a state of mind and can only be ascertained in reference to a person's overt acts. In making such an evaluation, one must evaluate a case on the basis of its own merits – cognizant of its unique facts, context, and other nuances – rather than be compelled to satisfy a pre-conceived determination of what acts are sufficiently indicative of the belief being ascertained.

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[23] *Id.* at 397-398.

[24] G.R. No. 94053, March 17, 1993, 220 SCRA 20. [Third Division, per Feliciano, J.]

[25] *Id.* at 26.

[26] *Republic of the Philippines v. Court of Appeals and Alegro*, *supra.*

[27] *Id.* at 399.

[28] G.R. No. 187512, June 13, 2012, 672 SCRA 432. [Second Division, per Sereno, J.]

[29] *Id.* at 445.

A belief is well-founded when a person has reasonable basis for holding on to such belief. It is to say that such belief is not arbitrary and whimsical. Such belief must, thus, be evaluated on the basic and uncomplicated standard of rationality.

In declaring a person presumptively dead, a court is called upon to sustain a *presumption*. It is not called upon to conclude on verity or to establish actuality. In so doing, a court infers despite an acknowledged uncertainty. Thus, to insist on such demanding and extracting evidence as to practically require enough *proof* of a well-founded belief, as the Office of the Solicitor General suggests, is to insist on an inordinate, intemperate, and non-rational standard.

Maria Fe testified in court that months after their wedding, she and her husband had a violent quarrel, and he had left after the fight. She noted the two (2) causes of the quarrel: first, she could not "climax" every time they would have sexual intercourse; second, Jerry disrespected her father every time he would visit them. She likewise stated that she went to see her mother-in-law, brothers-in-law, sisters-in-law, neighbors, and friends to ask about her husband's whereabouts. She said that every time she would go to a hospital, she would check its directory to find out anything about her husband, but her efforts proved futile.

The Office of the Solicitor General faulted her for "fall[ing] short of the degree of diligence required for the search of a missing spouse."[30] In effect, the Office of the Solicitor General insinuated that she should have exerted more painstaking efforts to *ascertain* her husband's whereabouts.

The majority agrees with the Office of the Solicitor General. The majority views Maria Fe's efforts as a mere "passive search" that is short of the diligent search required to form a well-founded belief that her husband was already dead.[31]

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[30] *Rollo*, p. 24.

[31] Majority opinion, p. 12.

Maria Fe exerted the best efforts to ascertain the location of her husband but to no avail. She bore the indignity of being left behind. She suffered the indifference of her husband. Such indifference was not momentary. She anguished through years of never hearing from him. The absence of a few days between spouses may be tolerable, required by necessity. The absence of months may test one's patience. But the absence of years of someone who made the solemn promise to stand by his partner in sickness and in health, for richer or poorer, is intolerable. The waiting is as painful to the spirit as the endless search for a person that probably did not want to be found or could no longer be found.

To require more from Maria Fe who did what she could, given the resources available to her, is to assert the oppressiveness of our laws. It is to tell her that she has to suffer from causes which she cannot understand for more years to come. It should be in the public interest to assume that Jerry, or any husband for that matter, as a matter of moral and legal obligation, would get in touch with Maria Fe even if only to tell her that he is alive.

It behooves this court not to have pre-conceived expectations of a standard operating procedure for spouses who are abandoned. Instead, it should, with the public interest in mind and human sensitivity at heart, understand the domestic situation.

A review of the cases that the Office of the Solicitor General cited reveals this same conclusion.

Republic of the Philippines v. Court of Appeals and Alegro[32] acknowledges that "testimonial evidence may suffice to prove the well-founded belief of the present spouse that the absent spouse is already dead x x x."[33]

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[32] *Republic of the Philippines v. Court of Appeals and Alegro*, *supra* note 22.

[33] *Id.* at 398.

In another case cited by the Office of the Solicitor General, *Republic v. Nolasco*,[34] which similarly considered the matter of whether respondent therein was able to establish a well-founded belief of the death of his absent spouse, this court cited the 1913 case of *United States v. Biasbas*,[35] finding it to be "instructive as to degree [sic] of diligence required in searching for a missing spouse."[36] In *Biasbas*, defendant Biasbas' defense of a good faith belief that his wife was already dead was not sustained, and his conviction for bigamy was affirmed. Speaking on Biasbas' lack of due diligence, this court said:

> While the defendant testified that he had made inquiries concerning the whereabouts of his wife, he fails to state of whom he made such inquiries. He did not even write to the parents of his first wife, who lived in the Province of Pampanga, for the purpose of securing information concerning her or her whereabouts. He admits that he had a suspicion only that his first wife was dead. He admits that the only basis of his suspicion was the fact that she had been absent.[37] (Emphasis supplied)

What was involved in *Biasbas* was a mere suspicion – totally bereft of any other rational basis. Moreover, the defendant himself *admitted* that all he had was a mere suspicion.

What is involved in this case is not a mere suspicion. In *Biasbas*, the defendant could be faulted for failing to even write the parents of his wife. Here, Maria Fe testified to her having *visited and personally inquired* with her mother-in-law, brothers-in-law, sisters-in-law, neighbors, and friends. Moreover, Maria Fe repeatedly checked hospital entries to check if her husband was admitted or otherwise was pronounced deceased.

While it may be true that it would have been *ideal* for Maria Fe to have exerted more exceptional efforts in locating her husband, the hypothetical issue of what else she could have

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[34] *Republic v. Nolasco, supra* note 24.

[35] 25 Phil. 71 (1913).

[36] *Republic v. Nolasco, supra* note 24, at 26.

[37] *United States v. Biasbas, supra* at 73.

done or ought to have done should not diminish the import of her efforts. It is for Maria Fe to resort to the courses of action permitted to her given her stature and means. We are called upon to make an appreciation of the *reasonable*, not of the *exceptional*. In adjudicating this case, this court must ground itself on what is *real*, not dwell on a projected *ideal*.

In the case of Maria Fe, she did what, in her circumstances, are to be considered as an efficient search. Again, she got in touch with her husband's relatives and searched hospitals. More importantly, she waited for more than four (4) long years for her husband to get in touch with her.

Also, the insistence on the need for Maria Fe to ascertain the whereabouts of her deserting husband undermines the significance and weight of her husband's own duty. In the normal course of things, a spouse is well in a position to expect that the other spouse will return to their common dwelling. Article 68 of the Family Code obliges the husband and the wife "to live together, observe mutual love, respect and fidelity, and render mutual help and support."

The opinions of a recognized authority in civil law, Arturo M. Tolentino, are particularly enlightening:

> **Meaning of "Absent" Spouse.** – The provisions of this article are of American origin, and must be construed in the light of American jurisprudence. An identical provision (except for the period) exists in the California civil code (Section 61); California jurisprudence should, therefore, prove enlightening. It has been held in that jurisdiction that, as respects the validity of a husband's subsequent marriage, a presumption as to the death of his first wife cannot be predicated upon an absence resulting from his leaving or deserting her, as it is his duty to keep her advised as to his whereabouts. The spouse who has been left or deserted is the one who is considered as the "spouse present"; such spouse is not required to ascertain the whereabouts of the deserting spouse, and after the required number of years of absence of the latter, the former may validly remarry.[38] (Underscoring supplied)

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[38] A.M. TOLENTINO, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES*, 281-282 (Vol. I, 1990) citing *People v. Glab*, 13

Precisely, it is a deserting spouse's failure to comply with what is reasonably expected of him or her and to fulfill the responsibilities that are all but normal to a spouse which makes reasonable (*i.e.*, well-founded) the belief that should he or she fail to manifest his or her presence within a statutorily determined reasonable period, he or she must have been deceased. The law is of the confidence that spouses will in fact "live together, observe mutual love, respect and fidelity, and render mutual help and support"[39] such that it is not the business of the law to assume any other circumstance than that a spouse is deceased in case he or she becomes absent.

It is unfortunate that the majority fails to appreciate Maria Fe's predicament and instead places upon her the burden to prove good faith in her painstaking efforts.

To be present in any human relationship especially that of marriage is a complex affair. There are interests to be compromised for each other, temperaments to be adjusted, evolving personalities to be understood in the crucible of common experiences. The moments of bliss are paid for by the many moments of inevitable discomfort as couples adjust their many standpoints, attitudes, and values for each other. It is a journey that takes time and in that time, presence.

This case does not present that kind of complexity. It is simple enough. Maria Fe was left behind. She looked for Jerry, in good faith. Jerry could not be found. He did not leave word. He did not make the slightest effort to get in touch with Maria Fe. His absence did not make the difficult compromises possible. There were no adjustments in their temperaments, no opportunities to further understand each other, no journey together. His absence was palpable: not moments, not days, not months, but years. Maria Fe deserves more. The law, in Article 41, allows her succor.

App. (2d) 528, 57 Pac. (2d) 588 and *Harrington Estate*, 140 Cal. 244, 73 Pac. 1000.

[39] FAMILY CODE, Art. 68.

Given the circumstances, Maria Fe acted adequately. Her actions were sufficient to form the well-founded belief that her husband passed away. It was proper that he be declared presumptively dead. In the far possibility that he reappears and is not dead, the law provides remedies for him. In the meantime, the Court of Appeals committed no reversible error in affirming the Regional Trial Court's declaration.

WHEREFORE, I vote to **DENY** the petition.

EN BANC

[G.R. No. 192803. December 10, 2013]

ALLIANCE FOR RURAL AND AGRARIAN RECONSTRUCTION, INC., ALSO KNOWN AS ARARO PARTY-LIST, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ELECTIONS; SUPERVENING EVENTS THAT RENDERED AN ELECTORAL PROTEST CASE MOOT AND ACADEMIC; EXCEPTION TO THE RULE OF DECLINING JURISDICTION OVER MOOT AND ACADEMIC CASES FINDS APPLICATION IN CASE AT BAR.— Several supervening events have already rendered this case moot and academic. First, the Commission on Elections *En Banc* already proclaimed other winning party-list groups. Second, the term of office of the winning party-list groups in the May 2010 national elections ended on June 30, 2013. Finally, the conduct of the May 13, 2013 elections resulted in a new set of party-list groups. We held that the expiration of the challenged term of office renders the corresponding Petition moot and academic. This leaves any ruling on the issues raised

by the petitioner with no practical or useful value. However, the following exceptions to the rule of declining jurisdiction over moot and academic cases are allowed: (1) there was a grave violation of the Constitution; (2) the case involved a situation of exceptional character and was of paramount public interest; (3) the issues raised required the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case was capable of repetition yet evading review. On the importance of the assailed formula, this Court will discuss the issues raised by the petitioner as these are capable of repetition yet evading review and for the guidance of the bench, bar, and public.

2. ID.; ID.; A SECTORAL PARTY WHICH WAS NOT BENEFITED OR INJURED BY THE FORMULA USED BY THE COMMISSION ON ELECTIONS (COMELEC) TO DETERMINE THE PROPORTIONAL REPRESENTATION OF THE PARTY-LIST CANDIDATES IN THE HOUSE OF REPRESENTATIVES HAS NO LEGAL STANDING TO QUESTION THE VALIDITY OF SUCH FORMULA.— "A real party in interest is the party who stands to be benefited or injured by the judgement in the suit, or the party entitled to the avails of the suit." The party's interest must be direct, substantial, and material. In this case, the petitioner attacks the validity of the formula used and upheld in *BANAT*. It also proposes its own interpretation of the formula to determine the proportional representation of party-list candidates in the House of Representatives. However despite any new computation, ARARO's proposed divisor of total votes cast for the party-list system whether valid or invalid still fails to secure one seat for ARARO. x x x [T]he petitioner does not suffer a direct, substantial or material injury from the application of the formula interpreted and used in *BANAT* in proclaiming the winning party-lists in the assailed National Board of Canvassers Resolution. The computation proposed by petitioner ARARO even lowers its chances to meet the 2% threshold required by law for a guaranteed seat. Its arguments will neither benefit nor injure the party. Thus, it has no legal standing to raise the argument in this Court.

3. ID.; ID.; DETERMINATION OF THE PARTY-LIST GROUP REPRESENTATION IN THE HOUSE OF REPRESENTATIVES; NOT ALL VOTES CAST IN THE ELECTIONS SHOULD BE INCLUDED IN THE DIVISOR TO DETERMINE THE 2% THRESHOLD; *TOTAL VOTES CAST FOR THE PARTY-LIST SYSTEM* SHOULD MEAN ALL THE VOTES VALIDLY CAST FOR ALL THE CANDIDATES LISTED IN THE BALLOT.— The petitioner claims that there should be no distinction in law between *valid* and *invalid* votes. Invalid votes include those votes that were made for disqualified party-list groups, votes that were spoiled due to improper shading, erasures in the ballots, and even those that did not vote for any party-list candidate at all. All of the votes should be included in the divisor to determine the 2% threshold. **We agree with the petitioner but only to the extent that votes later on determined to be invalid due to no cause attributable to the voter should not be excluded in the divisor. In other words, votes cast validly for a party-list group listed in the ballot but later on disqualified should be counted as part of the divisor. To do otherwise would be to disenfranchise the voters who voted on the basis of good faith that that ballot contained all the qualified candidates. However, following this rationale, party-list groups listed in the ballot but whose disqualification attained finality prior to the elections and whose disqualification was reasonably made known by the Commission on Elections to the voters prior to such elections should not be included in the divisor.** Not all votes cast in the elections should be included in the divisor. Contrary to the argument of the petitioner, Section 11(b) of Republic Act No. 7941 is clear that only those votes cast *for the party-list system* shall be considered in the computation of the percentage of representation[.] x x x The total votes cast do not include invalid votes. The *invalid votes*, for the determination of the denominator, may be votes that were spoiled or votes that resulted from the following: improper shading or having no shade at all; existence of stray or ambiguous marks; tears in the ballot; and/or ballots rejected by the Precinct Count Optical Scan (PCOS) machines under the paper-based automated election system. All these are causes that nullify the count for that vote that can be attributable to

the voter's action. Votes cast for the party-list system should, however, include all votes cast for party-list groups contained in the ballot even if subsequently they are disqualified by the Commission on Elections or by our courts. Thus, the content of the divisor in the formula to determine the seat allocation for the party-list component of the House of Representatives should be amended accordingly. We qualify that the divisor to be used in interpreting the formula used in *BANAT* is the *total votes cast for the party-list system. This should not include the invalid votes*. However, so as not to disenfranchise a substantial portion of the electorate, *total votes cast for the party-list system* should mean **all the votes validly cast for all the candidates listed in the ballot**. The voter relies on the ballot when making his or her choices. To the voter, the listing of candidates in the official ballot represents the extent of his or her choices for an electoral exercise. He or she is entitled to the expectation that these names have properly been vetted by the Commission on Elections. Therefore, he or she is also by right entitled to the expectation that his or her choice based on the listed names in the ballot will be counted.

4. ID.; ID.; ID.; ID.; THE PARTY-LIST GROUP IN THE BALLOT THAT HAS BEEN DISQUALIFIED WITH FINALITY AND WHOSE FINAL DISQUALIFICATION WAS MADE KNOWN TO THE ELECTORATE BY THE COMELEC PRIOR TO THE ELECTIONS SHOULD ALSO NOT BE INCLUDED IN THE DIVISOR.— Section 10 of Republic Act No. 7941, which governs party-list elections, states that votes cast for a party-list "not entitled to be voted for shall not be counted." It does not specify any reckoning period of the finding of disqualification or cancellation of registration for the validity or the invalidity of votes unlike that in Section 72 of the Omnibus Election Code, as amended by Section 6, Republic Act No. 6646. Taking Sections 2 and 10 together, this Court must consider the intention of the law and the nature of Philippine style party-list elections. Party-list groups provide for a different and special representation in Congress. To disregard votes of party-list groups disqualified after the conduct of the elections means the disenfranchisement of thousands, if not hundreds of thousands of votes, of the Filipino people. Definitely, it is not the voter's fault that the party-list group in the ballot it votes for will be subsequently disqualified. The voter

should not be penalized. The counting of votes for party-list groups in the ballot but subsequently declared as disqualified is, thus, corollary to the "fundamental tenet of representative democracy that the people should be allowed to choose whom they please to govern them." It is also part of the right of suffrage, and the law's intention to ensure a more representative Congress should be given priority. Therefore, the divisor should now include all votes cast for party-list groups that are subsequently disqualified for so long as they were presented as a choice to the electorate. If his or her vote is not counted as part of the divisor, then this would amount to a disenfranchisement of a basic constitutional right to be able to choose representatives of the House of Representatives in two ways. First, his or her vote will be nullified. Second, he or she will be deprived of choosing another party-list group to represent his or her interest should the party listed in the ballot be declared disqualified. However, there are instances when the Commission on Elections include the name of the party-list group in the ballot but such group is disqualified with finality prior to the elections. In applying and interpreting the provisions of Section 6 of Republic Act No. 6646, we said in *Cayat v. Commission on Elections* that votes cast in favor of a candidate "disqualified with finality" should be considered stray and not be counted. *To be consistent, the party-list group in the ballot that has been disqualified with finality and whose final disqualification was made known to the electorate by the Commission on Elections should also not be included in the divisor.* This is to accord weight to the disqualification as well as accord respect to the inherent right of suffrage of the voters.

5. ID.; ID.; ID.; ID.; THE COURT LAID DOWN THE FORMULA TO DETERMINE THE WINNING PARTY-LIST GROUPS. — The formula in determining the winning party-list groups, as used and interpreted in the case of *BANAT v. COMELEC*, is **MODIFIED** as follows:

$$\frac{\text{Number of votes of party-list}}{\text{Total number of valid votes for party-list candidates}} = \text{Proportion or Percentage of votes garnered by party-list}$$

The divisor shall be the total number of valid votes cast for the party-list system including votes cast for party-list groups whose names are in the ballot but are subsequently disqualified. Party-list groups listed in the ballot but whose disqualification attained finality prior to the elections and whose disqualification was reasonably made known by the Commission on Elections to the voters prior to such elections should not be included in the divisor. The divisor shall also not include votes that are declared spoiled or invalid. The refined formula shall apply prospectively to succeeding party-list elections from the date of finality of this case.

VELASCO, JR., *J., concurring and dissenting opinion*:

1. POLITICAL LAW; ELECTIONS; DETERMINATION OF THE PARTY-LIST GROUP REPRESENTATION IN THE HOUSE OF REPRESENTATIVES; THE DIVISOR REPRESENTING THE *TOTAL VOTES CAST FOR THE PARTY-LIST SYSTEM* SHOULD INCLUDE VALID VOTES CAST FOR PARTY LIST ORGANIZATIONS (PLOS) DISQUALIFIED WITH FINALITY AFTER THE DAY OF THE ELECTIONS BUT NOT PLOS DISQUALIFIED WITH FINALITY BEFORE THE DAY OF THE ELECTIONS.— [T]he divisor representing the "total votes cast for the party-list system" should include valid votes cast for PLOs disqualified with finality after the day of elections but not PLOs disqualified with finality before the day of elections. Whether preceded by the adverb "under," used in Section 6 of RA 7941, or the preposition "for," used in Sections 11 and 12 of RA 7941, the "party-list system" still refers to a mechanism of proportional representation in the election of representatives from "national, regional and sectoral parties or organizations or coalitions thereof **registered** with the Commission on Elections." It is, therefore, necessary for the inclusion of the votes in the "total votes cast for the party-list system" that the PLO voted for is qualified, *i.e.*, registered with the COMELEC, on the day of the elections. Thus, when the vote is in favor of a PLO that had been removed or cancelled under Section 6 of RA 7941 and thus disqualified with finality before the election, the vote can only be considered "stray votes" and therefore invalid; it cannot be considered as a valid vote or included in the "total votes cast for the party-list system." x x x In *Cayat v. COMELEC*, this Court declared as "stray"

the votes cast in favor of a candidate disqualified with finality *before* the election even if his name remained in the ballot. x x x Of particular importance is this Court's June 25, 2003 Resolution in *Ang Bagong Bayani-OFW Labor Party v. COMELEC*, where We emphasized the relevance of Section 10 of RA 7941, which states that "a vote cast for a party, sectoral organization, or coalition not entitled to be voted for shall not be counted x x x." This Court held that the "total votes cast for the party-list system" include only the votes cast for PLOs *qualified* to be voted on the day of election[.] x x x It is therefore in keeping with both the spirit and language of the law on the party-list system that the votes cast in favor of PLOs disqualified with finality *before* the day of the election be considered invalid and not included in the computation of the "total votes cast for the party-list system."

2. ID.; ID.; ID.; THE MODIFICATION OF THE DIVISOR IN THE FORMULA FOR DETERMINING THE WINNING PLOS IN *BANAT VS. COMELEC* SHALL BE LIMITED ONLY TO INCLUDE THE VOTES CAST FOR PLOS WHOSE NAMES ARE IN THE BALLOT BUT ARE DISQUALIFIED AFTER THE ELECTIONS.— The proviso stated in the *ponencia* that the "disqualification [must be] reasonably made known by the [COMELEC] to the voters prior to such elections" is without legal basis and only serves to weaken Our ruling in *Cayat*. To rule that the votes cast in favor of PLOs disqualified with finality prior to the elections are to be excluded from the divisor only "if the electorate is notified of the finality of their disqualification" places the exclusion of these votes on the notoriety of the disqualification of these PLOs. Clearly, this contravenes our ruling in *Cayat* and similar cases where this Court refused to apply the presumption that the voters remained in the belief that the disqualified PLO is qualified. The obscurity of the final disqualification of these PLOs before the day of elections cannot be used as a reason to recognize the validity of their inclusion in the ballot. Otherwise, the qualifications set for PLOs to validly participate in the elections will all be for naught and this Court will only be encouraging nuisance PLOs to participate in the election and dilute the percentage votes cast for the qualified PLOs, even denying some of the opportunity to achieve the 2% winning minimum percentage threshold. After all, as provided in the *ponencia*,

a decision of disqualification, regardless of the date of its finality, does not affect its inclusion in the divisor "if not reasonably made known by the COMELEC." Clearly, this cannot be allowed. At the very least, the *ponencia* should have provided sufficient parameters that will enable the COMELEC to comply with the proviso. Otherwise, the nebulous qualification in the proviso renders the rule open to various interpretations and possible circumvention. Indeed, the fact that a disqualified PLO's name remains on the ballot on the day of the election can be used to assert that the COMELEC has not "reasonably" informed the electorate of the disqualification. Thus, I vote that the modification of the divisor in the formula for determining the winning PLOs in *BANAT v. COMELEC* shall be limited only to include the votes cast for PLOs whose names are in the ballot but are disqualified *after* the elections. Spoiled, invalid and stray votes, as well as votes cast in favor of PLOs whose names are in the ballot but were disqualified with finality *before* the day of election shall remain excluded in the computation of the "total votes cast for the party-list system." The final disqualification of a PLO prior to the day of the election, without more, is sufficient to render the votes cast in its favor as stray votes and excluded from the "total votes cast for the party-list system."

APPEARANCES OF COUNSEL

Bernardita S. Fortuno for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

It is beyond human expectations that we charge voters with knowledge as to which among the many party-list groups listed in the ballot they are presented with during election day is disqualified. To do so will amount to their disenfranchisement and the failure to comply with the proportionality for party-list representatives required by the Constitution and by law.

We are asked to decide the Petition for Review on *Certiorari* filed by a party-list group that ran for the 2010 national elections. The petitioner questions the validity of the formula used by the Commission on Elections in determining and proclaiming the winning party-list groups.[1]

We rule that the Petition is moot and academic. However, we provide guidance for the bench and the bar with respect to the formula used in determining the winning party-list groups. We refine the divisor in the formula used in getting the percentage of votes garnered by a party-list.

The facts as established on record are as follows:

Petitioner, Alliance for Rural and Agrarian Reconstruction, Inc., (ARARO) was a duly accredited party-list under Republic Act No. 7941.[2] It garnered a total of one hundred forty-seven thousand two hundred four (147,204) votes in the May 10, 2010 elections and ranked fiftieth (50th).[3] The Commission on Elections *En Banc* sitting as the National Board of Canvassers initially proclaimed twenty-eight (28) party-list organizations as winners involving a total of thirty-five (35) seats guaranteed and additional seats.[4] The result was based on the Commission on Elections' count of one hundred twenty-one (121) Certificates of Canvass or a total of twenty-nine million seven hundred fifty thousand and forty-one (29,750,041) votes for the Party-List System.[5]

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[1] *Barangay Association for National Advancement and Transparency (BANAT) v. COMELEC*, G.R. No. 179271, April 21, 2009, 586 SCRA 210.

[2] Republic Act No. 7941 known as An Act Providing for the Election of Party-List Representatives Through the Party-List System, and Appropriating Funds Therefor.

[3] *Rollo*, p. 27.

[4] *Id.* at 35.

[5] *Id.* at 23.

The winning party-list groups were the following:[6]

	PARTY	NUMBER OF SEATS
1	COALITION OF ASSOCIATIONS OF SENIOR CITIZENS OF THE PHILIPPINES, INC.	2
2	AKBAYAN! CITIZEN'S ACTION PARTY	2
3	GABRIELA WOMEN'S PARTY	2
4	COOPERATIVE NATCCO NETWORK PARTY	2
5	ABONO	2
6	BAYAN MUNA	2
7	AN WARAY	2
8	AGRICULTURAL SECTOR ALLIANCE SECTOR OF THE PHILIPPINES, INC.	1
9	ALLIANCE FOR BARANGAY CONCERNS PARTY	1
10	ANAKPAWIS	1
11	KABATAAN PARTYLIST	1
12	ABANTE MINDANAO, INC.	1
13	ACT TEACHERS	1
14	YOU AGAINST CORRUPTION AND POVERTY	1
15	KASANGGA SA KAUNLARAN, INC.	1
16	BAGONG HENERASYON	1
17	ANG GALING PINOY	1
18	AGBIAG! TIMPUYOG ILOCANO, INC.	1
19	PUWERSA NG BAYANing ATLETA	1
20	ARTS BUSINESS AND SCIENCE PROFESSIONALS	1
21	TRADE UNION CONGRESS PARTY	1
22	ALYANSA NG MGA GRUPONG HALIGI NG AGHAM AT TEKNOLOHIYA PARA SA MAMAMAYAN, INC.	1
23	DEMOCRATIC INDEPENDENT WORKERS' ASSOCIATION, INC.	1
24	KAPATIRAN NG MGA NAKULONG NA WALANG SALA	1
25	KALINGA-ADVOCACY FOR SOCIAL EMPOWERMENT AND NATION BUILDING THROUGH EASING POVERTY, INC.	1

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

26	ALAGAD PARTY-LIST	1
27	UNA ANG PAMILYA FORMERLY ALLIANCE OF NEO-CONSERVATIVES	1
28	ALLIANCE OF VOLUNTEER EDUCATORS	1
	TOTAL SEATS	35

Petitioner then filed an election protest before the House of Representatives Electoral Tribunal questioning the Resolution of the Commission on Elections that proclaimed the 28 party-list groups listed above.[7]

Without waiting for the resolution of the House of Representatives Electoral Tribunal, the petitioner filed the present Petition for Review on *Certiorari* with Prayer for Preliminary Injunction and Temporary Restraining Order.[8] The petitioner asks that this Court:

1. modify the Commission on Elections' interpretation of the formula stated in *BANAT v. COMELEC*[9] by making the divisor for the computation of the percentage votes, from total number of votes cast minus the votes for the disqualified party-list candidates, to the total number of votes cast regardless whether party-list groups are disqualified;

2. enjoin the public respondent Commission on Elections from proclaiming the remaining winning party-list candidates until it modifies the interpretation of the formula used in *BANAT v. COMELEC* to the formula proposed by the petitioner; and

3. issue a Temporary Restraining Order against the public respondent until it modifies the present formula for

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[7] *Id*. at 4 and 64.

[8] *Id*. at 3-22. This Petition was filed on July 26, 2010 under Rule 65 of the Rules of Court.

[9] Petitioner also refers to this as the "*Carpio formula*."

computing the number of seats for the winning party-list candidates to the formula proposed by the petitioner.[10]

This Court did not issue any Temporary Restraining Order.[11]

By Resolution, the National Board of Canvassers proclaimed the winning party-list groups with the following computation:[12]

WHEREAS, as of May 17, 2010, the projected/maximum total party-list votes cannot go any higher than **thirty million two hundred sixty[-]four thousand five hundred seventy[-] nine (30,264,579)** given the following statistical data:

DESCRIPTION	REGISTERED VOTERS
Total party-list votes already canvassed/tabulated	**29,750,041**
Less: Votes garnered by the eight (8) disqualified parties	308,335
Total party-list votes already canvassed/tabulated after deducting votes of the eight (8) disqualified parties	**29,441,706**
Add: Party-list votes still uncanvassed	
Lanao del Sur	515,488
Local Absentee Voting	19,071
Overseas Absentee Voting	9,299
Due to lowering of threshold	92,740
Precincts reporting Final Testing and Sealing results	186,275
Maximum Total Party-List Votes	**30,264,579**

WHEREAS, since there are two hundred twenty-nine (229) legislative districts, the total number of party-list seats available for the May 10, 2010 automated national and local elections is fifty-

[10] *Rollo*, p. 19.

[11] *Id.* at 83. On January 8, 2013, this Court resolved to deny the prayer for a Temporary Restraining Order of the petitioner.

[12] *Id.* at 24.

seven (57) based on the following formula: number of legislative districts/0.80 x 0.20;

WHEREAS, the provision of Section 11 of Republic Act No. 7941 provides, in part, that:

"(b) The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each: Provided, That those garnering more than two [sic] (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes: Provided, finally, That each party, organization or coalitions shall be entitled to not more than three (3) seats."

WHEREAS, applying the formula in the case of *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections*, and [sic] *Bayan Muna, Advocacy for Teacher Empowerment, Cooperation and Harmony Towards Educational Reforms, Inc., and Abono [v.] Commission on Elections*, the ranking of the participating parties, organizations and coalitions from highest to lowest based on the number of votes garnered as of May 17, 2010, and the seats that may be obtained by each party to complete the allocation of the available 57 party-list seats, are shown below:[13]

RANK	PARTY	VOTES GARNERED	VOTES GARNERED OVER TOTAL VOTES FOR PARTY LIST, in % (A)	GUARANTEED SEAT First Round (B)	ADDITIONAL SEATS Second Round (C)	(B) plus (C), in whole integers (D)
1	AKO BICOL POLITICAL PARTY	1,522,986	5.0322%	1	2.26	3
2	COALITION OF ASSOCIATIONS OF SENIOR CITIZENS OF THE PHILIPPINES, INC.	1,292,182	4.2696%	1	1.92	2
3	BUHAY HAYAAN YUMABONG	1,249,555	4.1288%	1	1.85	2

[13] *Id.* at 24-28. Only the first 75 groups were reproduced in this Decision.

4	AKBAYAN! CITIZEN'S ACTION PARTY	1,058,691	3.4981%	1	1.57	2
5	GABRIELA WOMEN'S PARTY	1,001,421	3.3089%	1	1.48	2
6	COOPERATIVE NATCCO NETWORK PARTY	943,529	3.1176%	1	1.40	2
7	1ST CONSUMERS ALLIANCE FOR RURAL ENERGY	768,829	2.5404%	1	1.14	2
8	ABONO	766,615	2.5330%	1	1.13	2
9	BAYAN MUNA	746,019	2.4650%	1	1.10	2
10	AN WARAY	711,631	2.3514%	1	1.05	2
11	CITIZEN'S BATTLE AGAINST CORRUPTION	647,483	2.1394%	1	0.96	1
12	ADVOCACY FOR TEACHER EMPOWERMENT THROUGH ACTION COOPERATION AND HARMONY TOWARDS EDUCATIONAL REFORMS	614,725	2.0312%	1	0.91	1
13	AGRICULTURAL SECTOR ALLIANCE SECTOR OF THE PHILIPPINES, INC.	515,501	1.7033%	0	1	1
14	BUTIL FARMERS PARTY	506,703	1.6742%	0	1	1
15	ALLIANCE FOR BARANGAY CONCERNS PARTY	469,093	1.5500%	0	1	1
16	ANAKPAWIS	445,628	1.4724%	0	1	1
17	KABATAAN PARTYLIST	417,923	1.3809%	0	1	1
18	LPG MARKETERS ASSOCIATION, INC.	417,600	1.3798%	0	1	1
19	ABANTE MINDANAO, INC.	376,011	1.2424%	0	1	1
20	ACT TEACHERS	369,564	1.2211%	0	1	1

21	ANG ASOSASYON SANG MANGUNGUMA NGA BISAYA-OWA MANGUNGUMA, INC.	357,009	1.1796%	0	1	1
22	YOU AGAINST CORRUPTION AND POVERTY	335,635	1.1090%	0	1	1
23	ASSOCIATION OF PHILIPPINE ELECTRIC COOPERATIVES	313,359	1.0354%	0	1	1
24	KASANGGA SA KAUNLARAN, INC.	296,368	0.9793%	0	1	1
25	BAGONG HENERASYON	292,875	0.9677%	0	1	1
26	ALLIANCE FOR NATIONALISM AND DEMOCRACY	292,057	0.9650%	0	1	1
27	ANG GALING PINOY	269,009	0.8889%	0	1	1
28	AGBIAG! TIMBUYOG ILOCANO, INC.	262,298	0.8667%	0	1	1
29	PUWERSA NG BAYANING ATLETA	258,498	0.8541%	0	1	1
30	ARTS BUSINESS AND SCIENCE PROFESSIONALS	257,301	0.8502%	0	1	1
31	TRADE UNION CONGRESS PARTY	244,623	0.8083%	0	1	1
32	ALYANSA NG MGA GRUPONG HALIGI NG AGHAM AT TEKNOLOHIYA PARA SA MAMAMAYAN, INC.	241,898	0.7993%	0	1	1
33	DEMOCRATIC INDEPENDENT WORKERS' ASSOCIATION, INC.	238,675	0.7886%	0	1	1
34	KAPATIRAN NG MGA NAKULONG NA WALANG SALA	234,717	0.7756%	0	1	1

35	KALINGA-ADVOCACY FOR SOCIAL EMPOWERMENT AND NATION BUILDING THROUGH EASING POVERTY, INC.	229,198	0.7573%	0	1	1
36	ALAGAD PARTY-LIST	227,116	0.7504%	0	1	1
37	1-UNITED TRANSPORT KOALISYON	220,002	0.7269%	0	1	1
38	UNA ANG PAMILYA FORMERLY ALLIANCE OF NEO-CONSERVATIVES	217,032	0.7171%	0	1	1
39	ALLIANCE OF VOLUNTEER EDUCATORS	214,760	0.7096%	0	1	1
40	AANGAT TAYO	176,074	0.5818%	0	1	1
41	ADHIKAING TINATAGUYOD NG KOOPERATIBA	173,711	0.5740%	0	1	1
42	ANG LABAN NG INDIGONG FILIPINO	170,304	0.5627%	0	1	1
43	ASSOCIATION OF LABORERS AND EMPLOYEES	167,654	0.5540%	0	1	1
44	KASOSYO PRODUCER-CONSUMER EXCHANGE ASSOCIATION, INC.	166,432	0.5499%	0	1	1
45	ALAY BUHAY COMMUNITY DEVELOPMENT FOUNDATION, INC.	163,164	0.5391%	0	1	1
46	AKSYON MAGSASAKA PARTIDO TINIG NG MASA	161,674	0.5342%	0	1	1

47	KATIPUNAN NG MGA ANAK NG BAYAN ALL FILIPINO DEMOCRATIC MOVEMENT	160,745	0.5311%	0	0	0
48	ANAK MINDANAO	157,733	0.5212%	0	0	0
49	VETERANS FREEDOM PARTY	154,183	0.5095%	0	0	0
50	**ALLIANCE FOR RURAL RECONSTRUCTION, INC.**	**147,204**	**0.4864%**	**0**	**0**	**0**
51	ATONG PAGLAOM	145,435	0.4805%	0	0	0
52	PILIPINO ASSOCIATION FOR COUNTRY-URBAN POOR YOUTH ADVANCEMENT AND WELFARE	143,151	0.4730%	0	0	0
53	ABANTE TRIBUNG MAKABANSA	142,013	0.4692%	0	0	0
54	ANGAT ATING KABUHAYAN PILIPINAS, INC.	141,780	0.4685%	0	0	0
55	PARTIDO NG MANGGAGAWA	140,000	0.4626%	0	0	0
56	ALYANSANG BAYANIHAN NG MGA MAGSASAKA, MANGGAGAWANG-BUKID AT MANGINGISDA	137,842	0.4555%	0	0	0
57	ALLIANCE TRANSPORT SECTOR	136,710	0.4517%	0	0	0
58	KAUNLARAN NG AGRIKULTURA ASENSADONG PROBINSYA ANGAT NG BAYAN	130,270	0.4304%	0	0	0
59	BARANGAY NATIN	126,462	0.4179%	0	0	0
60	1-AKO BABAENG ASTIG AASENSO	120,734	0.3989%	0	0	0

61	1GUARDIANS NATIONALIST OF THE PHILIPPINES, INC.	120,727	0.3989%	0	0	0
62	BABAE PARA SA KAUNLARAN	117,299	0.3876%	0	0	0
63	BAGONG BAYAN NAGTATAGUYOD SA DEMOKRATIKONG IDEOLOHIYA AT LAYUNIN	115,428	0.3814%	0	0	0
64	AHON PINOY	115,197	0.3806%	0	0	0
65	ACTION FOR DYNAMIC DEVELOPMENT, INC.	115,058	0.3802%	0	0	0
66	KATRIBU INDIGINOUS PEOPLES SECTORAL PARTY	114,891	0.3796%	0	0	0
67	ANG LADLAD LBGT PARTY	113,187	0.3740%	0	0	0
68	CONFEDERATION OF NON-STOCK SAVINGS AND LOAN ASSOCIATIONS, INC.	110,759	0.3660%	0	0	0
69	KABALIKAT NG MGA MAMAMAYAN	109,739	0.3626%	0	0	0
70	ONE ADVOCACY FOR HEALTH, PROGRESS AND OPPORTUNITY	109,682	0.3624%	0	0	0
71	BINHI; PARTIDO NG MGA MAGSASAKA PARA SA MGA MAGSASAKA	108,005	0.3569%	0	0	0
72	1-AANI	107,970	0.3568%	0	0	0
73	AKAP BATA, INC.	107,154	0.3541%	0	0	0
74	ANG ASOSASYON NG MGA TRABAHADOR AT PAHINANTE	107,135	0.3540%	0	0	0
75	AGILA NG MGA KATUTUBONG PILIPINO, INC.	105,009	0.3470%	0	0	0

The petitioner suggests that the formula used by the Commission on Elections is flawed because votes that were spoiled or that were not made for any party-lists were not counted. According to the petitioner, around seven million (7,000,000) votes were disregarded as a result of the Commission on Elections' erroneous interpretation. The figure presented by petitioner resulted from the following computations:[14]

	37,377,371	(Number of voters who actually voted LESS votes for disqualified party lists)
less	**30,264,579**	(Number of votes for party-list candidates LESS number of votes for disqualified party-list candidates)
	7,112,792	**(Total number of disregarded votes according to petitioner ARARO)**

First, the total number of votes for disqualified party-lists is deducted from the total number of voters that *actually voted*. The total number of votes for disqualified party-list groups is three hundred eight thousand three hundred thirty-five (308,335).[15] The total number of voters that *actually voted* is thirty-seven million six hundred eighty-five thousand seven hundred six (37,685,706).[16] After subtracting the amounts, the result is thirty-seven million three hundred seventy-seven thousand three hundred seventy-one (37,377,371) votes.

Second, the number of votes for disqualified party-list groups is again deducted from the number of votes for party-list candidates which the petitioner pegged at thirty million five hundred seventy-two thousand nine hundred fourteen votes (30,572,914).[17] The difference then is thirty million two hundred sixty-four thousand five hundred seventy-nine (30,264,579) votes.

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[14] *Id.* at 9.

[15] See National Board of Canvassers Resolution No. 10-009, *rollo*, p. 23.

[16] See National Canvass Report No. 8, Annex B of Petition, *rollo*, p. 37.

[17] *Rollo,* p. 9.

Lastly, to get the total number of votes disregarded by the Commission on Elections' interpretation, 30,264,579 is subtracted from 37,377,371. The computation then results to seven million one hundred twelve thousand seven hundred ninety-two (**7,112,792**) votes disregarded using the Commission on Elections' interpretation.

On the other hand, the formula used by the Commission on Elections *En Banc* sitting as the National Board of Canvassers is the following:

$$\frac{\text{Number of seats available to legislative districts}}{.80} \times .20 = \text{Number of seats available to party-list representatives}$$

Thus, the total number of party-list seats available for the May 2010 elections is 57 as shown below:

$$\frac{229}{.80} \times .20 = 57$$

The National Board of Canvassers' Resolution No. 10-009 applies the formula used in *Barangay Association for National Advancement and Transparency (BANAT) v. COMELEC*[18] to arrive at the winning party-list groups and their guaranteed seats, where:

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[18] G.R. No. 179271 and G.R. No. 179295, April 21, 2009, 586 SCRA 210.

In determining the allocation of seats for party-list representatives under Section 11 of Republic Act No. 7941, the following procedure shall be observed:

1. The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.

2. The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one guaranteed seat each.

3. Those garnering sufficient number of votes, according to the ranking in paragraph 1, shall be entitled to additional seats in proportion to their total number of votes until all the additional seats are allocated.

4. Each party, organization, or coalition shall be entitled to not more than three (3) seats.

$$\frac{\text{Number of votes of party-list}}{\text{Total number of votes for party-list candidates}} = \text{Proportion or Percentage of votes garnered by party-list}$$

The *Proportion or Percentage of votes garnered by party-list* should be greater than or equal to 2% or 0.02 to entitle a party-list candidate to one (1) seat in the first round. There will be a second round if the total number of guaranteed seats awarded in the first round is less than the total number of party-list seats available. Thus:

$$\text{Total number of party-list seats available} - \text{Number of seats allocated in first round} \times \text{Proportion or Percentage of votes garnered by party-list} = \text{Additional seats awarded}$$

If the total seats available for party-lists are not yet awarded after the second round (this is computed by getting the sum of the seats awarded in the first round and the additional seats awarded in the second round), the next in the party-list ranking will be given one (1) seat each until all seats are fully distributed. A three-seat cap per party-list, however, is imposed on winning groups. Fractional seats are not rounded off and are disregarded.

The petitioner argues that the Commission on Elections' interpretation of the formula used in *BANAT v. COMELEC* is flawed because it is not in accordance with the law.[19] The petitioner distinguishes the phrases, *valid votes cast* ***for party-list candidates*** on the one hand as against *votes cast* ***for the party-list system*** on the other.

The petitioner puts in issue the interpretation of Sections 11 and 12 of Republic Act No. 7941 or "An Act Providing for the Election of Party-List Representatives Through the Party-List System, and Appropriating Funds Therefor." The sections provide the guidelines in allocating seats to party-list representatives:

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[19] *Rollo*, p. 8.

Section 11. *Number of Party-List Representatives.* The party-list representatives shall constitute twenty per centum (20%) of the total number of the members of the House of Representatives including those under the party-list.

For purposes of the May 1998 elections, the first five (5) major political parties on the basis of party representation in the House of Representatives at the start of the Tenth Congress of the Philippines shall not be entitled to participate in the party-list system.

In determining the allocation of seats for the second vote, the following procedure shall be observed:

(a) The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.

(b) The parties, organizations, and coalitions receiving at least two percent (2%) of **the total votes cast for the party-list system** shall be entitled to one seat each: Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes: Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats.

Section 12. *Procedure in Allocating Seats for Party-List Representatives.* The COMELEC shall tally all the votes for the parties, organizations, or coalitions on a nationwide basis, rank them according to the number of votes received and allocate party-list representatives proportionately according to the percentage of votes obtained by each party, organization, or coalition as against the **total nationwide votes cast for the party-list system.** (Emphasis provided)

The petitioner argues that the correct interpretation of the provisions of Republic Act No. 7941 or the Party-list Law does not distinguish between valid and invalid votes, to wit:

Therefore, votes for specific party lists are not the same as votes for the party-list system. Hence, people whose votes were spoiled for instance (like checking or failure to properly shade the ovals in the ballots, or voted for two party lists when the requirement is only one, or had erasures on their ballots for instance), or did not vote for any party-list at all **are still voters for the party-list system**.

The votes for the party-list system [**include] all those people who voted whether their votes were counted or not** as long as the mechanism for the selection of party-list is in place.[20] (Emphasis provided)

In its November 12, 2010 Comment,[21] the Commission on Elections through the Office of the Solicitor General took the position that invalid or stray votes should not be counted in determining the divisor. The Commission on Elections argues that this will contradict *Citizens' Battle Against Corruption (CIBAC) v. COMELEC*[22] and *Barangay Association for National Advancement and Transparency (BANAT) v. COMELEC*.[23] It asserts that:

> Neither can the phrase be construed to include the number of voters who did not even vote for any qualified party-list candidate, as these voters cannot be considered to have cast any vote "for the party-list system."[24]

The issues in this case are as follows:

I. Whether the case is already moot and academic

II. Whether petitioners have legal standing

III. Whether the Commission on Elections committed grave abuse of discretion in its interpretation of the formula used in *BANAT v. COMELEC*[25] to determine the party-list groups that would be proclaimed in the 2010 elections

The third issue requires our determination of the computation of the correct divisor to be used. The options are:

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[20] *Id.* at 10-11.

[21] *Id.* at 62-73.

[22] 549 Phil. 767 (2007).

[23] *Barangay Association for National Advancement and Transparency (BANAT) v. COMELEC*, *supra* note 1.

[24] *Rollo*, pp. 69-70.

[25] Petitioners also call this the "Carpio formula."

A. All votes cast for the party-list system less the votes cast for subsequently disqualified party-list groups and votes declared spoiled

B. The total votes cast

C. The total number of valid votes cast for the party-list system including votes cast for party-list groups listed in the ballot even if subsequently declared disqualified. The divisor should not include votes that are declared spoiled or invalid.

We decide as follows:

I

This case is moot and academic.

Mendoza v. Villas[26] defines a moot and academic case:

> A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value. As a rule, courts decline jurisdiction over such case, or dismiss it on ground of mootness.[27]

Several supervening events have already rendered this case moot and academic. First, the Commission on Elections *En Banc* already proclaimed other winning party-list groups.[28]

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[26] G.R. No. 187256, February 23, 2011, 644 SCRA 347.

[27] *Id.* at 356-357 *citing Gunsi, Sr. v. Commissioners, The Commission on Elections*, G.R. No. 168792, February 23, 2009, 580 SCRA 70, 76.

[28] The Commission on Elections *En Banc*, sitting as the National Board of Canvassers, proclaimed the remaining party-list groups in NBC Resolution No. 10-025 dated July 12, 2010; NBC Resolution No. 10-030 dated July 27, 2010; NBC Resolution No. 10-033 dated July 30, 2010; NBC Resolution No. 10-034 dated July 30, 2010; NBC Resolution No. 10-048 dated September 1, 2010; NBC Resolution No. 10-049 dated September 1, 2010; NBC Resolution No. 10-054 dated September 21, 2010; NBC Resolution No. 10-055 dated September 23, 2010; NBC Resolution No. 10-057 dated September 24, 2010; NBC Resolution No. 10-059 dated October 7, 2010; and NBC Resolution 10-069 dated December 8, 2010.

Second, the term of office of the winning party-list groups in the May 2010 national elections ended on June 30, 2013. Finally, the conduct of the May 13, 2013 elections resulted in a new set of party-list groups.

We held that the expiration of the challenged term of office renders the corresponding Petition moot and academic.[29] This leaves any ruling on the issues raised by the petitioner with no practical or useful value.[30]

However, the following exceptions to the rule of declining jurisdiction over moot and academic cases are allowed: (1) there was a grave violation of the Constitution; (2) the case involved a situation of exceptional character and was of paramount public interest; (3) the issues raised required the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case was capable of repetition yet evading review.[31] On the importance of the assailed formula, this Court will discuss the issues raised by the petitioner as these are capable of repetition yet evading review[32] and for the guidance of the bench, bar, and public.[33]

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[29] *ABAKADA Guro Partylist, et al. v. Dela Cruz, et al.* G.R. No. 191583, April 17, 2012 citing *Malaluan v. COMELEC*, 324 Phil. 676, 683 (1996); *Sales v. Commission on Elections*, G.R. No. 174668, September 12, 2007, 533 SCRA 173; and *Baldo, Jr. v. Commission on Elections*, G.R. No. 176135, June 16, 2009, 589 SCRA 306, 311.

[30] *Quiño, et al. v. Commission on Elections*, G.R. No. 197466, November 13, 2012, 685 SCRA 371; See *Enrile v. Senate Electoral Tribunal*, G.R. No. 132986, May 19, 2004 and *Gancho-on v. Secretary of Labor and Employment*, 337 Phil. 654 (1997). See also *Gunsi, Sr. v. Commissioners, The Commission on Elections*, G.R. No. 168792, February 23, 2009, 580 SCRA 70, 76.

[31] *Funa v. Acting Secretary of Justice Agra*, G.R. No. 191644, February 19, 2013, 691 SCRA 196, 209.

[32] *Alunan III v. Mirasol*, G.R. No. 108399, July 31, 1997, 276 SCRA 501, 509 *citing Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 55 L. Ed. 310 (1911).

[33] *Chavez v. Public Estates Authority*, G.R. No. 133250, July 9, 2002, 384 SCRA 152; *Salonga v. Hon. Paño*, 219 Phil. 402 (1985); *De la Camara v. Hon. Enage*, 148-B Phil. 502 (1971).

II

The petitioner is not the real party in interest

"A real party in interest is the party who stands to be benefited or injured by the judgement in the suit, or the party entitled to the avails of the suit."[34] The party's interest must be direct, substantial, and material.[35] In this case, the petitioner attacks the validity of the formula used and upheld in *BANAT*. It also proposes its own interpretation of the formula to determine the proportional representation of party-list candidates in the House of Representatives. However despite any new computation, ARARO's proposed divisor of total votes cast for the party-list system whether valid or invalid still fails to secure one seat for ARARO. Reviewing the figures presented by the petitioner:[36]

	With Divisor of total valid votes cast for party-list system minus votes cast for disqualified party-lists or invalid votes (30,264,579)	**With Divisor of votes cast for the party-list system as proposed by ARARO** (37,377,371)
Votes garnered	147,204	147,204
Votes garnered over total votes cast for party-lists (%)	0.4864	0.3939
Guaranteed Seat	0	0

This table clearly shows that the petitioner does not suffer a direct, substantial or material injury from the application of the formula interpreted and used in *BANAT* in proclaiming the winning party-lists in the assailed National Board of Canvassers Resolution. The computation proposed by petitioner ARARO

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[34] RULES OF COURT, Rule 3, Sec. 2. See *Stronghold Insurance Company, Inc. v. Cuenca*, G.R. No. 173297, March 6, 2013, 692 SCRA 473.

[35] See *Sumalo Homeowners Association of Hermosa, Bataan v. Litton*, 532 Phil. 86 (2006).

[36] *Rollo*, pp. 14 and 16.

even lowers its chances to meet the 2% threshold required by law for a guaranteed seat. Its arguments will neither benefit nor injure the party. Thus, it has no legal standing to raise the argument in this Court.

III

However, we review the interpretation of the formula used for the determination of wining party-list candidates with respect to the divisor used for the guidance of bench and bar and for future elections.

The textual references for determining the formula to be used are found in the Constitution and the statute interpreting the relevant provisions.

Article VI, Section 5, paragraphs 1 and 2 of the 1987 Constitution provide the following:

1. The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.

2. The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

Sections 11 and 12 of Republic Act No. 7941, thus, provide:

Section 11. *Number of Party-List Representatives.* The party-list representatives shall constitute twenty per centum (20%) of the total number of the members of the House of Representatives including those under the party-list.

For purposes of the May 1998 elections, the first five (5) major political parties on the basis of party representation in the House of Representatives at the start of the Tenth Congress of the Philippines shall not be entitled to participate in the party-list system.

In determining the allocation of seats for the second vote, the following procedure shall be observed:

(a) The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.

(b) The parties, organizations, and coalitions receiving at least two percent (2%) of the **total votes cast for the party-list system** shall be entitled to one seat each: Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes: Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats.

Section 12. *Procedure in Allocating Seats for Party-List Representatives.* The COMELEC shall tally all the votes for the parties, organizations, or coalitions on a nationwide basis, rank them according to the number of votes received and allocate party-list representatives proportionately according to the percentage of votes obtained by each party, organization, or coalition as against the **total nationwide votes cast for the party-list system**. (Emphasis provided)

In *Veterans Federation Party v. Commission on Elections*,[37] we reversed the Commission on Elections' ruling that the respondent parties, coalitions, and organizations were each entitled to a party-list seat despite their failure to reach the 2% threshold in the 1998 party-list election. *Veterans* also stated that the 20% requirement in the Constitution is merely a ceiling.

Veterans laid down the "four inviolable parameters" in determining the winners in a Philippine-style party-list election based on a reading of the Constitution and Republic Act No. 7941:

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[37] G.R. No. 136781, October 6, 2000, 342 SCRA 244.

First, **the twenty percent allocation** - the combined number of *all* party-list congressmen shall not exceed twenty percent of the total membership of the House of Representatives, including those elected under the party list.

Second, **the two percent threshold** - only those parties garnering a minimum of two percent of the total valid votes cast for the party-list system are "qualified" to have a seat in the House of Representatives.

Third, **the three-seat limit** - each qualified party, regardless of the number of votes it actually obtained, is entitled to a maximum of three seats; that is, one "qualifying" and two additional seats.

Fourth, **proportional representation** - the additional seats which a qualified party is entitled to shall be computed "in proportion to their total number of votes."[38] (Emphasis provided)

In *Partido ng Manggagawa (PM) and Butil Farmers Party (Butil) v. COMELEC*,[39] the petitioning party-list groups sought the immediate proclamation by the Commission on Elections of their respective second nominee, claiming that they were entitled to one (1) additional seat each in the House of Representatives. We held that the correct formula to be used is the one used in *Veterans* and reiterated it in *Ang Bagong Bayani – OFW Labor Party v. COMELEC*.[40] This Court in *CIBAC v. COMELEC*[41] differentiates the formula used in *Ang Bagong Bayani* but upholds the validity of the *Veterans* formula.

In *BANAT v. COMELEC*,[42] we declared the 2% threshold in relation to the distribution of the additional seats as void. We said in that case that:

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[38] *Id.* at 255.

[39] 519 Phil. 644 (2006).

[40] 412 Phil. 308 (2001).

[41] *Citizens' Battle Against Corruption (CIBAC) v. COMELEC, supra* note 22.

[42] *Barangay Association for National Advancement and Transparency (BANAT) v. COMELEC, supra* note 1, at 243-244.

x x x The two percent threshold presents an unwarranted obstacle to the full implementation of Section 5(2), Article VI of the Constitution and prevents the attainment of "the broadest possible representation of party, sectoral or group interests in the House of Representatives." (Republic Act No. 7941, Section 2)

x x x x x x x x x

x x x There are two steps in the second round of seat allocation. *First*, the percentage is multiplied by the remaining available seats, 38, which is the difference between the 55 maximum seats reserved under the Party-List System and the 17 guaranteed seats of the two-percenters. The whole integer of the product of the percentage and of the remaining available seats corresponds to a party's share in the remaining available seats. *Second*, we assign one party-list seat to each of the parties next in rank until all available seats are completely distributed. We distributed all of the remaining 38 seats in the second round of seat allocation. *Finally*, we apply the three-seat cap to determine the number of seats each qualified party-list candidate is entitled.[43]

The most recent *Atong Paglaum v. COMELEC*[44] does not in any way modify the formula set in *Veterans*. It only corrects the definition of valid party-list groups. We affirmed that party-list groups may be national, regional, and sectoral parties or organizations. We abandoned the requirement introduced in *Ang Bagong Bayani* that all party-list groups should prove that they represent a "marginalized" or "under-represented" sector.

Proportional representation is provided in Section 2 of Republic Act No. 7941.[45] *BANAT* overturned *Veterans'* interpretation of the phrase *in proportion to their total number of votes*. We clarified that the interpretation that only those that obtained at least 2% of the votes may get additional seats will not result in proportional representation because it will make it impossible

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[43] *Id.* at 243-244.

[44] G.R. No. 203766, April 2, 2013.

[45] Thus, "the State shall promote **proportional representation** in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof."

for the party-list seats to be filled completely. As demonstrated in *BANAT,* the 20% share may never be filled if the 2% threshold is maintained.

The divisor, thus, helps to determine the correct percentage of representation of party-list groups as intended by the law. This is part of the *index of proportionality* of the representation of a party-list to the House of Representatives.[46] It measures the relation between the share of the total seats and the share of the total votes of the party-list.[47] In *Veterans*, where the 20% requirement in the Constitution was treated only as a ceiling, the mandate for proportional representation was not achieved, and thus, was held void by this Court.

The petitioner now argues that the votes of all the registered voters who actually voted in the May 2010 elections should be included in the computation of the divisor whether valid or invalid.[48] According to the petitioner, **votes cast for the party-list candidates** is not the same as the **votes cast under or for the party-list system**. Specifically, it said that:

> The party list system is not just for the specific party lists as provided in the ballot, but pertains to the system of selection of the party list to be part of the House of Representatives.[49]

The petitioner claims that there should be no distinction in law between *valid* and *invalid* votes. Invalid votes include those votes that were made for disqualified party-list groups, votes that were spoiled due to improper shading, erasures in the ballots, and even those that did not vote for any party-list candidate at all.[50] All of the votes should be included in the divisor to determine the 2% threshold.

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[46] F. P. Muga II, *On the Seat Allocation Method of the Party-List System in the Philippines*, LOYOLA SCHOOLS REVIEW (Vol. 4, 2005).

[47] *Id.*

[48] *Rollo,* p. 76.

[49] *Id.* at 10.

[50] *Id.* at 10-11.

We agree with the petitioner but only to the extent that votes later on determined to be invalid due to no cause attributable to the voter should not be excluded in the divisor. In other words, votes cast validly for a party-list group listed in the ballot but later on disqualified should be counted as part of the divisor. To do otherwise would be to disenfranchise the voters who voted on the basis of good faith that that ballot contained all the qualified candidates. However, following this rationale, party-list groups listed in the ballot but whose disqualification attained finality prior to the elections and whose disqualification was reasonably made known by the Commission on Elections to the voters prior to such elections should not be included in the divisor.

Not all votes cast in the elections should be included in the divisor. Contrary to the argument of the petitioner, Section 11(b) of Republic Act No. 7941 is clear that only those votes cast *for the party-list system* shall be considered in the computation of the percentage of representation:

> (b) The parties, organizations, and coalitions receiving at least two percent (2%) of the **total votes cast for the party-list system** shall be entitled to one seat each: Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes: Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats. (Emphasis provided)

The total votes cast do not include invalid votes. The *invalid votes*, for the determination of the denominator, may be votes that were spoiled or votes that resulted from the following: improper shading or having no shade at all;[51] existence of stray

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[51] See Section 6, par. (h) of Commission on Elections Resolution No. 9164, "In The Matter Of Reinstating And Reimplementing COMELEC Resolution No. 8804 With Amendments," March 16, 2011, "STRAY BALLOTS refer to ballots with two or more shades or without any shade in the contested position."

or ambiguous marks;[52] tears in the ballot; and/or ballots rejected by the Precinct Count Optical Scan (PCOS) machines under the paper-based[53] automated election system. All these are causes that nullify the count for that vote that can be attributable to the voter's action.

Votes cast for the party-list system should, however, include all votes cast for party-list groups contained in the ballot even if subsequently they are disqualified by the Commission on Elections or by our courts. Thus, the content of the divisor in the formula to determine the seat allocation for the party-list component of the House of Representatives should be amended accordingly.

We qualify that the divisor to be used in interpreting the formula used in *BANAT* is the *total votes cast for the party-list system. This should not include the invalid votes*. However, so as not to disenfranchise a substantial portion of the electorate, *total votes cast for the party-list system* should mean **all the votes validly cast for all the candidates listed in the ballot**. The voter relies on the ballot when making his or her choices.

To the voter, the listing of candidates in the official ballot represents the extent of his or her choices for an electoral exercise. He or she is entitled to the expectation that these names have properly been vetted by the Commission on Elections. Therefore, he or she is also by right entitled to the expectation

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[52] *Id.* "MARKED BALLOTS refer to those ballots containing marks outside the ovals, which marks could either be identifying marks or voting marks. Voting marks are markings placed beside the ovals that may appear to show the intent of the voter to vote for a party, while identifying marks are those intentionally placed to identify the ballot or the voter."

[53] Republic Act No. 9369, Sec. 2, (7), January 23, 2007, "An Act Amending Republic Act No. 8436, Entitled "An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, to Encourage Transparency, Credibility, Fairness and Accuracy of Elections, Amending for the Purpose Batas Pambansa Blg. 881, as Amended, Republic Act No. 7166 and Other Related Elections Laws, Providing Funds Therefor and for Other Purposes"

that his or her choice based on the listed names in the ballot will be counted.

In *Reyes v. COMELEC*[54] as cited in *Loreto v. Brion*,[55] this Court said "that the votes cast for the disqualified candidate are presumed to have been cast in the belief that he is qualified."[56] Therefore, the votes cast for disqualified candidates are presumed to be made with a sincere belief that the voters' choices were qualified candidates and that they were without any intention to misapply their franchise.[57] Their votes may not be treated as stray, void or meaningless[58] for purposes of the divisor in the party-list elections. Assuming *arguendo* that petitions for *certiorari* do not stay the execution of the judgment or final order or resolution sought to be reviewed,[59] the finality of the disqualification of a candidate should not be a means for the disenfranchisement of the votes cast for the party-list system.

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[54] 324 Phil. 813 (1996).

[55] 370 Phil. 727 (1999).

[56] *Id.* at 734 citing *Reyes v. COMELEC*, G.R. No. 120905, March 7, 1996, 254 SCRA 514.

[57] See *Kare v. Commission on Elections*, G.R. No. 157526, April 28, 2004, 428 SCRA 264. See also *Domino v. Commission on Elections*, G.R. No. 134015. July 19, 1999, 310 SCRA 546, as cited in *Bautista vs. Commission on Elections*, G.R. Nos. 154796-97. October 23, 2003, 414 SCRA 299. In *Domino v. Commission on Elections*, p. 575, this Court said that "petitioner was not notoriously known by the public as an ineligible candidate. Although the resolution declaring him ineligible as candidate was rendered before the election, however, the same is not yet final and executory. In fact, it was no less than the COMELEC in its Supplemental Omnibus Resolution No. 3046 that allowed DOMINO to be voted for the office and ordered that the votes cast for him be counted as the Resolution declaring him ineligible has not yet attained finality. Thus, the votes cast for DOMINO are presumed to have been cast in the sincere belief that he was a qualified candidate, without any intention to misapply their franchise. Thus, said votes can not be treated as stray, void, or meaningless."

[58] *Kare v. Commission on Elections, supra.*

[59] RULES OF COURT, Rule 65, Sec. 8.

Section 10 of the Party-list Law should thus be read in conjunction with the intention of the law as seen in Section 2, to wit:

> Sec. 2. Declaration of Policy. - The State shall promote proportional representation in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to the marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. **Towards this end, the State shall develop and guarantee a full, free and open party system in order to attain the broadest possible representation of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible.** (Emphasis provided)

Section 10 of Republic Act No. 7941, which governs party-list elections, states that votes cast for a party-list "not entitled to be voted for shall not be counted." It does not specify any reckoning period of the finding of disqualification or cancellation of registration for the validity or the invalidity of votes unlike that in Section 72 of the Omnibus Election Code, as amended by Section 6, Republic Act No. 6646.[60] Taking Sections 2 and 10 together, this Court must consider the intention of the law and the nature of Philippine style party-list elections. Party-list groups provide for a different and special representation in Congress. To disregard votes of party-list groups disqualified

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[60] Section 6. Effect of Disqualification Case. – Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.

after the conduct of the elections means the disenfranchisement of thousands, if not hundreds of thousands of votes, of the Filipino people. Definitely, it is not the voter's fault that the party-list group in the ballot it votes for will be subsequently disqualified. The voter should not be penalized.

The counting of votes for party-list groups in the ballot but subsequently declared as disqualified is, thus, corollary to the "fundamental tenet of representative democracy that the people should be allowed to choose whom they please to govern them."[61] It is also part of the right of suffrage, and the law's intention to ensure a more representative Congress should be given priority.

Therefore, the divisor should now include all votes cast for party-list groups that are subsequently disqualified for so long as they were presented as a choice to the electorate.

If his or her vote is not counted as part of the divisor, then this would amount to a disenfranchisement of a basic constitutional right to be able to choose representatives of the House of Representatives in two ways. First, his or her vote will be nullified. Second, he or she will be deprived of choosing another party-list group to represent his or her interest should the party listed in the ballot be declared disqualified.

However, there are instances when the Commission on Elections include the name of the party-list group in the ballot but such group is disqualified with finality prior to the elections. In applying and interpreting the provisions of Section 6 of Republic Act No. 6646, we said in *Cayat v. Commission on*

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[61] See *Borja v. Commision on Elections*, 356 Phil. 467, 475 (1998) citing *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 131 L. Ed. 2d 881 (1995): In resolving whether a vice-mayor who succeeds to the office of mayor by operation of law and serves the remainder of the term is considered to have served a term in that office for the purpose of the three-term limit, the Court held that it is not enough that an individual has *served* three consecutive terms in an elective local office, he must also have been *elected* to the same position for the same number of times before the disqualification can apply; See also J. Carpio's Dissenting Opinion, *Kida v. Senate of the Philippines*, G.R. No. 196271, October 18, 2011, 659 SCRA 270.

Elections[62] that votes cast in favor of a candidate "disqualified with finality" should be considered stray and not be counted. *To be consistent, the party-list group in the ballot that has been disqualified with finality and whose final disqualification was made known to the electorate by the Commission on Elections should also not be included in the divisor.* This is to accord weight to the disqualification as well as accord respect to the inherent right of suffrage of the voters.

Thus, the formula to determine the proportion garnered by the party- list group would now henceforth be:

$$\frac{\text{Number of votes of party-list}}{\text{Total number of valid votes for party-list candidates}} = \text{Proportion or Percentage of votes garnered by party-list}$$

The total votes cast for the party-list system include those votes made for party-list groups indicated in the ballot regardless of the pendency of their motions for reconsideration or petitions before any tribunal in relation to their cancellation or disqualification cases. However, votes made for those party-list groups whose disqualification attained finality prior to the elections should be excluded if the electorate is notified of the finality of their disqualification by the Commission on Elections. The divisor also shall not include invalid votes.

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[62] *Cayat v. Commission on Elections*, G.R. No. 163776. April 24, 2007, 522 SCRA 23; 550 Phil. 209 (2007). This case involves the cancellation of the certificate of candidacy of Rev. Fr. Nardo B. Cayat as mayoralty candidate of Buguias, Benguet in the May 10, 2004 local elections. We said in this case that Section 6 of Rep. Act No. 6646 covers two situations. One situation is when the disqualification becomes final before the elections and the other situation is when the disqualification becomes final after the elections. Petitioner Cayat's case falls under the first situation wherein a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall be considered stray and not counted. The Court held that the Resolution disqualifying petitioner Cayat became final on April 17, 2004, or way before the May 10, 2004 elections due to the non-payment of the required filing fee for the Motion for Reconsideration.

WHEREFORE, from the above discussion:

1. The prayer to enjoin the Commission on Elections from proclaiming the qualified party-list groups is denied for **being moot and academic;**

2. The formula in determining the winning party-list groups, as used and interpreted in the case of *BANAT v. COMELEC*, is **MODIFIED** as follows:

$$\frac{\text{Number of votes of party-list}}{\text{Total number of valid votes for party-list candidates}} = \text{Proportion or Percentage of votes garnered by party-list}$$

The divisor shall be the total number of valid votes cast for the party-list system including votes cast for party-list groups whose names are in the ballot but are subsequently disqualified. Party-list groups listed in the ballot but whose disqualification attained finality prior to the elections and whose disqualification was reasonably made known by the Commission on Elections to the voters prior to such elections should not be included in the divisor. The divisor shall also not include votes that are declared spoiled or invalid.

The refined formula shall apply prospectively to succeeding party-list elections from the date of finality of this case.

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr., J., see concurring and dissenting opinion.

CONCURRING AND DISSENTING OPINION

VELASCO, JR., *J.*:

The sole issue in the present case revolves around the application of the phrase "total votes cast for the party-list system" in Republic Act No. (RA) 7941, otherwise known as the "Party-List System Act."

Petitioner is of the position that the phrase refers to the total number of voters who actually voted less the number of votes for party list organizations (PLOs) disqualified before the actual elections. In other words, petitioner maintains that "votes that were spoiled or were not made for any party list" as well as votes cast in favor of PLOs disqualified after the actual elections must be counted in determining the "total votes cast for the party-list system." Respondent, on the other hand, maintains otherwise arguing that only "valid votes" and votes cast in favor of PLOs not otherwise declared disqualified should be included in the "total votes cast for the part-list system."

The issue is of particular significance as its resolution determines the proper divisor of the formula applied in *BANAT v. COMELEC*[1] to determine a PLO's percentage of votes garnered and thus its entitlement to a seat or two in congress. It is, therefore, of utmost relevance that the present petition is given the proper consideration by this Court.

I agree that the divisor representing the "total votes cast for the party-list system" should include valid votes cast for PLOs disqualified with finality after the day of elections but not PLOs disqualified with finality before the day of elections.

Whether preceded by the adverb "under," used in Section 6 of RA 7941, or the preposition "for," used in Sections 11 and 12 of RA 7941, the "party-list system" still refers to a mechanism of proportional representation in the election of representatives from "national, regional and sectoral parties or organizations or

[1] G.R. No. 179271, April 21, 2009, 586 SCRA 210.

coalitions thereof **registered** with the Commission on Elections."[2] It is, therefore, necessary for the inclusion of the votes in the "total votes cast for the party-list system" that the PLO voted for is qualified, *i.e.*, registered with the COMELEC, on the day of the elections. Thus, when the vote is in favor of a PLO that had been removed or cancelled under Section 6 of RA 7941 and thus disqualified with finality before the election, the vote can only be considered "stray votes" and therefore invalid; it cannot be considered as a valid vote or included in the "total votes cast for the party-list system."

Section 72 of the Omnibus Election Code, as amended by Section 6 of RA 6646, clearly provides for the effect of a disqualification on a candidate before the day of elections, which under the party-list system is a PLO:

> Sec. 6. Effect of Disqualification Case. - **Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted**. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong. (Emphasis supplied.)

In *Cayat v. COMELEC*,[3] this Court declared as "stray" the votes cast in favor of a candidate disqualified with finality *before* the election even if his name remained in the ballot. We held, thus:

> The law expressly declares that a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted. This is a mandatory provision of law. Section 6 of Republic Act No. 6646, The Electoral Reforms Law of 1987, states:

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[2] RA 7941, Sec. 3. (Emphasis supplied.)

[3] G.R. No. 163776, April 24, 2007.

> Sec. 6. Effect of Disqualification Case.— Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong. (Emphasis added)

Section 6 of the Electoral Reforms Law of 1987 covers two situations. The first is when the disqualification becomes final before the elections, which is the situation covered in the first sentence of Section 6. The second is when the disqualification becomes final after the elections, which is the situation covered in the second sentence of Section 6.

The present case falls under the first situation. Section 6 of the Electoral Reforms Law governing the first situation is categorical: **a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted.** The Resolution disqualifying Cayat became final on 17 April 2004, way before the 10 May 2004 elections. Therefore, all the 8,164 **votes cast in Cayat's favor are stray**. Cayat was never a candidate in the 10 May 2004 elections. Palileng's proclamation is proper because he was the sole and only candidate, second to none.

x x x x x x x x x

To allow a candidate disqualified by final judgment 23 days before the elections to be voted for and have his votes counted is a blatant violation of a mandatory provision of the election law. It creates confusion in the results of the elections and invites needless new litigations from a candidate whose disqualification had long become final before the elections. The doctrine on the rejection of the second placer was never meant to apply to a situation where a candidate's disqualification had become final before the elections.

Of particular importance is this Court's June 25, 2003 Resolution in *Ang Bagong Bayani-OFW Labor Party v.*

COMELEC,[4] where We emphasized the relevance of Section 10 of RA 7941, which states that "a vote cast for a party, sectoral organization, or coalition not entitled to be voted for shall not be counted x x x." This Court held that the "total votes cast for the party-list system" include only the votes cast for PLOs *qualified* to be voted on the day of election, viz:

Legal Effect of the Disqualifications
on the "Total Votes Cast"

….. The critical question now is this: To determine the "total votes cast for the party-list system," should the votes tallied for the disqualified candidates be deducted? Otherwise stated, does the clause "total votes cast for the party-list system" include only those ballots cast for *qualified* party-list candidates?

To answer this question, there is a need to review related jurisprudence on the matter, especially *Labo v. Comelec* and *Grego v. Comelec*, which were mentioned in our February 18, 2003 Resolution.

Labo and Grego
Not Applicable

In *Labo,* the Court declared that "the ineligibility of a candidate receiving majority votes does not entitle the eligible candidate receiving the next highest number of votes to be declared elected. A minority or defeated candidate cannot be deemed elected to the office." In other words, the votes cast for an ineligible or disqualified candidate cannot be considered "stray."

However, "this rule would be different if the electorate, fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety, would nonetheless cast their votes in favor of the ineligible candidate. In such case, the electorate may be said to have waived the validity and efficacy of their votes by notoriously misapplying their franchise or throwing away their votes, in which case, the eligible candidate obtaining the next higher number of votes may be deemed elected." In short, the votes cast for a "notoriously disqualified" candidate may be considered "stray" and excluded from the canvass.

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[4] G.R. Nos. 147589 & 147613, June 25, 2003, 404 SCRA 719.

The foregoing pronouncement was reiterated in *Grego*, which held that the exception mentioned in *Labo v. Comelec* "is predicated on the concurrence of two assumptions, namely: (1) the one who obtained the highest number of votes is disqualified; and (2) the electorate is fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety but would nonetheless cast their votes in favor of the ineligible candidate."

Note, however, that the foregoing pronouncements (1) referred to regular elections for local offices and (2) involved the interpretation of Section 6 of RA 6646. They were not meant to cover party-list elections, which are specifically governed by RA 7941. **Section 10 of this latter law clearly provides that the votes cast for a party, a sectoral organization or a coalition *"not entitled to be voted for shall not be counted":***

> "SEC. 10. *Manner of Voting*. — Every voter shall be entitled to two (2) votes: the first vote is a vote for candidate for membership of the House of Representatives in his legislative district, and the second, a vote for the party, organization, or coalition he wants represented in the House of Representatives: ***Provided,* That a vote cast for a party, sectoral organization, or coalition not entitled to be voted for shall not be counted**: *Provided, finally*, That the first election under the party-list system shall be held in May 1998." (Emphasis supplied)

The language of the law is clear; hence, there is room, not for interpretation, but merely for application.Likewise, no recourse to extrinsic aids is warranted when the language of the law is plain and unambiguous.

Another reason for not applying *Labo* and *Grego* is that these cases involve single elective posts, while the present controversy pertains to the acquisition of a number of congressional seats depending on the total election results — such that even those garnering second, third, fourth or lesser places could be proclaimed winners depending on their compliance with other requirements.

RA 7941 is a special statute governing the elections of party-list representatives and is the controlling law in matters pertaining thereto. Since *Labo* and Section 6 of RA 6646 came into being prior to the enactment of RA 7941, the latter is a qualification of the former ruling and law. On the other hand, *Grego* and other related cases that came after the enactment of RA 7941 should be construed as inapplicable to the latter.

Subtracting the votes garnered by these disqualified party-list groups from the total votes cast under the party-list system will reduce the base figure to 6,523,185. This means that the two-percent threshold can be more easily attained by the *qualified* marginalized and under-represented groups. Hence, **disregarding the votes of disqualified party-list participants will increase and broaden the number of representatives from these sectors. Doing so will further concretize and give flesh to the policy declaration in RA 7941**, which we reproduce thus:

> "SEC. 2. *Declaration of Policy*. — The State shall promote proportional representation in the election of representation in the election of representatives to the House of Representatives through a party-list system of registered, national and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. Towards this end, the State shall develop and guarantee a full, free and open party system in order to attain the broadest possible representation of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible."

It is therefore in keeping with both the spirit and language of the law on the party-list system that the votes cast in favor of PLOs disqualified with finality *before* the day of the election be considered invalid and not included in the computation of the "total votes cast for the party-list system."

On this note, We must consider the fact of final disqualification of the PLO before the day of election as enough to consider the votes cast in favor of the disqualified PLO as stray votes. The proviso stated in the *ponencia* that the "disqualification [must be] reasonably made known by the [COMELEC] to the voters prior to such elections"[5] is without legal basis and only serves to weaken Our ruling in *Cayat*.

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[5] *Ponencia*, p. 24.

To rule that the votes cast in favor of PLOs disqualified with finality prior to the elections are to be excluded from the divisor only "if the electorate is notified of the finality of their disqualification"[6] places the exclusion of these votes on the notoriety of the disqualification of these PLOs. Clearly, this contravenes our ruling in *Cayat* and similar cases where this Court refused to apply the presumption that the voters remained in the belief that the disqualified PLO is qualified.

The obscurity of the final disqualification of these PLOs before the day of elections cannot be used as a reason to recognize the validity of their inclusion in the ballot. Otherwise, the qualifications set for PLOs to validly participate in the elections will all be for naught and this Court will only be encouraging nuisance PLOs to participate in the election and dilute the percentage votes cast for the qualified PLOs, even denying some of the opportunity to achieve the 2% winning minimum percentage threshold. After all, as provided in the *ponencia*, a decision of disqualification, regardless of the date of its finality, does not affect its inclusion in the divisor "if not reasonably made known by the COMELEC." Clearly, this cannot be allowed. At the very least, the *ponencia* should have provided sufficient parameters that will enable the COMELEC to comply with the proviso. Otherwise, the nebulous qualification in the proviso renders the rule open to various interpretations and possible circumvention. Indeed, the fact that a disqualified PLO's name remains on the ballot on the day of the election can be used to assert that the COMELEC has not "reasonably" informed the electorate of the disqualification.

Thus, I vote that the modification of the divisor in the formula for determining the winning PLOs in *BANAT v. COMELEC* shall be limited only to include the votes cast for PLOs whose names are in the ballot but are disqualified *after* the elections. Spoiled, invalid and stray votes, as well as votes cast in favor of PLOs whose names are in the ballot but were disqualified with finality *before* the day of election shall remain excluded in the computation of the "total votes cast for the party-list system."

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[6] *Id.* at 23.

The final disqualification of a PLO prior to the day of the election, without more, is sufficient to render the votes cast in its favor as stray votes and excluded from the "total votes cast for the party-list system."

FIRST DIVISION

[A.C. No. 8269. December 11, 2013]

PHESCHEM INDUSTRIAL CORPORATION, *complainant, vs.* **ATTYS. LLOYD P. SURIGAO and JESUS A. VILLARDO III**, *respondents.*

SYLLABUS

1. POLITICAL LAW; LOCAL GOVERNMENT CODE (R.A. 7160); THE POLICE POWER DELEGATED BY THE STATE TO THE LOCAL GOVERNMENT UNITS IS ESSENTIALLY REGULATORY IN NATURE; NATURE OF QUARRY/ MINING PERMIT, EXPLAINED.— The State, through the legislature, has delegated the exercise of police power to local government units, as agencies of the State, in order to effectively accomplish and carry out the declared objects of their creation. This delegation is embodied in the general welfare clause, Section 16, of R.A. No. 7160. Police power is essentially regulatory in nature, and the power to issue licenses or grant business permits, if exercised for a regulatory and not revenue-raising purpose, is within the ambit of this power. Consistent with this principle, the CA held in the aforesaid petitions that the quarry permit issued by the Governor of Leyte to Pheschem is contingent on its compliance with the terms and conditions of the ECC. Thus, the quarry permit cannot be said to have vested in Pheschem an absolute, unconditional right to quarry or to mine, such that if it fails to comply with any of the terms and conditions of the ECC, there would be no right to quarry or mine to speak of. The CA stressed that a license or permit

is not a contract between the sovereign and the grantee, but a special privilege, a permission or authority to do what would be within its terms; that it is neither vested nor permanent that can at no time be withdrawn or taken back by the grantor.

2. LEGAL ETHICS; ATTORNEYS; DISBARMENT COMPLAINT AGAINST LAWYERS IS DISMISSED INASMUCH AS THE ALLEGED ABUSIVE AND ARBITRARY ACTUATIONS COMPLAINED OF WERE ACTUALLY PURSUANT TO THE DILIGENT PERFORMANCE OF THEIR SWORN DUTIES AND RESPONSIBILITIES AS ELECTED OFFICIALS OF THE MUNICIPALITY.— [R]ather than this Court penalizing the respondents for their supposed abusive and arbitrary actuations not befitting the moral character required of members of the bar, there is ample showing that their conduct was pursuant to the diligent performance of their sworn duties and responsibilities as duly elected officials of the Municipality of Palompon, Leyte. They therefore deserve commendation, instead of condemnation, and not just commendation but even encouragement, for their vigilance and prompt and decisive actions in helping to protect and preserve the environment and natural resources of their Municipality.

APPEARANCES OF COUNSEL

Neil Simon S. Silva for complainant.
Dona Villa M. Gaspan-Cerna for respondents.

D E C I S I O N

REYES, *J.*:

This is a Complaint for Disbarment[1] filed by Pheschem Industrial Corporation (Pheschem) on May 11, 2009 against lawyers Lloyd P. Surigao (Atty. Surigao) and Jesus A. Villardo III (Atty. Villardo) (respondents), for gross, malicious and oppressive violation of their duties under the Code of Professional

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

Responsibility. On September 30, 2009, the respondents filed their comment,[2] and on November 23, 2009, this Court referred the complaint to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[3]

Factual Antecedents

Pheschem is a domestic corporation engaged in the manufacture of hydrated lime, an industrial chemical, and has been operating a limestone quarry in Palompon, Leyte on a 25-year mining permit since 1985. Toward the end of its said permit, it allegedly encountered harassment from the town officials when it tried to renew the same, although it also surmised that its troubles began after it refused passage through its quarry to the logging trucks owned by the Chairman of *Barangay* Liberty, Palompon, Leyte, Eddie Longcanaya (Chairman Longcanaya). Pheschem claims that it only wanted to avoid any suspicion from the Department of Environment and Natural Resources (DENR) that it was consenting to illegal logging activities in its quarry area. Nonetheless, in retaliation, and without a local ordinance or resolution, Chairman Longcanaya began imposing a fee of ₱100.00 for each dump truck of Pheschem that entered its quarry site, which Pheschem refused to pay. On May 12, 2008, Chairman Longcanaya led the *barangay* residents in blockading Pheschem's quarry site to prevent its trucks from hauling out limestone to its manufacturing plant in another part of town.

Pheschem sought the help of Atty. Surigao, then Vice-Mayor of Palompon, but instead of helping the former, Atty. Surigao joined the blockade. Not only that, in a dialogue he called between Pheschem and the *barangay* officials, Atty. Surigao harangued Pheschem with a litany of complaints from the *barangay* residents, while ignoring the DENR's certifications that Pheschem committed no violations, as well as DENR's explanation that Pheschem could not be denied an Environmental Compliance Certificate (ECC) as long as it substantially complied with the requirements therefor.

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[2] *Id*. at 191-217.

[3] *Id*. at 391.

On June 2, 2008, the *Sangguniang Bayan* of Palompon, allegedly upon instigation of Atty. Surigao, passed Municipal Resolution No. 068-020608,[4] entitled, "*An Omnibus Opposition to Any and all Re-application of Pheschem Industrial Corporation for Mining Permit or License, or Issuance of an Environmental Compliance Certificate, or Business License, or Mayor's Permit, Inter Alia.*" Then, on June 27, 2008 Atty. Surigao even appeared as collaborating counsel in a labor case for a dismissed employee of Pheschem named Pablito Moldez.[5] It appears that Atty. Surigao was also the private counsel of the respondent in G.R. No. 161159, entitled "*Pheschem Industrial Corporation v. Pablito Moldez*," decided by this Court on May 9, 2005.[6] Pheschem now insists that Atty. Surigao should have inhibited himself from the *Sangguniang Bayan*'s deliberations on Resolution No. 068-020608 due to conflict of interest.

Unable now to haul limestone from its quarry site in *Barangay* Liberty to its plant, despite being a holder of an ECC from the DENR and a still subsisting mining permit from the Provincial Governor, Pheschem opened a new quarry in *Barangay* Cantandoy, but again Atty. Surigao and other town officials blocked and stopped its operations. Undaunted, Pheschem opened a third quarry, this time in *Barangay* San Miguel, but again the town officials led by Palompon Mayor Eulogio S. Tupa (Mayor Tupa) and joined by Attys. Surigao and Villardo, a *Sangguniang Bayan* member, seized two (2) dump trucks belonging to Pheschem. This was pursuant to a "Cease and Desist Order for the Land Development (Leveling) Project at *Barangay* San Miguel" dated July14, 2008, issued by Mayor Tupa to Engineer Timoteo Andales (Engr. Andales), Operations Manager of Pheschem. Engr. Andales had obtained an ECC in his name to level a property owned by Jess Tangog (Tangog) in *Barangay* San Miguel, Palompon. Mayor Tupa charged that it was actually Pheschem which was leveling the property, but

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[4] *Id*. at 37-39.

[5] *Id*. at 51.

[6] 497 Phil. 647 (2005).

instead of moving the scraped limestone within the said property to even out the ground surface to prepare the same for residential development, the limestone was hauled to its plant in *Barangay* Cantandoy to make hydrated lime. The aforesaid order reads as follows:

> Without necessarily admitting the legality of the issuance of the ECC that was given to you dated 4 July 2008 by EMB Region 8, a clear provision in the said ECC (ECC-r8-0806-070-5010) states that 'permits/clearances from other concerned agencies shall be secured prior to project implementation;' (par. 3, p. 4, ECC)
>
> Upon verification in the area, subject-matter of your Land Development (Leveling) Project [of] which you are the proponent located in Barangay San Miguel, Palompon, Leyte and [for] which you were issued the above-mentioned ECC, you have already started with your operations sans the above-mentioned condition *sine qua non*.
>
> Moreover, because of your operations now you have already violated other conditionalities in the said ECC, to wit:
>
> 1. You have not secured a Development Permit from the LGU ([I][A][3], ECC);
>
> 2. You have failed to provide silt traps to contain silt-laden run-off from draining to the adjacent road[.]
>
> Moreover importantly, we know that you are not doing leveling activities only. You are actually hauling raw materials (limestone) to be supplied to Pheschem Industrial Corporation for processing into lime at its Cantandoy Plant. By doing so, you have clearly violated Presidential Decree 1586 and Republic Act 7942 (because you know for a fact that Pheschem should have an approved quarry site which should have a separate ECC to be valid). Your application for a Land Development (Leveling) Project is a facade and a vivid circumvention of the aforementioned laws.
>
> Finally, you are the Operations Manager of Pheschem Industrial Corporation and that your application as the contractor/supplier of raw materials (limestone) to your employer violates Municipal Resolution No. 068-020608. Your actions have gravely put into jeopardy the security, safety of the Palomponganons, and the environment of Palompon.

It is in this light that you are AT ONCE TO CEASE AND DESIST from continuing your operation in the area subject-matter of the ECC and/or to haul, transfer, deliver to Pheschem Industrial Corporation any raw materials which you might or will produce because of your leveling activities.

Your continued operation will be an explicit violation of this Order and shall be dealt with accordingly.

The PNP, Palompon, Leyte through P/Insp Judito N. Cinco is directed to immediately serve this Order to Engr. Timoteo Andales at his address as indicated hereinabove.[7]

On November 25, 2008, Pheschem through its plant manager, Engr. Andales, pleaded with Atty. Surigao to release its trucks, but Atty. Surigao responded by furnishing Pheschem with a copy of Municipal Resolution No. 170-211008, entitled, "*Strongly Requesting the Office of the Mayor to Cancel the Mayor's Permit and/or Business License Issued to Pheschem Industrial Corporation and/or Tomas Y. Tan.*"[8] According to Pheschem, it was at this time that Atty. Surigao demanded as a pre-condition for the release of its trucks that Pheschem pay its workers a cost of living allowance (COLA) and a separation pay of one month's salary per year of service. Pheschem refused the demand.

On December 5, 2008, Pheschem represented by its Plant Manager, Engr. Andales, and Engr. Esperidion C. Pascua, Assistant Plant Manager, filed Special Civil Action (SCA) Case No. 0045-PN with the Regional Trial Court (RTC) of Palompon, Leyte, Branch 17, for "Injunction, Prohibition, *Mandamus* with Damages, with prayer for immediate issuance of 72-hour and 20-day Temporary Restraining Order (TRO) and Writ of Preliminary Injunction."[9] Named as respondents were Mayor Tupa, Vice-Mayor Atty. Surigao, the *Sangguniang Bayan* of Palompon, Leyte, represented by Atty. Surigao, Municipal

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[7] *Rollo*, pp. 581-582.

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

[9] *Id.* at 102-123.

Councilor Atty. Villardo, SPO1 Manolito R. Ilustre, SPO1 Joel M. Suca, Herville V. Pajaron (Pajaron) of the Municipal Environment and Natural Resources Offices (MENRO) of Palompon, HESG German Cliton, Diosdado Perales and *Barangay* Chairman Longcanaya.

On December 8, 2008, the RTC issued a 72-hour TRO as well as commanded the respondent town officials to release Pheschem's trucks and to stop obstructing its quarrying operations.[10] The next day, the respondents filed a motion for reconsideration, but on December 22, 2008, the RTC went on to issue a writ of preliminary injunction against the municipal officials of Palompon, including herein respondents, to stop interfering in Pheschem's quarry operations,[11] to wit:

> WHEREFORE, after hearing the pro's and con's of both parties in the above-entitled case on the application of petitioner for preliminary injunction, this court hereby grants the same with the following specific orders.
>
> 1. Enjoining the respondent incumbent Municipal Mayor of Palompon and all or any person under his direction, and all the other respondents herein from stopping, interfering, preventing[,] and doing acts of harassments against the herein petitioner or any of its officers, employees and laborers or its vehicles and properties in the operation [of] its quarry sites and plant site in the Municipality of Palompon[.]
>
> 2. Prohibiting the Vice-Mayor, Atty. Lloyd Surigao, and the Sangguniang Bayan of Palompon from interfering, doing acts of harassments and other acts which will hamper the legitimate operation of petitioner's quarry sites and plant.
>
> 3. Enjoining and prohibiting Barangay Chairman Eddie Longcanaya from collecting the Php100.00 peso imposition and from further setting up road blocks to prevent petitioner from using the subject road.
>
> SO ORDERED.[12]

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[10] *Id.* at 124-126.

[11] *Id.* at 127-131.

[12] *Id.* at 130.

In apparent defiance of the above writ, on January 6, 2009 Atty. Surigao, accompanied by Pajaron, head of Palompon's MENRO, and several policemen, entered Pheschem's quarry site and seized three (3) of its dump trucks.[13] On January 9, 2009, Mayor Tupa, Atty. Surigao, and Pajaron executed a Joint Complaint Affidavit[14] seeking to cancel Pheschem's provincial quarry permit. But in a Resolution[15] dated March 20, 2009, the Office of the Provincial Governor of Leyte dismissed the complaint.

On January 13, 2009, the day Pheschem was to resume its operations at the San Miguel quarry site, it obtained the release of its equipment,[16] but again on January 16, 2009, the trucks were impounded for the third time in the act of hauling limestone from Tangog's property in *Barangay* San Miguel, Palompon, allegedly for violation of Sections 53 and 55, in relation to Sections 108 and 110, of the Mining Act of 1995, as well as the Municipal Tax Code of 2004, and the conditions of the provincial quarry permit.[17]

On May 11, 2009, Pheschem filed the instant disbarment complaint against herein respondents, "for gross, malicious and oppressive violation of their duties under the Code of Professional Responsibility." Meanwhile, on July 22, 2009, the RTC issued a resolution in SCA Case No. 0045-PN denying therein respondents' motion to dissolve the preliminary injunction which was premised on the expiration of Pheschem's quarry permit.[18] The RTC reiterated its order to lift the blockade at Pheschem's San Miguel quarry and to release the trucks and their accessories impounded by the municipal and police officers. Then on January 15, 2010, the RTC granted Pheschem's motion

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[13] *Id.* at 132.

[14] *Id.* at 135-141.

[15] *Id.* at 142-145.

[16] *Id.* at 148.

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

[18] *Id.* at 273-289.

to enforce its December 22, 2008 and July 22, 2009 orders. On February 5, 2010, the RTC denied therein respondents' motion to inhibit as well as affirmed its Order dated January 15, 2010.[19]

From the above orders, three *certiorari* petitions were filed in the Court of Appeals (CA), namely: CA-G.R. SP No. 04547, seeking to lift the writ of preliminary injunction and the order to lift the *barangay* road blockade; CA-G.R. SP No. 04592, praying to dismiss SCA Case No. 0045-PN for lack of cause of action; and CA-G.R. SP No. 04901, praying to set aside the RTC order denying the motion to inhibit, ordering the release of Pheschem's trucks and batteries, and reiterating the enforcement of its orders of December 22, 2008, July 22, 2009, January 15, 2010 and February 5, 2010.[20]

Meanwhile, on January 5, 2011, IBP Investigating Commissioner Rebecca Villanueva-Maala (Commissioner Villanueva-Maala) issued her Report and Recommendation in A.C. No. 8269,[21] wherein she recommended that the disbarment complaint against the respondents be dismissed for lack of merit, to wit:

> From the facts adduced, we find that respondents merely performed their duties as public officials. Misconduct in the discharge of official duties as government official, generally is not disciplinable unless the misconduct of the government official is of such a character as to affect his qualification as a lawyer or to show moral delinquency. In the case at bar, we find the orders issued by respondents in the regular performance of their official duties were all based on the facts, evidence and the law. There is nothing on record that shows that the assailed orders were motivated with malice, ill-intent or bad faith.
>
> **PREMISES CONSIDERED**, we respectfully recommend that this administrative complaint against **ATTY. LLOYD P. SURIGAO**

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[19] *Id.* at 581.

[20] *Id.* at 585-589.

[21] *Id.* at 535-546.

and **ATTY. JESUS A. VILLARDO III** be **DISMISSED** for lack of merit.

RESPECTFULLY SUBMITTED.[22] (Citation omitted)

On July 21, 2012, the IBP Board of Governors issued Resolution No. XX-2012-308 adopting and approving IBP Commissioner Villanueva-Maala's report and recommendation:

> **RESOLUTION NO. XX-2012-308**
> Adm. Case No. 8269
> Pheschem Industrial Corporation vs.
> Atty. Lloyd P. Surigao and
> Atty. Jesus A. Villardo III
>
> *RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED[,] the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, considering that the complaint lacks merit, the same is hereby DISMISSED.*[23]

On October 12, 2012, Pheschem moved for reconsideration of the dismissal of its disbarment complaint,[24] upon the following grounds:

I. The acts committed by the Respondents were not done in the regular performance of their official duties because they were manifestly in excess of their legal authority.

II. The acts committed by the Respondents were not done in the regular performance of their official duties, because the competent agencies themselves found that Complainant never committed any actual violation of law.

III. The acts committed by the Respondents were not done in the regular performance of their official duties, because their

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[22] *Id.* at 545-546.

[23] *Id.* at 534.

[24] *Id.* at 547-561.

attack on the complainant's Environmental Compliance Certificate had been found to be without any merit by the competent agencies.

IV. The Respondents' assertion that the Complainant was not a valid contractor because [it] had no Mayor's Permit is self-serving because it was the municipality itself that refused to issue the same.

V. The acts committed by the Respondents were not done in the regular performance of their official duties, because their disobedience to the injunctive writ issued by the Court was in manifest violation of law.

VI. The acts committed by the Respondent Atty. Surigao were not done in the regular performance of his official duties, because he actively used his office [to] make the Sanggunian act against the Complainant on a private case.[25]

The respondents in their Comment-Opposition filed on November 28, 2012 maintained that the above motion is a mere rehash of Pheschem's arguments before the IBP Investigating Commissioner.[26] On March 21, 2013, IBP Governor Leonor L. Gerona-Romeo (IBP Governor Gerona Romeo) rendered an "extended" resolution, consisting of only one page, stating as follows:

The very comprehensive and accurate Motion for Reconsideration of Complainant is impressed with merit. Respondents' actions although apparently done in the performance of their duties constitute arbitrary acts beyond the scope even of discretionary authority which border on harassment. Such is unethical per professional standards of lawyers. Board Resolution dated July 21, 2012 is therefore REVERSED. Respondents are **SUSPENDED** from the practice of law for one (1) month.

SO ORDERED.[27]

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[25] *Id.* at 547-548.

[26] *Id.* at 566-570.

[27] *Id.* at 709.

On March 21, 2013, the IBP issued Resolution No. XX-2013-327 adopting IBP Governor Gerona-Romeo's ruling to suspend the respondents for one month:

RESOLVED to unanimously GRANT Complainant's Motion for Reconsideration. Thus, Resolution No. XX-2012-308 dated July 21, 2012 is hereby ***REVERSED and SET ASIDE****[. I]nstead[,] Atty. Lloyd P. Surigao and Atty. Jesus A. Villardo III are hereby* ***SUSPENDED from the practice of law for one (1) month***.[28]

On April 29, 2013, the respondents manifested[29] to the IBP Board of Governors that on February 19, 2013, the CA had lifted the writ of preliminary injunction in SCA Case No. 0045-PN, having found grave abuse of discretion in the issuance of the RTC orders subject of the consolidated petitions in CA-G.R. SP Nos. 04547, 04592 and 04901:[30]

We find and so rule that the RTC's Order dated 22 December 2008, granting respondent PHESCHEM'S application for writ of preliminary injunction, the Resolution dated 22 July 2009 denying the dissolution of the injunctive writ so issued, and Order dated 15 January 2009, enforcing the same injunctive writ, constituted manifestly grave abuse of discretion.[31]

It was only on July 3, 2013 that the respondents received a copy of the IBP Resolution No. XX-2013-327 suspending them for one month from the practice of law. They forthwith filed a Manifestation with Motion for Reconsideration[32] on July 11, 2013 wherein they reiterated, invoking the CA decision, that they were only genuinely motivated in their actuations against Pheschem to implement the environmental laws. They pointed out in particular that Quarry Permit No. 8, which Engr. Andales had assigned to Pheschem, was not for limestone but for rock

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[28] *Id.* at 708.

[29] *Id.* at 574-577.

[30] *Id.* at 578-604.

[31] *Id.* at 594.

[32] *Id.* at 616-626.

asphalt. On August 6, 2013, Pheschem filed its Comment, again insisting that the respondents employed illegal "vigilante methods" instead of legal processes in discharging their duties as town officials. Pheschem also mentioned its pending motion for reconsideration from the CA decision.

Our Ruling

We resolve to dismiss the complaint for disbarment against the respondents.

In her Report and Recommendation, Commissioner Villanueva-Maala found based on the facts, evidence and the law that the respondents were merely performing their duties as town officials; that their conduct was not of such a character as to affect their qualification as lawyers or demonstrate their moral delinquency; and that nothing in the record shows that they were motivated by malice, ill-intent or bad faith.

In its Motion for Reconsideration to the above report filed on October 15, 2012, Pheschem insisted that the respondents' acts were manifestly in excess of their legal authority; that the regulatory agencies which granted them permits did not violate any law and the respondents' attack on its ECC was without merit; that the respondents' insistence that Pheschem operated without a local permit was self-serving because it was them who refused Pheschem a permit; that the respondents acted in defiance of the injunction granted by the RTC; and, that Atty. Surigao used his office to harass Pheschem in a private case. As to the town officials' authority to stop its quarrying operations, Pheschem argued that under Section 17(b) of Republic Act (R.A.) No. 7160, or the "Local Government Code," municipalities are not entrusted with power over mined resources but only the DENR and the provincial and city governments. These competent agencies did not find any violations by Pheschem, thus, the respondents had no right to demand that Pheschem obtain certain permits from the municipal government, such as a Mine Processing Permit, a Development Permit, and an Ore Transport Permit.

Although IBP Governor Gerona-Romeo agreed with Commissioner Villanueva-Maala that the respondents' actions against complainant Pheschem were done in the performance of their duties as municipal officials, she nonetheless overruled Commissioner Villanueva-Maala's recommendation to dismiss the disbarment complaint against them. She however failed to cite any specific facts, circumstances and laws, as required under Section 1 of Rule 36 of the Rules of Court, which rendered their actions arbitrary and "beyond the scope even of discretionary authority which border on harassment," despite her observation that "[t]he very comprehensive and accurate Motion for Reconsideration of Complainant is impressed with merit. x x x."[33]

In their Position Paper,[34] the respondents adamantly maintained that they were merely performing their duties as Vice-Mayor and *Sangguniang Bayan* member of Palompon, Leyte, respectively, insisting that their actuations toward Pheschem were in response to complaints from both officials and residents of the affected *barangays* seeking to stop the unabated dynamite blasting and quarrying operations of Pheschem. In fact, at a dialogue with Pheschem's officers held on May 1, 2008, a report of the Mines and Geosciences Bureau was presented showing that *Barangay* Liberty is located in a geo-hazard area within the Palompon Forest Reserve declared under Presidential Proclamation No. 212 as a watershed area critical to the water supply of the municipality.

The respondents also pointed out that for 24 years, the Municipality of Palompon did not demand that Pheschem regularly renew its local quarrying permits. But now that Pheschem wanted to operate new quarries in new sites, but with its unrenewed mining lease now about to expire, the *Sanggunian* now insists that it must first secure new permits and licenses from the regulatory agencies. Its permit for the Cantandoy quarry had expired and was not renewed for its

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[33] *Id.* at 709.

[34] *Id.* at 448-480.

failure to submit the required documents, particulary a locational clearance for its kiln and hydrating plant. But despite the lack of a permit, Pheschem proceeded to open a new quarry in San Miguel, doing so by making it appear that it was merely leveling the site to prepare it for residential development, yet in reality it was hauling the limestone to its processing plant. Moreover, its quarry permit and limestone processing permit from the Governor of Leyte also expired in April and May of 2009, along with its 25-year Mining Sharing Lease Agreement. The municipality also charged that Pheschem misdeclared its income in the previous years.

Since Pheschem's operations in San Miguel did not have renewal mining and quarrying permits, Mayor Tupa issued a Cease and Desist Order on July 14, 2008, charging that Pheschem violated both Palompon's municipal zoning and land use ordinance, in view of the quarry's proximity to the Manuel B. Veloso Memorial Hospital and the Doanne Baptist School, and because its new ECC from the DENR was not for mining but only for land leveling of Tangog's property in *Barangay* San Miguel. The ECC itself was issued not to Pheschem but to Engr. Andales in his personal capacity, who misled the Environment Management Bureau (EMB) that Tangog's property was being leveled for residential, not quarrying, purposes.

As to the injunctive writ issued by the RTC, the respondents insist that the writ was not final and executory in view of their timely motion for reconsideration. And although the RTC eventually denied the same, three petitions for *certiorari* had been filed in the CA in CA-G.R. SP Nos. 04547, 04592 and 04901, to dissolve the injunction. The respondents also clarify that the seizure of Pheschem's trucks was effected by the municipal officers deputized by the Provincial government in relation to Tangog's property.

Concerning the COLA which Atty. Surigao sought for Pheschem's workers, he admitted that he did urge Pheschem to pay the same, but not as a condition for the release of its impounded trucks. The respondents also denied that they singled out Pheschem, since there is no other entity operating

a quarry in Palompon. As to Atty. Surigao's appearance as counsel for a former employee of Pheschem in a labor case, he pointed out that the case preceded Pheschem's injunction suit by several years.

To their manifestation to the IBP Board of Governors dated April 29, 2013,[35] the respondents attached a copy of the consolidated decision of the CA in CA-G.R. SP Nos. 04547, 04592 and 04901, which ordered the lifting of the injunction in SCA Case No. 0045-PN. The CA has ruled that Pheschem has no existing vested right to continue operating its quarries.

We agree.

The State, through the legislature, has delegated the exercise of police power to local government units, as agencies of the State, in order to effectively accomplish and carry out the declared objects of their creation.[36] This delegation is embodied in the general welfare clause, Section 16,[37] of R.A. No. 7160. Police power is essentially regulatory in nature, and the power to issue licenses or grant business permits, if exercised for a regulatory and not revenue-raising purpose, is within the ambit of this power.[38] Consistent with this principle, the CA held in

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[35] *Id.* at 574-577.

[36] *Tatel v. Municipality of Virac*, G.R. No. 40243, March 11, 1992, 207 SCRA 157, 160.

[37] Sec. 16. *General Welfare*. Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

[38] *Procter & Gamble Philippine Manufacturing Corp. v. Municipality of Jagna*, 183 Phil. 453 (1979).

the aforesaid petitions that the quarry permit issued by the Governor of Leyte to Pheschem is contingent on its compliance with the terms and conditions of the ECC. Thus, the quarry permit cannot be said to have vested in Pheschem an absolute, unconditional right to quarry or to mine, such that if it fails to comply with any of the terms and conditions of the ECC, there would be no right to quarry or mine to speak of. The CA stressed that a license or permit is not a contract between the sovereign and the grantee, but a special privilege, a permission or authority to do what would be within its terms; that it is neither vested nor permanent that can at no time be withdrawn or taken back by the grantor.[39]

The CA also cited *Boracay Foundation, Inc. v. Province of Aklan*,[40] where it was held that although the *Sangguniang Barangay* of Caticlan, Malay, Province of Aklan and the *Sangguniang Bayan* of the Municipality of Malay had passed resolutions favorably endorsing the project of the Province of Aklan to reclaim several hectares of foreshore land in Caticlan, Malay, the Province of Aklan must still comply with the terms and conditions contained in the said resolutions of the *Sangguniang Barangay* of Caticlan and *Sangguniang Bayan* of Malay. The Court invoked the duty of local governments to ensure the quality of the environment pursuant to Presidential Decree No. 1586, which established the Environmental Impact Statement System.

In *Republic of the Philippines v. The City of Davao*,[41] invoked in *Boracay*, we affirmed that under Section 15 of R.A. No. 7160, a local government unit is endowed with powers to perform not just proprietary but also governmental functions which concern the health, safety and the advancement of the public good or welfare as affecting the public generally. The local government unit exercises governmental powers and

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[39] *Rollo*, p. 596, citing *Acebedo Optical Company, Inc. v. CA*, 385 Phil. 956, 977 (2000).

[40] G.R. No. 196870, June 26, 2012, 674 SCRA 555.

[41] 437 Phil. 525 (2002).

performs governmental duties as an agency of the national government. Thus, in relation to Section 16 of R.A. No. 7160, Section 447 of the Local Government Code, which enumerates the powers, duties and functions of the municipality, grants the *Sangguniang Bayan* the power to, among other things, "enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants x x x," to wit:

x x x x x x x x x

(2) Prescribing reasonable limits and restraints on the use of property within the jurisdiction of the municipality, adopting a comprehensive land use plan for the municipality, reclassifying land within the jurisdiction of the city, subject to the pertinent provisions of this Code, enacting integrated zoning ordinances in consonance with the approved comprehensive land use plan, subject to existing laws, rules and regulations; establishing fire limits or zones, particularly in populous centers; and regulating the construction, repair or modification of buildings within said fire limits or zones in accordance with the provisions of this Code;

x x x x x x x x x[42]

In the complaint before us, the *Sangguniang Bayan* of Palompon passed on June 2, 2008 Resolution No. 068-020608, wherein it manifested its opposition to any and all re-application by Pheschem for mining permit or license, or, issuance of an ECC, business permit, or mayor's permit. Notwithstanding the same, on July 4, 2008, the DENR issued ECC No. ECC-R8-0806-070-5010 to Engr. Andales for the proposed Land Development (Leveling) Project located at *Barangay* San Miguel, Palompon. The DENR-EMB explained in a letter[43] dated July 7, 2008 to then Acting Mayor of Palompon, Atty. Surigao, that although Pheschem could still re-apply for an ECC as long as it substantially complied with the pertinent requirements,

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[42] See *Province of Rizal v. Executive Secretary*, 513 Phil. 557, 591 (2005).

[43] *Rollo*, p. 40.

they "wish to emphasize that the nature of ECC is not a permit but more of a planning tool. As such, it does not exempt the proponent from securing other permits/clearances from other Government Agencies including LGUs. Instead, it may serve as guide for other GA[s] or LGUs whether or not to issue their respective permits and/or clearances. x x x."[44] The DENR-EMB also assured Atty. Surigao that they "fully respect [his] actions in manning [his] municipality including the granting or denial of Business and/or Mayor's permit to anyone."[45]

On September 10, 2008, notwithstanding Resolution No. 068-020608 of the Municipality of Palompon, the Governor of Leyte granted Quarry Permit No. 08-2008 to Engr. Andales to extract and dispose of rock asphalt resources, *not* limestone, in San Miguel, Palompon, from September 10, 2008 to March 10, 2009. Engr. Andales later assigned his quarry rights to Pheschem. On October 17, 2008, the Governor of Leyte also issued Quarry Permit No. 019 to Pheschem from October 17, 2008 to April 17, 2009. But a certification dated October 16, 2008 by Engr. Romeo N. Cartalla of the Municipal Planning and Development Council of Palompon disclosed that the site is not a mining or quarry area but a residential zone. Also, San Miguel has already been declared as within the Palompon Forest Reserve under Presidential Proclamation No. 212, and identified as such under R.A. No. 7586, otherwise known as the National Integrated Protected Areas Systems Act.

Lastly, in addition to the violations by Pheschem of the terms and conditions of the ECC and quarry permit, the respondents alleged that its Mining Lease Agreement and quarry permit have expired, and there is no showing that they have been renewed.

In conclusion, rather than this Court penalizing the respondents for their supposed abusive and arbitrary actuations not befitting the moral character required of members of the bar, there is ample showing that their conduct was pursuant to

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[44] *Id*.

[45] *Id*.

the diligent performance of their sworn duties and responsibilities as duly elected officials of the Municipality of Palompon, Leyte. They therefore deserve commendation, instead of condemnation, and not just commendation but even encouragement, for their vigilance and prompt and decisive actions in helping to protect and preserve the environment and natural resources of their Municipality.

WHEREFORE, the disbarment complaint filed by Pheschem Industrial Corporation against lawyers Lloyd P. Surigao and Jesus A. Villardo III is **DISMISSED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[A.C. No. 9091. December 11, 2013]

CONCHITA A. BALTAZAR, ROLANDO SAN PEDRO, ALICIA EULALIO-RAMOS, SOLEDAD A. FAJARDO and ENCARNACION A. FERNANDEZ, *complainants, vs.* **ATTY. JUAN B. BAÑEZ, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; AN ADMINISTRATIVE COMPLAINT FILED AGAINST A LAWYER ONLY BECAUSE HE PERFORMED A DUTY IMPOSED ON HIM BY HIS OATH CANNOT BE COUNTENANCED.— Respondent cannot be faulted for advising complainants to file an action against Fevidal to recover their properties, instead of agreeing to a settlement of ₱10,000,000 – a measly amount compared to that in the original agreement, under which Fevidal

undertook to pay complainants the amount of ₱35,000,000. Lawyers have a sworn duty and responsibility to protect the interest of any prospective client and pursue the ends of justice. Any lawyer worth his salt would advise complainants against the abuses of Fevidal under the circumstances, and we cannot countenance an administrative complaint against a lawyer only because he performed a duty imposed on him by his oath.

2. ID.; ID.; AN ATTORNEY MAY INTERVENE IN A CASE TO PROTECT HIS RIGHTS CONCERNING THE PAYMENT OF HIS COMPENSATION.— Section 26, Rule 138 of the Rules of Court allows an attorney to intervene in a case to protect his rights concerning the payment of his compensation. According to the discretion of the court, the attorney shall have a lien upon all judgments for the payment of money rendered in a case in which his services have been retained by the client. We recently upheld the right of counsel to intervene in proceedings for the recording of their charging lien. In *Malvar v. KFPI*, we granted counsel's motion to intervene in the case after petitioner therein terminated his services without justifiable cause. Furthermore, after finding that petitioner and respondent had colluded in order to deprive counsel of his fees, we ordered the parties to jointly and severally pay counsel the stipulated contingent fees.

3. ID.; ID.; AN ATTORNEY WHO HAS PURSUED THE PAYMENT OF HIS COMPENSATION IN THE APPROPRIATE VENUE CANNOT BE MADE LIABLE FOR DISCIPLINARY ACTION.— [T]he determination of whether respondent is entitled to the charging lien is based on the discretion of the court before which the lien is presented. The compensation of lawyers for professional services rendered is subject to the supervision of the court, not only to guarantee that the fees they charge remain reasonable and commensurate with the services they have actually rendered, but to maintain the dignity and integrity of the legal profession as well. In any case, an attorney is entitled to be paid reasonable compensation for his services. That he had pursued its payment in the appropriate venue does not make him liable for disciplinary action.

4. ID.; ID.; CHAMPERTOUS CONTRACT; REFERS TO AN AGREEMENT WHEREBY AN ATTORNEY UNDERTAKES TO PAY THE EXPENSES OF THE PROCEEDINGS TO ENFORCE THE CLIENT'S RIGHTS IN EXCHANGE FOR SOME BARGAIN TO HAVE A PART OF THE THING IN DISPUTE.— [R]espondent is not without fault. Indeed, we find that the contract for legal services he has executed with complainants is in the nature of a champertous contract – an agreement whereby an attorney undertakes to pay the expenses of the proceedings to enforce the client's rights in exchange for some bargain to have a part of the thing in dispute. Such contracts are contrary to public policy and are thus void or inexistent. They are also contrary to Canon 16.04 of the Code of Professional Responsibility, which states that lawyers shall not lend money to a client, except when in the interest of justice, they have to advance necessary expenses in a legal matter they are handling for the client. A reading of the contract for legal services shows that respondent agreed to pay for at least half of the expense for the docket fees. He also paid for the whole amount needed for the recording of complainants' adverse claim.

5. ID.; ID.; MAY ADVANCE THE NECESSARY EXPENSES OF LITIGATION SUBJECT TO REIMBURSEMENT.— While lawyers may advance the necessary expenses in a legal matter they are handling in order to safeguard their client's rights, it is imperative that the advances be subject to reimbursement. The purpose is to avoid a situation in which a lawyer acquires a personal stake in the client's cause. Regrettably, nowhere in the contract for legal services is it stated that the expenses of litigation advanced by respondent shall be subject to reimbursement by complainants.

6. ID.; ID.; MUST ALWAYS AVOID ANY APPEARANCE OF IMPROPRIETY TO PRESERVE THE INTEGRITY OF THE PROFESSION.— Clearly, respondent lost sight of his responsibility as a lawyer in balancing the client's interests with the ethical standards of his profession. Considering the surrounding circumstances in this case, an admonition shall suffice to remind him that however dire the needs of the clients, a lawyer must always avoid any appearance of impropriety to preserve the integrity of the profession.

R E S O L U T I O N

SERENO, *C.J.*:

Complainants are the owners of three parcels of land located in Dinalupihan, Bataan.[1] On 4 September 2002, they entered into an agreement with Gerry R. Fevidal (Fevidal), a subdivision developer. In that agreement, they stood to be paid ₱35,000,000 for all the lots that would be sold in the subdivision.[2] For that purpose, they executed a Special Power of Attorney authorizing Fevidal to enter into all agreements concerning the parcels of land and to sign those agreements on their behalf.[3]

Fevidal did not update complainants about the status of the subdivision project and failed to account for the titles to the subdivided land.[4] Complainants also found that he had sold a number of parcels to third parties, but that he did not turn the proceeds over to them. Neither were complainants invited to the ceremonial opening of the subdivision project.[5] Thus, on 23 August 2005, they revoked the Special Power of Attorney they had previously executed in his favor.[6]

Complainants subsequently agreed to settle with Fevidal for the amount of ₱10,000,000, but the latter again failed to pay them.[7] Complainants engaged the professional services of respondent for the purpose of assisting them in the preparation of a settlement agreement.[8] Instead of drafting a written settlement, respondent encouraged them to institute actions against Fevidal in order to recover their properties.

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[1] *Rollo* (Vol. I), pp. 3-4.

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

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

[4] *Rollo*, (Vol. II), p. 127.

[5] *Id*.

[6] *Id*. at 126.

[7] *Id*. at 263.

[8] *Rollo* (Vol. I), p. 7.

Complainants then signed a contract of legal services,[9] in which it was agreed that they would not pay acceptance and appearance fees to respondent, but that the docket fees would instead be shared by the parties. Under the contract, complainants would pay respondent 50% of whatever would be recovered of the properties.

In preparation for the filing of an action against Fevidal, respondent prepared and notarized an Affidavit of Adverse Claim, seeking to annotate the claim of complainants to at least 195 titles in the possession of Fevidal.[10] A certain Luzviminda Andrade (Andrade) was tasked to submit the Affidavit of Adverse Claim to the Register of Deeds of Bataan.[11] The costs for the annotation of the adverse claim were paid by respondent. Unknown to him, the adverse claim was held in abeyance, because Fevidal got wind of it and convinced complainants to agree to another settlement.[12]

Meanwhile, on behalf of complainants, and after sending Fevidal a demand letter dated 10 July 2006, respondent filed a complaint for annulment, cancellation and revalidation of titles, and damages against Fevidal before the Regional Trial Court (RTC) of Bataan on 13 October 2006.[13]

Complainants found it hard to wait for the outcome of the action. Thus, they terminated the services of respondent on 8 June 2007, withdrew their complaint against Fevidal on 9 June 2007, and finalized their amicable settlement with him on 5 July 2007.[14]

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[9] *Id.* at 25.

[10] *Rollo* (Vol. II), pp. 102-105.

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

[12] *Id.* at 264.

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

[14] *Rollo* (Vol. I), pp. 11-13.

Respondent filed a Manifestation and Opposition[15] dated 20 July 2007 before the RTC, alleging that the termination of his services and withdrawal of the complaint had been done with the intent of defrauding counsel. On the same date, he filed a Motion for Recording of Attorney's Charging Lien in the Records of the Above-Captioned Cases.[16] When the RTC granted the withdrawal of the complaint,[17] he filed a Manifestation and Motion for Reconsideration.[18]

After an exchange of pleadings between respondent and Fevidal, with the latter denying the former's allegation of collusion,[19] complainants sought the suspension/disbarment of respondent through a Complaint[20] filed before the Integrated Bar of the Philippines (IBP) on 14 November 2007. Complainants alleged that they were uneducated and underprivileged, and could not taste the fruits of their properties because the disposition thereof was "now clothed with legal problems" brought about by respondent.[21] In their complaint, they alleged that respondent had violated Canons 1.01,[22] 1.03,[23] 1.04,[24] 12.02,[25]

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[15] *Rollo* (Vol. II), pp. 187-191.

[16] *Id*. at 197-203.

[17] *Id*. at 209.

[18] *Id*. at 212-222.

[19] *Id*. at 237-238.

[20] *Rollo* (Vol. I), pp. 1-18.

[21] *Id*. at 2.

[22] A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[23] A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

[24] A lawyer shall encourage his clients to avoid, end or settle a controversy if it will admit of a fair settlement.

[25] A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

15.05,[26] 18.04,[27] and 20.04[28] of the Code of Professional Responsibility.

On 14 August 2008, the IBP Commission on Bar Discipline adopted and approved the Report and Recommendation[29] of the investigating commissioner. It suspended respondent from the practice of law for a period of one year for entering into a champertous agreement.[30] On 26 June 2011, it denied his motion for reconsideration.

On 26 November 2012, this Court noted the Indorsement of the IBP Commission on Bar Discipline, as well as respondent's second motion for reconsideration.

We find that respondent did not violate any of the canons cited by complainants. In fact, we have reason to believe that complainants only filed the instant complaint against him at the prodding of Fevidal.

Respondent cannot be faulted for advising complainants to file an action against Fevidal to recover their properties, instead of agreeing to a settlement of ₱10,000,000 – a measly amount compared to that in the original agreement, under which Fevidal undertook to pay complainants the amount of ₱35,000,000. Lawyers have a sworn duty and responsibility to protect the interest of any prospective client and pursue the ends of justice.[31] Any lawyer worth his salt would advise complainants against

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[26] A lawyer when advising his client, shall give a candid and honest opinion on the merits and probable results of the client's case, neither overstating nor understating the prospects of the case.

[27] A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to client's request for information.

[28] A lawyer shall avoid controversies with clients concerning his compensation and shall resort to judicial action only to prevent imposition, injustice or fraud.

[29] *Rollo* (Vol. IV), pp. 2-12.

[30] *Id.* at 1.

[31] *Manzano v. Soriano*, A.C. No. 8051, 7 April 2009, 584 SCRA 1.

the abuses of Fevidal under the circumstances, and we cannot countenance an administrative complaint against a lawyer only because he performed a duty imposed on him by his oath.

The claim of complainants that they were not informed of the status of the case is more appropriately laid at their door rather than at that of respondent. He was never informed that they had held in abeyance the filing of the adverse claim. Neither was he informed of the brewing amicable settlement between complainants and Fevidal. We also find it very hard to believe that while complainants received various amounts as loans from respondent from August 2006 to June 2007,[32] they could not spare even a few minutes to ask about the status of the case. We shall discuss this more below.

As regards the claim that respondent refused to "patch up" with Fevidal despite the pleas of complainants, we note the latter's *Sinumpaang Salaysay* dated 24 September 2007, in which they admitted that they could not convince Fevidal to meet with respondent to agree to a settlement.[33]

Finally, complainants apparently refer to the motion of respondent for the recording of his attorney's charging lien as the "legal problem" preventing them from enjoying the fruits of their property.

Section 26, Rule 138 of the Rules of Court allows an attorney to intervene in a case to protect his rights concerning the payment of his compensation. According to the discretion of the court, the attorney shall have a lien upon all judgments for the payment of money rendered in a case in which his services have been retained by the client.

We recently upheld the right of counsel to intervene in proceedings for the recording of their charging lien. In *Malvar v. KFPI*,[34] we granted counsel's motion to intervene in the

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[32] *Rollo* (Vol. II), pp. 90-101.

[33] *Id.* at 264.

[34] G.R. No. 183952, 9 September 2013.

case after petitioner therein terminated his services without justifiable cause. Furthermore, after finding that petitioner and respondent had colluded in order to deprive counsel of his fees, we ordered the parties to jointly and severally pay counsel the stipulated contingent fees.

Thus, the determination of whether respondent is entitled to the charging lien is based on the discretion of the court before which the lien is presented. The compensation of lawyers for professional services rendered is subject to the supervision of the court, not only to guarantee that the fees they charge remain reasonable and commensurate with the services they have actually rendered, but to maintain the dignity and integrity of the legal profession as well.[35] In any case, an attorney is entitled to be paid reasonable compensation for his services.[36] That he had pursued its payment in the appropriate venue does not make him liable for disciplinary action.

Notwithstanding the foregoing, respondent is not without fault. Indeed, we find that the contract for legal services he has executed with complainants is in the nature of a champertous contract – an agreement whereby an attorney undertakes to pay the expenses of the proceedings to enforce the client's rights in exchange for some bargain to have a part of the thing in dispute.[37] Such contracts are contrary to public policy[38] and are thus void or inexistent.[39] They are also contrary to Canon 16.04 of the Code of Professional Responsibility, which states that lawyers shall not lend money to a client, except when in the interest of justice, they have to advance necessary expenses in a legal matter they are handling for the client.

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[35] *Municipality of Tiwi v. Betito*, G.R. No. 171873, 9 July 2010, 624 SCRA 623.

[36] RULES OF COURT, Rule 138, Sec. 24.

[37] *Bautista v. Gonzales*, 261 Phil. 266, 281 (1990).

[38] *Id.*

[39] CIVIL CODE, Art. 1409(1).

A reading of the contract for legal services[40] shows that respondent agreed to pay for at least half of the expense for the docket fees. He also paid for the whole amount needed for the recording of complainants' adverse claim.

While lawyers may advance the necessary expenses in a legal matter they are handling in order to safeguard their client's rights, it is imperative that the advances be subject to reimbursement.[41] The purpose is to avoid a situation in which a lawyer acquires a personal stake in the client's cause. Regrettably, nowhere in the contract for legal services is it stated that the expenses of litigation advanced by respondent shall be subject to reimbursement by complainants.

In addition, respondent gave various amounts as cash advances (*bali*), gasoline and transportation allowance to them for the duration of their attorney-client relationship. In fact, he admits that the cash advances were in the nature of personal loans that he extended to complainants.[42]

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[40] *KAMI, na nakalagda sa ilalim nito ay hinihirang and tanggapan ng* BAÑEZ, BAÑEZ & ASSOCIATES *upang siyang humawak sa lahat ng kaso na aming isasampa laban kay* Gerry R. Fevidal *at iba pang kasama nito, hinggil sa mga parsela ng lupa na matatagpuan sa Bo. Pinulot, Hermosa, Bataan, na paw[a]ng pag-aari ni* Dominador Alejo, *ayon sa mga sumusunod na alituntunin:*

1. *Na kami ay hindi magbabayad ng acceptance fee;*
2. *Na kami ay hindi magbabayad ng appearance fee tuwing may hearing;*
3. *Na paghahatian namin ng aming abogado ang magagastos bilang docket fee o bayad sa husgado sa pagsasampa ng kaso;*
4. *Na aming babayaran ang aming nasabing abogado ng katumbas ng 50% ng anumang marerecover o mababawi namin sa mga ari-ariang nakasaad sa Extrajudicial Settlement of Estate na isinagawa noong Abril 12, 1986, gaya Ng mga sumusunod:* [1] TCT No. T-18653 [79,885 sq.m.]*;* [2] TCT No. T-21447 [80,555 sq.m.] *at* [3] 38847 [35,380 sq.m.], *at ito ay matapos bawasin ang* 10% *ng anumang marerecover bilang parte ni Luzviminda Andrade;*
5. *Ang anumang bayarin sa buwis para sa nasabing mga parsela ng lupa ay aming sasagutin.*

[41] *Supra* note 38.

[42] *Rollo* (Vol. IV), p. 33.

Clearly, respondent lost sight of his responsibility as a lawyer in balancing the client's interests with the ethical standards of his profession. Considering the surrounding circumstances in this case, an admonition shall suffice to remind him that however dire the needs of the clients, a lawyer must always avoid any appearance of impropriety to preserve the integrity of the profession.

WHEREFORE, Attorney Juan B. Bañez, Jr. is hereby **ADMONISHED** for advancing the litigation expenses in a legal matter he handled for a client without providing for terms of reimbursement and lending money to his client, in violation of Canon 16.04 of the Code of Professional Responsibility. He is sternly warned that a repetition of the same or a similar act would be dealt with more severely.

Let a copy of this Resolution be attached to the personal record of Attorney Bañez, Jr.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[A.M. No. P-06-2261. December 11, 2013]
(OCA IPI No. 04-1905-P)

ELPIDIO SY, President, Systems Realty Development Corporation, *complainant, vs.* **EDGAR ESPONILLA, Legal Researcher and Officer-In-Charge, and JENNIFER DELA CRUZ-BUENDIA, Clerk of Court and *Ex-Officio* Sheriff, Office of the Clerk of Court, Regional Trial Court, Branch 54, Manila,** *respondents.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; A MEMBER OF THE BAR MAY BE DISBARRED OR SUSPENDED FROM HIS OFFICE AS ATTORNEY BY THE SUPREME COURT FOR ANY VIOLATION OF THE LAWYER'S OATH; CASE AT BAR.— Atty. Bayhon should be imposed a stringer penalty. The disobedience and the consequent delays he incurred had protracted the pace of the administrative investigation in the case at bar. While Atty. Bayhon may have apologized to this Court a number of times, his sincerity is not reflected in the manner that he would deal with the Court after each tendered apology: he would again not comply, and hence cause delay, to a subsequent resolution in clear violation of the Lawyer's Oath which states, among others, that a lawyer "will conduct [himself] as a lawyer according to the best of [his] knowledge and discretion, with all good fidelity as well to the courts as to [his] clients." Aside from not complying with the resolutions of the Court, the evidence on record is clear that Atty. Bayhon also violated Canon 10, Rule 10.01 of the Code of Professional Responsibility which states that "[a] lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice." x x x Atty. Bayhon's unsubstantiated claim that the deposits withdrawn were replaced by a supersedeas bond is a legal incredulity. It is a preposterous excuse that does not only attempt to mislead the Court – it was proffered in an attempt to evade the directive of the Court to produce a copy of the *Ex-Parte* Motion which may open another can of worms. x x x It is precisely the claim of herein complainant that it was fraudulent misrepresentation on the part of Atty. Bayhon to make it appear that the Branch 54 deposits were superfluous because the deposits made with Branches 32 and 54 were separate, distinct and covered different periods – a false claim that Atty. Bayhon has continuously denied making in the *Ex-Parte* Motion. But instead of producing and submitting to this Court a copy of the *Ex-Parte* Motion to conclusively prove that he did not make such a false averment, Atty. Bayhon hides behind the rules of evidence claiming that without the subject *Ex-Parte* Motion, this allegation against him is but hearsay. x x x For failing to explain, in good faith, the circumstances surrounding the filing

of the *Ex-Parte* Motion which he himself filed, for proffering misleading claims in the course of the subject administrative investigation, and for not having shown and proved that he exerted his best efforts to secure and submit a copy of the subject *Ex-Parte* Motion – all in violation of the resolutions issued by this Court – Atty. Bayhon violated the Lawyer's Oath and Canon 10, Rule 10.01 of the Code of Professional Responsibility. Under Section 27, Rule 138 of the Rules of Court, a member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any violation of the Lawyer's Oath x x x. We believe that the proven acts and omissions of Atty. Bayhon in the case at bar warrant the imposition of the penalty of suspension from the practice of law for six (6) months. He has attempted to mislead the Court, and his non-compliance with the resolutions of the Court dated March 25, 2009, December 1, 2010 and August 24, 2011 shows nothing but an indifference to our directives which cannot be taken lightly, especially that it has affected and protracted the investigation and resolution of an administrative matter where his explanation and assistance is a crucial factor.

APPEARANCES OF COUNSEL

Federico D. Ricafort for complainant.
Salonga Hernandez Mendoza Law Offices for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

This case is one among many where the irregularities complained of are evident and blatant yet its resolution has been protracted for years. While this Court has already ruled on the liability of the respondents in its October 30, 2006 Decision,[1] it directed another administrative investigation to search for the "missing link" which – if found – would have established the culpability of the perpetrator of these irregularities.

[1] *Rollo,* pp. 283-291.

On March 30, 2004, complainant Elpidio Sy (Sy), President of Systems Realty Development Corporation, filed a verified Complaint[2] charging respondent Edgar Esponilla, Legal Researcher and then Officer-In-Charge of Branch 54 of the Regional Trial Court of Manila (Branch 54), and Atty. Jennifer Dela Cruz-Buendia (Atty. Dela Cruz-Buendia), Clerk of Court and *Ex-officio* Sheriff of the Regional Trial Court of Manila, with Gross Misconduct, Negligence and Dishonesty. The complaint was filed in connection with the withdrawal of deposits for monthly rentals deposited with Branch 54 in Civil Case No. 90-55003 entitled *Maria Gagarin, et al. v. Bank of the Philippine Islands and Systems Realty Development Corporation.*

Complainant had previously filed an ejectment case with Branch 1 of the Metropolitan Trial Court of Manila against Jaime AngTiao and Maria Gagarin who were eventually ejected from the property. On appeal, the case was assigned to Branch 32 of the Regional Trial Court of Manila (Branch 32) where supersedeas bond and monthly rentals covering the period from September 30, 1994 to January 3, 1997were deposited. Simultaneously, AngTiao and Gagarin filed with Branch 54 a case, docketed as Civil Case No. 90-55003, contesting the validity of a deed of sale executed between Systems Realty Development Corporation and BPI.[3] The plaintiffs deposited with Branch 54 the sum of ₱264,000.00 to cover rental deposits from June 30, 1989 to August 5, 1994.

Upon a purported *Ex-Parte* Motion to Withdraw Rental Deposits (*Ex-Parte* Motion) in Civil Case No. 90-55003 filed by Atty. Walfredo Bayhon (Atty. Bayhon), counsel for plaintiffs Ang Tiao and Gagarin, the late Judge Hermogenes R. Liwag (Judge Liwag) issued the subject Order dated November 11, 1994, allowing the withdrawal of the deposits amounting to ₱260,000.00, *viz.*:

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

[3] *Id*. at 285, 346-347.

Finding the *Ex-Parte* Motion to Withdraw Rental Deposits filed by plaintiffs, thru counsel, to be well-taken, the same is hereby GRANTED, and the Clerk of Court, or her duly authorized representative, is hereby ordered to release to plaintiffs, or their duly authorized representative, the deposits made by such parties in the concept of rentals from May, 1989 to August, 1994 in the estimated aggregate sum of ₱260,000.00.

It is well to emphasize here that such deposits were made in the concept of monthly rentals for the plaintiffs' occupancy of the premises in controversy, here and in the ejectment suit now on appeal with Branch 32 of this same Court. It would appear, however, from the attachments to the Motion to Withdraw Rental Deposits that sufficient supersedeas bond was already posted in that appealed ejectment bond case by the plaintiffs hereto, defendants therein, in the total sum of ₱260,000.00. Surely, the rental deposits made in this case become superfluous and serve no legal purpose. It is actually duplicitous and its non-release would actually prejudice the plaintiffs.[4]

Judge Liwag was then the Pairing Judge of Branch 54 where Civil Case No. 90-55003 was docketed and the questioned Order was issued. He was likewise then the Presiding Judge of Branch 55 where, as the investigation would later show, Atty. Bayhon filed the *Ex-Parte* Motion. The assailed Order was also typed by an employee of Branch 55. Based on this Order, AngTiao was able to withdraw ₱256,000.00 from the Office of the Clerk of Court of the Regional Trial Court of Manila as evidenced by a disbursement voucher[5] dated November 14, 1994 certified by respondent Atty. Dela Cruz-Buendia and approved by then Acting Court Cashier Corazon L. Guanlao.

Complainant alleged that the withdrawal of the rental deposits was irregular because the claim in the *Ex-Parte* Motion to Withdraw Rental Deposits that the amount withdrawn from Branch 54 was superfluous and duplicitous is false. He asserted that Atty. Bayhon falsely alleged that there was already a

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[4] *Id*. at 24.

[5] *Id*. at 102.

sufficient supersedeas bond posted with Branch 32 to justify the withdrawal of the rental deposits made in Branch 54.[6] Complainant pointed out that there could have been no such duplication because the deposits made with Branch 54 covered the period from June 30, 1989 to August 5, 1994, while those made in Branch 32 were for the period covering September 30, 1994 to January 3, 1997.[7] Complainant thus concluded that when Judge Liwag granted the *Ex-Parte* Motion, he did not first ascertain the veracity of the allegations therein.[8] Complainant explained that he could not have objected to the false allegations made by Atty. Bayhon because he was not furnished a copy of the *Ex-Parte* Motion and the same was never set for hearing.[9]

It is of material significance in the case at bar that the *Ex-Parte* Motion does not appear anywhere in the records of Branch 54 on Civil Case No. 90-55003, and the fact that these documents were not attached to the case folio were discovered only when the records of the case were elevated to the Court of Appeals.[10]

Complainant faulted respondent Dela Cruz-Buendia, who was then the Assistant Clerk of Court for being negligent and conniving with the plaintiffs in the said civil case when she allowed and facilitated the release of the deposits without first verifying the authenticity of the *Ex-Parte* Motion and Order.[11] Complainant also charged respondent Esponilla with gross negligence for failing to safeguard vital case records and connivance with the plaintiffs in the same civil case.[12]

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[6] *Id.* at 1-2, 284-285.

[7] *Id.* at 2, 285.

[8] *Id.*

[9] *Id.* at 285.

[10] *Id.* at 354.

[11] *Id.* at 2-4, 285.

[12] *Id.*

Respondent Dela Cruz-Buendia denied the charges against her and asserted that the functions of a clerk of court are purely ministerial in nature. As such, a clerk of court does not possess the discretion to follow or not to follow orders of the court.[13] Respondent Esponilla, on the other hand, prayed that the complaint against him be dismissed. He alleged that he was not the Officer-In-Charge of Branch 54 when the Order granting the *Ex-Parte* Motion was allegedly issued by Judge Liwag on November 11, 1994. Esponilla was designated as Officer-In-Charge only in March 1995.[14]

On November 9, 2004, the Office of the Court Administrator (OCA) referred the instant complaint to the Executive Judge of the Regional Trial Court of Manila for investigation, report and recommendation.[15] In a Report and Recommendation[16] dated February 1, 2006, then Executive Judge Antonio M. Eugenio, Jr. submitted the following findings:

> Respondent Edgar Esponilla cannot be faulted for any of the acts complained of as he was appointed officer-in-charge of Branch 54 only in March 1995 and the questioned order was issued by Pairing Judge HermogenesLiwag on November 11, 1994. Nor did he have a hand in the preparation and release of the check to the plaintiffs on November 14, 1994 or sometime thereafter.
>
> x x x x x x x x x
>
> As to respondent Clerk of Court, we likewise find her explanations meritorious. In the instant case, the duty of the Clerk of Court and/or respondent Buendia x x x is ministerial.
>
> Upon receipt of an order from a court, the Clerk of Court's duty is to make sure that the order is complied with. x x x For a Clerk of Court to question a ruling or order of a judge is an invitation for contempt.
>
> x x x x x x x x x

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[13] *Id.* at 9-11, 285.

[14] *Id.* at 118-119, 285.

[15] *Id.* at 171-173.

[16] *Id.* at 253-262.

The pivotal issue that should be addressed is why Atty. Walfredo Bayhon filed the motion in the first place and why then Pairing Judge Hermogenes Liwag favorably acted on it without looking into the truth of the allegation of "duplicity and superfluity."

x x x x x x x x x

Accordingly, it is respectfully submitted that the administrative complaint filed against respondents Edgar Esponilla and Jennifer de la Cruz[-]Buendia be dismissed for lack of merit.

It is further recommended that Atty. Walfredo Bayhon be asked to explain the circumstances behind his filing of the *Ex-Parte* Motion and to provide the Supreme Court with a true copy of the motion.[17]

In a Memorandum[18] dated June 5, 2006, the OCA submitted its evaluation and recommendation adopting the findings and recommendation of Executive Judge Eugenio, as follows:

RECOMMENDATION: In view of the foregoing discussions, it is respectfully submitted that the administrative complaint filed against respondents Edgar Esponilla and Atty. Jennifer dela Cruz-Buendia be **DISMISSED** for lack of merit.

Consequently, it is further recommended that Atty. Walfredo Bayhon be asked to **EXPLAIN** the circumstances behind his filing of the *Ex-Parte* Motion and to provide the Court with a true copy of the motion.[19]

In a Decision[20] dated October 30, 2006, this Court dismissed the administrative case against respondent Esponilla for lack of merit. The Court ruled that Esponilla – not being the Officer-In-Charge when the subject documents were allegedly processed with Branch 54 – cannot be faulted for the missing documents in the folio of Civil Case No. 90-55003.[21] The Court also did

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[17] *Id.* at 260-262.

[18] *Id.* at 276-281.

[19] *Id.* at 280-281.

[20] *Supra* note 1.

[21] *Id.* at 288.

not find proof that Esponilla participated in the preparation and release of the check to the plaintiffs.[22] For lack of evidence, the Court was not convinced that Esponilla connived with either the plaintiffs in the civil case or with the other respondents to perpetuate fraud against the complainant.[23]

Respondent Dela Cruz-Buendia was found guilty of simple negligence in the performance of her duties and was fined in the amount of One Thousand Pesos (₱1,000.00), with a warning that a repetition of the same or similar infraction will be dealt with more severely.[24] Atty. Bayhon, for his part, was ordered to explain within ten (10) days from receipt of the Decision the circumstances behind the filing of the *Ex-Parte* Motion and to provide the Court with a true copy of the Motion.[25] The Court required Atty. Bayhon's explanation in order to shed light on the circumstances leading to the issuance of the November 11, 1994 Order and the release of the rental deposits.[26]

The Court, in the said Decision, stated that the duties[27] and functions of clerks of court as officers of the law are generally administrative in nature and do not involve the discretion on

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[22] *Id.* at 289.

[23] *Id.*

[24] *Id.* at 290.

[25] *Id.*

[26] *Id.* at 289-290.

[27] *Id.* at 287-288.

The duties of Clerks of Court under the 2002 Revised Manual for Clerks of Court are as follows:

Adjudicative Support Functions:

a. Prepares and signs summonses, subpoenas and notices, writs of execution, remittances, and releases of prisoners;

b. Certifies true copies of decisions, orders, and other processes, letters of administration and guardianship; transmittals of appealed cases, indorsements and communications; and

c. Prepares and signs monthly reports of cases.

Non-Adjudicative Functions:

a. Plans, directs, supervises and coordinates the activities of all divisions/sections/units in the Office of the Clerk of Court;

the use of judicial powers.[28] It ruled that while respondent Dela Cruz-Buendia's duties as then clerk of court were purely ministerial, "ordinary prudence [would have called] for her to [have] at least [verified] the authenticity and origin of the alleged Order of Judge Liwag because from the copies on record, we note that the same does not bear the seal of the Court nor the standard certification by the branch clerk of court. She should have been vigilant considering that the Order dealt with withdrawal of deposits."[29]

The Court further noted the finding of the OCA that per the investigation of Judge Enrico A. Lanzanas, "the purported Order of Judge Liwag was actually prepared in Branch 55 by one Baby Manalastas."[30] Since this finding does not fully explain why the said Order and the *Ex-Parte* Motion were not filed in the case folio of Civil Case No. 90-55003, the OCA was directed to conduct an investigation against the then clerks of court of Branches 54 and 55 during the period material to this case in order to explain the circumstances behind their improper management of court records and documents.[31]

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b. Controls and manages all court records, exhibits, documents, properties and supplies;

c. Acts on applications for leave of absence and signs daily time records;

d. Determines the docket fees to be paid by the parties-litigants as provided in the Rules of Court;

e. Issues clearances in appropriate cases;

f. Provides information services to the public and private agencies including bar associations;

g. Prepares cases for raffle;

h. Safekeeps and maintains a judgment book and execution book;

i. Studies and recommends to the Executive Judge ways and means to improve both adjudicative and support functions;

j. Performs special functions as *ex-officio* municipal sheriff;

k. Implements all orders and policies of the court in connection with the speedy administration of justice;

l. Performs other duties that may be assigned to him.

[28] *Rollo*, p. 288. Citation omitted.

[29] *Id*. Citation omitted.

[30] *Id*. at 289.

[31] *Id*.

In a Motion for Reconsideration[32] dated December 28, 2006, respondent Dela-Cruz-Buendia averred that she should not be found guilty of simple negligence. She argued that her delegated duty in relation to the withdrawal of the rental deposits – the physical preparation of the checks issued by the Office of the Clerk of Court – was ministerial and she had no choice but to prepare the subject check based on the Order lest she be cited for contempt. She stated that she did not have to verify the authenticity of the Order because it is presumed to have been regularly issued. Besides, she argued that the Order submitted to the Office of the Clerk of Court "was a duplicate original copy, appeared to be authentic on its face, showed no palpable nor patent, no definite nor certain defects, duly signed by the Honorable Judge HermogenesLiwag, counterchecked by the subordinate personnel involved in the preparation of vouchers, namely: Corazon L. Guanlao, Court Cashier and Rosa S. Rayo."[33] She allegedly signed and issued the check after the voucher was prepared and signed by the Acting Court Cashier and Clerk-in-Charge; the attachments, including the duplicate original copy of the Order, were attached to the voucher. With a "duplicate original copy" of the Order, respondent Dela Cruz-Buendia argued that there was no need to further require a "certified true copy."

The Court, in a Resolution[34] dated January 31, 2007, resolved to deny the motion with finality as no substantial matters were raised to warrant a reconsideration thereof. Respondent Dela Cruz-Buendia filed a subsequent Supplemental Motion for Reconsideration[35] which was Noted Without Action by the Court in its March 19, 2007 Resolution.[36]

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[32] *Id.* at 292-296.

[33] *Id.* at 293.

[34] *Id.* at 297.

[35] *Id.* at 298-301.

[36] *Id.* at 311.

In a Compliance/Explanation[37] dated September 28, 2007, Atty. Bayhon explained that he was not in a position to comply with the Court's resolution because he had long ceased to be the counsel of record of the plaintiffs in Civil Case No. 90-55003. He further averred that he had already turned over the records of the case to Ang Tiao's family when he withdrew as counsel in 1997 to join a multinational corporation. Atty. Bayhon also requested that he be allowed to adopt *in toto* the pleadings and arguments raised in his Answer[38] and Position Paper[39] submitted to the Integrated Bar of the Philippines (IBP) in view of a disbarment complaint filed against him – also by herein complainant Sy. Both of these pleadings submitted to the IBP however failed to shed light into the circumstances surrounding the issuance of the assailed Order which granted the *Ex-Parte* Motion which allegedly could not now be located by Atty. Bayhon. He also sustained his averment that there is nothing on record to establish that he made an allegation that the deposits made with Branch 54 were superfluous and duplicitous.

On January 3, 2008, the OCA submitted its Report and Recommendation[40] to the Court, in compliance with the Resolution[41] of the Third Division directing the OCA to conduct an investigation on the mismanagement of court records in Branches 54 and 55 of the Regional Trial Court of Manila. It submitted the following findings:

> It would appear that the incident in Civil Case No. 90-55003 was an isolated anomaly. The case involved rental deposits amounting to almost ₱260,000.00 that were released by virtue of a November 11, 1994 order issued by Judge Liwag, which order granted the *Ex-Parte* Motion to Withdraw Rental Deposits filed by Atty. Bayhon. According to the October 30, 2006 decision of the Court, the order granting

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[37] *Id.* at 319-326.

[38] *Id.* at 338-344.

[39] *Id.* at 327-337.

[40] *Id.* at 353-355.

[41] *Id.* at 314-315.

the motion was drafted by Ms. Baby Manalastas, a court stenographer in RTC Branch 55 who has since migrated to the United States.

Based on the information gathered by the audit team, the Clerk of Court of RTC Branch 54 for the period November 1994 was Atty. Emerenciana O. Manook. Atty. Manook, who now serves as Clerk of Court VI of RTC, Branch 23, Allen, Northern Samar, was the Clerk of Court of RTC, Branch 54, Manila from July 1, 1989 to March 29, 1995.

On the other hand, the Officer-in-Charge (OIC) of RTC Branch 55 for the period November 1994 was Ms. Isabelita D. Artuz. Ms. Artuz served as OIC of the branch from September 1994 until November 1996 x x x.[42]

In light of these findings, the Court, in another Resolution[43] dated February 11, 2008, adopted the following recommendations of the OCA:

1. That Atty. Emerenciana O. Manook, Clerk of Court, RTC, Branch 23, Allen, Northern Samar, and Ms. Isabelita D. Artuz, Office of Court of Appeals Associate Justice Fernanda L. Peralta, be DIRECTED TO COMMENT on the November 11, 1994 order issued by former RTC Branch 55 Manila Presiding Judge Hermogenes Liwag granting the Motion to Withdraw Rental Deposits filed by Atty. Walfredo Bayhon x x x;

2. That action on the September 28, 2007 comment/explanation submitted by Atty. Walfredo C. Bayhon relative to the incident be DEFERRED pending the submission of Atty. Manook and Ms. Artuz of their comments.[44]

On June 17, 2008, Ms. Artuz submitted her explanation.[45] While she was a Legal Researcher at Branch 55 when the subject irregularity was allegedly committed, she admitted that she was not familiar with Civil Case No. 90-55003. She also did not know of any irregularity surrounding the issuance of the questioned Order as it dealt with a case docketed with Branch 54, and not

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[42] *Id*. at 354-355. Emphasis omitted.

[43] *Id*. at 360-361.

[44] *Id*. at 355. Emphasis omitted.

[45] *Id*. at 363-364.

with Branch 55. Sifting through her averments, the Court found a relevant information that in the past, Branch 54 used the sala of Branch 55 where Judge Liwag was then Presiding Judge.[46]

In a letter[47] dated September 26, 2008 submitted by Atty. Manook – the Branch Clerk of Court of Branch 54 during the time material to the case – she claimed that "[a]fter [a] careful scrutiny of the records, [she found] that in x x x Civil Case No. 90-55003 xxx, the *Ex-Parte* Motion to Withdraw Rental Deposits was filed by Atty. Walfredo Bayhon with Branch 55, RTC Manila. It was never filed with Branch 54, RTC Manila." She added that she could not remember encountering the *Ex-Parte* Motion and was puzzled why the Order of Judge Liwag was typed by Baby Manalastas – a court stenographic reporter assigned to Branch 55 – when the Order involved a case filed with Branch 54.

In a Memorandum[48] dated February 3, 2009, the OCA found a *prima facie* case of irregularity in granting the *Ex-Parte* Motion due to the following factors:

1. [t]he Motion and the subject Order could not be found in the records of Branch 54;
2. [t]hey could not be produced either by Atty. Bayhon;
3. [t]he Motion was filed with Branch 55, never with Branch 54, while the Order was typed or drafted by a stenographer of Branch 55, not by a personnel of Branch 54; and
4. [c]omplainant in the civil case was not even furnished a copy of the Motion which was not even set for hearing.[49]

On March 25, 2009, the Court issued a Resolution[50] requiring Atty. Bayhon to show cause why he should not be disciplinarily

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[46] *Id.* at 375.

[47] *Id.* at 369-370.

[48] *Id.* at 373-377.

[49] *Id.* at 375.

[50] *Id.* at 378-380.

dealt with for filing the *Ex-Parte* Motion with Branch 55, and not with Branch 54. He was also required to comment on the allegation that complainant was not furnished a copy of the *Ex-Parte* Motion and to exert his best efforts to submit the subject *Ex-Parte* Motion to the Court. The Clerk of Court of the Court of Appeals was also directed to furnish the Court a copy of the *Ex-Parte* Motion which was appealed thereto from Branch 54 on July 11, 1996.[51]

Despite the Show Cause Resolution,[52] Atty. Bayhon failed to file his explanation and comment as required. Thus, in a Resolution[53] dated December 1, 2010, he was fined in the amount of ₱500.00 and directed to submit the required comment and explanation. In the same Resolution, the Court also required the Presiding Judge of Branch 54, to submit to the Court a copy of the subject *Ex-Parte* Motion in view of the Court of Appeals remanding the case to the said branch. Hon. Reynaldo A. Alhambra, then Pairing Judge of Branch 54, informed the Court that the subject *Ex-Parte* Motion was not attached to the *expediente* per certification of the Branch Clerk of Court, Atty. Noel Antay.[54] The OCA, for its part, reported in a Memorandum[55] dated April 4, 2011 that upon the certification[56] of Ms. Adora Millo, the Officer-In-Charge of Branch 55, a copy of the *Ex-Parte* Motion could not be produced since the civil case involving the *Ex-Parte* Motion is not in its docket. The OCA Memorandum further stated, *viz.*:

> We had also directed the Office of the Clerk of Court of the Regional Trial Court of Manila to verify from the record of the disbursement voucher relative to the release of the rental deposit if a copy of the said *ex-parte* motion is attached. As certified by

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[51] *Id.* at 379.

[52] *Supra* note 50.

[53] *Id.* at 394-395.

[54] *Id.* at 396-397.

[55] *Id.* at 405.

[56] *Id.* at 406.

xxx Atty. Clemente M. Clemente, the Assistant Clerk of Court, the voucher discloses that no such document is attached x x x.[57]

The finding of the OCA – that the *Ex-Parte* Motion was also not attached to the disbursement voucher – is significant. It could be argued that such document may not be a necessary attachment in the issuance of a check by the Office of the Clerk of Court. However, the fact that all the employees involved – from the filing of the *Ex-Parte* Motion to the eventual issuance and withdrawal of the check – certify that the *Ex-Parte* Motion does not exist in the records within their respective custody casts serious doubt as to the regularity surrounding the filing of the *Ex-Parte* Motion.

Meanwhile, Atty. Bayhon again failed to comply with the Resolution of December 1, 2010. Thus, in the August 24, 2011 Resolution[58] of the Court, Atty. Bayhon was required to comply with the December 1, 2010 Resolution within ten days from notice, and to submit his memorandum within thirty days from notice. Since Atty. Bayhon yet again failed to comply, the Court issued another Resolution[59] dated April 16, 2012 requiring him to comply with the same December 1, 2010 Resolution within ten days from notice, otherwise the Court will order his arrest for non-compliance therewith.

On October 5, 2012, Atty. Bayhon finally filed a Very Respectful Apology and Compliance[60] with the OCA. While he apologized to the Court for the late submission of his response and compliance with its resolutions, he merely reiterated his previous string of excuses that in no way could have shed light to the circumstances in question:

1. that he ceased to be the counsel for plaintiff Ang in 1997 when he left his law practice;

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[57] *Id.* at 405.

[58] *Id.* at 410-411.

[59] *Id.* at 416-417.

[60] *Id.* at 419-424.

2. that in view of his withdrawal as counsel, he no longer has possession and access to the subject *Ex-Parte* Motion as he had already turned over the files to Ang's children and had lost contact with them; and

3. that due to these circumstances, he cannot proffer intelligent answers and explanations to the questions being posed on him by the Court.

We are not persuaded.

It is clear that the filing of the *Ex-Parte* Motion by Atty. Bayhon triggered the series of irregularities that have studded the case at bar: the *Ex-Parte* Motion was never shown to have been set for hearing; there is no record that the opposing party was notified; the *Ex-Parte* Motion was granted in an Order issued by the late Judge Liwag under Branch 54, but the *Ex-Parte* Motion could not be found in the case folio from the said branch; it was later found that the *Ex-Parte* Motion was filed with Branch 55 where the case was not docketed; the Order granting the Motion was typed by a court stenographic reporter of Branch 55; nonetheless, the Motion could not be located among the files of Branch 55.

The Court had sought the explanation of Atty. Bayhon to shed light on the circumstances surrounding the filing of the *Ex-Parte* Motion, and to exert his best efforts to furnish us a copy of the said motion. The compliance of Atty. Bayhon was sought as early as October 30, 2006 – the date when the Court promulgated its Decision pertaining to the liability of herein respondents. It was in light of the Court's recognition that some form of irregularity was committed in this case that prompted it to look at all angles and request an explanation from every relevant source of information. However, Atty. Bayhon, instead of shedding light in the discussion, only proffered unresponsive answers that were mostly reiterations of his averments in the pleadings he had earlier submitted to the IBP. As aptly observed and succinctly described by the OCA:

Atty. Bayhon's explanations are unsatisfactory. His words are evasive and carefully selected as to free him from any liability. They do not directly confront the nagging questions, merely offering as excuses his resignation as counsel of record and turn-over of documents to his clients, and blaming his adversary's negligence. However, he himself is to be greatly blamed for not promptly and fully complying with the directives of the Court, particularly the 25 March 2009 Resolution and the subsequent resolutions which dragged this case for so long a time. He refused to answer why he filed the subject motion at Branch 55, not at Branch 54. He did not comment on the allegation that the complainant in the civil case was not furnished a copy of the said motion which was not even set for hearing. He did not exert his best efforts in locating or producing the motion for submission to the Court. And he complied with the resolutions rather belatedly, or after he was threatened by the Court with arrest. It appears that he took the Court's directives lightly.

Worse, Atty. Bayhon completely ignored the sanction of the Court in its 01 December 2010 Resolution imposing upon him a fine of ₱500.00. After almost two (2) years and several resolutions reiterating the said resolution, he has not paid the fine or even mentioned the penalty in his 01 October 2012 compliance.

A resolution of the Supreme Court should not be construed as a mere request, and should be complied with promptly and completely. Such failure to comply accordingly betrays not only a recalcitrant streak in character, but also disrespect for the Court's lawful order and directive.[61] This contumacious conduct of refusing to abide by the lawful directives issued by the Court has likewise been considered as an utter lack of interest to remain with, if not contempt of, the system.[62] As a lawyer and an officer of the court, Atty. Bayhon should have been more than conscious and aware of his duty to strictly follow the Court's orders and processes without unreasonable delay.[63]

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[61] Citing *Tugot v. Judge Coliflores*, 467 Phil. 391, 402-403 (2004).

[62] Citing *Parane v. Reloza*, A.M. No. MTJ-92-718, November 7, 1994, 238 SCRA 1, 4.

[63] *Rollo*, pp. 432-432-A.

We agree with the accurate and incisive discussion of the OCA on all points, except for the penalty imposed. The OCA imposed upon Atty. Bayhon an additional fine of ₱2,000.00 to the original fine of ₱500.00 for non-compliance with the directives of the Court. This additional fine was also imposed for Atty. Bayhon's continuously ignoring the several Court resolutions reiterating the payment of the original fine.[64]

Atty. Bayhon should be imposed a stringer penalty. The disobedience and the consequent delays he incurred had protracted the pace of the administrative investigation in the case at bar. While Atty. Bayhon may have apologized to this Court a number of times, his sincerity is not reflected in the manner that he would deal with the Court after each tendered apology: he would again not comply, and hence cause delay, to a subsequent resolution in clear violation of the Lawyer's Oath[65] which states, among others, that a lawyer "will conduct [himself] as a lawyer according to the best of [his] knowledge and discretion, with all good fidelity as well to the courts as to [his] clients."

Aside from not complying with the resolutions of the Court, the evidence on record is clear that Atty. Bayhon also violated Canon 10, Rule 10.01 of the Code of Professional Responsibility which states that "[a] lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice." It is significant that Atty. Bayhon has consistently claimed that there is no proof

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[64] *Id.* at 432-A.

[65] I, _____, do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support the Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion, with all good fidelity as well to the courts as to my clients; and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God.

to show that he ever claimed that the amounts deposited with Branch 32 were superfluous and duplicitous[66] – the reason used as a basis for the issuance of the assailed Order. He also stated that from his recollection, if there was a motion to withdraw cash deposits with Branch 54, there was also a simultaneous request to the trial court to replace the money with a supersedeas bond.[67] He further stated that "no trial judge worth his salt, Judge Liwag in this instance, would have allowed such a withdrawal without a corresponding replacement."[68]

On its face, however, the following Order of Judge Liwag shows that the deposits were allowed to be withdrawn due to their "superfluity and duplicity" *vis-à-vis* the supersedeas bond already posted with Branch 32, and not because the amount withdrawn with Branch 54 was replaced by a supersedeas bond:

x x x x x x x x x

It is well to emphasize here that such deposits were made in the concept of monthly rentals for the plaintiffs' occupancy of the premises in controversy, here and in the ejectment suit now on appeal with Branch 32 of this same Court. **It would appear, however, from the attachments to the Motion to Withdraw Rental Deposits that sufficient supersedeas bond was already posted in that appealed ejectment bond case by the plaintiffs hereto, defendants therein, in the total sum of ₱260,000.00. Surely, the rental deposits made in this case become superfluous and serve no legal purpose. It is actually duplicitous and its non-release would actually prejudice the plaintiffs.**[69]

Atty. Bayhon's unsubstantiated claim that the deposits withdrawn were replaced by a supersedeas bond is a legal incredulity. It is a preposterous excuse that does not only attempt to mislead the Court – it was proffered in an attempt to evade the directive of the Court to produce a copy of the

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[66] *Rollo*, p. 374.

[67] *Id.* at 420-421.

[68] *Id.* at 421.

[69] *Id.* at 24. Emphases supplied.

Ex-Parte Motion which may open another can of worms. The Order clearly states that the attachments to the *Ex-Parte* Motion showed that there was already a "supersedeas bond" posted with Branch 32 in the amount of ₱260,000.00, that is why Judge Liwag ordered and authorized the withdrawal of the same amount of ₱260,000.00 from Branch 54. It is precisely the claim of herein complainant that it was fraudulent misrepresentation on the part of Atty. Bayhon to make it appear that the Branch 54 deposits were superfluous because the deposits made with Branches 32 and 54 were separate, distinct and covered different periods – a false claim that Atty. Bayhon has continuously denied making in the *Ex-Parte* Motion. But instead of producing and submitting to this Court a copy of the *Ex-Parte* Motion to conclusively prove that he did not make such a false averment, Atty. Bayhon hides behind the rules of evidence claiming that without the subject *Ex-Parte* Motion, this allegation against him is but hearsay.

The OCA appears to be right when it observed that Atty. Bayhon seems to have a selective memory,[70] since he remembers only the matter pertaining to the supersedeas bond, but has claimed that he no longer remembers the other circumstances surrounding the filing of the *Ex-Parte* Motion.[71] To be sure, Atty. Bayhon has never denied having filed the controversial *Ex-Parte* Motion, but as pointed out by the OCA:

> x x x His explanation about the circumstances surrounding its filing is unsatisfactory as he did not exert his utmost efforts to locate the Motion from his clients or from the courts. He did not even mention in his "Explanation/Compliance" that he tried to contact his clients to verify if they still have in their possession a copy of the Motion.[72]

For failing to explain, in good faith, the circumstances surrounding the filing of the *Ex-Parte* Motion which he himself

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[70] *Id.* at 431.

[71] *Id.* at 420-421.

[72] *Id.* at 375.

filed, for proffering misleading claims in the course of the subject administrative investigation, and for not having shown and proved that he exerted his best efforts to secure and submit a copy of the subject *Ex-Parte* Motion – all in violation of the resolutions issued by this Court – Atty. Bayhon violated the Lawyer's Oath and Canon 10, Rule 10.01 of the Code of Professional Responsibility. Under Section 27, Rule 138 of the Rules of Court, a member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any violation of the Lawyer's Oath, *viz.*:

> SEC. 27. *Disbarment or suspension of attorneys by Supreme Court, grounds therefor.* – A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any unlawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. x x x

We believe that the proven acts and omissions of Atty. Bayhon in the case at bar warrant the imposition of the penalty of suspension from the practice of law for six (6) months. He has attempted to mislead the Court, and his non-compliance with the resolutions of the Court dated March 25, 2009, December 1, 2010 and August 24, 2011 shows nothing but an indifference to our directives which cannot be taken lightly, especially that it has affected and protracted the investigation and resolution of an administrative matter where his explanation and assistance is a crucial factor.

WHEREFORE, Atty. Walfredo C. Bayhon is hereby found guilty of violating the Lawyer's Oath and Canon 10, Rule 10.01 of the Code of Professional Responsibility. This Court imposes upon Atty. Bayhon the penalty of **SUSPENSION** from the practice of law for a period of **SIX (6) MONTHS** to commence immediately upon receipt of this Decision. This penalty of suspension is imposed in addition to the fine of ₱500.00 under

the December 1, 2010 Resolution of this Court. Atty. Bayhon is further **WARNED** that a commission of the same or similar acts in the future shall be dealt with more severely.

Let copies of this Decision be furnished to the Office of the Court Administrator to be disseminated to all courts throughout the country, to the Office of the Bar Confidant to be appended to Atty. Walfredo C. Bayhon's personal records, and to the Integrated Bar of the Philippines for its information and guidance.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Reyes, JJ.*,concur.

SECOND DIVISION

[A.M. No. MTJ-11-1790. December 11, 2013]
(Formerly A.M. No. 11-7-86-MTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE RAYMUNDO D. LOPEZ and EDGAR M. TUTAAN, former Presiding Judge and Clerk of Court, respectively, Municipal Trial Court, Palo, Leyte,** *respondents.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; THE FAILURE OF A JUDGE TO DECIDE A CASE WITHIN THE REQUIRED PERIOD IS NOT EXCUSABLE BUT UPON PROPER APPLICATION, HE MAY BE GRANTED ADDITIONAL TIME TO DECIDE BEYOND THE REGLEMENTARY PERIOD.— Judges have the sworn duty to administer justice and decide cases promptly and expeditiously because justice

delayed is justice denied. The 1987 Constitution mandates that all cases or matters be decided or resolved by the lower courts within three months from date of submission. Judges are expected to perform all judicial duties, including the rendition of decisions, efficiently, fairly, and with reasonable promptness. x x x Time and again, this Court reminds judges to decide cases with dispatch. The Court has consistently held that the failure of a judge to decide a case within the required period is not excusable and constitutes gross inefficiency, and non-observance of this rule is a ground for administrative sanction against the defaulting judge. Upon proper application and in meritorious cases, however, the Court has granted judges of lower courts additional time to decide cases beyond the 90-day reglementary period.

2. ID.; ID.; UNDUE DELAY IN RENDERING A DECISION OR ORDER; CONSIDERED A LESS SERIOUS CHARGE; PENALTY.— Undue delay in rendering a decision or order is a less serious charge and punishable by either: (1) suspension from office without salary and other benefits for not less than one nor more than three months; or (2) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

3. ID.; ID.; CERTIFICATE OF SERVICE, DEFINED; MAKING UNTRUTHFUL STATEMENTS IN THE CERTIFICATE OF SERVICE IS A LESS SERIOUS CHARGE; PENALTY.— A certificate of service is an instrument essential to the fulfillment by judges of their duty to dispose of their cases speedily as mandated by the Constitution. Judges are expected to be more diligent in preparing their Monthly Certificates of Service by verifying every now and then the status of the cases pending before their sala. x x x Making untruthful statements in the certificate of service is a less serious charge, and is punishable by either: (1) suspension from office without salary and other benefits for not less than one month nor more than three months; or (2) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

4. ID.; ID.; SHOULD NOT ENGAGE IN CONDUCT INCOMPATIBLE WITH THE DILIGENT DISCHARGE OF JUDICIAL DUTIES.— The administration of justice demands that those who don judicial robes be able to comply fully and faithfully with the task before them. Judges are duty-

bound not only to be faithful to the law, but likewise to maintain professional competence. x x x Judge Lopez's submission of false monthly reports and docket inventory undermines the speedy disposition of cases and administration of justice and is prejudicial to the interests of the parties litigants. Judges are expected not to engage in conduct incompatible with the diligent discharge of judicial duties. Further, Judge Lopez's explanation of lack of time due to emotional and physical stress does not inspire trust and confidence from the public.

5. ID.; ID.; THE NEGLIGENCE OF A JUDGE IN NOT REVIEWING THE MONTHLY REPORT OF CASES AND DOCKET INVENTORY SHOWS A LACK OF PROFESSIONAL COMPETENCE IN COURT MANAGEMENT, AND DOES NOT INSPIRE THE OBSERVANCE OF HIGH STANDARDS OF PUBLIC SERVICE AMONG THE COURT PERSONNEL.— Judge Lopez's admitted negligence in not reviewing the monthly reports of cases and the docket inventory also violates the rules on administrative duties outlined in the Code of Judicial Conduct x x x. The negligence of Judge Lopez shows a lack of professional competence in court management, and does not inspire the observance of high standards of public service among the court personnel. Although the negligence of the judge does not excuse the negligence of the court personnel, the latter look to the former, who is the head of the trial court and who should set the bar for professionalism and excellence.

6. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; WHEN THE RESPONDENT IS GUILTY OF TWO OR MORE CHARGES, THE PENALTY FOR THE MOST SERIOUS CHARGE SHOULD BE IMPOSED AND THE OTHER CHARGES MAY BE CONSIDERED AS AGGRAVATING CIRCUMSTANCES.— Judge Lopez's violations of the New Code of Judicial Conduct for the Philippine Judiciary and the Code of Judicial Conduct constitute gross misconduct. Gross misconduct is a serious charge, and is punishable by (1) dismissal from the service; (2) suspension from office for more than three months but not exceeding six months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. Section 17, Rule XIV of the CSC Omnibus Rules Implementing Book V of Executive Order

No. 292 provides that when the respondent is guilty of two or more charges, the penalty for the most serious charge should be imposed and the other charges may be considered as aggravating circumstances. In this case, Judge Lopez is guilty of the serious charge of gross misconduct, and the less serious charges of undue delay in rendering decisions and of making untruthful statements in his Certificates of Service. Since Judge Lopez is already retired, the Court imposes a fine in the amount of ₱40,000.00, which is the amount corresponding to the maximum imposable fine for the most serious charge of gross misconduct.

7. ID.; ID.; ID.; SIMPLE MISCONDUCT; DEFINED AS A TRANSGRESSION OF SOME ESTABLISHED RULE OF ACTION, AN UNLAWFUL NEGLIGENCE COMMITTED BY A PUBLIC OFFICER; PENALTY IN CASE AT BAR.— The Docket Inventory attached to Mr. Tutaan's letter, and purporting to exonerate him from culpability, was executed on 16 February 2011. The Docket Inventory attached to the audit report was executed on 7 March 2011. Mr. Tutaan's explanation that the cases were already reflected in the 16 February 2011 Docket Inventory is of no moment because when the 7 March 2011 Docket Inventory was executed, the cases remained undecided. Besides, 11 out of the 21 cases cited by the OCA are still missing from the 16 February 2011 Docket Inventory. x x x Mr. Tutaan exhibited indifference to the Court's directives as he admitted that he simply continued his practice since 1979 to 1994 of not reporting cases submitted for decision that remain undecided, and waiting for someone to correct him on that practice. As early as 1991, judges, clerks and branch clerks of court were instructed to list down **all cases submitted for decision that are still undecided at the end of the month**. In 1992, judges, clerks and branch clerks of court were yet again reminded about duly filling in the Monthly Report of Cases, SC Form 01 to include **all cases submitted for decision but remain undecided at the end of the month**. x x x Worse still, Mr. Tutaan admitted to omitting certain cases from the reports because of the alleged request of Judge Lopez for him to do so. Mr. Tutaan's statement that he did not intend to submit false reports is belied by his admission that he knowingly excluded certain cases from the reports. The fact remains that he knowingly omitted certain

cases from the Monthly Reports of Cases and Docket Inventory. On the part of Mr. Tutaan, his act of excluding cases from the Monthly Reports of Cases and Docket Inventory amounts to simple misconduct. Simple misconduct is a transgression of some established rule of action, an unlawful negligence committed by a public officer. It is classified as a less grave offense with a penalty of suspension of one month and one day to six months for the first offense, to dismissal for the second offense. Taking into account his length of service, we impose the minimum penalty of one month and one day suspension on Mr. Tutaan.

D E C I S I O N

CARPIO, *J.*:

The Case

This administrative case arose from a Memorandum dated 20 July 2011 submitted by an audit team of the Office of the Court Administrator (OCA), reporting on the judicial audit conducted in the Municipal Trial Court, Palo, Leyte (trial court).[1]

The Facts

On 31 May 2011 and 1 June 2011, the OCA audit team conducted a judicial audit in connection with the compulsory retirement on 15 March 2011 of Judge Raymundo D. Lopez (Judge Lopez), former presiding judge of the trial court.

The audit team examined all pending cases as of 31 May 2011, and cases disposed during the first semester of 2011. Of the 133 cases audited, consisting of 89 criminal cases and 44 civil cases,[2] the audit team found that:

1. The trial court had 23 cases submitted for decision which had not been decided, despite the lapse of the 90-day reglementary period for deciding cases, to wit: Criminal

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[1] *Rollo*, pp. 11-32.

[2] *Id*. at 11.

Case Nos. 5411; 5532; 5637; 5774-09-94; 5717-4-94; 5891-3-96; 6323-10-99; 6073-11-97; 6127-3-98; 6431-12-00; 6459-12-00; 6803-01-04; 7107-7-06; 6386-4-00; and 7111-7-06; and Civil Case Nos. 375-9-96; 356-08-94; LRC-001-01; 493-7-07; SP-96-01; 464-9-05; 407-6-99; and 488-01-07;[3]

2. The trial court had pending motions and incidents in 16 cases that remained unresolved despite the lapse of the prescribed period, to wit: Criminal Case Nos. 5886-2-95; 6534-10-01; 6853-06-04; 6163-7-98; 6210-12-98; 6943-01-05; 7126-10-06; and 7171-7-07; and Civil Case Nos. 365-2-95; 374-9-96; 386-6-97; 427-1-02; 500-3-08; 505-6-08; 496-10-07; and 518-09-09;[4]

3. The trial court decided 9 cases beyond the 90-day reglementary period in March 2011;[5] and

4. The trial court had 18 cases which had not been acted upon for a considerable length of time since the last action taken thereon;[6] 2 cases which had not been acted upon since filing;[7] and 11 cases which had not been further set for a considerable length of time since the last settings made thereon.[8]

The audit team also observed that 14 criminal and 7 civil cases were not reflected in the trial court's Docket Inventory for the second semester of 2010 and in the list of cases submitted for decision in the Monthly Report for February 2011, to wit: Criminal Case Nos. 5411; 5532; 5637; 5774-09-94; 5717-4-94; 5891-3-96; 6163-7-98; 5467; 5563; 6286-2-99; 6079-11-97; 6236-3-99; 6723-5-03; and 6888-9-04; and Civil Case Nos.

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

[4] *Id.* at 15.

[5] *Id.* at 16-17.

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

[7] *Id.* at 19.

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

375-9-96; 356-08-94; LRC-001-01; 464-9-05; 488-01-07; 501-04-08; and 479-3-2006.[9]

Finally, the audit team found that Judge Lopez submitted false Certificates of Service for the months of February 2010 to December 2010.[10]

The OCA submitted its Report on the judicial audit conducted in the trial court (Report)[11] to the Court on 2 August 2011, which was docketed as A.M. No. 11-7-86-MTC. The OCA adopted the findings and recommendations of the audit team, and further recommended that the matter be re-docketed as a regular administrative matter against Judge Lopez.

The Court in a Resolution dated 15 August 2011[12] resolved as follows:

1. **RE-DOCKET** this case as a regular administrative matter against Judge Raymundo D. Lopez, former Presiding Judge, Municipal Trial Court, Palo, Leyte;

2. Judge Lopez be **DIRECTED** to **EXPLAIN** within fifteen (15) days from notice why he should not be cited for:

    2.1. **gross dereliction of duty/gross inefficiency** for his:

        2.1.1. FAILURE TO DECIDE the following **fifteen (15) criminal and eight (8) civil cases** despite the lapse of the prescribed period to decide the same x x x.

        2.1.2. FAILURE TO RESOLVE pending motions/ incidents in the following **eight (8) criminal and eight (8) civil cases**, despite the lapse of the prescribed period to resolve the same x x x.

        2.1.3. DELAY IN DECIDING the following **seven (7) criminal and two (2) civil cases** x x x.

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

[10] *Id.* at 22.

[11] *Id.* at 1-10.

[12] *Id.* at 54-65.

2.2. **serious misconduct** for:

2.2.1. Declaring in his Certificates of Service for the months of February to December 2010 that he has decided all cases and resolved all incidents within ninety (90) day period from the date of submission for decision/resolution even when there were several cases/incidents which remained undecided/unresolved beyond the reglementary period.

2.2.2. Failing to reflect in the Docket Inventory and/or in the Monthly Report of Cases, particularly in the List of Cases Submitted for Decision, the following **fourteen (14) criminal and seven (7) civil cases** that have long been submitted for decision/resolution x x x.

3. **DIRECT** Mr. Edgar M. Tutaan, Clerk of Court, MTC, Palo, Leyte, to **SHOW CAUSE** why he should not be administratively dealt with for submitting false Monthly Report of Cases and Docket Inventory in relation to Item No. 2.2.2 above;

x x x x x x x x x

5. And, **ORDER** the Fiscal Management Office, OCA, to retain from the retirement benefits of Judge Lopez the sum of Two Hundred Thousand Pesos (₱200,000.00), to answer for any administrative liability that may be imposed upon him in connection with the instant administrative matter.[13] (Boldfacing in the original)

The Court likewise ordered the Acting Presiding Judge, Judge Sarah L. Dapula (Judge Dapula) to resolve the cases and incidents left unresolved by Judge Lopez and to take appropriate action on the cases that have not been acted upon, or set for hearing, for a long time. Judge Dapula, in her compliance dated 28 September 2011,[14] reported having acted upon all the cases which had not been acted upon for a considerable length of time, which had not been acted upon since filing, and which

[13] *Id*.

[14] *Id*. at 66-68.

had not been set for a considerable length of time. However, she requested the Court for an extension of the 90-day period to decide the cases and resolve the pending incidents left by Judge Lopez.

Judge Dapula also reiterated her request that an assisting judge be appointed, or in the alternative, to relieve her as Acting Presiding Judge and designate another judge with less heavy load. In support of her request, Judge Dapula cited her failing health and reasoned that her own sala[15] had an equally heavy caseload.

Judge Lopez in his letter dated 30 September 2011[16] set forth the following reasons:

1. His failure to decide the cases and resolve the pending incidents within the reglementary period was caused by the following health problems and personal circumstances:
    a) He suffered from acute myocardial infarction in 1998, a triple bypass operation in 1999, fluctuating blood pressure from 1999 onwards and an enlarged heart, and underwent extracorporeal shock wave lithotripsy of his right ureterolithiasis in September 1999;
    b) When his wife was diagnosed with cancer, he personally attended to her;
    c) He underwent hemorrhoidectomy in February 2010;
    d) His wife succumbed to cancer on 13 July 2010; and
    e) Two months before his retirement from the judiciary, he was hospitalized for severe hyperkalemia, chronic kidney disease and hypoalbuminemia, hypertensive cardiovascular disease, cardiomegaly, and CHF II.

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[15] Municipal Trial Court, Tanauan, Leyte.

[16] *Rollo*, pp. 120-121.

2. He ascribed to pure inadvertence, brought about by the same health and personal problems, his false declarations in his Certificates of Service for the months of February 2010 to December 2010; and

3. He suffered much emotional and physical stress, due to his health problems and the death of his wife, which gravely affected his work that he lacked the time to review the monthly reports and docket inventory.

For his part, the Clerk of Court, Edgar M. Tutaan (Mr. Tutaan), reasoned in his letter dated 26 September 2011[17] that:

1. Prior to 1994, the monthly report form required only a list of cases submitted for decision, and did not specifically require a list of the cases still undecided but previously submitted for decision. The form was changed in 1994; however, he continued his old practice since nobody corrected him;

2. Some of the cases cited by the OCA audit team were in fact reflected in the Docket Inventory;

3. Some cases were not reflected in the monthly reports as submitted for decision due to lack of any order by the judge to that effect;

4. For 12 of the cases not included in the monthly reports, he merely acceded to Judge Lopez's request to exclude the same out of sympathy for Judge Lopez's health and personal circumstances; and

5. He did not intend to submit false reports of cases.

In compliance with the Court's Resolution dated 19 October 2011,[18] the OCA, in a Memorandum dated 12 January 2012,[19]

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[17] *Id.* at 191-193.

[18] *Id.* at 189-190.

[19] *Id.* at 213-227.

commented on Judge Dapula's compliance, recommending that Judge Dapula be relieved as Acting Presiding Judge, and named another judge[20] to replace her. The OCA also evaluated the explanations of Judge Lopez and Mr. Tutaan and expressed its recommendations.

Meanwhile, the case docketed as A.M. No. MTJ-12-1803, entitled *Office of the Court Administrator v. Hon. Raymundo D. Lopez, former Judge, Municipal Trial Court, Palo, Leyte*, involved two cases that were inadvertently not included in the judicial audit. Those cases were also left undecided beyond the reglementary period. The Court in a Resolution dated 18 January 2012[21] imposed a fine of ₱4,000.00 upon Judge Lopez. The Resolution further ordered A.M. No. MTJ-12-1803 to be consolidated with this case.

In a Resolution dated 17 September 2012,[22] the Court required the OCA to comment on the possible de-consolidation of the instant case and A.M. No. MTJ-12-1803. The OCA recommended the de-consolidation of the cases in its Memorandum dated 25 February 2013,[23] since A.M. No. MTJ-12-1803 had already been resolved. In the same Memorandum, the OCA reiterated its recommendations contained in its 12 January 2012 Memorandum, with some modifications, as Judge Jeanette Ngo Loreto had already been appointed Presiding Judge of the trial court.[24]

In the interim, Judge Lopez, in a letter dated 30 October 2012, requested the release of his retirement benefits, which he needed for his maintenance medicines and for hospitalization and medical expenses, pending resolution of this case.

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[20] Judge Mario P. Nicolasora of the Municipal Trial Court, Tolosa, Leyte.

[21] *Rollo*, pp. 228-229.

[22] *Id.* at 232.

[23] *Id.* at 243-245.

[24] *Id.* at 244.

The OCA's Report and Recommendations

The OCA's recommendations in the Memorandum dated 12 January 2012[25] read, in part:

WHEREFORE, in view of the foregoing, it is respectfully recommended that:

1. Mr. Edgar M. Tutaan, Clerk of Court, Municipal Trial Court, Palo, Leyte be INCLUDED as respondent in the instant administrative case;

2. Retired Judge Raymundo D. Lopez, former Presiding Judge, MTC, Palo, Leyte be found GUILTY of **gross dereliction of duty/gross inefficiency** and be FINED in the amount of two hundred thousand pesos (₱200,000.00) to be taken from the two hundred thousand pesos (₱200,000.00) ordered withheld from his retirement benefits pursuant to the Resolution of 15 August 2011;

3. Mr. Edgar M. Tutaan, Clerk of Court, Municipal Trial Court, Palo, Leyte, be found guilty of **misconduct** and be **FINED** in the amount of ten thousand pesos (₱10,000.00) with a **STERN WARNING** that a repetition of the same or similar infraction shall be dealt with more severely; x x x. (Boldfacing in the original)

The Court's Ruling

The Court finds the report of the OCA well taken except as to the penalty.

On the Delay in Rendering Judgment

Judges have the sworn duty to administer justice and decide cases promptly and expeditiously because justice delayed is justice denied.[26] The 1987 Constitution mandates that all cases or matters be decided or resolved by the lower courts within three months from date of submission.[27] Judges are expected to perform all

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[25] *Id.* at 223-224.

[26] *Office of the Court Administrator v. Asaali*, A.M. No. RTJ-06-1991, 5 June 1999, 588 SCRA 273, 281.

[27] Section 15(1), Article VIII of the 1987 Constitution.

judicial duties, including the rendition of decisions, efficiently, fairly, and with reasonable promptness.[28]

In this case, Judge Lopez failed to decide a total of 32 cases and resolve pending incidents in 16 cases within the 90-day reglementary period.

Time and again, this Court reminds judges to decide cases with dispatch. The Court has consistently held that the failure of a judge to decide a case within the required period is not excusable and constitutes gross inefficiency, and non-observance of this rule is a ground for administrative sanction against the defaulting judge.[29]

Upon proper application and in meritorious cases, however, the Court has granted judges of lower courts additional time to decide cases beyond the 90-day reglementary period.

In this case, Judge Lopez, despite his medical condition and personal circumstances, did not apply for any extension to decide the cases before him. In certain instances, as the OCA noted, the cases were submitted for decision even before Judge Lopez began having medical problems.

This Court commiserates with Judge Lopez for the heart attack, other ailments, and personal tragedy that he suffered. However, these do not exonerate him from the consequences of his omissions that took place before he became ill and more than a decade after he had resumed reporting to work. In the absence of any showing that his medical and personal problems prevented him from working after his operation, Judge Lopez had no valid excuse for not giving due attention to the cases in his sala. At the very least, his health problems and personal crises would only mitigate his liability.

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[28] Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary.

[29] *Lambino v. Judge De Vera*, 341 Phil. 62, 66 (1997).

In *Re: Cases Submitted for Decision Before Judge Damaso A. Herrera, Regional Trial Court, Branch 24, Biñan, Laguna*,[30] we held:

> [The judge's] plea of heavy workload, lack of sufficient time, poor health, and physical impossibility could not excuse him. Such circumstances were not justifications for the delay or non-performance, given that he could have easily requested the Court for the extension of his time to resolve cases. Our awareness of the heavy caseload of the trial courts has often moved us to allow reasonable extensions of time for trial judges to decide their cases. But we have to remind x x x trial judges that no judge can choose to prolong, on his own, the period for deciding cases beyond the period authorized by law. Without an order of extension granted by the Court, a failure to decide a single case within the required period rightly constitutes gross inefficiency that merits administrative sanction.[31]

Undue delay in rendering a decision or order is a less serious charge and punishable by either: (1) suspension from office without salary and other benefits for not less than one nor more than three months; or (2) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[32]

On the False Monthly Certificates of Service

A certificate of service is an instrument essential to the fulfillment by judges of their duty to dispose of their cases speedily as mandated by the Constitution.[33] Judges are expected to be more diligent in preparing their Monthly Certificates of Service by verifying every now and then the status of the cases pending before their sala.[34]

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[30] A.M. No. RTJ-05-1924, 13 October 2010, 633 SCRA 1.

[31] *Id.* at 10.

[32] Sections 9(1) and 11(B), Rule 140 of the Rules of Court.

[33] *Office of the Court Administrator v. Judge Trocino,* 551 Phil. 258, 268 (2007).

[34] *Id.*

The OCA found that Judge Lopez falsified his Monthly Certificates of Service for the months of February 2010 to December 2010.[35] In the Certificates, Judge Lopez stated that he had decided "all special proceedings, application, petitions, motions, and all civil and criminal cases which have been under submission for decision or determination for a period of ninety (90) days or more." But a careful reading of the audit report reveals that the cases not decided within the 90-day reglementary period were all submitted for decision prior to 2011, some even as early as the 1990s.[36] The same is true with the motions and incidents submitted for resolution left pending beyond the 90-day period.[37]

Making untruthful statements in the certificate of service is a less serious charge, and is punishable by either: (1) suspension from office without salary and other benefits for not less than one month nor more than three months; or (2) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[38]

On the False Monthly Report of Cases and Docket Inventory

The administration of justice demands that those who don judicial robes be able to comply fully and faithfully with the task before them.[39] Judges are duty-bound not only to be faithful to the law, but likewise to maintain professional competence.[40] Section 2, Canon 2 of the New Code of Judicial Conduct for the Philippine Judiciary provides:

> The behavior and conduct of judges must reaffirm the people's faith in the integrity of the Judiciary. Justice must not merely be done, but must also be seen to be done.

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[35] *Rollo*, pp. 33-42-A.

[36] *Supra* note 3.

[37] *Supra* note 4.

[38] Sections 9(6) and 11(B), Rule 140 of the Rules of Court.

[39] *Office of the Court Administrator v. Judge Leonida*, A.M. No. RTJ-09-2198, 18 January 2011, 639 SCRA 697, 706.

[40] *Id*.

Judge Lopez's submission of false monthly reports and docket inventory undermines the speedy disposition of cases and administration of justice and is prejudicial to the interests of the parties litigants. Judges are expected not to engage in conduct incompatible with the diligent discharge of judicial duties.[41] Further, Judge Lopez's explanation of lack of time due to emotional and physical stress does not inspire trust and confidence from the public.

Judge Lopez's admitted negligence in not reviewing the monthly reports of cases and the docket inventory also violates the rules on administrative duties outlined in the Code of Judicial Conduct,[42] which provides:

> Rule 3.08. – A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions of other judges and court personnel.
>
> Rule 3.09. – A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity.
>
> Rule 3.10. – A judge should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware.

The negligence of Judge Lopez shows a lack of professional competence in court management, and does not inspire the observance of high standards of public service among the court personnel. Although the negligence of the judge does not excuse the negligence of the court personnel, the latter look to the former, who is the head of the trial court and who should set the bar for professionalism and excellence.

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[41] Section 7, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary.

[42] The Code of Judicial Conduct was superseded by the New Code of Judicial Conduct for the Philippine Judiciary; however, in case of deficiency or absence of specific provisions in the new code, the Code of Judicial Conduct applies suppletorily.

In addition, we cannot ignore the allegation of Mr. Tutaan that Judge Lopez requested him to exclude certain cases from the Monthly Report of Cases. There is no evidence on record on whether Judge Lopez did in fact make such a request, apart from Mr. Tutaan's statement. However, judges are expected to ensure not only that their conduct is above reproach, but that it be perceived to be so in the view of a reasonable observer.[43]

Judge Lopez's violations of the New Code of Judicial Conduct for the Philippine Judiciary and the Code of Judicial Conduct constitute gross misconduct. Gross misconduct is a serious charge, and is punishable by (1) dismissal from the service; (2) suspension from office for more than three months but not exceeding six months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[44]

Section 17, Rule XIV of the CSC Omnibus Rules Implementing Book V of Executive Order No. 292 provides that when the respondent is guilty of two or more charges, the penalty for the most serious charge should be imposed and the other charges may be considered as aggravating circumstances.[45] In this case, Judge Lopez is guilty of the serious charge of gross misconduct, and the less serious charges of undue delay in rendering decisions and of making untruthful statements in his Certificates of Service. Since Judge Lopez is already retired, the Court imposes a fine in the amount of ₱40,000.00, which is the amount corresponding to the maximum imposable fine for the most serious charge of gross misconduct.

The OCA, in the Memorandum dated 12 January 2012,[46] found the explanation of Mr. Tutaan flimsy and unconvincing. The OCA's evaluation of Mr. Tutaan's explanation reads:

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[43] Section 1, Canon 2 of the New Code of Judicial Conduct for the Philippine Judiciary.

[44] Sections 8(3) and 11(A), Rule 140 of the Rules of Court.

[45] See *Office of the Court Administrator v. Judge Trocino*, *supra* note 33.

[46] *Supra* note 19.

The excuse of Mr. Tutaan that Criminal Case Nos. 5411, 5532, 5637, 5467 and 5563 were not reflected in the monthly report of cases because of his mistaken belief that in the old form only cases submitted for a particular month are to be entered therein, is flimsy and unconvincing. In the comment, he admitted that he knows about these undecided cases which were brought home by the judge, yet, despite the introduction of the new form in 1994 and knowledge that it now clearly requires the reporting of all pending cases submitted for decision, he still failed to do so.

Further, the admission of Mr. Tutaan that he gave in to the anomalous request of retired Judge Lopez not to reflect the truth that Criminal Case Nos. 5774-09-1994, 5717-4-1994, 5891-3-1996, 6163-7-1998, 6079-11-1997, 6286-2-1999, 6236-3-1999, 6723-5-2003 and Civil Case Nos. 375-9-96, 356-08-1994, 501-04-2008 and 479-3-2006 in the same monthly report of cases is highly irregular and constitutes misconduct. He now cannot escape administrative responsibility by blaming the judge.

Clerks of Court are the chief administrative officers of their respective courts (*Office of the Court Administrator v. Fortaleza, A.M. No. P-01-1524, July 29, 2002, 385 SCRA 293, 303)*. They must show competence, honesty and probity since they are charged with safeguarding the integrity of the court and its proceedings (*Cabanatan v. Molina, A.M. No. P-01-1520, November 21, 2001, 370 SCRA 16, 23)*.[47]

The Docket Inventory attached to Mr. Tutaan's letter, and purporting to exonerate him from culpability, was executed on 16 February 2011.[48] The Docket Inventory attached to the audit report was executed on 7 March 2011.[49] Mr. Tutaan's explanation that the cases were already reflected in the 16 February 2011 Docket Inventory is of no moment because when the 7 March 2011 Docket Inventory was executed, the cases remained undecided. Besides, 11 out of the 21 cases cited by

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[47] *Rollo*, p. 219.

[48] *Id*. at 198-205.

[49] *Id*. at 43-53.

the OCA are still missing from the 16 February 2011 Docket Inventory.[50]

In his letter explanation, Mr. Tutaan posed a question: "Is the Clerk of Court duty bound to report a case as submitted for decision even if there is no order yet from the Judge submitting [the same]?"[51]

The answer to Mr. Tutaan's question had already been answered by this Court in *Re: Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 27, Naga City*.[52] In that case the Court also stressed the importance of submitting correct monthly reports that should have guided Mr. Tutaan. We said:

> Vargas would want us to believe, as she claims she honestly believed then that her duty to register the seven cases as submitted for determination in the monthly report depends on the existence of orders declaring the submission of those cases for decision. Withal, the fact that no orders were issued declaring the cases ready for judgment will not necessarily exonerate Vargas from administrative culpability.
>
> Vital to our determination of whether or not Vargas was remiss in her duty, however, is the parallel issue on the definition of the phrase 'submitted for decision.' We find the meaning thereof in Administrative Circular No. 28 x x x.
>
> Thus, in cases where the courts allow the filing of memoranda, no further orders pronouncing the submission of cases for decision are necessary before a case can be regarded as submitted for decision. Where the parties fail to submit their memoranda within the period given by the court, a case is deemed submitted for decision upon the expiration of that period whether or not there is an order from the court to that effect. It is not the order that makes a case ready

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[50] *Id*. In the 16 February 2011 Docket Inventory annexed to Mr. Tutaan's letter, the following cases, from among the cases cited by the OCA, were excluded: Criminal Case Nos. 5411, 5532, 5637, 5774-09-94, 5717-4-94, 5891-3-96, 6163-7-98, 5467, 5563, 6079-11-97 and Civil Case No. 356-08-94.

[51] *Id.* at 194.

[52] 343 Phil. 518 (1997).

for disposition of the court. The mere filing of the memoranda or the termination of the period to file one, whichever is earlier, *ipso facto* submits the case for adjudication.

One of the basic responsibilities of a Branch Clerk of Court is the preparation of the official Monthly Report of Cases to be submitted to the Supreme Court. Erroneous statistical accomplishment of the monthly report thus required is equivalent to the submission of [inaccurate] reports and the failure of the clerk of court to make proper entries is a ground for disciplinary action against such clerk.

Even if there are no orders declaring the submission of cases for judgment of the court, a clerk of court is neither precluded nor excused from accurately accomplishing SC Form No. 01. We have laid down in Circular 25-92 that all cases submitted for decision but which remain undecided at the end of the month must be duly reported. It is only when there are no cases submitted for decision that clerks are allowed to enter 'none.'

The fact remains that Vargas indicated that there were no cases submitted for decision when in truth there were seven of such cases as discovered by the audit team. She cannot even plead ignorance of Administrative Circular No. 28 because, **as a member of the bar and an employee of the court, she is expected to know the rules and regulations promulgated by this Court**. If she was in doubt as to how to fill up the report, she could have easily consulted the Office of the Court Administrator for assistance or simply stated the facts in full in her report.

An erroneous report falsely indicating that there are no cases submitted for decision is prejudicial to the prompt administration of justice and to the interest of the parties. An accurate monthly report is essential in order to inform this Court of the status of pending cases in a particular lower court. x x x.

The importance of correct reports is underscored by the shift in our policy on the reporting of cases. In lieu of the monthly report of cases required in the Manual for Clerks of Court, we directed in Administrative Circular No. 8-93, dated June 21, 1993, the preparation and submission of Quarterly Report of Cases instead. However, after the Court realized the value of timely and accurate reports in the effective administration of lower courts, the monthly reporting of cases was forthwith restored effective January 1995 through Administrative Circular No. 4-95, dated January 16, 1995.

Branch clerks of court must realize that their administrative functions are vital to the prompt and proper administration of justice. They are charged with the efficient recording, filing and management of court records, besides having administrative supervision over court personnel. They play a key role in the complement of the court and cannot be permitted to slacken on their jobs under one pretext or another. They must be assiduous in performing their official duties and in supervising and managing court dockets and records.[53] (Emphasis supplied; italics in the original)

Mr. Tutaan exhibited indifference to the Court's directives as he admitted that he simply continued his practice since 1979 to 1994 of not reporting cases submitted for decision that remain undecided, and waiting for someone to correct him on that practice.

As early as 1991, judges, clerks and branch clerks of court were instructed to list down **all cases submitted for decision that are still undecided at the end of the month**.[54] In 1992, judges, clerks and branch clerks of court were yet again reminded about duly filling in the Monthly Report of Cases, SC Form 01 to include **all cases submitted for decision but remain undecided at the end of the month**.[55]

The current Revised SC Form No. 1-2004 was released with Administrative Circular No. 4-2004[56] with rules, guidelines and instructions in filling out the Monthly Report of Cases. Administrative Circular No. 4-2004 reads, in part:

8. Item No. VI (List of Cases Submitted for Decision But Not Yet Decided at the End of the Month) covers **all cases submitted for decision but not yet decided at the end of the month, including those submitted prior to the month covered by the report under preparation**. **Likewise included are cases with unresolved motions which may determine the disposition of the cases**, such as Motions to Dismiss or Demurrer to Evidence. Patent non-

[53] *Id.* at 526-528.

[54] SC Circular No. 11-91 dated 19 July 1991.

[55] SC Circular No. 25-92 dated 7 May 1992.

[56] Dated 4 February 2004.

indication of undecided cases or unresolved motions may constitute falsification of official document. All columns provided therein must be properly filled up. Incomplete entries as well as the use of another format not conforming with the prescribed form shall warrant the application of Rule No. 4 on withholding of salaries and other disciplinary measures.[57] (Emphasis supplied)

with the following note:

Note No. 2: **Emphasis is given on the date the case was submitted for decision and the respective date when the reglementary period shall expire/have expired.** The due date should be computed based on the 90 or 30-day period, whichever is applicable. Judges are further reminded that neither incomplete transcript of stenographic notes nor the non-submission of memoranda does not suspend the running of the period within which to decide a case.[58] (Emphasis supplied)

Worse still, Mr. Tutaan admitted to omitting certain cases from the reports because of the alleged request of Judge Lopez for him to do so. Mr. Tutaan's statement that he did not intend to submit false reports is belied by his admission that he knowingly excluded certain cases from the reports. The fact remains that he knowingly omitted certain cases from the Monthly Reports of Cases and Docket Inventory. On the part of Mr. Tutaan, his act of excluding cases from the Monthly Reports of Cases and Docket Inventory amounts to simple misconduct.

Simple misconduct is a transgression of some established rule of action, an unlawful negligence committed by a public officer.[59] It is classified as a less grave offense with a penalty of suspension of one month and one day to six months for the first offense, to dismissal for the second offense.[60]

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[57] Administrative Circular No. 4-2004 dated 4 February 2004.

[58] *Id*.

[59] *Re: Report on the Judicial Audit Conducted at the Metropolitan Trial Court, Branch 55, Malabon City*, A.M. No. 08-3-73-MeTC, 31 July 2009, 594 SCRA 492.

[60] Section 46 (D), Revised Rules on Administrative Cases in the Civil Service.

Taking into account his length of service, we impose the minimum penalty of one month and one day suspension on Mr. Tutaan.

WHEREFORE, the Court finds Judge Raymundo D. Lopez, former Presiding Judge, Municipal Trial Court, Palo, Leyte, guilty of **GROSS MISCONDUCT** and accordingly **FINES** him ₱40,000.00, to be deducted from his retirement/gratuity benefits. The Court also finds Judge Lopez guilty of **undue delay in rendering decisions** and **making untruthful statements in his Certificates of Service** but these constitute aggravating circumstances to the offense of gross misconduct.

The Financial Management Office of the Office of the Court Administrator is **DIRECTED** to release the remainder of the retirement pay and other benefits due Judge Lopez, unless he is charged in some other administrative complaint or the same is otherwise withheld for some other lawful cause.

The Court finds Edgar M. Tutaan, Clerk of Court, Municipal Trial Court, Palo Leyte, guilty of **SIMPLE MISCONDUCT** and **SUSPENDS** him for one month and one day, with a **STERN WARNING** that a repetition of the same or similar act in the future will merit a more severe sanction.

Judge Jeanette Ngo Loreto is **DIRECTED** to **DECIDE** within one hundred twenty (120) days the cases left undecided by Judge Lopez, to wit: Criminal Case Nos. 5411; 5532; 5637; 5774-09-94; 5717-4-94; 5891-3-96; 6323-10-99; 6073-11-97; 6127-3-98; 6431-12-00; 6459-12-00; 6803-01-04; 7107-7-06; 6386-4-00; and 7111-7-06; and Civil Case Nos. 375-9-96; 356-08-94; LRC-001-01; 493-7-07; SP-96-01; 464-9-05; 407-6-99; and 488-01-07. Judge Loreto is also **DIRECTED** to **RESOLVE** within one hundred twenty (120) days the pending incidents left unresolved by Judge Lopez in the following cases: Criminal Case Nos. 5886-2-95; 6534-10-01; 6853-06-04; 6163-7-98; 6210-12-98; 6943-01-05; 7126-10-06; and 7171-7-07; and Civil Case Nos. 365-2-95; 374-9-96; 386-6-97; 427-1-02; 500-3-08; 505-6-08; 496-10-07; and 518-09-09. Judge Loreto is further **DIRECTED**

to **SUBMIT** copies of the Decisions and Orders within ten (10) days from rendition or issuance thereof.

SO ORDERED.

Brion, del Castillo, Perlas-Bernabe, and *Leonen,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 157988. December 11, 2013]

REPUBLIC OF THE PHILIPPINES-BUREAU OF FOREST DEVELOPMENT, *petitioner, vs.* **VICENTE ROXAS and THE REGISTER OF DEEDS OF ORIENTAL MINDORO,** *respondents.*

[G.R. No. 160640. December 11, 2013]

PROVIDENT TREE FARMS, INC., *petitioner, vs.* **VICENTE ROXAS and THE REGISTER OF DEEDS OF ORIENTAL MINDORO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; DOES NOT INVOLVE REVIEW OF QUESTIONS OF FACT; EXCEPTIONS.— Before delving into the merits, the propriety of these Petitions for Review under Rule 45 of the Rules of Court should first be addressed. We note at the outset that except for the third issue on estoppel and prescription, the other two issues involve questions of fact that necessitate a review of the evidence on record. In

[*] Designated acting member per Special Order No. 1627 dated 6 December 2013.

Decaleng v. Bishop of the Missionary District of the Philippine Islands of Protestant Episcopal Church in the United States of America, we presented the general rule, as well as the exceptions, to the same x x x. The case at bar falls under several exceptions, *i.e.*, the inference made is manifestly mistaken, absurd, or impossible; the judgment is based on misapprehension of facts; and the findings of fact are contradicted by the evidence on record. As a result, we must return to the evidence submitted by the parties during trial and make our own evaluation of the same.

2. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; REGALIAN DOCTRINE; PUBLIC LANDS NOT SHOWN TO HAVE BEEN RECLASSIFIED AS ALIENABLE AGRICULTURAL LAND OR ALIENATED TO A PRIVATE PERSON BY THE STATE REMAIN PART OF THE INALIENABLE PUBLIC DOMAIN.— Under the Regalian doctrine, which is embodied in Article XII, Section 2 of our Constitution, all lands of the public domain belong to the State, which is the source of any asserted right to any ownership of land. All lands not appearing to be clearly within private ownership are presumed to belong to the State. Accordingly, public lands not shown to have been reclassified or released as alienable agricultural land or alienated to a private person by the State remain part of the inalienable public domain.

3. CIVIL LAW; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT), AS AMENDED; REMAINS THE EXISTING GENERAL LAW GOVERNING THE CLASSIFICATION AND DISPOSITION OF LANDS OF THE PUBLIC DOMAIN, OTHER THAN TIMBER AND MINERAL LANDS.— Commonwealth Act No. 141, also known as the Public Land Act, as amended by Presidential Decree No. 1073, remains to this day the existing general law governing the classification and disposition of lands of the public domain, other than timber and mineral lands. The x x x provisions under Title I, Chapter II of the Public Land Act, as amended, is very specific on how lands of the public domain become alienable or disposable x x x.

4. ID.; PRESIDENTIAL DECREE NO. 705 (THE REVISED FORESTRY CODE); DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SECRETARY; HAS THE POWER TO DETERMINE WHICH OF THE

UNCLASSIFIED LANDS OF THE PUBLIC DOMAIN ARE NEEDED OR NOT NEEDED FOR FOREST PURPOSES.— By virtue of Presidential Decree No. 705, otherwise known as the Revised Forestry Code, the President delegated to the DENR Secretary the power to determine which of the unclassified lands of the public domain are (1) needed for forest purposes and declare them as permanent forest to form part of the forest reserves; and (2) not needed for forest purposes and declare them as alienable and disposable lands.

5. ID.; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT), AS AMENDED; HOMESTEAD SETTLEMENT; ONLY ALIENABLE AND DISPOSABLE AGRICULTURAL LANDS OF THE PUBLIC DOMAIN CAN BE ACQUIRED BY HOMESTEAD.— Per the Public Land Act, alienable and disposable public lands suitable for agricultural purposes can be disposed of only as follows: "1. For homestead settlement; x x x." Homestead over alienable and disposable public agricultural land is granted after compliance by an applicant with the conditions and requirements laid down under Title II, Chapter IV of the Public Land Act x x x. It is clear under the law that only alienable and disposable agricultural lands of the public domain can be acquired by homestead.

6. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; REGALIAN DOCTRINE; PRESUMPTION OF STATE OWNERSHIP OF LANDS OF THE PUBLIC DOMAIN; MAY BE OVERCOME BY THE PERSON APPLYING FOR REGISTRATION BY SHOWING INCONTROVERTIBLE EVIDENCE THAT THE LAND SUBJECT OF THE APPLICATION IS ALIENABLE OR DISPOSABLE.— The burden of proof in overcoming the presumption of State ownership of lands of the public domain is on the person applying for registration, or in this case, for homestead patent. The applicant must show that the land subject of the application is alienable or disposable. It must be stressed that **incontrovertible evidence** must be presented to establish that the land subject of the application is alienable or disposable.

7. ID.; ID.; ID.; ID.; ID.; AN APPLICANT MUST ESTABLISH THE EXISTENCE OF A POSITIVE ACT OF THE GOVERNMENT TO PROVE THAT THE LAND SUBJECT OF AN APPLICATION FOR REGISTRATION IS ALIENABLE.— As we pronounced in *Republic of the Phils.*

v. Tri-Plus Corporation, to prove that the land subject of an application for registration is alienable, an applicant must establish the existence of a **positive act of the Government** such as a presidential proclamation or an executive order, an administrative action, investigation reports of Bureau of Lands investigators, and a legislative act or statute. The applicant may also secure a certification from the Government that the lands applied for are alienable and disposable. We were even more specific in *Republic of the Phils. v. T.A.N. Properties, Inc.* as to what constitutes sufficient proof that a piece of land is alienable and disposable x x x. "**The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.**"

8. REMEDIAL LAW; ACTIONS; REVERSION; WARRANTED WHERE MISTAKE OR OVERSIGHT ATTENDED THE GRANT OF A HOMESTEAD PATENT OVER INALIENABLE FOREST LAND; CASE AT BAR.— We do not find evidence indicating that respondent Roxas committed fraud when he applied for homestead patent over the subject property. It does not appear that he knowingly and intentionally misrepresented in his application that the subject property was alienable and disposable agricultural land. Nonetheless, we recognized in *Republic of the Phils. v. Mangotara* that there are instances when we granted reversion for reasons other than fraud x x x. Apparently, in the case at bar, a mistake or oversight was committed on the part of respondent Roxas, as well as the Government, resulting in the grant of a homestead patent over inalienable forest land. Hence, it can be said that the subject property was unlawfully covered by Homestead Patent No. 111598 and OCT No. P-5885 in respondent Roxas's name, which entitles petitioner Republic to the cancellation of said patent and certificate of title and the reversion of the subject property to the public domain.

9. ID.; ID.; PRESCRIPTION; THE RIGHT OF THE STATE TO SEEK CANCELLATION OF A VOID PATENT/TITLE AND THE REVERSION OF THE SUBJECT PROPERTY IS IMPRESCRIPTIBLE.— It is true that once a homestead patent granted in accordance with the Public Land Act is registered pursuant to Act 496, otherwise known as The Land Registration Act, or Presidential Decree No. 1529, otherwise known as The Property Registration Decree, the certificate of title issued by virtue of said patent has the force and effect of a Torrens title issued under said registration laws. x x x Yet, we emphasize that our statement in x x x [*Ybañez v. Intermediate Appellate Court*] that a certificate of title issued pursuant to a homestead patent becomes indefeasible after one year, is subject to the proviso that "the land covered by said certificate is a **disposable public land** within the contemplation of the Public Land Law." As we have ruled herein, the subject property is part of the Matchwood Forest Reserve and is inalienable and not subject to disposition. Being contrary to the Public Land Law, Homestead Patent No. 111598 and OCT No. P-5885 issued in respondent Roxas's name are void; and the right of petitioner Republic to seek cancellation of such void patent/ title and reversion of the subject property to the State is imprescriptible.

10. ID.; ID.; PRINCIPLE OF ESTOPPEL; DOES NOT OPERATE AGAINST THE GOVERNMENT FOR THE ACT OF ITS AGENTS.— Neither can respondent Roxas successfully invoke the doctrine of estoppel against petitioner Republic. While it is true that respondent Roxas was granted Homestead Patent No. 111598 and OCT No. P-5885 only after undergoing appropriate administrative proceedings, the Government is not now estopped from questioning the validity of said homestead patent and certificate of title. It is, after all, hornbook law that the principle of estoppel does not operate against the Government for the act of its agents. And while there may be circumstances when equitable estoppel was applied against public authorities, *i.e.*, when the Government did not undertake any act to contest the title for an unreasonable length of time and the lot was already alienated to innocent buyers for value, such are not present in this case. More importantly, we cannot use the equitable principle of estoppel to defeat the law. Under the Public Land Act and Presidential Proclamation No. 678

dated February 5, 1941, the subject property is part of the Matchwood Forest Reserve which is inalienable and not subject to disposition.

APPEARANCES OF COUNSEL

The Solicitor General for public petitioner.

Siguion Reyna Montecillo & Ongsiako for Provident Tree Farms.

Edgardo C. Aceron for Vicente V. Roxas.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before Us are consolidated Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court: (1) G.R. No. 157988, filed by petitioner Republic of the Philippines (Republic), represented by the Bureau of Forest Development (BFD),[1] and (2) G.R. No. 160640, filed by petitioner Provident Tree Farms, Inc. (PTFI), both against respondents Vicente Roxas (Roxas) and the Register of Deeds (ROD) of Oriental Mindoro, assailing the joint Decision[2] dated April 21, 2003 of the Court of Appeals in CA-G.R. CV No. 44926, which, in turn, affirmed the Decision[3] dated February 10, 1994 of the Regional Trial Court (RTC), Branch 39 of Oriental Mindoro, in Civil Case No. R-3110. The RTC dismissed the Complaint for Cancellation of Title and/or Reversion filed by petitioner Republic against respondents Roxas and the ROD of Oriental Mindoro. Petitioner PTFI was an intervenor in Civil Case No. R-3110, as a lessee of petitioner Republic.

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[1] Now the Forest Management Bureau (FMB).

[2] *Rollo* (G.R. No. 157988), pp. 40-51; penned by Associate Justice Roberto A. Barrios with Associate Justices Josefina Guevara-Salonga and Lucas P. Bersamin (now Supreme Court Associate Justice), concurring.

[3] *Id*. at 52-55; penned by Judge Marciano T. Virola.

At the crux of the controversy is Lot No. 1-GSS-569 (subject property), located in San Teodoro, Oriental Mindoro, with an area of 6.2820 hectares, and covered by Original Certificate of Title (OCT) No. P-5885[4] issued on July 21, 1965 by respondent ROD in respondent Roxas's name.

The controversy arose from the following facts:

On February 5, 1941, then President Manuel L. Quezon (Quezon) issued Proclamation No. 678,[5] converting forest land measuring around 928 hectares, situated in San Teodoro, Oriental Mindoro, described on Bureau of Forestry Map No. F. R.-110, as Matchwood Forest Reserve. The Matchwood Forest Reserve was placed under the administration and control of the Bureau of Forestry, "which shall have the authority to regulate the use and occupancy of this reserve, and the cutting, collection and removal of timber and other forest products therein in accordance with the Forest Law and Regulations."[6] For the foregoing purpose, President Quezon withdrew the 928 hectares of forest land constituting the Matchwood Forest Reserve from entry, sale, or settlement, subject to private rights, if there be any.

Petitioner Republic, through the Department of Agriculture and Natural Resources (DANR), entered into Matchwood Plantation Lease Agreement No. 1 with petitioner PTFI on May 12, 1965, wherein petitioner Republic leased the entire Matchwood Forest Reserve to petitioner PTFI for a period of 25 years, which would expire on June 30, 1990.

In the meantime, respondent Roxas filed with the Bureau of Lands[7] on December 29, 1959 Homestead Application No. 9-5122, covering a parcel of land he initially identified as Lot No. 4, SA-22657, located at Paspasin, San Teodoro, Oriental Mindoro.

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[4] Records, pp. 61-62.

[5] *Id*. at 299-303; "Establishing as Matchwood Forest Reserve a Parcel of the Public Domain Situated in the Municipality of San Teodoro, Province and Island of Mindoro."

[6] *Id*. at 299.

[7] Now the Land Management Bureau (LMB).

Following the report and recommendation[8] of Land Inspector (LI) Domingo Q. Fernandez (Fernandez), Officer-in-Charge (OIC) Jesus B. Toledo (Toledo), for and by the authority of the Director of Lands, issued an Order dated September 20, 1961 amending respondent Roxas's Homestead Application No. 9-5122, to wit:

> It having been found upon investigation conducted by a representative of this Office that the land actually occupied by the applicant is Lot No. 1, SA-22657 Amd., and not Lot No. 4 of the same subdivision as applied for, and it appearing in the records of this Office that the land actually occupied is free from claims and conflicts, the above-noted application is hereby amended to cover Lot No. 1, SA-22657 Amd., and as thus amended, shall continue to be given due course.[9]

OIC Toledo subsequently issued another Order dated September 27, 1961 which approved respondent Roxas's Homestead Application No. 9-5122 and recorded the same as Homestead Entry No. 9-4143.[10] Thereafter, respondent Roxas executed a Notice of Intention to Make Final Proof, which was posted on September 23, 1963.[11] Respondent Roxas personally testified before LI Fernandez on October 25, 1963 to finally prove his residence and cultivation of the subject property.

In a letter dated July 12, 1965, Assistant District Forester Luis G. Dacanay (Dacanay), Bureau of Forestry, DANR, informed the District Land Officer of Calapan, Oriental Mindoro, that "the subject-area designated as Lot No. 1, Gss-569, has been verified to be within the alienable and disposable land of Project 18 of San Teodoro, Oriental Mindoro, per B.F. Map LC-1110 certified as such on September 30, 1934."[12] Assistant District Forester Dacanay further wrote in the same letter that "[t]he said land is no longer within the administrative jurisdiction of the Bureau of Forestry, so that, its disposition in accordance

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[8] Records, p. 52.

[9] *Id.* at 51.

[10] *Id.* at 53.

[11] *Id.* at 54.

[12] *Id.* at 57.

with the Public Land Law does not adversely affect forestry interest anymore."[13]

The Director of Lands issued Homestead Patent No. 111598[14] to respondent Roxas on July 19, 1965, on the basis of which, respondent ROD issued OCT No. P-5885 in respondent Roxas's name on even date,[15] with the following technical description of the subject property:

Lot No. 1, Gss-569

Beginning at a point marked "1" of Lot 1, Gss-569, being N. 32-15 W., 1396.63 m. from BBM No. 3, Cad-104, thence

S.36-38 W., 168.79m. to point 2; S.80-16 W., 46.02m. to point 3;
S.33-22 W., 63.40m. to point 4; S.77-05 W., 17.28m. to point 5;
N.52.06 W., 137.92m. to point 6; N.40-51 E., 417.50m. to point 7;
S.54-25 E., 115.36m. to point 8; S.24-20 W., 146.33m. to point 1;

point of beginning.

Containing an area of SIXTY[-]TWO THOUSAND EIGHT HUNDRED AND TWENTY (62,820) SQUARE METERS.

All points are marked on the ground as follows: points 3 & 4 by Stakes, and the rest by B.L. Cyl. Conc. Mons.

Bounded on the SE., along line 1-2 by Lot 2, Gss-569; on the S., along lines 2-3-4-5 by Road; on the SW., and NW., along lines 5-6-7 by Match Wood Forest Reservation; on the NE., along line 7-8 by Lot 4, Gss-569; and on the E., along line 8-1 by Lot 3, Gss-569.

Bearings true.

This lot was surveyed in accordance with law and existing regulations promulgated thereunder, by R.F. Javier, Public Land Surveyor, on October 5, 1959.

NOTE:

This lot is covered by H.A. No. 9-5122.[16]

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[13] *Id*.

[14] *Id*. at 59.

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

[16] *Id*. at 62.

On May 2, 1978, petitioner Republic, represented by the BFD, filed with the RTC a Complaint for Cancellation of Title and/or Reversion against respondents Roxas and the ROD over the subject property, docketed as Civil Case No. R-3110.[17]

Petitioner Republic alleged that the subject property was within the Matchwood Forest Reserve and could not be the subject of private appropriation and ownership; and possession of said property, no matter how long would not convert the same into private property. The Director of Lands could not dispose of the subject property under the provisions of Commonwealth Act No. 141, otherwise known as the Public Land Act, thus, OCT No. P-5885 issued in respondent Roxas's name was null and void *ab initio*. Petitioner Republic also averred that respondent Roxas acquired OCT No. P-5885 through fraud and misrepresentation, not only because the subject property was not capable of registration, but also because respondent Roxas was disqualified to acquire the same under the provisions of the Public Land Act, not having exercised acts of possession in the manner and for the length of time required by law. The Director of Lands was only misled into approving respondent Roxas's application for homestead patent. Petitioner Republic additionally mentioned that the subject property, as part of the Matchwood Forest Reserve, was included in the lease agreement of petitioner Republic with petitioner PTFI.

In his Answer, respondent Roxas admitted applying for and acquiring a homestead patent over the subject property. Respondent Roxas, however, denied that the subject property was within the Matchwood Forest Reserve. To the contrary, the subject property was part and parcel of the Paspasin Group Settlement Subdivision, SA-22657, and had been the subject of investigation in accordance with law, rules, and regulations, as established by documentary evidence, *viz*:

1. LI Fernandez's letter dated February 28, 1961 addressed to the Director of Lands, Manila, reporting that Roxas was actually applying for Lot No. 1, not Lot No. 4, of the Paspasin Group

[17] *Id*. at 1-8.

Settlement Subdivision, SA-22657 Amd., and recommending that Roxas's application be corrected accordingly;[18]

2. OIC Toledo's Order dated September 27, 1961 approving Roxas's application for homestead patent;[19]

3. Roxas's Notice of Intention to Make Final Proof, together with his Affidavit that the said Notice was accordingly posted;[20]

4. Roxas's Final Proof Homestead Testimony of Applicant;[21]

5. Assistant District Forester Dacanay's letter dated July 12, 1965 to the District Land Officer of Calapan, Oriental Mindoro, verifying that Lot No. 1, GSS-569, was alienable and disposable;[22]

6. Blue Print Plan of Land Group Settlement Survey as surveyed for the Republic;[23]

7. Order dated July 19, 1965 of the Director of Lands approving Roxas's application for patent;[24]

8. The unsigned letter dated July 19, 1965 of Gabriel Sansano, Chief, Records Division, Bureau of Lands, to the ROD of Calapan, Oriental Mindoro, transmitting Roxas's Homestead Patent No. 111598 for the registration and issuance of Owner's Duplicate Certificate of Title in accordance with Section 122, Act No. 496;[25] and

9. OCT No. P-5885 in Roxas's name.[26]

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[18] *Id*. at 52; Exhibit "2".

[19] *Id*. at 53; Exhibit "3".

[20] *Id*. at 54-55; Exhibits "4" and "5".

[21] *Id*. at 56; Exhibit "6".

[22] *Id*. at 57; Exhibit "7".

[23] *Id*. at 58; Exhibit "8".

[24] *Id*. at 59; Exhibit "9".

[25] *Id*. at 60; Exhibit "10".

[26] *Id*. at 61-62; Exhibit "11".

Respondent Roxas maintained that OCT No. P-5885 had been legally and validly issued to him and that he had been in actual, open, and continuous possession of the subject property in the concept of an owner since 1959.

Respondent Roxas then prayed that judgment be rendered dismissing the Complaint of petitioner Republic; awarding damages to him in the amount of ₱500.00 and attorney's fees in the amount of ₱2,000.00; and declaring OCT No. P-5885 free from all claims and conflicts.

Petitioner PTFI eventually filed a Complaint for Intervention on the ground that it was leasing the entire Matchwood Forest Reserve from petitioner Republic under Matchwood Plantation Lease Agreement No. 1 for a period of 25 years that would expire on June 30, 1990.[27]

The RTC granted the intervention of petitioner PTFI in an Order dated August 10, 1979.[28]

Subsequently, during the pendency of Civil Case No. R-3110 before the RTC, and considering the expiration of Lease Agreement No. 1 in 1990, petitioner PTFI entered into an Industrial Tree Plantation Lease Agreement[29] dated November 11, 1982 and Industrial Forest Plantation Management Agreement[30] dated November 24, 1982 with petitioner Republic, which extended the lease of petitioner PTFI of the Matchwood Forest Reserve until July 7, 2007.

To determine whether or not the subject property was within the Matchwood Forest Reserve, the RTC issued an Order dated June 23, 1983 creating a committee to conduct a relocation survey. The committee was composed of three competent government officials: (1) the District Land Officer of Calapan, Oriental Mindoro, as chairman; (2) Geodetic Engineer (Engr.)

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[27] *Id.* at 68-70.

[28] *Id.* at 86.

[29] *Rollo* (G.R. No. 160640), pp. 119-124.

[30] *Id.* at 112-118.

Narciso Mulles (Mulles) of the BFD; and (3) Geodetic Engineer Cresente Mendoza (Mendoza) of the Bureau of Lands, Calapan, Oriental Mindoro.[31] However, Engr. Mulles was assigned to Region V, Naga City, so no relocation survey was conducted. Thus, the RTC issued another Order dated March 15, 1984, creating a second relocation survey committee composed of District Forester Gregorio O. Nisperos (Nisperos) as team leader, with representatives of the District Land Office, respondent Roxas, and petitioner PTFI as members.[32]

The committee submitted to the RTC a Memorandum dated May 11, 1984, prepared by Engr. Mendoza, the representative of the Bureau of Lands, and countersigned by District Forester Nisperos, the team leader, presenting the results of the ocular inspection/survey work conducted by the committee from April 23 to 29, 1984 and the recommendations of the committee. Pertinent parts of the Memorandum read:

> REMARKS: [W]e are submitting herewith the result of our ocular inspection/survey work undertaken during the period from April 23 to 29, 1984 in the presence of Engineer Cresente M. Mendoza, Bureau of Lands (B.L.) representative, Mr. Reynaldo Labay, Bureau of Forest Development (BFD) representative and Mr. Vicente Roxas, the defendant. Findings and other related informations gathered during the survey disclosed the following:
>
> 1. The titled land property claimed by Mr. Vicente Roxas (defendant) situated at Barangay Paspasin, San Teodoro, Oriental Mindoro which is subject of the complaint and inquiry covering an area of about 6.282 hectares is located inside the Matchwood Forest Reserve No. 1 under Presidential Proclamation No. 678 dated February 5, 1941 per F.R. 110 and leased to Provident Tree Farms, Inc.
>
> 2. The whole land area falls inside said forest reserve reckoning from established BFFR corners (BFFR Corner Nos. 45, 46 & 47-A) as shown in the attached sketch/map plan. The issuance of the Original Certificate of Title

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[31] Records, p. 197.

[32] *Id.* at 214.

> to herein defendant inside a proclaimed Forest Reserve would not warrant nor justify the validity of legitimate and/or rightful ownership over said titled land property considering the present status of the subject land area under question, therefore it could not complete its right under the provisions of the Public Land Law.
>
> ACTION
> RECOMMENDED: In view of the above-mentioned facts gathered by the team and after judicious scrutiny of other informations surrounding the subject case, it is hereby recommended that the Original Certificate of Title issued to Mr. Vicente Roxas covering a land area located inside the Matchwood Forest Reserve be annulled and the retention of said area for which they have been reserved. Should the Honorable Court needs some clarification on the survey conducted, it is recommended further that Engineer Cresente M. Mendoza of the Bureau of Lands, Calapan be sub-phoenaed (sic).[33]

Petitioner Roxas contested the results of the relocation survey conducted by the committee, hence, in an Order dated August 6, 1984, the RTC directed the Clerk of Court to issue a subpoena to committee members Engr. Mendoza of the Bureau of Lands and Mr. Reynaldo Labay (Labay) of the BFD to appear before the court; and a subpoena *duces tecum* to the District Land Officer or his duly authorized representative to bring and produce pertinent papers relative to cadastral survey 104 in respondent Roxas's name.[34]

Engr. Mendoza attested that pursuant to the RTC Order dated March 15, 1984, he conducted a relocation survey of the subject property on April 23-29, 1984. After the said survey, he personally prepared the Plan of Lots 1 (owned by respondent Roxas), 4 (owned by Esteban Paroninog), and 5 (no registered owner, adjacent to Lot 4), GSS-569, as relocated for *Vicente Roxas v. Republic of the Philippines (BFD)*. In the Plan, Engr. Mendoza marked the boundary between the forest

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

[34] *Id.* at 233.

zone and the released area by drawing a line from BFFR-45 to BFFR-46 to BFFR-47-A, which showed that Lot 1 owned by respondent Roxas was found inside the forest zone.[35]

On cross-examination, Engr. Mendoza acknowledged that even before the committee conducted the relocation survey, he already knew that the subject property was part of the Matchwood Forest Reserve. During the relocation survey, Engr. Mendoza did not take into consideration the total area of the reserve since he had no idea as to the same. He merely relocated BFFR-45, BFFR-46, and BFFR-47-A. Per record of the BFD, the line drawn from BFFR-45 until BFFR-47-A was the boundary line between the forest zone and the released areas. Engr. Mendoza was then asked to compare the Plan he prepared based on the relocation survey conducted by the committee on April 23-29, 1984 *vis-à-vis* the Plan of Land Group Settlement Survey, GSS-569, prepared by Engr. Restituto Javier (Javier) and approved (for the Director of Lands) by Acting Regional Land Director Narciso Villapando (Villapando), as a result of the survey conducted on September 21-22 and October 5-19, 1959. Engr. Mendoza conceded that Lot 1 indicated in both plans in respondent Roxas's name were the same,[36] but in the Plan of the Land Group Settlement Survey, GSS-569, the boundary line separating the forest reserve from the released areas was just above Lots 1, 4, and 5.

During redirect examination, Engr. Mendoza explained that he came upon the conclusion that the Plan of the Land Group Settlement Survey, GSS-569, was the approved plan because it was signed by Acting Regional Land Director Villapando. He further avowed that points BFFR-45, BFFR-46, and BFFR-47-A were still intact during the relocation survey by the committee, marked by monuments which he believed were previously placed by the people from the BFD.[37]

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[35] TSN, March 1, 1993, pp. 13-16.

[36] *Id*. at 19-24.

[37] *Id*. at 27-31.

Daniel de los Santos (De los Santos), a Geodetic Engineer from the Department of Environment and Natural Resources (DENR), Regional Office IV, also testified for petitioners. According to Engr. De los Santos, his supervisor showed him OCT No. P-5885 and instructed him to prepare a plotting on the land classification map. Engr. De los Santos presented two maps before the RTC, both coming from the National Mapping Resources Administration: (1) the Land Classification, Province of Oriental Mindoro LC-1110 dated August 30, 1934 (marked as Exhibit "J") and (2) the Land Classification, Province of Oriental Mindoro LC-2244 dated December 15, 1958 (marked as Exhibit "K"). Engr. De los Santos demonstrated table plotting on both land classification maps using the technical description of the subject property as appearing on OCT No. P-5885, which showed that the subject property fell within the forest reserve.[38] When cross-examined, Engr. De los Santos reiterated that he based his plotting on the technical description of the subject property as it appeared on OCT No. P-5885. He did not consider Lot No. 1 of GSS-569 in his plotting because he was not aware of the same.

Respondent Roxas himself testified for the defense. Respondent Roxas recounted that he originally joined the Philippine Army in 1941, but he joined the guerilla movement in Oriental Mindoro during the Japanese occupation, and thereafter, he re-enlisted with the United States Armed Forces in the Far East (USAFFE). Respondent Roxas was first struck with the pleasant appearance of the subject property while he was still in the guerilla movement, and when he retired from the USAFFE in 1946, he cleaned the said property, which was still woody at that time. Respondent Roxas built a nipa hut on the subject property where he and his wife, as well as their children, had resided, and planted the same with *palay* and bananas to sustain his family. Sometime in 1959, a certain Luz Alegre filed a sales application for the subject property occupied by respondent Roxas and adjoining parcels of land occupied by

[38] TSN, March 22, 1993, pp. 2-23.

20 other residents. Respondent Roxas and the other residents were spurred to petition the Bureau of Lands to have their respective properties surveyed. It was then that respondent Roxas came to know that he had developed the subject property to the extent of 6.2820 hectares. After the survey of the subject property, respondent Roxas began planting thereon about 700 coconut trees, 500 calamansi trees, 200 rambutan trees, 50 sinturis trees, and 30 cacao trees, plus an unspecified number of other trees such as abaca, banana, and mango.[39]

The RTC rendered a Decision on February 10, 1994, in respondent Roxas's favor. The RTC declared that petitioner PTFI had no right whatsoever to the subject property since the latter's lease agreement with petitioner Republic had already expired on June 30, 1990. It also held that the preponderance of evidence showed that the subject property was outside the forest reserve and part of the alienable and disposable lands of the public domain; and that there was no proof at all of fraud or misrepresentation on respondent Roxas's part in procuring OCT No. P-5885. In the end, the RTC decreed:

> ACCORDINGLY, judgment is hereby rendered:
>
> 1. Dismissing the complaint; and
>
> 2. Ordering the plaintiff Republic of the Philippines (Bureau of Forest Development) and plaintiff intervenor Provident Tree Farms, to pay jointly and severally defendant Vicente Roxas ₱25,000.00 for and as attorney's fees and expenses of litigation and the costs of suit.[40]

Unsatisfied with the foregoing RTC Decision, petitioners jointly filed an appeal before the Court of Appeals, docketed as CA-G.R. CV No. 44926.

In its Decision dated April 21, 2003, the Court of Appeals sustained the appreciation of evidence by the RTC, thus:

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[39] TSN, October 5, 1993, pp. 11-22.

[40] *Rollo* (G.R. No. 157988), p. 55.

Before Roxas could be issued his corresponding homestead patent, the Bureau of Forestry of the Department of Environment and Natural Resources declared that:

> "I have the honor to inform you that the subject area designated as Lot No. 1 Gss-569, has been verified to be within the alienable and disposable land of Project No. 18 of San Teodoro, Oriental Mindoro per B.F. LC-110 certified as such on September 30, 1934.
>
> The said land is no longer within the administrative jurisdiction of the Bureau of Forestry, so that, its disposition in accordance with the Public Land Law does not adversely affect forestry interest anymore."

Not only does this letter prove that Lot 1-GSS-569, the area occupied and titled in the name of Roxas, is alienable and disposable but so does the 1959 Survey Plan, which with its dotted lines confirm that the land of Roxas is outside the Matchwood Forest Reserve.

Even the 1984 Relocation Survey conducted by Cresente Mendoza on the subject property showed it to be on the same location. x x x.

x x x x x x x x x

The court *a quo* was correct when it did not give credence to the testimony of [Cresente] Mendoza that the subject lot is within the Matchwood Forest Reserve area because despite having performed a relocation survey in the area, he admitted that he does not know the actual area of the forest reserve. x x x.

x x x x x x x x x

And though another witness, Geodetic Engineer Daniel de los Santos, did a table plotting of the two Land Classification Maps, it appears that the subject Lot 1-GSS-569 was not actually included in the plotting. x x x.[41] (Citations omitted.)

The Court of Appeals also ruled that respondent Roxas's compliance with substantive and procedural requirements for acquisition of public lands belied the allegation that respondent Roxas obtained grant and title over the subject property through fraud and misrepresentation. The appellate court further

[41] *Id*. at 46-49.

pronounced that once a patent had been registered and the corresponding certificate of title had been issued, the land covered by them ceased to be part of the public domain and became private property; and the Torrens title issued pursuant to the patent became indefeasible upon the expiration of one year from the date of the issuance of the patent. The Court of Appeals, however, disagreed with the RTC in awarding attorney's fees, expenses of litigation, and costs of suit to respondent Roxas, finding no basis for such awards.

Ultimately, the Court of Appeals disposed of CA-G.R. CV No. 44926 in this wise:

> **WHEREFORE**, except for the award of attorney's fees, expenses of litigation and costs of suit which are hereby **DELETED**, the appealed Decision is otherwise **AFFIRMED**.[42]

Petitioner Republic, through the BFD, directly filed its Petition for Review on *Certiorari* before us, docketed as G.R. No. 157988. Petitioner Republic assigned the following errors on the part of the Court of Appeals:

I

THE COURT OF APPEALS ERRED IN DECLARING THAT LOT NO. 1, GSS-569 IS NOT PART OF THE MATCHWOOD FOREST RESERVE.

II

THE COURT OF APPEALS ERRED IN DISREGARDING THE TESTIMONY OF ENGINEER CRESENCIO MENDOZA THAT THE SUBJECT LOT IS WITHIN THE MATCHWOOD FOREST RESERVE AREA ON THE SOLE BASIS OF HIS ADMISSION THAT HE DID NOT KNOW THE ACTUAL AREA OF THE FOREST RESERVE.

III

THE COURT OF APPEALS ERRED IN NOT FINDING THAT PRIVATE RESPONDENT PROCURED HOMESTEAD PATENT NO. 111598 AND ORIGINAL CERTIFICATE OF TITLE NO. P-5885 THROUGH FRAUD AND/OR MISREPRESENTATION.

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[42] *Id.* at 51.

IV

THE COURT OF APEPALS ERRED IN CONCLUDING THAT PRESCRIPTION IS APPLICABLE TO THIS CASE.[43]

Meanwhile, petitioner PTFI first filed a Motion for Reconsideration[44] with the Court of Appeals. After the appellate court denied said Motion in a Resolution dated October 30, 2003,[45] petitioner PTFI likewise sought recourse from us through a Petition for Review on *Certiorari*, docketed as G.R. No. 160640, assailing the Court of Appeals judgment on the following grounds:

I

THE COURT OF APPEALS' REFUSAL TO ACCORD CREDENCE TO THE TESTIMONIES OF EXPERTS IS CONTRARY TO LAW AND JURISPRUDENCE.

II

THE COURT OF APPEALS ACTED CONTRARY TO LAW AND JURISPRUDENCE ON THE INALIENABILITY OF PUBLIC LANDS WHEN IT AFFIRMED THE DECISION OF THE TRIAL COURT.

III

THE COURT OF APPEALS CONTRAVENED EXISTING LAW AND JURISPRUDENCE WHEN IT CONCLUDED THAT THE INSTANT ACTION IS BARRED BY PRESCRIPTION AND THE PRINCIPLE OF INDEFEASIBILITY OF TITLE.[46]

In a Resolution[47] dated December 8, 2004, we consolidated G.R. No. 160640 with G.R. No. 157988.

Sifting through the arguments raised by the parties, we identify three fundamental issues for our resolution, particularly: (1)

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

[44] CA *rollo*, pp. 122-141.

[45] *Id.* at 198-199.

[46] *Rollo* (G.R. No. 160640), pp. 22-23.

[47] *Id.* at 236.

whether the subject property is forest land or alienable and disposable agricultural land; (2) whether respondent Roxas procured OCT No. P-5885 through fraud and misrepresentation; and (3) whether petitioner Republic is barred by estoppel and prescription from seeking the cancellation of OCT No. P-5885 and/or reversion of the subject property.

Review of the findings of fact of the RTC and Court of Appeals is proper in this case

Before delving into the merits, the propriety of these Petitions for Review under Rule 45 of the Rules of Court should first be addressed. We note at the outset that except for the third issue on estoppel and prescription, the other two issues involve questions of fact that necessitate a review of the evidence on record. In *Decaleng v. Bishop of the Missionary District of the Philippine Islands of Protestant Episcopal Church in the United States of America*,[48] we presented the general rule, as well as the exceptions, to the same:

> Prefatorily, it is already a well-established rule that the Court, in the exercise of its power of review under Rule 45 of the Rules of Court, is not a trier of facts and does not normally embark on a re-examination of the evidence presented by the contending parties during the trial of the case, considering that the findings of facts of the Court of Appeals are conclusive and binding on the Court. This rule, however, admits of exceptions as recognized by jurisprudence, to wit:
>
> > (1) [W]hen the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific

[48] G.R. No. 171209, June 27, 2012, 675 SCRA 145, 160-161.

> 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 Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (Citations omitted.)

The case at bar falls under several exceptions, *i.e.*, the inference made is manifestly mistaken, absurd, or impossible; the judgment is based on misapprehension of facts; and the findings of fact are contradicted by the evidence on record. As a result, we must return to the evidence submitted by the parties during trial and make our own evaluation of the same.

Subject property is within the Matchwood Forest Reserve and, thus, inalienable and not subject to disposition.

Under the Regalian doctrine, which is embodied in Article XII, Section 2 of our Constitution, all lands of the public domain belong to the State, which is the source of any asserted right to any ownership of land. All lands not appearing to be clearly within private ownership are presumed to belong to the State. Accordingly, public lands not shown to have been reclassified or released as alienable agricultural land or alienated to a private person by the State remain part of the inalienable public domain.[49]

Commonwealth Act No. 141, also known as the Public Land Act, as amended by Presidential Decree No. 1073, remains to this day the existing general law governing the classification and disposition of lands of the public domain, other than timber and mineral lands. The following provisions under Title I, Chapter II of the Public Land Act, as amended, is very specific on how lands of the public domain become alienable or disposable:

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[49] *Republic of the Phils. v. Tri-Plus Corporation*, 534 Phil. 181, 194 (2006).

SEC. 6. The **President, upon the recommendation of the Secretary of Agriculture and Natural Resources,** shall from time to time classify the lands of the public domain into:

(a) Alienable or disposable,

(b) Timber, and

(c) Mineral lands,

and may at any time and in a like manner transfer such lands from one class to another, for the purposes of their administration and disposition.

SEC. 7. For the purposes of the administration and disposition of alienable or disposable public lands, the **Batasang Pambansa or the President, upon recommendation by the Secretary of Natural Resources**, may from time to time declare what public lands are open to disposition or concession under this Act.

x x x x x x x x x

SEC. 8. **Only those lands shall be declared open to disposition or concession which have been officially delimited and classified and, when practicable, surveyed, and which have not been reserved for public or quasi-public uses, nor appropriated by the Government, nor in any manner become private property, nor those on which a private right authorized and recognized by this Act or any other valid law may be claimed, or which, having been reserved or appropriated, have ceased to be so.** However, the President may, for reasons of public interest, declare lands of the public domain open to disposition before the same have had their boundaries established or been surveyed, or may, for the same reason, suspend their concession or disposition until they are again declared open to concession or disposition by proclamation duly published or by Act of the Congress.

SEC. 9. For the purpose of their administration and disposition, the lands of the public domain alienable or open to disposition shall be classified, according to the use or purposes to which such lands are destined, as follows:

(a) Agricultural;

(b) Residential, commercial, industrial, or for similar productive purposes;

(c) Educational, charitable, or other similar purposes; and

(d) Reservations for townsites and for public and quasi-public uses.

The President, upon recommendation by the Secretary of Agriculture and Natural Resources, shall from time to time make the classifications provided for in this section, and may, at any time and in a similar manner, transfer lands from one class to another. (Emphases ours.)

By virtue of Presidential Decree No. 705, otherwise known as the Revised Forestry Code,[50] the President delegated to the DENR Secretary the power to determine which of the unclassified lands of the public domain are (1) needed for forest purposes and declare them as permanent forest to form part of the forest reserves; and (2) not needed for forest purposes and declare them as alienable and disposable lands.[51]

Per the Public Land Act, alienable and disposable public lands suitable for agricultural purposes can be disposed of only as follows:

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[50] Issued on May 19, 1975.

[51] Section 13 of the Revised Forestry Code, pertaining to the system of land classification, provides that:

The Department Head shall study, devise, determine and prescribe the criteria, guidelines and methods for the proper and accurate classification and survey of all lands of the public domain into agricultural, industrial or commercial, residential, resettlement, mineral, timber or forest, and grazing lands, and into such other classes as now or may hereafter be provided by law, rules and regulations.

In the meantime, the Department head shall simplify through inter-bureau action the present system of determining which of the unclassified lands of the public domain are needed for forest purposes and declare them as permanent forest to form part of the forest reserves. He shall declare those classified and determined not to be needed for forest purposes as alienable and disposable lands, the administrative jurisdiction and management of which shall be transferred to the Lands Management Bureau; *Provided*, That mangrove and other swamps not needed for shore protection and suitable for fishpond purposes shall be released to, and be placed under the administrative jurisdiction and management of, the Bureau of Fisheries and Aquatic Resources. Those still to be classified under the present system shall continue to remain as part of the public forest.

1. For homestead settlement;
2. By sale;
3. By lease; and
4. By confirmation of imperfect or incomplete titles:

(a) By judicial legalization;

(b) By administrative legalization (free patent).[52]

Homestead over alienable and disposable public agricultural land is granted after compliance by an applicant with the conditions and requirements laid down under Title II, Chapter IV of the Public Land Act, the most basic of which are quoted below:

SEC. 12. Any citizen of the Philippines over the age of eighteen years, or the head of a family, who does not own more than twenty-four hectares of land in the Philippines or has not had the benefit of any gratuitous allotment of more than twenty-four hectares of land since the occupation of the Philippines by the United States, may enter a homestead of not exceeding twenty-four hectares of agricultural land of the public domain.

SEC. 13. Upon the filing of an application for a homestead, the Director of Lands, if he finds that the application should be approved, shall do so and authorize the applicant to take possession of the land upon the payment of five pesos, Philippine currency, as entry fee. Within six months from and after the date of the approval of the application, the applicant shall begin to work the homestead, otherwise he shall lose his prior right to the land.

SEC. 14. No certificate shall be given or patent issued for the land applied for until at least one-fifth of the land has been improved and cultivated. The period within which the land shall be cultivated shall not be less than one nor more than five years, from and after the date of the approval of the application. The applicant shall, within the said period, notify the Director of Lands as soon as he is ready to acquire the title. If at the date of such notice, the applicant shall prove to the satisfaction of the Director of Lands, that he has resided continuously for at least one year in the municipality in which the

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[52] Title II, Chapter III, Section 11.

land is located, or in a municipality adjacent to the same and has cultivated at least one-fifth of the land continuously since the approval of the application, and shall make affidavit that no part of said land has been alienated or encumbered, and that he has complied with all the requirements of this Act, then, upon the payment of five pesos, as final fee, he shall be entitled to a patent.

It is clear under the law that only alienable and disposable agricultural lands of the public domain can be acquired by homestead.

In the instant case, respondent Roxas applied for and was granted Homestead Patent No. 111598 for the subject property, pursuant to which, he acquired OCT No. P-5885 in his name. The problem, however, is that the subject property is not alienable and disposable agricultural land to begin with.

The burden of proof in overcoming the presumption of State ownership of lands of the public domain is on the person applying for registration, or in this case, for homestead patent. The applicant must show that the land subject of the application is alienable or disposable.[53] It must be stressed that **incontrovertible evidence** must be presented to establish that the land subject of the application is alienable or disposable.[54]

The Court of Appeals, in its assailed Decision, concluded that the subject property is indeed alienable and disposable based on the (1) Letter dated July 12, 1965 of Assistant District Forester Dacanay to the District Land Officer of Calapan, Oriental Mindoro informing the latter that Lot 1, GSS-569 was verified to be within the alienable and disposable land of Project 18 of San Teodoro, Oriental Mindoro per B.F. Map LC-1110; and (2) the Blue Print Plan of the Land Group Settlement Survey, GSS-569, showing that the subject property lies beyond the Matchwood Forest Reserve. But these are hardly the kind of proof required by law.

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[53] *Director of Lands v. Intermediate Appellate Court*, G.R. No. 73246, March 2, 1993, 219 SCRA 339, 347.

[54] *Republic of the Phils. v. Tri-Plus Corporation*, *supra* note 49 at 194.

As we pronounced in *Republic of the Phils. v. Tri-Plus Corporation*,[55] to prove that the land subject of an application for registration is alienable, an applicant must establish the existence of a **positive act of the Government** such as a presidential proclamation or an executive order, an administrative action, investigation reports of Bureau of Lands investigators, and a legislative act or statute. The applicant may also secure a certification from the Government that the lands applied for are alienable and disposable.

We were even more specific in *Republic of the Phils. v. T.A.N. Properties, Inc.*[56] as to what constitutes sufficient proof that a piece of land is alienable and disposable, to quote:

> Further, it is not enough for the PENRO or CENRO to certify that a land is alienable and disposable. **The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.** These facts must be established to prove that the land is alienable and disposable. Respondent failed to do so because the certifications presented by respondent do not, by themselves, prove that the land is alienable and disposable.
>
> Only Torres, respondent's Operations Manager, identified the certifications submitted by respondent. The government officials who issued the certifications were not presented before the trial court to testify on their contents. The trial court should not have accepted the contents of the certifications as proof of the facts stated therein. Even if the certifications are presumed duly issued and admissible in evidence, they have no probative value in establishing that the land is alienable and disposable. (Emphasis ours.)

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[55] *Id.* at 194-195.

[56] 578 Phil. 441, 452-453 (2008).

Assistant District Forester Dacanay's Letter dated July 12, 1965 is a mere correspondence; it is not even a certification. Coupled with the fact that Assistant District Forester Dacanay did not personally testify before the RTC as to the truth of the contents of his Letter dated July 12, 1965, said letter carries little evidentiary weight. The Land Group Settlement Survey, GSS-569, prepared by Engr. Javier and approved (for the Director of Lands) by Acting Regional Land Director Villapando, also does not constitute incontrovertible evidence that the subject property is alienable and disposable agricultural land of the public domain. We pointed out in *Republic of the Phils. v. Court of Appeals*[57] that:

> There is no factual basis for the conclusion of the appellate court that the property in question was no longer part of the public land when the Government through the Director of Lands approved on March 6, 1925, the survey plan (Psu-43639) for Salming Piraso. The existence of a sketch plan of real property even if approved by the Bureau of Lands is no proof in itself of ownership of the land covered by the plan. (*Gimeno v. Court of Appeals*, 80 SCRA 623). The fact that a claimant or a possessor has a sketch plan or a survey map prepared for a parcel of land which forms part of the country's forest reserves does not convert such land into alienable land, much less private property. Assuming that a public officer erroneously approves the sketch plan, such approval is null and void. There must first be a formal Government declaration that the forest land has been re-classified into alienable and disposable agricultural land which may then be acquired by private persons in accordance with the various modes of acquiring public agricultural lands.

In stark contrast, more than just the presumption under the Regalian doctrine, there is actually Presidential Proclamation No. 678 dated February 5, 1941, declaring around 928 hectares of forest land as Matchwood Forest Reserve, which had been withdrawn from entry, sale, or settlement. Two geodetic engineers, namely, (1) Engr. Mendoza, who conducted an ocular inspection/relocation survey in 1984 upon orders of the RTC; and (2) Engr. De los Santos, who performed table plotting of

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[57] 238 Phil. 475, 486-487 (1987).

the technical description of the subject property on land classification maps, testified before the RTC that the subject property is within the Matchwood Forest Reserve.

Both the RTC and the Court of Appeals erred in brushing aside the testimonies of the two engineers on very tenuous grounds. Engr. Mendoza need not know the entire area of the Matchwood Forest Reserve, such fact being insignificant to the issue at hand. What Engr. Mendoza only needed to do, which he did, was to relocate on the ground the boundary lines of the Matchwood Forest Reserve which are nearest the subject property, *i.e.*, from points BFFR-45 to BFFR-46 to BFFR-47-A, and from there, determine whether the subject property is on the side of the forest reserve or the released area. It would similarly be unnecessary for Engr. De los Santos to conduct table plotting of Lot 1 of GSS-569 on the land classification maps. Engr. De los Santos already plotted the subject property on the land classification maps based on the technical description of said property as it stated on OCT No. P-5885. Thus, there can be no doubt that the property Engr. De los Santos plotted on the land classification maps is exactly the property awarded and registered in the name of respondent Roxas. It bears to stress that both geodetic engineers testified on matters within their competence and expertise, and other than the baseless doubts of the RTC and the Court of Appeals, there is no evidence on record to refute said witnesses' testimonies.

In sum, the subject property is within the Matchwood Forest Reserve and, therefore, inalienable and not subject to disposition. Respondent Roxas could not have validly acquired a homestead patent and certificate of title for the same.

Although there is no evidence of fraud by respondent Roxas, there is still reason to cancel OCT No. P-5885 and revert the subject property to the State.

We do not find evidence indicating that respondent Roxas committed fraud when he applied for homestead patent over

the subject property. It does not appear that he knowingly and intentionally misrepresented in his application that the subject property was alienable and disposable agricultural land. Nonetheless, we recognized in *Republic of the Phils. v. Mangotara*[58] that there are instances when we granted reversion for reasons other than fraud:

> *Reversion* is an action where the ultimate relief sought is to revert the land back to the government under the Regalian doctrine. Considering that the land subject of the action originated from a grant by the government, its cancellation is a matter between the grantor and the grantee. **In *Estate of the Late Jesus S. Yujuico v. Republic* (*Yujuico case*), reversion was defined as an action which seeks to restore public land fraudulently awarded and disposed of to private individuals or corporations to the mass of public domain. It bears to point out, though, that the Court also allowed the resort by the Government to actions for reversion to cancel titles that were void for reasons other than fraud, *i.e.*, violation by the grantee of a patent of the conditions imposed by law; and lack of jurisdiction of the Director of Lands to grant a patent covering inalienable forest land or portion of a river, even when such grant was made through mere oversight.** In *Republic v. Guerrero*, the Court gave a more general statement that the remedy of reversion can be availed of "only in cases of fraudulent or unlawful inclusion of the land in patents or certificates of title." (Emphasis ours, citations omitted.)

Apparently, in the case at bar, a mistake or oversight was committed on the part of respondent Roxas, as well as the Government, resulting in the grant of a homestead patent over inalienable forest land. Hence, it can be said that the subject property was unlawfully covered by Homestead Patent No. 111598 and OCT No. P-5885 in respondent Roxas's name, which entitles petitioner Republic to the cancellation of said patent and certificate of title and the reversion of the subject property to the public domain.

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[58] G.R. No. 170375, July 7, 2010, 624 SCRA 360, 473-474.

Petitioner Republic is not barred by prescription and estoppel from seeking the cancellation of respondent Roxas's title and reversion of the subject property.

It is true that once a homestead patent granted in accordance with the Public Land Act is registered pursuant to Act 496, otherwise known as The Land Registration Act, or Presidential Decree No. 1529, otherwise known as The Property Registration Decree, the certificate of title issued by virtue of said patent has the force and effect of a Torrens title issued under said registration laws.[59] We expounded in *Ybañez v. Intermediate Appellate Court*[60] that:

> The certificate of title serves as evidence of an indefeasible title to the property in favor of the person whose name appears therein. After the expiration of the one (1) year period from the issuance of the decree of registration upon which it is based, it becomes incontrovertible. The settled rule is that a decree of registration and the certificate of title issued pursuant thereto may be attacked on the ground of actual fraud within one (1) year from the date of its entry and such an attack must be direct and not by a collateral proceeding. The validity of the certificate of title in this regard can be threshed out only in an action expressly filed for the purpose.

It must be emphasized that a certificate of title issued under an administrative proceeding pursuant to a homestead patent, as in the instant case, is as indefeasible as a certificate of title issued under a judicial registration proceeding, provided the land covered by said certificate is a disposable public land within the contemplation of the Public Land Law.

There is no specific provision in the Public Land Law (C.A. No. 141, as amended) or the Land Registration Act (Act 496), now P.D. 1529, fixing the one (1) year period within which the public land patent is open to review on the ground of actual fraud as in Section 38 of the Land Registration Act, now Section 32 of P.D. 1529, and clothing a public land patent certificate of title with indefeasibility.

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[59] *Lopez v. Court of Appeals*, 251 Phil. 249, 254 (1989).

[60] G.R. No. 68291, March 6, 1991, 194 SCRA 743, 748-750.

Nevertheless, the pertinent pronouncements in the aforecited cases clearly reveal that **Section 38 of the Land Registration Act, now Section 32 of P.D. 1529 was applied by implication by this Court to the patent issued by the Director of Lands duly approved by the Secretary of Natural Resources, under the signature of the President of the Philippines in accordance with law.** The date of issuance of the patent, therefore, corresponds to the date of the issuance of the decree in ordinary registration cases because the decree finally awards the land applied for registration to the party entitled to it, and the patent issued by the Director of Lands equally and finally grants, awards, and conveys the land applied for to the applicant. This, to our mind, is in consonance with the intent and spirit of the homestead laws, *i.e.* conservation of a family home, and to encourage the settlement, residence and cultivation and improvement of the lands of the public domain. If the title to the land grant in favor of the homesteader would be subjected to inquiry, contest and decision after it has been given by the Government thru the process of proceedings in accordance with the Public Land Law, there would arise uncertainty, confusion and suspicion on the government's system of distributing public agricultural lands pursuant to the "Land for the Landless" policy of the State. (Emphases ours, citations omitted.)

Yet, we emphasize that our statement in the aforequoted case that a certificate of title issued pursuant to a homestead patent becomes indefeasible after one year, is subject to the proviso that "the land covered by said certificate is a **disposable public land** within the contemplation of the Public Land Law." As we have ruled herein, the subject property is part of the Matchwood Forest Reserve and is inalienable and not subject to disposition. Being contrary to the Public Land Law, Homestead Patent No. 111598 and OCT No. P-5885 issued in respondent Roxas's name are void; and the right of petitioner Republic to seek cancellation of such void patent/title and reversion of the subject property to the State is imprescriptible.

We have addressed the same questions on indefeasibility of title and prescription in *Mangotara*,[61] thus:

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[61] *Republic of the Phils. v. Mangotara*, *supra* note 58 at 488-490.

It is evident from the foregoing jurisprudence that despite the lapse of one year from the entry of a decree of registration/certificate of title, the State, through the Solicitor General, may still institute an action for reversion when said decree/certificate was acquired by fraud or misrepresentation. Indefeasibility of a title does not attach to titles secured by fraud and misrepresentation. Well-settled is the doctrine that the registration of a patent under the Torrens system does not by itself vest title; it merely confirms the registrant's already existing one. Verily, registration under the Torrens system is not a mode of acquiring ownership.

But then again, the Court had several times in the past recognized the right of the State to avail itself of the remedy of reversion in other instances when the title to the land is void for reasons other than having been secured by fraud or misrepresentation. One such case is *Spouses Morandarte v. Court of Appeals*, where the Bureau of Lands (BOL), by mistake and oversight, granted a patent to the spouses Morandarte which included a portion of the Miputak River. The Republic instituted an action for reversion 10 years after the issuance of an OCT in the name of the spouses Morandarte. The Court ruled:

> Be that as it may, the mistake or error of the officials or agents of the BOL in this regard cannot be invoked against the government with regard to property of the public domain. It has been said that the State cannot be estopped by the omission, mistake or error of its officials or agents.
>
> It is well-recognized that if a person obtains a title under the Public Land Act which includes, by oversight, lands which cannot be registered under the Torrens system, or when the Director of Lands did not have jurisdiction over the same because it is a public domain, the grantee does not, by virtue of the said certificate of title alone, become the owner of the land or property illegally included. Otherwise stated, property of the public domain is incapable of registration and its inclusion in a title nullifies that title.

Another example is the case of *Republic of the Phils. v. CFI of Lanao del Norte, Br. IV*, in which the homestead patent issued by the State became null and void because of the grantee's violation of the conditions for the grant. The Court ordered the reversion even though the land subject of the patent was already covered by an OCT

and the Republic availed itself of the said remedy more than 11 years after the cause of action accrued, because:

> There is merit in this appeal considering that the statute of limitation does not lie against the State. Civil Case No. 1382 of the lower court for reversion is a suit brought by the petitioner Republic of the Philippines as a sovereign state and, by the express provision of Section 118 of Commonwealth Act No. 141, any transfer or alienation of a homestead grant within five (5) years from the issuance of the patent is null and void and constitute a cause for reversion of the homestead to the State. In *Republic vs. Ruiz*, 23 SCRA 348, We held that "the Court below committed no error in ordering the reversion to plaintiff of the land grant involved herein, notwithstanding the fact that the original certificate of title based on the patent had been cancelled and another certificate issued in the names of the grantee heirs. Thus, where a grantee is found not entitled to hold and possess in fee simple the land, by reason of his having violated Section 118 of the Public Land Law, the Court may properly order its reconveyance to the grantor, although the property has already been brought under the operation of the Torrens System. *And, this right of the government to bring an appropriate action for reconveyance is not barred by the lapse of time: the Statute of Limitations does not run against the State.*" (Italics supplied). The above ruling was reiterated in *Republic vs. Mina*, 114 SCRA 945.
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> If the Republic is able to establish after trial and hearing of Civil Case No. 6686 that the decrees and OCTs in Doña Demetria's name are void for some reason, then the trial court can still order the reversion of the parcels of land covered by the same because indefeasibility cannot attach to a void decree or certificate of title. x x x. (Citations omitted.)

Neither can respondent Roxas successfully invoke the doctrine of estoppel against petitioner Republic. While it is true that respondent Roxas was granted Homestead Patent No. 111598 and OCT No. P-5885 only after undergoing appropriate administrative proceedings, the Government is not now estopped from questioning the validity of said homestead patent and certificate of title. It is, after all, hornbook law that the principle of estoppel does not operate against the Government for the

act of its agents.[62] And while there may be circumstances when equitable estoppel was applied against public authorities, *i.e.*, when the Government did not undertake any act to contest the title for an unreasonable length of time and the lot was already alienated to innocent buyers for value, such are not present in this case.[63] More importantly, we cannot use the equitable principle of estoppel to defeat the law. Under the Public Land Act and Presidential Proclamation No. 678 dated February 5, 1941, the subject property is part of the Matchwood Forest Reserve which is inalienable and not subject to disposition.

WHEREFORE, we **GRANT** the Petitions and **REVERSE and SET ASIDE** the Decision dated April 21, 2003 of the Court of Appeals in CA-G.R. CV No. 44926, which, in turn, affirmed the Decision dated February 10, 1994 of the Regional Trial Court, Branch 39 of Oriental Mindoro, in Civil Case No. R-3110. We **DECLARE** Homestead Patent No. 111598 and OCT No. P-5885 in the name of respondent Vicente Roxas null and void and **ORDER** the cancellation of the said patent and certificate of title. We further **ORDER** the reversion of the subject property to the public domain as part of the Matchwood Forest Reserve.

SO ORDERED.

Sereno, C.J. (Chairperson), del Castillo,[*] *Villarama, Jr.,* and *Reyes, JJ.,* concur.

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[62] *Republic of the Phils. v. Court of Appeals*, 406 Phil. 597, 609 (2001).

[63] *Estate of the Late Jesus S. Yujuico v. Republic of the Phils.*, 563 Phil. 92, 111 (2007); *Republic of the Phils. v. Agunoy, Sr.*, 492 Phil. 118, 136 (2005); *Republic of the Phils. v. Court of Appeals*, 361 Phil. 319, 336-337 (1999).

[*] Per Raffle dated September 17, 2012.

FIRST DIVISION

[G.R. No. 162757. December 11, 2013]

UNITED COCONUT PLANTERS BANK, *petitioner, vs.* **CHRISTOPHER LUMBO and MILAGROS LUMBO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; WRIT OF POSSESSION; WHEN ISSUED.— A writ of possession commands the sheriff to place a person in possession of real property. It may be issued in the following instances, namely: (1) land registration proceedings under Section 17 of Act No. 496; (2) judicial foreclosure, provided the debtor is in possession of the mortgaged property, and no third person, not a party to the foreclosure suit, had intervened; (3) extrajudicial foreclosure of a real estate mortgage, pending redemption under Section 7 of Act No. 3135, as amended by Act No. 4118; and (4) execution sales, pursuant to the last paragraph of Section 33, Rule 39 of the *Rules of Court.*

2. MERCANTILE LAW; ACT NO. 3135 (REAL ESTATE MORTGAGE LAW), AS AMENDED; EXTRA-JUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE; WRIT OF POSSESSION; THE APPLICATION FOR A WRIT OF POSSESSION BY THE PURCHASER IN A FORECLOSURE SALE IS *EX PARTE* AND SUMMARY IN NATURE AND THE GRANT THEREOF IS BUT A MINISTERIAL ACT ON THE PART OF THE ISSUING COURT.— With particular reference to an extra-judicial foreclosure of a real estate mortgage under Act No. 3135, as amended by Act No. 4118, the purchaser at the foreclosure sale may apply *ex parte* with the RTC of the province or place where the property or any part of it is situated, to give the purchaser possession thereof *during the redemption period*, furnishing bond in an amount equivalent to the *use* of the property for a period of twelve months, to indemnify the debtor should it be shown that the sale was made without violating the mortgage or without complying with the requirements of Act No. 3135; and the

RTC, *upon approval of the bond*, order that a writ of possession be issued, addressed to the sheriff of the province in which the property is situated, who shall then execute said order *immediately*. We underscore that the application for a writ of possession by the purchaser in a foreclosure sale conducted under Act No. 3135 is *ex parte* and summary in nature, brought for the benefit of one party only and without notice being sent by the court to any person adverse in interest. The relief is granted even without giving an opportunity to be heard to the person against whom the relief is sought. Its nature as an *ex parte* petition under Act No. 3135, as amended, renders the application for the issuance of a *writ of possession* a non-litigious proceeding. Indeed, the grant of the writ of possession is but a ministerial act on the part of the issuing court, because its issuance is a matter of right on the part of the purchaser. The judge issuing the order for the granting of the writ of possession pursuant to the express provisions of Act No. 3135 cannot be charged with having acted without jurisdiction or with grave abuse of discretion.

3. ID.; ID.; ID.; REDEMPTION PERIOD; THE RECKONING THEREOF STARTS FROM THE REGISTRATION OF THE SALE.— The reckoning of the period of redemption by the mortgagor or his successor-in-interest starts from the registration of the sale in the Register of Deeds. Although Section 6 of Act No. 3135, as amended, specifies that the period of redemption starts *from* and *after* the date of the sale, jurisprudence has since settled that such period is more appropriately reckoned from the date of registration.

4. ID.; ID.; ID.; WRIT OF POSSESSION; THE ISSUANCE THEREOF TO THE PURCHASER BECOMES A MATTER OF RIGHT UPON THE CONSOLIDATION OF TITLE IN HIS NAME.— If the redemption period expires without the mortgagor or his successor-in-interest redeeming the foreclosed property within one year from the registration of the sale with the Register of Deeds, the title over the property consolidates in the purchaser. The consolidation confirms the purchaser as the owner entitled to the possession of the property without any need for him to file the bond required under Section 7 of Act No. 3135. The issuance of a writ of possession to the purchaser becomes a matter of right upon

the consolidation of title in his name, while the mortgagor, by failing to redeem, loses all interest in the property.

5. REMEDIAL LAW; ACTIONS; ERROR OF JUDGMENT AND ERROR OF JURISDICTION, DISTINGUISHED.— An error of judgment is one that the court may commit in the exercise of its jurisdiction, and such error is reviewable only through an appeal taken in due course. In contrast, an error of jurisdiction is committed where the act complained of was issued by the court without or in excess of jurisdiction, and such error is correctible only by the extraordinary writ of *certiorari*.

6. ID.; CIVIL PROCEDURE; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION, DEFINED; PRELIMINARY MANDATORY INJUNCTION AND PROHIBITORY INJUNCTION, DISTINGUISHED.— A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order requiring a party or a court, an agency, or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it is known as a preliminary mandatory injunction. Thus, a prohibitory injunction is one that commands a party to refrain from doing a particular act, while a mandatory injunction commands the performance of some positive act to correct a wrong in the past.

7. ID.; ID.; ID.; ID.; AN APPLICANT IS NOT ENTITLED TO AN INJUNCTIVE RELIEF UNLESS THE RIGHT SOUGHT TO BE PROTECTED IS SHOWN TO EXIST *PRIMA FACIE*.— A right is *in esse* if it exists in fact. In the case of injunction, the right sought to be protected should at least be shown to exist *prima facie*. Unless such a showing is made, the applicant is not entitled to an injunctive relief.

APPEARANCES OF COUNSEL

Paner Hosaka and *Ypil* and *Mario C. Caoyongan* for petitioner.
Chuidian Law Office for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The implementation of a writ of possession issued pursuant to Act No. 3135 at the instance of the purchaser at the foreclosure sale of the mortgaged property in whose name the title has been meanwhile consolidated cannot be prevented by the injunctive writ.

The Case

Petitioner United Coconut Planters Bank (UCPB) appeals the decision promulgated on November 27, 2003,[1] whereby the Court of Appeals (CA) reversed and set aside the order issued on March 19, 2002 by the Regional Trial Court (RTC) of Kalibo, Aklan, Branch 8,[2] denying the motion of respondents Christopher Lumbo and Milagros Lumbo for the issuance of a writ of preliminary injunction to prevent the implementation of the writ of possession issued against them.

Antecedents

The respondents borrowed the aggregate amount of ₱12,000,000.00 from UCPB. To secure the performance of their obligation, they constituted a real estate mortgage on a parcel of land located in Boracay, Aklan and all the improvements thereon that they owned and operated as a beach resort known as Titay's South Beach Resort. Upon their failure to settle the obligation, UCPB applied on November 11, 1998 for the extrajudicial foreclosure of the mortgage, and emerged as the highest bidder at the ensuing foreclosure sale held on January 12, 1999. The certificate of sale was issued on the same day, and UCPB registered the sale in its name on February 18, 1999.

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[1] *Rollo*, at 56-64; penned by Associate Justice Josefina Guevara-Salonga (retired), and concurred in by Associate Justice Salvador Valdez, Jr. (retired/deceased) and Associate Justice Arturo D. Brion (now a Member of this Court).

[2] *Id*. at 118-120.

The title over the mortgaged property was consolidated in the name of UCPB after the respondents failed to redeem the property within the redemption period.

On January 7, 2000, the respondents brought against UCPB in the RTC[3] an action for the annulment of the foreclosure, legal accounting, injunction against the consolidation of title, and damages (Civil Case No. 5920).

During the pendency of Civil Case No. 5920, UCPB filed an *ex parte* petition for the issuance of a writ of possession to recover possession of the property (Special Proceedings No. 5884). On September 5, 2000, the RTC granted the *ex parte* petition of UCPB,[4] and issued on December 4, 2001 the writ of possession directing the sheriff of the Province of Aklan to place UCPB in the actual possession of the property. The writ of possession was served on the respondents on January 23, 2002 with a demand for them to peacefully vacate on or before January 31, 2002. Although the possession of the property was turned over to UCPB on February 1, 2002, they were allowed to temporarily remain on the property for humanitarian reasons.[5]

On February 14, 2002, the respondents filed in the RTC handling Special Proceedings No. 5884 a petition to cancel the writ of possession and to set aside the foreclosure sale.[6] They included an application for a writ of preliminary injunction and temporary restraining order to prevent the implementation of the writ of possession.

It is notable that Special Proceedings No. 5884 was consolidated with Civil Case No. 5920 on March 1, 2002.[7]

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[3] Branch 8, Kalibo, Aklan.

[4] Branch 9, Kalibo, Aklan.

[5] *Rollo*, pp. 241-242 (Partial Sheriff's Return of Service).

[6] The records show that the case was re-raffled to the RTC, Kalibo, Aklan, Branch 4.

[7] Branch 4, Kalibo, Aklan.

On March 19, 2002, the RTC denied the respondents' application for the issuance of a writ of preliminary injunction.[8] Aggrieved by the denial, the respondents brought a petition for *certiorari* and/or *mandamus* in the CA (C.A.-G.R. SP No. 70261).

The CA's Ruling

On November 27, 2003, the CA resolved C.A.-G.R. SP No. 70261 by granting the respondents' petition, setting aside the assailed orders, and enjoining the RTC from implementing the writ of possession "pending the final disposition of the petition for its cancellation and the annulment of the foreclosure sale."[9] It held as follows:

> A careful review of the records of this case reveals that the respondent judge committed glaring errors of jurisdiction in his assailed order in denying the petitioners' entreaty for injunctive relief pending the determination of the propriety of the writ of possession and the adjudication of the action for the annulment of the disputed foreclosure sale.
>
> In the assailed order, the respondent judge opined, albeit erroneously, that the present petition for the cancellation of the writ of possession is premature to avail of the remedies under Section 8 of Act 3135 as amended by Act 4118 considering that the petitioners are still in possession of the foreclosed property.
>
> Sec. 8 of Act 3135 as amended by Act 4118, provides:
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> *"The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor*

[8] *Rollo*, p. 120.

[9] *Id.* at 64.

> *of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal."*

As the records would show, although the petitioners are still in possession of the subject properties as they were allowed to temporarily stay thereat by the respondent bank, it cannot be gainsaid that the latter has already obtained the possession of the said properties. This being so, the petitioners have the legal recourse to file a petition for the cancellation of the writ of possession based on the cited legal grounds, *i.e.* that the mortgage was not violated or that the sale was not made in accordance with the provisions of the law. Clearly, the respondent judge erred in declaring that the said petition was prematurely filed.

Contrary to the dissertation of the respondent judge, the plain language of the law actually does not require the debtor to file a petition to cancel the writ of possession only after the purchaser had obtained possession of the foreclosed property subject of the writ. It merely states that the petition should not be filed later that thirty (30) days after the purchaser was given possession. Neither does the law qualify whether the possession is full or partial, nor permanent or temporary, as to justify the availability of the legal remedy to the mortgagor. What the plain language of the law espouses is the right of the debtor to question the validity of the foreclosure sale and the propriety of the issuance of the writ of possession.

Statutes, it must be stressed, should be construed in light of the objective to be achieved and the evil or mischief to be suppressed. Equally notable is the well-established rule that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation, only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent.

Sadly, the respondent judge, in erroneously interpreting Section 8 of Act 3135, failed to observe these elementary rules considering that the law is clear and ambiguous (sic) and in fact explicitly manifest its true intention to afford the debtor legal recourses. Instead of conforming to these rules, the respondent judge interpreted the said law in a manner which betrays its true intent.

Admittedly, in this case, a writ of possession was issued against the petitioners and that the respondent bank had already been given possession of the foreclosed property although the same is only partial. This being the case, the petitioners clearly have the legal recourse to file the said petition.

In fact, this disquisition of the respondent judge respecting the untimely filing of the petition for the cancellation of the disputed writ completely contradicts the basis of his subsequent pronouncement that injunctive relief cannot be made available to the petitioners since the act complained of is already *fait accompli*. On one hand, when it comes to the issue of the timeliness of the petition, the disposition of the respondent judge is that the respondents are yet to gain possession of the foreclosed properties. In contrast, when it respects the propriety of the prayer for injunctive relief, he in turn declares that the act sought to be restrained is already fait accomplice on the supposition that although the Sheriff's Return of Service dated 6 March 2002 is denominated as a partial return, the possession of the said properties had already been given to the respondent judge.

Peremptorily, the respondent judge gravely abused his discretion in bending his discourses on the matter of possession depending upon what issue implores adjudication. What is undeniable, however, is the fact that the petitioners are still in possession of the foreclosed property as they are admittedly allowed to temporarily stay thereat and that irrespective thereof, they have every right under the law to question the propriety of the issued writ by way of a petition.

Moreover, the respondent judge erred in declaring that he could not act on the application for injunctive relief because the writ was issued by another court of coordinate jurisdiction. The petition was filed before the same branch of the RTC of Kalibo, Aklan but was re-raffled to another branch and later on consolidated before the branch of the respondent judge where the action for the annulment of the foreclosure sale is pending. Thus, the case, which incidentally is a mere continuation of the *de-parte* proceeding before the same court though not before the same branch.

What is more appalling is that by denying the petitioners' prayer for injunctive relief, he in effect resolved the main case before him, which is the petition for the cancellation of the writ of possession. The course of his dissertation in the assailed order already manifests

his predisposition to deny the petition for the cancellation of the disputed writ. Considering that there is an urgent and paramount necessity for the writ to be issued in order to prevent serious damage on the part of the petitioners pending the trial proceedings in the annulment suit, especially so since the same is also pending before the respondent judge, the Resolution dated 22 October 2003 which temporarily enjoins the implementation of the writ of possession issued against the petitioners is hereby made permanent awaiting the final disposition on the issues regarding the validity of the foreclosure sale and the said writ of possession.[10]

UCPB sought the reconsideration of the decision, but the CA denied its motion for reconsideration on March 8, 2004.

Hence, UCPB appeals by petition for review on *certiorari*.

Issues

In its petition for review,[11] UCPB asserts that the CA did not rule in accordance with prevailing laws and jurisprudence when it granted the respondents' petition for *certiorari* and enjoined the implementation of the writ of possession issued by the RTC in favor of UCPB; that the respondents were not entitled to the issuance of an injunctive writ; that assuming, *arguendo*, that the CA was within its jurisdiction to issue the assailed decision and resolution, no bond was posted to the effect that the respondents would pay to UCPB all the damages that it would sustain by reason of the injunction should the Court finally decide that they were not entitled to the injunctive writ; that the assailed decision and resolution were tantamount to a pre-judgment of the respondents' petition to cancel the writ of possession; and that the respondents were illegally attempting to wrest away its possession of the property.

In their comment,[12] the respondents maintain that the rule that "prohibition cannot lie against the implementation of a writ

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[10] *Id*. at 61-64.

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

[12] *Id*. at 262-278.

of possession"[13] was not absolute; and that the petition was infirm for raising mixed questions of fact and of law.

Ruling of the Court

The petition is impressed with merit.

To resolve the issue of whether the CA correctly granted the injunctive writ to enjoin the implementation of the writ of possession the RTC had issued to place UCPB in the possession of the mortgaged property, it is necessary to explain the nature of the writ of possession and the consequences of its implementation.

A writ of possession commands the sheriff to place a person in possession of real property. It may be issued in the following instances, namely: (1) land registration proceedings under Section 17 of Act No. 496; (2) judicial foreclosure, provided the debtor is in possession of the mortgaged property, and no third person, not a party to the foreclosure suit, had intervened; (3) extrajudicial foreclosure of a real estate mortgage, pending redemption under Section 7 of Act No. 3135, as amended by Act No. 4118; and (4) execution sales, pursuant to the last paragraph of Section 33, Rule 39 of the *Rules of Court*.[14]

With particular reference to an extra-judicial foreclosure of a real estate mortgage under Act No. 3135, as amended by Act No. 4118, the purchaser at the foreclosure sale may apply *ex parte* with the RTC of the province or place where the property or any part of it is situated, to give the purchaser possession thereof *during the redemption period*, furnishing bond in an amount equivalent to the *use* of the property for a period of twelve months, to indemnify the debtor should it be shown that the sale was made without violating the mortgage or without

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[13] *Id.* at 273.

[14] *Mallari v. Government Service Insurance System,* G.R. No. 157659, January 25, 2010, 611 SCRA 32, 44; citing *Philippine National Bank v. Sanao Marketing Corporation* , G.R. No. 153951, July 29, 2005, 465 SCRA 287, 299-300; *Autocorp. Group and Autographics, Inc. v. Court of Appeals*, G.R. No. 157553, September 8, 2004, 437 SCRA 678, 689.

complying with the requirements of Act No. 3135; and the RTC, *upon approval of the bond*, order that a writ of possession be issued, addressed to the sheriff of the province in which the property is situated, who shall then execute said order *immediately*.[15] We underscore that the application for a writ of possession by the purchaser in a foreclosure sale conducted under Act No. 3135 is *ex parte* and summary in nature, brought for the benefit of one party only and without notice being sent by the court to any person adverse in interest. The relief is granted even without giving an opportunity to be heard to the person against whom the relief is sought.[16] Its nature as an *ex parte* petition under Act No. 3135, as amended, renders the application for the issuance of a *writ of possession* a non-litigious proceeding.[17] Indeed, the grant of the writ of possession is but

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[15] Section 7 of Act No. 3135, as amended by Act No. 4118, states:

Section 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance (now Regional Trial Court) of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered four hundred ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

[16] *Mallari v. Government Service Insurance System*, G.R. No. 157659, January 25, 2010, 611 SCRA 32, 50; citing *Santiago v. Merchants Rural Bank of Talavera, Inc.*, G.R. No. 147820, March 18, 2005, 453 SCRA 756, 763-764.

[17] *Id.*, citing *Penson v. Maranan*, G.R. No. 148630, June 20, 2006, 491 SCRA 396, 407.

a ministerial act on the part of the issuing court, because its issuance is a matter of right on the part of the purchaser.[18] The judge issuing the order for the granting of the writ of possession pursuant to the express provisions of Act No. 3135 cannot be charged with having acted without jurisdiction or with grave abuse of discretion.[19]

The reckoning of the period of redemption by the mortgagor or his successor-in-interest starts from the registration of the sale in the Register of Deeds. Although Section 6[20] of Act No. 3135, as amended, specifies that the period of redemption starts *from* and *after* the date of the sale, jurisprudence has since settled that such period is more appropriately reckoned from the date of registration. In *Mallari v. Government Service Insurance System*,[21] the Court explains the shift, *viz*:

> In this regard, we clarify that the redemption period envisioned under Act 3135 is reckoned *from the date of the registration of the sale*, not from and after the date of the sale, as the text of Act 3135 shows. Although the original *Rules of Court* (effective on July 1, 1940) incorporated Section 464 to Section 466 of the *Code of Civil Procedure* as its Section 25 (Section 464); Section 26 (Section 465); and Section 27 (Section 466) of Rule 39, with

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[18] *Oliveros v. Presiding Judge, RTC, Branch 24, Biñan, Laguna*, G.R. No. 165963, September 3, 2007, 532 SCRA 109, 118-119.

[19] *Ong v. Court of Appeals*, G.R. No. 121494, June 8, 2000, 333 SCRA 189, 197-198.

[20] Section 6, Act No. 3135, as amended, reads:

> Sec. 6. *Redemption*. – In all cases in which an extrajudicial sale is made under the special power herein before referred to, the debtor, his successors-in-interest or any judicial creditor or judgment creditor of said debtor or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, **may redeem the same at anytime within the term of one year from and after the date of the sale**; and such redemption shall be governed by the provisions of section four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act. (Emphasis supplied)

[21] *Supra* note 16, at 44-48.

Section 27 still expressly reckoning the redemption period to be "at any time within twelve months *after the sale*;": and although the *Revised Rules of Court* (effective on January 1, 1964) continued to provide in Section 30 of Rule 39 that the redemption be made from the purchaser "at any time within twelve (12) months *after the sale*," the 12-month period of redemption came to be held as beginning "to run not from the date of the sale but from the time of registration of the sale in the Office of the Register of Deeds." This construction was due to the fact that the sheriff's sale of registered (and unregistered) lands did not take effect as a conveyance, or did not bind the land, until the sale was registered in the Register of Deeds.

Desiring to avoid any confusion arising from the conflict between the texts of the *Rules of Court* (1940 and 1964) and Act No. 3135, on one hand, and the jurisprudence clarifying the reckoning of the redemption period in judicial sales of real property, on the other hand, the Court has incorporated in Section 28 of Rule 39 of the current *Rules of Court* (effective on July 1, 1997) the foregoing judicial construction of reckoning the redemption period from the date of the registration of the certificate of sale, to wit:

> Sec. 28. *Time and manner of, and amounts payable on, successive redemptions; notice to be given and filed*. — The judgment obligor, or redemptioner, may redeem the property from the purchaser, **at any time within one (1) year from the date of the registration of the certificate of sale,** by paying the purchaser the amount of his purchase, with one *per centum* per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last named amount at the same rate; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest.
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> Property so redeemed may again be redeemed within sixty (60) days after the last redemption upon payment of the sum paid on the last redemption, with two *per centum* thereon in addition, and the amount of any assessments or taxes which the last redemptioner may have paid thereon after redemption by him, with interest on such last-named amount, and in addition, the amount of any liens held by said last redemptioner prior to his own, with interest. The property may be again, and as

> often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty (60) days after the last redemption, on paying the sum paid on the last previous redemption, with two *per centum* thereon in addition, and the amounts of any assessments or taxes which the last previous redemptioner paid after the redemption thereon, with interest thereon, and the amount of any liens held by the last redemptioner prior to his own, with interest.
>
> Written notice of any redemption must be given to the officer who made the sale and a duplicate filed with the registry of deeds of the place, and if any assessments or taxes are paid by the redemptioner or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the officer and filed with the registry of deeds; if such notice be not filed, the property may be redeemed without paying such assessments, taxes, or liens. (30a)

Accordingly, the mortgagor or his successor-in-interest must redeem the foreclosed property *within one year from the registration of the sale with the Register of Deeds* in order to avoid the title from consolidating in the purchaser. x x x

If the redemption period expires without the mortgagor or his successor-in-interest redeeming the foreclosed property within one year from the registration of the sale with the Register of Deeds, the title over the property consolidates in the purchaser. The consolidation confirms the purchaser as the owner entitled to the possession of the property without any need for him to file the bond required under Section 7 of Act No. 3135.[22] The issuance of a writ of possession to the purchaser becomes a matter of right upon the consolidation of title in his name,[23] while the mortgagor, by failing to redeem, loses all interest in the property.[24]

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[22] *Chailease Finance Corporation v. Ma*, G.R. No. 151941, August 15, 2003, 409 SCRA 250, 253, 254.

[23] *Mallari v. Government Service Insurance System*, *supra* note 16, at 49.

[24] *Yulienco v. Court of Appeals*, G.R. No. 141365, November 27, 2002, 393 SCRA 143, 152.

The property was sold at the public auction on January 12, 1999, with UCPB as the highest bidder. The sheriff issued the certificate of sale to UCPB on the same day of the sale. Considering that UCPB registered the certificate of sale in its name on February 18, 1999, the period of redemption was one year from said date. By virtue of the non-redemption by the respondents within said period, UCPB consolidated the title over the property in its name.

It is clear enough, therefore, that the RTC committed no grave abuse of discretion but acted in accordance with the law and jurisprudence in denying the respondents' application for the injunctive writ filed on February 14, 2002 in Special Proceedings No. 5884 to prevent the implementation of the writ of possession issued on December 4, 2001. Consequently, the CA grossly erred in granting the respondents' petition for *certiorari* and/or *mandamus*, and in enjoining the RTC from implementing the writ of possession in favor of UCPB.

Other weighty considerations justify resolving this appeal in favor of UCPB.

The first is that the CA did not properly appreciate the nature of the supposed error attributed to the RTC.

Assuming, though not conceding, that the RTC did err in denying the respondents' application for injunction to prevent the implementation of the writ of possession, its error related only to the correct application of the law and jurisprudence relevant to the application for injunction. As such, the error amounted only to one of judgment, not of jurisdiction. An error of judgment is one that the court may commit in the exercise of its jurisdiction, and such error is reviewable only through an appeal taken in due course. In contrast, an error of jurisdiction is committed where the act complained of was issued by the court without or in excess of jurisdiction, and such error is correctible only by the extraordinary writ of *certiorari*.[25]

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[25] *AAG Trucking v. Yuag*, G.R. No. 195033, October 12, 2011, 659 SCRA 91, 100.

Considering that there is no question that the RTC had jurisdiction over both Civil Case No. 5920 and Special Proceedings No. 5884, it should follow that its consideration and resolution of the respondents' application for the injunctive writ filed in Special Proceedings No. 5884 were taken in the exercise of that jurisdiction. As earlier made plain, UCPB as the registered owner of the property was at that point unquestionably entitled to the full implementation of the writ of possession. In the absence of any clear and persuasive showing that it capriciously or whimsically denied the respondents' application, its denial of the application did not constitute grave abuse of discretion amounting to either lack or excess of jurisdiction.

It was of no consequence at all that UCPB made its *ex parte* application for the writ of possession the action (Special Proceedings No. 5884) when Civil Case No. 5920 (in which the respondents were seeking the annulment of the foreclosure and the stoppage of the consolidation of title, among other reliefs sought) was already pending in the RTC, for the settled jurisprudence is to the effect that the pendency of an action for the annulment of the mortgage or of the foreclosure sale does not constitute a legal ground to prevent the implementation of a writ of possession.[26]

The second concerns the CA's reversing and undoing the RTC's denial of the respondents' application for the injunctive writ, and enjoining the RTC from implementing the writ of possession against the respondents "pending the final disposition of the petition for its cancellation and the annulment of the foreclosure sale."[27] The CA effectively thereby granted the respondents' application for the injunctive writ. In so doing,

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[26] *De Vera v. Agloro*, G.R. No. 155673, January 14, 2005, 448 SCRA 203, 215; *Mamerto Maniquiz Foundation, Inc. v. Pizarro*, A.M. No. RTJ-03-1750, January 14, 2005, 448 SCRA 140, 151; *Vaca v. Court of Appeals*, G.R. No. 109672, July 14, 1994, 234 SCRA 146, 148; *Vda. de Jacob v. Court of Appeals*, G.R. Nos. 88602 and 89544, April 6, 1990, 184 SCRA 294, 302.

[27] *Rollo*, p. 64.

however, the CA ignored the essential requirements for the grant of the injunctive writ, and disregarded the patent fact that the respondents held no right *in esse* that the injunctive writ they were seeking would protect. Thus, the CA committed another serious error.

A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order requiring a party or a court, an agency, or a person to refrain from a particular a particular act or acts. It may also require the performance of a particular act or acts, in which case it is known as a preliminary mandatory injunction. Thus, a prohibitory injunction is one that commands a party to refrain from doing a particular act, while a mandatory injunction commands the performance of some positive act to correct a wrong in the past.

Under Section 3, Rule 58 of the *Rules of Court*, the issuance of a writ of preliminary injunction may be justified under any of the following circumstances, namely:

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

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

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

A right is *in esse* if it exists in fact. In the case of injunction, the right sought to be protected should at least be shown to exist *prima facie*. Unless such a showing is made, the applicant

is not entitled to an injunctive relief. In *City Government of Butuan v. Consolidated Broadcasting System (CBS), Inc.*,[28] the Court has stressed the essential significance of the applicant for injunction holding a right *in esse* to be protected, stating:

> As with all equitable remedies, injunction must be issued only at the instance of a party who possesses sufficient interest in or title to the right or the property sought to be protected. **It is proper only when the applicant appears to be entitled to the relief demanded in the complaint, which must aver the existence of the right and the violation of the right, or whose averments must in the minimum constitute a *prima facie* showing of a right to the final relief sought. Accordingly, the conditions for the issuance of the injunctive writ are: (*a*) that the right to be protected exists *prima facie*; (*b*) that the act sought to be enjoined is violative of that right; and (*c*) that there is an urgent and paramount necessity for the writ to prevent serious damage. An injunction will not issue to protect a right not *in esse*, or a right which is merely contingent and may never arise; or to restrain an act which does not give rise to a cause of action; or to prevent the perpetration of an act prohibited by statute. Indeed, a right, to be protected by injunction, means a right clearly founded on or granted by law or is enforceable as a matter of law**. (Bold underscoring supplied for emphasis)

However, the respondents made no such showing of their holding a right *in esse*. They could not do so simply because their non-redemption within the period of redemption had lost for them any right in the property, including its possession. The absence of a right *in esse* on their part furnishes a compelling reason to undo the CA's reversal of the RTC's denial of their application for injunction as well as to strike down the injunctive relief the CA afforded to the respondents. It cannot be otherwise, for they had no "right clearly founded on or granted by law or is enforceable as a matter of law".

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** the decision promulgated on November 27, 2003 and the resolution promulgated on

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

March 8, 2004 in C.A.-G.R. SP. No. 70261; **DISMISSES** the petition in C.A.-G.R. SP. No. 70261 for lack of factual and legal merits; **DECLARES** that there is now no obstacle to the implementation of the writ of possession issued in favor of the petitioner; and **ORDERS** the respondents to pay the costs of suit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 173331. December 11, 2013]

FLORPINA BENAVIDEZ, *petitioner, vs.* **NESTOR SALVADOR,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; *LITIS PENDENTIA*; REFERS TO THE SITUATION WHERE TWO ACTIONS ARE PENDING BETWEEN THE SAME PARTIES FOR THE SAME CAUSE OF ACTION, SO THAT ONE OF THEM BECOMES UNNECESSARY AND VEXATIOUS.— *Litis pendentia* is a Latin term, which literally means "a pending suit" and is variously referred to in some decisions as *lis pendens* and *auter action pendant*. As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits.

2. ID.; ID.; ID.; REQUISITES.— *Litis pendentia* exists when the following requisites are present: identity of the parties in the

two actions; substantial identity in the causes of action and in the reliefs sought by the parties; and the identity between the two actions should be such that any judgment that may be rendered in one case, regardless of which party is successful, would amount to *res judicata* in the other.

3. ID.; ID.; FORUM SHOPPING; EXISTS WHEN THE ELEMENTS OF *LITIS PENDENTIA* ARE PRESENT OR WHERE A FINAL JUDGMENT IN ONE CASE WILL AMOUNT TO *RES JUDICATA* IN ANOTHER.— [F]orum shopping exists when, as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari*. There is forum shopping when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another.

4. ID.; ID.; *LITIS PENDENTIA*; PRIORITY-IN-TIME RULE; DOES NOT APPLY IF THE FIRST CASE WAS FILED MERELY TO PRE-EMPT THE LATER ACTION OR TO ANTICIPATE ITS FILING AND LAY THE BASIS FOR ITS DISMISSAL.— At first glance, it would seem that Civil Case No. 00-5660 or the complaint filed with RTC-Antipolo should have been dismissed applying the "priority-in-time rule." This rule, however, is not ironclad. The rule is not applied if the first case was filed merely to pre-empt the later action or to anticipate its filing and lay the basis for its dismissal. A crucial consideration is the good faith of the parties. In recent rulings, the more appropriate case is preferred and survives. x x x Considering the nature of the transaction between the parties, the Court believes that the case for collection of sum of money filed before RTC-Antipolo should be upheld as the more appropriate case because the judgment therein would eventually settle the issue in the controversy - whether or not Benavidez should be made accountable for the subject loan. In the complaint that she filed with RTC- Morong, Benavidez never denied that she contracted a loan with Salvador. x x x [T]o dismiss Civil Case No. 00-5660 would only result in needless delay in the resolution of the parties' dispute and bring them back to square one. This consequence will defeat the public policy reasons behind *litis pendentia* which, like the rule on forum shopping, aim to prevent the unnecessary burdening of our courts and

undue taxing of the manpower and financial resources of the Judiciary; to avoid the situation where co-equal courts issue conflicting decisions over the same cause; and to preclude one party from harassing the other party through the filing of an unnecessary or vexatious suit.

5. ID.; ID.; PRE-TRIAL; FAILURE TO APPEAR AT THE PRE-TRIAL AND TO FILE PRE-TRIAL BRIEF, EFFECT.— Section 4, Rule 18 of the Rules of Court provides that it is the duty of the parties and their counsel to appear at the pre-trial conference. x x x [T]he failure of a party to appear at the pre-trial has adverse consequences. If the absent party is the plaintiff, then his case shall be dismissed. If it is the defendant who fails to appear, then the plaintiff is allowed to present his evidence *ex parte* and the court shall render judgment on the basis thereof. Thus, the plaintiff is given the privilege to present his evidence without objection from the defendant, the likelihood being that the court will decide in favor of the plaintiff, the defendant having forfeited the opportunity to rebut or present its own evidence. RTC-Antipolo then had the legal basis to allow Salvador to present evidence *ex parte* upon motion. Benavidez and her counsel were not present at the scheduled pre-trial conference despite due notice. They did not file the required pre-trial brief despite receipt of the Order. The rule explicitly provides that both parties and their counsel are mandated to appear thereat except for: (1) a valid excuse; and (2) appearance of a representative on behalf of a party who is fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and documents. In this case, Benavidez's lawyer was already negligent, but she compounded this by being negligent herself. x x x Also, her failure to file the pre-trial brief warranted the same effect because the rules dictate that failure to file a pre-trial brief shall have the same effect as failure to appear at the pre-trial. Settled is the rule that the negligence of a counsel binds his clients. Neither Benavidez nor her counsel can now evade the effects of their misfeasance.

6. CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTEREST RATES; MAY BE DECLARED ILLEGAL WHENEVER UNCONSCIONABLE.— This Court is not unmindful of the

fact that parties to a loan contract have wide latitude to stipulate on any interest rate in view of the Central Bank Circular No. 905 s. 1982 which suspended the Usury Law ceiling on interest effective January 1, 1983. It is, however, worth stressing that interest rates whenever unconscionable may still be declared illegal. There is nothing in said circular which grants lenders *carte blanche* authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets. In *Menchavez v. Bermudez*, the interest rate of 5% per month, which when summed up would reach 60% per annum, is null and void for being excessive, iniquitous, unconscionable and exorbitant, contrary to morals, and the law. Accordingly, in this case, the Court considers the compounded interest rate of 5% per month as iniquitous and unconscionable and void and inexistent from the beginning. The debt is to be considered without the stipulation of the iniquitous and unconscionable interest rate. In line with the ruling in the recent case of *Nacar v. Gallery Frames*, the legal interest of 6% per annum must be imposed in lieu of the excessive interest stipulated in the agreement.

APPEARANCES OF COUNSEL

Remigio D. Saladero for petitioner.
N.S. Segarra Law Office for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* assailing the November 22, 2005 Decision[1] and the June 8, 2006 Amended Decision[2] of the Court of Appeals *(CA)*, in CA-G.R. CV No. 73487, which affirmed and modified the June 1, 2001 Decision[3]

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[1] *Rollo*, pp. 27-37. Penned by Associate Justice Danilo B. Pine with Associate Justice Marina L. Buzon and Associate Justice Vicente S.E. Veloso, concurring.

[2] *Id.* at 38-42. Penned by Associate Justice Marina L. Buzon with Associate Justice Lucas P. Bersamin and Vicente S.E. Veloso, concurring.

[3] *Id.* at 24-30. Penned by Judge Francisco A. Querubin.

of the Regional Trial Court, Branch 74, Antipolo City *(RTC-Antipolo)* in Civil Case No. 00-5660.

The Facts:

Sometime in February 1998, petitioner Florpina Benavidez *(Benavidez)* approached and asked respondent Nestor Salvador *(Salvador)* for a loan that she would use to repurchase her property in Tanay, Rizal which was foreclosed by the Farmers Savings and Loan Bank, Inc. *(Farmers Savings*). After inspecting the said property, Salvador agreed to lend the money subject to certain conditions. To secure the loan, Benavidez was required to execute a real estate mortgage, a promissory note and a deed of sale. She was also required to submit a special power of attorney *(SPA)* executed and signed by Benavidez's daughter, Florence B. Baning *(Baning),* whom she named as the vendee in the deed of absolute sale of the repurchased property. In the SPA, Baning would authorize her mother to obtain a loan and to constitute the said property as security of her indebtedness to Salvador.

Pursuant to the agreement, Salvador issued a manager's check in favor of Benavidez in the amount of One Million Pesos (₱1,000,000.00) and released Five Hundred Thousand Pesos (₱500,000.00) in cash. For the loan obtained, Benavidez executed a promissory note, dated March 11, 1998.

Benavidez, however, failed to deliver the required SPA. She also defaulted in her obligation under the promissory note. All the postdated checks which she had issued to pay for the interests were dishonored. This development prompted Salvador to send a demand letter with a corresponding statement of account, dated January 11, 2000. Unfortunately, the demand fell on deaf ears which constrained Salvador to file a complaint for sum of money with damages with prayer for issuance of preliminary attachment.

On May 4, 2000, Benavidez filed a motion to dismiss on the ground of *litis pendentia*. She averred that prior to the filing of the case before the RTC-Antipolo, she had filed a *Complaint*

for Collection for Sum of Money, Annulment of Contract and Checks with Prayer for Preliminary Injunction and Temporary Restraining Order against Salvador; his counsel, Atty. Nepthalie Segarra; Almar Danguilan; and Cris Marcelino, before the Regional Trial Court, Branch 80, Morong, Rizal *(RTC-Morong).* The motion to dismiss, however, was denied by RTC-Antipolo on July 31, 2000. On September 15, 2000, Benavidez filed her answer with counterclaim. A pre-trial conference was scheduled on May 2, 2001 but she and her counsel failed to appear despite due notice. Resultantly, upon motion, Salvador was allowed by the trial court to present evidence *ex parte*.

On June 1, 2001, RTC-Antipolo decided the subject case for Salvador. It found that indeed Benavidez obtained a loan from Salvador in the amount of ₱1,500,000.00. It also noted that up to the time of the rendition of the judgment, she had failed to settle her obligation despite having received oral and written demands from Salvador. Also, the trial court pointed out that the evidence had shown that as of January 11, 2000, Benavidez's obligation had already reached the total amount of ₱4,810,703.21.[4] Thus, the *fallo* of the said decision reads:

> WHEREFORE, in view of the foregoing premises, defendant is hereby directed to pay plaintiff the following:
>
> 1. The amount of ₱4,810,703.21, covering the period from June 11, 1998 to January 11, 2000, exclusive of interest and penalty charges until the said amount is fully paid;
>
> 2. The amount of ₱50,000.00 as exemplary damages;
>
> 3. The sum of 25% of the total obligation as and by way of attorney's fees; and,
>
> 4. Cost of suit.
>
> SO ORDERED.[5]

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[4] *Id.* at 106.

[5] CA *rollo*, pp. 106-107.

Benavidez filed a motion for reconsideration but unfortunately for her, RTC-Antipolo, in its August 10, 2001 Order,[6] denied her motion for lack of merit.

Frustrated, Benavidez appealed the June 1, 2001 Decision and the August 10, 2001 Order of RTC-Antipolo to the CA. She argued, in chief, that early on, the trial court should have dismissed the complaint for collection of sum of money filed by Salvador on grounds of *litis pendentia* and erroneous certification against forum shopping. She claimed that prior to the filing of the said complaint against her, she had already filed a complaint for the annulment of the promissory note evidencing her obligation against Salvador. According to her, there was substantial identity in the causes of action and any result of her complaint for annulment would necessarily affect the complaint for collection of sum of money filed against her. She added that Salvador never informed RTC-Antipolo about the pending case before RTC-Morong, rendering his certification on forum shopping erroneous.[7]

Benavidez also argued that RTC-Antipolo erred in refusing to re-open the case for pre-trial conference and disallowing her to present evidence. She added that the absence of her counsel on the scheduled pre-trial conference caused her substantial prejudice. Though she was not unmindful of the general rule that a client was bound by the mistake or negligence of her counsel, she insisted that since the incompetence or ignorance of her counsel was so great and the error committed was so serious as it prejudiced her and denied her day in court, the litigation should have been reopened to give her the opportunity to present her case.[8]

The CA was not moved.

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[6] *Id.* at 111.

[7] *Id.* at 30.

[8] *Id.* at 32.

The CA reasoned out that RTC-Antipolo did not err in allowing Salvador to present his evidence *ex-parte* in accordance with Section 5, Rule 18 of the 1997 Rules of Court.[9] Benavidez and her counsel failed to show a valid reason for their non-appearance at the pre-trial and so their absence was not excusable. Her counsel's negligence, as Benavidez cited, was not among the grounds for new trial or reconsideration as required under Section 1, Rule 37 of the Rules of Civil Procedure. The CA emphasized that well-entrenched was the rule that negligence of counsel bound his client. She was bound by the action of his counsel in the conduct of the trial. The appellate court also took note that she herself was guilty of negligence because she was also absent during the pre-trial despite due notice. Thus, Benavidez's position that the trial court should have reopened the case was untenable.[10]

With regards to the grounds of *litis pendentia* and forum shopping cited by Benavidez, the CA wrote that there was no identity of the rights asserted in the cases filed before RTC-Morong and RTC-Antipolo. The reliefs prayed for in those cases were different. One case was for the annulment of the promissory note while the other one was a complaint for sum of money. There could be identity of the parties, but all the other requisites to warrant the dismissal of the case on the ground of *litis pendentia* were wanting.[11] Thus, on November 22, 2005, the CA affirmed *in toto* the decision of RTC-Antipolo.[12]

Feeling aggrieved by the affirmance, Benavidez filed a motion for reconsideration on the ground that the same was contrary to law and jurisprudence; that *litis pendentia* existed which resultantly made his certification on non-forum shopping untruthful; and, that her absence during the pre-trial was justified.

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[9] *Id*. at 33.

[10] *Id*. at 34.

[11] *Id*. at 31.

[12] *Id*. at 37.

On June 08, 2006, the CA issued the *Amended Decision*, holding that the motion was partly meritorious. Accordingly, it modified its earlier decision by deleting the award of exemplary damages and attorney's fees because the award thereof was not supported by any factual, legal and equitable justification. Thus, the decretal portion of the Amended Decision reads:

> **WHEREFORE**, the motion for reconsideration is **PARTIALLY GRANTED.** The Decision dated November 22, 2005 is **MODIFIED** by **DELETING** the award of exemplary damages and attorney's fees.
>
> SO ORDERED.[13]

Still unsatisfied, Benavidez comes before the Court via a petition for review under Rule 45 of the Rules of Court, raising the following issues:[14]

1. Whether or not the present case is barred by Civil Case No. 00-05660 which is pending before the RTC-Morong, Rizal.

2. Whether or not the case is dismissible because the certification against forum shopping was defective.

3. Whether or not the executed promissory note is void for being unconscionable and shocking to the conscience.

4. Whether or not the CA erred in holding that the order allowing respondent to present evidence *ex-parte* and submitting the case for decision is valid despite the fact that default judgment is looked upon with disfavor by this Court.

In fine, the core issue is whether or not the present case should have been dismissed on the ground of *litis pendentia*.

Benavidez argues that the outcome of the case, before RTC-Morong, where the annulment of the promissory note was sought, would have been determinative of the subject case before RTC-Antipolo where the enforcement of the promissory note was sought. If RTC-Morong would rule that the promissory note was null and void, then the case with RTC-Antipolo would

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[13] *Id*. at 41.

[14] *Id*. at 15.

have no more leg to stand on. He concludes that the requisites of *litis pendentia* were indeed present: *first,* both Benavidez and Salvador were parties to both complaints; *second,* both complaints were concerned with the promissory note; and *third,* the judgment in either of the said complaints would have been determinative of the other.[15]

Benavidez further claims that the case should have been dismissed because the certification on forum shopping which accompanied Salvador's complaint was defective. He declared therein that he was not aware of any pending case before any court similar to the one he was filing, when in truth and in fact, there was one. This fact could not be denied because summons in the case before RTC-Morong was served on him and he even filed his answer to the said complaint.[16]

Benavidez also pushes the argument that RTC-Antipolo committed an error of law when it allowed Salvador to present evidence *ex-parte* and eventually decided the case without waiting to hear her side. The trial court should have been more lenient. If there was any one to be blamed for her predicament, it should have been his counsel, Atty. Rogelio Jakosalem *(Jakosalem).* His counsel was negligent in his duties when he did not bother to file the necessary pre-trial brief and did not even appear at the pre-trial conference. He did not assist her either in filing a motion for reconsideration. Benavidez explains that Atty. Jakosalem did not appear on the scheduled pre-trial conference because he got mad at her when she refused to heed his advice to settle when the trial court granted Salvador's motion for issuance of preliminary attachment. Under the circumstances, she should have been exempted from the rule that the negligence of counsel binds the client.[17]

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[15] *Id*. at 17.

[16] *Id*. at 18.

[17] *Id*. at 19.

For her part, she failed to appear because she was then suffering from illness. Contrary to the finding of the CA, her medical certificate was not belatedly submitted. She submitted it within a reasonable period after she received the order allowing Salvador to present evidence *ex-parte* and considering the case for resolution thereafter.[18]

The Court's Ruling

In litis pendentia, there is no hard and fast rule in determining which of the two actions should be abated

Litis pendentia is a Latin term, which literally means "a pending suit" and is variously referred to in some decisions as *lis pendens* and *auter action pendant*. As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits.[19]

Litis pendentia exists when the following requisites are present: identity of the parties in the two actions; substantial identity in the causes of action and in the reliefs sought by the parties; and the identity between the two actions should be such that any judgment that may be rendered in one case, regardless of which party is successful, would amount to *res judicata* in the other.[20]

On the other hand, forum shopping exists when, as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari*.[21]

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[18] *Id*. at 20.

[19] *Marasigan v. Chevron Phil., Inc.*, G.R. No. 184015, February 08, 2012, 665 SCRA 499, 511.

[20] *Umale v. Canoga Park Development Corporation*, G.R. No. 167246, July 20, 2011, 654 SCRA 155, 161.

[21] *Polanco v. Cruz*, G.R. No. 182426, February 13, 2009, 579 SCRA 489, 495.

There is forum shopping when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another.[22]

In the present controversy, the Court is of the view that *litis pendentia* exists. All the elements are present: *first,* both Benavidez and Salvador are parties in both cases; *second,* both complaints are concerned with the same promissory note; and *third,* the judgment in either case would be determinative of the other.

With the foregoing, which case then should be dismissed? At first glance, it would seem that Civil Case No. 00-5660 or the complaint filed with RTC-Antipolo should have been dismissed applying the "priority-in-time rule." This rule, however, is not ironclad. The rule is not applied if the first case was filed merely to pre-empt the later action or to anticipate its filing and lay the basis for its dismissal. A crucial consideration is the good faith of the parties. In recent rulings, the more appropriate case is preferred and survives. In *Spouses Abines v. BPI,*[23] it was written:

> There is no hard and fast rule in determining which of the actions should be abated on the ground of *litis pendentia*, but through time, the Supreme Court has endeavored to lay down certain criteria to guide lower courts faced with this legal dilemma. As a rule, preference is given to the first action filed to be retained. This is in accordance with the maxim *Qui prior est tempore, potior est jure*. There are, however, limitations to this rule. Hence, the first action may be abated if it was filed merely to pre-empt the later action or to anticipate its filing and lay the basis for its dismissal. Thus, the *bona fide*s or good faith of the parties is a crucial element. A later case shall not be abated if not brought to harass or vex; and the first case can be abated if it is merely an anticipatory action or, more appropriately, an anticipatory defense against an expected suit – a clever move to steal the march from the aggrieved party.

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[22] *Id.* at 495-496.

[23] 517 Phil. 609, 620 (2006), citing *Compania General De Tabacos De Filipinas v. Court of Appeals,* 422 Phil. 405, 425 (2001).

Another exception to the priority in time rule is the criterion of the more appropriate action. Thus, an action, although filed later, shall not be dismissed if it is the more appropriate vehicle for litigating the issues between the parties. [Underscoring supplied]

In the relatively recent case of *Dotmatrix Trading v. Legaspi*,[24] the Court had the occasion to extensively discuss the various rules and consideration in determining which case to dismiss in such situations. It included its analysis of *Abines*. Thus:

Early on, we applied the principle of *Qui prior est tempore, potior est jure* (literally, *he who is before in time is better in right*) in dismissing a case on the ground of *litis pendentia*. This was exemplified in the relatively early case of *Del Rosario v. Jacinto* where two complaints for reconveyance and/or recovery of the same parcel of land were filed by substantially the same parties, with the second case only impleading more party-plaintiffs. The Court held that "parties who base their contention upon the same rights as the litigants in a previous suit are bound by the judgment in the latter case." Without expressly saying so in *litis pendentia* terms, the Court gave priority to the suit filed earlier.

In *Pampanga Bus Company, Inc. v. Ocfemia*, complaints for damages arising from a collision of a cargo truck and a bus were separately filed by the owners of the colliding vehicles. The complaint of the owners of the cargo truck prevailed and the complaint of the owners of the bus had to yield, as the cargo truck owners first filed their complaint. Notably, the first and prevailing case was far advanced in development, with an answer with counterclaim and an answer to the counterclaim having been already filed, thus fully joining the issues.

In *Lamis Ents. v. Lagamon*, the first case was a complaint for specific performance of obligations under a Memorandum of Agreement, while the second case was a complaint for sums of money arising from obligations under a promissory note and a chattel mortgage, and damages. We dismissed the second case because the claims for sums of money therein arose from the Memorandum of Agreement sued upon in the first case.

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[24] G.R. No. 155622, October 26, 2009,604 SCRA 431.

Ago Timber Corporation v. Ruiz offered an insightful reason after both parties had each pleaded the pendency of another action between the same parties for the same cause. The Court ruled that the second action should be dismissed, "not only as a matter of comity with a coordinate and co-equal court (Laureta & Nolledo, Commentaries & Jurisprudence on Injunction, p. 79, citing *Harrison v. Littlefield*, 57 Tex. Div. A. 617, 619, 124 SW 212), but also to prevent confusion that might seriously hinder the administration of justice. (*Cabigao, et al. v. Del Rosario, et al.*, 44 Phil. 182)."

In all these cases, we gave preference to the first action filed to be retained. The **"priority-in-time rule,"** however, is not absolute.

In the 1956 case of *Teodoro v. Mirasol*, we deviated from the "priority-in-time rule" and applied the **"more appropriate action test"** and the **"anticipatory test."**

The **"more appropriate action test" considers the real issue raised by the pleadings and the ultimate objective of the parties; the more appropriate action is the one where the real issues raised can be fully and completely settled.** In *Teodoro*, the lessee filed an action for declaratory relief to fix the period of the lease, but the lessor moved for its dismissal because he had subsequently filed an action for ejectment against the lessee. We noted that the unlawful detainer suit was the more appropriate action to resolve the real issue between the parties - whether or not the lessee should be allowed to continue occupying the land under the terms of the lease contract; this was the subject matter of the second suit for unlawful detainer, and was also the main or principal purpose of the first suit for declaratory relief.

In the **"anticipatory test,"** the *bona fides* or good faith of the parties is the critical element. **If the first suit is filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal, then the first suit should be dismissed.** In *Teodoro*, we noted that the first action, declaratory relief, was filed by the lessee to anticipate the filing of the second action, unlawful detainer, considering the lessor's letter informing the lessee that the lease contract had expired.

We also applied the "more appropriate action test" in *Ramos v. Peralta*. In this case, the lessee filed an action for consignation of lease rentals against the new owner of the property, but the new owner moved to dismiss the consignation case because of the quieting

of title case he had also filed against the lessee. Finding that the real issue between the parties involved the right to occupy/possess the subject property, we ordered the dismissal of the consignation case, noting that the quieting of title case is the more appropriate vehicle for the ventilation of the issues between them; the consignation case raised the issue of the right to possession of the lessee under the lease contract, an issue that was effectively covered by the quieting of title case which raised the issue of the validity and effectivity of the same lease contract.

In *University Physician Services, Inc. v. Court of Appeals*, we applied both the "more appropriate action test" and "anticipatory test." In this case, the new owner of an apartment sent a demand letter to the lessee to vacate the leased apartment unit. When the lessee filed an action for damages and injunction against the new owner, the new owner moved for the dismissal of the action for damages on account of the action for ejectment it had also filed. We noted that ejectment suit is the more appropriate action to resolve the issue of whether the lessee had the right to occupy the apartment unit, where the question of possession is likewise the primary issue for resolution. We also noted that the lessee, after her unjustified refusal to vacate the premises, was aware that an ejectment case against her was forthcoming; the lessee's filing of the complaint for damages and injunction was but a canny and preemptive maneuver intended to block the new owner's action for ejectment.

We also applied the "more appropriate action test" in the 2003 case *Panganiban v. Pilipinas Shell Petroleum Corp.*, where the lessee filed a petition for declaratory relief on the issue of renewal of the lease of a gasoline service station, while the lessor filed an unlawful detainer case against the lessee. On the question of which action should be dismissed, we noted that the interpretation of a provision in the lease contract as to when the lease would expire is the key issue that would determine the lessee's right to possess the gasoline service station. The primary issue - the physical possession of the gasoline station - is best settled in the ejectment suit that directly confronted the physical possession issue, and not in any other case such as an action for declaratory relief.

A more recent case - *Abines v. Bank of the Philippine Islands* in 2006 - saw the application of both the "priority-in-time rule" and the "more appropriate action test." In this case, the respondent filed a complaint for collection of sum of money against the petitioners

to enforce its rights under the promissory notes and real estate mortgages, while the petitioners subsequently filed a complaint for reformation of the promissory notes and real estate mortgages. We held that the first case, the collection case, should subsist because it is the first action filed and the more appropriate vehicle for litigating all the issues in the controversy. We noted that in the second case, the reformation case, the petitioners acknowledged their indebtedness to the respondent; they merely contested the amounts of the principal, interest and the remaining balance. We observed, too, that the petitioners' claims in the reformation case were in the nature of defenses to the collection case and should be asserted in this latter case.

Under this established jurisprudence on *litis pendentia*, the following considerations predominate in the ascending order of importance in determining which action should prevail: **(1)** the date of filing, with preference generally given to the first action filed to be retained; **(2)** whether the action sought to be dismissed was filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal; and **(3)** whether the action is the appropriate vehicle for litigating the issues between the parties.[25] [Underscoring supplied]

In the complaint filed before RTC-Morong, Benavidez alleged, among others, that it was defendant Atty. Nepthalie Segarra *(Atty. Segarra)* who arranged the loan in the amount of ₱1,500,000.00 for her at his own initiative; that he was the one who received the amount for her on or about March 10, 1998 from defendant Salvador; that he paid Farmers Bank the amount of ₱1,049,266.12 leaving a balance of more than ₱450,000.00 in his possession; and that he made her sign a promissory note. Benavidez prayed, among others, that Atty. Segarra be ordered to give her the balance of the amount loaned and that the promissory note that Salvador allegedly executed be declared null and void because she was just duped into signing the said document through machinations and that the stipulated interest therein was shocking to the conscience. Salvador, on the other

[25] *Id.* at 437-442.

hand, filed the subject case for the collection of a sum of money before RTC-Antipolo to enforce his rights under the promissory note.

Considering the nature of the transaction between the parties, the Court believes that the case for collection of sum of money filed before RTC-Antipolo should be upheld as the more appropriate case because the judgment therein would eventually settle the issue in the controversy - whether or not Benavidez should be made accountable for the subject loan. In the complaint that she filed with RTC- Morong, Benavidez never denied that she contracted a loan with Salvador. Under her second cause of action, she alleged:

SECOND CAUSE OF ACTION

11. Defendant Atty. Nepthalie Segarra arranged a loan in the amount of ONE MILLION AND FIVE HUNDRED THOUSAND (₱1,500,000.00) PESOS for plaintiff at his own initiative;

12. Defendant Atty. Nepthalie Segarra received the ₱1,500,000.00 on or about March 10, 1998 from defendant Nestor Salvador **in behalf of and for delivery to plaintiff;**

13. Defendant Atty. Nepthalie Segarra paid Farmers Bank the amount of ₱1,049,266.12 leaving a balance of more than ₱450,000.00 in his possession. A copy of the receipt evidencing payment is herewith attached as Annex "A" and made an integral part hereof;

14. Defendant Atty. Nepthalie Segarra made plaintiff sign a Promissory Note evidencing the loan of ₱1,500,000.00. A copy of said Promissory Note is herewith attached as Annex "B" and made an integral part hereof;[26] [Underscoring supplied]

From the foregoing, it is clear that there was an amount of money borrowed from Salvador which was used in the repurchase of her foreclosed property. Whether or not it was Atty. Segarra who arranged the loan is immaterial. The fact stands that she borrowed from Salvador and she benefited from it. Her insistence that the remaining balance of

[26] *Rollo*, p. 49.

₱450,000.00 of the money loaned was never handed to her by Atty. Segarra is a matter between the two of them. As far as she and Salvador are concerned, there is admittedly an obligation. Whether the promissory note was void or not could have been proven by her during the trial but she forfeited her right to do so when she and her lawyer failed to submit a pre-trial brief and to appear at the pre-trial as will be discussed hereafter.

At this point, to dismiss Civil Case No. 00-5660 would only result in needless delay in the resolution of the parties' dispute and bring them back to square one. This consequence will defeat the public policy reasons behind *litis pendentia* which, like the rule on forum shopping, aim to prevent the unnecessary burdening of our courts and undue taxing of the manpower and financial resources of the Judiciary; to avoid the situation where co-equal courts issue conflicting decisions over the same cause; and to preclude one party from harassing the other party through the filing of an unnecessary or vexatious suit.[27]

The failure of a party to file a pre-trial brief or to appear at a pre-trial conference shall be cause to allow the other party to present evidence ex parte.

Benavidez basically contends that she should not be made to suffer the irresponsibility of her former counsel, Atty. Jakosalem, and that the trial court should have relaxed the application of the Rules of Court, reopened the case and allowed her to present evidence in her favor.

The Court is not moved.

Section 4, Rule 18 of the Rules of Court provides that it is the duty of the parties and their counsel to appear at the pre-trial conference. The effect of their failure to appear is provided by Section 5 of the same rule where it states:

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[27] *Supra* note 24, at 443.

Sec. 5. Effect of failure to appear.- The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. **A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.** [Emphasis supplied]

Furthermore, Section 6 thereof provides:

Sec. 6. *Pre-trial brief*.-The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

x x x x x x x x x

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

From the foregoing, it is clear that the failure of a party to appear at the pre-trial has adverse consequences. If the absent party is the plaintiff, then his case shall be dismissed. If it is the defendant who fails to appear, then the plaintiff is allowed to present his evidence *ex parte* and the court shall render judgment on the basis thereof. Thus, the plaintiff is given the privilege to present his evidence without objection from the defendant, the likelihood being that the court will decide in favor of the plaintiff, the defendant having forfeited the opportunity to rebut or present its own evidence.[28]

RTC-Antipolo then had the legal basis to allow Salvador to present evidence *ex parte* upon motion. Benavidez and her counsel were not present at the scheduled pre-trial conference despite due notice. They did not file the required pre-trial brief despite receipt of the Order. The rule explicitly provides that both parties and their counsel are mandated to appear thereat except for: (1) a valid excuse; and (2) appearance of a representative on behalf of a party who is fully authorized in writing to enter

[28] *Tolentino v. Laurel*, G.R. No. 181368, February 22, 2012, 666 SCRA 561, 569-570.

into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and documents.[29] In this case, Benavidez's lawyer was already negligent, but she compounded this by being negligent herself. She was aware of the scheduled pre-trial conference, but she did not make any move to prevent the prejudicial consequences of her absence or that of her counsel. If she knew that her lawyer would not appear and could not because she was ill, she should have sent a representative in court to inform the judge of her predicament.

Also, her failure to file the pre-trial brief warranted the same effect because the rules dictate that failure to file a pre-trial brief shall have the same effect as failure to appear at the pre-trial. Settled is the rule that the negligence of a counsel binds his clients.[30] Neither Benavidez nor her counsel can now evade the effects of their misfeasance.

Stipulated interest should be reduced for being iniquitous and unconscionable.

This Court is not unmindful of the fact that parties to a loan contract have wide latitude to stipulate on any interest rate in view of the Central Bank Circular No. 905 s. 1982 which suspended the Usury Law ceiling on interest effective January 1, 1983. It is, however, worth stressing that interest rates whenever unconscionable may still be declared illegal. There is nothing in said circular which grants lenders *carte blanche* authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets.[31] In *Menchavez v. Bermudez,*[32] the interest rate

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[29] *Durban Apartments Corp. v. Pioneer Insurance and Surety Corp.*, G.R. No. 179419, January 12, 2011, 639 SCRA 441, 450.

[30] *Suico Industrial Corp. v. Lagura-Yap*, G.R. No. 177711, September 05, 2012, 680 SCRA 145, 159.

[31] *Castro v. Tan, et al.*, G.R. No. 168940, November 24, 2009, 605 SCRA 231, 237-238.

[32] G.R. No. 185368, October 11, 2012, 684 SCRA 168.

of 5% per month, which when summed up would reach 60% per annum, is null and void for being excessive, iniquitous, unconscionable and exorbitant, contrary to morals, and the law.[33]

Accordingly, in this case, the Court considers the compounded interest rate of 5% per month as iniquitous and unconscionable and void and inexistent from the beginning. The debt is to be considered without the stipulation of the iniquitous and unconscionable interest rate.[34] In line with the ruling in the recent case of *Nacar v. Gallery Frames*,[35] the legal interest of 6% per annum must be imposed in lieu of the excessive interest stipulated in the agreement.

WHEREFORE, the petition is **DENIED**. The November 22, 2005 Decision and the June 8, 2006 Amended Decision of the Court of Appeals are **AFFIRMED** with **MODIFICATION**. The interest rate of 5% per month which was the basis in computing Benavidez's obligation is reduced to 6% per annum.

SO ORDERED.

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

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

[34] *Sps. Castro v. De Leon Tan, supra* note 31.

[35] G.R. No. 189871, August 13, 2013.

SECOND DIVISION

[G.R. No. 174588. December 11, 2013]

DAVAO NEW TOWN DEVELOPMENT CORPORATION, *petitioner, vs.* **SPOUSES GLORIA ESPINO SALIGA and CESAR SALIGA, and SPOUSES DEMETRIO EHARA and ROBERTA SUGUE EHARA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; LIMITED TO REVIEW OF QUESTIONS OF LAW; EXCEPTIONS.— [O]nly questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Questions of facts are not allowed in a Rule 45 petition because this Court is not a trier of facts. The Court generally accords respect, if not finality, to the factual findings of quasi-judicial bodies, among them is the DARAB, as these bodies are deemed experts in their respective fields. The question of the existence of a tenancy relationship intertwined with the question of reclassification requires for its resolution a review of the factual findings of the agricultural tribunals and of the CA. These are questions we cannot generally touch in a Rule 45 petition. Nevertheless, the case also presents a legal question as the issue of tenancy relationship is both factual and legal. Moreover, the findings of the PARAD conflict with those of the DARAB. These circumstances impel us to disregard the above general rule and to address both the presented factual and legal issues in view of their social justice implications and the duty to do justice that this Court has sworn to uphold.

2. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 2264; LOCAL GOVERNMENT UNITS; HAVE THE POWER TO RECLASSIFY OR CONVERT LANDS TO NON-AGRICULTURAL USES WHICH IS NOT SUBJECT TO THE APPROVAL OF THE DEPARTMENT OF AGRARIAN REFORM.— [T]he City Council of Davao City has the authority to adopt zoning resolutions and ordinances. Under Section 3

of R.A. No. 2264 (the then governing Local Government Code), **municipal and/or city officials are specifically empowered to** "**adopt zoning and subdivision ordinances or regulations** in consultation with the National Planning Commission." In *Pasong Bayabas Farmers Asso., Inc. v. Court of Appeals*, the Court held that this power of the local government units to reclassify or convert lands to non-agricultural uses is not subject to the approval of the DAR. x x x In the subsequent case of *Junio v. Secretary Garilao*, this Court clarified, once and for all, that "with respect to areas classified and identified as zonal areas not for agricultural uses, like those approved by the HSRC before the effectivity of RA 6657 on June 15, 1988, the DAR's clearance is no longer necessary for conversion."

3. REMEDIAL LAW; RULES OF PROCEDURE; STRICT APPLICATION THEREOF MAY BE RELAXED WHEN THE MERITS OF THE CASE CALL FOR, AND THE GOVERNING RULES OF PROCEDURE EXPLICITLY COMMAND, A RELAXATION.— [W]hile, generally, evidence submitted past the presentation-of-evidence stage is no longer admissible and should be disregarded for reasons of fairness, strict application of this general rule may be relaxed. By way of exception, we relax the application of the rules when, as here, the merits of the case call for, and the governing rules of procedure explicitly command, a relaxation. Under Section 3, Rule I of the 1994 DARAB New Rules of Procedure (the governing DARAB rules), the DARAB shall not be bound by technical rules of procedure and evidence provided under the Rules of Court, which shall not apply even in a suppletory character, and shall employ all reasonable means to ascertain facts of every case. Time and again, this Court has held that "rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice."

4. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW); COVERS ONLY THOSE PUBLIC OR PRIVATE LANDS DEVOTED OR SUITABLE FOR AGRICULTURE.— Considering that the property is no longer agricultural as of June 15, 1988, it is removed from the operation of R.A. No. 6657. By express provision, the CARL

covers only those public or private lands devoted or suitable for agriculture, the operative word being agricultural. Under Section 3(c) of R.A. No. 6657, agricultural lands refer to lands devoted to agricultural activity and not otherwise classified as mineral, forest, residential, commercial, or industrial land. In its Administrative Order No. 1, series of 1990, the DAR further explained the term "agricultural lands" as referring to "those devoted to agricultural activity as defined in R.A. 6657 and x x x ***not classified in town plans and zoning ordinances as approved by the Housing and Land Use Regulatory Board (HLURB) and its preceding competent authorities prior to 15 June 1988 for residential, commercial or industrial use***." If only to emphasize, we reiterate - only those parcels of land specifically classified as agricultural are covered by the CARL; any parcel of land otherwise classified is beyond its ambit.

5. ID.; ID.; PRESIDENTIAL DECREE NO. 27 (THE TENANT EMANCIPATION DECREE); LAND TRANSFER; STAGES. — Under P.D. No. 27, tenant-farmers of rice and corn agricultural lands are "deemed owners" of the land that they till as of October 21, 1972. Under these terms, vested rights cannot simply be taken away by the expedience of adopting zoning plans and ordinances reclassifying an agricultural land to an "urban/urbanizing" area. We need to clarify, however, that while tenant farmers of rice and corn lands are "deemed owners" as of October 21, 1972 following the provisions of P.D. No. 27, this policy should not be interpreted as automatically vesting in them absolute ownership over their respective tillage. The tenant-farmers must still first comply with the requisite preconditions, *i.e.*, payment of just compensation and perfection of title before acquisition of full ownership. In *Del Castillo v. Orciga*, the Court explained that land transfer under P.D. No. 27 is effected in two (2) stages: *first*, the issuance of a certificate of land transfer *(CLT)*; and *second*, the issuance of an emancipation patent *(EP)*. The first stage - issuance of the CLT - serves as the government's recognition of the tenant farmers' inchoate right as "deemed owners" of the land that they till. The second stage – issuance of the EP – perfects the title of the tenant farmers and vests in them absolute ownership upon full compliance with the prescribed requirements. As a preliminary step, therefore, the CLT immediately serves as the tangible evidence of the

government's recognition of the tenant farmers' inchoate right and of the subjection of the particular landholding to the government's OLT program.

6. ID.; ID.; ID.; APPLIES ONLY TO PRIVATE AGRICULTURAL LANDS PRIMARILY DEVOTED TO RICE AND CORN PRODUCTION.— [T]he contract of lease executed between Eugenio and the respondents shows that the property was primarily planted with coconut and coffee trees and, secondarily with several fruit-bearing trees. By its explicit terms, P.D. No. 27 applies only to private agricultural lands primarily devoted to rice and corn production. Thus, the property could never have been covered by P.D. No. 27 as it was not classified as rice and corn land.

7. ID.; ID.; TENANCY RELATIONSHIP; REQUISITES.— In *Solmayor v. Arroyo,* the Court outlined the essential requisites of a tenancy relationship, all of which must concur for the relationship to exist, namely: "1. The parties are the landowner and the tenant; 2. The subject is agricultural land; 3. There is consent; 4. The purpose is agricultural production; 5. There is personal cultivation; and 6. There is sharing of harvests." The absence of any of these requisites does not make an occupant a cultivator, or a planter, a *de jure* tenant. Consequently, a person who is not a *de jure* tenant is not entitled to security of tenure nor covered by the land reform program of the government under any existing tenancy laws.

8. ID.; REPUBLIC ACT NO. 3844 (THE AGRICULTURAL LAND REFORM CODE); LEASEHOLD RELATIONSHIP; THE RECLASSIFICATION OR CONVERSION OF AN AGRICULTURAL LAND TO NON-AGRICULTURAL USE TERMINATES THE RIGHT OF THE AGRICULTURAL LESSEE TO CONTINUE IN ITS POSSESSION AND ENJOYMENT.— Under Section 7 of R.A. No. 3844, once the leasehold relation is established, the agricultural lessee is entitled to security of tenure and acquires the right to continue working on the landholding. Section 10 of this Act further strengthens such tenurial security by declaring that the mere expiration of the term or period in a leasehold contract, or the sale, alienation or transfer of the legal possession of the landholding shall not extinguish the leasehold relation; and in case of sale or transfer, the purchaser or transferee is subrogated

to the rights and obligations of the landowner/lessor. By the provisions of Section 10, mere expiration of the five-year term on the respondents' lease contract could not have caused the termination of any tenancy relationship that may have existed between the respondents and Eugenio. Still, however, we cannot agree with the position that the respondents are the tenants of DNTDC. This is because, despite the guaranty, R.A. No. 3844 also enumerates the instances that put an end to the lessee's protected tenurial rights. Under Section 7 of R.A. No. 3844, the right of the agricultural lessee to continue working on the landholding ceases when the leasehold relation is extinguished or when the lessee is lawfully ejected from the landholding. Section 8 enumerates the causes that terminate a relationship, while Section 36 enumerates the grounds for dispossessing the agricultural lessee of the landholding.

APPEARANCES OF COUNSEL

Carag Caballes Jamora & Somera Law Offices for petitioner.
Firmo P. Braganza for private respondents.

D E C I S I O N

BRION, *J.*:

We pass upon the petition for review on *certiorari*,[1] under Rule 45 of the Rules of Court, challenging the March 28, 2006 decision[2] and the September 5, 2006 resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 79377. This CA ruling affirmed the January 12, 2001 decision[4] of the Department of

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[1] Dated October 22, 2006 and filed on October 30, 2006, *rollo*, pp. 9-27.

[2] Penned by Associate Justice Normandie B. Pizarro, and concurred in by Associate Justices Edgardo A. Camello and Ricardo R. Rosario, *id.* at 32-46.

[3] *Id.* at 48-50.

[4] Penned by Assistant Secretary Lorenzo R. Reyes, and concurred in by Assistant Secretary Augusto P. Quijano, Edwin C. Sales and Assistant Secretary Wilfredo M. Peñaflor; CA *rollo*, pp. 43-53. The August 28, 2003 resolution of the DARAB denied DNTDC's motion for reconsideration dated August 7, 2001; *id.* at 29-34.

Agrarian Reform Adjudication Board *(DARAB)* in DARAB Case No. 7775. The DARAB set aside the July 6, 1998 decision[5] of the Provincial Agrarian Reform Adjudicator *(PARAD)* that ruled in favor of petitioner Davao New Town Development Corporation *(DNTDC)*.

The Factual Antecedents

At the root of the present controversy are two parcels of land – 4.9964 hectares[6] and 2.5574 hectares[7] *(subject property)* - situated in Catalunan Pequeño, Davao City and originally registered in the name of Atty. Eugenio Mendiola (deceased).

On February 5, 1998,[8] the respondents - spouses Gloria Espino Saliga and Cesar Saliga *(spouses Saliga)* and spouses Demetrio Ehara and Roberta Sugue Ehara *(spouses Ehara)*, *(*collectively referred to as *respondents)* - filed before the Office of the PARAD in Davao City a complaint for injunction, cancellation of titles and damages against DNTDC. They amended this complaint on February 13, 1998.

In their complaint and amended complaint, the respondents claimed that they and their parents, from whom they took over the cultivation of the landholding, had been tenants of the property as early as 1965. On August 12, 1981, the respondents and Eugenio executed a five-year lease contract.[9] While they made stipulations regarding their respective rights and obligations over the landholding, the respondents claimed that the instrument was actually a device Eugenio used to evade the land reform law.

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[5] Penned by Regional Adjudicator Norberto Sinsona; *id.* at 264-270.

[6] Known as Lot 850-C and covered by Transfer Certificate of Title No. T-8929.

[7] Known as Lot 850-B-3-D and covered by Transfer Certificate of Title No. T-8930.

[8] Filed on February 6, 1998 per the DARAB's January 12, 2001 decision; *supra* note 4.

[9] CA *rollo,* pp. 36-40.

The respondents also argued that pursuant to the provisions of Presidential Decree *(P.D.)* No. 27, they, as tenants, were deemed owners of the property beginning October 21, 1972 (the Act's effectivity date); thus, the subsequent transfer of the property to DNTDC was not valid. The respondents added that DNTDC could not have been a buyer in good faith as it did not verify the status of the property – whether tenanted or not tenanted - prior to its purchase. The respondents submitted, among others, the pertinent tax declarations showing that the property was agricultural as of 1985.

In its answer, DNTDC alleged in defense that it purchased the property in good faith from the previous owners (Paz M. Flores and Elizabeth M. Nepumuceno)[10] in 1995. At that time, the alleged tenancy relationship between the respondents and Eugenio had already expired following the expiration of their lease contracts in 1986. DNTDC also claimed that prior to the sale, the Davao City Office of the Zoning Administrator confirmed that the property was not classified as agricultural; it pointed out that the affidavit of non-tenancy executed by the vendors affirmed the absence of any recognized agricultural lessees on the property. DNTDC added that the property had already been classified to be within an "urban/urbanizing zone" in the *"1979-2000 Comprehensive Land Use Plan for Davao City"* that was duly adopted by the City Council of Davao City and approved by the Human Settlement Regulatory Commission *(HSRC)* (now the Housing and Land Use Regulatory Board [*HLURB*]).

In its decision of July 6, 1998, the PARAD ordered the DNTDC to pay the spouses Saliga the sum of ₱20,000.00 and the spouses Ehara the sum of ₱15,000.00 as disturbance compensation, and to allocate to each of the respondent spouses a 150-square meter homelot. While the PARAD conceded that the respondents were tenants of the property, it nevertheless ruled that the property had already been reclassified from agricultural to non-agricultural uses prior to June 15, 1988, the

[10] Respectively, the sister-in-law and the daughter of Eugenio.

date when Republic Act *(R.A.)* No. 6657 (the Comprehensive Agrarian Reform Law of 1988) took effect. Thus, since R.A. No. 6657 covers only agricultural lands, the property fell outside its coverage.

The respondents appealed the case to the DARAB.

The ejectment case before the MTCC

Pending resolution of the appeal before the DARAB, DNTDC filed before the Municipal Trial Court in Cities *(MTCC)* of Davao City a complaint for unlawful detainer[11] against Demetrio Ehara, Jr., Reynaldo Saliga and Liza Saliga, the children of respondent spouses Ehara and spouses Saliga. DNTDC claimed that it owned the 2.5574-hectare portion of the property which the respondents' children had been occupying by its mere tolerance. Despite its repeated demands, the respondents' children refused to vacate and continued to illegally occupy it.

In their answer, the respondents' children raised the issue of lack of jurisdiction, arguing that the case involved an agrarian dispute. They contended that the law considers them immediate members of the farm household, to whom R.A. No. 3844 and R.A. No. 6657 extend tenurial security. Thus, they claimed that they, as tenants, were entitled to continue occupying the disputed portion.

On December 20, 2000, the MTCC rendered its decision[12] granting the DNTDC's complaint and ordering the respondents' children to vacate the 2.5574-hectare portion of the property. The MTCC ruled that the respondents' children were not tenants of the property because they failed to prove that their stay on the premises was by virtue of a tenancy agreement and because they had been occupying portions different from their parents' landholding. The MTCC also ruled that the 2.5574-hectare portion was no longer agricultural and was thus removed from the coverage of R.A. No. 6657.

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[11] Dated March 30, 2000; *rollo*, pp. 51-54.

[12] Penned by Judge Antonina B. Escovilla; *id.* at 55-63.

The prohibition case before the RTC

The respondents' children did not appeal the MTCC decision. Instead, on June 1, 2001, they filed before the Regional Trial Court *(RTC)*, Branch 17, Davao City a petition for Prohibition[13] against DNTDC to enjoin the execution of the MTCC decision. They repeated the defenses and allegations in their pleading before the MTCC. The children of the spouses Saliga – Liza and Reynaldo - however added that Cesar had already died; hence, they were filing the prohibition case in their own right as heirs/successors-in-interest of Cesar.

On November 29, 2001, the respondents' children and DNTDC entered into a compromise agreement.[14] The respondents' children undertook to voluntarily and peacefully vacate the 2.5574-hectare portion of the property and to remove and demolish their respective houses built on its premises, while DNTDC agreed to give each of them the amount of 20,000.00 as financial assistance. The RTC approved the compromise agreement in its December 7, 2001 decision.[15]

The Ruling of the DARAB

In its decision[16] of January 12, 2001, the DARAB reversed and set aside the PARAD's ruling. The DARAB ordered DNTDC and all persons acting in its behalf to respect and maintain the respondents in the peaceful possession and cultivation of the property, and the Municipal Agrarian Reform Officer *(MARO)* to enjoin the DNTDC from disturbing and/or molesting the respondents in their peaceful possession and cultivation of it.

As the PARAD did, the DARAB declared that a tenancy relationship existed between Eugenio and the respondents, which was not extinguished by the expiration of the five-year term

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[13] Petition for Prohibition with TRO, Preliminary Injunction, Damages and Attorney's Fees dated March 15, 2001; *id*. at 64-71.

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

[15] Penned by Judge Renato A. Fuentes; *id.* at 75-76.

[16] *Supra* note 4.

stated in their lease contracts. Thus, when DNTDC purchased the property, it had been subrogated to the rights and obligations of the previous landowner pursuant to the provisions of R.A. No. 3844.[17]

Unlike the PARAD, however, the DARAB was not convinced that the property had already been reclassified to non-agricultural uses so as to remove it from the coverage of R.A. No. 6657. With Administrative Order No. 5, series of 1994 as basis, the DARAB held that the alleged reclassification of the property did not and could not have divested the respondents of their rights as "deemed owners" under P.D. No. 27. The DARAB also pointed out that while Davao City Ordinance No. 363, series of 1982 (adopting the Comprehensive Development Plan of Davao City), reclassified the property to be within the "urban/ urbanizing zone," the DNTDC did not submit the required certifications from the HLURB, adopting the zoning ordinance, and from the DAR, approving the conversion to make the reclassification valid.

When the DARAB denied the DNTDC's motion for reconsideration in its August 28, 2003 resolution,[18] the DNTDC elevated the case to the CA *via* a petition for review.[19]

The Ruling of the CA

In its March 28, 2006 decision,[20] the CA affirmed *in toto* the January 12, 2001 decision of the DARAB. The CA similarly declared that the tenancy relationship established between the respondents and Eugenio was not extinguished by the expiration of the five-year term of their lease contracts or by the subsequent transfer of the property to DNTDC. The CA noted that both the DARAB and the PARAD arrived at the same findings and that the DNTDC impliedly admitted in its pleadings the existence of the tenancy relationship.

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[17] The Agricultural Land Reform Code.

[18] *Supra* note 4.

[19] Dated September 19, 2003; CA *rollo*, pp. 2-23.

[20] *Supra* note 2.

The CA was also convinced that the property was still agricultural and was, therefore, covered by R.A. No. 6657. While the CA conceded that the conversion of the use of lands that had been reclassified as residential, commercial or industrial, prior to the effectivity of R.A. No. 6657, no longer requires the DAR's approval, the CA pointed out that the landowner must first comply with certain pre-conditions for exemption and/or conversion. Among other requirements, the landowner must secure an exemption clearance from the DAR. This exemption clearance shall be issued after the landowner files the certifications issued by the deputized zoning administrator, stating that the land had been reclassified, and by the HLURB, stating that it had approved the pertinent zoning ordinance, with both the reclassification and the approval carried out prior to June 15, 1988.

In this case, the CA held that DNTDC failed to secure and present any exemption clearance. The CA also pointed out that: (1) Davao City Ordinance No. 363, series of 1982, adopting the Comprehensive Development Plan of Davao City did not substantially show that it had reclassified the property from agricultural to non-agricultural uses; (2) DNTDC failed to submit during the proceedings before the PARAD and the DARAB the HLURB certification allegedly approving Davao City Ordinance No. 363, series of 1982; (3) while DNTDC attached to its motion for reconsideration of the DARAB's decision a certification from the HLURB stating that by resolution (Resolution No. R-39-4) dated July 31, 1980, it approved the Comprehensive Development Plan, yet at the time of the alleged HLURB approval, the pertinent zoning ordinance - Davao City Ordinance No. 363, series of 1982 - adopting such plan had not yet been enacted; and (4) the HLURB certification that DNTDC presented referred to a parcel of land subject of another case.

DNTDC filed the present petition after the CA denied its motion for reconsideration[21] in the CA's September 5, 2006 resolution.[22]

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[21] Dated April 17, 2006; CA *rollo*, pp. 295-306.

[22] *Supra* note 3.

The Petition

In its present petition,[23] DNTDC argues that the CA seriously erred when it: (1) failed to consider the fact that the respondents violated the compromise agreement; (2) ruled that a tenancy relationship exists between it and the respondents; and (3) declared that the subject property is agricultural.[24]

Directly addressing the CA's ruling, DNTDC argues that: *first,* the respondents, in the compromise agreement, categorically agreed to voluntarily vacate the property upon receipt of the stated financial assistance. Since the RTC approved the compromise agreement and the respondents had already received the agreed financial assistance, the CA should have considered these incidents that immediately bound the respondents to comply with their undertaking to vacate.

Second, no tenancy relationship exists between DNTDC and the respondents. DNTDC maintains that while a tenancy relationship existed between the respondents and Eugenio, this relationship was terminated when the MTCC ordered the respondents to vacate the property. It emphasizes that this MTCC decision that ordered the respondents to vacate the property had already become final and executory upon the respondents' failure to seasonably appeal. DNTDC adds that after the respondents' lease contract with Eugenio expired and the latter simply allowed the former to continue occupying the property, the respondents became bound by an implied promise to vacate its premises upon demand. Thus, when, as the new owner, it demanded the return of the property, the respondents were obligated to comply with their implied promise to vacate.

Finally, the property is no longer agricultural, contrary to the findings of the DARAB and the CA. DNTDC points out that the proceedings before the PARAD had sufficiently addressed this issue, which the CA recognized in the assailed

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[23] See also DNTDC's memorandum dated October 27, 2007; *rollo,* pp. 132-149.

[24] *Id.* at 20.

decision. Thus, DNTDC contends that the findings of the PARAD should prevail over those of the DARAB.

In its reply[25] to the respondents' comment, DNTDC additionally argues that the MTCC and the RTC cases are closely intertwined with and relevant to the present case. It points out that Reynaldo and Liza categorically stated in their petition in the RTC case that they were suing in their own right as heirs/successors-in-interest of Cesar. Consequently, the spouses Saliga, as represented and succeeded by Reynaldo and Liza, are bound by the compromise agreement that the latter signed in the RTC case.

The Case for the Respondents

In their comment,[26] the respondents argue that the MTCC and the RTC cases do not bear any significance to the present controversy. They point out that the parties in the MTCC and the RTC cases, aside from DNTDC, were Demetrio Ehara, Jr., Reynaldo and Liza who are undeniably different from them.

Relying on the ruling of the CA, the respondents also argue that a tenancy relationship exists between them and DNTDC and that the property is still agricultural. The respondents quoted *in toto* the CA's discussions on these issues to support their position.

The Issues

In sum, the issues for our resolution are: (1) whether the property had been reclassified from agricultural to non-agricultural uses prior to June 15, 1988 so as to remove it from the coverage of R.A. No. 6657; (2) whether an agricultural leasehold or tenancy relationship exists between DNTDC and the respondents; and (3) whether the compromise agreement signed by the respondents' children in the RTC case binds the respondents.

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[25] Dated June 20, 2007; *id.* at 109-112.

[26] Dated January 28, 2007, *id.* at 90-100. See also the respondents' memorandum dated November 5, 2007; *id.* at 154-168.

The Court's Ruling

We resolve to **GRANT** the petition.

Preliminary considerations

At the outset, we reiterate the settled rule that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court.[27] Questions of facts are not allowed in a Rule 45 petition because this Court is not a trier of facts.[28] The Court generally accords respect, if not finality, to the factual findings of quasi-judicial bodies, among them is the DARAB, as these bodies are deemed experts in their respective fields.[29] The question of the existence of a tenancy relationship intertwined with the question of reclassification requires for its resolution a review of the factual findings of the agricultural tribunals and of the CA. These are questions we cannot generally touch in a Rule 45 petition.

Nevertheless, the case also presents a legal question as the issue of tenancy relationship is both factual and legal. Moreover, the findings of the PARAD conflict with those of the DARAB. These circumstances impel us to disregard the above general rule and to address both the presented factual and legal issues in view of their social justice implications and the duty to do justice that this Court has sworn to uphold.

We now resolve the merits of the petition.

The subject property had been reclassified as non-agricultural prior to June 15, 1988; hence, they are no longer covered by R.A. No. 6657

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[27] *Pasong Bayabas Farmers Asso., Inc. v. Court of Appeals*, 473 Phil. 64, 90 (2004).

[28] *Heirs of Luis A. Luna and Remegio A. Luna v. Afable*, G.R. No. 188299, January 23, 2013, 689 SCRA 207, 223.

[29] *Pasong Bayabas Farmers Asso., Inc. v. Court of Appeals, supra* note 27, at 90; and *Heirs of Luis A. Luna and Remegio A. Luna v. Afable, supra* note 28, at 223.

At the core of the controversy is the questioned reclassification of the property to non-agricultural uses. This issue is intertwined with and on which depends the resolution of the issue concerning the claimed agricultural leasehold relationship.

In reversing the PARAD and holding that the property was still agricultural, the DARAB considered the Comprehensive Development Plan (approved by the HSRC through Board Resolution R-39-4 dated July 31, 1980) and Davao City Ordinance No. 363, series of 1982 (adopting the Comprehensive Development Plan) as invalid reclassification measures. It gave as reason the absence of the requisite certification from the HLURB and the approval of the DAR. In the alternative, and citing P.D. No. 27, in relation with R.A. No. 6657, as basis, the DARAB considered the alleged reclassification ineffective so as to free the property from the legal effects of P.D. No. 27 that deemed it taken under the government's operation land transfer *(OLT)* program as of October 21, 1972.

We differ from, and cannot accept, the DARAB's position.

We hold that the property had been reclassified to non-agricultural uses and was, therefore, already outside the coverage of the Comprehensive Agrarian Reform Law (CARL) after it took effect on July 15, 1988.

1. Power of the local government units to reclassify lands from agricultural to non-agricultural uses; the DAR approval is not required

Indubitably, the City Council of Davao City has the authority to adopt zoning resolutions and ordinances. Under Section 3 of R.A. No. 2264[30] (the then governing Local Government Code),

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[30] "AN ACT AMENDING THE LAWS GOVERNING LOCAL GOVERNMENTS BY INCREASING THEIR AUTONOMY AND REORGANIZING PROVINCIAL GOVERNMENTS." Enacted on June 15, 1959.

See also Memorandum Circular No. 74-20 dated March 11, 1974 issued by the Secretary of the Department of Local Government and Community

municipal and/or city officials are specifically empowered to "adopt zoning and subdivision ordinances or regulations in consultation with the National Planning Commission."[31]

In *Pasong Bayabas Farmers Asso., Inc. v. Court of Appeals*,[32] the Court held that this power of the local government units to reclassify or convert lands to non-agricultural uses is not subject to the approval of the DAR.[33] There, the Court affirmed the authority of the Municipal Council of Carmona to issue a zoning classification and to reclassify the property in dispute from agricultural to residential through the Council's *Kapasiyahang Bilang 30,* as approved by the HSRC.

In the subsequent case of *Junio v. Secretary Garilao*,[34] this Court clarified, once and for all, that "with respect to areas classified and identified as zonal areas not for agricultural uses, like those approved by the HSRC before the effectivity of RA 6657 on June 15, 1988, the DAR's clearance is no longer necessary for conversion."[35] The Court in that case declared the disputed landholding as validly reclassified from agricultural to residential pursuant to Resolution No. 5153-A of the City Council of Bacolod.

Citing the cases of *Pasong Bayabas Farmers Asso., Inc.* and *Junio,* this Court arrived at significantly similar ruling in the case of *Agrarian Reform Beneficiaries Association (ARBA) v. Nicolas.*[36]

Development authorizing the local legislative bodies to create and organize their respective City Planning and Development Boards.

[31] *Pasong Bayabas Farmers Asso., Inc. v. Court of Appeals, supra* note 27, at 94; and *Heirs of Dr. Jose Deleste v. Land Bank of the Philippines (LBP),* G.R. No. 169913, June 8, 2011, 651 SCRA 352, 376 (emphasis and underscore ours).

[32] *Supra* note 27.

[33] *Id.* at 95. See also *Heirs of Dr. Jose Deleste v. Land Bank of the Philippines (LBP), supra* note 31, at 376.

[34] 503 Phil. 154 (2005).

[35] *Id.* at 167.

[36] G.R. No. 168394, October 6, 2008, 567 SCRA 540, 553-555.

Based on these considerations, we hold that the property had been validly reclassified as non-agricultural land prior to June 15, 1988. We note the following facts established in the records that support this conclusion: (1) the Davao City Planning and Development Board prepared the Comprehensive Development Plan for the year 1979-2000 in order to provide for a comprehensive zoning plan for Davao City; (2) the HSRC approved this Comprehensive Development Plan through Board Resolution R-39-4 dated July 31, 1980; (3) the HLURB confirmed the approval per the certification issued on April 26, 2006;[37] (4) the City Council of Davao City adopted the Comprehensive Development Plan through its Resolution No. 894 and City Ordinance No. 363, series of 1982;[38] (5) the Office of the City Planning and Development Coordinator, Office of the Zoning Administrator expressly certified on June 15, 1995 that per City Ordinance No. 363, series of 1982 as amended by S.P. Resolution No. 2843, Ordinance No. 561, series of 1992, the property (located in barangay Catalunan Pequeño) is within an "urban/urbanizing" zone;[39] (6) the Office of the City Agriculturist confirmed the above classification and further stated that the property is not classified as prime agricultural land and is not irrigated nor covered by an irrigation project as certified by the National Irrigation Administration, per the certification issued on December 4, 1998;[40] and (7) the HLURB, per certification dated May 2, 1996,[41] quoted the April 8, 1996 certification issued by the Office of the City Planning and Development Coordinator stating that "the Mintal District which includes barangay Catalunan Pequeño, is identified as one of the '*urbaning* [sic] *district centers and priority areas and for development and investments'* in Davao City."

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[37] *Rollo,* p. 85.

[38] CA *rollo,* pp. 151-184.

[39] Issued by then Zoning Administrator Hector L. Esguerra; *id.* at 185-186.

[40] Issued by City Agriculturist Dionisio A. Bangkas; *id.* at 187.

[41] *Id.* at 61-64.

We note that while the DNTDC attached, to its motion for reconsideration of the DARAB's decision, the May 2, 1996 certification of the HLURB, both the DARAB and the CA simply brushed this aside on technicality. The CA reasoned that the certificate was belatedly presented and that it referred to a parcel of lot subject of another case, albeit, similarly involving DNTDC, as one of the parties, and property located within the same district.

We cannot support this position of the CA for the following reasons: *first*, while, generally, evidence submitted past the presentation-of-evidence stage is no longer admissible and should be disregarded for reasons of fairness, strict application of this general rule may be relaxed. By way of exception, we relax the application of the rules when, as here, the merits of the case call for, and the governing rules of procedure explicitly command, a relaxation. Under Section 3, Rule I of the 1994 DARAB New Rules of Procedure (the governing DARAB rules), the DARAB shall not be bound by technical rules of procedure and evidence provided under the Rules of Court, which shall not apply even in a suppletory character, and shall employ all reasonable means to ascertain facts of every case.

Time and again, this Court has held that "rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice."[42] Thus, while DNTDC, in this case, attached the May 2, 1996 HLURB certification only in its motion for reconsideration, the DARAB should have considered it, especially in the light of the various documents that DNTDC presented to support its position that the property had already been reclassified as non-agricultural land prior to June 15, 1988.

And *second*, granting *arguendo* that the May 2, 1996 HLURB certification was issued in relation to another case that involved a different parcel of land, it is not without value. The clear-cut

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[42] *Solmayor v. Arroyo*, 520 Phil. 854, 870 (2006). See also *Heirs of Dr. Jose Deleste v. Land Bank of the Philippines (LBP)*, *supra* note 31, at 373.

declarations of the HLURB in the certification, which the DARAB and the CA should have considered and which we find sufficiently convincing, show that Catalunan Pequeño (where the property lies) is classified as within the urbanizing district centers of Davao City. Thus, for all intents and purposes, the May 2, 1996 HLURB certification satisfied the purpose of this requirement, which is to establish by sufficient evidence the property's reclassification as non-agricultural land prior to June 15, 1988.

Considering that the property is no longer agricultural as of June 15, 1988, it is removed from the operation of R.A. No. 6657. By express provision, the CARL covers only those public or private lands devoted or suitable for agriculture,[43] the operative word being agricultural. Under Section 3(c) of R.A. No. 6657, agricultural lands refer to lands devoted to agricultural activity and not otherwise classified as mineral, forest, residential, commercial, or industrial land.[44] In its Administrative Order No. 1, series of 1990,[45] the DAR further explained the term "agricultural lands" as referring to "those devoted to agricultural activity as defined in R.A. 6657 and x x x ***not classified in town plans and zoning ordinances as approved by the Housing and Land Use Regulatory Board (HLURB) and its preceding competent authorities prior to 15 June 1988 for residential, commercial or industrial use.***" If only to emphasize, we reiterate - only those parcels of land specifically classified as agricultural are covered by the CARL; any parcel of land otherwise classified is beyond its ambit.

2. No vested rights over the property accrued to the respondents under P.D. No. 27

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[43] See Section 4 of R.A. No. 6657.

[44] See *Pasong Bayabas Farmers Asso., Inc. v. Court of Appeals*, *supra* note 27, at 92.

[45] Entitled "Revised Rules and Regulations Governing Conversion of Private Agricultural Land to Non-Agricultural Uses."

Under P.D. No. 27, tenant-farmers of rice and corn agricultural lands are "deemed owners" of the land that they till as of October 21, 1972. Under these terms, vested rights cannot simply be taken away by the expedience of adopting zoning plans and ordinances reclassifying an agricultural land to an "urban/urbanizing" area.

We need to clarify, however, that while tenant farmers of rice and corn lands are "deemed owners" as of October 21, 1972 following the provisions of P.D. No. 27, this policy should not be interpreted as automatically vesting in them absolute ownership over their respective tillage. The tenant-farmers must still first comply with the requisite preconditions, *i.e.*, payment of just compensation and perfection of title before acquisition of full ownership.[46]

In *Del Castillo v. Orciga*,[47] the Court explained that land transfer under P.D. No. 27 is effected in two (2) stages: *first*, the issuance of a certificate of land transfer *(CLT)*; and *second*, the issuance of an emancipation patent *(EP)*. The first stage - issuance of the CLT - serves as the government's recognition of the tenant farmers' inchoate right as "deemed owners" of the land that they till.[48] The second stage – issuance of the EP – perfects the title of the tenant farmers and vests in them absolute ownership upon full compliance with the prescribed requirements.[49] As a preliminary step, therefore, the CLT immediately serves as the tangible evidence of the government's recognition of the tenant farmers' inchoate right and of the subjection of the particular landholding to the government's OLT program.

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[46] See *Heirs of Dr. Jose Deleste v. Land Bank of the Philippines (LBP), supra* note 31, at 381.

[47] 532 Phil. 204, 214 (2006).

[48] *Ibid*.

[49] See *Dela Cruz v. Quiazon*, G.R. No. 171961, November 28, 2008, 572 SCRA 681, 693; and *Del Castillo v. Orciga, supra* note 48, at 214.

In this case, the record does not show that the respondents had been issued CLTs. The CLT could have been their best evidence of the government's recognition of their inchoate right as "deemed owners" of the property. Similarly, the record does not show that the government had placed the property under its OLT program or that the government, through the MARO, recognized the respondents as the actual tenants of the property on the relevant date, thereby sufficiently vesting in them such inchoate right.

Consequently, this Court can safely conclude that no CLTs had ever been issued to the respondents and that the government never recognized any inchoate right on the part of the respondents as "deemed owners" of the property. In effect, therefore, no vested rights under P.D. No. 27, in relation to R.A. No. 6657, accrued to the respondents such that when the property was reclassified prior to June 15, 1988, it did not fall, by clear legal recognition within the coverage of R.A. No. 6657.

Interestingly, the contract of lease executed between Eugenio and the respondents shows that the property was primarily planted with coconut and coffee trees and, secondarily with several fruit-bearing trees. By its explicit terms, P.D. No. 27 applies only to private agricultural lands primarily devoted to rice and corn production. Thus, the property could never have been covered by P.D. No. 27 as it was not classified as rice and corn land.

For these reasons, we hold that the property is no longer agricultural and that the CA erred when it affirmed the DARAB's ruling that the property – notwithstanding the various documents that unquestionably established the contrary – was agricultural.

No tenancy relationship exists between DNTDC and the respondents; the tenancy relationship between the respondents and Eugenio ceased when the property was reclassified

In *Solmayor v. Arroyo,*[50] the Court outlined the essential requisites of a tenancy relationship, all of which must concur for the relationship to exist, namely:

1. The parties are the landowner and the tenant;
2. The subject is agricultural land;
3. There is consent;
4. The purpose is agricultural production;
5. There is personal cultivation; and
6. There is sharing of harvests.

The absence of any of these requisites does not make an occupant a cultivator, or a planter, a *de jure* tenant.[51] Consequently, a person who is not a *de jure* tenant is not entitled to security of tenure nor covered by the land reform program of the government under any existing tenancy laws.[52]

In this case, we hold that no tenancy relationship exists between DNTDC, as the owner of the property, and the respondents, as the purported tenants; the second essential requisite as outlined above – the subject is agricultural land – is lacking. To recall, the property had already been reclassified as non-agricultural land. Accordingly, the respondents are not *de jure* tenants and are, therefore, not entitled to the benefits granted to agricultural lessees under the provisions of P.D. No. 27, in relation to R.A. No. 6657.

We note that the respondents, through their predecessors-in-interest, had been tenants of Eugenio as early as 1965. Under Section 7 of R.A. No. 3844, once the leasehold relation is established, the agricultural lessee is entitled to security of tenure and acquires the right to continue working on the landholding.

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[50] *Supra* note 42, at 875-876 citing *Caballes v. Department of Agrarian Reform*, 250 Phil. 255, 261 (1988). See also *Esquivel v. Atty. Reyes*, 457 Phil. 509, 515-516 (2003).

[51] *Solmayor v. Arroyo, supra* note 42, at 876; and *Esquivel v. Atty. Reyes, supra*, at 517.

[52] *Solmayor v. Arroyo, supra* note 42, at 876; and *Esquivel v. Atty. Reyes, supra*, at 520.

Section 10 of this Act further strengthens such tenurial security by declaring that the mere expiration of the term or period in a leasehold contract, or the sale, alienation or transfer of the legal possession of the landholding shall not extinguish the leasehold relation; and in case of sale or transfer, the purchaser or transferee is subrogated to the rights and obligations of the landowner/ lessor. By the provisions of Section 10, mere expiration of the five-year term on the respondents' lease contract could not have caused the termination of any tenancy relationship that may have existed between the respondents and Eugenio.

Still, however, we cannot agree with the position that the respondents are the tenants of DNTDC. This is because, despite the guaranty, R.A. No. 3844 also enumerates the instances that put an end to the lessee's protected tenurial rights. Under Section 7 of R.A. No. 3844, the right of the agricultural lessee to continue working on the landholding ceases when the leasehold relation is extinguished or when the lessee is lawfully ejected from the landholding. Section 8[53] enumerates the causes that terminate a relationship, while Section 36 enumerates the grounds for dispossessing the agricultural lessee of the landholding.[54]

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[53] Section 8 of R.A. No. 3844 reads:

"Section 8. *Extinguishment of Agricultural Leasehold Relation* - The agricultural leasehold relation established under this Code shall be extinguished by:

(1) Abandonment of the landholding without the knowledge of the agricultural lessor;

(2) Voluntary surrender of the landholding by the agricultural lessee, written notice of which shall be served three months in advance; or

(3) Absence of the persons under Section nine to succeed to the lessee, in the event of death or permanent incapacity of the lessee." (italics supplied)

[54] Section 36 of R.A. No. 3844, as amended by R.A. No. 6389, reads:

"Section 36. *Possession of Landholding; Exceptions* - Notwithstanding any agreement as to the period or future surrender, of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:

(1) The landholding is declared by the department head upon recommendation of the National Planning Commission to be suited for residential, commercial, industrial or some other urban purposes: Provided, That the agricultural

Notably, under Section 36(1) of R.A. No. 3844, as amended by Section 7 of R.A. No. 6389,[55] declaration by the department head, upon recommendation of the National Planning Commission, to be suited for residential, commercial, industrial or some other urban purposes, terminates the right of the agricultural lessee to continue in its possession and enjoyment. The approval of the conversion, however, is not limited to the authority of the DAR or the courts. In the case of *Pasong Bayabas Farmers Asso., Inc. v. Court of Appeals*,[56] and again in *Junio v. Secretary Garilao*,[57] the Court essentially explained that the reclassification and conversion of agricultural lands to non-agricultural uses prior to the effectivity of R.A. No. 6657, on June 15, 1988, was a coordinated effort of several government agencies, such as local government units and the HSRC.

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lessee shall be entitled to disturbance compensation equivalent to five times the average of the gross harvests on his landholding during the last five preceding calendar years;
(2) The agricultural lessee failed to substantially comply with any of the terms and conditions of the contract or any of the provisions of this Code unless his failure is caused by fortuitous event or force majeure;
(3) The agricultural lessee planted crops or used the landholding for a purpose other than what had been previously agreed upon;
(4) The agricultural lessee failed to adopt proven farm practices as determined under paragraph 3 of Section twenty-nine;
(5) The land or other substantial permanent improvement thereon is substantially damaged or destroyed or has unreasonably deteriorated through the fault or negligence of the agricultural lessee;
(6) The agricultural lessee does not pay the lease rental when it falls due: Provided, That if the non-payment of the rental shall be due to crop failure to the extent of seventy-five per centum as a result of a fortuitous event, the non-payment shall not be a ground for dispossession, although the obligation to pay the rental due that particular crop is not thereby extinguished; or
(7) The lessee employed a sub-lessee on his landholding in violation of the terms of paragraph 2 of Section twenty-seven." (italics supplied)

[55] "AN ACT AMENDING REPUBLIC ACT NUMBERED THIRTY-EIGHT HUNDRED AND FORTY-FOUR, AS AMENDED, OTHERWISE KNOWN AS THE AGRICULTURAL LAND REFORM CODE, AND FOR OTHER PURPOSES."

[56] *Supra* note 27, at 92-95.

[57] *Supra* note 34, at 165-166.

In effect, therefore, whether the leasehold relationship between the respondents and Eugenio had been established by virtue of the provisions of R.A. No. 3844 or of the five-year lease contract executed in 1981, this leasehold relationship had been terminated with the reclassification of the property as non-agricultural land in 1982. The expiration the five-year lease contract in 1986 could not have done more than simply finally terminate any leasehold relationship that may have prevailed under the terms of that contract.

Consequently, when the DNTDC purchased the property in 1995, there was no longer any tenancy relationship that could have subrogated the DNTDC to the rights and obligations of the previous owner. We, therefore, disagree with the findings of the CA, as it affirmed the DARAB that a tenancy relationship exists between DNTDC and the respondents.

The respondents are not bound by the November 29, 2001 compromise agreement before the RTC

The respondents argue that the compromise agreement of Demetrio Ehara, Jr., Reynaldo and Liza – entered into with DNTDC on November 29, 2001 and approved by the RTC on December 7, 2001 – does not and cannot bind them as they are different from the former.

We agree for two plain reasons.

First, the respondents' position on this matter finds support in logic. Indeed, as the respondents have well pointed out and contrary to DNTDC's position, this similarity in their last names or familial relationship cannot automatically bind the respondents to any undertaking that their children in the RTC case had agreed to. This is because DNTDC has not shown that the respondents had expressly or impliedly acquiesced to their children's undertaking; that the respondents had authorized the latter to bind them in the compromise agreement; or that the respondents' cause of action in the instant case arose from or depended on those of their children in the cases before the MTCC and the RTC. Moreover, the respondents' children and DNTDC executed the compromise agreement in the RTC case with the view of settling the controversy concerning only the

issue of physical possession over the disputed 2.5574-hectare portion subject of the ejectment case before the MTCC.

And *second*, the issues involved in the cases before the MTCC and the RTC are different from the issues involved in the present case. In the ejectment case before the MTCC, the sole issue was possession *de jure*, while in the prohibition case before the RTC, the issue was the propriety of the execution of the decision of the MTCC in the ejectment case. In contrast, the issues in the present controversy that originated from the PARAD boil down to the respondents' averred rights, as tenants of the property.

With these considerations, therefore, whatever decision that the MTCC in the ejectment case arrived at, which was limited to possession *de jure* of the disputed 2.5574-hectare portion of the property, could not have affected any right that the respondents may have had, as tenants, over the property. Consequently, any agreement that the respondents' children had entered into in the RTC case could not have bound the respondents in the present controversy as the respondents' claim over the property and their alleged right to continue in its possession clearly go beyond mere possession *de jure*, whether of the 2.5574-hectare portion of the property that was subject of the ejectment case before the MTCC or of the entire property in the present case.

WHEREFORE, in view of these considerations, we hereby **GRANT** the petition, and accordingly **REVERSE** and **SET ASIDE** the decision dated March 28, 2006 and the resolution dated September 5, 2006 of the Court of Appeals in CA-G.R. SP No. 79377. We **REINSTATE** the decision dated July 6, 1998 and the resolution dated September 8, 1998 of the **PARAD** in DARAB Case No. XI-1418-DC-98.

SO ORDERED.

Del Castillo, Mendoza,[*] *Perlas-Bernabe,* and *Leonen,*[**] *JJ.,* concur.

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[*] Designated as Acting Member in lieu of Associate Justice Antonio T. Carpio, per Raffle dated December 6, 2013.

[**] Designated as Acting Member in lieu of Associate Justice Jose P. Perez, per Special Order No. 1627 dated December 6, 2013.

FIRST DIVISION

[G.R. No. 175768. December 11, 2013]

METROPOLITAN BANK & TRUST COMPANY, *petitioner, vs.* **SPOUSES EDGARDO M. CRISTOBAL and MA. TERESITA S. CRISTOBAL,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; ACT 3135 (REAL ESTATE MORTGAGE LAW); EXTRA-JUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE; WRIT OF POSSESSION; BECOMES A MATTER OF RIGHT AFTER THE CONSOLIDATION OF TITLE IN THE BUYER'S NAME FOR FAILURE OF THE MORTGAGOR TO REDEEM THE PROPERTY.— Jurisprudence articulates that "[t]he purchaser can demand possession at any time **following** the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. **After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right.**" x x x Hence, for petitioner to be issued a writ of possession, it must first clearly show that it has consolidated ownership of the subject properties in its name. It is only at this point that issuance of the writ becomes a ministerial function of the courts.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF FACT; THE ISSUE ON CONSOLIDATION IN CASE AT BAR IS ESSENTIALLY A QUESTION OF FACT BEST LEFT TO THE DETERMINATION OF THE LOWER COURT.— [P]etitioner insists that we must take cognizance of a supervening event – that it has already consolidated the property's title in its name, as evidenced by Transfer Certificate of Title Nos. T-432045 (M) and T-432046 (M). While the Court has "ample authority to review and resolve matters not assigned and specified as errors by either of the parties in the appeal if it finds the consideration and determination of the same essential and indispensable in order to arrive at a just decision in the case," we agree with the respondents that the

> Court cannot automatically accede to the alleged consolidation, for the matter is essentially a question of fact best left to the determination of the lower court. x x x Here, no question of law is involved, for it is clear that petitioner has the right to possession once it has established that ownership has been consolidated in its name. Consolidation is essentially factual in nature, as it requires the presentation of evidence. Consequently, and in the interest of substantial justice, a remand of this case to the lower court is necessary to receive evidence if indeed consolidation has taken place, for the issuance of a writ of possession.

APPEARANCES OF COUNSEL

Perez Calima Maynigo and Roque Law Offices for petitioner.
Tabalingcos Caraos Mongon and Associates for respondents.

D E C I S I O N

SERENO, *C.J.*:

This is a Rule 45 appeal[1] dated 26 December 2006 assailing the Decision[2] and Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 80874, which affirmed the Decision[4] of the Regional Trial Court (RTC), Branch 13, Malolos, Bulacan in LRC Case No. P-65-2003, denying the Petition for Issuance of a Writ of Possession filed by the Metropolitan Bank & Trust Company (petitioner).

The antecedent facts are as follows:

On 14 September 1998, respondents Spouses Edgardo M. Cristobal and Ma. Teresita S. Cristobal obtained a loan from

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[1] *Rollo*, pp. 3-25.

[2] *Id*. at 26-36; CA Decision dated 10 August 2006, penned by Presiding Justice Ruben T. Reyes, and concurred in by Associate Justices Rebecca De Guia-Salvador and Vicente Q. Roxas.

[3] *Id*. at 37-38; CA Resolution dated 6 December 2006.

[4] *Id*. at 87-88; RTC Order dated 5 March 2003, penned by Presiding Judge Andres B. Soriano.

petitioner Metropolitan Bank and Trust Company in the amount of ₱4,500,000.00. The loan was secured by two real estate mortgages and its three amendments, which respondents executed in favor of petitioner.[5]

Despite demand, respondents failed to pay their loan, resulting in the extrajudicial foreclosure and auction sale of their mortgaged properties (subject properties). In the auction sale, petitioner emerged as the highest bidder, so a Certificate of Sale was issued in its name. This certificate was duly registered in the Registry of Deeds of Bulacan on 11 September 2002.[6]

Consequently, petitioner demanded that respondents vacate the properties covered by the mortgage. However, this went unheeded, forcing petitioner to file with the trial court a petition seeking a Writ of Possession over the foreclosed properties.[7]

On 30 June 2003, the RTC issued an Order[8] to wit:

> It is uncontroverted that the 12 month redemption period has not yet expired hence it is incumbent upon the petitioner bank to post bond in an amount equivalent to the use of the property for a period of twelve months. However, petitioner did not proffer any evidence from whence the Court could base the bond required under Section 7 of Act 3135.
>
> **WHEREFORE,** in view of the foregoing, the application is **DENIED.**
>
> SO ORDERED. (Emphasis in the original)

In disposing of the application, the lower court ruled that petitioner did not submit sufficient evidence from which it could base the amount of bond required in an application for a writ of possession done within the 12 month redemption period.[9]

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[5] *Id*. at 27.

[6] *Id*.

[7] *Id*.

[8] *Supra* note 4.

[9] *Id*. at 88.

Petitioner seasonably moved to reconsider the judgment,[10] but this was also denied in an Order[11] dated 22 September 2003, herein quoted as follows:

> Acting on the "*Ex-Parte* Motion for Reconsideration (to the Decision dated June 30, 2003) with Motion for Leave of Court to Recall Petitioner's Witness" and taking note that the 12-month period for redemption in this case has already expired as of September 11, 2003, the Court finds no useful purpose nor compelling reason to reconsider its decision dated June 30, 2003, the motion is DENIED.
>
> SO ORDERED.

Aggrieved, petitioner appealed via a Petition for *Certiorari* on 4 December 2003.[12] Petition argued that "granting *arguendo* that petitioner should have presented evidence for the purpose of fixing the bond, the redemption period already expired on September 11, 2003; hence, posting of a bond is no longer necessary."[13] This appeal was however dismissed by the CA in a Decision dated 10 August 2006, the relevant portion of which is herein quoted as follows:[14]

> Indeed, while the posting of a bond is no longer necessary upon the expiration of the redemption period, it is however required that ownership over the property be consolidated with the purchaser of the foreclosed property. Verily, the presentation of a transfer certificate of title in the name of the purchaser is a condition *sine qua non* for the issuance of a writ of possession.
>
> We have examined the record *vis-à-vis* petitioner's insistence on its entitlement to the writ and found that the claim is premature. The record is bereft of any indication that petitioner bank has consolidated its ownership over the subject parcels of land. x x x.
>
> **WHEREFORE**, the petition is **DENIED** for lack of merit.
>
> **SO ORDERED.**

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[10] *Id*. at 89-91.

[11] *Id*. at 92.

[12] *Id*. at 93-111.

[13] *Id*. at 106.

[14] *Supra* note 2.

In affirming the RTC, the CA explained that in accordance with Section 7 of Act 3135, the trial court has the duty to issue a writ of possession before the lapse of the 12-month redemption period; but this is qualified by the receipt of an *ex-parte* application and the posting of the required bond.[15] In this case, the trial court denied the application because petitioner failed to discharge its burden of providing ample information upon which the amount of the bond could be based.[16]

Moreover, even if the 12-month redemption period had already expired and the need for a bond already dispensed with, possession could not yet be given to petitioner until the ownership is consolidated and a new transfer certificate of title issued in its name.[17]

On 24 August 2006, petitioner filed a Motion for Reconsideration,[18] arguing that "the grounds upon which We [the CA] anchored the denial of the petition has [sic] since disappeared in light of the consolidation of titles over the subject properties by the petitioner."[19] In a Resolution promulgated on 6 December 2006,[20] the CA denied petitioner's Motion in the following wise:

> x x x Anent the claims of a supervening event, petitioner should be minded that it is not precluded from re-filing the petition for a writ of possession in the Court *a quo* especially so since it now meets the grounds for the issuance of the said writ.
>
> **ACCORDINGLY,** the motion for reconsideration is **DENIED.**
>
> **SO ORDERED.** (Emphasis in the original)

Hence, the instant Petition.

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

[16] *Id*.

[17] *Id*. at 33-34.

[18] *Id*. at. 40-42.

[19] *Id*. at 38.

[20] *Supra* note 3.

This Court noted the following pleadings: (a) respondent's Comment dated 21 March 2007;[21] (b) petitioner's Reply dated 10 July 2007;[22] (c) respondent's Memorandum dated 20 November 2007;[23] and (d) petitioner's Memorandum dated 24 November 2007.[24]

ISSUE

Considering that the 12-month redemption period has already lapsed and the need for a bond already dispensed with, we reduce the issue to whether or not consolidation of title is necessary before possession may be automatically given to petitioner.

THE COURT'S RULING

Petitioner insists that a review of Act 3135 will reveal that there is "absolutely nothing therein which provides that consolidation of ownership over the foreclosed property is required before a writ of possession may be issued."[25] Moreover, even assuming that consolidation is indeed required, petitioner faults the CA for refusing to recognize the fact that it had already consolidated its ownership over the subject properties, resulting in the issuance of Transfer Certificate of Title Nos. T-432045 (M) and T-432046 (M) in its name on 6 April 2004.[26]

On the other hand, respondent alleges that the consolidated titles under petitioner's name were not submitted in the trial court. As such, petitioner cannot raise it as an issue for the first time in appeal.[27]

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[21] *Id*. at 140-143.

[22] *Id*. at. 146-152.

[23] *Id*. at 177-187.

[24] *Id*. at 158-176.

[25] *Id*. at 12.

[26] *Id*. at 14.

[27] *Id*. at 182.

We rule that a remand of this case to the trial court is necessary for the reception of evidence to determine if consolidation has taken place, this being a necessary requisite to the issuance of a writ of possession.

Petitioner can only demand possession after the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title.

Jurisprudence articulates that "[t]he purchaser can demand possession at any time **following** the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. **After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right.**"[28] In fact, in *Sps. Edralin v. Philippine Veterans Bank*,[29] we have held that:

> Consequently, the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. In this regard, the bond is no longer needed. The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title becomes merely a ministerial function. Effectively, the court cannot exercise its discretion.

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[28] *Espinoza v. United Overseas Bank Phils.*, G.R. No. 175380, 22 March 2010, 616 SCRA 353, 360 citing *De Vera v. Agloro*, 489 Phil. 185 (2005). See also *Sps. Sarrosa v. Dizon*, G.R. No. 183027, 26 July 2010, 625 SCRA 556 citing *Metropolitan Bank & Trust Company v. Santos*, G.R. No. 157867, 15 December 2009, 608 SCRA 222; *Sps. Tolosa v. United Coconut Planters Bank*, G.R. No. 183058, 3 April 2013, 695 SCRA 138 citing *Sps. Lam v. Metropolitan Bank & Trust Company*, 569 Phil. 531, 536 (2008); and *Torbela v. Rosario*, G.R. No. 140528, 7 December 2011, 661 SCRA 633, 683.

[29] G.R. No. 168523, 9 March 2011, 645 SCRA 75, 85-86 citing *Saguan v. Philippine Bank of Communications*, 563 Phil. 696, 706-707 (2007).

Hence, for petitioner to be issued a writ of possession, it must first clearly show that it has consolidated ownership of the subject properties in its name. It is only at this point that issuance of the writ becomes a ministerial function of the courts.

The issue of whether or not petitioner has consolidated ownership in its name is a question of fact best left to the determination of the lower court.

On this score, petitioner insists that we must take cognizance of a supervening event –that it has already consolidated the property's title in its name, as evidenced by Transfer Certificate of Title Nos. T-432045 (M) and T-432046 (M).[30] While the Court has "ample authority to review and resolve matters not assigned and specified as errors by either of the parties in the appeal if it finds the consideration and determination of the same essential and indispensable in order to arrive at a just decision in the case,"[31] we agree with the respondents that the Court cannot automatically accede to the alleged consolidation, for the matter is essentially a question of fact best left to the determination of the lower court. In *Republic v. Malabanan,*[32] we held that:

> [T]his Court has differentiated a question of law from a question of fact. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination

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[30] *Rollo,* pp. 44-45.

[31] *Philippine Commercial and Industrial Bank v. Court of Appeals*, 242 Phil. 497, 504 (1988), citing *Insular Life Assurance Co., Ltd. Employees Association-NATU v. Insular Life Assurance Co., Ltd.*, 166 Phil. 505, 518 (1977).

[32] G.R. No. 169067, 6 October 2010, 632 SCRA 338, 345, citing *Leoncio v. De Vera*, 569 Phil. 512 (2008). See also *Binay v. Odeña*, 551 Phil. 681, 689 (2007), citing *Velayo-Fong v. Velayo*, 539 Phil. 377, 386-387 (2006).

of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.

Here, no question of law is involved, for it is clear that petitioner has the right to possession once it has established that ownership has been consolidated in its name. Consolidation is essentially factual in nature, as it requires the presentation of evidence.[33]

Consequently, and in the interest of substantial justice, a remand of this case to the lower court is necessary to receive evidence if indeed consolidation has taken place, for the issuance of a writ of possession.

WHEREFORE, this case is hereby **REMANDED** to the Regional Trial Court, Branch 13, Malolos, Bulacan, for further proceedings in accordance with this Decision.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[33] *Id*.

FIRST DIVISION

[G.R. No. 175874. December 11, 2013]

HEIRS OF CIPRIANO TRAZONA, Namely: FRANCISCA T. MATBAGON, NATIVIDAD T. ABADIANO, CARLITO C. TRAZONA; and HEIRS OF EDELBERTO C. TRAZONA represented by his daughter DOMICINA T. ARANAS, ELADIA T. ALICAMEN (Now Deceased) Substituted by DOMINGO ALICAMEN, LUPECIO ALICAMEN, REBECCA ALICAMEN-BALBUTIN, ELSEI ALICAMEN, GLENN ALICAMEN, LENNEI ALICAMEN-GEONZON, DANILO ALICAMEN, JOVELYN ALICAMEN-VILLETA, JIMBIE ALICAMEN and HERMOGENES C. TRAZONA (Now Deceased) Substituted by LILYBETH TRAZONA-MANGILA, GEMMA TRAZONA, ELIZALDE TRAZONA, BOBBY TRAZONA, and PALABIANA B. TRAZONA, *petitioners, vs.* **HEIRS OF DIONISIO CAÑADA, Namely: ROSITA C. GERSALINA, CONCEPTION C. GEONZON, DANIEL CAÑADA, GORGONIO CAÑADA, LEOPOLDO CAÑADA, SUSANA C. DUNGOG, LUZVIMINDA C. TABUADA, AND CEFERINA CAÑADA; PROVINCIAL ASSESSOR of Cebu and MUNICIPAL ASSESSOR of Minglanilla, Cebu,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; SHOULD INVOLVE ONLY QUESTIONS OF LAW; EXCEPTION.— Well-settled is the rule that petitions for review on *certiorari* under Rule 45 before this Court should involve only questions of law. A reading of the issues raised by petitioners readily show that they are questions of fact, which are generally not within the purview of this Court. When a question involves facts, the findings of the CA, including the probative weight accorded to certain pieces of evidence,

are binding on this Court. Also well-settled, however, are exceptions to this rule, such as when the findings of fact of the CA are contrary to those of the RTC, as in this case.

2. ID.; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY OF NOTARIZED DOCUMENTS MAY BE CONTRADICTED BY EVIDENCE THAT IS CLEAR, CONVINCING, AND MORE THAN MERELY PREPONDERANT.— It is true that notarized documents are accorded evidentiary weight as regards their due execution. Nevertheless, while notarized documents enjoy the presumption of regularity, this presumption is disputable. They can be contradicted by evidence that is clear, convincing, and more than merely preponderant. Here, contrary to the conclusion of the CA, we find clear and convincing evidence that is enough to overturn the presumption of regularity of the assailed deed.

3. ID.; ID.; FORGERY; WHILE EVERY SIGNATURE OF THE SAME PERSON VARIES, THE INDIVIDUAL HANDWRITING CHARACTERISTICS OF THE PERSON REMAIN THE SAME.— In concluding that the signature of Cipriano in the assailed deed was a forgery, the document examiner found that there were "significant differences in letter formation, construction and other individual handwriting characteristics" between the assailed and the standard signatures of Cipriano. The fact that the document examiner himself admitted that even the standard signatures of Cipriano showed variations among themselves does not make the former's determination any less convincing. He explained that while every signature of the same person varies, the individual handwriting characteristics of the person remain the same. In *Cesar v. Sandiganbayan*, we recognized that there is bound to be some variation in the different samples of genuine signatures of the same person.

4. CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; POSSESSION; PERSONS WHO OCCUPY LANDS BY VIRTUE OF TOLERANCE OF OWNERS ARE NOT POSSESSORS IN GOOD FAITH.— The actual possession of Lot No. 5053-H by petitioners has been properly ruled on by the RTC. Much has been made by the CA of the fact that respondents' house was standing on the property. However, petitioners have explained that the house

was erected only after Cipriano permitted it. Dionisio was then well aware that this temporary arrangement may be terminated at any time. Respondents cannot now refuse to vacate the property or eventually demand reimbursement of necessary and useful expenses under Articles 448 and 546 of the New Civil Code, because the provisions apply only to a possessor in good faith, *i.e.*, one who builds on land with the belief that he is the owner thereof. Persons who occupy land by virtue of tolerance of the owners are not possessors in good faith. Thus, the directive of the RTC for respondents to demolish their residential house on Lot No. 5053-H was also proper.

APPEARANCES OF COUNSEL

Durano Law Office for petitioners.
Balorio and Pintor Law Office for respondents.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] and Resolution[2] of the Court of Appeals Cebu City (CA) in CA-G.R. CV No. 00099. The CA reversed the Decision[3] of the Regional Trial Court of Cebu City, Branch 57 (RTC) in Civil Case No. CEB-20620, which annulled the Deed of Absolute Sale dated 27 June 1956 and ordered the cancellation of Tax Declaration No. 23959 in the name of Dionisio Cañada (Dionisio), predecessor of respondents.

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[1] *Rollo*, pp. 100-105. The Decision dated 25 May 2006 of the Court of Appeals (CA) Cebu City Nineteenth Division was penned by Associate Justice Isaias P. Dicdican, with Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr. concurring.

[2] *Id*. at 106-107. The Resolution dated 8 November 2006 of the CA Cebu City Special Former Nineteenth Division was penned by Associate Justice Isaias P. Dicdican, with Associate Justices Romeo F. Barza and Priscilla Baltazar-Padilla concurring.

[3] *Id*. at 204-215.

Petitioners are heirs of Cipriano Trazona (Cipriano), who owned an untitled parcel of land referred to as Lot No. 5053-H. The property, located in Minglanilla, Cebu, is covered by Tax Declaration No. 07764 and has an area of 9,515 square meters.[4] The land was purchased from the government in 1940.[5] Since then, Cipriano had taken possession of the land, cultivated it and diligently paid taxes thereon.[6]

In 1949, Dionisio bought the adjacent parcel of land from Pilar Diaz.[7] It was later found that he had encroached on a small portion of Lot No. 5053-H. He was then summoned by Cipriano for a confrontation before the *barangay* captain in 1952.[8] Dionisio offered to buy the encroached portion, but Cipriano refused the offer.[9] In 1956, the latter gave Dionisio permission to temporarily build a house on said portion, where it still stands.[10] No action for ejectment was filed against Dionisio during the lifetime of Cipriano,[11] who eventually died on 18 May 1982.[12] The latter's son Hermogenes, one of the petitioners herein who had cultivated the lot since 1972, took over.[13] On 24 March 1992, Dionisio died.[14]

The present controversy arose in 1997. Petitioners went to the Office of the Municipal Assessor to secure a copy of Tax Declaration No. 07764, as they intended to sell Lot No. 5053-H

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[4] *Id*. at 204.

[5] *Id*.

[6] *Id*. at 204-205.

[7] *Id*. at 207.

[8] *Id*.

[9] *Id*.

[10] *Id*.

[11] *Id*.

[12] *Id*. at 204.

[13] TSN, 4 March 1999, p. 16.

[14] *Rollo*, p. 205.

to an interested buyer.[15] To their surprise, they were informed that Tax Declaration No. 07764 had been cancelled and, in lieu thereof, Tax Declaration No. 23959 was issued on 24 June 1996 in the name of Dionisio.[16] Apparently, respondents had caused the issuance of Tax Declaration No. 23959 by submitting a Deed of Absolute Sale dated 27 June 1956 supposedly executed by Cipriano in favor of Dionisio.[17] That sale involved a portion of Lot No. 5053-H described as follows:

> x x x that portion of land of Lot No. FIVE THOUSAND FIFTY THREE-H (5053-H) under subdivision plan FLR-133 approved by the Director of Lands Jose P. Dans on September 5, 1953, covered by monuments No. 7, 8, 9, 10, 11, of said Lot No. 5053 bounded on the North by Lot No. 5954 & portion of Lot 5053-H; East by portion of Lot 5053-H; South by Lot no. 5053-J of Domingo Ababon; West by Lot no. 9479; x x x.[18]

Petitioners summoned respondents before the *Lupon Tagapamayapa*, but the conciliation was not successful.[19] On 28 July 1997, petitioners filed a Complaint[20] against respondents for quieting of title, annulment of deed of sale, cancellation of Tax Declaration No. 23959, recovery of possession and ownership, damages, and payment of attorney's fees. Petitioners alleged therein that the Deed of Absolute Sale dated 27 June 1956 was a forgery. Respondents, in their Answer,[21] alleged that the assailed deed was a genuine document and asked for the payment of moral and exemplary damages, and attorney's fees, as counterclaims.

During trial, among the witnesses presented by petitioners was Romeo O. Varona, document examiner of the Philippine

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[15] *Id*. at 205, 207.

[16] *Id*. at 205.

[17] *Id*.

[18] Folder of Exhibits, p. 14.

[19] *Rollo*, p. 205.

[20] Records, pp. 1-9.

[21] *Id*. at 22-25.

National Police Crime Laboratory, Region VII. He testified that according to his comparative analysis of Cipriano's signature on the assailed deed and standard signatures on other documents, Cipriano's signature on the deed in question was a forgery.[22]

For their part, respondents presented Dionisio's son Gorgonio, who testified that he was present when the assailed deed was executed.[23] He also stated that they had enjoyed the fruits of the lot in question from 1956 until 1960, when they were confronted by petitioners. Respondents were asked to show proof of ownership, but could not present any.[24] Thus, from 1960 onwards, petitioners enjoyed the fruits of the property.[25] Later, respondents were able to find a copy of the assailed deed in the National Archives, thereby enabling them to cause the issuance of Tax Declaration No. 23959.[26]

In the presentation of their rebuttal evidence, petitioners presented a Deed of Absolute Sale dated 11 April 1953,[27] executed by Pilar Diaz in favor of Dionisio. This prior sale involved the exact same portion allegedly sold to him by Cipriano – except that in the date of approval of the subdivision plan by the Director of Lands, two figures were interchanged. Whereas the assailed deed showed the date as "September 5, 1953," the Deed of Absolute Sale dated 11 April 1953 showed the date as "September 5, 1935."

In its Decision dated 6 April 2004, the RTC annulled the assailed deed and ordered the cancellation of Tax Declaration No. 23959, as well as the reinstatement of Tax Declaration No. 07764.[28] Respondents were also ordered to demolish their

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[22] *Rollo*, p. 208.

[23] TSN, 5 August 1999, pp. 7-8.

[24] *Id*. at 12-13.

[25] *Id*. at 13.

[26] *Id*. at 13-15.

[27] Folder of Exhibits, p. 58.

[28] *Rollo*, p. 215.

residential house on Lot No. 5053-H and to pay petitioners attorney's fees and litigation expenses.[29]

The RTC found that respondents' failure to present the deed for 40 years from its alleged execution had not been satisfactorily and convincingly explained.[30] It also found that the assailed deed was indeed a forgery for the following reasons:

1. It would have been pointless for Dionisio to buy the same property twice from different owners.
2. Cipriano's residence certificate, whose number was indicated in the assailed deed, as well as in the notarial register where the deed was recorded, was allegedly issued in Minglanilla, Cebu. The other persons' residence certificates, whose numbers were indicated on the same page of the notarial register, appear to have come from the same booklet as the residence certificate of Cipriano, judging from their numerical sequence. However, the residence certificates of these other persons had been issued in Sogod, Cebu.
3. There was indeed a glaring difference between the alleged signature of Cipriano in the assailed deed and in his standard signatures in 10 other documents submitted by plaintiffs.

Respondents filed a Notice of Appeal dated 30 April 2004.

RULING OF THE CA

On 25 May 2006, the CA issued a Decision reversing that of the RTC. The appellate court ruled that petitioners had failed to prove by requisite evidence their allegation that the assailed deed was a forgery.[31] The deed, being a notarized document, enjoyed the presumption of authenticity and due execution. Also,

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[29] *Id*.

[30] *Id*. at 213.

[31] *Id*. at 102.

the fact that it was an ancient document that "remained unaltered after so many years, bodes well for its authenticity."[32]

The CA also concluded that the document examiner was not able to determine the forgery with certainty. What he had examined was a mere machine copy of the assailed deed.[33] Furthermore, even he admitted that the standard signatures of Cipriano had shown variations among themselves.

Finally, the CA ruled that respondents were the actual possessors of Lot No. 5053-H, since it was their house that was standing on the property.[34] Thus, the CA granted the appeal and consequently dismissed the Complaint of petitioners.

ISSUES

Petitioners come before us on a Petition for Review on *Certiorari*[35] alleging that the CA erred as follows:

1. Ruling that petitioners were not able to overturn the presumption of regularity of the assailed deed;
2. Finding that the document examiner was not able to establish the forgery with certainty;
3. Finding that respondents were in actual possession of Lot No. 5053-H;
4. Ruling that there was no merit in petitioners' prayer for the award of attorney's fees and litigation expenses.

OUR RULING

Petitioners presented clear and convincing evidence that the assailed deed is a forgery.

Well-settled is the rule that petitions for review on *certiorari* under Rule 45 before this Court should involve only questions

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[32] *Id.* at 103.

[33] *Id*.

[34] *Id.* at 104.

[35] *Id*. at 5-98.

of law.[36] A reading of the issues raised by petitioners readily show that they are questions of fact, which are generally not within the purview of this Court. When a question involves facts, the findings of the CA, including the probative weight accorded to certain pieces of evidence, are binding on this Court. Also well-settled, however, are exceptions to this rule,[37] such as when the findings of fact of the CA are contrary to those of the RTC, as in this case.

We sustain the findings of the RTC.

At the outset, it is worth pointing out that the sale of a mere portion of Lot No. 5053-H was what brought about the cancellation of Tax Declaration No. 07764 and the consequent issuance of Tax Declaration No. 23959, each of which covered the entire lot. The fact that the assailed deed covers only a portion of Lot No. 5053-H becomes clearer still when one considers that it was bounded on the north and the east by portions of Lot No. 5053-H itself.

As will be shown below, the assailed deed is a forgery. Assuming it were genuine, petitioners have a right to the rest of the property not covered by the purported sale. If the procedure

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[36] RULES OF COURT, Rule 45, Sec. 1.

[37] (1) [T]he factual findings of the Court of Appeals and the trial court are contradictory; (2) the findings are grounded entirely on speculation, surmises or conjectures; (3) the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd or impossible; (4) there is grave abuse of discretion in the appreciation of facts; (5) the appellate court, in making its findings, goes beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee; (6) the judgment of the Court of Appeals is premised on a misapprehension of facts; (7) the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; and (8) the findings of fact of the Court of Appeals are contrary to those of the trial court or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record. (*Heirs of Ampil v. Manahan*, G.R. No. 175990, 11 October 2012, 684 SCRA 130, 138-139)

for the issuance of tax declarations was followed – if care had been observed to make sure that all papers were in order and understood – this irregularity would not have taken place.

It is true that notarized documents are accorded evidentiary weight as regards their due execution.[38] Nevertheless, while notarized documents enjoy the presumption of regularity, this presumption is disputable. They can be contradicted by evidence that is clear, convincing, and more than merely preponderant.[39] Here, contrary to the conclusion of the CA, we find clear and convincing evidence that is enough to overturn the presumption of regularity of the assailed deed.

First, the document examiner determined that the signature of Cipriano in the assailed deed had been forged. No issue has been raised about his expertise. The finding of the CA that he had examined a mere machine copy of the assailed deed was erroneous. The pertinent portion of his testimony clearly shows otherwise, to wit:

> ATTY. DURANO:
> Q: Now you made mention of the standard documents, could you kindly tell the Honorable Court what is [the] questioned document stated in your report?
> [ROMEO O. VARONA]
> [A]: The questioned document is the Deed of Absolute Sale dated June 27, 1956.
> Q: Do you have a copy of that Deed of Sale as examined by you?
> A: Well, I have a machine copy. **I have examined the original copy at the archive's office, Mandaue City**.[40] (Emphasis supplied)

In concluding that the signature of Cipriano in the assailed deed was a forgery, the document examiner found that there were "significant differences in letter formation, construction

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[38] *Basilio v. CA*, 400 Phil. 120, 124 (2000).

[39] *Cleofas v. St. Peter Memorial Park, Inc.*, 381 Phil. 236, 247 (2000).

[40] TSN, 14 April 1999, pp. 8-9.

and other individual handwriting characteristics" between the assailed and the standard signatures of Cipriano.[41]

The fact that the document examiner himself admitted that even the standard signatures of Cipriano showed variations among themselves does not make the former's determination any less convincing. He explained that while every signature of the same person varies, the individual handwriting characteristics of the person remain the same.[42] In *Cesar v. Sandiganbayan*,[43] we recognized that there is bound to be some variation in the different samples of genuine signatures of the same person.

Second, the RTC did not just rely on expert testimony in ruling that the signature was forged. It likewise supported its finding that the signature was forged through independent observation:

> Finally, a scrutiny of the signature on the questioned deed of sale compared to the eleven (11) signatures on the ten (10) standard documents there exists a glaring difference in the letter formation of capital letters "C" in Cipriano and "T" in Trazona. The capital C in questioned signature, the initial stroke stopped at the upper curve of the letter C while in the standard signatures, it overlaps from the upper curve. In the word Trazona, the capital T in the questioned signature is disconnected from the T bar to the body of the questioned signature whereas, in the standard signatures, the capital T is connected. These discrepancies can easily be noticed by mere physical appearance that the letters C and T were written.[44]

Third, the existence of the Deed of Absolute Sale dated 11 April 1953 brings into question the regularity of the assailed deed. This deed was never disputed by respondents at any stage of the proceedings, and was in fact admitted by them in their Comments to Plaintiffs' Additional Formal Offer of Exhibits.[45] Indeed, the RTC was correct in its observation that no one in

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[41] Folder of Exhibits, p. 51.

[42] TSN, 15 April 1999, pp. 8-9.

[43] 219 Phil. 87, 106 (1985).

[44] *Rollo*, p. 214.

[45] Records, pp. 206-207.

complete possession of one's mental faculties would buy the same property twice from different owners. Respondents never provided any explanation for this anomalous situation. In any case, it has been established that Lot No. 5053-H is in the name of Cipriano, who bought it from the government in 1940. Thus, only Cipriano had the right to dispose of the property, or portions thereof.

Fourth, Cipriano had cultivated the property and paid taxes thereon since the time he acquired it from the government, and even after its purported sale to Dionisio, until his death.[46] Petitioners continued paying the taxes thereon even after Cipriano had died.[47] Respondents started paying taxes on the property only after Tax Declaration No. 23959 was issued in Dionisio's name in 1997.[48] It would be absurd for petitioners to pay taxes on a property they do not own.

Fifth, as admitted by Gorgonio himself, petitioners were the ones enjoying the fruits of the property from 1960 until the present controversy.[49] Again, it is incongruous for petitioners to enjoy the fruits if respondents owned the property.

Sixth, as the RTC noted, there was an irregularity regarding the place of issuance of Cipriano's residence certificate indicated in the assailed deed, as compared with the residence certificates of the other persons indicated on the same page of the notarial register.

Finally, when the record management analyst from the Bureau of Archives presented the assailed deed, the paper was noted to be white, while its supposed contemporaries in the bunch from where it was taken had turned yellow with age.[50] Further, when the analyst was asked the question of when the assailed deed was received by the Bureau of Archives, she answered

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[46] *Id.* at 213.

[47] *Id*.

[48] *Id*.

[49] TSN, 5 August 1999, pp. 12-13.

[50] TSN, 9 December 2002, pp. 10-12.

that it was forwarded to them only on 28 September 1987 by RTC Region 7, Notarial Division.[51]

Clearly, the evidence adduced fully supports the position of petitioners that the assailed deed of sale is forged and that they are the owners of the property. Having been forced to litigate in order to protect their interest therein, the award of attorney's fees and litigation expenses to them is in order.

The actual possession of Lot No. 5053-H by petitioners has been properly ruled on by the RTC. Much has been made by the CA of the fact that respondents' house was standing on the property. However, petitioners have explained that the house was erected only after Cipriano permitted it.

Dionisio was then well aware that this temporary arrangement may be terminated at any time. Respondents cannot now refuse to vacate the property or eventually demand reimbursement of necessary and useful expenses under Articles 448 and 546 of the New Civil Code, because the provisions apply only to a possessor in good faith, *i.e.*, one who builds on land with the belief that he is the owner thereof.[52] Persons who occupy land by virtue of tolerance of the owners are not possessors in good faith.[53] Thus, the directive of the RTC for respondents to demolish their residential house on Lot No. 5053-H was also proper.

WHEREFORE, the Decision and Resolution of the Court of Appeals Cebu City in CA-G.R. CV No. 00099 are **REVERSED** and **SET ASIDE**. The Decision of the Regional Trial Court of Cebu City, Branch 57, in Civil Case No. CEB-20620 is **REINSTATED** in all respects.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[51] TSN, 18 March 2003, p. 8.

[52] *Esmaquel v. Coprada*, G.R. No. 152423, 15 December 2010, 638 SCRA 428.

[53] *Resuena v. CA*, 494 Phil. 40 (2005).

SECOND DIVISION

[G.R. No. 176897. December 11, 2013]

ADVANCE PAPER CORPORATION and GEORGE HAW, in his capacity as President of Advance Paper Corporation, *petitioners, vs.* **ARMA TRADERS CORPORATION, MANUEL TING, CHENG GUI and BENJAMIN NG,** *respondents.* **ANTONIO TAN and UY SENG KEE WILLY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTS OF A PLEADING; VERIFICATION/CERTIFICATION OF NON-FORUM SHOPPING; A DEFECTIVE *JURAT* THEREIN IS NOT A FATAL DEFECT BECAUSE IT IS ONLY A FORMAL, NOT A JURISDICTIONAL, REQUIREMENT THAT THE COURT MAY WAIVE.— [T]he respondents correctly cited A.M. No. 02-8-13-SC dated February 19, 2008 which refer to the amendment of the 2004 Rules on Notarial Practice. It deleted the Community Tax Certificate among the accepted proof of identity of the affiant because of its inherent unreliability. The petitioners violated this when they used Community Tax Certificate No. 05730869 in their Petition for Review. Nevertheless, the defective *jurat* in the Verification/ Certification of Non-Forum Shopping is not a fatal defect because it is only a formal, not a jurisdictional, requirement that the Court may waive. Furthermore, we cannot simply ignore the millions of pesos at stake in this case. To do so might cause grave injustice to a party, a situation that this Court intends to avoid.

2. MERCANTILE LAW; CORPORATION CODE; PRIVATE CORPORATIONS; DOCTRINE OF APPARENT AUTHORITY; EXPLAINED.— The doctrine of apparent authority provides that a corporation will be estopped from denying the agent's authority if it knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, and it holds him out to the public as possessing the power to do those acts. The doctrine of apparent

authority does not apply if the principal did not commit any acts or conduct which a third party knew and relied upon in good faith as a result of the exercise of reasonable prudence. Moreover, the agent's acts or conduct must have produced a change of position to the third party's detriment.

3. ID.; ID.; ID.; CORPORATE PRESIDENT; PRESUMED TO HAVE AUTHORITY TO ACT WITHIN THE DOMAIN OF THE GENERAL OBJECTIVES OF THE CORPORATION'S BUSINESS AND WITHIN THE SCOPE OF HIS USUAL DUTIES IN THE ABSENCE OF A CHARTER OR BY LAW PROVISION TO THE CONTRARY.— In *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals,* we ruled that the doctrine of apparent authority is applied when the petitioner, through its president Antonio Punsalan Jr., entered into the First Contract without first securing board approval. Despite such lack of board approval, petitioner did not object to or repudiate said contract, thus "clothing" its president with the power to bind the corporation. "Inasmuch as a corporate president is often given general supervision and control over corporate operations, the strict rule that said officer has no inherent power to act for the corporation is slowly giving way to the realization that such officer has certain limited powers in the transaction of the usual and ordinary business of the corporation." **"In the absence of a charter or by law provision to the contrary, the president is presumed to have the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties."**

4. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; A PARTY'S FAILURE TO OBJECT TO THE OFFERED EVIDENCE RENDERS IT ADMISSIBLE; CASE AT BAR.— The rule is that failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence. When a party desires the court to reject the evidence offered, it must so state in the form of a timely objection and it cannot raise the objection to the evidence for the first time on appeal. Because of a party's failure to timely object, the evidence becomes part of the evidence in the case. Thereafter, all the parties are considered bound by any outcome arising from the offer of evidence properly presented. x x x We agree with

the respondents that with respect to the identification of the sales invoices, Haw's testimony was hearsay because he was not present during its preparation and the secretaries who prepared them were not presented to identify them in court. Further, these sales invoices do not fall within the exceptions to the hearsay rule even under the "entries in the course of business" because the petitioners failed to show that the entrant was deceased or was unable to testify. But even though the sales invoices are hearsay, nonetheless, they form part of the records of the case for the respondents' failure to object as to the admissibility of the sales invoices on the ground that they are hearsay. Based on the records, the respondents through Ng objected to the offer "for the purpose [to] which they are being offered" only – not on the ground that they were hearsay.

5. ID.; ID.; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FINDINGS THEREON ARE GENERALLY NOT DISTURBED ON APPEAL.— [T]he issue of credibility of witnesses is to be resolved primarily by the trial court because it is in the better position to assess the credibility of witnesses as it heard the testimonies and observed the deportment and manner of testifying of the witnesses. Accordingly, its findings are entitled to great respect and will not be disturbed on appeal in the absence of any showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.

APPEARANCES OF COUNSEL

Numeriano F. Rodriguez, Jr. for petitioners.
Ernest Ang, Jr. and *Ferrer Co* for respondents.

D E C I S I O N

BRION, *J.*:

Before us is a Petition for Review[1] seeking to set aside the Decision of the Court of Appeals (*CA*) in CA-G.R. CV No. 71499

[1] Rule 45 of the Revised Rules of Court; *rollo*, pp. 8-44.

dated March 31, 2006 and the Resolution dated March 7, 2007.[2] The Decision reversed and set aside the ruling of the Regional Trial Court (*RTC*) of Manila, Branch 18 in Civil Case No. 94-72526 which ordered Arma Traders Corporation (*Arma Traders*) to pay Advance Paper Corporation (*Advance Paper*) the sum of ₱15,321,798.25 with interest, and ₱1,500,000.00 for attorney's fees, plus the cost of the suit.[3]

Factual Antecedents

Petitioner Advance Paper is a domestic corporation engaged in the business of producing, printing, manufacturing, distributing and selling of various paper products.[4] Petitioner George Haw (*Haw*) is the President while his wife, Connie Haw, is the General Manager.[5]

Respondent Arma Traders is also a domestic corporation engaged in the wholesale and distribution of school and office supplies, and novelty products.[6] Respondent Antonio Tan (*Tan*) was formerly the President while respondent Uy Seng Kee Willy (*Uy*) is the Treasurer of Arma Traders.[7] They represented Arma Traders when dealing with its supplier, Advance Paper, for about 14 years.[8]

On the other hand, respondents Manuel Ting, Cheng Gui and Benjamin Ng worked for Arma Traders as Vice-President, General Manager and Corporate Secretary, respectively.[9]

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[2] Penned by Associate Justice Vicente S.E. Veloso, and concurred in by Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino; *id.* at 46-69.

[3] Civil Case No. 94-72526 dated August 20, 2011; penned by Judge Perfecto A.S. Laguio, Jr.; *id.* at 75-77.

[4] *Id.* at 48.

[5] *Id.* at 288.

[6] *Ibid.*

[7] *Id.* at 48.

[8] Records, Vol. 3, pp. 170-178; referring to the Sworn Statement of Haw dated November 18, 1996.

[9] *Id.* at 48.

On various dates from September to December 1994, Arma Traders purchased on credit notebooks and other paper products amounting to ₱7,533,001.49 from Advance Paper.[10]

Upon the representation of Tan and Uy, Arma Traders also obtained three loans from Advance Paper in November 1994 in the amounts of ₱3,380,171.82, ₱1,000,000.00, and ₱3,408,623.94 or a total of ₱7,788,796.76.[11] Arma Traders needed the loan to settle its obligations to other suppliers because its own collectibles did not arrive on time.[12] Because of its good business relations with Arma Traders, Advance Paper extended the loans.[13]

As payment for the purchases on credit and the loan transactions, Arma Traders issued 82 postdated checks[14] payable to cash or to Advance Paper. Tan and Uy were Arma Traders' authorized bank signatories who signed and issued these checks which had the aggregate amount of ₱15,130,636.87.[15]

Advance Paper presented the checks to the drawee bank but these were dishonored either for "insufficiency of funds" or "account closed." Despite repeated demands, however, Arma Traders failed to settle its account with Advance Paper.[16]

On December 29, 1994, the petitioners filed a complaint[17] for collection of sum of money with application for preliminary attachment against Arma Traders, Tan, Uy, Ting, Gui, and Ng.

Claims of the petitioners

The petitioners claimed that the respondents fraudulently issued the postdated checks as payment for the purchases and loan

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[10] *Ibid*.

[11] *Ibid*.

[12] *Ibid*.

[13] *Id*. at 75.

[14] Marked as Exhibits "E-1" to "E-82". See Records, Vol. 2, pp. 418-445.

[15] *Rollo*, p. 48.

[16] *Id*. at 48-49.

[17] Amended on October 26, 1995.

transactions knowing that they did not have sufficient funds with the drawee banks.[18]

To prove the **purchases on credit**, the petitioners presented the summary of the transactions and their corresponding sales invoices as their documentary evidence.[19]

During the trial, Haw also testified that within one or two weeks upon delivery of the paper products, Arma Traders paid the purchases in the form of postdated checks. Thus, he personally collected these checks on Saturdays and upon receiving the checks, he surrendered to Arma Traders the original of the sales invoices while he retained the duplicate of the invoices.[20]

To prove the **loan transactions**, the petitioners presented the copies of the checks[21] which Advance Paper issued in favor of Arma Traders. The petitioners also filed a manifestation[22] dated June 14, 1995, submitting a bank statement from Metrobank EDSA Kalookan Branch. This was to show that Advance Paper's credit line with Metrobank has been transferred to the account of Arma Traders as payee from October 1994 to December 1994.

Moreover, Haw testified to prove the loan transactions. When asked why he considered extending the loans without any collateral and loan agreement or promissory note, and only on the basis of the issuance of the postdated checks, he answered that it was because he trusted Arma Traders since it had been their customer for a long time and that none of the previous checks ever bounced.[23]

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[18] Records, Vol. 2, p. 283; referring to the Amended Complaint.

[19] Records, Vol. 1, pp. 12-109, and Vol. 2, pp. 290-417; Marked as Exhibits "A-1" to "A-32", "B-1" to "B-30", "C" to "C-31" and "D" to "D-3".

[20] *Rollo*, p. 193; Records, Vol. 3, pp. 170-178; referring to the Sworn Statement of Haw dated November 18, 1996.

[21] *Id.* at 48; marked as Exhibits "AA", "BB" and "CC".

[22] Records, Vol. 2, pp. 113-116.

[23] Records, Vol. 3, pp. 244-245.

Claims of the respondents

The respondents argued that the **purchases on credit** were spurious, simulated and fraudulent since there was no delivery of the ₱7,000,000.00 worth of notebooks and other paper products.[24]

During the trial, Ng testified that Arma Traders did not purchase notebooks and other paper products from September to December 1994. He claimed that during this period, Arma Traders concentrated on Christmas items, not school and office supplies. He also narrated that upon learning about the complaint filed by the petitioners, he immediately looked for Arma Traders' records and found no receipts involving the purchases of notebooks and other paper products from Advance Paper.[25]

As to the **loan transactions**, the respondents countered that these were the personal obligations of Tan and Uy to Advance Paper. These loans were never intended to benefit the respondents.

The respondents also claimed that the loan transactions were *ultra vires* because the board of directors of Arma Traders did not issue a board resolution authorizing Tan and Uy to obtain the loans from Advance Paper. They claimed that the borrowing of money must be done only with the prior approval of the board of directors because without the approval, the corporate officers are acting in excess of their authority or *ultra vires*. When the acts of the corporate officers are *ultra vires*, the corporation is not liable for whatever acts that these officers committed in excess of their authority. Further, the respondents claimed that Advance Paper failed to verify Tan and Uy's authority to transact business with them. Hence, Advance Paper should suffer the consequences.[26]

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[24] Records, Vol. 3, pp. 71-80; referring to par. 7, page 2 of Arma Traders, Ting, Gui and Ng's Answer with Compulsory Counterclaim and Crossclaim dated February 23, 1996.

[25] Records, Vol. 4, pp. 141-147; referring to Ng's Direct Testimony dated February 4, 1999.

[26] *Id*. at 241; referring to the Memorandum of the Defendants.

The respondents accused Tan and Uy for conspiring with the petitioners to defraud Arma Traders through a series of transactions known as rediscounting of postdated checks. In rediscounting, the respondents explained that Tan and Uy would issue Arma Traders' postdated checks to the petitioners in exchange for cash, discounted by as much as 7% to 10% depending on how long were the terms of repayment. The rediscounted percentage represented the interest or profit earned by the petitioners in these transactions.[27]

Tan did not file his Answer and was eventually declared in default.

On the other hand, Uy filed his Answer[28] dated January 20, 1995 but was subsequently declared in default upon his failure to appear during the pre-trial. In his Answer, he admitted that Arma Traders together with its corporate officers have been transacting business with Advance Paper.[29] He claimed that he and Tan have been authorized by the board of directors for the past 13 years to issue checks in behalf of Arma Traders to pay its obligations with Advance Paper.[30] **Furthermore, he admitted that Arma Traders' checks were issued to pay its contractual obligations with Advance Paper.**[31] However, according to him, Advance Paper was informed beforehand that Arma Traders' checks were funded out of the ₱20,000,000.00 worth of collectibles coming from the provinces. Unfortunately, the expected collectibles did not materialize for unknown reasons.[32]

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[27] Records, Vol. 3, pp. 71-80; referring to par. 8-9.5, page 2 of Arma Traders, Ting, Gui and Ng's Answer with Compulsory Counterclaim and Crossclaim dated February 23, 1996.

[28] Records, Vol. 1, pp. 146-154.

[29] Page 2 of Uy's Answer dated January 20, 1995.

[30] *Ibid*.

[31] *Ibid*.

[32] *Id*. at 3.

Ng filed his Answer[33] and claimed that the management of Arma Traders was left entirely to Tan and Uy. Thus, he never participated in the company's daily transactions.[34]

Atty. Ernest S. Ang, Jr. (*Atty. Ang*), Arma Traders' Vice-President for Legal Affairs and Credit and Collection, testified that he investigated the transactions involving Tan and Uy and discovered that they were financing their own business using Arma Traders' resources. He also accused Haw for conniving with Tan and Uy in fraudulently making Arma Traders liable for their personal debts. He based this conclusion from the following: *First,* basic human experience and common sense tell us that a lender will not agree to extend additional loan to another person who already owes a substantial sum from the lender – in this case, petitioner Advance Paper. *Second,* there was no other document proving the existence of the loan other than the postdated checks. *Third,* the total of the purchase and loan transactions *vis-à-vis* the total amount of the postdated checks did not tally. *Fourth,* he found out that the certified true copy of Advance Paper's report with the Securities and Exchange Commission (*SEC report*) did not reflect the ₱15,000,000.00 collectibles it had with Arma Traders.[35]

Atty. Ang also testified that he already filed several cases of estafa and qualified theft[36] against Tan and Uy and that several warrants of arrest had been issued against them.

In their pre-trial brief,[37] the respondents named Sharow Ong, the secretary of Tan and Uy, to testify on how Tan and Uy conspired with the petitioners to defraud Arma Traders. However, the respondents did not present her on the witness stand.

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[33] Records, Vol. 3, pp. 64-68.

[34] Page 3 of Ng's Answer dated February 19, 1996.

[35] Records, Vol. 4, pp. 169-176; referring to the Direct Testimony of Atty. Ernest S. Ang, Jr. dated May 12, 2000.

[36] Records, Vol. 3, pp. 208-209; as supported by the Information in Criminal Case No. 145888 dated September 11, 1995 which was marked as Exhibit "2".

[37] *Id.* at 123-126.

The RTC Ruling

On June 18, 2001, the RTC ruled that the purchases on credit and loans were sufficiently proven by the petitioners. Hence, the RTC ordered Arma Traders to pay Advance Paper the sum of ₱15,321,798.25 with interest, and ₱1,500,000.00 for attorney's fees, plus the cost of the suit.

The RTC held that the respondents failed to present hard, admissible and credible evidence to prove that the sale invoices were forged or fictitious, and that the loan transactions were personal obligations of Tan and Uy. Nonetheless, the RTC dismissed the complaint against Tan, Uy, Ting, Gui and Ng due to the lack of evidence showing that they bound themselves, either jointly or solidarily, with Arma Traders for the payment of its account.[38]

Arma Traders appealed the RTC decision to the CA.

The CA Ruling

The CA held that the petitioners failed to prove by preponderance of evidence the existence of the purchases on credit and loans based on the following grounds:

First, Arma Traders was not liable for the loan in the absence of a board resolution authorizing Tan and Uy to obtain the loan from Advance Paper.[39] The CA acknowledged that Tan and Uy were Arma Traders' authorized bank signatories. However, the CA explained that this is not sufficient because the authority to sign the checks is different from the required authority to contract a loan.[40]

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[38] *Rollo,* pp. 49, 76.

[39] *Id.* at 63, citing Sec. 23 of the Corporation Code, and *AF Realty & Development, Inc. v. Dieselman Freight Services, Co.,* G.R. No. 111448, January 16, 2002, 373 SCRA 385, 391, which held: "[C]ontracts or acts of a corporation must be made either by the board of directors or by a corporate agent duly authorized by the board. Absent such valid delegation or authorization, the rule is that the declarations of an individual director relating to the affairs of the corporation x x x are x x x not binding on the corporation."

[40] *Id.* at 64.

Second, the CA also held that the petitioners presented incompetent and inadmissible evidence to prove the purchases on credit since the sales invoices were hearsay.[41] The CA pointed out that Haw's testimony as to the identification of the sales invoices was not an exception to the hearsay rule because there was no showing that the secretaries who prepared the sales invoices are already dead or unable to testify as required by the Rules of Court.[42] Further, the CA noted that the secretaries were not identified or presented in court.[43]

Third, the CA ruling heavily relied on Ng's Appellant's Brief[44] which made the detailed description of the "badges of fraud." The CA averred that the petitioners failed to satisfactorily rebut the badges of fraud[45] which include the inconsistencies in:

(1) "Exhibit E-26," a postdated check, which was allegedly issued in favor of Advance Paper but turned out to be a check payable to Top Line, Advance Paper's sister company;[46]

(2) "Sale Invoice No. 8946," an evidence to prove the existence of the purchases on credit, whose photocopy failed to reflect the amount stated in the duplicate copy,[47] and;

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[41] *Id.* at 61.

[42] *Id.* at 62-63, citing Section 43, Rule 130 of the Rules of Court:

"*Entries in the course of business.* – Entries made at, or near the time of the transactions to which they refer, **by a person deceased, or unable to testify,** who was in a position to know the facts therein stated, may be received as *prima facie* evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty." (italics and emphasis supplied)

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

[44] *Id.* at 52-61.

[45] *Id.* at 60.

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

[47] *Id.* at 65.

(3) The SEC report of Advance Paper for the year ended 1994 reflected its account receivables amounting to ₱219,705.19 only – an amount far from the claimed ₱15,321,798.25 receivables from Arma Traders.[48]

Hence, the CA **set aside** the RTC's order for Arma Traders to pay Advance Paper the sum of ₱15,321,798.25, ₱1,500,000.00 for attorney's fees, plus cost of suit.[49] It **affirmed** the RTC decision dismissing the complaint against respondents Tan, Uy, Ting, Gui and Ng.[50] The CA also directed the petitioners to solidarily pay each of the respondents their counterclaims of ₱250,000.00 as moral damages, ₱250,000.00 as exemplary damages, and ₱250,000.00 as attorney's fees.[51]

The Petition

The petitioners raise the following arguments.

First, Arma Traders led the petitioners to believe that Tan and Uy had the authority to obtain loans since the respondents left the active and sole management of the company to Tan and Uy since 1984. In fact, Ng testified that Arma Traders' stockholders and board of directors never conducted a meeting from 1984 to 1995. Therefore, if the respondents' position will be sustained, they will have the absurd power to question all the business transactions of Arma Traders.[52] Citing *Lipat v. Pacific Banking Corporation*,[53] the petitioners said that if a corporation knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those acts; thus, the corporation will, as against anyone who has in good

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[48] *Ibid.*

[49] *Id.* at 68.

[50] *Ibid.*

[51] *Id.* at 69.

[52] *Id.* at 207-208.

[53] G.R. No. 142435, April 30, 2003, 402 SCRA 339.

faith dealt with it through such agent, be estopped from denying the agent's authority.

Second, the petitioners argue that Haw's testimony is not hearsay. They emphasize that Haw has personal knowledge of the assailed purchases and loan transactions because he dealt with the customers, and supervised and directed the preparation of the sales invoices and the deliveries of the goods.[54] Moreover, the petitioners stress that the respondents never objected to the admissibility of the sales invoices on the ground that they were hearsay.[55]

Third, the petitioners dispute the CA's findings on the existence of the badges of fraud. The petitioners countered:

(1) The discrepancies between the figures in the 15 out of the 96 photocopies and duplicate originals of the sales invoices amounting to **₱4,624.80 – an insignificant amount compared to the total purchases of ₱7,533,001.49** – may have been caused by the failure to put the carbon paper.[56] Besides, **the remaining 81 sales invoices are uncontroverted.** The petitioners also raise the point that this discrepancy is a nonissue because the duplicate originals **were surrendered in the RTC**.[57]

(2) The respondents misled Haw during the cross-examination and took his answer out of context.[58] The petitioners

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[54] *Rollo*, p. 254.

[55] *Id.* at 194.

[56] *Id.* at 258.

[57] *Id.* at 257.

[58] *Id.* at 259. The petitioners explained:

By perusing the transcripts, it is obvious that the questions preceding the one cited by the respondents referred to transactions **which created obligations on the part of Arma Traders.** So, when Haw was asked: "Aside from this, there were no other transaction (sic) between you x x x," he answered, "No other transaction," believing that he was being asked if there were other transactions that could be added to those he mentioned already, meaning, those UNPAID transactions. He truthfully said there were no other.

argue that this maneuver is insufficient to discredit Haw's entire testimony.[59]

(3) Arma Traders should be faulted for indicating Top Line as the payee in Exhibit E-26 or PBC check no. 091014. Moreover, Exhibit E-26 does not refer to PBC check no. 091014 but to PBC check no. 091032 payable to the order of cash.[60]

(4) The discrepancy in the total amount of the checks which is **₱15,130,363.87** as against the total obligation of **₱15,321,798.25** does not necessarily prove that the transactions are spurious.[61]

(5) The difference in Advance Paper's accounts receivables in the SEC report and in Arma Traders' obligation with Advance Paper was based on non-existent evidence because Exhibit 294-NG does not pertain to any balance sheet.[62] Moreover, the term "accounts receivable" is not synonymous with "cause of action." The respondents cannot escape their liability by simply pointing the SEC report because the petitioners have established their cause of action – that the purchases on credit and loan transactions took place, the respondents issued the dishonored checks to cover their debts, and they refused to settle their obligation with Advance Paper.[63]

The Case for the Respondents

The respondents argue that the Petition for Review should be dismissed summarily because of the following procedural grounds: *first*, for failure to comply with A.M. No. 02-8-13-

[59] *Id.* at 259.

[60] *Id.* at 260.

[61] *Ibid.*

[62] *Id.* at 261.

[63] *Id.* at 262.

SC;[64] and *second*, the CA decision is already final and executory since the petitioners filed their Motion for Reconsideration out of time. They explain that under the rules of the CA, if the last day for filing of any pleading falls on a Saturday not a holiday, the same must be filed on said Saturday, as the Docket and Receiving Section of the CA is open on a Saturday.[65]

The respondents argue that while as a general rule, a corporation is estopped from denying the authority of its agents which it allowed to deal with the general public; this is only true if the person dealing with the agent dealt in good faith.[66] In the present case, the respondents claim that the petitioners are in bad faith because the petitioners connived with Tan and Uy to make Arma Traders liable for the non-existent deliveries of notebooks and other paper products.[67] They also insist that the sales invoices are manufactured evidence.[68]

As to the loans, the respondents aver that these were Tan and Uy's personal obligations with Advance Paper.[69] Moreover, while the three cashier's checks were deposited in the account of Arma Traders, it is likewise true that Tan and Uy issued Arma Traders' checks in favor of Advance Paper. All these checks are evidence of Tan, Uy and Haw's systematic conspiracy to siphon Arma Traders corporate funds.[70]

The respondents also seek to discredit Haw's testimony on the basis of the following. *First*, his testimony as regards the sales invoices is hearsay because he did not personally prepare

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[64] Directing notary publics to no longer use the community tax certificate as proof of the affiant's identity because of its inherent unreliability; effective August 1, 2004.

[65] *Rollo*, p. 292.

[66] *Id*. at 310, Memorandum for Respondents, citing *Lipat v. Pacific Banking Corporation, supra* note 53, at 350.

[67] *Id*. at 289, 311.

[68] *Id.* at 311.

[69] *Id.* at 289.

[70] *Supra* note 68.

these documentary evidence.[71] *Second*, Haw suspiciously never had any written authority from his own Board of Directors to lend money. *Third*, the respondents also questioned why Advance Paper granted the ₱7,000,000.00 loan without requiring Arma Traders to present any collateral or guarantees.[72]

The Issues

The main procedural and substantive issues are:

I. Whether the petition for review should be dismissed for failure to comply with A.M. No. 02-8-13-SC.

II. Whether the petition for review should be dismissed on the ground of failure to file the motion for reconsideration with the CA on time.

III. Whether Arma Traders is liable to pay the loans applying the doctrine of apparent authority.

IV. Whether the petitioners proved Arma Traders' liability on the purchases on credit by preponderance of evidence.

The Court's Ruling

We grant the petition.

The procedural issues.

First, the respondents correctly cited A.M. No. 02-8-13-SC dated February 19, 2008 which refer to the amendment of the 2004 Rules on Notarial Practice. It deleted the Community Tax Certificate among the accepted proof of identity of the affiant because of its inherent unreliability. The petitioners violated this when they used Community Tax Certificate No. 05730869 in their Petition for Review.[73] Nevertheless, the defective *jurat* in the Verification/Certification of Non-Forum Shopping is not a fatal defect because it is only a formal, not a jurisdictional,

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[71] *Rollo*, p. 293.

[72] *Id.* at 169, 303.

[73] *Id.* at 43.

requirement that the Court may waive.[74] Furthermore, we cannot simply ignore the millions of pesos at stake in this case. To do so might cause grave injustice to a party, a situation that this Court intends to avoid.

Second, no less than the CA itself waived the rules on the period to file the motion for reconsideration. A review of the CA Resolution[75] dated March 7, 2007, reveals that the petitioners' Motion for Reconsideration was denied because the allegations were a mere rehash of what the petitioners earlier argued – *not because the motion for reconsideration was filed out of time.*

The substantive issues.

Arma Traders is liable to pay the loans on the basis of the doctrine of apparent authority.

The doctrine of apparent authority provides that a corporation will be estopped from denying the agent's authority if it knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, and it holds him out to the public as possessing the power to do those acts.[76] The doctrine of apparent authority does not apply if the principal did not commit any acts or conduct which a third party knew and relied upon in good faith as a result of the exercise of reasonable prudence. Moreover, the agent's acts or conduct must have produced a change of position to the third party's detriment.[77]

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[74] *Galicto v. Aquino III*, G.R. No. 193978, February 28, 2012, 667 SCRA 150, 175.

[75] *Rollo,* p. 139.

[76] *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, G.R. No. 117847, October 7, 1998, 297 SCRA 170, 184-185, citing *Francisco v. Government Service Insurance System*, Nos. L-18287 and L-18155, March 30, 1963, 7 SCRA 577, 583; and *Maharlika Publishing Corporation v. Tagle*, No. 65594, July 9, 1986, 142 SCRA 553, 566.

[77] *Banate v. Philippine Countryside Rural Bank (Liloan, Cebu), Inc.*, G.R. No. 163825, July 13, 2010, 625 SCRA 21, 34, citing *Yun Kwan Byung v. Philippine Amusement and Gaming Corporation*, G.R. No. 163553, December 11, 2009, 608 SCRA 107, 132.

In *Inter-Asia Investment Industries v. Court of Appeals,*[78] we explained:

> Under this provision [referring to Sec. 23 of the Corporation Code], the power and responsibility to decide whether the corporation should enter into a contract that will bind the corporation is lodged in the board, subject to the articles of incorporation, by laws, or relevant provisions of law. **However, just as a natural person who may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to officers, committees or agents. The authority of such individuals to bind the corporation is generally derived from law, corporate by laws or authorization from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business, *viz.*:**
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> > A corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that [the] authority to do so has been conferred upon him, and this includes powers as, in the usual course of the particular business, are incidental to, or may be implied from, the powers intentionally conferred, powers added by custom and usage, as usually pertaining to the particular officer or agent, and such apparent powers as the corporation has caused person dealing with the officer or agent to believe that it has conferred.
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> **[A]pparent authority is derived not merely from practice. Its existence may be ascertained through** (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words the apparent authority to act in general, with which it clothes him; or (2) **the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers. It requires presentation of evidence of similar act(s) executed either in its favor or in favor of other parties. It is not the quantity of similar acts which establishes apparent authority, but the vesting of a corporate officer with the power to bind the corporation.** [emphases and underscores ours]

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[78] G.R. No. 125778, June 10, 2003, 403 SCRA 452, 456-457, citing *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals, supra* note 76.

In *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*,[79] we ruled that the doctrine of apparent authority is applied when the petitioner, through its president Antonio Punsalan Jr., entered into the First Contract without first securing board approval. Despite such lack of board approval, petitioner did not object to or repudiate said contract, thus "clothing" its president with the power to bind the corporation.

"Inasmuch as a corporate president is often given general supervision and control over corporate operations, the strict rule that said officer has no inherent power to act for the corporation is slowly giving way to the realization that such officer has certain limited powers in the transaction of the usual and ordinary business of the corporation."[80] **In the absence of a charter or by law provision to the contrary, the president is presumed to have the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties.**"[81]

In the present petition, we do not agree with the CA's findings that Arma Traders is not liable to pay the loans due to the lack of board resolution authorizing Tan and Uy to obtain the loans. To begin with, Arma Traders' Articles of Incorporation[82] provides that the corporation **may borrow or raise money to meet the financial requirements of its business** by the issuance of bonds,

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[79] *Supra* note 76.

[80] *Id*. at 185, citing *Western American Life Ins. Co. v. Hicks*, 217 SE 2d 323, 324, May 19, 1975; and *Cooper v. G.E. Construction Co*., 158 SE 2d 305, 308, October 30, 1967.

[81] *Ibid.*, citing 19 AmJur 2d 595; citing *Pegram-West, Inc. v. Winston Mut. Life Ins. Co*., 56 SE 2d 607, 612, December 14, 1949; *Cushman v. Cloverland Coal & Mining Co*., 84 NE 759, 760, May 15, 1908; *Ceedeer v. H.M. Loud & Son's Lumber Co*., 49 NW 575, 575, July 28, 1891, *Memorial Hospital Asso. v. Pacific Grape*, 50 ALR 2d 442, 445, November 29, 1955; *Lloyd & Co. v. Matthews & Rice*, 79 NE 172, 173, December 5, 1906, and *National State Bank v. Vigo County National Bank*, 40 NE 799, 800, May 28, 1895.

[82] Records, Vol. 1, pp. 399-407. Arma Traders was formerly known as Divisoria Advance Products Corp.

promissory notes and ***other evidence of indebtedness***. Likewise, it states that Tan and Uy are not just ordinary corporate officers and authorized bank signatories because they are also Arma Traders' **incorporators** along with respondents Ng and Ting, and Pedro Chao. Furthermore, the respondents, through Ng who is Arma Traders' corporate secretary, incorporator, stockholder and director, testified that ***the sole management of Arma Traders was left to Tan and Uy and that he and the other officers never dealt with the business and management of Arma Traders for 14 years. He also confirmed that since 1984 up to the filing of the complaint against Arma Traders, its stockholders and board of directors never had its meeting.***[83]

Thus, Arma Traders bestowed upon Tan and Uy broad powers by allowing them to transact with third persons without the necessary written authority from its non-performing board of directors. Arma Traders failed to take precautions to prevent its own corporate officers from abusing their powers. Because of its own laxity in its business dealings, Arma Traders is now estopped from denying Tan and Uy's authority to obtain loan from Advance Paper.

We also reject the respondents' claim that Advance Paper, through Haw, connived with Tan and Uy. The records do not contain any evidence to prove that the loan transactions were personal to Tan and Uy. A different conclusion might have been inferred had the cashier's checks been issued in favor of Tan and Uy, and had the postdated checks in favor of Advance Paper been either Tan and/or Uy's, or had the respondents presented convincing evidence to show how Tan and Uy conspired with the petitioners to defraud Arma Traders.[84] We

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[83] *Rollo,* pp. 207-208.

[84] *Id.* at 264. The petitioners argued:

"Significantly, in the Pre-Trial Brief filed by Respondents (citation omitted), a certain Sharow Ong was supposed to testify on 'how Antonio Tan and Uy Seng Kee Willy conspired with plaintiffs to defraud Arma Traders Corporation.' No such witness or substitute was produced. No explanation for such failure was ever made either."

note that the respondents initially intended to present Sharow Ong, the secretary of Tan and Uy, to testify on how Advance Paper connived with Tan and Uy. As mentioned, the respondents failed to present her on the witness stand.

The respondents failed to object to the admissibility of the sales invoices on the ground that they are hearsay

The rule is that failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence.[85] When a party desires the court to reject the evidence offered, it must so state in the form of a timely objection and it cannot raise the objection to the evidence for the first time on appeal. Because of a party's failure to timely object, the evidence becomes part of the evidence in the case. Thereafter, all the parties are considered bound by any outcome arising from the offer of evidence properly presented.[86]

In *Heirs of Policronio M. Ureta, Sr. v. Heirs of Liberato M. Ureta*,[87] however, we held:

> [H]earsay evidence whether objected to or not cannot be given credence for having no probative value. This principle, however, has been relaxed in cases where, in addition to the failure to object to the admissibility of the subject evidence, **there were other pieces of evidence presented or there were other circumstances prevailing to support the fact in issue.** (emphasis and underscore ours; citation omitted)

We agree with the respondents that with respect to the identification of the sales invoices, Haw's testimony was hearsay

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[85] *Malayan Insurance Co., Inc. v. Alberto*, G.R. No. 194320, February 1, 2012, 664 SCRA 791, 805.

[86] *Ibid.*, citing *Asian Construction and Development Corporation v. COMFAC Corporation*, G.R. No. 163915, October 16, 2006, 504 SCRA 519, 524.

[87] G.R. No. 165748, September 14, 2011, 657 SCRA 555, 568. See also *Top-Weld Manufacturing, Inc. v. ECED, IRTI, S.A., Eutectic Corp.*, 222 Phil. 424, 347 (1985).

because he was not present during its preparation[88] and the secretaries who prepared them were not presented to identify them in court. Further, these sales invoices do not fall within the exceptions to the hearsay rule even under the "entries in the course of business" because the petitioners failed to show that the entrant was deceased or was unable to testify.[89]

But even though the sales invoices are hearsay, nonetheless, they form part of the records of the case for the respondents' failure to object as to the admissibility of the sales invoices on the ground that they are hearsay.[90] Based on the records, the respondents through Ng objected to the offer "for the purpose [to] which they are being offered" only – not on the ground that they were hearsay.[91]

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[88] During the cross-examination, Haw testified:

"Q: Where were you when these sales invoices, Exhibits 'A-1' and its submarkings, 'B-1' and its submarkings, "C-1" and its submarkings, and "D-1" and its submarkings, were prepared?

A: Well, I was in the office also but the secretaries were the ones who prepared the invoices. **I am not the one who saw to it the secretaries writing these invoices."** (TSN, December 9, 1996, p. 5)

[89] Section 43, Rule 130 of the Rules of Court provides: "Entries made at, or near the time of transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as *prima facie* evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty." (italics supplied)

In several cases, the following were the established requisites for the admissibility of entries made in the course of business:

(a) Entries must have been made at or near the time of the transaction to which they refer.
(b) Entrant must have been in a position to know the facts stated in the entries.
(c) Entries must have been made by entrant in his professional capacity or in the performance of his duty.
(d) Entries were made in the ordinary or regular course of business or duty.
(e) **Entrant must be deceased or unable to testify**.

[90] *Rollo*, pp. 194, 105-106.

[91] *Id.* at 106.

The petitioners have proven their claims for the unpaid purchases on credit by preponderance of evidence.

We are not convinced by the respondents' argument that the purchases are spurious because no less than Uy **admitted that all the checks issued were in payments of the contractual obligations of the Arma Traders with Advance Paper.**[92] Moreover, there are other pieces of evidence to prove the existence of the purchases other than the sales invoices themselves. For one, Arma Traders' postdated checks evince the existence of the purchases on credit. Moreover, Haw testified that within one or two weeks, Arma Traders paid the purchases in the form of postdated checks. He personally collected these checks on Saturdays and upon receiving the checks, he surrendered to Arma Traders the original of the sales invoices while he retained the duplicate of the invoices.[93]

The respondents attempted to impugn the credibility of Haw by pointing to the inconsistencies they can find from the transcript of stenographic notes. However, we are not persuaded that these inconsistencies are sufficiently pervasive to affect the totality of evidence showing the general relationship between Advance Paper and Arma Traders.

Additionally, the issue of credibility of witnesses is to be resolved primarily by the trial court because it is in the better position to assess the credibility of witnesses as it heard the testimonies and observed the deportment and manner of testifying of the witnesses. Accordingly, its findings are entitled to great respect and will not be disturbed on appeal in the absence of any showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.[94]

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[92] Par. 9, page 2 of Answer dated January 20, 1995.

[93] *Rollo,* p. 193.

[94] *People v. Sagarino, Jr.*, G.R. Nos. 135356-58, September 4, 2001, 364 SCRA 438, 445.

In the present case, the RTC judge took into consideration the substance and the manner by which Haw answered each propounded questions to him in the witness stand. Hence, the minor inconsistencies in Haw's testimony notwithstanding, the RTC held that the respondents claim that the purchase and loan transactions were spurious is "not worthy of serious consideration." Besides, the respondents failed to convince us that the RTC judge overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.

On the other hand, we agree with the petitioners that the discrepancies in the photocopy of the sales invoices and its duplicate copy have been sufficiently explained. Besides, this is already a non-issue since the duplicate copies were surrendered in the RTC.[95] Furthermore, the fact that the value of Arma Traders' checks does not tally with the total amount of their obligation with Advance Paper is not inconsistent with the existence of the purchases and loan transactions.

As against the case and the evidence Advance Paper presented, the respondents relied on the core theory of an alleged conspiracy between Tan, Uy and Haw to defraud Arma Traders. However, the records are bereft of supporting evidence to prove the alleged conspiracy. Instead, the respondents simply dwelled on the minor inconsistencies from the petitioners' evidence that the respondents appear to have magnified. From these perspectives, the preponderance of evidence thus lies

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[95] TSN, p. 18, Hearing on December 9, 1996; Testimony of George Haw – Continuation of the cross-examination:
ATTY. RODRIGUEZ, JR.:
Your Honor, we will surrender its custody to the Court the sales invoice no. 8946.
ATTY. CO:
May we make it on record that the counsel is detaching the same from the booklet.
ATTY. RODRIGUEZ, JR.:
And surrender it to the custody of the court.
THE COURT:
Alright. Attach that to the record. [Emphasis and underscore ours]

heavily in the petitioners' favor as the RTC found. For this reason, we find the petition meritorious.

WHEREFORE, premises considered, we **GRANT** the petition. The decision dated March 31, 2006 and the resolution dated March 7, 2007 of the Court of Appeals in CA-G.R. CV No. 71499 are **REVERSED** and **SET ASIDE**. The Regional Trial Court decision in Civil Case No. 94-72526 dated June 18, 2001 is **REINSTATED**. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 180661. December 11, 2013]

GEORGE ANTIQUERA *Y* CODES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; WARRANTLESS ARREST; ARREST *IN FLAGRANTE DELICTO;* IN AN ARREST *IN FLAGRANTE DELICTO,* THE OVERT ACT CONSTITUTING THE CRIME IS DONE IN THE PRESENCE OR WITHIN THE VIEW OF THE ARRESTING OFFICER.— Section 5(a), Rule 113 of the Rules of Criminal Procedure provides that a "peace officer or a private person may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense." This is an

[*] Designated as Acting Member in lieu of Associate Justice Jose P. Perez per Special Order No. 1627 dated December 6, 2013.

arrest *in flagrante delicto*. The overt act constituting the crime is done in the presence or within the view of the arresting officer.

2. ID.; ID.; ID.; ID.; ID.; WHERE NO CRIME WAS PLAINLY EXPOSED TO THE VIEW OF THE ARRESTING OFFICERS, THE ARREST OF THE ACCUSED WITHOUT WARRANT IS NOT AUTHORIZED; CASE AT BAR.— [T]he circumstances here do not make out a case of arrest made *in flagrante delicto*. x x x Clearly, no crime was plainly exposed to the view of the arresting officers that authorized the arrest of accused Antiquera without warrant under x x x [Section 5 (a), Rule 113 of the Rules of Criminal Procedure]. Considering that his arrest was illegal, the search and seizure that resulted from it was likewise illegal. Consequently, the various drug paraphernalia that the police officers allegedly found in the house and seized are inadmissible, having proceeded from an invalid search and seizure. Since the confiscated drug paraphernalia is the very *corpus delicti* of the crime charged, the Court has no choice but to acquit the accused.

3. ID.; ID.; ID.; A WAIVER OF AN ILLEGAL WARRANTLESS ARREST DOES NOT CARRY WITH IT A WAIVER OF THE ADMISSIBILITY OF EVIDENCE SEIZED DURING THE ILLEGAL WARRANTLESS ARREST.— The failure of the accused to object to the irregularity of his arrest by itself is not enough to sustain his conviction. A waiver of an illegal warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during the illegal warrantless arrest.

APPEARANCES OF COUNSEL

Gregorio G. Sadiasa & Severo C. Madrona, Jr. for petitioner.
The Solicitor General for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about a supposed warrantless arrest and a subsequent search prompted by the police officers' chance sighting through an ajar door of the accused engaged in pot session.

The Facts and the Case

On January 13, 2004 the second Assistant City Prosecutor of Pasay City charged the accused George Codes Antiquera* and Corazon Olivenza Cruz with illegal possession of paraphernalia for dangerous drugs[1] before the Regional Trial Court (RTC) of Pasay City in Criminal Case 04-0100-CFM.[2] Since the accused Cruz jumped bail, the court tried her *in absentia*.[3]

The prosecution evidence shows that at around 4:45 a.m. of February 11, 2004, PO1 Gregorio Recio, PO1 Laurence Cabutihan, P/Insp. Eric Ibon, PO1 Rodelio Rania, and two civilian operatives on board a patrol car and a tricycle were conducting a police visibility patrol on David Street, Pasay City, when they saw two unidentified men rush out of house number 107-C and immediately boarded a jeep.

Suspecting that a crime had been committed, the police officers approached the house from where the men came and peeked through the partially opened door. PO1 Recio and PO1 Cabutihan saw accused Antiquera holding an improvised tooter and a pink lighter. Beside him was his live-in partner, Cruz, who was holding an aluminum foil and an improvised burner. They sat facing each other at the living room. This prompted the police officers to enter the house, introduce themselves, and arrest Antiquera and Cruz.[4]

While inspecting the immediate surroundings, PO1 Cabutihan saw a wooden jewelry box atop a table. It contained an improvised burner, wok, scissors, 10 small transparent plastic sachets with traces of white crystalline substance, improvised scoop, and seven unused strips of aluminum foil. The police

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* Also referred to as George Antiquira in some parts of the records.

[1] In violation of Section 12, Article II of Republic Act 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

[2] Records, pp. 10-11.

[3] *Rollo*, p. 233.

[4] *Id*. at 236.

officers confiscated all these and brought Antiquera and Cruz to the Drug Enforcement Unit of the Philippine National Police in Pasay City for further investigation and testing.[5]

A forensic chemical officer examined the confiscated drug paraphernalia and found them positive for traces of methamphetamine hydrochloride or "*shabu*."[6]

Accused Antiquera gave a different story. He said that on the date and time in question, he and Cruz were asleep in their house when he was roused by knocking on the door. When he went to open it, three armed police officers forced themselves into the house. One of them shoved him and said, "*D'yan ka lang, pusher ka*." He was handcuffed and someone instructed two of the officers to go to his room. The police later brought accused Antiquera and Cruz to the police station and there informed them of the charges against them. They were shown a box that the police said had been recovered from his house.[7]

On July 30, 2004 the RTC rendered a Decision[8] that found accused Antiquera and Cruz guilty of the crime charged and sentenced them to a prison term ranging from six months and one day to two years and four months, and to pay a fine of ₱10,000.00 each and the costs of the suit.

The RTC said that the prosecution proved beyond reasonable doubt that the police caught accused Antiquera and Cruz in the act of using *shabu* and having drug paraphernalia in their possession. Since no ill motive could be attributed to PO1 Recio and PO1 Cabutihan, the court accorded full faith and credit to their testimony and rejected the self-serving claim of Antiquera.

The trial court gave no weight to accused Antiquera's claim of illegal arrest, given PO1 Recio and PO1 Cabutihan's credible testimony that, prior to their arrest, they saw Antiquera and

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[5] *Id*. at 236-237.

[6] *Id*.

[7] TSN, May 31, 2004, pp. 3-4.

[8] Records, pp. 147-155.

Cruz in a pot session at their living room and in possession of drug paraphernalia. The police officers were thus justified in arresting the two without a warrant pursuant to Section 5, Rule 113 of the Rules of Criminal Procedure.[9]

On appeal, the Court of Appeals (CA) rendered a Decision[10] on September 21, 2007 affirming in full the decision of the trial court. The accused moved for reconsideration but the CA denied it.[11] The accused is now before this Court seeking acquittal.

The Issue Presented

The issue in this case is whether or not the CA erred in finding accused Antiquera guilty beyond reasonable doubt of illegal possession of drug paraphernalia based on the evidence of the police officers that they saw him and Cruz in the act of possessing drug paraphernalia.

Ruling of the Court

The prosecution's theory, upheld by both the RTC and the CA, is that it was a case of valid warrantless arrest in that the police officers saw accused Antiquera and Cruz through the door of their house, in the act of having a pot session. That valid warrantless arrest gave the officers the right as well to search the living room for objects relating to the crime and thus seize the paraphernalia they found there.

The prosecution contends that, since the seized paraphernalia tested positive for *shabu*, they were no doubt used for smoking, consuming, administering, injecting, ingesting, or introducing dangerous drug into the body in violation of Section 12 of Republic Act 9165. That the accused tested negative for *shabu*, said the prosecution, had no bearing on the crime charged which was for illegal possession of drug paraphernalia, not for illegal use

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

[10] *Rollo*, pp. 56-70. Penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Japar B. Dimaampao and Myrna Dimaranan Vidal.

[11] *Id.* at 72.

of dangerous drugs. The prosecution added that even assuming that the arrest of the accused was irregular, he is already considered to have waived his right to question the validity of his arrest when he voluntarily submitted himself to the court's jurisdiction by entering a plea of not guilty.[12]

Section 5(a), Rule 113 of the Rules of Criminal Procedure provides that a "peace officer or a private person may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense." This is an arrest *in flagrante delicto*.[13] The overt act constituting the crime is done in the presence or within the view of the arresting officer.[14]

But the circumstances here do not make out a case of arrest made *in flagrante delicto*.

1. The police officers claim that they were alerted when they saw two unidentified men suddenly rush out of 107 David Street, Pasay City. Since they suspected that a crime had been committed, the natural thing for them to do was to give chase to the jeep that the two fleeing men boarded, given that the officers were in a patrol car and a tricycle. Running after the fleeing suspects was the more urgent task but the officers instead gave priority to the house even when they heard no cry for help from it.

2. Admittedly, the police officers did not notice anything amiss going on in the house from the street where they stood. Indeed, even as they peeked through its partially opened door, they saw no activity that warranted their entering it. Thus, PO1 Cabutihan testified:

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[12] *Id.* at 240-244.

[13] *People v. Molina*, 404 Phil. 797, 809 (2001).

[14] *Zalameda v. People*, G.R. No. 183656, September 4, 2009, 598 SCRA 537, 552.

THE COURT:

Q – By the way, Mr. Cabutihan, when you followed your companion towards the open door, how was the door open? Was it totally open, or was it partially open?
A – It was partially open Your Honor.

Q – By how much, 1/3, 1/2? Only by less than one (1) foot?
A – More or less 4 to 6 inches, Your Honor.

Q – So how were you able to know, to see the interior of the house if the door was only open by 6 inches? Or did you have to push the door?
A – We pushed the door, Your Honor.

x x x x x x x x x

Q – Were you allowed to just go towards the door of the house, push its door and peeped inside it, as a police officer?
A – *Kasi po naghinala po kami baka may…*

Q – Are you not allowed to – Are you not required to get a search warrant before you can search the interior of the house?
A – Yes, Your Honor.

Q – What do you mean by yes? Would you first obtain a search warrant before searching the interior of the house?
A – Yes, Your Honor.

Q – So why did you not a [sic] secure a search warrant first before you tried to investigate the house, considering your admission that you suspected that there was something wrong inside the house?
A – Because we saw them that they were engaged in pot session, Your Honor.

Q – But before you saw them, you just had to push the door wide open to peep through its opening because you did not know what was happening inside?
A – Yes, Your Honor.[15] (Emphasis supplied)

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[15] TSN, May 20, 2004, pp. 8-10.

Clearly, no crime was plainly exposed to the view of the arresting officers that authorized the arrest of accused Antiquera without warrant under the above-mentioned rule. Considering that his arrest was illegal, the search and seizure that resulted from it was likewise illegal.[16] Consequently, the various drug paraphernalia that the police officers allegedly found in the house and seized are inadmissible, having proceeded from an invalid search and seizure. Since the confiscated drug paraphernalia is the very *corpus delicti* of the crime charged, the Court has no choice but to acquit the accused.[17]

One final note. The failure of the accused to object to the irregularity of his arrest by itself is not enough to sustain his conviction. A waiver of an illegal warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during the illegal warrantless arrest.[18]

WHEREFORE, the Court **REVERSES and SETS ASIDE** the Decision dated September 21, 2007 and Resolution dated November 16, 2007 of the Court of Appeals in CA-G.R. CR 28937 and **ACQUITS** the accused George Antiquera *y* Codes of the crime of which he is charged for lack of evidence sufficient to establish his guilt beyond reasonable doubt. The Court further **ORDERS** the cancellation and release of the bail bond he posted for his provisional liberty.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Mendoza, and *Leonen, JJ.,* concur.

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[16] See: *Luz v. People*, G.R. No. 197788, February 29, 2012, 667 SCRA 421, 434.

[17] See: *People v. Villareal*, G.R. No. 201363, March 18, 2013, 693 SCRA 549, 561.

[18] *People v. Martinez*, G.R. No. 191366, December 13, 2010, 637 SCRA 791, 801.

THIRD DIVISION

[G.R. No. 184145. December 11, 2013]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **DASH ENGINEERING PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); VALUE-ADDED TAX (VAT); REFUNDS OR TAX CREDITS OF INPUT TAX; SECTION 112 OF THE NIRC APPLIES TO CLAIMS FOR EXCESS INPUT VAT.— Sections 204 and 229 of the NIRC pertain to the refund of erroneously or illegally collected taxes x x x. This Court has previously made a pronouncement as to the inapplicability of Section 229 of the NIRC to claims for excess input VAT. In the recently decided case of *Commissioner of Internal Revenue v. San Roque Power Corporation,* the Court made a lengthy disquisition on the nature of excess input VAT, clarifying that "input VAT is not 'excessively' collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper." Hence, respondent cannot advance its position by referring to Section 229 because Section 112 is the more specific and appropriate provision of law for claims for excess input VAT.

2. ID.; ID.; ID.; ID.; TWO-YEAR PRESCRIPTIVE PERIOD; APPLIES ONLY TO THE FILING OF ADMINISTRATIVE CLAIMS WITH THE COMMISSIONER OF INTERNAL REVENUE AND NOT TO THE FILING OF JUDICIAL CLAIMS WITH THE COURT OF TAX APPEALS.— Section 112(A) x x x provides for a two-year period for filing a claim for refund x x x. As explained in *San Roque*, however, the two-year prescriptive period referred to in Section 112(A) applies only to the filing of administrative claims with the CIR and not to the filing of judicial claims with the CTA. In other words, for as long as the administrative claim is filed with the CIR within the two-year prescriptive period, the 30-day period given to the taxpayer to file a judicial claim with the CTA need not fall in the same two-year period.

3. ID.; ID.; ID.; ID.; 120+30-DAY PERIOD; CONSIDERED MANDATORY AND JURISDICTIONAL.— Petitioner is entirely correct in its assertion that compliance with the periods provided for in x x x [Section 112(D)(now subparagraph C) of the NIRC] is indeed mandatory and jurisdictional, as affirmed in this Court's ruling in *San Roque*, where the Court *En Banc* settled the controversy surrounding the application of the 120+30-day period provided for in Section 112 of the NIRC and reiterated the *Aichi* doctrine that the 120+30-day period is mandatory and jurisdictional. Nonetheless, the Court took into account the issuance by the Bureau of Internal Revenue (*BIR*) of BIR Ruling No. DA-489-03 which misled taxpayers by explicitly stating that taxpayers may file a petition for review with the CTA even before the expiration of the 120-day period given to the CIR to decide the administrative claim for refund. Even though observance of the periods in Section 112 is compulsory and failure to do so will deprive the CTA of jurisdiction to hear the case, such a strict application will be made from the effectivity of the Tax Reform Act of 1997 on January 1, 1998 until the present, except for the period from December 10, 2003 (the issuance of the erroneous BIR ruling) to October 6, 2010 (the promulgation of *Aichi*), during which taxpayers need not wait for the lapse of the 120+30-day period before filing their judicial claim for refund.

4. ID.; TAX LAWS; MUST BE FAITHFULLY AND STRICTLY IMPLEMENTED AS THEY ARE NOT INTENDED TO BE LIBERALLY CONSTRUED.— The Court has held time and again that taxes are the lifeblood of the government and, consequently, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed. Hence, We are left with no other recourse but to deny respondent's judicial claim for refund for non-compliance with the provisions of Section 112 of the NIRC.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Angara Abello Concepcion Regala & Cruz for respondent.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure, assailing the July 17, 2008 Decision[1] and the August 12, 2008 Resolution[2] of the Court of Tax Appeals (*CTA*) *En Banc* in C.T.A. EB No. 357 (C.T.A. Case No. 7243) entitled "*Commissioner of Internal Revenue v. Dash Engineering Philippines, Inc.*"

The Facts

Respondent Dash Engineering Philippines, Inc. (*DEPI*) is a corporation duly registered with the Securities and Exchange Commission, authorized to do business in the Philippines and listed with the Philippine Economic Zone Authority as an ecozone IT export enterprise.[3] It is also a VAT-registered entity engaged in the export sales of computer-aided engineering and design.[4]

Respondent filed its monthly and quarterly value-added tax (*VAT*) returns for the period from January 1, 2003 to June 30, 2003.[5] On August 9, 2004, it filed a claim for tax credit or refund in the amount of ₱ 2,149,684.88 representing unutilized input VAT attributable to its zero-rated sales.[6] Because petitioner Commissioner of Internal Revenue (*CIR*) failed to act upon the said claim, respondent was compelled to file a petition for review with the CTA on May 5, 2005.[7]

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[1] *Rollo*, pp. 30-47; penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justice Juanito C. Castañeda, Jr., Associate Justice Erlinda P. Uy, Associate Justice Caesar A. Casanova and Associate Justice Olga Palanca-Enriquez.

[2] *Id*. at 48-49.

[3] *Id*. at 32.

[4] *Id*. at 31.

[5] *Id*. at 32; 120-129.

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

[7] *Id*. at 254.

On October 4, 2007, the Second Division of the CTA rendered its Decision[8] partially granting respondent's claim for refund or issuance of a tax credit certificate in the reduced amount of ₱ 1,147,683.78. On the matter of the timeliness of the filing of the judicial claim, the Tax Court found that respondent's claims for refund for the first and second quarters of 2003 were filed within the two-year prescriptive period which is counted from the date of filing of the return and payment of the tax due. Because DEPI filed its amended quarterly VAT returns for the first and second quarters of 2003 on July 24, 2004, it had until July 24, 2006 to file its judicial claim. As such, its filing of a petition for review with the CTA on April 26, 2005[9] was within the prescriptive period.[10] Petitioner moved for reconsideration but the same was denied in a Resolution dated January 3, 2008.[11]

Aggrieved, petitioner elevated the case to the CTA *En Banc*, where it argued that respondent failed to show that (1) its purchases of goods and services were made in the course of its trade and business, (2) the said purchases were properly supported by VAT invoices and/or official receipts and other documents, and (3) that the claimed input VAT payments were directly attributable to its zero-rated sales. Petitioner also averred that the petition for review was filed out of time.[12]

The CTA *En Banc* in its Decision,[13] dated July 17, 2008, upheld the decision of the CTA Second Division, ruling that the judicial claim was filed on time because the use of the word

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[8] *Id*. at 50-67; penned by Associate Justice Olga Palanca-Enriquez and concurred in by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Erlinda P. Uy.

[9] Based on the Memoranda filed by the petitioner and the respondent and on the Decision of the CTA *En Banc*, the petition for review was filed with the CTA on May 5, 2005, not April 26, 2005.

[10] *Id*. at 59-61.

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

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

[13] *Id*. at 30-47.

"may" in Section 112(D) (now subparagraph C) of the National Internal Revenue Code (*NIRC*) indicates that judicial recourse within thirty (30) days after the lapse of the 120-day period is only directory and permissive and not mandatory and jurisdictional, as long as the petition was filed within the two-year prescriptive period. The Tax Court further reiterated that the two-year prescriptive period applies to both the administrative and judicial claims. Petitioner's motion for reconsideration was denied in the August 12, 2008 Resolution of the CTA.[14]

Hence, this petition.

The Issues

Petitioner raises the following grounds for the allowance of the petition:

I

The Court of Tax Appeals *En Banc* erred in holding that respondent's judicial claim for refund was filed within the prescriptive period provided under the Tax Code.

II

The Court of Tax Appeals *En Banc* erred in partially granting respondent's claim for refund despite the failure of the latter to substantiate its claim by sufficient documentary proof.[15]

The Court's Ruling

As to the first issue, petitioner argues that the judicial claim was filed out of time because respondent failed to comply with the 30-day period referred to in Section 112(D) (now subparagraph C) of the NIRC, citing the case of *Commissioner of Internal Revenue v. Aichi*[16] where the Court categorically held that compliance with the prescribed periods in Section 112 is mandatory and jurisdictional. Respondent filed its

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[14] *Id*. at 48-49.

[15] *Id*. at 15.

[16] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

administrative claim for refund on August 9, 2004. The 120-day period within which the CIR should act on the claim expired on December 7, 2004 without any action on the part of petitioner. Thus, respondent only had 30 days from the lapse of the said period, or until January 6, 2005, to file a petition for review with the CTA. The petition, however, was filed only on May 5, 2005.[17] Petitioner further posits that the 30-day period within which to file an appeal with the CTA is jurisdictional and failure to comply therewith would bar the appeal and deprive the CTA of its jurisdiction to entertain the same.[18]

Conversely, respondent DEPI asserts that its petition was seasonably filed before the CTA in keeping with the two-year prescriptive period provided for in Sections 204(c) and 229 of the NIRC.[19] DEPI interprets Section 112, in relation to Section 229, to mean that the 120-day period is the time given to the CIR to decide the case. The taxpayer, on the other hand, has the option of either appealing to the CTA the denial by the CIR of the claim for refund within thirty (30) days from receipt of such denial and within the two-year prescriptive period, or appealing an unacted claim to the CTA anytime after the expiration of the 120-day period given to the CIR to resolve the administrative claim for as long as the judicial claim is made within the two-year prescriptive period.[20] Following respondent's reasoning, its filing of the judicial claim on April 26, 2005 was filed on time because it was made after the lapse of the 120-day period and within the two-year period referred to in Section 229.

The petition is meritorious.

Sec. 229 is inapplicable; two-year period in Sec. 112 refers only to administrative claims

Sections 204 and 229 of the NIRC pertain to the refund of erroneously or illegally collected taxes:

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[17] *Rollo*, p. 231.

[18] *Id.* at 235.

[19] *Id.* at 254.

[20] *Id.* at 257.

Sec. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. – The Commissioner may –

x x x x x x x x x

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

Sec. 229. Recovery of Tax Erroneously or Illegally Collected. – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment xxx. (Emphases supplied)

This Court has previously made a pronouncement as to the inapplicability of Section 229 of the NIRC to claims for excess input VAT. In the recently decided case of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[21] the Court made a lengthy disquisition on the nature of excess input VAT, clarifying that "input VAT is not 'excessively' collected as understood under Section 229 because at the time the input

[21] G.R. No. 187485, February 12, 2013, 690 SCRA 336.

VAT is collected the amount paid is correct and proper."[22] Hence, respondent cannot advance its position by referring to Section 229 because Section 112 is the more specific and appropriate provision of law for claims for excess input VAT.

Section 112(A) also provides for a two-year period for filing a claim for refund, to wit:

> Sec. 112. Refunds or Tax Credits of Input Tax. –
>
> (A) Zero-rated or Effectively Zero-rated Sales. – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax
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> x x x x x x x x x

As explained in *San Roque*, however, the two-year prescriptive period referred to in Section 112(A) applies only to the filing of administrative claims with the CIR and not to the filing of judicial claims with the CTA. In other words, for as long as the administrative claim is filed with the CIR within the two-year prescriptive period, the 30-day period given to the taxpayer to file a judicial claim with the CTA need not fall in the same two-year period.

At any rate, respondent's compliance with the two-year prescriptive period under Section 112(A) is not an issue. What is being questioned in this case is DEPI's failure to observe the requisite 120+30-day period as mandated by Section 112(C) of the NIRC.

120+30 day period under Sec. 112 is mandatory and jurisdictional

Section 112(D) (now subparagraph C) of the NIRC provides that:

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[22] *Id*.

Sec. 112. Refunds or Tax Credits of Input Tax

x x x x x x x x x

(D) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period**, appeal the decision or the unacted claim with the Court of Tax Appeals. (emphasis supplied)

Petitioner is entirely correct in its assertion that compliance with the periods provided for in the abovequoted provision is indeed mandatory and jurisdictional, as affirmed in this Court's ruling in *San Roque*, where the Court *En Banc* settled the controversy surrounding the application of the 120+30-day period provided for in Section 112 of the NIRC and reiterated the *Aichi* doctrine that the 120+30-day period is mandatory and jurisdictional. Nonetheless, the Court took into account the issuance by the Bureau of Internal Revenue (*BIR*) of BIR Ruling No. DA-489-03 which misled taxpayers by explicitly stating that taxpayers may file a petition for review with the CTA even before the expiration of the 120-day period given to the CIR to decide the administrative claim for refund. Even though observance of the periods in Section 112 is compulsory and failure to do so will deprive the CTA of jurisdiction to hear the case, such a strict application will be made from the effectivity of the Tax Reform Act of 1997 on January 1, 1998 until the present, except for the period from December 10, 2003 (the issuance of the erroneous BIR ruling) to October 6, 2010 (the promulgation of *Aichi*), during which taxpayers need not wait for the lapse of the 120+30-day period before filing their judicial claim for refund.

The case at bench, however, does not involve the issue of premature filing of the petition for review with the CTA. Rather, this petition seeks the denial of DEPI's claim for refund for having been filed late or after the expiration of the 30-day period from the denial by the CIR or failure of the CIR to make a decision within 120 days from the submission of the documents in support of respondent's administrative claim.

In *San Roque*, one of the respondents similarly filed its petition for review with the CTA well after the 120+30-day period. In denying the taxpayer's claim for refund, this Court explained that:

> Unlike San Roque and Taganito, **Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim long after the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period.** In any event, whether governed by jurisprudence before, during or after the *Atlas* case, Philex's judicial claim will have to be rejected because of late filing. Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late.
>
> The *Atlas* doctrine cannot save Philex from the late filing of its judicial claim. **The inaction of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, "deemed a denial" of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and inappealable.** The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. **The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise.** Philex failed to comply with the statutory conditions and must thus bear the consequences.[23] (Emphases supplied)

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[23] *Id*.

Therefore, in accordance with *San Roque*, respondent's judicial claim for refund must be denied for having been filed late. Although respondent filed its administrative claim with the BIR on August 9, 2004 before the expiration of the two-year period in Section 112(A), it undoubtedly failed to comply with the 120+30-day period in Section 112(D) (now subparagraph C) which requires that upon the inaction of the CIR for 120 days after the submission of the documents in support of the claim, the taxpayer has to file its judicial claim within 30 days after the lapse of the said period. The 120 days granted to the CIR to decide the case ended on December 7, 2004. Thus, DEPI had 30 days therefrom, or until January 6, 2005, to file a petition for review with the CTA. Unfortunately, DEPI only sought judicial relief on May 5, 2005 when it belatedly filed its petition to the CTA, despite having had ample time to file the same, almost four months after the period allowed by law. As a consequence of DEPI's late filing, the CTA did not properly acquire jurisdiction over the claim.

The Court has held time and again that taxes are the lifeblood of the government and, consequently, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[24] Hence, We are left with no other recourse but to deny respondent's judicial claim for refund for non-compliance with the provisions of Section 112 of the NIRC.

WHEREFORE, the petition is **GRANTED**. The July 17, 2008 Decision and the August 12, 2008 Resolution of the CTA *En Banc* in C.T.A. EB No. 357 (C.T.A. Case No. 7243) are hereby **REVERSED** and **SET ASIDE**. Respondent DEPI's judicial claim for refund or tax credit through its petition for review before the CTA is **DENIED**.

SO ORDERED.

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

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[24] *Commissioner of Internal Revenue v. Acosta*, G.R. No. 154068, August 3, 2007, 529 SCRA 177, 186.

FIRST DIVISION

[G.R. No. 188165. December 11, 2013]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HON. SANDIGANBAYAN, FIRST DIVISION & THIRD DIVISION, HERNANDO BENITO PEREZ, ROSARIO PEREZ, RAMON ARCEO and ERNEST ESCALER,** *respondents.*

[G.R. No. 189063. December 11, 2013]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HON. SANDIGANBAYAN, SECOND DIVISION, HERNANDO BENITO PEREZ, ROSARIO SALVADOR PEREZ, ERNEST DE LEON ESCALER and RAMON CASTILLO ARCEO, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE THAT ONLY THE SOLICITOR GENERAL MAY REPRESENT THE PEOPLE ON APPEAL OR *CERTIORARI* IN THE SUPREME COURT AND THE COURT OF APPEALS IN ALL CRIMINAL CASES; EXCEPTION; WHERE THE OFFICE OF THE OMBUDSMAN REPRESENTS THE PEOPLE IN ALL CASES ELEVATED TO THE SANDIGANBAYAN AND FROM THE SANDIGANBAYAN TO THE SUPREME COURT.— That only the Solicitor General may represent the People on appeal or *certiorari* in the Supreme Court and the Court of Appeals in all criminal proceedings is the general rule, but the rule admits the exception concerning "all cases elevated to the Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines, except in cases filed pursuant to Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986." More specifically, Section 4(*c*) of Republic Act No. 8249 authorizes the exception.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPRIETY THEREOF.— A special civil action for *certiorari* is an independent action based on the specific grounds provided in Section 1, Rule 65 of the *Rules of Court*, and can prosper only the jurisdictional error, or the grave abuse of discretion amounting to lack or excess of jurisdiction committed by the inferior court or judge is alleged and proved to exist. In *De los Santos v. Metropolitan Bank and Trust Company*, the Court has expounded on the nature and reach of the extraordinary remedy of *Certiorari*.

3. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); PRELIMINARY INVESTIGATION OF A CRIMINAL COMPLAINT WAS NOT A "CONTRACT OR TRANSACTION" THAT BRINGS THE COMPLAINT WITHIN THE AMBIT OF SEC. 3(B) OF RA 3019.— In its questioned resolution dismissing Criminal Case No. SB-08-CRM-0265, the Sandiganbayan relied on the ruling in *Soriano, Jr. v. Sandiganbayan*, in which the principal issue was whether or not the preliminary investigation of a criminal complaint conducted by petitioner Soriano, Jr., then a Fiscal, was a "contract or transaction" as to bring the complaint within the ambit of Section 3 (b) of Republic Act No. 3019, which punished any public officer for "[d]irectly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any *contract or transaction* between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law." The *Soriano, Jr.* Court ruled in the negative, and pronounced: It is obvious that **the investigation conducted by the petitioner was not a contract. Neither was it a transaction because this term must be construed as analogous to the term which precedes it. A transaction, like a contract, is one which involves some consideration as in credit transactions** and this element (consideration) is absent in the investigation conducted by the petitioner. x x x The interpretation in *Soriano, Jr.* of the term *transaction* as used in Section 3(*b*) of Republic Act No. 3019 has not been overturned by the Court. x x x [I]t does not help the State any that the term *transaction* as used in Section 3(b) of Republic Act No. 3019 is susceptible of being interpreted both restrictively and liberally, considering that laws creating,

defining or punishing crimes and laws imposing penalties and forfeitures are to be construed strictly against the State or against the party seeking to enforce them, and liberally against the party sought to be charged.

4. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; APPLICATION AND VIOLATION THEREOF, ELUCIDATED.— The right to the speedy disposition of cases is enshrined in Article III of the Constitution, which declares: Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. The constitutional right to a speedy disposition of cases is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings. While the concept of speedy disposition is relative or flexible, such that a mere mathematical reckoning of the time involved is not sufficient, the right to the speedy disposition of a case, like the right to speedy trial, is deemed violated when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried. According to *Angchonco, Jr. v. Ombudsman*, inordinate delay in resolving a criminal complaint, being violative of the constitutionally guaranteed right to due process and to the speedy disposition of cases, warrants the dismissal of the criminal case.

5. ID.; ID.; ID.; ID.; VIOLATED IN CASE AT BAR WHERE THE INVESTIGATIONS BY THE OFFICE OF THE OMBUDSMAN LASTED MORE THAN FIVE YEARS.— In [case at bar], the fact finding investigation and preliminary investigation by the Office of the Ombudsman lasted nearly five years and five months. [T]he Office of the Ombudsman had taken an unusually long period of time just to investigate the criminal complaint and to determine whether to criminally charge the respondents in the Sandiganbayan. Such long delay was inordinate and oppressive, and constituted under the peculiar circumstances of the case an outright violation of the respondents' right under the Constitution to the speedy

> disposition of their cases. x x x [I]t is incumbent for the State to prove that the delay was reasonable, or that the delay was not attributable to it. In both regards, the State miserably failed. x x x The guarantee of speedy disposition under Section 16 of Article III of the Constitution applies to *all* cases pending before *all* judicial, quasi judicial or administrative bodies. The guarantee would be defeated or rendered inutile if the hair-splitting distinction by the State is accepted. Whether or not the fact-finding investigation was separate from the preliminary investigation conducted by the Office of the Ombudsman should not matter for purposes of determining if the respondents' right to the speedy disposition of their cases had been violated.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Angara Abello Concepcion Regala & Cruz Law Offices for E. Escaler.
Law Firm Tanjuatco & Partners for R. Arceo.
Villanueva Gabionza & De Santos for Sps. Perez.
Balgos & Perez Law Offices for Sps. Perez.

D E C I S I O N

BERSAMIN, *J.*:

The guarantee of the speedy disposition of cases under Section 16 of Article III of the Constitution applies to all cases pending before all judicial, quasi-judicial or administrative bodies. Thus, the fact-finding investigation should not be deemed separate from the preliminary investigation conducted by the Office of the Ombudsman if the aggregate time spent for both constitutes inordinate and oppressive delay in the disposition of any case.

The Case

The Court resolves the petitions for *certiorari* the State instituted to assail and nullify, in G.R. No. 188165, the Sandiganbayan's dismissal of Criminal Case SB-08-CRM-0265 entitled *People of the Philippine v. Hernando Benito Perez*,

Rosario S. Perez, Ernest Escaler, and Ramon A. Arceo, for violation of Section 3 (*b*) of Republic Act No. 3019, as amended; and, in G.R. No. 189063, the Sandiganbayan's dismissal of SB-08-CRM-0266 entitled *People of the Philippine v. Hernando Benito Perez, Rosario S. Perez, Ernest Escaler, and Ramon A. Arceo*, for robbery under Article 293, in relation to Article 294, of the *Revised Penal Code*.

Common Factual and Procedural Antecedents

On November 12, 2002, Congressman Wilfrido B. Villarama of Bulacan (Cong. Villarama) delivered a privilege speech in the House of Representatives denouncing acts of bribery allegedly committed by a high ranking government official whom he then called the "2 Million Dollar Man."[1] In reaction, the Office of the President directed the Presidential Anti-Graft and Commission (PAGC) to conduct an inquiry on the exposé of Cong. Villarama. PAGC sent written communications to Cong. Villarama, Cong. Mark Jimenez, Senator Panfilo Lacson and respondent Secretary of Justice Hernando B. Perez inviting them to provide information and documents on the alleged bribery subject of the exposé.[2] On November 18, 2002, Cong. Villarama responded by letter to PAGC's invitation by confirming that Secretary Perez was the government official who "ha[d] knowledge or connection with the bribery subject of his expose."[3] In his own letter of November 18, 2002, however, Secretary Perez denied being the Million-Dollar Man referred to in Cong. Villarama's privilege speech.[4] On November 25, 2002, Cong. Jimenez delivered a privilege speech in the House of Representatives confirming Cong. Villarama's exposé, and accusing Secretary Perez of extorting US$2 Million from him in February 2001.[5]

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[1] *Rollo* (G.R. No. 189063, Vol. I), p. 9.

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

[3] *Id*. at 10.

[4] *Id*.

[5] *Id*.

On November 25, 2002, then Ombudsman Simeon Marcelo requested PAGC to submit documents relevant to the exposé.[6] On November 26, 2002, Ombudsman Marcelo formally requested Cong. Jimenez to submit a sworn statement on his exposé.[7] Cong. Jimenez complied on December 23, 2002 by submitting his complaint-affidavit to the Office of the Ombudsman. The complaint-affidavit was initially docketed as CPL-C-02-1992. On the same day, the Special Action Team of the Fact Finding and Intelligence Research Office (FIRO) of the Office of the Ombudsman referred Cong. Jimenez's complaint-affidavit to the Evaluation and Preliminary Investigation Bureau and to the Administrative Adjudication Board, both of the Office of the Ombudsman, for preliminary investigation and administrative adjudication, respectively.[8]

The complaint-affidavit of Jimenez was re-docketed as OMB-C-C-02-0857L, for the criminal case in which the respondents were Secretary Perez, Ernest L. Escaler and Ramon C. Arceo, Jr.; and as OMB-C-A-02-0631L, for the administrative case involving only Secretary Perez as respondent.[9]

On January 2, 2003, a Special Panel composed of Atty. Evelyn Baliton, Atty. Mary Susan Guillermo and Atty. Jose de Jesus was created to evaluate and conduct an investigation of CPL-C-02-1992.

On even date, Secretary Perez, through counsel, requested Ombudsman Marcelo that the Office of the Ombudsman itself directly verify from the Coutt's Bank whether he (Secretary Perez) had ever held any account in that bank to which the sum of US$2 Million had been remitted by Cong. Jimenez.[10]

On January 15, 2003, Ombudsman Marcelo approved the recommendation of the Special Panel to refer the complaint

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[6] *Id.* at 10-11.

[7] *Id.* at 11.

[8] *Id.* at 12.

[9] *Id.* at 12-13.

[10] *Id.* at 13.

of Cong. Jimenez to FIRO for a full-blown fact-finding investigation.[11]

On June 4, 2003, the Office of the Ombudsman received the letter dated May 30, 2003 from the counsel of Cong. Jimenez, submitting the supplemental complaint-affidavit dated April 4, 2003 of Cong. Jimenez.

In his letter dated July 3, 2003, Secretary Perez, through counsel, sought the dismissal of the complaint for lack of probable cause.[12]

On July 17, 2003, Assistant Ombudsman Pelagio S. Apostol informed Secretary Perez about the letter from Coutts Bank stating that "Hernando B. Perez" had no account with it, and assured that the letter would be considered in the final resolution of the case.[13]

On August 22, 2005, Ombudsman Marcelo created a new Special Panel to evaluate CPL-C-02-1992, and, if warranted, to conduct administrative and preliminary investigations, thereby superseding the creation of the Special Panel formed on January 2, 2003.[14]

On November 14, 2005, the Field Investigation Office (FIO) completed its fact-finding investigation and filed complaints against the following individuals, namely:

A. Former Justice Secretary Hernando B. Perez, Rosario S. Perez, Ernesto L. Escaler, Ramon C. Arceo and John Does for violation of Section 3(b) of R.A. No. 3019;

B. Former Justice Secretary Hernando B. Perez for violation of the following: Section 8 in relation to Section 11 of R.A. No. 6713, Article 183 (Perjury) of the Revised Penal Code, and Article 171, par. 4 (Falsification) of the RPC; and

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[11] *Id*. at 14.

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

[13] *Id*. at 15.

[14] *Id*. at 15.

C. Former Justice Secretary Hernando B. Perez, Rosario S. Perez, Ernest L. Escaler, Ramon C. Arceo and John Does for violation of the provisions of R.A. 1379.[15]

On November 23, 2005, the Special Panel directed Secretary Perez (who had meanwhile resigned from office), his wife Rosario S. Perez (Mrs. Perez), Escaler and Arceo to submit their counter-affidavits in OMB-C-C-02-0857-L, OMB-C-C-05-0633-K, OMB-C-C-05-0634-K and OMB-C-C-05-0635-K (criminal cases). In another order of the same date, the Special Panel directed former Secretary Perez to file his counter-affidavit in OMB-C-A-02-0631-L (administrative case).[16]

On November 29, 2005, the respondents filed an urgent motion for extension of time to file their counter-affidavits.

On December 2, 2005, the counsel for Escaler entered his appearance and sought the extension of the time to file Escaler's counter-affidavit.[17]

On December 5, 2005, the Special Panel ordered the respondents to file their counter-affidavits within ten days from December 4, 2005, or until December 14, 2005.[18]

On December 7, 2005, Asst. Ombudsman Apostol issued PAMO Office Order No. 22, Series of 2005, creating a new team of investigators to assist in the preliminary investigation and administrative adjudication of OMB-C-C-02-0857L, OMB-C-A-02-0631L (administrative case), OMB-C-C-05-0633K to OMB-C-C-0635K (forfeiture proceedings under Republic Act No. 1379). The office order cancelled and superseded PAMO Office Order No. 01-2003, Series of 2003.[19]

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[15] *Id*. at 16.

[16] *Id*. at 17.

[17] *Id*. at 17.

[18] *Id*. at 18.

[19] *Id*.

On December 12, 2005, former Secretary Perez, Mrs. Perez and Arceo filed an urgent motion to be furnished copies of the complaints.[20] On December 13, 2005, they submitted a consolidated joint counter-affidavit dated December 12, 2005.[21]

On December 15, 2005, the respondents filed a manifestation to which they attached the affidavit of Atty. Chona Dimayuga.[22]

On December 20, 2005, Escaler, instead of filing his counter-affidavit, moved to disqualify the Office of the Ombudsman from conducting the preliminary investigation, and to require the Special Panel to turn over the investigation to the Department of Justice (DOJ).[23]

On December 22, 2005, the respondents submitted the affidavit of Chief State Prosecutor Jovencito Zuño.[24]

On December 29, 2005, the Special Panel denied the motion to disqualify the Office of the Ombudsman from conducting the preliminary investigation, and ordered Escaler to submit his counter-affidavit within five days from notice.[25]

On January 4, 2006, Cong. Jimenez filed an urgent motion for extension of the period to file his opposition to the motion earlier filed by Escaler, and to be granted a new period to reply to the consolidated joint counter-affidavit of the Perezes and Arceo.[26]

Between January 9, 2006 and February 10, 2006, Cong. Jimenez filed urgent motions for time to file his opposition, the last of them seeking an extension until February 10, 2006.[27]

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[20] *Id*.

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

[22] *Id*. at 19.

[23] *Id*.

[24] *Id*.

[25] *Id*.

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

[27] *Id*. at 20.

On February 21, 2006, the Perezes and Arceo reiterated their urgent motion to be furnished copies of the complaints.[28]

On February 22, 2006, Cong. Jimenez opposed Escaler's motion to disqualify the Office of the Ombudsman.[29] On the same date, Escaler asked for at least 20 days from February 17, 2006 (or until March 9, 2006) within which to reply to Cong. Jimenez's opposition to his motion.[30] On March 9, 2006, Escaler replied to Cong. Jimenez's opposition.[31] On March 28, 2006, Cong. Jimenez sought leave to file a rejoinder to Escaler's reply.[32]

On May 15, 2006, Escaler moved for the reconsideration of the order of December 29, 2005.[33]

On May 25, 2006, the Special Panel denied Escaler's motion for reconsideration; directed the FIO "to let respondent Escaler examine, compare, copy and obtain any and all documentary evidence described, attached to and forming part of the complaints" of the cases; and granted Escaler an extension of five days within which to submit his counter-affidavit.[34]

After Escaler failed to submit his counter-affidavit despite the lapse of the five day period given to him, the preliminary investigation was terminated.[35]

On August 23, 2006, Escaler commenced in this Court a special civil action for *certiorari* with application for a temporary restraining order (TRO) docketed as G.R. Nos. 173967-71.[36]

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[28] *Id*.

[29] *Id*. at 21.

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

[31] *Id*. at 21.

[32] *Id*.

[33] *Id*.

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

[35] *Id*. at 22.

[36] *Rollo* (G.R. Nos. 173967-71, Vol. I), pp. 3-71.

On September 4, 2006, the Court required the Office of the Ombudsman to comment on the petition of Escaler.[37]

On November 6, 2006, the Special Panel issued a joint resolution, finding probable cause and recommending that criminal informations be filed against the respondents, as follows:

1) Former Secretary Hernando B. Perez, Rosario S. Perez, Ernest L. Escaler and Ramon S. Arceo, Jr. for Extortion (Robbery) under par. 5 of Article 294 in relation to Article 293 of the Revised Penal Code;

2) Former Secretary Hernando B. Perez, Rosario S. Perez, Ernest L. Escaler and Ramon S. Arceo, Jr. for violation of Section 3 (b) of Rep. Act. 3019.

3) Former Secretary Hernando B. Perez for Falsification of Public Documents under Article 171 par. 4 of the Revised Penal Code.

4) Former Secretary Hernando B. Perez for violation of Sec. 7, R.A. 3019 in relation to Section 8 of R.A. 6713.[38]

On January 5, 2007, Ombudsman Ma. Merceditas Gutierrez (Ombudsman Gutierrez), who had meanwhile replaced the resigned Ombudsman Marcelo, approved the joint resolution of the Special Panel.[39]

On January 11, 2007, the Perezes and Arceo sought the reconsideration of the joint resolution,[40] and supplemented their motion for that purpose with additional arguments on January 15, 2007.[41]

On January 17, 2007, Arceo filed an *ex parte* motion for leave to admit attached supplemental motion for reconsideration.[42]

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[37] *Id.* at 1082.

[38] *Rollo* (G.R. No. 189063, Vol. I), pp. 22-23.

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

[40] *Id.* at 23.

[41] *Id.*

[42] *Id.*

On January 24, 2007, the Perezes and Arceo filed an urgent motion to suspend proceedings. On February 6, 2007, Escaler also filed a motion to suspend proceedings *ex abundanti ad cautelam*.[43]

On March 15, 2007, Cong. Jimenez asked for time to comment on the respondents' motion for reconsideration. He filed another motion for extension of the time to comment on April 27, 2007.[44]

On September 18, 2007, the Perezes prayed that the proceedings be held in abeyance to await the ruling on their application for intervention in Escaler's action in the Court. On October 1, 2007, they filed a motion to dismiss.[45]

On October 2, 2007, Cong. Jimenez submitted his affidavit of desistance.[46] Thus, on October 4, 2007, the Perezes filed an *ex parte* motion for resolution on the basis of the desistance by Cong. Jimenez.[47]

On January 25, 2008, the Special Panel issued an omnibus resolution denying the original and supplemental motions for reconsideration of the Perezes and Arceo; their motion to suspend the proceedings; Escaler's motion to suspend proceedings *ex abundanti ad cautelam*; and the Perezes' motion to dismiss.[48]

On April 18, 2008, the Perezes brought a petition for *certiorari* with an application for a writ of preliminary injunction in this Court (G.R. Nos. 182360-63).[49] In due time, the Court required the respondents in G.R. Nos. 182360-63 to file their comments on the petition.[50]

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[43] *Id.* at 24.

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.* at 25.

[48] *Id.* at 593-615.

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

[50] *Id.* at 1247.

On April 18, 2008, the Office of the Ombudsman filed in the Sandiganbayan four informations against respondents, namely:

1. for violation of Sec. 3 (b) of Rep. Act 3019, as amended;
2. for Robbery (Art. 293, in relation to Art. 294, Revised Penal Code;
3. for Falsification of Public/Official Document under Art. 171 of the Revised Penal Code; and
4. for violation of Section 7, Rep. Act 3019, as amended, in relation to Section 8, Rep. Act 6713.[51]

Criminal Case No. SB-08-CRM-0265
[Violation of Section 3(b) of Republic Act No. 3019]

The information alleging the violation of Section 3(b) of Republic Act No. 3019, which was docketed as Criminal Case No. SB-08-CRM-0265 entitled *People v. Hernando Benito Perez, et al.*, and was raffled to the First Division of the Sandiganbayan,[52] averred:

That during the month of February, 2001 and sometime prior or subsequent thereto in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, accused Hernando B. Perez, a high ranking public officer, being then the Secretary of the Department of Justice, while in the performance of his official function, committing the offense in relation to his office and taking advantage thereof, conspiring, confabulating and confederating with accused Ernest L. Escaler, Rosario S. Perez and Ramon C. Arceo, all private individuals, did then and there wilfully, unlawfully and criminally request and demand the amount of US TWO MILLION DOLLARS ($2,000,000.00) for himself and/or other persons from Mark Jimenez a.k.a. Mario B. Crespo, and thereafter succeeded in receiving from the latter the sum of US$1,999,965.00 in consideration of accused Hernando S. Perez's desisting from pressuring Mark Jimenez to execute affidavits implicating target personalities involved in the plunder case against former President Joseph 'Erap' Estrada and in connection with the pending application of Mark Jimenez for

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

[52] *Rollo* (G.R. No. 188165), p. 8.

admission into the Witness Protection Program of the government, over which transaction accused Hernando S. Perez had to intervene in his official capacity under the law, to the damage and prejudice of Mark Jimenez.

CONTRARY TO LAW.[53]

On May 8, 2008, the Perezes moved to quash the information.[54] Escaler presented a similar motion to quash *ex abundanti ad cautelam* on May 12, 2008,[55] while Arceo adopted the motions of the Perezes and Escaler on May 13, 2008.[56] On June 4, 2008, the Office of the Ombudsman countered with a consolidated opposition.[57]

On July 17, 2008, the First Division of the Sandiganbayan promulgated its resolution denying the motions to quash,[58] disposing thusly:

WHEREFORE, in view of the foregoing, the Motion to Quash of accused Hernando B. Perez and Rosario S. Perez and the urgent *Ex-Abudanti Ad Cautelam* Motion to Quash of accused Ernest Escaler are hereby **DENIED** for lack of merit.

Accordingly, let the arraignment of the accused herein proceed on July 18, 2008 at 8:30 in the morning as previously set by the Court.

SO ORDERED.

Respondents separately sought the reconsideration of the resolution of denial of their motions to quash.

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[53] *Id*. at 37.

[54] *Id*. at 8.

[55] *Id*.

[56] *Id*.

[57] *Id*.

[58] *Id*. at 76-84; penned by Associate Justice Diosdado M. Peralta (now a Member of the Court), with the concurrence of Associate Justice Rodolfo A. Ponferrada and Associate Justice Alexander G. Gesmundo.

On November 13, 2008, the Sandiganbayan First Division granted the motions for reconsideration,[59] rendering the following ratiocination, to wit:

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After a second hard look on the respective contentions of the parties, the Court is inclined to grant the Motions for Reconsideration of the accused and perforce grant their motion to quash the Information filed against them in this case.

It is axiomatic that as a general rule prerequisite, a motion to quash on the ground that the Information does not constitute the offense charged, or any offense for that matter, should be resolved on the basis of the factual allegations therein whose truth and veracity are hypothetically admitted; and on additional facts admitted or not denied by the prosecution. If the facts in the Information do not constitute an offense, the complaint or information should be quashed by the court.

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It is clear that the ambit of Section 3 (b) of RA 3019 is specific. It is limited only to contracts or transaction involving monetary consideration where the public officer has authority to intervene under the law. Thus, the requesting or demanding of any gift, present, share, percentage, or benefit covered by said Section 3(b) must be in connection with a "contract or transaction" involving "monetary consideration" with the government wherein the public officer in his official capacity has to intervene under the law. In this regard, the Supreme Court in *Soriano, Jr. vs. Sandiganbayan* construed the term "contract" or "transaction" covered by Section 3(b) of RA 3019, as follows –

> "It is obvious that the investigation conducted by the petitioner was not a *contract*. Neither was it a *transaction* because this term must be construed as analogous to the terms which precedes it. **A transaction like a contract, is one which involves some consideration as in credit transactions and this element (consideration) is absent in the investigation conducted by the petitioner.**" (Emphasis supplied)

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[59] *Id.* at 37-41; penned by Associate Justice Peralta, with the concurrence of Associate Justice Ponferrada and Associate Justice Gesmundo (italicized and underlined portions are part of the original text).

Thus, applying the above construction of the Supreme Court in the case at bench, the Court believes and so holds that the alleged desistance of accused Hernando B. Perez *"from pressuring Mark Jimenez to execute affidavits implicating target personalities involved in the plunder case against former President Joseph 'Erap' Estrada and in connection with the pending application of Mark Jimenez for admission into the WPP of the government"*, cannot, by any stretch of the imagination, be considered as *"contract"* or *"transaction"* as defined within the ambit of the fourth element of the offense under Section 3(b) of RA 3019 because no *"monetary consideration"* as in credit transaction is involved.

The Court finds untenable the prosecution's contention that the execution by Mark Jimenez of the affidavits in connection with his pending application for admission in the WPP (and not the alleged desistance of accused Hernando B. Perez from pressuring Mark Jimenez to execute affidavits implicating target personalities involved in the plunder case against President Estrada) is the very contract or transaction required by the offense charged in this case; and that all the elements of a contract contemplated therein are present as there is allegedly consent between the government and Mark Jimenez, object or subject matter which is the execution of affidavits in connection with his application for admission in the WPP, and a cause or consideration which consists of security and monetary benefits to be given by the government to Mark Jimenez in exchange for his participation as a witness under the WPP.

For even assuming for the sake of argument that the pending application of Mark Jimenez for admission in the WPP can be considered as a contract or transaction, it bears stressing that the principal consideration for the said application of Mark Jimenez is the latter's obligation to testify as a witness under the WPP on one hand and his entitlement to the protection granted to a witness in the WPP on the other hand and as such, does not entail any money consideration. Certainly, this is not the (monetary) consideration which is essential or involved in credit transactions. Any pecuniary or monetary expense that may be incurred by the Government as a result of the implementation of the program in favour of Mark Jimenez is purely incidental. Such alleged monetary benefit is definitely not the reason that impelled Mark Jimenez to allegedly avail of the WPP of the government.

More precisely, however, what appears as the main consideration of the alleged demand or receipt of accused Hernando B. Perez of the sum of US$2,000,000.00 from Mark Jimenez is the former's alleged desistance from pressuring the latter to execute affidavits implicating targeted personalities in the plunder case against former President Estrada. In the light of the ruling of the Supreme Court in *Soriano vs. Sandiganbayan, supra*, such alleged desistance of accused Hernando B. Perez (and even the application of Mark Jimenez for admission into the WPP as argued by the prosecution) can hardly be considered as a "contract" or "transaction" that is contemplated in Section 3(b) of RA 3019, as amended.

Moreover, the Court takes note of the admission made by the prosecution in its Memorandum that the transaction involving Mark Jimenez's execution of affidavits for his admission to the WPP is not yet a perfected contract between the Government and Mark Jimenez since it is still in its "*negotiation phase*" because of the refusal of Mark Jimenez to execute the affidavits against certain individuals. This admission is another indication that there is indeed no contract or transaction to speak of that is covered under the fourth element of the offense of violation of Section 3(b) of RA 3019.

Finally, it may be argued that while the material allegations in the subject information may not constitute the offense of violation of Section 3(b) of RA 3019, as amended, the same material/factual allegations nevertheless constitute Direct Bribery or another felony which is necessarily included in the offense charged herein so that the subject information in this case should not be quashed. It is believed, however, that the filing of the Information charging the accused with Robbery in SB-08-CRM-00266 pending before the Second Division of this Court on the basis of the same acts complained of in this case, constitutes a bar against the information for said lesser felony as it would result into two differently charged felonies from a single act and thus, would unnecessarily or unjustifiably expose the accused to the danger of suffering two penalties for a single offense if the subject information is not quashed. If a single act results into two or more offenses, they should not be charged and/or punished separately unless the other offense with different elements is penalized under a special law. To do so would violate, if not the principle of double jeopardy, the rule against splitting a single act into various charges. It is settled that a defendant should not be harassed with various prosecutions upon the same act by splitting the same into various charges, all emanating from the same law

violated, when the prosecution could easily and well embody them in a single information because such splitting of the action would work unnecessary inconvenience to the administration of justice in general and to the accused in particular, for it would require the presentation of substantially the same evidence before different courts.

All told, with the absence of the fourth element, the Court finds that the factual/material allegations in the subject Information do not constitute the offense of violation of Section 3(b) of RA 3019, as amended, and therefore, It is constrained to quash the said Information. In this regard, the Court deems it unnecessary to discuss/resolve the other issues raised in the subject motions for reconsideration of the herein accused and/or disturb the other findings contained in the Resolution sought to be reconsidered.

WHEREFORE, the instant Motions for Reconsideration of the herein accused are resolved accordingly and the subject Information for violation of Section 3(b) of R.A. 3019, as amended, is hereby **QUASHED.**

SO ORDERED.

The State moved for the reconsideration of the resolution quashing the information in Criminal Case No. SB-08-CRM-0265.

During the pendency of the State's motion for reconsideration, Criminal Case No. SB-08-CRM-0265 was re-raffled to the Third Division of the Sandiganbayan.

On April 21, 2009, the Third Division denied the Ombudsman's motion for reconsideration,[60] holding thusly:

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The core issue raised in the submission of the parties relates to the meaning of the word "transaction" as it is used in Sec. 3 (b) of RA 3019 to constitute an element of the offense. More particularly, has the meaning of the term "transaction" as enunciated in the Soriano case been modified by subsequent rulings of the Supreme Court?

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[60] *Id.* at 42-51; penned by Associate Justice Francisco H. Villaruz, Jr. (later Presiding Justice, but already retired), joined by Associate Justice Efren N. De la Cruz and Associate Justice Alex L. Quiroz.

The meaning of "transaction" in Sec. 3 (b) of RA 3019 was enunciated in the Soriano case when the Supreme Court stated:

> As stated above, the principal issue is whether or not the investigation conducted by the petitioner can be regarded as a "contract or transaction" within the purview of Sec. 3 (b) of R.A. No. 3019. On this issue the petition is highly impressed with merit.
>
> The afore-mentioned provision reads as follows:
>
> SEC. 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:
>
> (a) …
>
> (b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.
>
> The petitioner states:
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> Assuming in *gratia argumenti*, petitioner's guilt, the facts make out a case of Direct Bribery defined and penalized under the provision of Article 210 of the Revised Penal Code and not a violation of Section 3, subparagraph (b) of Rep. Act 3019, as amended.
>
> The evidence for the prosecution clearly and undoubtedly support, if at all the offense of Direct Bribery, which is not the offense charged and is not likewise included in or is necessarily included in the offense charged, which is for violation of Section 3, subparagraph (b) of Rep. Act 3019, as amended. The prosecution showed that: the accused is a public officer; in consideration of ₱4,000.00 which was allegedly solicited, ₱2,000.00 of which was allegedly received, the petitioner undertook or promised to dismiss a criminal complaint pending preliminary investigation before him, which may or may not constitute a crime; that the act of dismissing the criminal complaint pending before petitioner was related

to the exercise of the function of his office. Therefore, it is with pristine clarity that the offense proved, if at all is Direct Bribery. (Petition, p. 5.)

Upon the other hand, the respondents claim:

A reading of the above-quoted provision would show that the term 'transaction' as used thereof is not limited in its scope or meaning to a commercial or business transaction but includes all kinds of transaction, whether commercial, civil or administrative in nature, pending with the government. This must be so, otherwise, the Act would have so stated in the "Definition of Terms", Section 2 thereof. But it did not, perforce leaving no other interpretation than that the expressed purpose and object is to embrace all kinds of transaction between the government and other party wherein the public officer would intervene under the law. (Comment, p. 8.)

It is obvious that the investigation conducted by the petitioner was not a *contract*. Neither was it a *transaction* because this term must be construed as analogous to the term which precedes it. A transaction, like a contract, is one which involves some consideration as in credit transactions and this element (consideration) is absent in the investigation conducted by the petitioner. (Emphasis Supplied)

The argument of the Prosecution that the interpretation of the term "transaction" defined in the Soriano case has been modified by the Mejia, Pelegrino and Chang cases does not persuade.

A review of the Mejia, Peligrino and Chang cases reveals that the main issue adjudicated in those cases involved an interpretation of the element of Sec. 3 (b) of RA 3019, namely: the right to intervene of the public officer in the contract or transaction and not the element of what is a contract or transaction with the government.

Thus, in the Mejia case, the Supreme Court ruled:

Under the sixth assigned error petitioner alleges that she does not intervene in the setting of the hearing of cases and she does not formulate resolutions thereof. The branch clerk of court is the administrative assistant of the presiding judge whose duty is to assist in the management of the calendar of

> the court and in all other matters not involving the exercise of discretion or judgment of the judge. It is this special relation of the petitioner with the judge who presumably has reposed confidence in her which appears to have been taken advantage of by the petitioner in persuading the complainants to give her money in consideration of a promise to get a favorable resolution of their cases.

In the Peligrino case, the Supreme Court ruled:

> Petitioner is a BIR Examiner assigned to the Special Project Committee tasked "xxx to undertake verification of tax liabilities of various professionals particularly doctors within the jurisdiction of Revenue Region 4-A, Manila xxx" Since the subject transaction involved the reassessment of taxes due from private complainant, **the right of petitioner to intervene in his official capacity is undisputed.** Therefore, elements (1), (4) and (5) of the offense are present. (Emphasis Supplied)

In the Chang case, the Supreme Court ruled:

> San Mateo's justification behind such refusal- that he had no authority to accept an amount less than the assessment amount- is too shallow to merit belief, he being the Chief Operations, Business Revenue Examination, Audit Division of the Treasurer's Office, who had, on those various meetings, gone out of his way to negotiate the settlement of the assessed deficiency tax.

In the recent case of *Merencillo vs. People*, the Supreme Court identified the issues raised in the Petition as follows: (1) the Sandiganbayan's refusal to believe petitioner's evidence over that of the prosecution and (2) the Sandiganbayan's failure to recognize that Petitioner was placed in double jeopardy.

In addressing the second issue, the Supreme Court ruled:

> Clearly, the violation of Section 3(b) of RA 3019 is neither identical nor necessarily inclusive of direct bribery. While they have common elements, not all the essential elements of one offense are included among or form part of those enumerated in the other. Whereas the mere request or demand of a gift, present, share, percentage or benefit is enough to

> constitute a violation of Section 3(b) of RA 3019, acceptance of a promise or offer or receipt of a gift or present is required in direct bribery. **Moreover, the ambit of Section 3(b) of RA 3019 is specific. It is limited only to contracts or transactions involving monetary consideration where the public officer has the authority to intervene under the law.** Direct bribery, on the other hand, has a wider and more general scope: (a) performance of an act constituting a crime; (b) execution of an unjust act which does not constitute a crime and (c) agreeing to refrain or refraining from doing an act which is his official duty to do. Although the two charges against petitioner stemmed from the same transaction, the same act gave rise to two separate and distinct offenses. No double jeopardy attached since there was a variance between the elements of the offenses charged. The constitutional protection against double jeopardy proceeds from a second prosecution for the same offense, not for a different one. (Emphasis Supplied)

Prosecution's argument that the statement of the Supreme Court above-quoted is an *obiter dictum* is specious.

An *obiter dictum* is a "judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive)." In the Merencillo case, one issue raised by Petitioner was precisely the issue of double jeopardy which the Supreme Court resolved by distinguishing the elements of violation of Sec. 3 (b) of RA 3019 and Direct Bribery. As one of the elements of the offense of violation of Sec. 3 (b) of RA 3019, the Court adopted the meaning given to the term "transaction" in the Soriano case. The above-quoted resolution was not a mere *obiter dictum* but the *ratio decidendi* which is defined as:

> "1. the principle or rule of law on which a court's decision is founded; 2. The rule of law on which a later court thinks that a previous court founded its decision xxx"

The Prosecution argued that it is a maxim in statutory construction that a law must be read in its entirety and no single provision should be interpreted in isolation with respect to the other provisions of the law. The Prosecution further argued that a close examination of RA 3019 in its entirety would show that the term "transaction" appears

several times and was never confined to transactions involving monetary consideration. Suffice it to say that a maxim in statutory construction cannot be superior to an express interpretation of the law made by the Supreme Court. Furthermore, the provisions in RA 3019 cited by Prosecution constitute different offenses with their own different elements, with their own different modalities of commission.

The reference to the Congressional record by the Prosecution does not disprove the fact that for violation of Sec. 3 (b) of RA 3019, the transaction must involve monetary consideration. As pointed out earlier, no less than the Supreme Court has interpreted the meaning of the term "transaction" as an element of violation of the said section. Likewise, as admitted by the Prosecution, the reference to the deliberations of Congress which it cited involved deliberations on Sec. 5 of RA 3019 and not on Sec. 3 (b) of RA 3019. The two sections, *i.e.* Sec. 5 and Sec. 3 (b) of RA 3019 are different offenses with their own different elements.

Having resolved the core issue in the Motion For Reconsideration of the Prosecution, there is no further need to discuss the other arguments of the Prosecution in its Motion.

WHEREFORE, Prosecution's Motion for Reconsideration of the Resolution of the First Division dated November 13, 2008 is **DENIED**.

SO ORDERED.

On June 22, 2009, the Office of the Special Prosecutor (OSP) assailed in this Court via petition for *certiorari* the resolution of the Sandiganbayan promulgated on July 17, 2008 quashing the information in Criminal Case No. SB-08-CRM-0265 and the resolution promulgated on April 21, 2009 denying the State's motion for reconsideration.

On November 18, 2009, the Court denied the Perezes' urgent motion for leave to file a motion to dismiss for being a prohibited pleading, and instead required the respondents to comment on the petition, among other things.[61]

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[61] *Id.* at 98.

Criminal Case SB-08-CRM-0266
[Robbery under Art. 293, in relation to Art. 294, *Revised Penal Code*]

The information charging robbery under Article 293, in relation to Article 294, *Revised Penal Code* was raffled to the Second Division (Criminal Case No. SB-08-CRM-0266).[62]

On May 6, 2008, Escaler filed a motion to quash *ex abundanti ad cautelam*, alleging that the facts charged did not constitute an offense.[63] On May 2, 2008, the Perezes filed their own motion to quash the information.[64] On May 6, 2008, Arceo filed an *ex parte* motion to adopt the Perezes motion as well as Escaler's motion to quash.[65]

On June 26, 2008, the Second Division of the Sandiganbayan denied the respective motions to quash of respondents.[66]

On June 30, 2008, Escaler moved to reconsider the denial.[67] On July 10, 2008, Arceo also moved to reconsider the denial.[68] The Perezes filed their own motion for reconsideration on July 11, 2008.[69]

On November 20, 2008, the Second Division of the Sandiganbayan granted the motions for reconsideration, quashed the information charging respondents with robbery, and dismissed Criminal Case No. SB-08-CRM-0266,[70] holding as follows:

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[62] *Rollo* (G.R. No. 189063, Vol. I), p. 620.

[63] *Rollo* (G.R. No. 189063, Vol. II), p. 1069.

[64] *Id.* at 2209.

[65] *Id.* at 2209.

[66] *Id.* at 2209-2213.

[67] *Id.* at 1070.

[68] *Rollo* (G.R. No. 189063, Vol. I), p. 86.

[69] *Id.*

[70] *Id.* at 86-95; penned by Associate Justice Edilberto G. Sandoval (later Presiding Justice, but already retired), with Associate Justice Teresita V. Diaz-Baldos and Associate Justice Samuel R. Martires concurring.

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The Court after a careful perusal of the issue and the record on hand, is persuaded. Extant in the record and which the prosecution admits or at least does not deny are the following:

1. The alleged Robbery (extortion) was committed on February 13, 2001 (Joint Resolution signed by members of the Special Panel composed of Orlando Ines, Adoracion Agbada, Mary Susan Geronimo, Jose de Jesus Jr., signed by Asst. Ombudsman Pelagio Apostol, and approved by Ombudsman Mr. (sic) Merceditas N. Gutierrez.) (pp. 4-69, Vol. 1, Records; pp. 70-88, Complaint-Affidavit of Mark Jimenez, Vol. 1, Records)

2. On February 23, 2001 the amount of US $1,999,965.00 was transferred to Coutts Bank Hongkong in favour of the beneficiary of Account No. HO 13706, from Trade and Commerce Bank, Cayman Island through the Chase Manhattan Bank in New York. Subsequently from March 6, 2001 to May 23, 2001 funds were transferred from Coutts Bank to other accounts, among them a $250,000.00 bank draft/cheque issued to Ramon C. Arceo (pp. 10-11 Records).

3. On December 23, 2002 Congressman Mark Jimenez filed his complaint with the Ombudsman charging Hernando Perez, Ernest Escaler, Ramon Arceo and several John Does (Mrs. Rosario Perez was not among those charged) with criminal offenses of Plunder, Extortion, Graft and Corruption, Obstruction of Justice, Violation of the Penal Provision of the Code of Conduct and Ethical Standards R.A. 6713, and Administrative Offenses of Dishonesty, Grave Misconduct, Oppression, Committing acts Punishable under the Anti-Graft Law, Conduct Prejudicial to the Best Interest of the service, and Violation of Section 5 (2) of R.A. 6713. It was subscribed and sworn to on (the) 23rd day of December 2002 (Complaint-Affidavit of Mario Mark (MJ) Jimenez B. Crespo – pp. 70-88 Records).

4. On December 23, 2002, the FIRO (Fact Finding and Intelligence Research Office) recommended that the case be referred to the Evaluation and Preliminary Investigation Bureau and the Administrative Adjudication Bureau (p. 6 of the Records)

5. The information was filed with this Court only on April 18, 2008.

Having established, or at least as claimed by Complainant Mark Jimenez, that the Robbery (extortion) took place on February 13, 2001, the Ombudsman should have demanded a reasonable explanation from the complainant who was then a Congressman, wealthy and influential and in whose house the alleged intimidation took place, why he was filing the complaint only on December 23, 2002 a matter of more than eighteen (18) months. This should have cautioned the Ombudsman as to the possible motive in filing the complaint.

At any rate, the Field Investigation Office (FIO) of the office of the Ombudsman as nominal complainant filed a complaint with the Ombudsman on November 14, 2005 charging Hernando Benito Perez, Rosario Salvador Perez, Ernest L. Escaler, Ramon Antonio C. Arceo Jr. and John Does with Violation of Sec. 3(b) R.A. 3019, Sec. 8 in relation to Sec. 11 of R.A. 6713, Perjury (Art. 183 RPC) and Art. 171 par. 4 Falsification, RPC and violation of R.A. 1379. (pp. 132 to 170 of Records) Robbery is NOT one of the charges.

With the Ombudsman's finding that the extortion (intimidation) was perpetrated on February 13, 2001 and that there was transfer of Mark Jimenez US $1,999,965.00 to Coutts Bank Account HO 133706 on February 23, 2001 in favour of the accused, there is no reason why within a reasonable period from these dates, the complaint should not be resolved. The act of intimidation was there, the asportation was complete as of February 23, 2001 why was the information filed only on April 18, 2008. For such a simple charge of Robbery there is nothing more to consider and all the facts and circumstances upon which to anchor a resolution whether to give due course to the complaint or to dismiss it are on hand. The case is more than ripe for resolution. Failure to act on the same is a clear transgression of the constitutional rights of the accused. A healthy respect for the constitutional prerogative of the accused should have prodded the Ombudsman to act within a reasonable time.

The long wait of the accused is without valid cause or justifiable motive and has unnecessarily trampled upon their constitutional prerogatives to a speedy disposition of the case. This is an impermissible course of action that our fundamental law loathes.

As Justice Laurel said, the government should be the last to set an example of delay and oppression in the administration of justice. It is the moral and legal obligation of the Court to see that criminal proceedings come to an end (*People vs. Calamba*, 63 Phil. 496).

The Constitution of the Philippines provides:

> Art. 3 Sec. 16: All persons shall have a right to a speedy disposition of their cases before all judicial(,) quasi-judicial or administrative bodies.

Thus under our present fundamental law, all persons are entitled to a speedy resolution of their cases be it civil, administrative or criminal cases. It is, in criminal cases however where the need to a speedy disposition of their cases is more pronounced. It is so, because in criminal cases, it is not only the honor and reputation but even the liberty of the accused (even life itself before the enactment of R.A. 9346) is at stake.

The charge is a simple case for Robbery. Certainly it does not involve complicated and factual issues that would necessitate painstaking and gruelling scrutiny and perusal on the part of the Ombudsman. It may have its novel, and to it, valid reason for departing from the established procedure and rules, but virtually in doing so, it has failed to discharge its duty as mandated by the Constitution to promptly act on complaints filed in any form or manner against public officers and employees.

The totality of the facts and the surrounding circumstances bears unmistakably the earmarks of inordinate delay, making the applicability of the doctrine enunciated in Anchangco Jr. and Duterte cases cited in the parties' pleadings irrefragable.

Accordingly, there being a clear violation of the constitutional right of the accused, the prosecution is ousted of any authority to file the information and we hereby order the quashing of the information and the consequent dismissal of this case.

While the ground upon which the Court banked and relied this dismissal order was not invoked in the motions for reconsideration of accused Escaler and Arceo, since they are similarly situated with their co-accused spouses Perez, this resolution applies to them with equal force and effect.

On the basis of the foregoing disquisition, We hereby consider the Motion for Reconsideration of our resolution denying the motion for consolidation moot and academic; even as, We rule that the said motion lacks persuasiveness considering that, per Manifestation of accused Escaler he is not in any way a party to all the cases pending, the accused in each of the cases were charged with different offenses, and the different cases are already at different stages of the proceedings, and considering the argument of the prosecution that the different offenses in the four (4) cases consist of different elements necessitating presentation of different proofs and evidence for each case.

Accused'(s) bonds are ordered cancelled and the Hold-Departure Order issued against them in this case is lifted and set aside.

So ordered.

The State moved to reconsider the resolution of November 20, 2008,[71] but the Second Division of the Sandiganbayan denied the motion for reconsideration on June 19, 2009,[72] stating thusly:

This resolves the Motion for Reconsideration of the People of the Philippines dated December 8, 2008 seeking to reconsider the Resolution of this Court promulgated on November 20, 2008 dismissing the case, as well as accused-spouses Perez Opposition dated December 22, 2008, accused Arceo's Comment/Opposition of even date, and the Opposition dated January 5, 2009 of accused Ernest L. Escaler.

On record too, are the Plaintiff's Consolidated Reply dated January 19, 2009 to the three (3) Opposition/Comment of the accused, the three (3) Rejoinders of the accused of different dates, the plaintiff's sub-rejoinder dated February 9, 2009, accused Perezes(') Manifestation and Plaintiff's Comment dated February 16, 2009 to Perezes(') Manifestation.

All these shall be considered and taken up by the Court in seriatim.

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[71] *Id*. at 96.

[72] *Id.* at 96-104; penned by Associate Justice Sandoval, joined by Associate Justice Diaz-Baldos and Associate Justice Martires (who filed a separate concurring opinion).

The first issue brought up by the accused is a supposed procedural lapse of the plaintiff's motion for reconsideration in that the same was filed in violation of Sec. 4 Rule 15 of the Rules of Court which provides in substance that in every written motion required to be heard, the notice of hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing.

Of course, it is not disputed that the accused-spouses received through registered mail their copy of plaintiff's motion only on December 16, 2008 while it set the date of hearing on December 12, 2007 thus the motion was set for hearing before the other party received it. Accused Ramon Arceo received his copy of the motion only on December 17, 2008 while accused Ernest Escaler received his copy after December 18, 2008 giving the same situation as accused Perezes. It must be taken note of that the Court set the hearing of the plaintiff's motion on December 18, 2008, as on December 12, 2008 the date specified on plaintiff's motion, no accused has received his copy of the said motion.

Considering thus, the situation, there seems plausibility for the accused claim of transgression of the aforecited provision of the Rules of Court.

Nonetheless, considering the transfer of the date of hearing, and that all the parties were given ample time to file and submit their respective pleadings which at the time the issue was to be resolved had grown voluminous, the Court is not inclined to give due consideration for this procedural impropriety.

The Court takes note however that the plaintiff's motion for reconsideration was filed only on December 8, 2008 beyond the fifteenth day period within which it should be filed, since it received a copy of the Resolution of this Court on November 21, 2008. Thus, the fifteenth day fell on December 6, 2008 after which the said Resolution has become final and executory. The Resolution in question therefore which finally disposes of the case is not only final but executory as well which is virtually beyond the reach of the motion for reconsideration belatedly filed.

We will now tackle the merits of the grounds invoked by the People.

The first ground cited in the People's motion was that the filing of complaint against former secretary Hernando B. Perez was not

attended by ill motive since it reasoned out that it was the intimation of the Court when it stated in its Resolution the Ombudsman xxx "should have demanded a reasonable explanation from the complainant who was then a congressman, wealthy and influential and in whose house the alleged intimidation took place, why he was filing the complaint only on December 23, 2002 a matter of more than eighteen (18) months. This should have cautioned the Ombudsman as to the possible motive in filing the complaint. xxx "We take note of the response of the prosecution "Jimenez thought that after the pay-off, Secretary Perez would stop threatening him and would leave him in peace for good. This was the reason why Jimenez did not immediately file a complaint against Secretary Perez and his co-accused."

The first and foremost impression We can gather is that the alleged about two million dollars which supposedly was the result of accused Perez' alleged extortion was delivered already to the accused. All along therefore, if the claim of the prosecution is to be believed, Robbery has long been committed that was on or about February 2001 as alleged in the information. With or without ill-motive, the Ombudsman should have acted within a reasonable time. Certainly eighteen (18) long months from the filing of the complaint can not be considered within a reasonable time.

The movant then argued that the filing of the information only on April 18, 2008 were due to legal impediments which were beyond the control of the office of the Ombudsman.

The Court can not understand those alleged "legal impediments" in the prosecution for Robbery. Here is the prosecution claiming strongly that the filing of the complaint was not attended by ill-motive and that after the pay-off even if a crime has been committed against complaint Congressman Mark Jimenez, the latter delayed his filing of the complaint because he thought the accused would leave him in peace. This is the only impediment we can think of, and this definitely is not a legal impediment; certainly too this is not beyond the control of the Office of the Ombudsman.

But the Court shall keep track of the movant's argument about this supposed legal impediment. Admitting that the asportation was complete on February 23, 2001, the prosecution reasoned out that the case can not be filed in Court at that time due to insufficiency of evidence. As averred in the Opposition of accused Ernest Escaler,

"xxx the plaintiff's duty is to determine whether there exists probable cause to hold the accused for trial for simple robbery", and those documents which the prosecution so capitalized it exerted so much offer to obtain, are mere evidentiary matters. This is even admitted in the prosecution's motion for reconsideration.

Consider these facts all explicitly admitted by the prosecution:

> On February 13, 2001 accused former Justice Secretary Hernando Perez accompanied by accused Ernest Escaler supposedly threatened complainant Congressman Mark Jimenez to send him to jail where he will die of boil *(Putang ina mo, sinasalsal mo lang ako. Hindot ka. Ipakukulong kita sa Quezon City Jail. Doon mamamatay ka sa pigsa).* On February 23, 2001 the amount of US $1,999,965 owned by Congressman Mark Jimenez was transferred to Coutts Bank, Hongkong in favour of Account Number 13706 in the name of Ernest Escaler (confirmed by Trade and Commerce Bank Payment Detail Report dated February 23, 2001)

Congressman Mark Jimenez did not file my complaint against the accused in any Court or prosecutor office. This, despite his claim in his counter-affidavit that:

> "12. Meanwhile, Pres. Estrada stepped down as President after the Armed Forces of the Philippines withdrew its support to him, and the Arroyo Administration was installed on January 19, 2001. The new Secretary of Justice, Hernando B. Perez, was appointed by Pres. Arroyo. Soon after his appointment. Sec. Perez sent feelers that I am his first target for inclusion in the criminal cases that he will file against Pres. Estrada. He also threatened and intimidated me and my family with bodily harm and incarceration in a city jail with hardened criminals and drug addicts unless I execute damaging affidavits against Pres. Estrada and his cronies and associates. Because of the intense pressure upon me and my family, I was forced to come across with US $2.0 Million. (Page 73 of the Records)

It was only on December 23, 2002 as stated in our Resolution that Congressman Mark Jimenez filed his complaint with the Ombudsman, even if the said offense was alleged to have been committed on Feb. 13, 2001 and it was only on April 18, 2008 that the Ombudsman presented the information with this Court.

The complainant had hesitated into filing his complaint for about eighteen (18) months while the Ombudsman with double hesitation dilly-dallied for about six (6) years. All in all, the delay from the supposed commission of such a simple offense of Robbery took more than seven years – that is from February 13, 2001 to April 18, 2008. It is clear the so-called legal impediments are but empty assertion to belatedly justify an impermissible action.

Taking exception to our ruling that the totality of facts and surrounding circumstances bear unmistakably the earmarks of inordinate delay, the movant made a comparison of those cases dismissed by the Supreme Court for violation of the Constitutional right of the accused to speedy disposition of cases, and this case, and wrongfully conclude there was no delay in their handling of the case at bar.

We have already resolved and passed upon rather adequately this issue in our Resolution with the observation that not anyone of the cases cited involved the charge of Robbery. The movant's discussion asserted no new and substantial reason and argument to persuade us to reverse or modify our considered opinion. We however pose this question to the prosecution. If Asst. Ombudsman Pelagio Apostol recommended the filing of the information against the accused on November 7, 2006 why did it take the Ombudsman only on January 5, 2007 to approve the recommendation. And if, on January 11, 2007 the accused submitted their Motion for Reconsideration, why did it take the Ombudsman up to April 15, 2008 – a matter of about fifteen (15) months to resolve the same when there was NO OPPOSITION nor comment from the other party?

The argument that "the authority of the Ombudsman is not divested by the claimed delay in filing the information as this authority is vested by law" is a reckless reasoning that only shows that while admitting there was undue delay in the disposition of the case, it could still proceed with its information to charge the accused.

The prosecution need not be reminded of the uniform ruling of the Honorable Supreme Court dismissing the cases of Tatad, Angchangco, Duterte and other cases for transgressing the constitutional rights of the accused to a speedy disposition of cases. To argue "that the authority of the Ombudsman is not divested by the claimed delay in filing the information xxx" is to limit the power of the Court to act on blatant transgression of the constitution.

As to fact-finding investigation, the Court finds it so baseless for the movant to capitalize on what it supposedly did in the process of the fact-finding stance; and then reasoning out as if clutching on straws that the sequences of events should excuse it from lately filing the information. But it took the movant six (6) years to conduct the said fact-finding investigation, and then unabashedly it argues that is not part of the preliminary investigation.

Determining probable cause should usually take no more than ninety (90) days precisely because it only involves finding out whether there are reasonable grounds to believe that the persons charged could be held for trial or not. It does not require sifting through and meticulously examining every piece of evidence to ascertain that they are enough to convict the persons involved beyond reasonable doubt. That is already the function of the Courts.

As argued by accused Ramon Arceo, the claim of the movant that the preliminary investigation of the instant case commenced only on November 14, 2005 when the Field Investigation Office (FIO) filed its complaint, and not on December 23, 2002 when Mark Jimenez filed his complaint-affidavit, is rather specious and does not hold water as Robbery was not among the offenses included in the charge of the FIO. As such, it is not correct to say that the counting of the period for delay should commence only in November 2005.

The conclusion thus, that the long waiting of six (6) years for the Office of the Ombudsman to resolve the simple case of Robbery is clearly an inordinate delay, blatantly intolerable, and grossly prejudicial to the constitutional right of speedy disposition of cases, easily commands assent. This Court, it must be made clear, is not making nor indulging in mere mathematical reckoning of the time involved.

In its sixth ground the movant argued that the First, Third and Fourth Divisions all junked the claimed inordinate delay of the accused and asked that the Second Division should "xxx co-exist not work on cross-purposes with the other Court's Division xxx". The argument begs the question! Suppose if and when the incident reaches the Supreme Court, the highest Court of the land ruled that it is the Second Division which is correct, and the other Divisions in error, what would happen now to the argument of the movant that "xxx there is rhyme or reason for the Sandiganbayan, Second Division to co-exist xxx with the other Court's Division xxx".

Moreover, the information in the first division charges the accused of Violation of Sec. 3 (b) of R.A. 3019, in the third division the accusation was for Falsification of Public Document under Art. 171 of the Revised Penal Code, while the accused have been indicted for violating Sec. 7 R.A. 3019 in relation to Sec. 8 of R.A. 6713 before the Fourth Division. The Court can not say whether there is need for paper trail or monitoring of documents in those cases, as the Divisions concerned can competently resolve and pass upon it but certainly in this instant case of Robbery, to indulge in a prolonged fact-finding process is not a boon but a bane on the part of the prosecution

In a distasteful exhibition of unsavoury language, bordering on derision and contempt, the prosecution argued that "xxx the assailed resolution is a wanton display of arrogance, contemptuous and outright illegal for it mooted the same issue of inordinate delay pending with the Honorable Supreme Court xxx". This only goes to show that the prosecution is totally ignorant of the hierarchy of Courts in our judicial system.

> xxx It must be remembered that delay in instituting prosecutions is not only productive of expense to the State, but of peril to public justice in the attenuation and distortion, even by mere natural lapse of memory, of testimony. It is the policy of the law that prosecutions should be prompt, and that statutes, enforcing such promptitude should be vigorously maintained. They are not merely acts of grace, but checks imposed by the State upon itself, to exact vigilant activity from its subalterns, and to secure for criminal trials the best evidence that can be obtained.

WHEREFORE, premises considered, the prosecution's Motion for Reconsideration dated December 8, 2008 is denied for lack of merit.

So ordered.

On August 24, 2009, the State assailed the resolutions of the Second Division of the Sandiganbayan in this Court (G.R. No. 189063).[73]

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[73] *Id*. at 2-82.

Consolidation of the petitions

On October 26, 2009, the Court directed that G.R. No. 189063 be consolidated with G.R. Nos. 182360-63 (entitled *Hernando B. Perez and Rosario S. Perez v. The Ombudsman, Field Investigation Officer of the Ombudsman and Mario B. Crespo a.k.a. Mark Jimenez*) and G.R. Nos. 173967-71 (*Ernest B. Escaler v. The Office of the Ombudsman, et al.*).[74]

On April 7, 2010, the Court consolidated G.R. No. 188165 with G.R. Nos. 173967-71, G.R. Nos. 182360-63 and G.R. No. 189063 (*People of the Philippines v. Hon. Sandiganbayan, 2nd Division, et al.*).[75]

G.R. Nos. 173967-71 and G.R. Nos. 182360-63 were special civil actions for *certiorari* to prevent the filing of the criminal informations against the respondents.

Deconsolidation and dismissal of G.R. Nos. 173967-71 and G.R. Nos. 182360-63 on the ground of their intervening mootness

On February 11, 2013, the Court deconsolidated G.R. Nos. 173967-71 and G.R. Nos. 182360-63 from G.R. No. 188165 and G.R. No. 189063 on the ground that the intervening filing of the informations in Criminal Case No. SB-08-CRM-0265 and Criminal Case No. SB-08-CRM-0266 had rendered the petitions in G.R. Nos. 173967-71 and G.R. Nos. 182360-63 moot.[76]

Issues

In G.R. No. 188165, the State raises the following issues:

I.

WHETHER RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN QUASHING THE INFORMATION IN CRIMINAL

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[74] *Id.* at 1037.

[75] *Rollo* (G.R. No. 188165), p. 321.

[76] *Rollo* (G.R. Nos. 173967-71, Vol. II), p. 2702.

CASE SB-08-CRM-265, BY CONFINING THE DEFINITION OF THE WORD "TRANSACTION" IN SECTION 3(B) OF R.A. 3019 AS TRANSACTIONS INVOLVING MONETARY CONSIDERATION.

II.

WHETHER RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RELYING SOLELY ON THE CASE OF *SORIANO, JR. VS. SANDIGANBAYAN* AND DISREGARDED JURISPRUDENCE THAT SHOWS SECTION 3 (B) OF RA 3019 EXTENDS TO ANY DEALING WITH THE GOVERNMENT.

III.

WHETHER RESPONDENT COURT ACTED WTH GRAVE ABUSE OF DISCRETION WHEN IT RESOLVED THE MOTIONS TO QUASH (ON THE GROUND THAT THE ALLEGATIONS IN THE INFORMATION DO NOT CONSTITUTE AN OFFENSE) BY GOING BEYOND THE ALLEGATIONS IN THE INFORMATION AND CONSIDERING SUPPOSED FACTS WITHOUT ANY BASIS.[77]

In G.R. No. 189063, the State submits the following issues:

A. WHETHER OR NOT PUBLIC RESPONDENT SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN QUASHING THE INFORMATION IN CRIMINAL CASE SB-08-CRM-0266 BY HOLDING THAT "THERE BEING A CLEAR VIOLATION OF THE CONSTITUTIONAL RIGHT OF THE ACCUSED, THE PROSECUTION IS OUSTED OF ANY AUTHORITY TO FILE THE INFORMATION."

B. WHETHER OR NOT PUBLIC RESPONDENT SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THE TOTALITY OF THE FACTS AND THE SURROUNDING CIRCUMSTANCES BEARS UNMISTAKABLY THE EARMARKS OF INORDINATE DELAY, MAKING THE APPLICABILITY OF THE DOCTRINE

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[77] *Rollo*, (G.R. No. 188165), pp. 11-12.

ENUNCIATED IN ANGCHONGCO JR. AND DUTERTE CASES CITED IN THE PARTIES' PLEADINGS IRREFRAGABLE.[78]

The foregoing issues are restated thuswise:

I.

Whether or not it was the Office of the Solicitor General, not the Office of the Ombudsman, that had the authority to file the petitions to assail the Sandiganbayan resolutions.

II.

Whether the State, as the petitioner in G.R. No. 188165 and G.R. No. 189063, resorted to the wrong remedy in assailing the resolutions of the Sandiganbayan dismissing the criminal charges against the respondents through petitions for *certiorari* instead of petitions for review on *certiorari*.

Specific Issue in G.R. No. 188165

Whether or not the Sandiganbayan committed grave abuse of discretion amounting to lack or in excess of jurisdiction in quashing the information by applying the definition of *transaction* in *Soriano, Jr. v Sandiganbayan*, 131 SCRA 188.

Specific Issue in G.R. No. 189063

Whether or not the Sandiganabayan committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it dismissed the criminal case due to the inordinate delay of the Office of the Ombudsman in bringing the criminal action against respondents as to violate their constitutional right to the speedy disposition of cases.

Ruling

The petitions for *certiorari* are devoid of merit.

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[78] *Rollo* (G.R. No. 189063, Vol. I), pp. 26-27.

I.
The Office of the Ombudsman is empowered to file an appeal or *certiorari* from the Sandiganbayan to the Supreme Court.

Respondents contend that the Office of the Ombudsman has no authority to file the petitions for *certiorari* because only the Solicitor General could file the petitions in this Court pursuant to Section 35, Chapter 12, Title III, Book IV of the *Administrative Code* as amended by E.O. No. 292, which pertinently states:

> Section 35. *Powers and Functions.*—The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceedings, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:
>
> (1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.
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> x x x x x x x x x

The contention of the respondents is grossly erroneous.

That only the Solicitor General may represent the People on appeal or *certiorari* in the Supreme Court and the Court of Appeals in all criminal proceedings is the general rule,[79] but the rule admits the exception concerning "all cases elevated to the

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[79] *Bernardo v. Court of Appeals*, G.R. No. 82483, September 26, 1990, 190 SCRA 63, 67.

Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines, except in cases filed pursuant to Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986." More specifically, Section 4(*c*) of Republic Act No. 8249 authorizes the exception, *viz*:

x x x x x x x x x

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

x x x x x x x x x

The procedure prescribed in Batas Pambansa Blg. 129, as well as the implementing rules that the Supreme Court has promulgated and may hereafter promulgate, relative to appeals/petitions for review to the Court of Appeals, shall apply to appeals and petitions for review filed with the Sandiganbayan. **In all cases elevated to the Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines,** except in cases filed pursuant to Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986. (Bold emphasis provided)

x x x x x x x x x

Consequently, the filing of the petitions in these cases by the Office of the Ombudsman, through the OSP, was authorized by law.

II.
Petitioner did not establish grave abuse of discretion on the part of the Sandiganbayan

The petitions for *certiorari* brought by the State must nonetheless be dismissed for failure to show any grave abuse of discretion on the part of Sandiganbayan in issuing the assailed resolutions.

A special civil action for *certiorari* is an independent action based on the specific grounds provided in Section 1, Rule 65 of the *Rules of Court*, and can prosper only the jurisdictional error, or the grave abuse of discretion amounting to lack or excess of

jurisdiction committed by the inferior court or judge is alleged and proved to exist.

In *De los Santos v. Metropolitan Bank and Trust Company*,[80] the Court has expounded on the nature and reach of the extraordinary remedy of *certiorari*, to wit:

> We remind that the writ of *certiorari* – being a remedy narrow in scope and inflexible in character, whose purpose is to keep an inferior court within the bounds of its jurisdiction, or to prevent an inferior court from committing such grave abuse of discretion amounting to excess of jurisdiction, or to relieve parties from arbitrary acts of courts (*i.e.*, acts that courts have no power or authority in law to perform) – is not a general utility tool in the legal workshop, and cannot be issued to correct every error committed by a lower court.
>
> In the common law, from which the remedy of *certiorari* evolved, the writ *certiorari* was issued out of Chancery, or the King's Bench, commanding agents or officers of the inferior courts to return the record of a cause pending before them, so as to give the party more sure and speedy justice, for the writ would enable the superior court to determine from an inspection of the record whether the inferior court's judgment was rendered without authority. The errors were of such a nature that, if allowed to stand, they would result in a substantial injury to the petitioner to whom no other remedy was available. If the inferior court acted without authority, the record was then revised and corrected in matters of law. The writ of *certiorari* was limited to cases in which the inferior court was said to be exceeding its jurisdiction or was not proceeding according to essential requirements of law and would lie only to review judicial or quasi-judicial acts.
>
> The concept of the remedy of *certiorari* in our judicial system remains much the same as it has been in the common law. In this jurisdiction, however, the exercise of the power to issue the writ of *certiorari* is largely regulated by laying down the instances or situations in the *Rules of Court* in which a superior court may issue the writ of *certiorari* to an inferior court or officer. Section 1, Rule 65 of the *Rules of Court* compellingly provides the requirements for that purpose, *viz*:

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[80] G.R. No. 153852, October 24, 2012, 684 SCRA 410, 420-423.

> Section 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (1a)

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

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

The sole office of the writ of *certiorari* is the correction of errors of jurisdiction, which includes the commission of grave abuse of discretion amounting to lack of jurisdiction. In this regard, mere abuse of discretion is not enough to warrant the issuance of the

writ. The abuse of discretion must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction. (citations omitted)

Did the petitioner show grave abuse of discretion that would warrant the issuance of the writ of *certiorari* prayed for?

A.
G.R. No. 188165
The Sandiganbayan correctly applied the restrictive meaning of the term *transaction* as used in Section 3 (b) of Republic Act No. 3019 adopted in *Soriano, Jr. v. Sandiganbayan*

In its questioned resolution dismissing Criminal Case No. SB-08-CRM-0265, the Sandiganbayan relied on the ruling in *Soriano, Jr. v. Sandiganbayan*,[81] in which the principal issue was whether or not the preliminary investigation of a criminal complaint conducted by petitioner Soriano, Jr., then a Fiscal, was a "contract or transaction" as to bring the complaint within the ambit of Section 3 (b) of Republic Act No. 3019, which punished any public officer for "[d]irectly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any *contract or transaction* between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law." The *Soriano, Jr.* Court ruled in the negative, and pronounced:

It is obvious that **the investigation conducted by the petitioner was not a contract. Neither was it a transaction because this term must be construed as analogous to the term which precedes it. A transaction, like a contract, is one which involves some**

[81] G.R. No. 65952, July 31, 1984, 131 SCRA 184, 188.

consideration as in credit transactions and this element (consideration) is absent in the investigation conducted by the petitioner.

In the light of the foregoing, We agree with the petitioner that it was error for the Sandiganbayan to have convicted him of violating Sec. 3 (b) of R.A. No. 3019. (Emphasis supplied)

The State now argues, however, that the Sandiganbayan thereby committed grave abuse of discretion resulting to lack or in excess of jurisdiction for applying the interpretation of the term *transaction* in *Soriano, Jr.* considering that the term *transaction* should be construed more liberally, and positing that *Soriano, Jr.* was already abandoned by the Court, citing for that purpose the rulings in *Mejia v. Pamaran*,[82] *Peligrino v. People*,[83] and *Chang v. People*.[84]

We disagree with the petitioner, and find for the respondents.

First of all, the interpretation in *Soriano, Jr.* of the term *transaction* as used in Section 3(*b*) of Republic Act No. 3019 has not been overturned by the Court.

In *Mejia v. Pamaran*, decided *en banc* on April 15, 1988, Mejia had demanded and received money from some persons involved in certain cases in a trial court where Mejia was then serving as the branch clerk of court in consideration of a promise that she would help in getting a favorable judgment for them. The issue was whether or not Mejia could be convicted under the information that alleged that she had demanded a certain amount, although the Sandiganbayan found that the amount was different from that charged in the information. The Court dismissed her petition, and ruled that "[i]n a prosecution under the foregoing provision of the Anti-Graft Law the value of the gift, money or present, *etc.* is immaterial xxx [w]hat is penalized is the receipt of any gift, present, share, percentage, or benefit by a public officer in connection with a contract or transaction

[82] G.R. Nos. 56741-42, April 15, 1988, 160 SCRA 457.

[83] G.R. No. 136266, August 13, 2001, 362 SCRA 683.

[84] G.R. No. 165111, July 21, 2006, 496 SCRA 321.

with the Government, wherein the public officer has to intervene in his official capacity." The Court nowhere ruled on the proper interpretation of the term *transaction*.

In *Peligrino v. People*, decided on August 13, 2001, Peligrino, an examiner of the Bureau of Internal Revenue, was convicted of violating Section 3(b) of Republic Act No. 3019 for demanding the amount of ₱200,000.00 from the complainant in connection with the latter's tax liabilities. Peligrino's defense was that he did not "demand" the money, but the money was just given to him. He argued that he had only informed the complainant of his tax deficiencies, and that the complainant had then requested the reduction of the amount claimed as his tax deficiencies. The Court found no merit in Peligrino's argument. The ruling had nothing to do with the interpretation of the term *transaction.*

Chang v. People, decided on July 21, 2006, was a case in which two persons – Chang and San Mateo – were convicted of violating Section 3(b) of Republic Act No. 3019 after being found to have received ₱125,000.00 in consideration of their issuance of a Certificate of Examination to the effect that the complainant had "no tax liability" in favour of the municipality, notwithstanding that it had not settled with them on their assessed deficiency tax of ₱494,000.00. Chang and San Mateo contended that the charge had resulted from an involuntary contact whereby complainant Magat had simply tossed to them the brown envelope; that there had been no conspiracy between them; and that what had transpired had been an instigation, not an entrapment. In affirming their conviction, the Court did not touch on the proper interpretation of the term *transaction* as used in Section 3(b) of Republic Act No. 3019.

The three rulings the State has cited here did not overturn the interpretation made in *Soriano, Jr.* of the term *transaction* as used in Section 3(b) of Republic Act No. 3019 because the proper interpretation of the term was clearly not decisive in those cases. On the contrary, in the later ruling in *Merencillo v. People*,[85] promulgated in 2007, the Court reiterated the

[85] G.R. Nos. 142369-70, April 13, 2007, 521 SCRA 31, 46.

restrictive interpretation given in *Soriano, Jr.* to the term *transaction* as used in Section 3(b) of Republic Act No. 3019 in connection with a differentiation between bribery under the *Revised Penal Code* and the violation of Section 3(b) of Republic Act No. 3019 by holding that the latter is "limited only to contracts or transactions involving monetary consideration where the public officer has the authority to intervene under the law."

And, secondly, it does not help the State any that the term *transaction* as used in Section 3(b) of Republic Act No. 3019 is susceptible of being interpreted both restrictively and liberally, considering that laws creating, defining or punishing crimes and laws imposing penalties and forfeitures are to be construed strictly against the State or against the party seeking to enforce them, and liberally against the party sought to be charged.[86]

Clearly, the Sandiganbayan did not arbitrarily, or whimsically, or capriciously quash the information for failing to properly state the fourth element of the violation of Section 3(b) of Republic Act No. 3019.

B.
G.R. No. 189063
The Sandiganbayan did not commit any grave abuse of discretion in finding that there had been an inordinate delay in the resolution against respondents of the charge in Criminal Case No. SB-08-CRM-0266

Upon its finding that the Office of the Ombudsman had incurred inordinate delay in resolving the complaint Cong. Jimenez had brought against the respondents, the Sandiganbayan dismissed Criminal Case No. SB-08-CRM-0266 mainly to uphold their constitutional right to the speedy disposition of their case.

But now comes the State contending that the delay in the resolution of the case against the respondents was neither inordinate nor solely attributable to the Office of the Ombudsman.

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[86] *People v. Gatchalian*, 104 Phil. 664 (1958).

Citing *Mendoza-Ong v. Sandiganbayan*,[87] in which the Court held that speedy disposition of cases was also consistent with reasonable delays, the State supported its contention by listing the various incidents that had caused the delay in the investigation, and then laying part of the blame on the respondents themselves.

The right to the speedy disposition of cases is enshrined in Article III of the Constitution, which declares:

> Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

The constitutional right to a speedy disposition of cases is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings.[88] While the concept of speedy disposition is relative or flexible, such that a mere mathematical reckoning of the time involved is not sufficient,[89] the right to the speedy disposition of a case, like the right to speedy trial, is deemed violated when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried.[90]

According to *Angchonco, Jr. v. Ombudsman*,[91] inordinate delay in resolving a criminal complaint, being violative of the

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[87] G.R. Nos. 146368-69, October 18, 2004, 440 SCRA 423, 425-426.

[88] *Cadalin v. POEA's Administrator*, G.R. Nos. 105029-32, December 5, 1994, 238 SCRA 722, 765.

[89] *De la Peña v. Sandiganbayan*, G.R. No. 144542, June 29, 2001, 360 SCRA 478, 485.

[90] *Gonzales v. Sandiganbayan***,** G.R. No. 94750, July 16, 1991, 199 SCRA 298, 307.

[91] G.R. No. 122728, February 13, 1997, 268 SCRA 301.

constitutionally guaranteed right to due process and to the speedy disposition of cases, warrants the dismissal of the criminal case.[92]

Was the delay on the part of the Office of the Ombudsman vexatious, capricious, and oppressive?

We answer in the affirmative.

The acts of the respondents that the Office of the Ombudsman investigated had supposedly occurred in the period from February 13, 2001 to February 23, 2001. Yet, the criminal complaint came to be initiated only on November 25, 2002 when Ombudsman Marcelo requested PAGC to provide his office with the documents relevant to the exposé of Cong. Villarama. Subsequently, on December 23, 2002, Cong. Jimenez submitted his complaint-affidavit to the Office of the Ombudsman. It was only on November 6, 2006, however, when the Special Panel created to investigate Cong. Jimenez's criminal complaint issued the Joint Resolution recommending that the criminal informations be filed against the respondents. Ombudsman Gutierrez approved the Joint Resolution only on January 5, 2007.[93] The Special Panel issued the second Joint Resolution denying the respondents' motion for reconsideration on January 25, 2008, and Ombudsman Gutierrez approved this resolution only on April 15, 2008. Ultimately, the informations charging the respondents with four different crimes based on the complaint of Cong. Jimenez were all filed on April 15, 2008, thereby leading to the commencement of Criminal Case No. SB-08-CRM-0265 and Criminal Case No. SB-08-CRM-0266. In sum, the fact-finding investigation and preliminary investigation by the Office of the Ombudsman lasted nearly five years and five months.

It is clear from the foregoing that the Office of the Ombudsman had taken an unusually long period of time just to investigate the criminal complaint and to determine whether to criminally charge the respondents in the Sandiganbayan. Such long delay was

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[92] *Id.* at 304.

[93] *Rollo* (G.R. No. 189063, Vol. I), pp. 22-23.

inordinate and oppressive, and constituted under the peculiar circumstances of the case an outright violation of the respondents' right under the Constitution to the speedy disposition of their cases. If, in *Tatad v. Sandiganbayan*,[94] the Court ruled that a delay of almost three years in the conduct of the preliminary investigation constituted a violation of the constitutional rights of the accused to due process and to the speedy disposition of his case, taking into account the following, namely: (*a*) the complaint had been resurrected only after the accused had a falling out with former President Marcos, indicating that political motivations had played a vital role in activating and propelling the prosecutorial process; (*b*) the Tanodbayan had blatantly departed from the established procedure prescribed by law for the conduct of preliminary investigation; and (*c*) the simple factual and legal issues involved did not justify the delay, there is a greater reason for us to hold so in the respondents' case.

To emphasize, it is incumbent for the State to prove that the delay was reasonable, or that the delay was not attributable to it. In both regards, the State miserably failed.

For one, the State explains that the criminal cases could not be immediately filed in court primarily because of the insufficiency of the evidence to establish probable cause, like not having a document showing that the funds (worth US$1,999,965.00 as averred in the complaint of Cong. Jimenez) had reached Secretary Perez;[95] and that it could not obtain the document, and to enable it to obtain the document and other evidence it needed to await the ratification of the Agreement Concerning Mutual Legal Assistance in Criminal Matters with the Hongkong Special Administrative Region (RP-HKSAR Agreement),[96] and the Treaty on Mutual Legal Assistance in Criminal Matters between the Republic of the Philippines and the Swiss Confederation (RP-Swiss MLAT).[97]

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[94] G.R. Nos. 72335-39, March 21, 1988, 159 SCRA 70, 82-83.

[95] *Rollo* (G.R. No. 189063, Vol. I), pp. 31-32.

[96] *Id.* at 47-48.

[97] *Id.* at 120.

To us, however, the State's dependence on the ratification of the two treaties was not a sufficient justification for the delay. The fact-finding investigation had extended from January 15, 2003, when Ombudsman Marcelo approved the recommendation of the Special Panel and referred the complaint of Cong. Jimenez for fact-finding investigation, until November 14, 2005, when the FIO completed its fact-finding investigation. That period accounted for a total of two years and 10 months. In addition, the FIO submitted its report only on November 14, 2005, which was after the Department of Justice had received on September 8, 2005 the letter from Wayne Walsh, the Deputy Government Counsel of the Hongkong Special Administrative Region in response to the request for assistance dated June 23, 2005,[98] and the reply of the Office of Justice of Switzerland dated February 10, 2005 and a subsequent letter dated February 21, 2005 from Liza Favre, the Ambassador of Switzerland, to Atty. Melchor Arthur Carandang, Acting Assistant Ombudsman, FIO, together with documents pertaining to the bank accounts relevant to the investigation.[99] For the Office of the Ombudsman to mark time until the HKSAR Agreement and the Swiss-RP MLAT were ratified by the Senate before it would proceed with the preliminary investigation was oppressive, capricious and vexatious, because the respondents were thereby subjected to a long and unfair delay.

We should frown on the reason for the inordinate delay because the State would thereby deliberately gain an advantage over the respondents during the preliminary investigation. At no time should the progress and success of the preliminary investigation of a criminal case be made dependent upon the ratification of a treaty by the Senate that would provide to the prosecutorial arm of the State, already powerful and overwhelming in terms of its resources, an undue advantage unavailable at the time of the investigation. To allow the delay under those terms would definitely violate fair play and nullify due process of law – fair play, because the field of contest between the accuser and the

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[98] *Id*. at 48-49.

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

accused should at all times be level; and due process of law, because no less that our Constitution guarantees the speedy disposition of the case.

The State further argues that the fact-finding investigation should not be considered a part of the preliminary investigation because the former was only preparatory in relation to the latter;[100] and that the period spent in the former should not be factored in the computation of the period devoted to the preliminary investigation.

The argument cannot pass fair scrutiny.

The guarantee of speedy disposition under Section 16 of Article III of the Constitution applies to *all* cases pending before *all* judicial, quasi-judicial or administrative bodies. The guarantee would be defeated or rendered inutile if the hair-splitting distinction by the State is accepted. Whether or not the fact-finding investigation was separate from the preliminary investigation conducted by the Office of the Ombudsman should not matter for purposes of determining if the respondents' right to the speedy disposition of their cases had been violated.

There was really no sufficient justification tendered by the State for the long delay of more than five years in bringing the charges against the respondents before the proper court. On the charge of robbery under Article 293 in relation to Article 294 of the *Revised Penal Code*, the preliminary investigation would not require more than five years to ascertain the relevant factual and legal matters. The basic elements of the offense, that is, the intimidation or pressure allegedly exerted on Cong. Jimenez, the manner by which the money extorted had been delivered, and the respondents had been identified as the perpetrators, had been adequately bared before the Office of the Ombudsman. The obtention of the bank documents was not indispensable to establish probable cause to charge them with the offense. We thus agree with the following observation of the Sandiganbayan, *viz*:

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[100] *Id.* at 53.

With the Ombudsman's finding that the extortion (intimidation) was perpetrated on February 13, 2001 and that there was transfer of Mark Jimenez US $1,999,965.00 to Coutts Bank Account HO 133706 on February 23, 2001 in favor of the accused, there is no reason why within a reasonable period from these dates, the complaint should not be resolved. The act of intimidation was there, the asportation was complete as of February 23, 2001 why was the information filed only on April 18, 2008. For such a simple charge of Robbery there is nothing more to consider and all the facts and circumstances upon which to anchor a resolution whether to give due course to the complaint or dismiss it are on hand. The case is more than ripe for resolution. Failure to act on the same is a clear transgression of the constitutional rights of the accused. A healthy respect for the constitutional prerogative of the accused should have prodded the Ombudsman to act within reasonable time.[101]

In fine, the Office of the Ombudsman transgressed the respondents' right to due process as well as their right to the speedy disposition of their case.

WHEREFORE, the Court **DISMISSES** the petitions for *certiorari* for their lack of merit.

No pronouncement on costs of suit.

SO ORDERED.

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

[101] *Id.* at 93.

FIRST DIVISION

[G.R. No. 188914. December 11, 2013]

JOCELYN HERRERA-MANAOIS, *petitioner, vs.* **ST. SCHOLASTICA'S COLLEGE,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; PROBATIONARY EMPLOYMENT; DISCUSSED.— Probationary employment refers to the trial stage or period during which the employer examines the competency and qualifications of job applicants, and determines whether they are qualified to be extended permanent employment status. Such an arrangement affords an employer the opportunity – before the full force of the guarantee of security of tenure comes into play – to fully scrutinize and observe the fitness and worth of probationers while on the job and to determine whether they would become proper and efficient employees. It also gives the probationers the chance to prove to the employer that they possess the necessary qualities and qualifications to meet reasonable standards for permanent employment. Article 281 of the Labor Code, as amended, provides as follows: **Art. 281. Probationary employment.** Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. **The services of an employee who has been engaged on a probationary basis may be terminated** for a just cause or **when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement**. An employee who is allowed to work after a probationary period shall be considered a regular employee.

2. ID.; ID.; ID.; MERE COMPLETION OF THE PROBATION PERIOD DOES NOT GUARANTEE PERMANENT EMPLOYMENT.— [W]e reiterate the rule that mere completion of the three-year probation, even with an above-average performance, does not guarantee that the employee will automatically acquire a permanent employment status. It

is settled jurisprudence that the probationer can only qualify upon fulfillment of the reasonable standards set for permanent employment as a member of the teaching personnel.

3. ID.; ID.; ID.; PRIVATE EDUCATIONAL INSTITUTIONS MUST SUPPLEMENTARILY REFER TO THE PREVAILING STANDARDS, QUALIFICATIONS AND CONDITIONS SET BY THE APPROPRIATE GOVERNMENT AGENCIES; 1992 MANUAL OF REGULATIONS FOR PRIVATE SCHOOLS AS THE APPLICABLE GUIDEBOOK IN CASE AT BAR.— Notwithstanding the existence of the SSC Faculty Manual, Manaois still cannot legally acquire a permanent status of employment. Private educational institutions must still supplementarily refer to the prevailing standards, qualifications, and conditions set by the appropriate government agencies (presently the Department of Education, the Commission on Higher Education, and the Technical Education and Skills Development Authority). This limitation on the right of private schools, colleges, and universities to select and determine the employment status of their academic personnel has been imposed by the state in view of the public interest nature of educational institutions, so as to ensure the quality and competency of our schools and educators. The applicable guidebook at the time petitioner was engaged as a probationary full-time instructor for the school year 2000 to 2003 is the 1992 Manual of Regulations for Private Schools (1992 Manual). x x x Considering that petitioner ultimately sought for the position of a permanent full-time instructor, we must further look into the [other] provisions under the 1992 Manual, which set out the minimum requirements for such status. x x x Thus, pursuant to the 1992 Manual, private educational institutions in the tertiary level may extend "full-time faculty" status only to those who possess, *inter alia*, a master's degree in the field of study that will be taught. This minimum requirement is neither subject to the prerogative of the school nor to the agreement between the parties. For all intents and purposes, this qualification must be deemed impliedly written in the employment contracts between private educational institutions and prospective faculty members. The issue of whether probationers were informed of this academic requirement before they were engaged as probationary employees is thus no longer material, as those who are seeking to be educators

> are presumed to know these mandated qualifications. Thus, all those who fail to meet the criteria under the 1992 Manual cannot legally attain the status of permanent full-time faculty members, even if they have completed three years of satisfactory service. In the light of the failure of Manaois to satisfy the academic requirements for the position, she may only be considered as a part-time instructor pursuant to Section 45 of the 1992 Manual. In turn, as we have enunciated in a line of cases, a part-time member of the academic personnel cannot acquire permanence of employment and security of tenure under the Manual of Regulations in relation to the Labor Code.

APPEARANCES OF COUNSEL

Gana Manlangit and Perez Law Offices for petitioner.
Padilla Law Office for respondent.

D E C I S I O N

SERENO, *C.J.*:

The present case concerns the academic qualifications required in attaining the status of a permanent full-time faculty member in the tertiary level of a private educational institution. Petitioner Jocelyn Herrera-Manaois (Manaois) assails the judgments[1] of the Court of Appeals (CA), which reversed the Resolution[2] of the National Labor Relations Commission (NLRC) and ruled that respondent St. Scholastica's College (SSC) was not guilty of illegal dismissal. SSC did not extend to Manaois the position

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[1] Both the Decision dated 27 February 2009 and the Resolution dated 22 July 2009 in CA-G.R. SP. No. 101382 were penned by CA Associate Justice Rosmari D. Carandang. Associate Justices Teresita Dy-Liacco Flores and Apolinario D. Bruselas, Jr. concurred in the Decision, while Associate Justices Remedios Salazar-Fernando and Apolinario D. Bruselas, Jr. concurred in the Resolution. See: *rollo*, pp. 35-57.

[2] The Resolution dated 27 July 2007 was penned by NLRC Commissioner Gregorio O. Bilog, III and concurred in by Commissioner Tito F. Genilo. Presiding Commissioner Lourdes C. Javier took no part in the proceedings. See: *rollo*, pp. 58-67.

of permanent full-time faculty member with the rank of instructor because she failed to acquire a master's degree and because her specialization could no longer be maximized by the institution due to the changes in its curriculum and streamlining.

THE FACTS

SSC, situated in the City of Manila, is a private educational institution offering elementary, secondary, and tertiary education. Manaois graduated from SSC in October 1992 with a degree in Bachelor of Arts in English. In 1994, she returned to her alma mater as a part-time English teacher. After taking a leave of absence for one year, she was again rehired by SSC for the same position. Four years into the service, she was later on recommended by her Department Chairperson to become a full-time faculty member of the English Department.

Manaois thus applied for a position as full-time instructor for school year 2000-2001. She mentioned in her application letter[3] that she had been taking the course Master of Arts in English Studies, Major in Creative Writing, at the University of the Philippines, Diliman (UP); that she was completing her master's thesis; and that her oral defense was scheduled for June 2000. In a reply letter[4] dated 17 April 2000, the Dean of Arts and Sciences informed her of the SSC Administrative Council's approval of her application. She was then advised to maintain the good performance that she had shown for the past years and to submit the necessary papers pertaining to her master's degree. Accordingly, SSC hired her as a probationary full-time faculty member with the assigned rank of instructor for the school year 2000-2001.[5] Her probationary employment continued for a total of three consecutive years. Throughout her service as a probationary full-time faculty member with no derogatory record, she was given above-satisfactory ratings by both the Department Chairperson and the Dean of Arts and Sciences.

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

[4] *Id*. at 39.

[5] *Id*. at 40-43.

Because of the forthcoming completion of her third year of probationary employment, Manaois wrote the Dean of Arts and Sciences requesting an extension of her teaching load for the school year 2003-2004. She again mentioned in her letter that she was a candidate for a master's degree in English Studies; that the schedule of her oral defense may actually materialize anytime within the first academic semester of 2003; and that she intended to fully earn her degree that year. She also furnished the school with a Certification from UP, stating that she had already finished her coursework in her master's studies. Furthermore, she indicated that it was her long-term goal to apply for a return to full-time faculty status by then and for SSC to consider the aforesaid matters.[6]

Manaois eventually received a letter from the Dean of College and Chairperson of the Promotions and Permanency Board officially informing her of the board's decision not to renew her contract. The letter provides as follows:[7]

> The Permanency Board reviewed your case and after a thorough deliberation, the members decided not to renew your contract for school year 2003-2004.
>
> With due consideration to your services, the institution had granted your request for a three-year extension to finish your master's degree. However, you failed to comply with the terms which you yourself had requested. In addition, your specialization cannot be maximized at SSC due to the college's curriculum changes and streamlining.
>
> It is with your best interest in mind and deep regret on our part that we have to let you go. A new environment may be able to provide you more avenues and opportunities where you can utilize your graduate studies in Creative Writing to the fullest.

Manaois sought clarification and reconsideration of the decision of SSC to terminate her services. SSC denied her request in a letter dated 11 July 2003. Consequently, she filed a complaint for illegal dismissal, payment of 13th month pay, damages, and attorney's fees against SSC.

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[6] *Id*. at 47.

[7] *Id*. at 48.

SSC explained that upon consideration of the written application of Manaois, the Dean of Arts and Sciences wrote the following notation at the bottom of her letter of application – "APPROVED: on the basis that she finishes her MA."[8] The college clarified that the application for full-time faculty status of Manaois was accepted with the specific qualification that she would submit the necessary papers pertaining to her master's degree. It stressed that permanency may only be extended to full-time faculty members if they had fulfilled the criteria provided in the SSC Faculty Manual. According to SSC, the Chair of the English Department did not endorse the application for permanency of Manaois, since the latter had not finished her master's degree within the three-year probationary period. SSC then refuted the supposed performance ratings of Manaois and instead pointed out that she had merely received an average rating from her students. Finally, it asserted that her specialization was the subject of writing and not English Literature, which was the subject area that they needed a faculty member for.

THE LABOR ARBITER RULING

On 16 July 2004, the labor arbiter rendered a Decision[9] finding the dismissal of petitioner to be illegal. In addressing the issues, he first noted the two reasons given by SSC for not renewing the contract of Manaois: (1) the failure of petitioner to finish her master's degree within the three-year probationary period; and (2) SSC's inability to maximize petitioner's specialization due to curriculum changes and streamlining.

With respect to the first reason, the labor arbiter reiterated that the alleged handwritten notation on Manaois's employment application showing that the approval thereof was premised on her completion of a master's degree had not been disclosed or made known to her at the start of her engagement. In fact, she was not given a copy of the approval until it was attached to the position paper of SSC. The labor arbiter agreed with Manaois

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[8] *Id*. at 38.

[9] The Decision dated 16 July 2004 was penned by labor arbiter Ramon Valentin C. Reyes. See: *rollo*, pp. 69-78.

that the only credible evidence that a precondition had been set for the acceptance of her employment application was SSC's letter expressly stating that she must (a) maintain a good performance and (b) submit the necessary papers pertaining to her master's degree. Regarding these preconditions, the labor arbiter noted that the allegation concerning the mere average performance rating of Manaois given by the students was neither made known to her nor duly substantiated with documentary proof. Even so, the labor arbiter articulated that at the very least, the performance of Manaois during her three-year probationary employment was satisfactory, as admitted by SSC itself, thereby satisfying the first condition mentioned in the letter. The labor arbiter then considered the Certification issued by UP as sufficient evidence of Manaois's compliance with the second condition set by SSC.

Next, the labor arbiter noted that under the SSC Faculty Manual, the minimum requirements for the rank of instructor, for which petitioner had been hired under the employment contract, was a bachelor's degree with at least 25% units of master's studies completed. He then found that the requirement for a master's degree actually pertained to the rank of assistant professor, a position that had not been applied for by Manaois. Thus, he ruled that failure to finish a master's degree could not be used either as a ground for dismissing petitioner or as basis for refusing to extend to her a permanent teaching status.

Anent respondent's argument citing the Manual of Regulations for Private Schools, the labor arbiter ruled that the provisions therein were inapplicable insofar as the employment status of petitioner was concerned. He explained that the manual merely referred to the requirements for tertiary schools to be accredited and not to the employment conditions of the academic personnel. Thus, he pronounced that Sections 44(c) and 45 of the manual, which required tertiary schools to hire teachers who were holders of master's degrees, could not be used as basis for dismissing Manaois.

The labor arbiter then focused on the second reason of SSC as a reflection of the true motive behind the dismissal of Manaois. According to the labor arbiter, the clear import of the statement "your specialization cannot be maximized at SSC due to the college's curriculum changes and streamlining" was that SSC had already decided to terminate her services, regardless of the completion of her master's degree. The labor arbiter consequently ruled that this reason was not a valid cause for dismissing a probationary employee, reiterating that probationers may only be terminated either (a) for a just cause, or (b) for failure to qualify as a regular employee in accordance with reasonable standards made known at the time of engagement. Ultimately, the labor arbiter pronounced that Manaois had attained permanent status and that SSC's nonrenewal of her contract must be deemed as a dismissal without just cause.

THE NLRC RULING

On 27 July 2007, the National Labor Relations Commission (NLRC) issued a Resolution[10] upholding the labor arbiter's Decision. The NLRC reiterated the labor arbiter's finding that the failure of petitioner to finish her master's degree within the three-year probationary period was not a valid ground for the termination of employment, as the condition was not made known to her at the time of engagement. Furthermore, it reasoned that an average rating was not one of the just causes for dismissal under the Labor Code. Consequently, it affirmed the Decision of the labor arbiter *in toto*.

THE CA RULING

On 27 February 2009, the CA issued the presently assailed Decision reversing the NLRC judgment on the ground of grave abuse of discretion and thus dismissing the complaint of Manaois. According to the appellate court, it was compelled to conduct its independent evaluation of the facts of the case, since the factual findings of the labor arbiter and the NLRC were contrary to the evidence on record.

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[10] *Rollo*, pp. 59-67.

First, the CA ruled that various pieces of evidence showed that Manaois had been, at the time of engagement, aware and knowledgeable that possession of a master's degree was a criterion for permanency as a full-time faculty member at SSC. As early as April 2000, which was the period during which Manaois applied to become a full-time faculty member, she had already sent a letter indicating that she was completing her master's degree, and that the oral defense of her thesis was scheduled for June 2000. According to the appellate court, this fact reasonably implied that she was fully aware of the necessity of a master's degree in order for her to attain permanent status at SSC. Furthermore, it noted that Manaois submitted, together with her application letter, a Certification from UP stating that she had already finished her course work for her master's degree. It then deduced that this submission was proof that she had endeavored to substantially comply with one of the requirements for permanency.

The CA then juxtaposed her letter with the reply of SSC's Dean of Arts and Sciences, who said that petitioner must submit the necessary papers pertaining to the latter's master's degree, as represented in her application letter. It treated this reply as indubitable proof of SSC's appraisal of the requirement to obtain a master's degree. Consequently, the appellate court reasoned that the disclosure of the notation on petitioner's application latter was already inconsequential, since one of the topics of the exchange of correspondences between the parties in April 2000 was the submission of petitioner's papers for her master's degree. This directive proffered no other interpretation than that the completion of a master's degree had been a precondition for the conferment of Manaois's permanent employment status.

The CA also noted that the employment contract of petitioner incorporated the conditions set in the SSC Faculty Manual. The manual explicitly stated that the criteria for permanency included the completion of a master's degree. According to the CA, the labor arbiter gravely erred when he solely relied on the minimum requirements provided for the rank of instructor. It stressed that the criteria cited for the rank of instructor referred

to the basis on which full-time and part-time faculty members were ranked, and not to the requirements to be fulfilled in order to become a permanent faculty member. Instead, the appellate court agreed with SSC that what happened in this case was merely the expiration of an employment contract and the nonrenewal thereof. It pointed out that, in spite of the requests of Manaois for the extension of her employment in order for her to finish her master's degree, she failed to do so. In fact, she informed SSC that there was still no fixed schedule for her oral defense.

Thus, in the light of the foregoing pieces of evidence, the CA ruled that the labor arbiter and the NLRC committed grave abuse of discretion in ruling that petitioner had not been made aware of the reasonable standards of employment at the time of her engagement. Based on her own acts, Manaois knew of the necessity of obtaining a master's degree in order to attain permanent employment status. SSC was thus well within its rights not to renew her employment contract for her failure to qualify as a permanent full-time faculty member. Consequently, her complaint was dismissed.

THE ISSUE

Whether the completion of a master's degree is required in order for a tertiary level educator to earn the status of permanency in a private educational institution.

OUR RULING

Probationary employment refers to the trial stage or period during which the employer examines the competency and qualifications of job applicants, and determines whether they are qualified to be extended permanent employment status.[11] Such an arrangement affords an employer the opportunity –

[11] *Colegio del Santisimo Rosario v. Rojo*, G.R. No. 170388, 4 September 2013; *Mercado v. AMA Computer College-Parañaque City, Inc.*, G.R. No. 183572, 13 April 2010, 618 SCRA 218; *Magis Young Achievers' Learning Center v. Manalo*, G.R. No. 178835, 13 February 2009, 579 SCRA 421; *International Catholic Migration Commission v. National Labor Relations Commission*, 251 Phil. 560 (1989).

before the full force of the guarantee of security of tenure comes into play – to fully scrutinize and observe the fitness and worth of probationers while on the job and to determine whether they would become proper and efficient employees.[12] It also gives the probationers the chance to prove to the employer that they possess the necessary qualities and qualifications to meet reasonable standards for permanent employment.[13] Article 281 of the Labor Code, as amended, provides as follows:

> **Art. 281. Probationary employment**. Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. **The services of an employee who has been engaged on a probationary basis may be terminated** for a just cause or **when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement.** An employee who is allowed to work after a probationary period shall be considered a regular employee. (Emphases supplied)

We agree with the CA in setting aside the NLRC Decision and in ruling that the requirement to obtain a master's degree was made known to Manaois. The contract she signed clearly incorporates the rules, regulations, and employment conditions contained in the SSC Faculty Manual, *viz*:[14]

> I. EMPLOYMENT
>
> A. x x x
>
> B. After having read and understood in full the contents of the COLLEGE UNIT's current FACULTY MANUAL, **the FACULTY MEMBER agrees to** faithfully perform all the duties and responsibilities attendant to her position as PROBATIONARY FULL-TIME FACULTY MEMBER and **comply with all the rules, regulations and employment conditions of the SCHOOL, as provided in**

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[12] *Id*.

[13] *Id*.

[14] CA *rollo*, pp. 40-42.

> **said FACULTY MANUAL including any amendment/s pertinent to her position as may be hereinafter incorporated therein.**
>
> x x x x x x x x x
>
> IV. EFFECTIVITY
>
> A. The **SCHOOL has the right to terminate the FACULTY MEMBER'S services for** just cause such as, among others, **failure to comply with any of the provisions of the FACULTY MANUAL pertinent to her status** as FULL-TIME PROBATIONARY FACULTY MEMBER. (Emphases supplied)

The SSC Faculty Manual in turn provides for the following conditions in order for a faculty member to acquire permanent employment status:[15]

> B. PERMANENCY
>
> 1. Prior to the end of the probationary period, the faculty member formally applies for permanency to her/his Department Chair/Coordinator. The Department Chair/ Coordinator, in consultation with the faculty member, reviews the applicant's over-all performance. If the records show that the criteria for permanency are met, the applicant is recommended for permanency to the Promotions and Permanency Board by the Department Chair/Coordinator. In certain instances (*i.e.*, when the Department Chair/ Coordinator does not give a recommendation for permanency), the Academic Dean can exercise her prerogative to recommend the applicant.
>
> x x x x x x x x x
>
> CRITERIA FOR PERMANENCY
>
> **1. The faculty member must have completed at least a master's degree.**
>
> 2. The faculty member must manifest behavior reflective of the school's mission-vision and goals.

[15] *Id*. at 43.

3. The faculty member must have consistently received above average rating for teaching performance as evaluated by the Academic Dean, Department Chair/Coordinator and the students.

4. The faculty member must have manifested more than satisfactory fulfillment of duties and responsibilities as evidenced by official records especially in the areas of: x x x

5. The faculty member must manifest awareness of and adherence to the school's code of ethics for faculty.

6. The faculty member must be in good physical health and manifest positive well being. (Emphasis supplied)

Viewed next to the statements and actions of Manaois – *i.e.*, the references to obtaining a master's degree in her application letter, in the subsequent correspondences between her and SSC, and in the letter seeking the extension of a teaching load for the school year 2003-2004; and her submission of certifications from UP and from her thesis adviser – we find that there is indeed substantial evidence proving that she knew about the necessary academic qualifications to obtain the status of permanency.

We also agree with the CA that the labor arbiter and the NLRC gravely misinterpreted the section in the SSC Faculty Manual, which purportedly provided for a lower academic requirement for full-time faculty members with the rank of instructor, regardless of whether they have attained permanency or are still on probation. The labor arbiter refers to the following section in the SSC Manual:[16]

B. **ACCORDING TO RANK**

Only full-time and half-time faculty members are ranked. Subsidiary faculty members follow a separate ranking system. Based on academic preparation, fulfillment of duties and responsibilities, performance, research, output and/or community service, a full-time or half-time faculty member may be appointed to any of the following ranks:

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[16] *Id.* at 124.

1. INSTRUCTOR

   There are **4 probationary ranks** and **8 permanent ranks**

   a. Minimum Requirements

      1. A bachelor's degree with **at least 25% masteral units completed**
      2. At least 2 years of teaching experience or its equivalent (*i.e.*, 1 year supervisory or professional experience)

   b. Promotion within the Rank

      1. A minimum of 1 year in the present level for promotion to Instructor 2, 3, 4, and 5; a minimum of 2 years for promotion to Instructor 6, 7 and 8.
      2. An Instructor at any level may be promoted to the rank of Assistant Professor upon fulfillment of all the qualifications and requirements of the said rank. (Emphases supplied)

As correctly pointed out by the CA, the aforecited minimum requirements provided for the rank of instructor merely refer to how instructors are ranked, and not to the academic qualifications required to attain permanency. It must be noted that the section in the SSC Faculty Manual on the ranking of instructors cover those who are still on probationary employment and those who have already attained permanency. It would therefore be erroneous to simply read the section on the ranking of instructors – without taking into consideration the previously quoted section on permanency – in order to determine the academic qualifications for the position of ***permanent*** *full-time faculty member with the rank of* ***instructor***. Thus, to properly arrive at the criteria, the sections on both the permanency and the ranking of an instructor, as provided in the SSC Manual, must be read in conjunction with each another.

At this juncture, we reiterate the rule that mere completion of the three-year probation, even with an above-average performance, does not guarantee that the employee will

automatically acquire a permanent employment status.[17] It is settled jurisprudence[18] that the probationer can only qualify upon fulfillment of the reasonable standards set for permanent employment as a member of the teaching personnel. In line with academic freedom and constitutional autonomy, an institution of higher learning has the discretion and prerogative to impose standards on its teachers and determine whether these have been met. Upon conclusion of the probation period, the college or university, being the employer, has the sole prerogative to make a decision on whether or not to re-hire the probationer. The probationer cannot automatically assert the acquisition of security of tenure and force the employer to renew the employment contract. In the case at bar, Manaois failed to comply with the stated academic qualifications required for the position of a permanent full-time faculty member.

Notwithstanding the existence of the SSC Faculty Manual, Manaois still cannot legally acquire a permanent status of employment. Private educational institutions must still supplementarily refer[19] to the prevailing standards, qualifications, and conditions set by the appropriate government agencies (presently the Department of Education, the Commission on

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[17] *Lacuesta v. Ateneo de Manila University*, 513 Phil. 329 (2005); *University of Santo Tomas v. National Labor Relations Commission*, 261 Phil. 483 (1990).

[18] *Colegio del Santisimo Rosario v. Rojo*, *supra* note 11; *Lacuesta v. Ateneo de Manila University*, *supra*; *La Salette of Santiago, Inc. v. National Labor Relations Commission*, G.R. No. 82918, 11 March 1991, 195 SCRA 80; *Cagayan Capitol College v. National Labor Relations Commission*, G.R. Nos. 90010-11, 14 September 1990, 189 SCRA 658.

[19] See: *Colegio del Santisimo Rosario v. Rojo*, *supra* note 11; *Mercado v. AMA Computer College-Parañaque City, Inc.*, *supra* note 11; *Magis Young Achievers' Learning Center v. Manalo*, *supra* note 11; *Lacuesta v. Ateneo de Manila University*, *supra* note 17; Cagayan *Cagayan Capitol College v. National Labor Relations Commission*, *supra*; *University of Santo Tomas v. National Labor Relations Commission*, *supra* note 17.

Higher Education, and the Technical Education and Skills Development Authority). This limitation on the right of private schools, colleges, and universities to select and determine the employment status of their academic personnel has been imposed by the state in view of the public interest nature of educational institutions, so as to ensure the quality and competency of our schools and educators.

The applicable guidebook[20] at the time petitioner was engaged as a probationary full-time instructor for the school year 2000 to 2003 is the 1992 Manual of Regulations for Private Schools (1992 Manual).[21] It provides the following conditions of a probationary employment:

> Section 89. Conditions of Employment. Every private school shall promote the improvement of the economic, social and professional status of all its personnel.
>
> **In recognition of their special employment status and their special role in the advancement of knowledge, the employment of teaching and non-teaching academic personnel shall be governed by such rules as may from time to time be promulgated, in coordination with one another, by the Department of Education, Culture and Sports and the Department of Labor and Employment.**
>
> Conditions of employment of non-academic non-teaching school personnel, including compensation, hours of work, security of tenure and labor relations, shall be governed by the appropriate labor laws and regulations.
>
> Section 92. Probationary Period. **Subject in all instances to compliance with Department and school requirements**, the probationary period for academic personnel shall not be more than three (3) consecutive years of **satisfactory service** for those in the elementary and secondary levels, **six (6) consecutive regular**

[20] The Commission on Higher Education has issued the 2008 Manual of Regulations for Private Higher Education (CHED Memorandum Order No. 40, Series of 2008) during the pendency of this case.

[21] Department of Education, Culture and Sports Order No. 92, S. 1992 (10 August 1992).

semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on the trimester basis.

Section 93. Regular or Permanent Status. **Those who have served the probationary period shall be made regular or permanent. Full-time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent.** (Emphases supplied)

Considering that petitioner ultimately sought for the position of a permanent full-time instructor, we must further look into the following provisions under the 1992 Manual, which set out the minimum requirements for such status:

Section 44. Minimum Faculty Qualifications. The minimum qualifications for faculty for the different grades and levels of instruction **duly supported by appropriate credentials on file** in the school shall be as follows:

x x x x x x x x x

c. Tertiary

(1) For undergraduate courses, other than vocational:

(a) **Holder of a master's degree, to teach largely in his major field**; or, for professional courses, holder of the appropriate professional license required for at least a bachelor's degree. Any deviation from this requirement will be subject to regulation by the Department.

Section 45. Full-time and Part-time Faculty. As a general rule, all private schools **shall employ full-time academic personnel consistent with the levels of instruction.**

Full-time academic personnel are those meeting all the following requirements:

a. **Who possess at least the minimum academic qualifications** prescribed by the Department **under this Manual for all academic personnel**;

b. Who are paid monthly or hourly, based on the regular teaching loads as provided for in the policies, rules and standards of the Department and the school;

c. Whose total working day of not more than eight hours a day is devoted to the school;

d. Who have no other remunerative occupation elsewhere requiring regular hours of work that will conflict with the working hours in the school; and

e. Who are not teaching full-time in any other educational institution.

All teaching personnel who do not meet the foregoing qualifications are considered part-time.

x x x x x x x x x

Section 47. Faculty Classification and Ranking. At the tertiary level, the **academic teaching positions shall be classified in accordance with academic qualifications**, training and scholarship preferably into academic ranks of Professor, Associate Professor, Assistant Professor, and Instructor, without prejudice to a more simplified or expanded system of faculty ranking, at the option of the school.

Any academic teaching personnel who does not fall under any of the classes or ranks indicated in the preceding paragraph shall be classified preferably as professorial lecturer, guest lecturer, or any other similar academic designation on the basis of his qualifications. (Emphases supplied)

Thus, pursuant to the 1992 Manual, private educational institutions in the tertiary level may extend "full-time faculty" status only to those who possess, *inter alia*, a master's degree in the field of study that will be taught. This minimum requirement is neither subject to the prerogative of the school nor to the agreement between the parties. For all intents and purposes, this qualification must be deemed impliedly written in the employment contracts between private educational institutions and prospective faculty members. The issue of whether probationers were informed of this academic requirement before they were engaged as probationary employees is thus no longer

material, as those who are seeking to be educators are presumed to know these mandated qualifications. Thus, all those who fail to meet the criteria under the 1992 Manual cannot legally attain the status of permanent full-time faculty members, even if they have completed three years of satisfactory service.

In the light of the failure of Manaois to satisfy the academic requirements for the position, she may only be considered as a part-time instructor pursuant to Section 45 of the 1992 Manual. In turn, as we have enunciated in a line of cases,[22] a part-time member of the academic personnel cannot acquire permanence of employment and security of tenure under the Manual of Regulations in relation to the Labor Code. We thus quote the ruling of this Court in *Lacuesta*, *viz*:[23]

> Section 93 of the 1992 Manual of Regulations for Private Schools provides that full-time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent. Moreover, for those teaching in the tertiary level, the probationary period shall not be more than six consecutive regular semesters of satisfactory service. **The requisites to acquire permanent employment, or security of tenure, are (1) the teacher is a full-time teacher; (2) the teacher must have rendered three consecutive years of service; and (3) such service must have been satisfactory.**
>
> As previously held, a part-time teacher cannot acquire permanent status. **Only when one has served as a full-time teacher can he acquire permanent or regular status.** The petitioner was a part-time lecturer before she was appointed as a full-time instructor on probation. **As a part-time lecturer, her employment as such had ended when her contract expired.** Thus, **the three semesters she served as part-time lecturer could not be credited to her** in computing the number of years she has served to qualify her for permanent status.

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[22] *Lacuesta v. Ateneo de Manila University*, *supra* note 11; *Cagayan Capitol College v. National Labor Relations Commission*, *supra* note 11; *University of Santo Tomas v. National Labor Relations Commission*, *supra* note 11.

[23] *Supra* note 11, at 336-337.

Petitioner posits that after completing the three-year [full-time instructor on] probation with an above-average performance, she already acquired permanent status. On this point, we are unable to agree with petitioner.

Completing the probation period does not automatically qualify her to become a permanent employee of the university. Petitioner could only qualify to become a permanent employee upon fulfilling the reasonable standards for permanent employment as faculty member. Consistent with academic freedom and constitutional autonomy, an institution of higher learning has the prerogative to provide standards for its teachers and determine whether these standards have been met. **At the end of the probation period, the decision to re-hire an employee on probation, belongs to the university as the employer alone.** (Emphases supplied)

For the foregoing reasons, we rule that there is no legal obligation on the part of SSC to reappoint Manaois after the lapse of her temporary appointment. We thus affirm *in toto* the findings of fact of the CA and rule that SSC is not guilty of illegal dismissal.

WHEREFORE, the petition is **DENIED** for lack of merit. Accordingly, the Court of Appeals Decision dated 27 February 2009 and the Resolution dated 22 July 2009 in CA-G.R. SP. No. 101382 are hereby **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 189404. December 11, 2013]

WILGEN LOON, JERRY ARCILLA, ALBERT PEREYE, ARNOLD PEREYE, EDGARDO OBOSE, ARNEL MALARAS, PATROCINO TOETIN, EVELYN LEONARDO, ELMER GLOCENDA, RUFO CUNAMAY, ROLANDO SAJOL, ROLANDO ABUCAYON, JENNIFER NATIVIDAD, MARITESS TORION, ARMANDO LONZAGA, RIZAL GELLIDO, EVIRDE HAQUE,[1] **MYRNA VINAS, RODELITO AYALA, WINELITO OJEL, RENATO RODREGO, NENA ABINA, EMALYN OLIVEROS, LOUIE ILAGAN, JOEL ENTIG, ARNEL ARANETA, BENJAMIN COSE, WELITO LOON and WILLIAM ALIPAO,** *petitioners, vs.* **POWER MASTER, INC., TRI-C GENERAL SERVICES, and SPOUSES HOMER and CARINA ALUMISIN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION (NLRC); APPEALS; WHERE JUDGMENT INVOLVES A MONETARY AWARD, APPEAL BY THE EMPLOYER MAY BE PERFECTED ONLY UPON POSTING OF BOND FROM A COMPANY DULY ACCREDITED BY THE NLRC.— Paragraph 2, Article 223 of the Labor Code provides that "[i]n case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company **duly accredited by the Commission** in the amount equivalent to the monetary award in the judgment appealed from."

2. ID.; ID.; ID.; APPEAL BOND; VALIDITY THEREOF MAY BE RAISED FOR THE FIRST TIME ON APPEAL.— Contrary to the respondents' claim, the issue of the appeal

[1] Evirdly Haque in the Court of Appeals' decision; *rollo*, p. 55.

bond's validity may be raised for the first time on appeal since its proper filing is a jurisdictional requirement. The requirement that the appeal bond should be issued by an accredited bonding company is mandatory and jurisdictional. The rationale of requiring an appeal bond is to discourage the employers from using an appeal to delay or evade the employees' just and lawful claims. It is intended to assure the workers that they will receive the money judgment in their favor upon the dismissal of the employer's appeal.

3. ID.; ID.; ID.; ID.; RESPONDENTS WHO RELIED IN GOOD FAITH ON A BONDING COMPANY'S ACCREDITATION PRIOR TO ITS REVOCATION SHOULD NOT BE PREJUDICED BUT SHOULD POST A NEW BOND ISSUED BY AN ACCREDITED BONDING COMPANY.— In the present case, the respondents filed a surety bond issued by Security Pacific Assurance Corporation *(Security Pacific)* on June 28, 2002. At that time, Security Pacific was still an accredited bonding company. However, the NLRC revoked its accreditation on February 16, 2003. Nonetheless, this subsequent revocation should not prejudice the respondents who relied on its then subsisting accreditation in good faith. In *Del Rosario v. Philippine Journalists, Inc.*, we ruled that a bonding company's revocation of authority is prospective in application. However, the respondents should post a new bond issued by an accredited bonding company in compliance with paragraph 4, Section 6, Rule 6 of the NLRC Rules of Procedure. This provision states that "[a] cash or surety bond shall be valid and effective from the date of deposit or posting, **until the case is finally decided, resolved or terminated or the award satisfied**."

4. ID.; ID.; ID.; THE NLRC PROPERLY GAVE DUE COURSE TO RESPONDENTS' SUPPLEMENTAL APPEAL WITHOUT VERIFICATION.— [T]he NLRC properly gave due course to the respondents' supplemental appeal. Neither the laws nor the rules require the verification of the supplemental appeal. Furthermore, verification is a formal, not a jurisdictional, requirement. It is mainly intended for the assurance that the matters alleged in the pleading are true and correct and not of mere speculation. Also, a supplemental appeal is merely an addendum to the verified memorandum on appeal that was

earlier filed in the present case; hence, the requirement for verification has substantially been complied with. The respondents also timely filed their supplemental appeal.

5. ID.; ID.; ID.; EVIDENCE ADDUCED FOR THE FIRST TIME ON APPEAL MAY BE ALLOWED IF DELAY IS ADEQUATELY EXPLAINED AND ALLEGATIONS SUFFICIENTLY EVINCED.— In labor cases, strict adherence to the technical rules of procedure is not required. Time and again, we have allowed evidence to be submitted for the first time on appeal with the NLRC in the interest of substantial justice. Thus, we have consistently supported the rule that labor officials should use all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, in the interest of due process. However, this liberal policy should still be subject to rules of reason and fairplay. **The liberality of procedural rules is qualified by two requirements: (1) a party should adequately explain any delay in the submission of evidence; and (2) a party should sufficiently prove the allegations sought to be proven**. The reason for these requirements is that the liberal application of the rules before quasi-judicial agencies cannot be used to perpetuate injustice and hamper the just resolution of the case. Neither is the rule on liberal construction a license to disregard the rules of procedure.

6. REMEDIAL LAW; EVIDENCE; RULES OF ADMISSIBILITY; DOCUMENTARY EVIDENCE; FAILURE TO PRESENT THE ORIGINALS RAISES THE PRESUMPTION THAT EVIDENCE WILFULLY SUPPRESSED WOULD BE ADVERSE IF PRODUCED.— [T]he respondents failed to sufficiently prove the allegations sought to be proven. Why the respondents' photocopied and computerized copies of documentary evidence were not presented at the earliest opportunity is a serious question that lends credence to the petitioners' claim that the respondents fabricated the evidence for purposes of appeal. ***While we generally admit in evidence and give probative value to photocopied documents in administrative proceedings, allegations of forgery and fabrication should prompt the adverse party to present the original documents for inspection.*** It was incumbent upon the respondents to present the originals, especially in this case

where the petitioners had submitted their specimen signatures. Instead, the respondents effectively deprived the petitioners of the opportunity to examine and controvert the alleged spurious evidence by not adducing the originals. This Court is thus left with no option but to rule that the respondents' failure to present the originals raises the presumption that evidence willfully suppressed would be adverse if produced. It was also gross error for the CA to affirm the NLRC's proposition that "[i]t is of common knowledge that there are many people who use at least two or more different signatures." The NLRC cannot take judicial notice that many people use at least two signatures, especially in this case where the petitioners themselves disown the signatures in the respondents' assailed documentary evidence. The NLRC's position is unwarranted and is patently unsupported by the law and jurisprudence. Viewed in these lights, the scales of justice must tilt in favor of the employees. This conclusion is consistent with the rule that the employer's cause can only succeed on the strength of its own evidence and not on the weakness of the employee's evidence.

7. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; VALID CAUSE MUST BE ESTABLISHED BY EMPLOYER.— In termination cases, the burden of proving just and valid cause for dismissing an employee from his employment rests upon the employer. The employer's failure to discharge this burden results in the finding that the dismissal is unjustified.

8. ID.; ID.; ILLEGAL DISMISSAL; MONEY CLAIMS; PAYMENT THEREOF MUST BE ESTABLISHED BY EMPLOYER.— As in illegal dismissal cases, the general rule is that the burden rests on the defendant to prove payment rather than on the plaintiff to prove non-payment of these money claims. The rationale for this rule is that the pertinent personnel files, payrolls, records, remittances and other similar documents – which will show that differentials, service incentive leave and other claims of workers have been paid – are not in the possession of the worker but are in the custody and control of the employer.

9. ID.; ID.; ID.; ID.; OVERTIME, HOLIDAY AND REST DAY PAY MUST BE ESTABLISHED BY EMPLOYEE.— The burden of proving entitlement to overtime pay and premium

pay for holidays and rest days rests on the employee because these are not incurred in the normal course of business. In the present case, the petitioners failed to adduce any evidence that would show that they actually rendered service in excess of the regular eight working hours a day, and that they in fact worked on holidays and rest days.

10. ID.; ID.; ID.; ID.; ATTORNEY'S FEES WARRANTED IN ACTIONS FOR UNLAWFUL WITHHOLDING OF WAGES. — The award of attorney's fees is also warranted under the circumstances of this case. An employee is entitled to an award of attorney's fees equivalent to ten percent (10%) of the amount of the wages in actions for unlawful withholding of wages.

APPEARANCE OF COUNSEL

Nenita C. Mahinay for petitioners.
Ana Rosario N. Padua for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*,[2] filed by petitioners Wilgen Loon, Jerry Arcilla, Albert Pereye, Arnold Pereye, Edgardo Obose, Arnel Malaras, Patrocino Toetin, Evelyn Leonardo, Elmer Glocenda, Rufo Cunamay, Rolando Sajol, Rolando Abucayon, Jennifer Natividad, Maritess Torion, Armando Lonzaga, Rizal Gellido, Evirde Haque, Myrna Vinas, Rodelito Ayala, Winelito Ojel, Renato Rodrego, Nena Abina, Emalyn Oliveros, Louie Ilagan, Joel Entig, Arnel Araneta, Benjamin Cose, Welito Loon, William Alipao (collectively, the *petitioners*), to challenge the June 5, 2009 decision[3] and the August 28,

[2] *Rollo*, pp. 18-54; dated October 23, 2009 and filed under Rule 45 of the Rules of Court.

[3] *Id*. at 55-65; penned by Associate Justice Sixto C. Marella, Jr., and concurred in by Associate Justices Rebecca de Guia-Salvador and Japar B. Dimaampao.

2009 resolution[4] of the Court of Appeals *(CA)* in CA-G.R. SP No. 95182.

The Factual Antecedents

Respondents Power Master, Inc. and Tri-C General Services employed and assigned the petitioners as janitors and leadsmen in various Philippine Long Distance Telephone Company *(PLDT)* offices in Metro Manila area. Subsequently, the petitioners filed a complaint for money claims against Power Master, Inc., Tri-C General Services and their officers, the spouses Homer and Carina Alumisin (collectively, the *respondents*). The petitioners alleged in their complaint that they were not paid minimum wages, overtime, holiday, premium, service incentive leave, and thirteenth month pays. They further averred that the respondents made them sign blank payroll sheets. On June 11, 2001, the petitioners amended their complaint and included illegal dismissal as their cause of action. They claimed that the respondents relieved them from service in retaliation for the filing of their original complaint.

Notably, the respondents did not participate in the proceedings before the Labor Arbiter **except on April 19, 2001 and May 21, 2001 when Mr. Romulo Pacia, Jr. appeared on the respondents' behalf.**[5] **The respondents' counsel also appeared in a preliminary mandatory conference on July 5, 2001.**[6] *However, the respondents neither filed any position paper nor proffered pieces of evidence in their defense despite their knowledge of the pendency of the case.*

The Labor Arbiter's Ruling

In a decision[7] dated March 15, 2002, Labor Arbiter *(LA)* Elias H. Salinas partially ruled in favor of the petitioners. The LA awarded the petitioners **salary differential, service incentive**

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

[5] *Id.* at 407.

[6] *Id.* at 321.

[7] *Id.* at 405-413.

leave, and thirteenth month pays. In awarding these claims, the LA stated that the burden of proving the payment of these money claims rests with the employer. The LA also awarded **attorney's fees** in favor of the petitioners, pursuant to Article 111 of the Labor Code.[8]

However, the LA denied the petitioners' claims for **backwages, overtime, holiday, and premium pays**. The LA observed that the petitioners failed to show that they rendered overtime work and worked on holidays and rest days without compensation. The LA further concluded that the petitioners cannot be declared to have been dismissed from employment because they did not show any notice of termination of employment. They were also not barred from entering the respondents' premises.

The Proceedings before the NLRC

Both parties appealed the LA's ruling with the National Labor Relations Commission. The petitioners disputed the LA's denial of their claim for backwages, overtime, holiday and premium pays. Meanwhile, the respondents questioned the LA's ruling on the ground that the LA did not acquire jurisdiction over their persons.

The respondents insisted that they were not personally served with summons and other processes. They also claimed that they paid the petitioners minimum wages, service incentive leave and thirteenth month pays. **As proofs, they attached photocopied and computerized copies of payroll sheets to their memorandum on appeal.**[9] They further maintained

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[8] Article 111 of the Labor Code provides:

1. In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.
2. It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

[9] *Id.* at 781-879; the payroll sheets cover the periods from November 1, 1998 to December 30, 1998; from November 1, 1999 to December 30, 1999; and from November 1, 2000 to February 28, 2001.

that the petitioners were validly dismissed. They argued that the petitioners' repeated defiance to their transfer to different workplaces and their violations of the company rules and regulations constituted serious misconduct and willful disobedience.[10]

On January 3, 2003, the respondents filed an unverified supplemental appeal. **They attached photocopied and computerized copies of list of employees with automated teller machine (*ATM)* cards to the supplemental appeal.** This list also showed the amounts allegedly deposited in the employees' ATM cards.[11] **They also attached documentary evidence showing that the petitioners were dismissed for cause and had been accorded due process.**

On January 22, 2003, the petitioners filed an **Urgent Manifestation and Motion**[12] where they asked for the deletion of the supplemental appeal from the records because it allegedly suffered from infirmities. ***First***, the supplemental appeal was not verified. ***Second***, it was belatedly filed six months from the filing of the respondents' notice of appeal with memorandum on appeal. The petitioners pointed out that they only agreed to the respondents' filing of a responsive pleading until December 18, 2002.[13] ***Third***, the attached documentary evidence on the supplemental appeal bore the petitioners' forged signatures.

They reiterated these allegations in an **Urgent Motion to Resolve Manifestation and Motion (To Expunge from the Records Respondents' Supplemental Appeal, Reply and/or Rejoinder)** dated January 31, 2003.[14] Subsequently, the petitioners filed an **Urgent Manifestation with Reiterating Motion to Strike-Off the Record Supplemental Appeal/Reply,**

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[10] *Id.* at 548-780.

[11] *Id.* at 880-985; the payroll sheets cover the periods from November 1, 2000 to December 30, 2000, and from January 1, 2001 to February 15, 2001.

[12] *Id.* at 359-382.

[13] *Id.* at 360.

[14] *Id.* at 384-389.

Quitclaims and Spurious Documents Attached to Respondents' Appeal dated August 7, 2003.[15] The petitioners argued in this last motion that the payrolls should not be given probative value because they were the respondents' fabrications. They reiterated that the genuine payrolls bore their signatures, unlike the respondents' photocopies of the payrolls. They also maintained that their signatures in the respondents' documents (which showed their receipt of thirteenth month pay) had been forged.

The NLRC Ruling

In a resolution dated November 27, 2003, the NLRC partially ruled in favor of the respondents.[16] The NLRC affirmed the LA's awards of **holiday pay and attorney's fees**. It also maintained that the LA acquired jurisdiction over the persons of the respondents through their voluntary appearance.

However, it allowed the respondents to submit pieces of evidence for the first time on appeal on the ground that they had been deprived of due process. It found that the respondents did not actually receive the LA's processes. It also admitted the respondents' unverified supplemental appeal on the ground that technicalities may be disregarded to serve the greater interest of substantial due process. Furthermore, the Rules of Court do not require the verification of a supplemental pleading.

The NLRC also vacated the LA's awards of **salary differential, thirteenth month and service incentive leave pays**. In so ruling, it gave weight to the pieces of evidence attached to the memorandum on appeal and the supplemental appeal. It maintained that the absence of the petitioners' signatures in the payrolls was not an indispensable factor for their authenticity. It pointed out that the payment of money claims was further

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[15] CA *rollo*, pp. 249-254.

[16] *Rollo*, pp. 148-180. Penned by Commissioner Tito F. Genilo, and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Ernesto C. Verceles.

evidenced by the list of employees with ATM cards. It also found that the petitioners' signatures were not forged. It took judicial notice that many people use at least two or more different signatures.

The NLRC further ruled that the petitioners were **lawfully dismissed on grounds of serious misconduct and willful disobedience.** It found that the petitioners failed to comply with various memoranda directing them to transfer to other workplaces and to attend training seminars for the intended reorganization and reshuffling.

The NLRC denied the petitioners' motion for reconsideration in a resolution dated April 28, 2006.[17] Aggrieved, the petitioners filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA.[18]

The CA Ruling

The CA affirmed the NLRC's ruling. The CA held that the petitioners were afforded substantive and procedural due process. Accordingly, the petitioners deliberately did not explain their side. Instead, they continuously resisted their transfer to other PLDT offices and violated company rules and regulations. It also upheld the NLRC's findings on the petitioners' monetary claims.

The CA denied the petitioners' motion for reconsideration in a resolution dated August 28, 2009, prompting the petitioners to file the present petition.[19]

The Petition

In the petition before this Court, the petitioners argue that the CA committed a reversible error when it did not find that the NLRC committed grave abuse of discretion. They reiterate their arguments before the lower tribunals and the CA in support

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[17] *Id.* at 181-189.

[18] *Id.* at 128-144.

[19] *Supra* note 2.

of this conclusion. They also point out that the respondents posted a bond from a surety that was not accredited by this Court and by the NLRC. In effect, the respondents failed to perfect their appeal before the NLRC. They further insist that the NLRC should not have admitted the respondents' unverified supplemental appeal.[20]

The Respondents' Position

In their *Comments*, the respondents stress that the petitioners only raised the issue of the validity of the appeal bond for the first time on appeal. They also reiterate their arguments before the NLRC and the CA. They additionally submit that the petitioners' arguments have been fully passed upon and found unmeritorious by the NLRC and the CA.[21]

The Issues

This case presents to us the following issues:

1) Whether the CA erred when it did not find that the NLRC committed grave abuse of discretion in giving due course to the respondents' appeal;
    a) Whether the respondents perfected their appeal before the NLRC; and
    b) Whether the NLRC properly allowed the respondents' supplemental appeal
2) Whether the respondents were estopped from submitting pieces of evidence for the first time on appeal;
3) Whether the petitioners were illegally dismissed and are thus entitled to backwages;
4) Whether the petitioners are entitled to salary differential, overtime, holiday, premium, service incentive leave, and thirteenth month pays; and
5) Whether the petitioners are entitled to attorney's fees.

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[20] *Ibid.*

[21] *Rollo*, pp. 475-502, 506-512.

The Court's Ruling

The respondents perfected their appeal with the NLRC because the revocation of the bonding company's authority has a prospective application

Paragraph 2, Article 223 of the Labor Code provides that "[i]n case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company **duly accredited by the Commission** in the amount equivalent to the monetary award in the judgment appealed from."

Contrary to the respondents' claim, the issue of the appeal bond's validity may be raised for the first time on appeal since its proper filing is a jurisdictional requirement.[22] The requirement that the appeal bond should be issued by an accredited bonding company is mandatory and jurisdictional. The rationale of requiring an appeal bond is to discourage the employers from using an appeal to delay or evade the employees' just and lawful claims. It is intended to assure the workers that they will receive the money judgment in their favor upon the dismissal of the employer's appeal.[23]

In the present case, the respondents filed a surety bond issued by Security Pacific Assurance Corporation *(Security Pacific)* on June 28, 2002. At that time, Security Pacific was still an accredited bonding company. However, the NLRC revoked its accreditation on February 16, 2003.[24] Nonetheless, this subsequent revocation should not prejudice the respondents who relied on its then subsisting accreditation in good faith. In *Del*

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[22] *Oca v. Court of Appeals*, 428 Phil. 696, 702 (2002).

[23] *Catubay v. National Labor Relations Commission*, 386 Phil. 648, 657 (2000); and *Borja Estate v. Spouses Ballad*, 498 Phil. 694, 706 (2005).

[24] Per Certification dated August 22, 2013 of Mr. James D.V. Navarrete, OCA Assistant Chief of Office, Legal Office.

Rosario v. Philippine Journalists, Inc.,[25] we ruled that a bonding company's revocation of authority is prospective in application.

However, the respondents should post a new bond issued by an accredited bonding company in compliance with paragraph 4, Section 6, Rule 6 of the NLRC Rules of Procedure. This provision states that "[a] cash or surety bond shall be valid and effective from the date of deposit or posting, **until the case is finally decided, resolved or terminated or the award satisfied**."

The CA correctly ruled that the NLRC properly gave due course to the respondents' supplemental appeal

The CA also correctly ruled that the NLRC properly gave due course to the respondents' supplemental appeal. Neither the laws nor the rules require the verification of the supplemental appeal.[26] Furthermore, verification is a formal, not a jurisdictional, requirement. It is mainly intended for the assurance that the matters alleged in the pleading are true and correct and not of mere speculation.[27] Also, a supplemental appeal is merely an addendum to the verified memorandum on appeal that was earlier filed in the present case; hence, the requirement for verification has substantially been complied with.

The respondents also timely filed their supplemental appeal on January 3, 2003. The records of the case show that the petitioners themselves agreed that the pleading shall be filed until December 18, 2002. The NLRC further extended the

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[25] G.R. No. 181516, August 19, 2009, 596 SCRA 515, 522-523.

[26] NLRC RULES OF PROCEDURE, Rule 1, Section 3, in relation to RULES OF COURT, Rule 7, Section 4.

[27] *Roy Pasos v. Philippine National Construction Corporation*, G.R. No. 192394, July 3, 2013; and *Millennium Erectors Corporation v. Magallanes*, G.R. No. 184362, November 15, 2010, 634 SCRA 708, 713-714, citing *Pacquing v. Coca-Cola Philippines, Inc.*, G.R. No. 157966, January 31, 2008, 543 SCRA 344, 356-357.

filing of the supplemental pleading until January 3, 2003 upon the respondents' motion for extension.

A party may only adduce evidence for the first time on appeal if he adequately explains his delay in the submission of evidence and he sufficiently proves the allegations sought to be proven

In labor cases, strict adherence to the technical rules of procedure is not required. Time and again, we have allowed evidence to be submitted for the first time on appeal with the NLRC in the interest of substantial justice.[28] Thus, we have consistently supported the rule that labor officials should use all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, in the interest of due process.[29]

However, this liberal policy should still be subject to rules of reason and fairplay. **The liberality of procedural rules is qualified by two requirements: (1) a party should adequately explain any delay in the submission of evidence; and (2) a party should sufficiently prove the allegations sought to be proven**.[30] The reason for these requirements is that the liberal application of the rules before quasi-judicial agencies cannot be used to perpetuate injustice and hamper the just resolution of the case. Neither is the rule on liberal construction a license to disregard the rules of procedure.[31]

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[28] *Casimiro v. Stern Real Estate, Inc.*, 519 Phil. 438, 454-455 (2006); and *Iran vs. NLRC*, 352 Phil. 264-265, 273-274 (1998).

[29] *Iran v. NLRC, supra*, at 274.

[30] *Tanjuan v. Phil. Postal Savings Bank, Inc*., 457 Phil. 993, 1004-1005 (2003).

[31] *Favila v. National Labor Relations Commission*, 367 Phil. 584, 593 (1999).

Guided by these principles, the CA grossly erred in ruling that the NLRC did not commit grave abuse of discretion in arbitrarily admitting and giving weight to the respondents' pieces of evidence for the first time on appeal.

A. The respondents failed to adequately explain their delay in the submission of evidence

We cannot accept the respondents' cavalier attitude in blatantly disregarding the NLRC Rules of Procedure. The CA gravely erred when it overlooked that the NLRC blindly admitted and arbitrarily gave probative value to the respondents' evidence despite their failure to adequately explain their delay in the submission of evidence. Notably, the respondents' delay was anchored on their assertion that they were oblivious of the proceedings before the LA. However, the respondents did not dispute the LA's finding that Mr. Romulo Pacia, Jr. appeared on their behalf on April 19, 2001 and May 21, 2001.[32] The respondents also failed to contest the petitioners' assertion that the respondents' counsel appeared in a preliminary mandatory conference on July 5, 2001.[33]

Indeed, the NLRC capriciously and whimsically admitted and gave weight to the respondents' evidence despite its finding that they voluntarily appeared in the compulsory arbitration proceedings. The NLRC blatantly disregarded the fact that the respondents voluntarily opted not to participate, to adduce evidence in their defense and to file a position paper despite their knowledge of the pendency of the proceedings before the LA. The respondents were also grossly negligent in not informing the LA of the specific building unit where the respondents were conducting their business and their counsel's address despite their knowledge of their non-receipt of the processes.[34]

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[32] *Supra* note 5.

[33] *Supra* note 6.

[34] NLRC RULES OF PROCEDURE, Rule 3, Sections 4 and 6(e).

B. The respondents failed to sufficiently prove the allegations sought to be proven

Furthermore, the respondents failed to sufficiently prove the allegations sought to be proven. Why the respondents' photocopied and computerized copies of documentary evidence were not presented at the earliest opportunity is a serious question that lends credence to the petitioners' claim that the respondents fabricated the evidence for purposes of appeal. ***While we generally admit in evidence and give probative value to photocopied documents in administrative proceedings, allegations of forgery and fabrication should prompt the adverse party to present the original documents for inspection.***[35] It was incumbent upon the respondents to present the originals, especially in this case where the petitioners had submitted their specimen signatures. Instead, the respondents effectively deprived the petitioners of the opportunity to examine and controvert the alleged spurious evidence by not adducing the originals. This Court is thus left with no option but to rule that the respondents' failure to present the originals raises the presumption that evidence willfully suppressed would be adverse if produced.[36]

It was also gross error for the CA to affirm the NLRC's proposition that "[i]t is of common knowledge that there are many people who use at least two or more different signatures."[37] The NLRC cannot take judicial notice that many people use at least two signatures, especially in this case where the petitioners themselves disown the signatures in the respondents' assailed documentary evidence.[38] The NLRC's position is unwarranted and is patently unsupported by the law and jurisprudence.

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[35] *Nicario v. NLRC,* 356 Phil. 936, 941 (1998).

[36] RULES OF COURT, Rule 131, Section 3(e).

[37] *Rollo,* p. 164.

[38] RULES OF COURT, Rule 129, Section 2.

Viewed in these lights, the scales of justice must tilt in favor of the employees. This conclusion is consistent with the rule that the employer's cause can only succeed on the strength of its own evidence and not on the weakness of the employee's evidence.[39]

The petitioners are entitled to backwages

Based on the above considerations, we reverse the NLRC and the CA's finding that the petitioners were terminated for just cause and were afforded procedural due process. In termination cases, the burden of proving just and valid cause for dismissing an employee from his employment rests upon the employer. The employer's failure to discharge this burden results in the finding that the dismissal is unjustified.[40] This is exactly what happened in the present case.

The petitioners are entitled to salary differential, service incentive, holiday, and thirteenth month pays

We also reverse the NLRC and the CA's finding that the petitioners are not entitled to salary differential, service incentive, holiday, and thirteenth month pays. As in illegal dismissal cases, the general rule is that the burden rests on the defendant to prove payment rather than on the plaintiff to prove non-payment of these money claims.[41] The rationale for this rule is that the pertinent personnel files, payrolls, records, remittances and other similar documents – which will show that differentials, service incentive leave and other claims of workers have been paid –

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[39] *The Coca-Cola Export Corporation. v. Gacayan,* G.R. No. 149433, December 15, 2010, 638 SCRA 377, 400-401, citations omitted.

[40] *Eastern Overseas Employment Center, Inc. v. Bea,* 512 Phil. 749, 759 (2005).

[41] *Pigcaulan v. Security and Credit Investigation, Inc.*, G.R. No. 173648, January 16, 2012, 663 SCRA 1, 14-15; and *Building Care Corp. v. NLRC,* 335 Phil. 1131, 1139 (1997).

are not in the possession of the worker but are in the custody and control of the employer.[42]

The petitioners are not entitled to overtime and premium pays

However, the CA was correct in its finding that the petitioners failed to provide sufficient factual basis for the award of overtime, and premium pays for holidays and rest days. The burden of proving entitlement to overtime pay and premium pay for holidays and rest days rests on the employee because these are not incurred in the normal course of business.[43] In the present case, the petitioners failed to adduce any evidence that would show that they actually rendered service in excess of the regular eight working hours a day, and that they in fact worked on holidays and rest days.

The petitioners are entitled to attorney's fees

The award of attorney's fees is also warranted under the circumstances of this case. An employee is entitled to an award of attorney's fees equivalent to ten percent (10%) of the amount of the wages in actions for unlawful withholding of wages.[44]

As a final note, we observe that Rodelito Ayala, Winelito Ojel, Renato Rodrego and Welito Loon are also named as petitioners in this case. However, we deny their petition for the reason that they were not part of the proceedings before the CA. Their failure to timely seek redress before the CA precludes this Court from awarding them monetary claims.

All told, we find that the NLRC committed grave abuse of discretion in admitting and giving probative value to the respondents' evidence on appeal, which errors the CA replicated when it upheld the NLRC rulings.

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[42] *Villar v. NLRC,* 387 Phil. 706, 716 (2000).

[43] *Lagatic v. NLRC,* 349 Phil. 172, 185-186 (1998).

[44] LABOR CODE, Article 111.

WHEREFORE, based on these premises, we **REVERSE** and **SET ASIDE** the decision dated June 5, 2009, and the resolution dated August 28, 2009 of the Court of Appeals in CA-G.R. SP No. 95182. This case is **REMANDED** to the Labor Arbiter for the sole purpose of computing petitioners' (Wilgen Loon, Jerry Arcilla, Albert Pereye, Arnold Pereye, Edgardo Obose, Arnel Malaras, Patrocino Toetin, Evelyn Leonardo, Elmer Glocenda, Rufo Cunamay, Rolando Sajol, Rolando Abucayon, Jennifer Natividad, Maritess Torion, Armando Lonzaga, Rizal Gellido, Evirde Haque, Myrna Vinas, Nena Abina, Emalyn Oliveros, Louie Ilagan, Joel Entig, Arnel Araneta, Benjamin Cose and William Alipao) full backwages (computed from the date of their respective dismissals up to the finality of this decision) and their salary differential, service incentive leave, holiday, thirteenth month pays, and attorney's fees equivalent to ten percent (10%) of the withheld wages. The respondents are further directed to immediately post a satisfactory bond conditioned on the satisfaction of the awards affirmed in this Decision.

SO ORDERED.

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

[*] Designated as Acting Member in lieu of Associate Justice Jose P. Perez per Special Order No. 1627 dated December 6, 2013.

SECOND DIVISION

[G.R. No. 189840. December 11, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAY MONTEVIRGEN *Y* OZARAGA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT (RA 9165); ILLEGAL SALE OF *SHABU*; ELEMENTS; ESTABLISHED IN CASE AT BAR.— In every prosecution for the illegal sale of *shabu*, under Section 5, Article II of RA 9165, the following elements must be proved: "(1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor. x x x What is material in a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*" or the illicit drug in evidence. x x x In this case, all the elements for the illegal sale of *shabu* were established. PO3 Ruiz, the poseur-buyer, positively identified appellant as the person he caught *in flagrante delicto* selling a white crystalline substance believed to be *shabu* in the entrapment operation conducted by the police and MADAC operatives. Upon receipt of the ₱200.00 buy-bust money, appellant handed to PO3 Ruiz the sachet containing 0.04 gram of white crystalline substance which later tested positive for *shabu*. "The delivery of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction x x x."

2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR.— [I]n prosecuting a case for illegal possession of dangerous drugs under Section 11, Article II of the same law, the following elements must concur: "(1) the accused is in possession of an item or object, which is identified as a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. x x x All the elements in the prosecution for illegal possession of dangerous drugs

were also established. First, the two plastic sachets containing *shabu* subject of the case for the illegal possession of drugs were found in appellant's pocket after a search on his person was made following his arrest *in flagrante delicto* for the illegal sale of *shabu*. It must be remembered that a person lawfully arrested may be searched for anything which may have been used or constitute proof in the commission of an offense without a warrant. Second, appellant did not adduce evidence showing his legal authority to possess the *shabu*. Third, appellant's act of allowing the poseur-buyer to choose one from among the three sachets and putting back into his pocket the two sachets of *shabu* not chosen clearly shows that he freely and consciously possessed the illegal drugs. Hence, appellant was correctly charged and convicted for illegal possession of *shabu*.

3. ID.; ID.; IMPLEMENTING RULES; PHYSICAL INVENTORY AND PHOTOGRAPH OF THE SEIZED ITEMS; FAILURE THEREOF NOT FATAL IN THE PRESENCE OF JUSTIFIABLE GROUNDS AND THE EVIDENTIARY VALUE OF SEIZED ITEMS WERE PRESERVED.— Appellant draws attention to the failure of the apprehending police officers to comply with Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 regarding the physical inventory and photograph of the seized items. x x x [T]he failure of the prosecution to show that the police officers conducted the required physical inventory and take photograph of the objects confiscated does not *ipso facto* render inadmissible in evidence the items seized. There is a *proviso* in the implementing rules stating that when it is shown that there exist justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved, the seized items can still be used in determining the guilt or innocence of the accused.

4. ID.; ID.; ILLEGAL SALE AND ILLEGAL POSSESSION OF *SHABU*; PENALTY.— Under Section 5, Article II of RA 9165, the penalty for the unauthorized sale of *shabu*, regardless of its quantity and purity, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10 million. Since the penalty imposed by the RTC and affirmed by the CA is within the prescribed range, we affirm the lower courts' imposition of life imprisonment as well as the payment of fine of

₱500,000.00. On the other hand, Section 11(3), Article II of the same law provides that illegal possession of less than five grams of *shabu* is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years plus a fine ranging from ₱300,000.00 to ₱400,000.00. Appellant was found guilty of selling one sachet containing 0.04 gram of *shabu* and of possessing two other sachets of the same substance with a total weight of 0.14 gram. Hence, applying the above provisions, the penalty of imprisonment of twelve (12) years and one (1) day as minimum to twenty (20) years as maximum and the payment of fine of ₱300,000.00 imposed by the RTC and affirmed by the CA are also proper.

APPEARANCE OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

Failure to physically inventory and photograph the *shabu* seized from an accused in the manner prescribed by law do not invalidate his arrest or render said drug inadmissible in evidence if its integrity and evidentiary value remain intact. It could still be utilized in determining the guilt or innocence of the accused.[1]

Factual Antecedents

On appeal is the Decision[2] dated July 31, 2009 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03208 which affirmed the Decision[3] dated December 18, 2007 of Branch 65, Regional

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[1] *People v. Guiara*, G.R. No. 186497, September 17, 2009, 600 SCRA 310, 329.

[2] CA *rollo*, pp. 99-124; penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Arcangelita M. Romilla Lontok and Myrna Dimaranan Vidal.

[3] Records, pp. 105-112; penned by Presiding Judge Edgardo M. Caldona.

Trial Court (RTC) of Makati City in Criminal Case Nos. 05-1396 to 1397 convicting beyond reasonable doubt Jay Montevirgen *y* Ozaraga (appellant) for the crime of illegal sale and possession of *shabu* under Sections 5 and 11, Article II of Republic Act (RA) No. 9165 or the "Comprehensive Dangerous Drugs Act of 2002."

The Informations against appellant read as follows:

Criminal Case No. 05-1396

That on or about the 19th day of July 2005, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above- named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell distribute and transport, weighing zero point zero four (0.04) gram of Methylamphetamine Hydrochloride (*Shabu*), which is a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[4]

Criminal Case No. 05-1397

That on or about the 19th day of July 2005, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above- named accused, not lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control weighing zero point zero four (0.04) gram and zero point ten (0.10) gram or [a] total weight of zero point fourteen (0.14) gram of Methylamphetamine Hydrochloride (*Shabu*), which is a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[5]

During arraignment, appellant pleaded "not guilty" in the two cases. After the pre-trial conference, a joint trial on the merits ensued.

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[4] *Id*. at 2.

[5] *Id*. at 4.

Version of the Prosecution

On July 18, 2005, P/Supt. Marietto Valerio (P/Supt. Valerio) of the Makati City Police Station Anti-Illegal Drugs Special Operation Task Force received a report from a confidential informant that appellant was selling *shabu* in Malvar Street, *Barangay* South Cembo, Makati City. Thus, he immediately formed a team composed of police officers and personnel of the Makati Anti-Drug Abuse Council (MADAC) to conduct a buy-bust operation against appellant. The members of the entrapment team were PO3 Esterio M. Ruiz, Jr. (PO3 Ruiz), PO1 Percival Mendoza, PO1 Honorio Marmonejo (PO1 Marmonejo), *Barangay* Captain Rodolfo Doromal, Eugenio Dizer, Miguel Castillo, Leo Sese, and Anthony Villanueva. PO3 Ruiz was designated as poseur-buyer and was provided with two 100-peso bills marked money. PO1 Marmonejo, on the other hand, coordinated the operation with the Philippine Drug Enforcement Agency (PDEA), which issued a Certificate of Coordination.[6] The buy-bust team then proceeded to the subject area but could not locate appellant.[7]

The next day, July 19, 2005, the buy-bust team returned to Malvar Street and found appellant talking to three men. After these men departed, PO3 Ruiz, accompanied by the confidential informant, approached appellant. The confidential informant introduced PO3 Ruiz to appellant and told him that PO3 Ruiz wanted to buy *shabu*. Appellant asked PO3 Ruiz how much he wanted to buy and he replied, ₱200.00. Appellant pulled out from his pocket three plastic sachets containing white crystalline substance and told PO3 Ruiz to choose one. He complied and gave the marked money to appellant as payment. Appellant pocketed the remaining plastic sachets together with the marked money. PO3 Ruiz then took off his cap – the pre-arranged signal that the transaction had been consummated. The other buy-bust team members then rushed to the scene to assist PO3 Ruiz in apprehending appellant. The two other plastic sachets

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[6] *Id*. at 13.

[7] TSN, July 4, 2006, pp. 4-8.

and marked money were recovered from appellant after PO3 Ruiz ordered him to empty his pockets. PO3 Ruiz then marked the plastic sachets – "EMR" for the one appellant sold to him and "EMR-1" and "EMR-2"[8] for the other two sachets confiscated from appellant.

Appellant was taken to the police headquarters where he was booked and the incident recorded in the police blotter. The items seized from him were turned over to the duty investigator who prepared a request for laboratory examination and then sent to the crime laboratory. The results revealed that the contents of the plastic sachets are positive for *shabu*.[9]

Version of the Defense

Appellant testified that on July 19, 2005, at around 2 p.m., he was in his house with his wife and child when he was roused from sleep by a man armed with a gun. Several other armed men entered his house. He was told that a buy-bust operation was being conducted. They searched his house then appellant was made to board a vehicle where he was showed a plastic sachet containing white crystalline substance that he believed to be *shabu*. He struggled to free himself and denied ownership thereof but his actions were futile. He was taken to *Barangay* Olympia, Makati City, where he was detained for 30 minutes, then brought to the crime laboratory for drug testing.[10]

Defense witness Fancy Dela Cruz corroborated the testimony of appellant. She averred that at around 1:30 p.m. of July 19, 2005, two vehicles parked almost in front of her. Several men alighted from the vehicles and forced open the door of appellant's house. She inquired as to their intentions but was told not to intervene and to avoid involvement. She complied but heard one of the men telling appellant to get up and put on his clothes. The men then had appellant board one of the vehicles and sped

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

[9] *Id.* at 13-14; Exhibits "K" to "K-2", "L" to "L-2" and "M" to "M-2", Formal Offer of Evidence, *id.* at 66-70.

[10] TSN, June 19, 2007, pp. 3-5.

away. She looked for appellant's wife and informed her of the incident.[11]

Ruling of the Regional Trial Court

The RTC gave credence to the testimony of the prosecution witnesses on the events that transpired prior to and during the buy-bust operation. It rendered a verdict of conviction on December 18, 2007,[12] *viz*:

> WHEREFORE**,** in view of the foregoing, judgment is hereby rendered as follows:
>
> 1. In Criminal Case No. 05-1396, the Court finds accused JAY MONTEVIRGEN *y* OZARAGA, GUILTY beyond reasonable doubt of the charge for violation of Sec. 5, Art. II, RA 9165, and sentences him to suffer LIFE imprisonment and to pay a fine of FIVE Hundred Thousand (₱500,000.00) pesos;
>
> 2. In Criminal Case No. 05-1397, the Court finds accused JAY MONTEVIRGEN *y* OZARAGA, GUILTY beyond reasonable doubt of the charge for violation of Sec. 11, Art. II, RA 9165 and sentences him to suffer the penalty of imprisonment of Twelve (12) years and one (1) day as minimum to Twenty (20) years as maximum and to pay a fine of Three Hundred Thousand (₱300,000.00);
>
> The period of detention of the accused should be given full credit.
>
> Let the dangerous drug subject matter of these cases be disposed of in the manner provided for by law.
>
> SO ORDERED.[13]

Ruling of the Court of Appeals

On appeal, the CA concurred with the RTC's findings and conclusions and, consequently, affirmed its judgment in the assailed Decision[14] of July 31, 2009. The dispositive portion of CA's Decision reads:

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[11] TSN, December 11, 2007, pp. 3-5.

[12] Records, pp. 105-112.

[13] *Id.* at 111-112.

[14] CA *rollo*, pp. 99-124.

WHEREFORE, the appeal is DENIED. The December 18, 2007 Decision of the Regional Trial Court of the City of Makati, Branch 65 is hereby AFFIRMED.

SO ORDERED.[15]

Assignment of Errors

Still unable to accept his conviction, appellant is now before us raising the same interrelated errors he assigned before the CA, *viz*:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE NON-COMPLIANCE WITH THE REQUIREMENTS FOR THE PROPER CUSTODY OF SEIZED DANGEROUS DRUGS UNDER R.A. NO. 9165.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE PROSECUTION'S EVIDENCE NOTWIT[H]STANDING THE FAILURE OF THE A[P]PREHENDING TEAM TO PROVE [THE] INTEGRITY OF THE SEIZED DRUGS.[16]

In his joint discussion of these errors, appellant contends that the police officers involved in the buy-bust operation failed to observe the proper procedure in the custody and control of the seized drug by not marking the confiscated specimens in the manner mandated by law. He claims that the arresting team did not immediately conduct a physical inventory of the seized items and photograph the same in the presence of his representative or counsel, representative from media, Department of Justice, and any elected public officials pursuant to Section 21 of the Implementing Rules and Regulations of RA 9165. He also argues that the Certificate of Coordination has no weight in evidence and cannot be used to prove the legitimacy of the buy-bust operation since it was issued for the failed entrapment operation the previous day, July 18, 2005.

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[15] *Id.* at 123.

[16] *Id.* at 33.

Appellee, through the Office of the Solicitor General argues that the prosecution sufficiently established all the elements of illegal sale and possession of *shabu* against appellant. It asserts that the integrity and evidentiary value of the *shabu* seized from appellant were properly preserved by the arresting team.

Our Ruling

The appeal is unmeritorious.

Elements for the Prosecution of Illegal Sale and Possession of Shabu.

In every prosecution for the illegal sale of *shabu*, under Section 5, Article II of RA 9165, the following elements must be proved: "(1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor. x x x What is material in a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*"[17] or the illicit drug in evidence. On the other hand, in prosecuting a case for illegal possession of dangerous drugs under Section 11, Article II of the same law, the following elements must concur: "(1) the accused is in possession of an item or object, which is identified as a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[18]

In this case, all the elements for the illegal sale of *shabu* were established. PO3 Ruiz, the poseur-buyer, positively identified appellant as the person he caught *in flagrante delicto* selling a white crystalline substance believed to be *shabu* in the entrapment operation conducted by the police and MADAC operatives. Upon receipt of the ₱200.00 buy-bust money, appellant handed to PO3 Ruiz the sachet containing 0.04 gram of white crystalline substance which later tested positive for *shabu*. "The delivery

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[17] *People v. Dilao*, 555 Phil. 394, 409 (2007).

[18] *People v. Sembrano*, G.R. No. 185848, August 16, 2010, 628 SCRA 328, 342-343.

of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction x x x."[19]

All the elements in the prosecution for illegal possession of dangerous drugs were also established. First, the two plastic sachets containing *shabu* subject of the case for the illegal possession of drugs were found in appellant's pocket after a search on his person was made following his arrest *in flagrante delicto* for the illegal sale of *shabu*. It must be remembered that a person lawfully arrested may be searched for anything which may have been used or constitute proof in the commission of an offense without a warrant.[20] Second, appellant did not adduce evidence showing his legal authority to possess the *shabu*. Third, appellant's act of allowing the poseur-buyer to choose one from among the three sachets and putting back into his pocket the two sachets of *shabu* not chosen clearly shows that he freely and consciously possessed the illegal drugs. Hence, appellant was correctly charged and convicted for illegal possession of *shabu*.

Appellant's defense of denial cannot prevail against the positive testimony of prosecution witnesses. There is also no imputation by appellant of any evil motives on the part of the buy-bust team to falsely testify against him. Their testimonies and actuations therefore enjoy the presumption of regularity.

Failure to Physically Inventory and Photograph the Shabu After Seizure and Confiscation is Not Fatal.

Appellant draws attention to the failure of the apprehending police officers to comply with Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 regarding the physical inventory and photograph of the seized items. This provision reads as follows:

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[19] *People v. Legaspi*, G.R. No. 173485, November 23, 2011, 661 SCRA 171, 185.

[20] RULES OF COURT, Rule 126, Section 13.

(1) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; *Provided,* that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

In other words, the failure of the prosecution to show that the police officers conducted the required physical inventory and take photograph of the objects confiscated does not *ipso facto* render inadmissible in evidence the items seized. There is a *proviso* in the implementing rules stating that when it is shown that there exist justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved, the seized items can still be used in determining the guilt or innocence of the accused.[21]

Here, the absence of evidence that the buy-bust team made an inventory and took photographs of the drugs seized from appellant was not fatal since the prosecution was able to preserve the integrity and evidentiary value of the *shabu*. PO3 Ruiz, the poseur-buyer and apprehending officer, marked the seized items in front of appellant, the *barangay* captain and other members of the buy-bust team, immediately after the consummation of the drug transaction. He then delivered the seized items to the duty investigator, who in turn sent the same to the PNP Crime Laboratory for examination on the same day. During trial, PO3

[21] *People v. Manalao*, G.R. No. 187496, February 6, 2013, 690 SCRA 106, 119.

Ruiz was able to identify the said markings and explain how they were made.

Clearly, there was no hiatus or confusion in the confiscation, handling, custody and examination of the *shabu*. The illegal drugs that were confiscated from appellant, taken to the police headquarters, subjected to qualitative examination at the crime laboratory, and finally introduced in evidence against appellant were the same illegal drugs that were confiscated from him when he was caught *in flagrante delicto* selling and possessing the same.

Appellant's contention that the buy-bust team should have coordinated with the PDEA on the day the entrapment operation occurred deserves scant consideration. Coordination with the PDEA is not an indispensable element of a proper buy-bust operation.[22] A buy-bust operation is not invalidated by mere non-coordination with the PDEA.[23]

Penalty

Under Section 5, Article II of RA 9165, the penalty for the unauthorized sale of *shabu*, regardless of its quantity and purity, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10 million. Since the penalty imposed by the RTC and affirmed by the CA is within the prescribed range, we affirm the lower courts' imposition of life imprisonment as well as the payment of fine of ₱500,000.00.

On the other hand, Section 11(3), Article II of the same law provides that illegal possession of less than five grams of *shabu* is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years plus a fine ranging from ₱300,000.00 to ₱400,000.00.

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[22] *People v. Adrid*, G.R. No. 201845, March 6, 2013, 692 SCRA 683, 696.

[23] *Id.*, quoting *People v. Roa*, G.R. No. 186134, May 6, 2010, 620 SCRA 359, 369-370.

Appellant was found guilty of selling one sachet containing 0.04 gram of *shabu* and of possessing two other sachets of the same substance with a total weight of 0.14 gram. Hence, applying the above provisions, the penalty of imprisonment of twelve (12) years and one (1) day as minimum to twenty (20) years as maximum and the payment of fine of ₱300,000.00 imposed by the RTC and affirmed by the CA are also proper.

WHEREFORE, the appeal is **DISMISSED**. The assailed Decision dated July 31, 2009 of the Court of Appeals in CA-G.R. CR-H.C. No. 03208 affirming the conviction of Jay Montevirgen *y* Ozaraga by the Regional Trial Court of Makati City, Branch 65, for violation of Sections 5 and 11, Article II of Republic Act No. 9165, is **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 190566. December 11, 2013]

MARK JEROME S. MAGLALANG, *petitioner, vs.* **PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), as represented by its incumbent Chairman EFRAIM GENUINO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES.— Our

[*] Per Special Order No. 1627 dated December 6, 2013.

ruling in *Public Hearing Committee of the Laguna Lake Development Authority v. SM Prime Holdings, Inc.* on the doctrine of exhaustion of administrative remedies is instructive, to wit: Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case.

2. ID.; ID.; ID.; EXCEPTIONS.— [T]he doctrine of exhaustion of administrative remedies is not absolute as it admits of the following exceptions: (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts as an *alter ego* of the President bears the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy, and (11) when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; **(12) where no administrative review is provided by law;** (13) where the rule of qualified political agency applies and

(14) where the issue of non-exhaustion of administrative remedies has been rendered moot.

3. ID.; ID.; ID.; ID.; WHERE NO ADMINISTRATIVE REVIEW IS PROVIDED BY LAW; APPLICABLE IN ADMINISTRATIVE CASES WHEREBY AN EMPLOYEE IS COVERED BY CIVIL SERVICE LAW AND PENALIZED WITH A SUSPENSION FOR NOT MORE THAN 30 DAYS. — The case before us falls squarely under exception number 12 since the law *per se* provides no administrative review for administrative cases whereby an employee like petitioner is covered by Civil Service law, rules and regulations and penalized with a suspension for not more than 30 days. Section 37 (a) and (b) of P.D. No. 807, otherwise known as the Civil Service Decree of the Philippines, provides for the unavailability of any appeal. x x x Similar provisions are reiterated in Section 47 of E.O, No. 292 essentially providing that cases of this sort are not appealable to the CSC.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY IN CASE OF GRAVE ABUSE OF DISCRETION IN THE FINAL AND UNAPPEALABLE DECISION OF ADMINISTRATIVE AGENCIES.— [D]ecisions of administrative agencies which are declared final and unappealable by law are still subject to judicial review. In *Republic of the Phils. v. Francisco*, we held: Since the decision of the Ombudsman **suspending respondents for one (1) month is final and unappealable**, it follows that the CA had no appellate jurisdiction to review, rectify or reverse the same. The Ombudsman was not estopped from asserting in this Court that the CA had no appellate jurisdiction to review and reverse the decision of the Ombudsman via petition for review under Rule 43 of the Rules of Court. This is not to say that decisions of the Ombudsman cannot be questioned. **Decisions of administrative or quasi-administrative agencies which are declared by law final and unappealable are subject to judicial review if they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law.** When such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings. **Thus, the decision of the Ombudsman may be**

reviewed, modified or reversed via petition for *certiorari* under Rule 65 of the Rules of Court, on a finding that it had no jurisdiction over the complaint, or of grave abuse of discretion amounting to excess or lack of jurisdiction.

5. ID.; ID.; ID.; DISTINGUISHED FROM APPEAL.— [A]n appeal and a special civil action such as *certiorari* under Rule 65 are entirely distinct and separate from each other. One cannot file petition for *certiorari* under Rule 65 of the Rules where appeal is available, even if the ground availed of is grave abuse of discretion. A special civil action for *certiorari* under Rule 65 lies only when there is no appeal, or plain, speedy and adequate remedy in the ordinary course of law. *Certiorari* cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, as the same should not be a substitute for the lost remedy of appeal. The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive. x x x Finally, as a rule, a petition for *certiorari* under Rule 65 is valid only when the question involved is an error of jurisdiction, or when there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the court or tribunals exercising quasi-judicial functions. Hence, courts exercising *certiorari* jurisdiction should refrain from reviewing factual assessments of the respondent court or agency. Occasionally, however, they are constrained to wade into factual matters when the evidence on record does not support those factual findings; or when too much is concluded, inferred or deduced from the bare or incomplete facts appearing on record. Considering the circumstances and since this Court is not a trier of facts, remand of this case to the CA for its judicious resolution is in order.

APPEARANCES OF COUNSEL

Maglalang Lagman and Maglalang Law Offices for petitioner.

Roderick R. Consolacion Arnold Ferdinand C. Salvosa and Bernadette P. De Guzman-Chua for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before this Court is a petition[1] for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking the reversal of the Resolution[2] dated September 30, 2009 issued by the Court of Appeals (CA) in CA-G.R. SP No. 110048, which outrightly dismissed the petition for *certiorari* filed by herein petitioner Mark Jerome S. Maglalang (petitioner). Also assailed is the appellate court's Resolution[3] dated November 26, 2009 which denied petitioner's motion for reconsideration.

The facts follow.

Petitioner was a teller at the Casino Filipino, Angeles City Branch, Angeles City, which was operated by respondent Philippine Amusement and Gaming Corporation (PAGCOR), a government-owned or controlled corporation existing by virtue of Presidential Decree (P.D.) No. 1869.[4]

Petitioner alleged that in the afternoon of December 13, 2008, while he was performing his functions as teller, a lady customer identified later as one Cecilia Nakasato[5] (Cecilia) approached him in his booth and handed to him an undetermined amount of cash consisting of mixed ₱1,000.00 and ₱500.00 bills. There were 45 ₱1,000.00 and ten ₱500.00 bills for the total amount of ₱50,000.00. Following casino procedure, petitioner laid the

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[1] *Rollo*, pp. 9-34.

[2] *Id*. at 35. Penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Celia C. Librea-Leagogo and Priscilla J. Baltazar-Padilla concurring.

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

[4] PRESIDENTIAL DECREE NO. 1869 - CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, 1067-B, 1067-C, 1399 AND 1632, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR).

[5] Also referred to as Cecilia Alfonso in other pleadings and documents.

bills on the spreading board. However, he erroneously spread the bills into only four clusters instead of five clusters worth ₱10,000.00 per cluster. He then placed markers for ₱10,000.00 each cluster of cash and declared the total amount of ₱40,000.00 to Cecilia. Perplexed, Cecilia asked petitioner why the latter only dished out ₱40,000.00. She then pointed to the first cluster of bills and requested petitioner to check the first cluster which she observed to be thicker than the others. Petitioner performed a recount and found that the said cluster contained 20 pieces of ₱1,000.00 bills. Petitioner apologized to Cecilia and rectified the error by declaring the full and correct amount handed to him by the latter. Petitioner, however, averred that Cecilia accused him of trying to shortchange her and that petitioner tried to deliberately fool her of her money. Petitioner tried to explain, but Cecilia allegedly continued to berate and curse him. To ease the tension, petitioner was asked to take a break. After ten minutes, petitioner returned to his booth. However, Cecilia allegedly showed up and continued to berate petitioner. As a result, the two of them were invited to the casino's Internal Security Office in order to air their respective sides. Thereafter, petitioner was required to file an Incident Report which he submitted on the same day of the incident.[6]

On January 8, 2009, petitioner received a Memorandum[7] issued by the casino's Branch Manager, Alexander Ozaeta, informing him that he was being charged with Discourtesy towards a casino customer and directing him to explain within 72 hours upon receipt of the memorandum why he should not be sanctioned or dismissed. In compliance therewith, petitioner submitted a letter-explanation[8] dated January 10, 2009.

On March 31, 2009, petitioner received another Memorandum[9] dated March 19, 2009, stating that the Board of Directors of

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[6] *Supra* note 1, at 12-16.

[7] *Id*. at 91.

[8] *Id*. at 92-94.

[9] *Id*. at 95.

PAGCOR found him guilty of Discourtesy towards a casino customer and imposed on him a 30-day suspension for this first offense. Aggrieved, on April 2, 2009, petitioner filed a Motion for Reconsideration[10] seeking a reversal of the board's decision and further prayed in the alternative that if he is indeed found guilty as charged, the penalty be only a reprimand as it is the appropriate penalty. During the pendency of said motion, petitioner also filed a Motion for Production[11] dated April 20, 2009, praying that he be furnished with copies of documents relative to the case including the recommendation of the investigating committee and the Decision/Resolution of the Board supposedly containing the latter's factual findings. In a letter-reply[12] dated June 2, 2009, one Atty. Carlos R. Bautista, Jr. who did not indicate his authority therein to represent PAGCOR, denied the said motion. Petitioner received said letter-reply on June 17, 2009.

Subsequently, on June 18, 2009, PAGCOR issued a Memorandum[13] dated June 18, 2009 practically reiterating the contents of its March 19, 2009 Memorandum. Attached therewith is another Memorandum[14] dated June 8, 2009 issued by PAGCOR's Assistant Vice President for Human Resource and Development, Atty. Lizette F. Mortel, informing petitioner that the Board of Directors in its meeting on May 13, 2009 resolved to deny his appeal for reconsideration for lack of merit. Petitioner received said memoranda on the same date of June 18, 2009.

On August 17, 2009, petitioner filed a petition[15] for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, as amended, before the CA, averring that there is no evidence, much less

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[10] *Id*. at 96-100.

[11] *Id*. at 106-107.

[12] *Id*. at 108-110.

[13] *Id*. at 104.

[14] *Id*. at 105.

[15] *Id*. at 39-56.

factual and legal basis to support the finding of guilt against him. Moreover, petitioner ascribed grave abuse of discretion amounting to lack or excess of jurisdiction to the acts of PAGCOR in adjudging him guilty of the charge, in failing to observe the proper procedure in the rendition of its decision and in imposing the harsh penalty of a 30-day suspension. Justifying his recourse to the CA, petitioner explained that he did not appeal to the Civil Service Commission (CSC) because the penalty imposed on him was only a 30-day suspension which is not within the CSC's appellate jurisdiction. He also claimed that discourtesy in the performance of official duties is classified as a light offense which is punishable only by reprimand.

In its assailed Resolution[16] dated September 30, 2009, the CA outrightly dismissed the petition for *certiorari* for being premature as petitioner failed to exhaust administrative remedies before seeking recourse from the CA. Invoking Section 2(1), Article IX-B of the 1987 Constitution,[17] the CA held that the CSC has jurisdiction over issues involving the employer-employee relationship in all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned or controlled corporations with original charters such as PAGCOR. Petitioner filed his Motion for Reconsideration[18] which the CA denied in the assailed Resolution[19] dated November 26, 2009. In denying the said motion, the CA relied on this Court's ruling in *Duty Free Philippines v. Mojica*[20] citing *Philippine Amusement and Gaming Corp. v. CA*,[21] where this Court held as follows:

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[16] *Supra* note 2.

[17] Sec. 2(1), Article IX-B of the 1987 Constitution provides:

Sec. 2. (1) The Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

[18] *Rollo*, pp. 82-87.

[19] *Supra* note 3.

[20] 508 Phil. 726, 732 (2005).

[21] 279 Phil. 203, 206-207 (1991).

It is now settled that, conformably to Article IX-B, Section 2(1), [of the 1987 Constitution] government-owned or controlled corporations shall be considered part of the Civil Service only if they have original charters, as distinguished from those created under general law.

PAGCOR belongs to the Civil Service because it was created directly by PD 1869 on July 11, 1983. Consequently, controversies concerning the relations of the employee with the management of PAGCOR should come under the jurisdiction of the Merit System Protection Board and the Civil Service Commission, conformably to the Administrative Code of 1987.

Section 16(2) of the said Code vest[s] in the Merit System Protection Board the power *inter alia* to:

a) Hear and decide on appeal administrative cases involving officials and employees of the Civil Service. Its decision shall be final except those involving dismissal or separation from the service which may be appealed to the Commission.

Hence, this petition where petitioner argues that the CA committed grave and substantial error of judgment

1. IN OUTRIGHTLY DISMISSING THE PETITION FOR *CERTIORARI* FILED BY PETITIONER AND IN DENYING THE LATTER'S MOTION FOR RECONSIDERATION[;]
2. IN RULING THAT THE CIVIL SERVICE COMMISSION HAS APPELLATE JURISDICTION OVER THE SUSPENSION OF THE PETITIONER DESPITE THE FACT THAT THE PENALTY INVOLVED IS NOT MORE THAN THIRTY (30) DAYS[;]
3. IN RESOLVING THE PETITION FOR *CERTIORARI* FILED BY PETITIONER IN A MANNER WHICH IS UTTERLY CONTRARY TO LAW AND JURISPRUDENCE[;]
4. IN UNJUSTIFIABLY REFUSING TO RENDER A DECISION AS TO THE PROPRIETY OR VALIDITY OF THE SUSPENSION OF THE PETITIONER BY THE RESPONDENT[;]
5. IN UNDULY REFUSING TO RENDER A DECISION DECLARING THAT THE ASSAILED DECISIONS/ RESOLUTIONS OF THE RESPONDENT ARE NOT SUPPORTED BY THE EVIDENCE ON RECORD[; AND]

6. IN UNJUSTIFIABLY REFUSING TO RENDER A DECISION DECLARING THAT THE ASSAILED DECISIONS/ RESOLUTIONS OF RESPONDENT WERE ISSUED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.[22]

Petitioner claims that the CA clearly overlooked the applicable laws and jurisprudence that provide that when the penalty involved in an administrative case is suspension for not more than 30 days, the CSC has no appellate jurisdiction over the said administrative case. As authority, petitioner invokes our ruling in *Geronga v. Hon. Varela*[23] which cited Section 47,[24] Chapter 1, Subtitle A, Title I, Book V of Executive Order (E.O.) No. 292 otherwise known as The Administrative Code of 1987. Said Section 47 provides that the CSC may entertain appeals only, among others, from a penalty of suspension of more than 30 days. Petitioner asserts that his case, involving a 30-day suspension penalty, is not appealable to the CSC. Thus, he submits that his case was properly brought before the CA via a petition for *certiorari*.[25]

On the other hand, PAGCOR alleges that petitioner intentionally omitted relevant matters in his statement of facts. PAGCOR essentially claims that petitioner refused to apologize to Cecilia; that he treated Cecilia's complaint with arrogance; and that before taking the aforementioned 10-minute break, petitioner slammed the cash to the counter window in giving it back to the customer. PAGCOR argues that the instant petition raises questions of fact which are not reviewable in a petition for review on *certiorari*. PAGCOR maintains that the CA's ruling

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[22] *Supra* note 1, at 20-21.

[23] 570 Phil. 39, 47 (2008).

[24] Section 47 (1), Title 1(A), Book V of E.O. No. 292, pertinently reads: SEC. 47. *Disciplinary Jurisdiction.* — (1) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office. . . .

[25] Petitioner's Memorandum dated December 29, 2011, *rollo*, pp. 204-223.

was in accordance with law and jurisprudence. Moreover, PAGCOR counters that petitioner's remedy of appeal is limited as Section 37 of the Revised Uniform Rules on Administrative Cases in the Civil Service provides that a decision rendered by heads of agencies whereby a penalty of suspension for not more than 30 days is imposed shall be final and executory. PAGCOR opines that such intent of limiting appeals over such minor offenses is elucidated in the Concurring Opinion of former Chief Justice Reynato S. Puno in *CSC v. Dacoycoy*[26] and based on the basic premise that appeal is merely a statutory privilege. Lastly, PAGCOR submits that the 30-day suspension meted on petitioner is justified under its own Code of Discipline.[27]

Prescinding from the foregoing, the sole question for resolution is: Was the CA correct in outrightly dismissing the petition for *certiorari* filed before it on the ground of non-exhaustion of administrative remedies?

We resolve the question in the negative.

Our ruling in *Public Hearing Committee of the Laguna Lake Development Authority v. SM Prime Holdings, Inc*.[28] on the doctrine of exhaustion of administrative remedies is instructive, to wit:

> Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons.

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[26] 366 Phil. 86 (1999).

[27] PAGCOR's Memorandum dated November 8, 2011, *rollo*, pp. 144-165.

[28] G.R. No. 170599, September 22, 2010, 631 SCRA 73, 79-80. Citations omitted.

The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case.

However, the doctrine of exhaustion of administrative remedies is not absolute as it admits of the following exceptions:

(1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts as an *alter ego* of the President bears the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy, and (11) when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; **(12) where no administrative review is provided by law**; (13) where the rule of qualified political agency applies and (14) where the issue of non-exhaustion of administrative remedies has been rendered moot.[29]

The case before us falls squarely under exception number 12 since the law *per se* provides no administrative review for administrative cases whereby an employee like petitioner is covered by Civil Service law, rules and regulations and penalized with a suspension for not more than 30 days.

Section 37 (a) and (b) of P.D. No. 807, otherwise known as the Civil Service Decree of the Philippines, provides for the unavailability of any appeal:

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[29] *Hongkong & Shanghai Banking Corp., Ltd. v. G.G. Sportswear Mfg. Corp.*, 523 Phil. 245, 253-254 (2006), citing *Province of Zamboanga Del Norte v. Court of Appeals*, 396 Phil. 709, 718-719 (2000). Emphasis supplied.

Section 37. *Disciplinary Jurisdiction.*

(a) **The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days**, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from Office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.

(b) **The heads of departments, agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days** or fine in an amount not exceeding thirty days' salary. **In case the decision rendered by a bureau or office head is appealable to the Commission**, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the department head. (Emphasis supplied.)

Similar provisions are reiterated in the aforequoted Section 47[30] of E.O. No. 292 essentially providing that cases of this sort are not appealable to the CSC.

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[30] Section 47 (1) and (2), Title 1(A), Book V of E.O. No. 292, provides: SEC. 47. *Disciplinary Jurisdiction.* - (1) **The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days**, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.

Correlatively, we are not unaware of the Concurring Opinion of then Chief Justice Puno in *CSC v. Dacoycoy*,[31] where he opined, to wit:

In truth, the doctrine barring appeal is not categorically sanctioned by the Civil Service Law. For what the law declares as "final" are decisions of heads of agencies involving suspension for not more than thirty (30) days or fine in an amount not exceeding thirty (30) days salary. But there is a clear policy reason for declaring these decisions final. These decisions involve minor offenses. They are numerous for they are the usual offenses committed by government officials and employees. To allow their multiple level appeal will doubtless overburden the quasi-judicial machinery of our administrative system and defeat the expectation of fast and efficient action from these administrative agencies. *Nepotism, however, is not a petty offense. Its deleterious effect on government cannot be over-emphasized. And it is a stubborn evil. The objective should be to eliminate nepotic acts, hence, erroneous decisions allowing nepotism cannot be given immunity from review, especially judicial review.* It is thus *non sequitur* to contend that since some decisions exonerating public officials from *minor* offenses can not be appealed, ergo, even a decision acquitting a government official from a *major* offense like nepotism cannot also be appealed.

Nevertheless, decisions of administrative agencies which are declared final and unappealable by law are still subject to judicial review. In *Republic of the Phils. v. Francisco*,[32] we held:

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(2) **The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days** or fine in an amount not exceeding thirty days' salary. **In case the decision rendered by a bureau or office head is appealable to the Commission**, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned. Emphasis supplied.

[31] *Supra* note 26, at 116-117.

[32] 539 Phil. 433, 450 (2006). Citations omitted; emphasis supplied.

Since the decision of the Ombudsman **suspending respondents for one (1) month is final and unappealable**, it follows that the CA had no appellate jurisdiction to review, rectify or reverse the same. The Ombudsman was not estopped from asserting in this Court that the CA had no appellate jurisdiction to review and reverse the decision of the Ombudsman via petition for review under Rule 43 of the Rules of Court. This is not to say that decisions of the Ombudsman cannot be questioned. **Decisions of administrative or quasi-administrative agencies which are declared by law final and unappealable are subject to judicial review if they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law**. When such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings. **Thus, the decision of the Ombudsman may be reviewed, modified or reversed via petition for *certiorari* under Rule 65 of the Rules of Court, on a finding that it had no jurisdiction over the complaint, or of grave abuse of discretion amounting to excess or lack of jurisdiction**.

It bears stressing that the judicial recourse petitioner availed of in this case before the CA is a special civil action for *certiorari* ascribing grave abuse of discretion, amounting to lack or excess of jurisdiction on the part of PAGCOR, not an appeal. Suffice it to state that an appeal and a special civil action such as *certiorari* under Rule 65 are entirely distinct and separate from each other. One cannot file petition for *certiorari* under Rule 65 of the Rules where appeal is available, even if the ground availed of is grave abuse of discretion. A special civil action for *certiorari* under Rule 65 lies only when there is no appeal, or plain, speedy and adequate remedy in the ordinary course of law. *Certiorari* cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, as the same should not be a substitute for the lost remedy of appeal. The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.[33]

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[33] *Tejano, Jr. v. Sandiganbayan*, G.R. No. 161778, April 7, 2009, 584 SCRA 191, 211-212.

In sum, there being no appeal or any plain, speedy, and adequate remedy in the ordinary course of law in view of petitioner's allegation that PAGCOR has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, the CA's outright dismissal of the petition for *certiorari* on the basis of non-exhaustion of administrative remedies is bereft of any legal standing and should therefore be set aside.

Finally, as a rule, a petition for *certiorari* under Rule 65 is valid only when the question involved is an error of jurisdiction, or when there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the court or tribunals exercising quasi-judicial functions. Hence, courts exercising *certiorari* jurisdiction should refrain from reviewing factual assessments of the respondent court or agency. Occasionally, however, they are constrained to wade into factual matters when the evidence on record does not support those factual findings; or when too much is concluded, inferred or deduced from the bare or incomplete facts appearing on record.[34] Considering the circumstances and since this Court is not a trier of facts, [35] remand of this case to the CA for its judicious resolution is in order.

WHEREFORE, the petition is **PARTLY GRANTED**. The Resolutions dated September 30, 2009 and November 26, 2009 of the Court of Appeals in CA-G.R. SP No. 110048 are hereby **REVERSED** and **SET ASIDE**. The instant case is **REMANDED** to the Court of Appeals for further proceedings.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Reyes, JJ.*, concur.

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[34] *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, G.R. No. 170464, July 12, 2010, 624 SCRA 705, 714-715, citing *Pascua v. NLRC (3rd Div.)*, 351 Phil. 48, 61 (1998).

[35] *LPBS Commercial, Inc. v. Hon. Amila, et al.*, 568 Phil. 182, 188 (2008).

THIRD DIVISION

[G.R. No. 191475. December 11, 2013]

PHILIPPINE CARPET MANUFACTURING CORPORATION, PACIFIC CARPET MANUFACTURING CORPORATION, MR. PATRICIO LIM and MR. DAVID LIM, *petitioners, vs.* **IGNACIO B. TAGYAMON, PABLITO L. LUNA, FE B. BADAYOS, GRACE B. MARCOS, ROGELIO C. NEMIS, ROBERTO B. ILAO, ANICIA D. DELA CRUZ and CYNTHIA L. COMANDAO,** *respondents.*

SYLLABUS

1. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION; PRESCRIPTION OF ACTIONS; CANNOT BE OVERCOME BY LACHES.— Laches has been defined as the failure or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence, could or should have been done earlier, thus, giving rise to a presumption that the party entitled to assert it either has abandoned or declined to assert it. It has been repeatedly held by the Court that: x x x Laches is a doctrine in equity while prescription is based on law. Our courts are basically courts of law not courts of equity. Thus, laches cannot be invoked to resist the enforcement of an existing legal right. x x x Courts exercising equity jurisdiction are bound by rules of law and have no arbitrary discretion to disregard them. In *Zabat Jr. v. Court of Appeals* x x x, this Court was more emphatic in upholding the rules of procedure. We said therein: As for equity which has been aptly described as a "justice outside legality," this is applied only in the absence of, and never against, statutory law or, as in this case, judicial rules of procedure. *Aequetas nunguam contravenit legis*. The pertinent positive rules being present here, they should preempt and prevail over all abstract arguments based only on equity. *Thus, where the claim was filed within the [four-year] statutory period, recovery therefore cannot be barred by laches. Courts should never apply the doctrine of laches earlier than the expiration of time limited for the commencement of actions at law."* An

action for reinstatement by reason of illegal dismissal is one based on an injury to the complainants' rights which should be brought within four years from the time of their dismissal pursuant to Article 1146 of the Civil Code. Respondents' complaint filed almost 3 years after their alleged illegal dismissal was still well within the prescriptive period. Laches cannot, therefore, be invoked yet. To be sure, laches may be applied only upon the most convincing evidence of deliberate inaction, for the rights of laborers are protected under the social justice provisions of the Constitution and under the Civil Code.

2. REMEDIAL LAW; CIVIL PROCEDURE; DOCTRINE OF *STARE DECISIS*; WHERE A COURT HAS LAID DOWN A PRINCIPLE OF LAW AS APPLICABLE TO A CERTAIN STATE OF FACTS, IT WILL ADHERE TO THAT PRINCIPLE AND APPLY IT TO ALL FUTURE CASES WITH SUBSTANTIALLY THE SAME FACTS.— Under the doctrine of *stare decisis*, when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same, even though the parties may be different. Where the facts are essentially different, however, *stare decisis* does not apply, for a perfectly sound principle as applied to one set of facts might be entirely inappropriate when a factual variant is introduced.

3. ID.; ID.; ID.; ID.; RULING IN *PHILCEA CASE* APPLIED IN THIS CASE AS THE FACTS WERE SUBSTANTIALLY THE SAME.— This case and the *Philippine Carpet Employees Association v. Hon. Sto. Tomas* (*Philcea case*) involve the same period which is March to April 2004; the issuance of Memorandum to employees informing them of the implementation of the cost reduction program; the implementation of the voluntary retirement program and retrenchment program, except that this case involves different employees; the execution of deeds of release, waiver, and quitclaim, and the acceptance of separation pay by the affected employees. The illegality of the basis of the implementation of both voluntary retirement and retrenchment programs of petitioners had been thoroughly ruled upon by the Court in the *Philcea case*. It discussed the requisites of both retrenchment and redundancy as authorized causes of termination and that

petitioners failed to substantiate them. In ascertaining the bases of the termination of employees, it took into consideration petitioners' claim of business losses; the purchase of machinery and equipment after the termination, the declaration of cash dividends to stockholders, the hiring of 100 new employees after the retrenchment, and the authorization of full blast overtime work for six hours daily. These, said the Court, are inconsistent with petitioners' claim that there was a slump in the demand for its products which compelled them to implement the termination programs. In arriving at its conclusions, the Court took note of petitioners' net sales, gross and net profits, as well as net income. The Court, thus, reached the conclusion that the retrenchment effected by PCMC is invalid due to a substantive defect. x x x Just like the union members in the *Philcea* case, respondents Tagyamon, Luna, Badayos, Dela Cruz, and Comandao received similarly worded memorandum of dismissal effective April 15, 2004 based on the same ground of slump in the market demand for the company's products. As such, they are similarly situated in all aspects as the union members. With respect to respondents Marcos, Nemis and Ilao, although they applied for voluntary retirement, the same was not accepted by petitioner. Instead, it issued notice of termination dated March 6, 2004 to these same employees. And while it is true that petitioner paid them separation pay, the payment was in the nature of separation and not retirement pay. In other words, payment was made because of the implementation of the retrenchment program and not because of retirement. As their application for availing of the company's voluntary retirement program was based on the wrong premise, the intent to retire was not clearly established, or rather that the retirement is involuntary. Thus, they shall be considered discharged from employment. Consequently, they shall be treated as if they are in the same footing as the other respondents herein and the union members in the *Philcea case.*

4. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; WAIVERS, RELEASES AND QUITCLAIMS; CANNOT BAR EMPLOYEES FROM DEMANDING BENEFITS OR FROM CONTESTING THE LEGALITY OF THEIR DISMISSAL.— "As a rule, deeds of release and quitclaim cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal. The acceptance of those benefits

would not amount to estoppel." To excuse respondents from complying with the terms of their waivers, they must locate their case within any of three narrow grounds: (1) the employer used fraud or deceit in obtaining the waivers; (2) the consideration the employer paid is incredible and unreasonable; or (3) the terms of the waiver are contrary to law, public order, public policy, morals, or good customs or prejudicial to a third person with a right recognized by law. The instant case falls under the first situation.

5. ID.; ID.; ID.; ID.; VALID EXCUSES FOR NON-COMPLIANCE THEREOF; THAT THE EMPLOYER USED FRAUD OR DECEIT IN OBTAINING THE WAIVERS; CASE AT BAR.— As the ground for termination of employment was illegal, the quitclaims are deemed illegal as the employees' consent had been vitiated by mistake or fraud. The law looks with disfavor upon quitclaims and releases by employees pressured into signing by unscrupulous employers minded to evade legal responsibilities. The circumstances show that petitioner's misrepresentation led its employees, specifically respondents herein, to believe that the company was suffering losses which necessitated the implementation of the voluntary retirement and retrenchment programs, and eventually the execution of the deeds of release, waiver and quitclaim. It can safely be concluded that economic necessity constrained respondents to accept petitioners' monetary offer and sign the deeds of release, waiver and quitclaim. That respondents are supervisors and not rank-and-file employees does not make them less susceptible to financial offers, faced as they were with the prospect of unemployment. The Court has allowed supervisory employees to seek payment of benefits and a manager to sue for illegal dismissal even though, for a consideration, they executed deeds of quitclaims releasing their employers from liability. x x x The amounts already received by respondents as consideration for signing the releases and quitclaims should be deducted from their respective monetary awards.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for petitioners.

Cesar F. Maravilla, Jr. for respondents.

D E C I S I O N

PERALTA, *J.*:

The Case

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Court of Appeals (*CA*) Decision[1] dated July 7, 2009 and Resolution[2] dated February 26, 2010 in CA-G.R. SP No. 105236. The assailed decision granted the petition for *certiorari* filed by respondents Ignacio B. Tagyamon (*Tagyamon*), Pablito I. Luna (*Luna*), Fe B. Badayos (*Badayos*), Grace B. Marcos (*Marcos*), Rogelio C. Nemis (*Nemis*), Roberto B. Ilao (*Ilao*), Anicia D. Dela Cruz (*Dela Cruz*), and Cynthia L. Comandao (*Comandao*), the dispositive portion of which reads:

> WHEREFORE, the petition is GRANTED. The private respondent is hereby ordered to reinstate the petitioners with full backwages less the amounts they received as separation pays. In case reinstatement would no longer be feasible because the positions previously held no longer exist, the private respondent shall pay them backwages plus, in lieu of reinstatement, separation pays equal to one (1) month pay, or one-half (1/2) month pay for every year of service, whichever is higher. In addition, the private respondent is hereby ordered to pay the petitioners moral damages in the amount of ₱20,000.00 each.
>
> SO ORDERED.[3]

The Facts

Petitioner Philippine Carpet Manufacturing Corporation (*PCMC*) is a corporation registered in the Philippines engaged in the business of manufacturing wool and yarn carpets and

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[1] Penned by Associate Justice Jose Catral Mendoza, with Associate Justices Sesinando E. Villon and Marlene Gonzales-Sison, concurring, *rollo*, pp. 50-59.

[2] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Sesinando E. Villon and Ramon R. Garcia, concurring; *rollo*, pp. 61-62.

[3] *Rollo*, p. 58.

rugs.[4] Respondents were its regular and permanent employees, but were affected by petitioner's retrenchment and voluntary retirement programs.

On March 15, 2004, Tagyamon,[5] Luna,[6] Badayos,[7] Dela Cruz,[8] and Comandao[9] received a uniformly worded Memorandum of dismissal, to wit:

> This is to inform you that in view of a slump in the market demand for our products due to the un-competitiveness of our price, the company is constrained to reduce the number of its workforce. The long-term effects of September 11 and the war in the Middle East have greatly affected the viability of our business and we are left with no recourse but to reorganize and downsize our organizational structure.
>
> We wish to inform you that we are implementing a retrenchment program in accordance with Article 283 of the Labor Code of the Philippines, as amended, and its implementing rules and regulations.
>
> In this connection, we regret to advise you that you are one of those affected by the said exercise, and your employment shall be terminated effective at the close of working hours on April 15, 2004.
>
> Accordingly, you shall be paid your separation pay as mandated by law. You will no longer be required to report for work during the 30-day notice period in order to give you more time to look for alternative employment. However, you will be paid the salary corresponding to the said period. We shall process your clearance and other documents and you may claim the payables due you on March 31, 2004.
>
> Thank you for your services and good luck to your future endeavors.[10]

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[4] *Philippine Carpet Employees Association (PHILCEA) v. Hon. Sto. Tomas,* 518 Phil. 299 (2006).

[5] *Rollo,* p. 82.

[6] *Id.* at 83.

[7] *Id.* at 84.

[8] *Id.* at 85.

[9] *Id.* at 86.

[10] *Id.* at 82.

As to Marcos, Ilao, and Nemis, they claimed that they were dismissed effective March 31, 2004, together with fifteen (15) other employees on the ground of lack of market/slump in demand.[11] PCMC, however, claimed that they availed of the company's voluntary retirement program and, in fact, voluntarily executed their respective Deeds of Release, Waiver, and Quitclaim.[12]

Claiming that they were aggrieved by PCMC's decision to terminate their employment, respondents filed separate complaints for illegal dismissal against PCMC, Pacific Carpet Manufacturing Corporation, Mr. Patricio Lim and Mr. David Lim. These cases were later consolidated. Respondents primarily relied on the Supreme Court's decision in *Philippine Carpet Employees Association (PHILCEA) v. Hon. Sto. Tomas (Philcea case),*[13] as to the validity of the company's retrenchment program. They further explained that PCMC did not, in fact, suffer losses shown by its acts prior to and subsequent to their termination.[14] They also insisted that their acceptance of separation pay and signing of quitclaim is not a bar to the pursuit of illegal dismissal case.[15]

PCMC, for its part, defended its decision to terminate the services of respondents being a necessary management prerogative. It pointed out that as an employer, it had no obligation to keep in its employ more workers than are necessary for the operation of his business. Thus, there was an authorized cause for dismissal. Petitioners also stressed that respondents belatedly filed their complaint as they allowed almost three years to pass making the principle of laches applicable. Considering that respondents accepted their separation pay and voluntarily executed deeds of release, waiver and quitclaim, PCMC invoked

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[11] CA *rollo,* p. 73.

[12] *Rollo,* pp. 73-81.

[13] *Supra* note 4.

[14] CA *rollo,* pp. 74-93.

[15] *Id.* at 93-96.

the principle of estoppel on the part of respondents to question their separation from the service. Finally, as to Marcos, Ilao and Nemis, PCMC emphasized that they were not dismissed from employment, but in fact they voluntarily retired from employment to take advantage of the company's program.[16]

On August 23, 2007, Labor Arbiter (*LA*) Donato G. Quinto, Jr. rendered a Decision dismissing the complaint for lack of merit.[17] The LA found no flaw in respondents' termination as they voluntarily opted to retire and were subsequently re-employed on a contractual basis then regularized, terminated from employment and were paid separation benefits.[18] In view of respondents' belated filing of the complaint, the LA concluded that such action is a mere afterthought designed primarily for respondents to collect more money, taking advantage of the 2006 Supreme Court decision.[19]

On appeal, the National Labor Relations Commission (*NLRC*) sustained the LA decision.[20] In addition to the LA ratiocination, the NLRC emphasized the application of the principle of laches for respondents' inaction for an unreasonable period.

Still undaunted, respondents elevated the matter to the CA in a petition for *certiorari*. In reversing the earlier decisions of the LA and the NLRC, the CA refused to apply the principle of laches, because the case was instituted prior to the expiration of the prescriptive period set by law which is four years. It stressed that said principle cannot be invoked earlier than the expiration of the prescriptive period.[21] Citing the Court's decision in the *Philcea case*, the CA applied the doctrine of *stare decisis*, in view of the similar factual circumstances of the cases. As to

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[16] *Id.* at 235-239.

[17] *Id.* at 151-160.

[18] *Id.* at 158.

[19] *Id.* at 159.

[20] *Id.* at 161-164.

[21] *Id.* at 55-56.

Ilao, Nemis and Marcos, while acknowledging their voluntary resignation, the CA found the same not a bar to the illegal dismissal case because they did so on the mistaken belief that PCMC was losing money.[22] With the foregoing findings, the CA ordered that respondents be reinstated with full backwages less the amounts they received as separation pay. In case of impossibility of reinstatement, the CA ordered PCMC to pay respondents backwages and in lieu of reinstatement, separation pay equal to one month pay or ½ month pay for every year of service whichever is higher, plus moral damages.[23]

The Issues

Aggrieved, petitioners come before the Court in this petition for review on *certiorari* based on this ground, to wit:

IN RENDERING ITS DISPUTED DECISION AND RESOLUTION, THE COURT *A QUO* HAS DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND/OR ESTABLISHED JURISPRUDENCE.

a) *Res Judicata* should not be followed if to follow it is to perpetuate error (*Philippine Trust Co., and Smith Bell & Co. vs. Mitchell,* 59 Phil. 30, 36 (1933). The (Supreme) Court is not precluded from rectifying errors of judgment if blind and stubborn adherence to the doctrine of immutability of final judgments would involve the sacrifice of justice for technicality (*Heirs of Maura So vs. Obliosca,* G.R. No. 147082, January 28, 2008, 542 SCRA 406)

b) Not all waivers and quitclaims are invalid as against public policy. Waivers that represent a voluntary and reasonable settlement of the laborer's claims are legitimate and should be respected by the Court as the law between the parties (*Gamo-gamo vs. PNOC Shipping and Transport Corp.,* G.R. No. 141707, May 2, 2002; *Alcasero vs. NLRC,* 288 SCRA 129) Where the persons making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and reasonable,

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[22] *Id.* at 58.

[23] *Id.*

> the transaction must be recognized as valid and binding undertaking (*Periquet vs. NLRC*, 186 SCRA 724 [1990]; *Magsalin vs. Coca Cola Bottlers Phils., Inc. vs. National Organization of Working Men (N.O.W.M.)*, G.R. No. 148492, May 2, 2003).[24]

Petitioners contend that the *Philcea case* decided by this Court and relied upon by the CA in the assailed decision was based on erroneous factual findings, inapplicable financial statement, as well as erroneous analysis of such financial statements.[25] They, thus, implore the Court to revisit the cited case in order to dispense with substantial justice.[26] They explain that the Court made conclusions based on erroneous information. Petitioners also insist that the doctrines of *res judicata* and law of the case are not applicable, considering that this case does not involve the same parties as the *Philcea case*.[27] They likewise point out that not all respondents were involuntarily separated on the ground of redundancy as some of them voluntarily availed of the company's Voluntary Separation Program.[28] They further contend that respondents are guilty not only of laches but also of estoppel in view of their inaction for an unreasonable length of time to assail the alleged illegal dismissal and in voluntarily executing a release, quitclaim and waiver.[29]

The Court's Ruling

Laches

Laches has been defined as the failure or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence, could or should have been done earlier, thus, giving rise to a presumption that the party entitled

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

[25] *Id.* at 29.

[26] *Id.*

[27] *Id.* at 38.

[28] *Id.* at 39.

[29] *Id.* at 40-42.

to assert it either has abandoned or declined to assert it.[30] It has been repeatedly[31] held by the Court that:

x x x Laches is a doctrine in equity while prescription is based on law. Our courts are basically courts of law not courts of equity. Thus, laches cannot be invoked to resist the enforcement of an existing legal right. x x x Courts exercising equity jurisdiction are bound by rules of law and have no arbitrary discretion to disregard them. In *Zabat, Jr. v. Court of Appeals* x x x, this Court was more emphatic in upholding the rules of procedure. We said therein:

> As for equity which has been aptly described as a "justice outside legality," this is applied only in the absence of, and never against, statutory law or, as in this case, judicial rules of procedure. *Aequetas nunguam contravenit legis*. The pertinent positive rules being present here, they should preempt and prevail over all abstract arguments based only on equity.

Thus, where the claim was filed within the [four-year] statutory period, recovery therefore cannot be barred by laches. Courts should never apply the doctrine of laches earlier than the expiration of time limited for the commencement of actions at law."[32]

An action for reinstatement by reason of illegal dismissal is one based on an injury to the complainants' rights which should be brought within four years from the time of their dismissal pursuant to Article 1146[33] of the Civil Code. Respondents' complaint filed almost 3 years after their alleged illegal dismissal was still well within the prescriptive period. Laches cannot, therefore, be invoked yet.[34] To be sure, laches may be applied

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[30] *GF Equity, Inc. v. Valenzona*, G.R. No. 156841, June 30, 2005, 462 SCRA 466, 480.

[31] See: *GF Equity, Inc. v. Valenzona, supra*; *Mendoza v. NLRC*, 350 Phil. 486 (1998); *Reno Foods, Inc. v. National Labor Relations Commission*, 319 Phil. 500 (1995).

[32] *Mendoza v. NLRC*, 350 Phil. 486, 495 (1998).

[33] Art. 1146. The following actions must be instituted within four years:
(1) Upon an injury to the rights of the plaintiff;
(2) Upon a quasi-delict.

[34] *Reno Foods, Inc. v. National Labor Relations Commission, supra* note 31, at 509.

only upon the most convincing evidence of deliberate inaction, for the rights of laborers are protected under the social justice provisions of the Constitution and under the Civil Code.[35]

Stare Decisis

The main issue sought to be determined in this case is the validity of respondents' dismissal from employment. Petitioners contend that they either voluntarily retired from the service or terminated from employment based on an authorized cause. The LA and the NLRC are one in saying that the dismissal was legal. The CA, however, no longer discussed the validity of the ground of termination. Rather, it applied the Court's decision in the *Philcea case* where the same ground was thoroughly discussed. In other words, the appellate court applied the doctrine of *stare decisis* and reached the same conclusion as the earlier case.

Under the doctrine of *stare decisis*, when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same, even though the parties may be different.[36] Where the facts are essentially different, however, *stare decisis* does not apply, for a perfectly sound principle as applied to one set of facts might be entirely inappropriate when a factual variant is introduced.[37]

The question, therefore, is whether the factual circumstances of this present case are substantially the same as the *Philcea case*.

We answer in the affirmative.

This case and the *Philcea case* involve the same period which is March to April 2004; the issuance of Memorandum to employees

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[35] *Id.*

[36] *Abaria v. National Labor Relations Commission*, G.R. No. 154113, December 7, 2011, 661 SCRA 686, 712.

[37] *Hacienda Bino/Hortencia Starke, Inc. v. Cuenca*, 496 Phil. 198, 207 (2005).

informing them of the implementation of the cost reduction program; the implementation of the voluntary retirement program and retrenchment program, except that this case involves different employees; the execution of deeds of release, waiver, and quitclaim, and the acceptance of separation pay by the affected employees.

The illegality of the basis of the implementation of both voluntary retirement and retrenchment programs of petitioners had been thoroughly ruled upon by the Court in the *Philcea case*. It discussed the requisites of both retrenchment and redundancy as authorized causes of termination and that petitioners failed to substantiate them. In ascertaining the bases of the termination of employees, it took into consideration petitioners' claim of business losses; the purchase of machinery and equipment after the termination, the declaration of cash dividends to stockholders, the hiring of 100 new employees after the retrenchment, and the authorization of full blast overtime work for six hours daily. These, said the Court, are inconsistent with petitioners' claim that there was a slump in the demand for its products which compelled them to implement the termination programs. In arriving at its conclusions, the Court took note of petitioners' net sales, gross and net profits, as well as net income. The Court, thus, reached the conclusion that the retrenchment effected by PCMC is invalid due to a substantive defect. We quote hereunder the Court's pronouncement in the *Philcea case*, to wit:

> Respondents failed to adduce clear and convincing evidence to prove the confluence of the essential requisites for a valid retrenchment of its employees. We believe that respondents acted in bad faith in terminating the employment of the members of petitioner Union.
>
> Contrary to the claim of respondents that the Corporation was experiencing business losses, respondent Corporation, in fact, amassed substantial earnings from 1999 to 2003. It found no need to appropriate its retained earnings except on March 23, 2001, when it appropriated ₱60,000,000.00 to increase production capacity. x x x

x x x x x x x x x

The evidence on record belies the ₱22,820,151.00 net income loss in 2004 as projected by the SOLE. On March 29, 2004, the Board of Directors approved the appropriation of ₱20,000,000.00 to purchase machinery to improve its facilities, and declared cash dividends to stockholders at ₱30.00 per share. x x x

x x x x x x x x x

It bears stressing that the appropriation of ₱20,000,000.00 by the respondent Corporation on September 16, 2004 was made barely five months after the 77 Union members were dismissed on the ground that respondent Corporation was suffering from "chronic depression." Cash dividends were likewise declared on March 29, 2004, barely two weeks after it implemented its "retrenchment program."

If respondent Corporation were to be believed that it had to retrench employees due to the debilitating slump in demand for its products resulting in severe losses, how could it justify the purchase of ₱20,000,000.00 worth of machinery and equipment? There is likewise no justification for the hiring of more than 100 new employees, more than the number of those who were retrenched, as well as the order authorizing full blast overtime work for six hours daily. All these are inconsistent with the intransigent claim that respondent Corporation was impelled to retrench its employees precisely because of low demand for its products and other external causes.

x x x x x x x x x

That respondents acted in bad faith in retrenching the 77 members of petitioner is buttressed by the fact that Diaz issued his Memorandum announcing the cost-reduction program on March 9, 2004, after receipt of the February 10, 2004 letter of the Union president which included the proposal for additional benefits and wage increases to be incorporated in the CBA for the ensuing year. Petitioner and its members had no inkling, before February 10, 2004, that respondent Corporation would terminate their employment. Moreover, respondent Corporation failed to exhaust all other means to avoid further losses without retrenching its employees, such as utilizing the latter's respective forced vacation leaves. Respondents also failed to use fair and reasonable criteria in implementing the retrenchment program, and instead chose to

retrench 77 of the members of petitioner out of the dismissed 88 employees. Worse, respondent Corporation hired new employees and even rehired the others who had been "retrenched."

As shown by the SGV & Co. Audit Report, as of year end December 31, 2003, respondent Corporation increased its net sales by more than ₱8,000,000.00. Respondents failed to prove that there was a drastic or severe decrease in the product sales or that it suffered severe business losses within an interval of three (3) months from January 2004 to March 9, 2004 when Diaz issued said Memorandum. Such claim of a depressed market as of March 9, 2004 was only a pretext to retaliate against petitioner Union and thereby frustrate its demands for more monetary benefits and, at the same time, justify the dismissal of the 77 Union members.

x x x x x x x x x

In contrast, in this case, the retrenchment effected by respondent Corporation is invalid due to a substantive defect, non-compliance with the substantial requirements to effect a valid retrenchment; it necessarily follows that the termination of the employment of petitioner Union's members on such ground is, likewise, illegal. As such, they (petitioner Union's members) are entitled to reinstatement with full backwages.[38]

We find no reason to depart from the above conclusions which are based on the Court's examination of the evidence presented by the parties therein. As the respondents here were similarly situated as the union members in the *Philcea* case, and considering that the questioned dismissal from the service was based on the same grounds under the same circumstances, there is no need to relitigate the issues presented herein. In short, we adopt the Court's earlier findings that there was no valid ground to terminate the employees.

A closer look at petitioners' arguments would show that they want the Court to re-examine our decision in the *Philcea* case allegedly on the ground that the conclusions therein were based on erroneous interpretation of the evidence presented.

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[38] *Philippine Carpet Employees Association (PHILCEA) v. Hon. Sto. Tomas, supra* note 4, at 317-323.

Indeed, in *Abaria v. National Labor Relations Commission,*[39] although the Court was confronted with the same issue of the legality of a strike that has already been determined in a previous case, the Court refused to apply the doctrine of *stare decisis* insofar as the award of backwages was concerned because of the clear erroneous application of the law. We held therein that the Court abandons or overrules precedents whenever it realizes that it erred in the prior decision.[40] The Court's pronouncement in that case is instructive:

> The doctrine though is not cast in stone for upon a showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, the Court is justified in setting it aside. For the Court, as the highest court of the land, may be guided but is not controlled by precedent. Thus, the Court, especially with a new membership, is not obliged to follow blindly a particular decision that it determines, after re-examination, to call for a rectification.[41]

The *Abaria case*, however, is not applicable in this case. There is no reason to abandon the Court's ruling in the *Philcea case*.

Do we apply the aforesaid decision to all the respondents herein? Again, we answer in the affirmative.

Just like the union members in the *Philcea* case, respondents Tagyamon, Luna, Badayos, Dela Cruz, and Comandao received similarly worded memorandum of dismissal effective April 15, 2004 based on the same ground of slump in the market demand for the company's products. As such, they are similarly situated in all aspects as the union members. With respect to respondents Marcos, Nemis and Ilao, although they applied for voluntary retirement, the same was not accepted by petitioner. Instead, it issued notice of termination dated March 6, 2004 to these same

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[39] *Supra* note 36.

[40] *Abaria v. National Labor Relations Commission*, *supra* note 36, at 713.

[41] *Id.*

employees.[42] And while it is true that petitioner paid them separation pay, the payment was in the nature of separation and not retirement pay. In other words, payment was made because of the implementation of the retrenchment program and not because of retirement.[43] As their application for availing of the company's voluntary retirement program was based on the wrong premise, the intent to retire was not clearly established, or rather that the retirement is involuntary. Thus, they shall be considered discharged from employment.[44] Consequently, they shall be treated as if they are in the same footing as the other respondents herein and the union members in the *Philcea case.*

Waivers, Releases and Quitclaims

"As a rule, deeds of release and quitclaim cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal. The acceptance of those benefits would not amount to estoppel."[45] To excuse respondents from complying with the terms of their waivers, they must locate their case within any of three narrow grounds: (1) the employer used fraud or deceit in obtaining the waivers; (2) the consideration the employer paid is incredible and unreasonable; or (3) the terms of the waiver are contrary to law, public order, public policy, morals, or good customs or prejudicial to a third person with a right recognized by law.[46] The instant case falls under the first situation.

As the ground for termination of employment was illegal, the quitclaims are deemed illegal as the employees' consent had been vitiated by mistake or fraud. The law looks with disfavor upon quitclaims and releases by employees pressured into signing by unscrupulous employers minded to evade legal

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[42] *Rollo*, pp. 422-424.

[43] See *Ariola v. Philex Mining Corp.*, 503 Phil. 765, 780 (2005).

[44] *Id.* at 783.

[45] *Emco Plywood Corporation v. Abelgas*, 471 Phil. 460, 483 (2004).

[46] *Quevedo v. Benguet Electric Cooperative, Inc.*, 459 SCRA 438, 451 (2009).

responsibilities.[47] The circumstances show that petitioner's misrepresentation led its employees, specifically respondents herein, to believe that the company was suffering losses which necessitated the implementation of the voluntary retirement and retrenchment programs, and eventually the execution of the deeds of release, waiver and quitclaim.[48]

It can safely be concluded that economic necessity constrained respondents to accept petitioners' monetary offer and sign the deeds of release, waiver and quitclaim. That respondents are supervisors and not rank-and-file employees does not make them less susceptible to financial offers, faced as they were with the prospect of unemployment. The Court has allowed supervisory employees to seek payment of benefits and a manager to sue for illegal dismissal even though, for a consideration, they executed deeds of quitclaims releasing their employers from liability.[49]

> x x x There is no nexus between intelligence, or even the position which the employee held in the company when it concerns the pressure which the employer may exert upon the free will of the employee who is asked to sign a release and quitclaim. A lowly employee or a sales manager, as in the present case, who is confronted with the same dilemma of whether [to sign] a release and quitclaim and accept what the company offers them, or [to refuse] to sign and walk out without receiving anything, may do succumb to the same pressure, being very well aware that it is going to take quite a while before he can recover whatever he is entitled to, because it is only after a protracted legal battle starting from the labor arbiter level, all the way to this Court, can he receive anything at all. The Court understands that such a risk of not receiving anything whatsoever, coupled with the probability of not immediately getting any gainful employment or means of livelihood in the meantime, constitutes enough pressure upon anyone who is asked to sign a release and quitclaim in exchange

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[47] *Emco Plywood Corporation v. Abelgas*, *supra* note 45, at 483; *Philippine Carpet Employee Association v. Philippine Carpet Manufacturing Corporation,* 394 Phil. 716, 728-729 (2000).

[48] See: *TEA-SPFL v. NLRC*, 338 Phil. 681, 690 (1997).

[49] *Ariola v. Philex Mining Corp.*, *supra* note 43, at 789.

of some amount of money which may be way below what he may be entitled to based on company practice and policy or by law.[50]

The amounts already received by respondents as consideration for signing the releases and quitclaims should be deducted from their respective monetary awards.[51]

WHEREFORE, premises considered, the petition is hereby **DENIED**. The Court of Appeals Decision dated July 7, 2009 and Resolution dated February 26, 2010 in CA-G.R. SP No. 105236 are **AFFIRMED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 191538. December 11, 2013]

WELLER JOPSON, *petitioner, vs.* **FABIAN O. MENDEZ, JR. and DEVELOPMENT BANK OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM LAW; TENANCY AGREEMENT; ELEMENTS.— At the outset, it must be emphasized that in order for a tenancy agreement to arise, it is essential to establish all its indispensable elements, *viz.*: (1) the parties are the landowner and the tenant

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[50] *Becton Dickinson Phils., Inc. v. NLRC*, 511 Phil. 566, 589-590 (2005).

[51] *Emco Plywood Corporation v. Abelgas, supra* note 45.

[*] Designated Acting Member in lieu of Associate Justice Jose Catral Mendoza, per Raffle dated February 16, 2011.

or agricultural lessee; (2) the subject matter of the relationship is an agricultural land; (3) there is consent between the parties to the relationship; (4) the purpose of the relationship is to bring about agricultural production; (5) there is personal cultivation on the part of the tenant or agricultural lessee; and (6) the harvest is shared between the landowner and the tenant or agricultural lessee. All these requisites are necessary to create a tenancy relationship, and the absence of one or more requisites will not make the alleged tenant a *de facto* tenant.

2. ID.; ID.; AGRICULTURAL LAND; BECOMES COMMERCIAL WHEN RECLASSIFIED AS SUCH.— Section 3 (c) of Republic Act (R.A.) No. 6657, otherwise known as the *Comprehensive Agrarian Reform Law (CARL),* states that "an agricultural land refers to land devoted to agricultural activity as defined therein and not classified as mineral, forest, residential, commercial or industrial land." As per Certification by the Office of the Zoning Administrator of Naga City, the subject landholding covered by TCT No. 21190 is classified as secondary commercial zone. x x x Thus, the reclassification of the subject landholding from agricultural to commercial removes it from the ambit of agricultural land over which petitioner claims a tenancy relationship is founded.

3. REMEDIAL LAW; JURISDICTION; PARAD AND DARAB; NO JURISDICTION AS THE PROPERTY IN ISSUE WAS NOT AGRICULTURAL AND THERE WAS NO TENANCY RELATIONSHIP.— Specifically, the PARAD and the DARAB have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the CARL under R.A. No. 6657. Thus, the jurisdiction of the PARAD and the DARAB is only limited to cases involving agrarian disputes, including incidents arising from the implementation of agrarian laws. Section 3 (d) of R.A. No. 6657 defines an agrarian dispute. x x x From the foregoing, it is clear that no agrarian dispute exists in the instant case, since what is involved is not an agricultural land and no tenancy relationship exists between petitioner and respondent DBP. As aptly held by the CA, for the DARAB to have jurisdiction over a case, there must be a tenancy relationship between the parties. Perforce, the ruling of the PARAD, as well as the decision and resolution of the DARAB which were rendered without jurisdiction, are without force and effect.

APPEARANCES OF COUNSEL

Expedito B. Mapa for petitioner.
Francis Romulo I. Badilla, Jr. for respondents.

D E C I S I O N

PERALTA, *J.*:

Assailed in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court are the Decision[1] dated July 9, 2009 and Resolution[2] dated February 12, 2010 of the Court of Appeals (*CA*) in CA-G.R. SP No. 70781.

The facts, as found by the CA, are as follows:

Spouses Laura S. Pascual (Laura) and Jose H. Mendoza (Jose) owned a parcel of land situated at Naga City, Camarines Sur. The property had an aggregate area of one hundred one thousand forty-five (101,045) square meters and was covered by Transfer Certificate of Title (TCT) No. 687. On 26 December 1961, the said property was subdivided into sixty- three (63) lots through a judicially approved subdivision and became part of Laura Subdivision. Thus, TCT No. 687 was cancelled and, in its stead, TCT No. 986 (covering 31 lots), TCT No. 987 (covering 31 lots) and TCT No. 988 (covering 1 lot) were issued.

On 4 January 1992, spouses Laura and Jose conveyed to respondent Development Bank of the Philippines (respondent DBP), by way of *dacion en pago*, the parcel of land covered by TCT No. 986 (subject landholding) which has an area of eight thousand nine hundred forty-six (8,946) square meters. The transfer was evidenced by a Deed of Conveyance of Real Estate Property in Payment of Debt. As a consequence, the Registry of Deeds of Naga City cancelled TCT No. 986 and issued TCT No. 1149 in favor of respondent DBP.

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[1] Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Monina Arevalo-Zenarosa, concurring; *rollo*, pp. 18-31.

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

Sometime in the year 1990, respondent DBP published an Invitation to Bid for the conveyance of the subject landholding covered by TCT No. 1149. On 28 December 1990, the said property was sold for ₱1.2M to petitioner Fabian O. Mendez, Jr. x x x as the highest bidder. Thus, TCT No. 1149 was cancelled and, in lieu of it, TCT No. 21190 was issued to [respondent Mendez].

Sometime in 1991, a Complaint was filed by x x x Weller Jopson x x x with the Provincial Agrarian Reform Adjudicator (PARAD) of Camarines Sur. It was directed against respondent DBP, [respondent Mendez] and Leonardo Tominio (Leonardo) for annulment of sale, preemption/redemption and reinstatement with prayer for a writ of preliminary injunction and/or restraining order with damages.

In essence, [petitioner] alleged that he is a *bona fide* tenant-farmer of the parcel of land subject of the sale between respondent DBP and [respondent Mendez]; his father Melchor Jopson (Melchor), was the original tenant of subject landholding appointed as such by the spouses Laura and Jose in 1947; in 1967, he succeeded his father in cultivating the subject landholding now covered by the present TCT No. 21190 when his father became ill; from 1967 up to December 1990, he laboriously tilled and cultivated the parcel of land and religiously shared the harvest with respondent DBP through its representatives or employees; on 20 December 1990, a certain Leonardo, acting upon the instructions of [respondent Mendez], unlawfully entered the subject landholding and ejected him from the same; the sale of the subject landholding by respondent DBP to petitioner is void because the latter is not qualified to acquire the same under Republic Act (R.A.) No. 6657; the sale of the parcel of land is also violative of Executive Order (E.O.) No. 360, series of 1989, in relation to Section 1 of E.O. No. 407 dated 14 June 1990; he was deprived of his preferential right to buy the parcel of land he tenanted under reasonable terms and conditions as provided for by Section 11, R.A. No. 3844; in the alternative, he also has the right to redeem the parcel of land from petitioner at a reasonable price pursuant to Section 12, R.A. No. 3844; the forcible entry by Leonardo upon the instructions of [respondent Mendez] desecrated his right to security of tenure and deprivation of his livelihood; he is entitled to the award of actual damages, moral damages, exemplary damages, attorney's fees and litigation expenses; a writ of preliminary injunction should be issued to prevent petitioner or his agents from disposing of the parcel of land.

In his Answer dated 5 November 1991, [respondent Mendez] denied [petitioner]'s allegations and asseverated that the latter has no cause of action against him; [petitioner] is guilty of laches (or estoppel) for not having questioned the auction sale of the parcel of land; the PARAD had no jurisdiction over the case because the parcel of land subject of the sale is no longer classified as agricultural and it is not located in an agricultural zone; as compulsory counterclaim, he is entitled to the award of moral damages, exemplary damages, attorney's fees and litigation expenses; as cross-claim against respondent DBP, he prayed that in the event judgment is rendered in [petitioner]'s favor, respondent DBP should shoulder all the monetary awards that will be granted to [petitioner], return to him the purchase price with interest, reimburse him all the expenses that he incurred relative to the purchase of the parcel of land and the improvements thereon, compensate him for lost business opportunities and pay him for the reliefs in his counterclaim.

Leonardo, in his Answer dated 24 January 1992, denied [petitioner]'s allegations and averred that he was already in possession of the parcel of land even before 20 December 1990, long before he knew [respondent Mendez]; it was [petitioner], claiming to be respondent DBP's caretaker, who placed him in the subject landholding; as counterclaim, he should be awarded moral damages, attorney's fees and litigation expenses.

In its Amended Answer dated 15 June 1992, respondent DBP alleged that [respondent Mendez] accepted the sale will full knowledge of the extent and nature of the right, title and interest of the former, thus, he should be the one to assume the risk of any liability, or the extent thereof, when he purchased the subject landholding.

On 8 October 1993, [respondent Mendez] filed a Motion to Maintain Status Quo *Ante Litem* and to Cite Complainant in Contempt as [petitioner] forcibly entered the parcel of land in the company of armed men. The motion was resolved by granting [respondent Mendez's] request and ordering [petitioner] to vacate the parcel of land. [Respondent Mendez] was, however, ordered to post a cash bond in the amount of ₱10,000.00 to answer for any damage [petitioner] may incur upon the issuance of the order to vacate.[3]

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[3] *Id.* at 19-21. (Citations omitted)

In a Decision[4] dated August 25, 1995, the PARAD declared the sale of the subject property between respondents as a nullity and ordered respondent DBP to execute the necessary Deed of Transfer of the parcel of land in favor of the Republic of the Philippines. It held that while the subject landholding is situated within a district classified as secondary commercial zone and its subdivision was judicially approved, the same was not duly converted to non-agricultural use as prescribed by law. Resultantly, the Register of Deeds of Naga City was ordered to cancel TCT No. 21190. The dispositive portion of the decision reads:

> WHEREFORE, judgment is hereby rendered:
>
> 1. Declaring the Deed of Absolute Sale executed by respondent Development Bank of the Philippines (DBP) in favor of co-respondent Fabian Mendez contrary to law and therefore a nullity;
>
> 2. Ordering DBP to execute the necessary Deed of Transfer in favor of the Republic of the Philippines represented by the Department of Agrarian Reform and surrender to the latter possession of subject landholding for coverage under E.O. No. 947;
>
> 3. Ordering DBP to return the purchase price of ₱1,200,000.00 to co-respondent Fabian Mendez;
>
> 4. Denying the claim for redemption and reinstatement by petitioner;
>
> 5. Ordering the Clerk of the Board, DARAB, Naga City to return to Fabian Mendez the cash bond of ₱10,000.00;
>
> 6. Dismissing all other claims for lack of merit.
>
> 7. Ordering the Register of Deeds, Naga City to cancel TCT No. 21190.
>
> SO ORDERED.[5]

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[4] *Id.* at 88-99.

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

Respondents moved for reconsideration of the aforesaid decision and argued that the parcel of land is no longer agricultural per Zoning Ordinance No. 603 adopted on December 20, 1978.

In a Resolution[6] dated February 26, 1996, the PARAD reversed its earlier ruling and declared that the parcel of land in question is duly classified and zonified as non-agricultural land in accordance with pertinent laws and guidelines.

Petitioner, thereafter, filed a Notice of Appeal with the DARAB.

In a Decision[7] dated January 25, 2000, the DARAB reversed the PARAD's ruling and held that there is a tenancy relationship between respondent DBP and petitioner as evidenced by the sharing of harvest between them. Thus, petitioner is not a mere caretaker but a *bona fide* tenant. It, however, did not sustain petitioner's claim for redemption of the subject landholding since he failed to consign with the PARAD a reasonable amount to cover the price of the land. It held as follows:

WHEREFORE, on the basis of the foregoing, the assailed Order is hereby **REVERSED** and a new one entered:

1. Declaring petitioner-appellant entitled to reinstatement to the subject landholding; and
2. Directing Fabian Mendez and all other persons in his behalf or under his authority to maintain petitioner-appellant in peaceful possession and cultivation of the subject-landholding as agricultural lessee thereof.

SO ORDERED.[8]

Respondent Mendez filed a motion for reconsideration against said decision, while petitioner filed a Petition for Review with the CA advancing the argument that the PARAD and the DARAB erred and gravely abused their discretion in denying his right of redemption of the parcel of land. In a Decision dated November 29, 2001, the CA denied petitioner's petition.

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[6] *Id*. at 116-118.

[7] *Id*. at 119-131.

[8] *Id*. at 131. (Emphasis in the original)

In a Resolution[9] dated April 26, 2002, the DARAB denied respondent Mendez's motion for reconsideration. Accordingly, respondent Mendez filed an appeal with the CA.

In a Decision dated July 9, 2009, the CA nullified and set aside the decision and resolution of the DARAB. The *fallo* reads:

> **WHEREFORE,** the foregoing premises considered, the petition is hereby **GRANTED.** Accordingly, the challenged Decision and Resolution of the DARAB, dated 25 January 2000 and 26 April 2002, respectively, are **NULLIFIED** and **SET ASIDE.** The complaint of respondent Jopson before the PARAD is **DISMISSED.**
>
> SO ORDERED.[10]

Unfazed, petitioner filed a Motion for Reconsideration. However, the same was denied in a Resolution dated February 12, 2010.

Thus, the present petition wherein petitioner raises the following issues for our resolution:

1. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW WHEN IT DISREGARDED THE SUBSTANTIAL EVIDENCE RULE BY OVERTURNING THE FINDINGS OF FACT OF THE DARAB THAT PETITIONER IS A BONAFIDE AGRICULTURAL TENANT OF THE SUBJECT PROPERTY.
2. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE PARAD AND THE DARAB HAVE NO JURISDICTION OVER THE CASE.[11]

In essence, the issues are: (1) whether petitioner is a *bona fide* tenant of the subject property, and (2) whether the PARAD and DARAB have jurisdiction over the present case.

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[9] *Id.* at 141-142.

[10] *Id.* at 30. (Emphasis in the original)

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

At the outset, it must be emphasized that in order for a tenancy agreement to arise, it is essential to establish all its indispensable elements, *viz.*: (1) the parties are the landowner and the tenant or agricultural lessee; (2) the subject matter of the relationship is an agricultural land; (3) there is consent between the parties to the relationship; (4) the purpose of the relationship is to bring about agricultural production; (5) there is personal cultivation on the part of the tenant or agricultural lessee; and (6) the harvest is shared between the landowner and the tenant or agricultural lessee. All these requisites are necessary to create a tenancy relationship, and the absence of one or more requisites will not make the alleged tenant a *de facto* tenant.[12]

In this case, however, the facts substantiating a *de jure* tenancy are missing.

First, besides petitioner's bare assertion that a tenancy relationship exists between him and respondent DBP, no other concrete proof was presented by petitioner to demonstrate the relationship of petitioner and respondent DBP as tenant and landowner. In fact, respondent DBP resolutely argued that petitioner is not a tenant but a mere caretaker of the subject landholding.

Second, the subject matter of the relationship is not an agricultural land but a commercial land. Section 3 (c) of Republic Act (R.A.) No. 6657,[13] otherwise known as the *Comprehensive Agrarian Reform Law (CARL)*, states that "an agricultural land refers to land devoted to agricultural activity as defined therein and not classified as mineral, forest, residential, commercial or industrial land."

As per Certification by the Office of the Zoning Administrator of Naga City, the subject landholding covered by TCT No. 21190 is classified as secondary commercial zone based on

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[12] *Masaquel v. Orial*, 562 Phil. 645, 653 (2007).

[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.*

Zoning Ordinance No. 603 adopted on December 20, 1978 by the City Council and approved by the National Coordinating Council for Town Planning and Zoning, Human Settlements Commission on September 24, 1980. Thus, the reclassification of the subject landholding from agricultural to commercial removes it from the ambit of agricultural land over which petitioner claims a tenancy relationship is founded.

As extensively discussed by the CA –

> Indeed, the subject landholding is no longer an agricultural land despite its being planted with *palay*. It had long been reclassified as a commercial land and it even forms part of Laura Subdivision. Whatever the landowner does to the subject landholding, like plant it with *palay*, does not convert it to an agricultural land nor divest it of its actual classification. x x x
>
> x x x x x x x x x
>
> The reclassification of the subject landholding from agricultural to non-agricultural by the City Council of Naga City through a zoning ordinance is undoubtedly binding to remove it from the coverage of the CARL. "In *Natalia Realty, Inc. v. Department of Agrarian Reform*, it was held that lands not devoted to agricultural activity are outside the coverage of CARL including lands previously converted to non-agricultural uses prior to the effectivity of CARL by government agencies other than DAR. This rule has been reiterated in a number of subsequent cases. Despite claims that the areas have been devoted for agricultural production, the Court has upheld the 'non-agricultural' classification made by the NHA over housing and resettlement projects, zoning ordinances passed by local government units classifying residential areas, and certifications over watershed areas issued by the Department of Environment and Natural Resources (DENR)." In addition, the power of the City Council of Naga City to adopt zoning ordinances is validly recognized under the law. x x x
>
> x x x x x x x x x
>
> Furthermore, the reclassification of the subject landholding does not need a conversion clearance from the DAR for it to be legal since such reclassification occurred prior to 15 June 1988, the effectivity of R.A. No. 6657. As it is, only land classifications or

reclassifications which occur from 15 June 1988 onwards require conversion clearance from the DAR. x x x[14]

Third, the essential element of consent is absent. In the present case, no proof was presented that respondent DBP recognized or hired petitioner as its legitimate tenant. Besides petitioner's self-serving assertions that he succeeded his father in tilling the subject landholding, no other concrete evidence was presented to prove consent of the landowner.

Anent the second issue, we rule that the PARAD and the DARAB have no jurisdiction over petitioner's claim.

Specifically, the PARAD and the DARAB have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the CARL under R.A. No. 6657. Thus, the jurisdiction of the PARAD and the DARAB is only limited to cases involving agrarian disputes, including incidents arising from the implementation of agrarian laws.[15] Section 3 (d) of R.A. No. 6657 defines an agrarian dispute in this wise:

x x x x x x x x x

(d) Agrarian dispute refers to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired under R.A. 6657 and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee.

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[14] *Rollo*, pp. 26-27. (Citations omitted)

[15] *Heirs of Candido del Rosario v. Del Rosario*, G.R. No. 181548, June 20, 2012, 674 SCRA 180, 190-191.

From the foregoing, it is clear that no agrarian dispute exists in the instant case, since what is involved is not an agricultural land and no tenancy relationship exists between petitioner and respondent DBP.

As aptly held by the CA, for the DARAB to have jurisdiction over a case, there must be a tenancy relationship between the parties. Perforce, the ruling of the PARAD, as well as the decision and resolution of the DARAB which were rendered without jurisdiction, are without force and effect.

WHEREFORE, premises considered, the instant petition is **DENIED**. The Decision dated July 9, 2009 and Resolution dated February 12, 2010 of the Court of Appeals, in CA-G.R. SP No. 70781, are hereby **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 191722. December 11, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GERRY SABANGAN and NOLI BORNASAL,** *accused,* **GERRY SABANGAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; MURDER; ELEMENTS.— Murder is defined and penalized under Article 248 of the Revised Penal Code. x x x The essential elements of murder, which the prosecution must prove beyond reasonable doubt, are: 1. That a person was killed. 2. That the accused killed him. 3. That the killing was

attended by *any* of the qualifying circumstances mentioned in Art. 248. 4. The killing is not parricide or infanticide.

2. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY.— Treachery exists when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. The essence of treachery is the sudden and unexpected attack by the aggressor on unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victims.

3. ID.; ID.; ID.; EVIDENT PREMEDITATION; REQUISITES.— In order to be appreciated, the circumstance must not merely be premeditation; it must be "evident premeditation." To warrant a finding of evident premeditation, the prosecution must establish the confluence of the following requisites: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act. Evident premeditation, like other circumstances that would qualify a killing as murder, must be established by clear and positive evidence showing the planning and the preparation stages prior to the killing. Without such evidence, mere presumptions and inferences, no matter how logical and probable, will not suffice.

4. REMEDIAL LAW; EVIDENCE; OUT OF COURT IDENTIFICATION OF ACCUSED; CASE OF *PEOPLE V. TEEHANKEE, JR.* INSTRUCTIVE ON THE CONDUCT OF AND TEST THEREFOR.— The following ruling of the Court in *People v. Teehankee, Jr.* is instructive on the conduct of and test for a valid out–of-court identification: Out-of-court identification is conducted by the police in various ways. It is done thru **show-ups** where the suspect alone is brought face to face with the witness for identification. It is done thru **mug shots** where photographs are shown to the witness to identify the suspect. It is also done thru **line-ups** where a witness identifies the suspect from a group of persons lined up for the

purpose. Since corruption of **out-of-court** identification contaminates the integrity of **in-court** identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. In resolving the admissibility of and relying on out-of-court identification of suspects, **courts have adopted the totality of circumstances test** where they consider the following factors, *viz*: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.

5. CRIMINAL LAW; MURDER; PENALTY AND DAMAGES.— With the prohibition against the imposition of the death penalty by Republic Act No. 9346, the only imposable penalty for the crime of murder is *reclusion perpetua*. The Court adds that accused-appellant shall not be eligible for parole. Again, pursuant to Section 3 of Republic Act No. 9346, "[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. 4180, otherwise known as the Indeterminate Sentence Law, as amended." When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex-delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages, in lieu of actual damages. Jurisprudence has decreed that the award of civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime, while moral damages are mandatory in cases of murder, without need of allegation and proof other than the death of the victim. Exemplary or corrective damages, in turn, are imposed by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages as provided by Article 2229 of the Civil Code. The grant of actual damages in the total amount of ₱106,354.00, representing funeral and burial expenses, is proper being duly supported by receipts. The award of moral damages in the amount of ₱50,000.00 is also correct pursuant

to recent rulings of the Court. However, the Court increases the awards of civil indemnity and exemplary damages to ₱75,000.00 and ₱30,000.00, respectively, in accordance with the latest 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.*:

On appeal is the Decision[1] dated November 20, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00329-MIN, which affirmed with modification the Decision[2] dated November 25, 2004 of the Regional Trial Court (RTC), Branch 16, City of Davao, in Criminal Case No. 46,888-01. While the appellate court sustained the conviction of accused-appellant Gerry Sabangan (Sabangan) for the murder of Barangay Captain Abe Felonia (Felonia), it acquitted the other accused, Noli Bornasal (Bornasal), of the same crime.

When the Information was filed before the RTC on February 21, 2000, only Sabangan was identified by the police and Bornasal, who was still at-large, was referred to therein as "John Doe."

During his arraignment on April 14, 2000, Sabangan pleaded not guilty to the crime charged.[3]

On June 10, 2002, the RTC, acting upon the motion of the prosecution, issued an Order[4] for the inclusion of Bornasal's

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[1] *Rollo*, pp. 5-29; penned by Associate Justice Dante Q. Bueser with Associate Justices Romulo V. Borja and Elihu A. Ybañez, concurring.

[2] CA *rollo*, pp. 21-33; penned by Presiding Judge Emmanuel C. Carpio.

[3] Records, p. 30.

[4] *Id.* at 197.

name in the Information and the issuance of a warrant for his arrest. Bornasal was arrested on June 13, 2002,[5] and arraigned on July 17, 2002, during which, he likewise pleaded not guilty to the crime charged.[6]

No stipulation of facts or plea bargaining agreement was reached by the parties at the pre-trial conference held on August 28, 2002.[7] However, before the presentation of evidence before the RTC, the defense expressed its willingness to stipulate the fact that Felonia was shot to death on December 27, 1999.[8]

The prosecution presented the testimonies of Eden Allado (Allado)[9] and Flora Navales (Navales),[10] who actually saw Sabangan shoot Felonia to death; Marlon Cordero (Cordero),[11] who saw Sabangan and Bornasal running away from the vicinity immediately after the shooting incident; Roberto T. Badian (Badian),[12] the Chief of Police of Kidapawan City in 1999, who investigated the shooting of Felonia; and Helen Felonia Galladora (Galladora),[13] Felonia's daughter, who testified on the damages suffered by Felonia's heirs.

The prosecution likewise presented documentary evidence which consisted of Galladora's Sworn Statement dated February 11, 2000;[14] Police Chief Badian's Affidavit dated February 11, 2000;[15] Allado's Sworn Statements dated February 7 and 22,

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[5] *Id.* at 198-200.

[6] *Id.* at 203-204.

[7] *Id.* at 207-208.

[8] TSN, January 27, 2003, p. 3.

[9] TSN, January 29, 2003.

[10] *Id*.

[11] TSN, January 30, 2003.

[12] TSN, January 28, 2003.

[13] TSN, January 27 and 31, 2003.

[14] Records, pp. 256-257; Exhibit A.

[15] *Id.* at 258; Exhibit B.

2000;[16] Allado's sketch of the crime scene;[17] Navales's Sworn Statements dated February 9 and 18, 2000;[18] Cordero's Sworn Statements dated February 4 and 22, 2000, and another one dated June 7, 2002;[19] Cordero's sketch of the vicinity of the crime scene;[20] the Official Receipt for the funeral services for Felonia;[21] receipts from a hardware and grocery store;[22] and two (2) pieces of paper containing handwritten additional funeral expenses.[23]

The RTC summarized the prosecution's evidence as follows:

Private complainant **Helen Felonia Galladora**, on January 27, 2003, testified as follows: She is one of the daughters of ABE FELONIA who was gunned down on December 27, 1999 at about 1:30 p.m. at Mega Market, Kidapawan City; her father was the *barangay* captain of Duroloman, Arakan, Cotabato for more than twenty years. She was at Arakan on December 27, 1999 when she learned about the death of her father from a certain Efren Balecer. She instructed her husband, brother and sisters to verify the news. She later came to know about the identity of the assailant from the sworn statements of Flora Navales, Eden Allado, Major Badia and Marlon Cordero. The death of her father shocked the family specially her mother whose blood pressure worsened for which she prays for damages of two million pesos. As a consequence of the death of their father, they spent ₱68,000.00 for the coffin. She identified her sworn statement as Exhibit "[A]". (TSN 1/27/2003, pages 2-11).

On cross-examination, she admits having stated in her affidavits that: Right after the shooting of my father I do not know the name of the suspect but later on because I know the name of the suspect based on the Sworn Statements given by the witnesses.

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[16] *Id*. at 259-261; Exhibit C.

[17] *Id*. at 262; Exhibit D.

[18] *Id*. at 263-265; Exhibit E.

[19] *Id*. at 266-269; Exhibit F.

[20] *Id*. at 270; Exhibit G.

[21] *Id*. at 271; Exhibit H.

[22] *Id*. at 272-273; Exhibits I and J.

[23] *Id*. at 274-275; Exhibits K and L.

Roberto Badian, the Chief of Police of Kidapawan in 1999 says that he conducted an investigation right after the fatal shooting of Duroloman Barangay Captain Abe Felonia and came up with the information from bystanders and witnesses that: the perpetrators ran towards the lower portion of the public market where the clutch bag of victim was recovered; Gerry Sabangan who has a pending robbery case in Kidapawan but out on bail, was one of the suspects. He identified the witnesses to the crime as Flora Navales, Eden Allado, Marlon. He learned from Navales, Allado and Marlon that they can directly identify the accused if seen again. Accused after being spotted in Antipaz was invited to the police safehouse where the three witnesses (Navales, Allado and Marlon) positively identified and pointed to accused as [the] triggerman who shot Abe Felonia. Accused was arrested and locked up in jail and a case for murder against accused was initiated by the police. He identified his Affidavit as Exhibit "[B]". He identified accused in open court as the same person who was pointed to by the witnesses. (TSN, Jan. 28, 2003, pages 17-25).

On cross-examination, he disclosed that the interview in the course of investigation is different from the taking of sworn statements of witnesses: Flora Navales and Edith Allado's sworn statements were taken on February 7, 2000 while the supplemental sworn statements were taken on February 18, 2000; Marlon's sworn statement was taken on February 3, 2000. (TSN, Jan. 28, 2003, page 29).

Eden Allado says that she was inside the store of Flora Navales at Mega Market, Kidapawan early afternoon about 1:30 p.m. on December 27, 1999 waiting for her husband Loreto Allado. Inside the store were Flora Navales, Abe Felonia, the storekeeper and another person. She knows Abe Felonia as a long time *barangay* captain and even greeted him. While exchanging pleasantries side by side together with Felonia, she noticed a "customer" went inside the store. Then she heard Flora shouting "ATE EDEN" apparently in reaction to what Flora saw of the "customer" as positioned at the back of Felonia and pulling a gun with which he used to shoot three times at the back of the head of Felonia.

Allado saw Felonia fell down right beside her and she shouted for help. The "customer" grabbed the bag of Felonia. She tried to grapple with the bag but she was too small to give a match to the "customer" who even pointed the gun at her as he ran away towards Serquina Store. She describes the "customer" as wearing a gray brown

jacket. She recognized the "customer" who was later identified as accused Gerry Sabangan because when she tried to pull the bag from him, she saw the face and it registered in her mind. On February 7, 2000, she was shown several pictures, one of which she recognized as the same person who shot Abe Felonia. She finally personally saw accused Gerry Sabangan for the second time on February 18, 2000 near a police outpost in Kidapawan. She identified accused Gerry Sabangan in open court. She identified her affidavits as Exhibits "[C]" and "[C-1]".

On cross-examination, she disclosed that Abe Felonia is a well-known personality with good reputation and a long time *barangay* captain in Barangay Duroluman, Arakan, Cotabato. She describes Navales store as selling school supplies and is located in front the jeep terminal for Arakan. She estimates the size of the store as half of the courtroom or 4x6 meters with 4 meters open entrance, more or less. She entered the store between 1:00 to 1:30 p.m. to wait for her husband; Flora Navales who was doing something [waved] at her. Abe Felonia came in to buy commodities and they had brief conversation. She thought accused Gerry Sabangan was a customer. After the shooting took place she shouted for help as Abe Felonia sprawled to the ground bathed with blood. Bystanders brought Felonia to the Kidapawan Hospital where he expired. She followed at the hospital pleading to the doctors to save the life of Felonia. Later she went home to change her clothes smeared with blood from Felonia. She was rattled, nervous with the incident that she did not leave their house.

Police authorities tried to interview her a day or two after the shooting incident but she pleaded for time to recover from the traumatic and tragic event. She could not sleep and had to see a doctor. She was afraid to give her statement for fear that if she did, the killer will return to kill her. However with conscience bothering her, she finally decided to come out and declare what she saw as an eyewitness, by executing sworn statements about the December 27, 1999 shooting incident. (TSN, Jan. 29, 2003, pages 55-58 and 62).

She further disclosed that she was inside a tinted jeep when she was asked by the police if she recognized accused Gerry Sabangan and she said she recognized accused Gerry Sabangan because she saw him shot Felonia. (TSN, Jan. 29, 2003, page 60).

Flora Navales says she owns a school supplies store at Metro Mega Market, Kidapawan City. While tending the store at about 1:30 p.m. on December 27, 1999, together with a helper, she saw inside the establishment Ate Eden Allado, a young man and an old man "*tigulang*". Said old man who intended to buy ballpen was talking to Eden. Then she noticed a young man coming in and out the store, asking the price of a binder which enabled her to see the face of the young man (later identified as accused Gerry Sabangan). Suddenly she saw accused Gerry Sabangan pull a revolver from the left waist and pointed it to the old man. Sensing danger she raised her hands and shouted "Ate Eden" to put Eden on guard. Three gunshots rang from the revolver of Gerry Sabangan and at a distance of 1 ½ meters she saw the old man fell down. In short, she saw accused Gerry Sabangan shot the old man three times: the first shot aimed at the head while the succeeding shots aimed at the back. Her Ate Eden was shouting and asking for help. The old man was later identified as Abe Felonia. Furthermore, she saw accused Gerry Sabangan picked up the bag of Abe Felonia and ran outside the store towards Serquina Store. (TSN, Jan. 29, 2003, pages 64-71).

Navales says that upon the invitation of a certain Sir Salmorin, she was able to see and recognized accused Gerry Sabangan at a police outpost in Kidapawan as the same person who shot Abe Felonia. She executed two sworn statements in relation to the case dated February 9, 2000 and February 18, 2000. She identified accused in open court, saying that "I recognize the face and I remember he has a mole." (TSN, Jan. 29, 2003, pages 71-73).

On cross-examination, Navales says that when attending her store she would ask the needs of customers who enter the store she is tending. She saw accused Gerry Sabangan passed by the counter and moved around the open shelves for notebooks at the middle of the store before he pulled out his revolver with which he shot Abe Felonia at the back. Felonia was side by side with Allado. Abe Felonia was rushed to the hospital and then policemen arrived. She was nervous such that all she could manage to say to police investigators was "somebody was shot and I did not want any trouble." Right after the incident she did not want to be investigated about the crime; she initially did not cooperate despite the repeated urgings of the police until her cousins told her to cooperate and tell what she witnessed. After identifying accused Gerry Sabangan through several pictures, she was invited by the police on October 18, 2000 if he can identify

a suspect who was at a police outpost and she identified that suspect (Gerry Sabangan) as the same person who shot Abe Felonia. (TSN, Jan. 29, 2003, pages 73-85).

Marlon Cordero says that he is a street sweeper of Kidapawan City. While doing his chores about 1:30 p.m. on December 27, 1999 at the vicinity of Serquina Store, Mega Market, he heard gunshots from the Public Terminal for Arakan. He observed people running and saw two guys, one after the other, fleeing from the terminal running towards his direction. He described both guys as wearing jacket: the first one wearing jacket was armed with a gun and even bumped him, and in fact, had an eye to eye contact. The second person in chaleco-type jacket was also armed with a gun and asked him where the first guy ran. He pointed to Talisay and the second guy followed the first guy. Later he identified the first guy through pictures from the police and saw in person for the second time same guy at a police outpost in Kidapawan on February 18, 2000. He saw in person for the second time the second guy while detained at the Kidapawan police station sometime June 2002. He executed three (3) affidavits identified as Exhibits "[F]", "[F-1]" and "[F-2]". In open court, he positively pointed to accused Jerry Sabangan a[s] the guy who bumped him and accused Noli Bornasal as the second guy who asked him where the first guy ran. (TSN, Jan. 30, 2003, pages 90-101).

On cross-examination, Mr. Cordero disclosed that he was about 15-20 meters away from the terminal where the crime took place, which is on left adjacent side of Serquina Store (Exhibit "G"). When bumped, he stared at accused Sabangan who quickly resumed running. He recalls Sabangan as wearing an old jacket. He went to a nearby Malaluan Clinic and learned that a *barangay* captain was shot to death. For fear of his life, he initially did not cooperate but eventually told the police about what he witnessed about the two persons by executing a sworn statement on February 4, 2000. On February 18, 2000, upon invitation of the police, he went to the police station where he saw an apprehended suspect whom he identified and pointed to as the same person, with a mole on the right face, who bumped him after the shooting incident on December 27, 1999. (TSN, Jan. 30, 2003, pages 101-115).

Private Complainant **Mrs. Galladora** was recalled on the witness stand on January 31, 2003 and presented the following documents for expenses incurred as a consequence of the death of her father:

Exhibit "H" – Official Receipt No. 403 issued by Somo Funeral Homes dated 09 May 2000 for the sum of ₱68,000.00 for the embalming, coffin and services on the corpse of Abe Felonia.

Exhibit "I" – Original Cash Invoice No. 5750 issued by Espinosa's Hardware & Construction Supply for expenses for the tomb ₱10,650.00.

Exhibit "J" – Cash Invoice No. 1192 issued by F. Abellana Sari-sari Store for grocery expenses for refreshments on the wake of the latter in the amount of Twenty-Seven Thousand Seven Hundred Fourteen Pesos (₱27,714.00).

Exhibit "K" – Receipt issued by Regaspi Store dated 30 December 2000 for incurred expenses for the rice during the wake of the latter which amounted to Twenty[-]Three Thousand Fifty Pesos (₱23,050.00).

Exhibit "L" – Summary of the total expenses incurred by the family of the victim Abe Felonia who was shot to death on 27 December 1999 – Two Hundred Thirty-Four Thousand Eighty Pesos (₱234,080.00).

Finally, Mrs. Galladora committed to pay counsel the sum of ₱100,000.00 as and for attorney's fees.[24] (Emphases supplied.)

During its turn, the defense called to the witness stand Sabangan and Bornasal,[25] who both denied any involvement with Felonia's death; Eddie Reyes (Eddie), Jesus Reyes (Jesus),[26] Carmelito Reyes (Carmelito), Romeo de Guzman (De Guzman), Ronald Reyes (Ronald),[27] and Mayette Orot (Mayette),[28] Sabangan's relatives and neighbors in Barangay Luhong, Antipas, Cotabato, who corroborated Sabangan's alibi; and Andres Comeki (Comeki),[29] Bornasal's co-worker, who

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

[25] TSN, November 6, 2003.

[26] TSN, October 6, 2003.

[27] TSN, November 4, 2003.

[28] TSN, March 11, 2004.

[29] TSN, July 15, 2004.

supported Bornasal's assertions. The documentary exhibits for the defense consisted of two Certifications issued by Carmelito, the Barangay Captain of Luhong, Antipas, Cotabato.[30]

The RTC gave the following rundown of the evidence for the defense:

> **Eddie Reyes** is a longtime resident of Luhong, Antipas, Cotabato and the brother of the mother of accused [G]erry Sabangan. He claims that on December 27, 1999, he was in Luhong together with accused [G]erry Sabangan, Jesus Reyes, [Mayette] Orot, and others from 8:00 a.m. to 5:00 p.m., preparing a makeshift to be used for the wedding of a relative Ricky Castillo. Luhong is 40 kilometers away from Kidapawan City. (TSN, October 6, 2003, pages 3-5).
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> On cross-examination, Eddie Reyes admitted he did not execute any affidavit to support the innocence of accused Sabangan; in fact he found it unnecessary and did not even make a statement before the Kidapawan police precinct where he visited once. He failed to produce the marriage contract of his relative Ricky Castillo. During his testimony, this Court observed that "a woman in black blouse (Semperia Sabangan) is making signal to the witness." (TSN, October 6, 2003, pages 5-8).
>
> **Jesus Reyes** also a long time resident of Luhong is the first cousin of the mother of accused. He corroborated the direct testimony of Eddie Reyes about the alleged presence of accused Sabangan at Luhong the whole day of December 27, 1999. He knew about the arrest of Sabangan but he did not bother to go to the police nor execute an affidavit to support the innocence of accused Sabangan. The wedding of the relative took place on December 30, 1999 but did not bring the contract of marriage. (TSN, Oct. 6, 2003, pages 12-18).
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> **Carmelito Reyes** the barangay chairman of Brgy. Luhong, Antipas, North Cotabato from 1998 to 2002 claims that on December 27, 1999 the whole day, he was in Brgy. Luhong and at that time he saw the accused [G]erry Sabangan helping the preparation of the banquet for the wedding of their relative, for which he issued a certification to that effect dated February 26, 2000 and marked as Exhibit "2". He further says that accused [G]erry Sabangan was arrested by

[30] Records, pp. 327-328; Exhibits 1 and 2.

Kidapawan authorities without Warrant and without any coordination from him as Brgy. Official, per certification he issued dated April 23, 2001 and marked as Exhibit "1".

But he admitted that: (1) he has [no] personal knowledge where, how and when accused Sabangan was arrested by the police; (2) did not execute any affidavit to support the foregoing narrations and (3) he was requested to testify by the family of accused and his constituents. (TSN, Nov. 4, 2003, pages 4-13).

Romeo de Guzman merely corroborated the testimonies of the previous defense witnesses. He admitted: (1) that he did not go to the police to question why accused [G]erry Sabangan was arrested; (2) he was requested to testify by the mother of accused Sabangan (3) the makeshift was done not in Barangay Luhong but in an adjacent barrio Barangay Greenhills, one kilometer away. (TSN, Nov. 4, 2003, pages 17-22).

Ronald Reyes is another brother of the mother of accused Sabangan and whose house is adjacent to the house of said accused. He says that about 1:30 p.m. on December 27, 1999, he took lunch together with accused Sabangan and Carmelita Reyes at the big house; thereafter they joined the preparation of bamboo materials which were transported to a neighboring barrio Greenhills the following days. He saw two policemen arrest accused Sabangan at his house. Sabangan was not handcuffed and was brought by the police on board a motorcycle. He admitted that despite his knowledge about the arrest of Gerry Sabangan, he did not report to the police nor execute an affidavit about accused Sabangan's presence in Luhong the whole day of December 27, 1999, as he find the same unnecessary. (TSN, Nov. 4, 2003, pages 23-29).

Accused **Gerry Sabangan** claims innocence saying that on December 27, 1999, he was in Luhong participating in the preparation of materials to be used in the makeshift for the wedding of a relative Ricky Castillo which took place on December 29, 1999. During the entire period from December 1999 to February 17, 2000, he was in Luhong, Antipaz. While irrigating his farm early morning on February 17, 2000 his uncle Silverio Orot who is a police officer and a comrade requested him to do an errand. While on their way to Kidapawan, Orot stopped the vehicle they were riding on and a group of about 10 policemen accosted him as accused in the killing of Abe Felonia. In spite protest and resistance, he was handcuffed

and forcibly brought to Kidapawan Police Precinct. Some relatives visited him in jail. After about one year, he met co-accused Noli Bornasal in jail. He did not request his relative to execute affidavit in support of his innocence. He left the hiring of lawyer to his mother. (TSN, Nov. 6, 2003, pages 2-14).

When cross-examined, Sabangan admits that he has gone to Kidapawan several times and is familiar with the place like the Kidapawan Market and the jeep terminal. It takes an hour to ride from Luhong to Kidapawan. He did not bother to tell friends and relatives to execute affidavits for his defense. He does not know as he learned about the identity of the victim only when he was in jail. (TSN, Nov. 6, 2003, pages 14-18).

Accused **Noli Bornasal** also claims innocence saying that he was in Arakan Valley the whole day of December 27, 1999 tending the store of his sister. He was arrested by the Police on June 20, 2002 while buying commodities in Kidapawan, and was brought to the City Hall for his involvement in "*shabu*" and the killing of Abe Felonia. He knows Abe Felonia as the *barangay* captain of Duroloman, Arakan Valley but denies participation i[n] the killing. He denies knowing accused Gerry Sabangan. (TSN, Nov. 6, 2003, pages 21-24).

When cross-examined: QUESTION – "If a person would ask you to identify for him, you would be glad to do that, because you know and you could identify Abe Felonia", ANSWER – "Yes sir, that is the *barangay* captain." Moreover, he admits about his familiarity with Kidapawan Market, including terminals where he goes when buying commodities. It takes three-hour ride from Arakan Valley to Kidapawan. He did not request his sister and father who are aware of his detention to execute affidavits to support his claim of non-participation of the crime; in fact he did not request them to testify for him. He learned about the death of Abe Felonia in the afternoon of December 27, 1999 from passengers coming from Kidapawan. (TSN, Nov. 6, 2003, pages 25-30).

Mayette Orot is the daughter of policeman Silverio Orot; she and accused Sabangan are first cousins as their mothers are sisters. She attended the 1999 Christmas reunion at the Sabangan residence in Luhong and stayed thereat until December 28, 1999. On December 27, 1999, she took lunch with accused and saw him still at the basketball court at 3:00 where relatives are preparing for the

banquet of the wedding of a cousin. She visited accused Sabangan at the police precinct but did not tell the police about the presence of accused in Luhong on December 27, 1999. (TSN, March 11, 2004, pages 2-12).

Andres Comeki testified for accused Noli Bornasal. He says that the whole day of December 27, 1999 he and accused Noli Bornasal were tending the grocery store of Edna Agana at Poblacion Arakan Valley, Cotabato; on that day they were just inside the store attending to customer and they never went out of the said store or go out to any other place. He learned about the arrest of Noli Bornasal in 2002 but did not execute any affidavit in defense of Noli Bornasal; in fact, he considers an affidavit unnecessary as nobody requested him to do so. (TSN, July 15, 2004, pages 2-9).[31] (Emphases supplied.)

The RTC promulgated its Decision on November 25, 2004 finding both Sabangan and Bornasal guilty beyond reasonable doubt of the murder of Felonia. The trial court sentenced them thus:

WHEREFORE, finding sufficient evidence to prove the guilt of accused beyond reasonable doubt, this Court hereby sentences both accused GERRY SABANGAN and NOLI BORNASAL to suffer the penalty of *RECLUSION PERPETUA*.

Both accused are further sentenced to pay and indemnify the heirs of Abe Felonia the following sums:

1)	₱50,000.00	civil indemnity;
2)	₱200,000.00	moral damages;
3)	₱234,080.00	actual damages;
4)	₱50,000.00	exemplary damages;
5)	₱50,000.00	attorney's fees.[32]

Sabangan and Bornasal directly appealed the RTC judgment to this Court,[33] but in a Resolution[34] dated August 8, 2005, the

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[31] CA *rollo*, pp. 27-29.

[32] *Id*. at 33.

[33] *Id*. at 34.

[34] *Id*. at 36.

Court, in accordance with its ruling in *People v. Mateo*,[35] referred the case to the Court of Appeals for appropriate action and disposition.

In their Brief[36] before the Court of Appeals, Sabangan and Bornasal, represented by the Public Attorney's Office (PAO), assigned the following errors on the part of the RTC in rendering its judgment of conviction:

I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING BOTH ACCUSED OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

II

THE COURT *A QUO* GRAVELY ERRED IN ORDERING BOTH ACCUSED TO PAY ₱234,080.00 AS ACTUAL DAMAGES.[37]

Sabangan reiterated his alibi that at around 1:30 in the afternoon of December 27, 1999, he was at Barangay Luhong, Antipas, Cotabato, and was helping several relatives prepare a makeshift structure to be used for the wedding ceremony of another relative, Ricky Castillo (Castillo), on December 29, 1999. Therefore, it was physically impossible for him, on the same date and time, to be in Kidapawan City when Felonia was killed, considering that Kidapawan City was approximately 40 kilometers away from Barangay Luhong, Antipas, Cotabato.

Bornasal argued that no evidence whatsoever was presented to prove his actual participation in the killing of Felonia. Aside from the testimony of prosecution witness Cordero, who saw Bornasal running behind Sabangan away from the crime scene, no other circumstantial evidence was presented to establish with moral certainty the alleged conspiracy between Sabangan and Bornasal to kill Felonia.

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

[36] CA *rollo*, pp. 48-64.

[37] *Id*. at 50.

In the alternative, Sabangan and Bornasal asserted that the award of actual damages in the total sum of ₱234,080.00 was excessive. Only the following claims were sufficiently proven during trial: ₱68,000.00 for Felonia's coffin, embalming, and other funeral services; ₱27,714.00 for the food for guests during Felonia's wake; and ₱10,650.00 for the construction of Felonia's tomb.

The People, represented by the Office of the Solicitor General, in its Brief,[38] insisted that the prosecution had proven beyond reasonable doubt the guilt of Sabangan and Bornasal for the murder of Felonia. Prosecution witnesses Allado and Navales, who were present at the time and place of Felonia's shooting, positively identified Sabangan as the shooter. Prosecution witness Cordero was able to establish the existence of conspiracy when he testified that Bornasal, also armed with a gun, was running right behind Sabangan away from the crime scene.

In its Decision dated November 20, 2009, the Court of Appeals sustained the conviction of Sabangan, but acquitted Bornasal on the ground of reasonable doubt, and modified the award of damages. The dispositive portion of the judgment of the appellate court reads:

WHEREFORE, premises considered, the instant appeal is PARTLY GRANTED. The assailed November 25, 200[4] Decision of the Regional Trial Court (RTC), 11th Judicial Region, Branch 16, Davao City, in Criminal Case No. 46,888-01, finding appellant Gerry Sabangan guilty beyond reasonable doubt of murder is hereby **AFFIRMED with modification**, in that appellant is ordered to pay the heirs of the late Abe Felonia the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as exemplary damages and ₱106,354.00 as actual damages.

On reasonable doubt, appellant Noli Bornasal is hereby **ACQUITTED** of the crime charged and his immediate **RELEASE** from custody is hereby ordered, unless he is being held for some other lawful cause.

The Superintendent of the Davao Penal Colony, Panabo City, Davao del Norte is ORDERED to implement this Decision forthwith

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[38] *Id*. at 80-110.

and to INFORM this Court, within five (5) days from receipt hereof of the date appellant Noli Bornasal was actually released from confinement.[39]

Hence, the present appeal by Sabangan.

The People manifested that it had already exhausted its arguments before the Court of Appeals, hence, it will no longer file any supplemental brief.[40]

Sabangan filed a Supplemental Brief[41] in which he protested that the manner by which the investigating police officers conducted his out-of-court identification by the witnesses was grossly suggestive. Sabangan averred that he was made to sit outside a police outpost, while the police officers fetched the witnesses from their homes and boarded said witnesses into a heavily tinted vehicle, which passed by the police outpost where Sabangan was. The police officers then asked the witnesses to confirm whether the man sitting outside the police outpost was the one who shot Felonia. Such manner of identification allegedly planted already in the witnesses' minds that Sabangan was indeed Felonia's assailant and was, therefore, highly unreliable, if not inadmissible in evidence.

The appeal is unmeritorious. The Court sustains Sabangan's conviction for Felonia's murder.

Murder is defined and penalized under Article 248 of the Revised Penal Code, as amended:

ART. 248. *Murder*. – Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With **treachery**, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

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[39] *Rollo*, p. 28.

[40] *Id*. at 39-43.

[41] *Id*. at 51-56.

2. In consideration of a price, reward, or promise;
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;
5. With evident premeditation;
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (Emphasis supplied.)

The essential elements of murder, which the prosecution must prove beyond reasonable doubt, are:

1. That a person was killed.
2. That the accused killed him.
3. That the killing was attended by *any* of the qualifying circumstances mentioned in Art. 248.
4. The killing is not parricide or infanticide.[42] (Citation omitted.)

The totality of the evidence for the prosecution against Sabangan establishes with moral certainty all the essential elements of the crime of murder qualified by treachery.

It was already stipulated by the parties, even prior to trial, that Felonia was shot to death at around 1:30 in the afternoon on December 27, 1999 in Kidapawan City, Cotabato.

Prosecution witnesses Allado and Navales, who were present at the time and place of the shooting, positively identified Sabangan as the one who shot Felonia. Allado and Navales, together with Felonia, were all inside Navales's Mega Market in the early afternoon of December 27, 1999. The store is merely

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[42] *People v. De la Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 746.

four by six meters big. Navales noticed Sabangan as the latter came in and out of the store at least three times before actually shooting Felonia. Navales also had a clear view of Sabangan's face as she was facing Allado and Felonia, who were standing side by side, when Sabangan stepped behind the latter two, pulled out a gun, and aimed it at the back of Felonia's head. Allado, for her part, came face to face with Sabangan when Felonia fell down after being shot three times, and Sabangan grabbed Felonia's bag. Allado grappled with Sabangan for Felonia's bag for a moment until Sabangan was able to get hold of the bag away and run out of the store.

The killing of Felonia by Sabangan was qualified by treachery.

Treachery exists when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[43] The essence of treachery is the sudden and unexpected attack by the aggressor on unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victims.[44]

In this case, Felonia was at a store, chatting with Allado. He was unarmed with his guard down. Sabangan went in and out of the store, around three times, apparently waiting for the perfect opportunity to commit the crime. When he saw his chance, Sabangan positioned himself behind the unsuspecting Felonia, suddenly brought out his gun, and without the slightest provocation on Felonia's part, shot the latter once in the head and twice in the back. Sabangan clearly employed treachery in killing Felonia. Sabangan's attack on Felonia was sudden and unexpected, the manner of which was deliberately adopted to give Felonia little or no chance at all to defend himself or retaliate.

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[43] Paragraph 16, Article 14, Revised Penal Code, as amended.

[44] *People v. Gutierrez*, G.R. No. 188602, February 4, 2010, 611 SCRA 633, 644.

The Court though does not find convincing proof of evident premeditation.

In order to be appreciated, the circumstance must not merely be premeditation; it must be "evident premeditation."[45] To warrant a finding of evident premeditation, the prosecution must establish the confluence of the following requisites: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.[46] Evident premeditation, like other circumstances that would qualify a killing as murder, must be established by clear and positive evidence showing the planning and the preparation stages prior to the killing. Without such evidence, mere presumptions and inferences, no matter how logical and probable, will not suffice.[47]

The prosecution's evidence herein pertained merely to the actual commission by Sabangan of the crime. It did not submit any proof that Sabangan, at some prior time, determined to kill Felonia; that Sabangan performed an act manifestly indicating that he clung to his determination to kill Felonia; and that there was sufficient interval of time between his determination and execution which allowed Sabangan to reflect upon the consequences of his act.

Finally, since Felonia and Sabangan were unrelated, the killing of Felonia by Sabangan would not qualify as parricide or infanticide.

There is no cogent reason for the Court to overturn the credence and evidentiary value accorded by both the RTC and the Court of Appeals to the positive identification of Sabangan as Felonia's assailant by the disinterested witnesses of the prosecution, rather than Sabangan's alibi, corroborated by his

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[45] *People v. Torejas*, 150 Phil. 179, 195-196 (1972).

[46] *People v. Tigle*, 465 Phil. 368, 382-383 (2004).

[47] *People v. Aytalin*, 411 Phil. 863, 879 (2001).

relatives, that he was at some other place at the time of the commission of the crime.

As the trial court correctly pointed out:

> Alibi is a telltale sign of weak defense and not an explanation of innocence.
>
> In order to give credence to the defense of alibi, it must not only appear that the accused interposing the same was at some other place but also that it was physically impossible for him to be at the scene of the crime at the time of its commission.
>
> In the case at bench, it was established that [the] travel time from Luhong to Kidapawan City is only about an hour. As such, it was not physically impossible for accused Gerry Sabangan to travel from Luhong to Kidapawan City, the place where the crime was committed, simply because you can reach Kidapawan for only an hour by riding on a Jeepney from Luhong.
>
> Moreover, Sabangan's witnesses are mostly his relatives, friends and neighbors who are prone to concoct and fabricate evidence. x x x.
>
> The defense of alibi may not prosper if it is established mainly by the accused themselves and their relatives, and not by credible persons. For against their positive identification by the prosecution witnesses the appellant's alibi, which constitutes the sum of their defenses, became weak.[48] (Citations omitted.)

The appellate court aptly added that:

> The alibi resorted to by appellant is worthless in the face of the positive identification made by reliable prosecution eyewitnesses who have not been found to have any reason or motive to falsely testify but whose only motive can well be to bring before the bar of justice the person who committed the crime. Appellant's alibi that he was in Barangay Luhong cannot be accepted since it was not impossible for him to have left the said place after taking lunch which is usually 12:00 noon and perpetrated the crime at 1:30 in the afternoon.
>
> x x x x x x x x x

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

Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.

For the defense of alibi to prosper, it must be shown with clear and convincing evidence that at the time of the commission of the crime charged, the accused is in a place other than the *situs* of the crime such that it was physically impossible for him to have been at the *situs criminis* when the crime was committed.[49] (Citations omitted.)

Contrary to Sabangan's contention, there appears no irregularity in the conduct by the investigating police officers of the out-of-court identification of Sabangan by the witnesses.

The following ruling of the Court in *People v. Teehankee, Jr.*[50] is instructive on the conduct of and test for a valid out-of-court identification:

Out-of-court identification is conducted by the police in various ways. It is done thru **show-ups** where the suspect alone is brought face to face with the witness for identification. It is done thru **mug shots** where photographs are shown to the witness to identify the suspect. It is also done thru **line-ups** where a witness identifies the suspect from a group of persons lined up for the purpose. Since corruption of **out-of-court** identification contaminates the integrity of **in-court** identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. In resolving the admissibility of and relying on out-of-court identification of suspects, **courts have adopted the totality of circumstances test** where they consider the following factors, *viz*: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the

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[49] *Rollo*, pp. 20-22.

[50] 319 Phil. 128, 180 (1995).

witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure. (Citation omitted.)

The out-of-court identification made by the witnesses in the case at bar complies with the totality of circumstances test. Given the particular circumstances in this case, the probability that the witnesses were influenced to misidentify Sabangan as Felonia's assailant seems farfetched.

First, the affidavits of Navales and Allado establish that even before they identified Sabangan in person on February 18, 2000, they already recognized Sabangan among the photographs of different people shown to them during the police's initial investigation on February 7, 2000.[51] It would then appear that the out-of-court identification of Sabangan by Allado and Navales on February 18, 2000 was only to confirm the earlier out-of-court identification of Sabangan by the same witnesses on February 7, 2000. It is worthy to note that in both instances, Allado and Navales confidently and consistently identified Sabangan as the person who shot Felonia.

Second, based on their respective accounts of the shooting incident, Allado and Navales, at different times, had the opportunity to clearly view Sabangan's face. Their candid and detailed testimonies prove that they were both fully attentive of what was happening at the time immediately before, during, and after Felonia's shooting.

Third, and more importantly, it is settled that an out-of-court identification does not necessarily foreclose the admissibility of an independent in-court identification and that, even assuming that an out-of-court identification was tainted with irregularity, the subsequent identification in court cured any flaw that may have attended it.[52] In the instant case, the independent in-court identification of Sabangan by Allado and Navales during trial

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[51] Records, pp. 259-261 and 263-265; *see* Exhibits C and E.

[52] *People v. Lumanog and Santos*, G.R. Nos. 182555, 185123, and 187745, September 7, 2010, 630 SCRA 42, 125.

proper was categorical, candid, and positive, hence, worthy of credence and weight.

In conclusion, Sabangan is found guilty beyond reasonable doubt of murdering Felonia, the killing being qualified by treachery. With the prohibition against the imposition of the death penalty by Republic Act No. 9346, the only imposable penalty for the crime of murder is *reclusion perpetua*. The Court adds that accused-appellant shall not be eligible for parole. Again, pursuant to Section 3 of Republic Act No. 9346, "[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. 4180, otherwise known as the Indeterminate Sentence Law, as amended."[53]

When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages, in lieu of actual damages.[54] Jurisprudence has decreed that the award of civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime, while moral damages are mandatory in cases of murder, without need of allegation and proof other than the death of the victim. Exemplary or corrective damages, in turn, are imposed by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages as provided by Article 2229 of the Civil Code.

The grant of actual damages in the total amount of ₱106,354.00, representing funeral and burial expenses, is proper being duly supported by receipts. The award of moral damages in the amount of ₱50,000.00 is also correct pursuant to recent rulings of the

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[53] *People v. Tadah*, G.R. No. 186226, February 1, 2012, 664 SCRA 744, 747.

[54] *People v. Escleto*, G.R. No. 183706, April 25, 2012, 671 SCRA 149, 160-161.

Court.[55] However, the Court increases the awards of civil indemnity and exemplary damages to ₱75,000.00 and ₱30,000.00, respectively, in accordance with the latest jurisprudence.[56]

WHEREFORE, in view of the foregoing, the Decision dated November 20, 2009 of the Court of Appeals in CA-G.R. CR-H.C. No. 00329-MIN is **AFFIRMED with MODIFICATION,** increasing the amounts of civil indemnity and exemplary damages awarded to the heirs of Abe Felonia to ₱75,000.00 and ₱30,000.00, respectively.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 193936. December 11, 2013]

NATIONAL POWER CORPORATION, *petitioner, vs.* **YCLA SUGAR DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EMINENT DOMAIN; JUST COMPENSATION AND DETERMINATION THEREOF; ELUCIDATED.— In expropriation proceedings, just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The

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[55] *People v. Malicdem*, G.R. No. 184601, November 12, 2012, 685 SCRA 193, 206-207; *People v. Laurio*, G.R. No. 182523, September 13, 2012, 680 SCRA 560, 572-573.

[56] *Id*.

word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample. The constitutional limitation of "just compensation" is considered to be a sum equivalent to the market value of the property, broadly defined as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition; or the fair value of the property; as between one who receives and one who desires to sell it, fixed at the time of the actual taking by the government. It is settled that the amount of just compensation is to be ascertained as of the time of the taking, which usually coincides with the commencement of the expropriation proceedings. Where the institution of the action precedes entry into the property, the amount of just compensation is to be ascertained as of the time of the filing of the complaint. x x x The Court has consistently ruled that just compensation cannot be arrived at arbitrarily; several factors must be considered such as, but not limited to, acquisition cost, current market value of like properties, tax value of the condemned property, its size, shape, and location. But before these factors can be considered and given weight, the same must be supported by documentary evidence. The amount of just compensation could only be attained by using reliable and actual data as bases for fixing the value of the condemned property. A commissioners' report of land prices which is not based on any documentary evidence is manifestly hearsay and should be disregarded by the court. x x x The trial court, in expropriation cases, may accept or reject, whether in whole or in part, the report submitted by the Board of Commissioners, which is merely advisory and recommendatory in character. It may also recommit the report or set aside the same and appoint new commissioners.

2. ID.; EVIDENCE; RULES OF ADMISSIBILITY; EVIDENCE IS HEARSAY IF ITS PROBATIVE VALUE IS NOT BASED ON PERSONAL KNOWLEDGE OF THE WITNESS; CASE AT BAR.— Under the Rules of Court, any evidence – whether oral or documentary – is hearsay if its probative value is not based on the personal knowledge of the witness, but on that of some other person who is not on the witness stand. A commissioners' report of land prices is considered as evidence in the determination of the amount of just compensation due

the land owner in expropriation cases. The recommended amount of just compensation contained in the commissioners' report of land prices, in turn, is based on various factors such as the fair market value of the property, the value of like properties. Thus, it becomes imperative that the commissioners' report of land prices be supported by pertinent documents, which impelled the commissioners to arrive at the recommended amount for the condemned properties, to aid the court in its determination of the amount of just compensation. Otherwise, the commissioner's report becomes hearsay and should thus not be considered by the court.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Puno & Puno for respondent.

D E C I S I O N

REYES, *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated September 23, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 86508, which affirmed with modification the Decision[3] dated May 12, 2005 of the Regional Trial Court (RTC) of Calapan City, Oriental Mindoro, Branch 40, in Civil Case No. R-4600.

The Facts

Petitioner National Power Corporation (NPC) is a government owned and controlled corporation created for the purpose of undertaking the development of hydroelectric power throughout

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[1] *Rollo*, pp. 12-30.

[2] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo, concurring; *id.* at 32-52.

[3] Issued by Judge Tomas C. Leynes; *id*. at 53-65.

the Philippines. NPC is thus authorized to exercise the power of eminent domain to carry out the said purpose.[4]

Respondent YCLA Sugar Development Corporation (YCLA) is the registered owner of three parcels of land situated in Puerto Galera, Oriental Mindoro, covered by Transfer Certificates of Title Nos. T-5209, T-21280 and T-78583.

In order to complete its 69 KV Calapan-Mamburao Island Grid Project in Puerto Galera, Oriental Mindoro, NPC had to construct transmission lines that would traverse several private properties, including the said parcels of land owned by YCLA.

Accordingly, on December 2, 1997, NPC filed a Complaint[5] for expropriation with the RTC against YCLA and several other individuals. The NPC sought the expropriation of a portion of the parcels of land owned by the said defendants for the acquisition of an easement of right-of-way over areas that would be affected by the construction of transmission lines. The portion of YCLA's properties that would be affected by the construction of NPC's transmission lines has an aggregate area of 5,846 square meters.

YCLA filed its Answer[6] dated July 9, 1998, alleging that the Complaint should be dismissed outright due to NPC's failure to allege the public use for the intended expropriation of its properties.

On April 30, 1999, the parties moved, *inter alia*, for the constitution of a Board of Commissioners to be appointed by the RTC to determine the reasonable amount of just compensation to be paid by the NPC. Thus, on even date, the RTC issued an order terminating the pre-trial conference and directing the constitution of a Board of Commissioners, which would submit a report and recommendation as to the reasonable amount of just compensation for the properties sought to be expropriated.

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[4] Section 3(h) of *Republic Act No. 6395* or An Act Revising the Charter of the National Power Corporation.

[5] *Rollo*, pp. 66-74.

[6] *Id.* at 83-92.

Meanwhile, on June 4, 1999, the RTC, acting on NPC's urgent *ex-parte* motion, issued a writ of possession placing NPC in possession of the properties sought to be expropriated.

On May 2, 2001, the Board of Commissioners submitted its Report,[7] which fixed the amount of just compensation of the subject properties at ₱500.00 per sq m. YCLA objected to the amount recommended by the Board of Commissioners, claiming that the amount of just compensation should be fixed at ₱900.00 per sq m considering the improvements in their properties.

On October 19, 2001, the RTC issued an Order directing YCLA to submit its written manifestation, together with supporting documents, on its position on the proper valuation of the subject properties. NPC was likewise given 15 days to comment thereon. Trial on the determination of the reasonable amount of just compensation ensued thereafter.

Consequently, YCLA filed a motion asking the RTC to direct the Board of Commissioners to conduct an ocular inspection over the subject properties and, thereafter, amend/revise the Board of Commissioner's Report dated May 2, 2001. YCLA's motion was granted by the RTC on July 25, 2003.

Meanwhile, on November 25, 2002, the RTC rendered a Partial Decision as regards the amount of just compensation that would be paid by the NPC to the other defendants.

On September 15, 2003, the Board of Commissioners submitted its second Report,[8] which fixed the just compensation of the subject properties at ₱1,000.00 per sq m. The Board of Commissioners' Report dated September 15, 2003, in part, reads:

> The undersigned secured from the office of the Provincial Assessor the actual appraised value per square meter x x x of the Agricultural Land subject matter of the case which is [₱11.50] per square meter[.] [H]owever, the prevailing market value is Five Hundred Pesos ([₱]500.00) to One Thousand Five Hundred Pesos ([₱]1,500.00) per

[7] *Id*. at 93.

[8] *Id*. at 94.

square meters x x x, per actual sale and opinion value of reliable persons x x x.

In view thereof, the undersigned is submitting this report to the Honorable Court that the amount of One Thousand Pesos ([₱]1,000.00) per square meter should be the basis in the computation of the price per square meter of the land subject matter of the instant case, justified by its location on [a] strategic place and the consequential damages to the whole properties of the defendants because the plaintiff occupied the front portion along the highway.[9]

On May 12, 2005, the RTC rendered a Decision,[10] which adopted the report and recommendation of the Board of Commissioners, *viz*:

ACCORDINGLY, judgment is hereby rendered directing the plaintiff National Power Corporation to pay herein defendant YCLA the total amount of [₱]5,786,000.00 representing the value of the expropriated lands owned by the said defendant and its 26 molave trees which were cut down to make way for the plaintiff[']s] project, with legal interest from the time the plaintiff had actually took possession of the subject properties on 19 April 1999 until full payment has been made.

SO ORDERED.[11]

The RTC pointed out that the Board of Commissioner's Report dated May 2, 2001, which recommended that the amount of just compensation be fixed at ₱500.00 per sq m, was arrived at without conducting an ocular inspection of the subject properties. That, upon YCLA's request, the Board of Commissioners subsequently conducted an ocular inspection of the subject properties, which prompted them to revise their earlier recommendation.

Unperturbed, NPC appealed the RTC Decision dated May 12, 2005 to the CA, alleging that the RTC erred in relying on the recommendation of the Board of Commissioners as regards

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[9] *Id*.

[10] *Id*. at 53-65.

[11] *Id*. at 65.

the amount of just compensation. NPC claimed that the amount of ₱1,000.00 per sq m recommended by the Board of Commissioners as the reasonable amount of just compensation, which was adopted by the RTC, is too excessive considering that the subject properties were barren and undeveloped agricultural lands at the time it instituted the action for expropriation.

On September 23, 2010, the CA rendered the Decision[12] which affirmed with modification the RTC Decision dated May 12, 2005, thus:

> **WHEREFORE**, the assailed Decision is **AFFIRMED** with the **MODIFICATION only in so far as the value of just compensation for the property involved is concerned**. Resultantly, the herein appellant is ordered to pay YCLA Sugar Development Corporation the award of [₱]900.00 per square meter, as and by way of just compensation for the expropriated property. Costs against the herein appellant.
>
> **SO ORDERED.**[13]

The CA held that the RTC's determination of the amount of just compensation was reasonable notwithstanding that it was merely based on the Report submitted by the Board of Commissioners. The RTC pointed out that there was no showing that the said Report was tainted with irregularity, fraud or bias. Nevertheless, the CA modified the award rendered by the RTC, by fixing the amount of just compensation to ₱900.00 per sq m instead of ₱1,000.00 per sq m, since YCLA only sought an award of ₱900.00 per sq m as just compensation for the subject properties in the proceedings before the RTC.

The Issue

Essentially, the issue presented to the Court for resolution is whether the RTC and the CA had sufficient basis in arriving at the questioned amount of just compensation of the subject properties.

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

[13] *Id*. at 51.

The NPC posits that the Board of Commissioners' Report dated September 15, 2003 lacks factual basis; that both the RTC and the CA erred in giving credence to the Report dated September 15, 2003 as to the recommended amount of just compensation for the subject properties. NPC maintains that the amount of ₱900.00 per sq m that was fixed by the CA as just compensation is excessive considering that the subject properties were barren and undeveloped agricultural lands at the time it filed the complaint for expropriation. Thus, NPC prayed that the Court fix the amount of just compensation for the subject properties at ₱500.00 per sq m pursuant to the Board of Commissioners' Report dated May 2, 2001.

On the other hand, YCLA contends that the RTC and the CA aptly relied on the Board of Commissioners' Report dated September 15, 2003, pointing out that the Board of Commissioners was in the best position to determine the amount of just compensation considering that its members undertook intensive ocular inspection of the subject properties.

The Court's Ruling

The petition is partly meritorious.

In expropriation proceedings, just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample. The constitutional limitation of "just compensation" is considered to be a sum equivalent to the market value of the property, broadly defined as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition; or the fair value of the property; as between one who receives and one who desires to sell it, fixed at the time of the actual taking by the government.[14]

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[14] *Republic v. Rural Bank of Kabacan, Inc.*, G.R. No. 185124, January 25, 2012, 664 SCRA 233, 244.

It is settled that the amount of just compensation is to be ascertained as of the time of the taking, which usually coincides with the commencement of the expropriation proceedings. Where the institution of the action precedes entry into the property, the amount of just compensation is to be ascertained as of the time of the filing of the complaint.[15]

In this case, in arriving at the amount of just compensation, both the RTC and the CA relied heavily on the Board of Commissioners' Report dated September 15, 2003, which, in turn, was arrived at after conducting an ocular inspection of the subject properties on August 27, 2003. However, the Board of Commissioners' recommendation as to the amount of just compensation was based on the prevailing market value of the subject properties in 2003. What escaped the attention of the lower courts is that the prevailing market value of the subject properties in 2003 cannot be used to determine the amount of just compensation considering that the Complaint for expropriation was filed by NPC on December 2, 1997.

Further, the Court notes that the Board of Commissioners, in its Report dated September 15, 2003, merely alleged that its members arrived at the amount of ₱1,000.00 per sq m as just compensation for the subject properties based on actual sales, presumably of surrounding parcels of land, and on the opinion of "reliable persons" that were interviewed. However, the Report dated September 15, 2003 is not supported by any corroborative documents such as sworn declarations of the "reliable persons" that were supposedly interviewed.

The Court has consistently ruled that just compensation cannot be arrived at arbitrarily; several factors must be considered such as, but not limited to, acquisition cost, current market value of like properties, tax value of the condemned property, its size, shape, and location. But before these factors can be considered and given weight, the same must be supported by documentary

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[15] See *National Power Corporation v. Diato-Bernal*, G.R. No. 180979, December 15, 2010, 638 SCRA 660, 669.

evidence.[16] The amount of just compensation could only be attained by using reliable and actual data as bases for fixing the value of the condemned property. A commissioners' report of land prices which is not based on any documentary evidence is manifestly hearsay and should be disregarded by the court.[17]

Under the Rules of Court, any evidence – whether oral or documentary – is hearsay if its probative value is not based on the personal knowledge of the witness, but on that of some other person who is not on the witness stand.[18]

A commissioners' report of land prices is considered as evidence in the determination of the amount of just compensation due the land owner in expropriation cases. The recommended amount of just compensation contained in the commissioners' report of land prices, in turn, is based on various factors such as the fair market value of the property, the value of like properties. Thus, it becomes imperative that the commissioners' report of land prices be supported by pertinent documents, which impelled the commissioners to arrive at the recommended amount for the condemned properties, to aid the court in its determination of the amount of just compensation. Otherwise, the commissioner's report becomes hearsay and should thus not be considered by the court.

The trial court, in expropriation cases, may accept or reject, whether in whole or in part, the report submitted by the Board of Commissioners, which is merely advisory and recommendatory in character. It may also recommit the report or set aside the same and appoint new commissioners.[19] In this case, the lower

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[16] *National Power Corporation v. Zabala*, G.R. No. 173520, January 30, 2013, 689 SCRA 554, 564.

[17] *Supra* note 14, at 246, citing *National Power Corporation v. Diato-Bernal*, *supra* note 15.

[18] RULES OF COURT, Rule 130, Section 36.

[19] RULES OF COURT, Rule 67, Section 8, provides that:

Section 8**.** Action upon commissioners' report. — Upon the expiration of the period of ten (10) days referred to in the preceding section, or even before the expiration of such period but after all the interested parties have filed

courts gave full faith and credence to the Board of Commissioners' Report dated September 15, 2003 notwithstanding that it was not supported by any documentary evidence.

Considering that the legal basis for the determination of just compensation for the subject properties is insufficient, the respective Decisions of the RTC and the CA should be set aside.

Nevertheless, the Court cannot fix the amount of just compensation for the subject properties at ₱500.00 per sq m pursuant to the Board of Commissioners' Report dated May 2, 2001. The said Report suffers from the same infirmity as the Report dated September 15, 2003 – it is unsupported by any documentary evidence and its recommendation as regards the amount of just compensation are based on the prevailing market value of the subject properties in 2001.

WHEREFORE, in consideration of the foregoing disquisitions, the instant petition is **PARTIALLY GRANTED**. The Decision dated September 23, 2010 of the Court of Appeals in CA-G.R. CV No. 86508 and the Decision dated May 12, 2005 of the Regional Trial Court of Calapan City, Oriental Mindoro, Branch 40, in Civil Case No. R-4600 are hereby **SET ASIDE**. This case is remanded to the trial court for the proper determination of just compensation, in conformity with this Decision.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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their objections to the report or their statement of agreement therewith, the court may, after hearing, accept the report and render judgment in accordance therewith, or, for cause shown, it may recommit the same to the commissioners for further report of facts, or it may set aside the report and appoint new commissioners; or it may accept the report in part and reject it in part and it may make such order or render such judgment as shall secure to the plaintiff the property essential to the exercise of his right of expropriation, and to the defendant just compensation for the property so taken.

FIRST DIVISION

[G.R. No. 198108. December 11, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROSELITO TACULOD *Y* ELLE,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT ON BUY-BUST OPERATION, RESPECTED.— We call to mind again our ruling in *People v. Naquita*, which states that: The issue of whether or not there was indeed a buy-bust operation primarily boils down to one of credibility. In a prosecution for violation of the Dangerous Drugs Law, a case becomes a contest of the credibility of witnesses and their testimonies. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.

2. CRIMINAL LAW; DANGEROUS DRUGS ACT (R.A. NO. 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— In *People v. Padua*, we held that: What determines if there was, indeed, a sale of dangerous drugs in a buy-bust operation is proof of the concurrence of all the elements of the offense, to wit: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor, which the prosecution has satisfactorily established. The prosecution satisfactorily proved the illegal sale of dangerous drugs and presented in court the evidence of *corpus delicti*. x x x On the other hand, for an accused to be convicted of illegal possession of prohibited or regulated drugs, the following elements must concur: (1) the accused is in possession of an item or object which is identified to be a

prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug.

3. REMEDIAL LAW; EVIDENCE; DENIAL; WEAK DEFENSE IN DANGEROUS DRUGS ACT VIOLATION.— Against the positive testimonies of the prosecution witnesses, the appellant could only muster a defense of outright denial, with nary any evidence to adequately support his version of the events that led to his arrest. Sadly for the appellant, this omission does nothing to help his cause. As held in *People v. Hernandez*: The defense of denial and frame-up has been invariably viewed by this Court with disfavor, for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of the Dangerous Drugs Act. In order to prosper, the defense of denial and frame-up must be proved with strong and convincing evidence. x x x .

4. ID.; CRIMINAL PROCEDURE; APPEALS; ISSUES NOT RAISED IN THE TRIAL COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— Concerning the appellant's argument that the police officers committed lapses in procedure in the safekeeping of the seized drug specimens and failed to explain the same, x x x the appellant raised the issue of the police officers' non-compliance with the provisions [of the law] only in his appeal before the Court of Appeals. The appellant's objections were not raised before the trial court in such a way that the prosecution may have had the opportunity to explain and/or justify the deviations from procedure that were ostensibly committed by the police officers in this case. As the Court underlined in *People v. Sta. Maria*: x x x In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

In this appeal, appellant Roselito Taculod *y* Elle seeks to challenge the Decision[1] dated August 28, 2005 of the Regional Trial Court (RTC) of Caloocan City, Branch 120, in Criminal Case Nos. 69226 and 69227.[2] The RTC found the appellant guilty of the crimes of illegal sale and illegal possession of dangerous drugs under Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The Court of Appeals affirmed the conviction of the appellant in its Decision[3] dated February 21, 2011 in CA-G.R. CR.-H.C. No. 02021.

On September 30, 2003, two separate Informations were filed against the appellant for violations of the aforementioned provisions of Republic Act No. 9165.

In Criminal Case No. 69226, the appellant allegedly violated the first paragraph of Section 5,[4] Article II of Republic Act No. 9165 in the following manner:

That on or about the 25th day of September, 2003, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without the authority of law,

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[1] Records, pp. 134-144; penned by Judge Victorino S. Alvaro.

[2] For brevity, the trial court sometimes referred to these cases as Criminal Case Nos. 69226-7.

[3] *Rollo*, pp. 2-10; penned by Associate Justice Mario L. Guariña III with Associate Justices Apolinario D. Bruselas, Jr. and Rodil V. Zalameda, concurring.

[4] SEC. 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.

did then and there wilfully, unlawfully and feloniously sell and deliver to PO1 ROLLY JONES MONTEFRIO, who posed as buyer[,] one heat-sealed transparent plastic sachet containing **METHYLAMPHETAMINE HYDROCHLORIDE** (***SHABU***), weighing 0.02 gram, knowing the same to be a dangerous drug under the provisions of the above-cited law.[5]

The accusatory portion of the second information pertaining to Criminal Case No. 69227 for violation of Section 11,[6] Article II of the same law, states:

That on or about the 25th day of September 2003, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without the authority of law, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control Three (3) heat-sealed transparent plastic sachets containing METHYLAMPHETAMINE HYDROCHLORIDE having a corresponding weight as follows:

B- ("RTE-2 09-25-03") 0.02 gram
C- ("RTE-3 09-25-03") 0.02 gram
[D]- ("RTE-4 09-25-03") 0.02 gram

knowing the same to be a dangerous drug under the provisions of the above-cited law.[7]

Upon his arraignment on November 19, 2003, the appellant pleaded "not guilty" to each of the charges.

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[5] Records, p. 1.

[6] SEC. 11. *Possession of Dangerous Drugs*. – x x x.

x x x x x x x x x

(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.

[7] Records, p. 12.

During the trial of the case, the prosecution presented the testimonies of the following witnesses: (1) Police Inspector (P/Insp.) Erickson Calabocal; (2) Police Officer (PO) 1 Rolly Jones Montefrio;[8] (3) PO2 Randulfo Hipolito; and (4) PO3 Rodrigo Antonio. On the other hand, only the appellant Roselito Taculod *y* Elle testified in his defense.

The relevant portions of the prosecution witnesses' testimonies are set forth here:

The first witness called upon by the prosecution was P/Insp. Erickson Calabocal. The parties stipulated that P/Insp. Calabocal is an expert witness and that he was the one who conducted the laboratory examination on the drug specimens subject of this case on the basis of a request by the police. His findings were contained in Physical Sciences Report No. D-1244-03. Also, he was the one who conducted an examination of ultraviolet fluorescent powder on the persons of the appellant and PO1 Montefrio, as well as the buy-bust money with serial number DL046026. P/Insp. Calabocal found that both hands of PO1 Montefrio tested positive for the presence of bright-orange fluorescent powder while the appellant tested positive only on his right hand.[9]

On cross-examination, P/Insp. Calabocal said that on September 25, 2003, his office received for examination four pieces of heat-sealed transparent plastic sachets. The drug specimens were first received by a certain PO2 Prado, a desk officer at the Northern Police District (NPD) Caloocan City Police Station Crime Laboratory. The drug specimens were then delivered by PO2 Prado to P/Insp. Calabocal. The four plastic sachets of drugs were contained in a bigger transparent plastic bag, which was not labelled. The only labels he found on the specimens were the markings of the police officers. The bigger plastic bag was not submitted to the trial court because it was not properly marked. P/Insp. Calabocal said that he

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[8] Also referred to as Rollie Jones Montefrio in other parts of the records.

[9] TSN, January 29, 2004, pp. 2-5.

marked the four sachets with the letters A, B, C, and D, along with his initials and the date.[10]

P/Insp. Calabocal also said, at 12:20 a.m. on September 25, 2003, he dusted the ₱100.00 bill buy-bust money with ultraviolet fluorescent powder. Subsequently, he examined the money and the living persons of the appellant and PO1 Montefrio for the presence of ultraviolet fluorescent powder. His examination yielded a positive result for said subjects. The results of the latter examination were contained in Physical Sciences Report No. PI-102-03.[11]

The next prosecution witness to testify was PO1 Rolly Jones Montefrio. He testified that he was then assigned at the Station Anti-Illegal Drugs–Special Operation Unit (SAID-SOU) of the Caloocan City Police Station. On September 24, 2003, a confidential informant called their office, telling them about the drug-peddling activities of the appellant Roselito Taculod along Sabalo Street, Dagat-dagatan, Caloocan City. PO1 Montefrio said a desk officer received the call but he could not remember the exact time thereof. The information received was relayed to P/Insp. Cesar Cruz, the Chief of the SAID-SOU, who then organized a buy-bust team. PO1 Montefrio was designated as the poseur-buyer. P/Insp. Cruz provided the buy-bust money, which consisted of a ₱100.00 bill with serial number DL046026. The money was given to PO1 Montefrio, who recorded the same in their dispatch book. He also placed on the buy-bust money the markings "RSM". During the briefing of the buy-bust team, they agreed that PO1 Montefrio was to scratch his head to signal to the team that the sale of the drugs had been consummated. A Pre-Operation Report was also submitted to the Philippine Drug Enforcement Agency (PDEA) before the team was dispatched to the area of the operation.[12]

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[10] *Id*. at 6-8.

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

[12] TSN, April 14, 2004, pp. 2-7.

PO1 Montefrio stated that the buy-bust team arrived on Sabalo Street, Dagat-dagatan, Caloocan City at around 1:30 a.m. on September 25, 2003. The team proceeded to the informant's house. There, they instructed the informant to fix his shoelace in front of the appellant to identify the latter. Afterwards, the team left the house and they let the informant lead them to the appellant. They followed the informant but they kept a distance of about 10 meters from him. Suddenly, the informant bent down and fixed his shoelace in front of the appellant. The latter was then sitting alone beside his house and he was facing the street. The team waited for the informant to leave the area before the appellant was approached.[13]

PO1 Montefrio said that he came up to the appellant and asked him "*PARE, MAYROON KA BA DYAN? PANGGAMIT LANG?*" When the appellant asked him "*MAGKANO BA?*" PO1 Montefrio replied "*PISO LANG*" and he handed to the appellant the buy-bust money. The appellant took the money and gave the poseur-buyer one plastic sachet of *shabu*. PO1 Montefrio looked at the plastic sachet and gave the pre-arranged signal of scratching his head. When he saw his companions approaching, PO1 Montefrio held the appellant and introduced himself as a police officer. He was able to recover the buy-bust money from the appellant's right hand. PO1 Montefrio then placed "RTE-1/Buy Bust," the initials of the suspect, on the *shabu*. PO3 Rodrigo Antonio handcuffed the appellant. PO1 Montefrio told PO3 Antonio that the appellant had more *shabu* in his pocket. PO1 Montefrio knew this because when he bought *shabu* from the appellant, the latter took out four plastic sachets from his pocket and gave one to PO1 Montefrio. The appellant put back the remaining three sachets in his left pocket. When PO3 Antonio ordered the appellant to empty the contents of his pocket, the other three sachets of *shabu* were recovered. PO3 Antonio marked the three plastic sachets with "RTE-2", "RTE-3", and "RTE-4". PO1 Montefrio was beside PO3 Antonio when the latter marked the three plastic sachets. Afterwards, PO3 Antonio informed the appellant of the latter's constitutional

[13] *Id*. at 7-9.

rights. The police officers later turned over to the investigator, PO2 Randulfo Hipolito, the appellant and the drug specimens seized. PO2 Hipolito took custody of the drug specimens and submitted the same to the crime laboratory for examination. PO1 Montefrio said that he was present when PO2 Hipolito submitted the drug specimens to the crime laboratory.[14]

On cross-examination, PO1 Montefrio stated that their office received the phone call of the informant at around 10:00 p.m. or 11:00 p.m. on September 24, 2003 but he was not sure. The decision to conduct a buy-bust operation was made after 11:00 p.m. on said date. PO1 Montefrio added that they already knew the informant prior to the buy-bust operation in this case. The buy-bust team was dispatched to the area of operation at about 11:00 p.m. PO1 Montefrio said that they sent a Pre-Operation Coordinating Sheet to the PDEA prior to their dispatch, which report was prepared by PO2 Hipolito and pertained specifically to the operation against the appellant. According to said report, the operation was to start at 24 1700H September 2003, meaning at 5:00 p.m. on September 24, 2003. The report was received by the PDEA at 6:00 p.m. PO3 Montefrio then clarified that the Pre-Operation Coordinating Sheet involved another operation that started at 5:00 p.m. up to 11:00 p.m. and when the operation against the appellant was set up, they did not prepare a separate Pre-Operation Coordinating Sheet anymore.[15]

PO1 Montefrio further stated that the buy-bust money was placed in an envelope when it was given to him at more or less 11:00 p.m. on September 24, 2003. He placed the money in his right pocket.[16] After the buy-bust operation, PO1 Montefrio took custody of the buy-bust money and the plastic sachet of *shabu* that was handed to him by the appellant until they reached the police station. Likewise, the other three sachets of *shabu* remained in the possession of PO3 Antonio until they arrived

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[14] *Id*. at 10-18.

[15] *Id*. at 22-28.

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

at the station. The items seized were then turned over to the investigator.[17]

Also called to the witness stand by the prosecution was PO2 Randulfo Hipolito. The parties agreed to stipulate that PO2 Randulfo Hipolito was the investigator on the case and that he was the one who prepared the Referral Slip, the Affidavit of Arrest, the Request for Laboratory Examination, the Request for Dusting Powder, the Request for Detection of Ultraviolet Powder, the Booking Sheet/Arrest Report and the Pre-Operation Coordinating Sheet.[18]

On cross-examination, PO2 Hipolito stated that at around 2:00 a.m. on September 25, 2003, PO1 Montefrio and PO3 Antonio referred the instant case to him for investigation. It was only then that he learned that the appellant's name was Roselito Taculod. He said that the arresting officers turned over to him four marked sachets of drug specimens. He neither signed any receipt therefor, nor was there any document that would show that he received said items from the police officers. PO2 Hipolito said that he did not take a picture of the accused together with the drug specimens submitted. He personally brought the specimens to the crime laboratory for examination.[19]

The last witness for the prosecution was PO3 Rodrigo Antonio. PO3 Antonio testified that at 1:30 a.m. on September 25, 2003, they arrested one Roselito Taculod, *alias* Lito. Prior to that, on September 24, 2003, he was at their office when he received a telephone call from a confidential informant regarding the drug peddling activities of *alias* Lito along Sabalo Street. He relayed the information to P/Insp. Cesar Cruz, who then created a buy-bust team. PO3 Antonio was designated as a backup while PO1 Montefrio was the poseur-buyer. PO3 Antonio related that the buy-bust team was dispatched to the area of operation on Sabalo Street at 10:00 p.m. on September 24, 2003. There,

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

[18] TSN, June 2, 2004, pp. 2-3.

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

they met the informant and held a briefing. They agreed that when the informant sees the appellant, the former would tie his shoelace to show that he was in front of the latter. After that, the informant would leave the area.[20]

In accordance with the plan, the informant went ahead of the buy-bust team towards the place where the appellant was situated. The team was more or less 10 meters away from the informant. After PO1 Montefrio saw the informant tie his shoelace in front of the appellant, he (PO1 Montefrio) proceeded to approach the appellant. PO3 Antonio said that he later observed PO1 Montefrio talk with, and then hand something, to the appellant. The appellant gave back something to PO1 Montefrio and the latter made the pre-arranged signal of scratching his head. The rest of the team immediately ran to PO1 Montefrio's location to assist him. PO3 Antonio held the appellant's back and introduced himself as a police officer. As PO1 Montefrio said that the appellant still had drug specimens in his left pocket, PO3 Antonio ordered the appellant to empty the contents thereof. The appellant then yielded three more plastic sachets of *shabu*, which PO3 Antonio confiscated. He also read to the appellant the latter's constitutional rights and placed him in handcuffs. PO3 Antonio marked the three plastic sachets with "RTE-2", "RTE-3" and "RTE-4". PO3 Antonio identified the three marked sachets in open court.[21]

The defense, upon the other hand, painted a different picture of the events that transpired on the day the appellant was arrested. As summarized in the appellant's brief[22] before the Court of Appeals, the defense's version of the events states that:

> [The appellant] was arrested while watching a basketball game on September 24, 2003 at about 6:00 or 7:00 o'clock in the evening at Sabalo St., Dagat-Dagatan, Caloocan City.

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[20] TSN, June 16, 2004, pp. 2-6.

[21] *Id.* at 7-10.

[22] CA *rollo*, pp. 68-89.

While simply observing his neighbors play basketball, [the appellant] was suddenly approached by several unidentified individuals who inquired if his name is "Lito." After replying in the affirmative, they suddenly grabbed and handcuffed him for no apparent reason. He tried to resist but to no avail, the policemen succeeded in seizing him and thereafter, brought him to the DEU Police Station. Thereat, he was told that the reason why he was arrested was because he had quarrelled with their assets, namely, Allan and Onang on April 22, 2003.

[The appellant] denied the charges filed against him and that he only came to know about such charges at the police station. The accused further averred that when he was inside the detention cell, Montefrio gave him a ₱100.00 peso bill to buy food. However, after the lapse of about three (3) minutes, the said police officer returned to the detention cell with some food, but ordered him to give the money back.[23] (Citations omitted.)

The Decision of the RTC

On August 28, 2005, the RTC rendered judgment finding the appellant guilty beyond reasonable doubt of the offenses charged. From the testimonial and documentary evidence presented by the prosecution, the trial court concluded that the appellant was validly arrested in a buy-bust operation after having been caught *in flagrante delicto* of selling illegal drugs to PO1 Montefrio and, thereafter, found to possess additional plastic sachets of drugs in his person. The trial court ruled that the elements for the prosecution of illegal sale of dangerous drugs had been proven in this case, *i.e.*, that there was a meeting of the minds between the appellant and the poseur-buyer, PO1 Montefrio, for the sale of ₱100.00 worth of *shabu* and there was delivery of the drugs to the poseur-buyer who gave money in exchange therefor. The trial court further noted that the appellant merely denied the prosecution's version of the events that transpired on September 25, 2003 and did not cite any evil or improper motive on the part of the police officers to frame him up for a non-existing offense.

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[23] *Id*. at 74.

Thus, the trial court decreed:

WHEREFORE, premises considered, the Court finds that accused ROSELITO TACULOD *y* ELLE **GUILTY** beyond reasonable doubt for Violations of R.A. 9165 and imposes upon him the following:

1. In Criminal Case No. 69226 for Violation of Section 5, Article II, R.A. 9165, the penalty of Life Imprisonment and a fine of Php500,000.00 pesos; and

2. In Criminal Case No. 69227 for Violation of Section 11, Article II, R.A. 9165, the indeterminate penalty of Six (6) Years and One (1) Day as minimum to Twelve (12) Years and a fine of Php300,000.00 without subsidiary imprisonment.

The penalties of imprisonment in both cases shall be served SIMULTANEOUSLY.

The four (4) pieces of heat-sealed plastic sachets containing *shabu* are hereby confiscated in favor of the government and shall be turned-over to PDEA for proper disposition.[24]

The Judgment of the Court of Appeals

On appeal,[25] the Court of Appeals fully affirmed the appellant's conviction in its Decision dated February 21, 2011. The appellate court also ruled that the elements for the prosecution of illegal sale of dangerous drugs had been proved in this case given that there was a meeting of the minds between the appellant and the poseur-buyer as to the object of the sale and the consideration therefor, as well as the fact of payment and delivery. As to the charge of illegal possession of dangerous drugs, the appellate court gave credence to testimonial evidence of the prosecution that established that when PO1 Montefrio bought drugs from the appellant, the latter took out four sachets of *shabu* from his pocket and gave one to the poseur-buyer. After placing the appellant under arrest, the police officers ordered the appellant to empty the contents of his pocket. It was then that the three remaining sachets of *shabu* were recovered. With respect to

[24] Records, pp. 143-144.

[25] *Id.* at 151.

the issue of non-compliance with the provisions of the law pertaining to the handling and custody of seized illegal drugs, the Court of Appeals brushed the same aside, pointing out that the evidence of the prosecution disclosed that the chain of custody of the seized illegal drugs had been preserved. Lastly, the appellate court held that the bare denials of the appellant cannot prevail over the categorical and positive declaration of the prosecution witnesses.

The appellant, thus, filed the instant appeal to this Court.[26]

The appellant assails the credibility of the prosecution witnesses by insisting that the prosecution failed to establish the exact time of the alleged buy-bust operation. The appellant points out that according to the Pre-Operation Report of the buy-bust operation, the time and date of the operation specified therein was "24 1700H September 2003" or three hours before the confidential informant supposedly called the police in this case to report on the drug peddling activities of the appellant. This inconsistency allegedly casts doubt on whether a buy-bust operation was really conducted and whether the informant actually existed. The appellant also argues that the police officers failed to inventory and photograph the drugs allegedly confiscated. This was supposedly fatal to the prosecution's case as it affected the identity of the seized drugs. Furthermore, the appellant avers that PO1 Hipolito failed to mention any precautionary measures that were taken in preserving the evidentiary value of the seized drugs from the time he received them from the arresting officers up to the time the same were submitted to the crime laboratory. In view of the above unexplained lapses in procedure, the appellant posits that the presumption of regularity in the conduct of official duties had been effectively destroyed in this case. Arguably, the testimonies of the police officers should not have been accorded full faith and credit.[27]

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[26] *Rollo*, pp. 11-13.

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

The Ruling of the Court

The appeal lacks merit.

In the instant case, the appellant was charged with illegal sale and illegal possession of dangerous drugs. In adjudging the appellant guilty of said charges, the RTC gave more weight to the testimonial evidence adduced by the prosecution as opposed to the lone testimony of the appellant presented by the defense. The Court of Appeals' review of the case yielded a similar verdict of conviction against the appellant.

We call to mind again our ruling in *People v. Naquita*,[28] which states that:

> The issue of whether or not there was indeed a buy-bust operation primarily boils down to one of credibility. In a prosecution for violation of the Dangerous Drugs Law, a case becomes a contest of the credibility of witnesses and their testimonies. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals. (Citations omitted.)

In the instant case, the above-cited doctrine very much applies. After thoroughly examining the records of this case, the Court likewise finds the appellant guilty of the offenses charged.

In *People v. Padua*,[29] we held that:

> What determines if there was, indeed, a sale of dangerous drugs in a buy-bust operation is proof of the concurrence of all the elements of the offense, to wit: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing

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[28] 582 Phil. 422, 437-438 (2008).

[29] G.R. No. 174097, July 21, 2010, 625 SCRA 220, 236-237.

sold and the payment therefor, which the prosecution has satisfactorily established. The prosecution satisfactorily proved the illegal sale of dangerous drugs and presented in court the evidence of *corpus delicti*.

x x x x x x x x x

On the other hand, for an accused to be convicted of illegal possession of prohibited or regulated drugs, the following elements must concur: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug. (Citations omitted.)

With respect to the charge of illegal sale of dangerous drugs, PO1 Montefrio positively identified the appellant as the person who sold to him one plastic sachet of *shabu* worth ₱100.00 in a buy-bust operation conducted by the police officers in this case. PO1 Montefrio also identified in court the plastic sachet of *shabu* he bought from the appellant. The testimony of PO1 Montefrio was in turn corroborated by the testimony of PO3 Antonio, a member of the buy-bust team who also categorically pointed to the appellant as the person whom he saw PO1 Montefrio bought illegal drugs from. To further prove that a buy-bust operation was actually conducted, the prosecution also presented the testimony of P/Insp. Calabocal, the forensic chemist assigned to the case. P/Insp. Calabocal testified that he dusted the ₱100.00 bill buy-bust money with ultraviolet fluorescent powder prior to the conduct of the buy-bust operation. After the operation, he again examined the ₱100.00 bill buy-bust money, as well as the living persons of PO1 Montefrio and the appellant for the presence of ultraviolet fluorescent powder. He stated that he found traces of said powder on the hands of both PO1 Montefrio and the appellant, which in this case meant that the ₱100.00 buy-bust money was indeed passed on from PO1 Montefrio to the appellant.

On the charge of illegal possession of dangerous drugs, PO1 Montefrio testified that when he bought *shabu* from the appellant, the latter took out from his pocket four plastic sachets. The

appellant gave one sachet to PO1 Montefrio and put the rest back in his left pocket. After the arrest of the appellant, PO1 Montefrio relayed this information to PO3 Antonio and the latter ordered the appellant to empty the contents of his pocket. The appellant then brought out the three remaining plastic sachets of *shabu*, which PO3 Antonio marked accordingly. PO3 Antonio gave similar account of the events that led to the discovery and seizure of the three remaining plastic sachets of *shabu*. Both police officers also identified the said items in court.

As regards the alleged inconsistency pertaining to the time of the buy-bust operation specified in the Pre-Operation Coordinating Sheet and the supposed time when the confidential informant called the police station, the Court finds the same to be specious. The appellant insists that the time and date of the buy-bust operation was specified in the Pre-Operation Coordinating Sheet as "24 1700H September 2003," or at 5:00 p.m. on September 24, 2003. The appellant argues that this is inconsistent with the testimony of PO1 Montefrio that the confidential informant only called the police station around 10:00 or 11:00 p.m. on said date. The appellant seemed to have ignored the fact that PO1 Montefrio already clarified this supposed inconsistency when he testified in court. PO1 Montefrio explained that the Pre-Operation Coordinating Sheet also involved another operation that started at 5:00 p.m. on September 24, 2003. Thereafter, when the buy-bust operation against the appellant was set up, the police officers no longer accomplished a separate Pre-Operation Coordinating Sheet. PO3 Antonio offered a similar explanation when asked about this matter when he testified before the trial court.[30] Absent any evidence from the appellant that tended to prove the falsity of the above explanation, the Court finds no reason to reject the same.

Against the positive testimonies of the prosecution witnesses, the appellant could only muster a defense of outright denial, with nary any evidence to adequately support his version of the

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[30] TSN, June 16, 2004, pp. 18-19.

events that led to his arrest. Sadly for the appellant, this omission does nothing to help his cause. As held in *People v. Hernandez*:[31]

> The defense of denial and frame-up has been invariably viewed by this Court with disfavor, for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of the Dangerous Drugs Act. In order to prosper, the defense of denial and frame-up must be proved with strong and convincing evidence. x x x. (Citations omitted.)

In light of the above disquisition, the Court is convinced the elements of the offenses charged had been sufficiently proven in this case.

Concerning the appellant's argument that the police officers committed lapses in procedure in the safekeeping of the seized drug specimens and failed to explain the same, the Court is likewise not persuaded.

Section 21, paragraph 1, Article II of Republic Act No. 9165 and Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 provide the procedural guidelines that police officers must observe in the proper handling of seized illegal drugs in order to ensure the preservation of the identity and integrity thereof.

Section 21, paragraph 1, Article II of Republic Act No. 9165 reads:

> SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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[31] G.R. No. 184804, June 18, 2009, 589 SCRA 625, 642.

(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[.]

On the other hand, Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, which implements said provision, stipulates:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]

It must be pointed out, however, that the appellant raised the issue of the police officers' non-compliance with the above provisions only in his appeal before the Court of Appeals. The appellant's objections were not raised before the trial court in such a way that the prosecution may have had the opportunity to explain and/or justify the deviations from procedure that were ostensibly committed by the police officers in this case. As the Court underlined in *People v. Sta. Maria*:[32]

[32] 545 Phil. 520, 534 (2007).

The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal. (Citation omitted.)

Given the foregoing circumstances, the Court finds that the positive and credible testimonies of witnesses for the prosecution prevail over the unsubstantiated defense of denial of the appellant.

WHEREFORE, the Decision dated February 21, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02021 is hereby **AFFIRMED**. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 198113. December 11, 2013]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **FERDINAND BAUTISTA *Y* SINAON,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT (R.A. NO. 9165); CHAIN OF CUSTODY; PROOF REQUIRED TO SHOW THAT THE DANGEROUS DRUGS SEIZED FROM THE ACCUSED AND SUBSEQUENTLY EXAMINED IN THE LABORATORY ARE THE SAME DRUGS PRESENTED IN COURT.— When prosecuting the sale or possession of dangerous drugs like *shabu*, the State must prove not only the elements of each of the offenses. It must prove as well the *corpus delicti*, failing in which the State will be unable to discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. To prove the *corpus delicti*, the prosecution must show that the dangerous drugs seized from the accused and subsequently examined in the laboratory are the same dangerous drugs presented in court as evidence to prove his guilt. To ensure that this is done right and that the integrity of the evidence of the dangerous drugs is safeguarded, Congress outlined in Sec. 21 of R.A. 9165 the mandatory procedure that law enforcers must observe following the seizure of such substance. x x x It is only by such strict compliance that the grave mischiefs of planting evidence or substituting it may be eradicated. Such strict compliance is also consistent with the doctrine that penal laws shall be construed strictly against the government and liberally in favor of the accused. The first stage after seizure is the taking of inventory of the dangerous drugs seized from the suspect. It begins with the marking of the seized objects to fix its identity. Such marking should be made as far as practicable in the presence of the suspect immediately upon his arrest. Of course, the failure to mark the seized items at the place of arrest does not of itself impair the integrity of the chain of custody and render the confiscated items inadmissible in evidence. Marking upon "immediate" confiscation can reasonably cover marking done

at the nearest police station or office of the apprehending team, especially when the place of seizure is volatile and could draw unpredictable reactions from its surroundings.

2. ID.; ID.; ID.; A REPRESENTATIVE FROM THE MEDIA AND THE DOJ AND ANY ELECTED PUBLIC OFFICIAL MUST BE PRESENT TO SIGN THE COPIES OF THE INVENTORY.— The law requires the apprehending officer or team to conduct a physical inventory of the seized items and take photograph of the same in the presence of the accused, 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 copies of the same.

3. ID.; ID.; ID.; PROCEDURAL SAFEGUARDS GROSSLY DISREGARDED IN CASE AT BAR.— The Court has of course held that non-compliance with the procedural safeguards provided in Sec. 21 of R.A. 9165 and its IRR would not necessarily void the seizure and custody of the dangerous drugs for as long as there is a justifiable ground for it and the integrity and the evidentiary value of the seized items are properly preserved. Here, however, the buy-bust team did not bother to show that they "intended to comply with the procedure but where thwarted by some justifiable reason or consideration." Accordingly, despite the presumption of regularity in the performance of official duty, this Court stresses that the step-by-step procedure outlined under R.A. 9165 is a matter of substantive law, which cannot be simply brushed aside as a simple procedural technicality. Due to the gross disregard of the buy-bust team of the procedural safeguards mandated by Sec. 21 of R.A. 9165 and its IRR and its failure to give justifiable reasons for it, this Court is led to conclude that the integrity and identity of the *corpus delicti* have been compromised.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ABAD, *J.*:

This case is about the gross and deliberate failure of the buy-bust team to comply with the mandatory procedural safeguards of Section 21, Republic Act (R.A.) 9165 and Section 21(a) of its Implementing Rules and Regulations (IRR) with no justification for such non-compliance.

The Facts and the Case

On September 15, 2003 the Provincial Prosecutor of Bulacan filed separate charges of selling and possessing dangerous drugs in violation of Sections 5 and 11, Article II of R.A. 9165 against the accused appellant Ferdinand Bautista *y* Sinaon (Bautista) before the Regional Trial Court of Bulacan in Criminal Cases 3529-M-2003 and 3530-M-2003.

The evidence for the prosecution shows that on August 31, 2003 the Chief of Police of the Philippine National Police (PNP) in Meycauayan, Bulacan, received a phone-in information that accused Bautista had been selling illegal drugs in *Barangay* Saluysoy, Meycauayan, Bulacan.[1] At about 11:40 p.m. on September 3, 2003, after confirming through surveillance that Bautista had indeed been peddling illegal drugs,[2] the police chief dispatched police officers Willie Tadeo, Frederick Viesca, Michael Sarangaya, Philip Santos, and Manuel Mendoza to the place mentioned to conduct a buy-bust operation against the accused.[3]

On reaching the place, PO1 Tadeo approached accused Bautista's house while the rest of the officers positioned themselves nearby. Bautista met Tadeo outside the house. The officer told Bautista that he was interested in buying ₱300.00 worth of *shabu*. Bautista agreed and handed over a plastic

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[1] TSN, April 3, 2007, p. 4.

[2] *Id*. at 3.

[3] TSN, June 4, 2007, p. 9.

sachet believed to contain *shabu* to his supposed buyer who in turn gave him three marked ₱100.00 bills. At a signal, the police back-up team rushed in and arrested Bautista.[4]

During the arrest, Bautista had a lady-companion later identified as Ma. Rocel Velasco (Ma. Rocel). The police officers asked Bautista to take out the contents of his pockets. He did so and this revealed the money paid to him as well as another sachet of 0.019 gram *shabu*. PO1 Viesca recovered from Ma. Rocel one big plastic sachet and eight small ones, the latter containing suspected *shabu*. PO1 Viesca marked these items with his initials "FTV."[5] The police then herded accused Bautista and Ma. Rocel to the police station.[6]

At the police station, PO1 Tadeo marked the *shabu* subject of the buy-bust with the initials "BBWCT". He marked the second plastic sachet seized from Bautista as "WCT" on one side and the letter "P" on the other side. After marking the seized items, the police submitted them for forensic examination which proved positive for methamphetamine hydrochloride or *shabu*.[7]

Bautista and Ma. Rocel denied the charges against them. In his brief, Bautista claimed as follows:

> On 3 September 2003 while accused Rocel was washing clothes and accused [Bautista] was sleeping inside their house, a male person arrived and inquired from Rocel as to the whereabouts of a certain Jerry. When she replied that she does not know of a person by that name and that her only companion was her husband, several armed men went inside their house and demanded for her husband.
>
> As she was about to call [Bautista,] however, they went to him, asked him whether he was Jerry and immediately handcuffed him. Both accused were invited to the police precinct after that, and were falsely charged of the instant case.

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[4] *Id*. at 10.

[5] *Id*. at 10-12.

[6] TSN, May 26, 2008, p. 38.

[7] *Supra* note 5, at 12-13.

The reason behind the false accusation was that Bautista was accused of stealing the coins from the video *karera* owned by PO1 Tadeo.[8]

On August 7, 2009 the RTC rendered a Decision finding accused Bautista guilty beyond reasonable doubt of selling dangerous drugs and, further, of having possession and control of a separate quantity of the same. The court, however, acquitted Ma. Rocel of the crime of possession for lack of the required proof to sustain conviction.

On appeal in CA-G.R. CR-HC 04099, the Court of Appeals (CA) affirmed on February 22, 2011 the Decision of the RTC with modification on the fine imposed.

Issue Presented

The key issue presented in this case is whether or not the arresting officers preserved the integrity and the evidentiary value of the seized items despite their failure to observe the mandatory procedural requirements of Sec. 21 of R.A. 9165 and its IRR.

The Court's Ruling

One. When prosecuting the sale or possession of dangerous drugs like *shabu*, the State must prove not only the elements of each of the offenses. It must prove as well the *corpus delicti*, failing in which the State will be unable to discharge its basic duty of proving the guilt of the accused beyond reasonable doubt.[9]

To prove the *corpus delicti*, the prosecution must show that the dangerous drugs seized from the accused and subsequently examined in the laboratory are the same dangerous drugs presented in court as evidence to prove his guilt.[10] To ensure that this is done right and that the integrity of the evidence

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[8] Records, p. 90.

[9] *People v. Relato*, G.R. No. 173794, January 18, 2012, 663 SCRA 260, 270.

[10] *People v. Gonzales*, G.R. No. 182417, April 3, 2013, 695 SCRA 123, 133.

of the dangerous drugs is safeguarded, Congress outlined in Sec. 21 of R.A. 9165 the mandatory procedure that law enforcers must observe following the seizure of such substance:

(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;

Also, Sec. 21(a) of the IRR of R.A. 9165 provides the following:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

Clearly, the Congress and the Executive Department demand strict compliance with the above. It is only by such strict compliance that the grave mischiefs of planting evidence or substituting it may be eradicated. Such strict compliance is also consistent with the doctrine that penal laws shall be construed strictly against the government and liberally in favor of the accused.[11]

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[11] *Id.* at 132.

The first stage after seizure is the taking of inventory of the dangerous drugs seized from the suspect. It begins with the marking of the seized objects to fix its identity. Such marking should be made as far as practicable in the presence of the suspect immediately upon his arrest.[12] Of course, the failure to mark the seized items at the place of arrest does not of itself impair the integrity of the chain of custody and render the confiscated items inadmissible in evidence.[13] Marking upon "immediate" confiscation can reasonably cover marking done at the nearest police station or office of the apprehending team,[14] especially when the place of seizure is volatile and could draw unpredictable reactions from its surroundings.

Here, however, PO1 Viesca marked the sachets of suspected substance seized from Ma. Rocel right where he arrested her. This shows that such marking was feasible. In contrast, PO1 Tadeo marked the substance he seized from Bautista after the police returned to their station. This unexplained digression from what ought to have been done creates a doubt regarding the integrity of the evidence against Bautista.

Two. The law requires the apprehending officer or team to conduct a physical inventory of the seized items and take photograph of the same in the presence of the accused, 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 copies of the same.

PO1 Tadeo categorically admitted that no elected official was present when the police made the arrest and when they conducted their investigation. PO1 Viesca admitted that no representative from the media or the DOJ were present during the inventory of the seized items.

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[12] *Id.* at 134.

[13] *People v. Umipang*, G.R. No. 190321, April 25, 2012, 671 SCRA 324, 351.

[14] *Id.*, citing *Imson v. People*, G.R. No. 193003, July 13, 2011, 653 SCRA 826, 836.

The cross-examination and re-direct of PO1 Viesca is enlightening:

Atty. Sabinorio:
Q: Was there any picture taken in relation to the items you have recovered?
A: As far as I remember there were pictures taken, sir.

Q: And who took the pictures?
A: **I cannot remember anymore who took the pictures, sir.**

x x x x x x x x x

Court:
Q: How about pictures of specimen?
A: **I cannot remember anymore if there were pictures taken, sir.**

Q: How about your coordination with the *barangay* officials in that place, did you do so?
A: **I don't remember, your honor.**

x x x x x x x x x

Q: How about a media representative was he around?
A: **None, sir.**

Q: How about a DOJ representative?
A: **Also none, your honor.**

x x x x x x x x x

Fiscal Roque:
Q: Why were you not able to coordinate this operation with the *barangay* officials?
A: **Because during that time I was just assigned there for only a month and I don't know the procedure, sir.**[15] (Emphasis supplied)

Further, although the prosecution witnesses averred that the physical inventory of the seized items was recorded in the police blotter, it did not bother to present a copy of the same with the required signatures or submit some valid justification for the omission.

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[15] TSN, July 1, 2008, pp. 10-12.

What is more, both PO1 Tadeo and PO1 Viesca were uncertain regarding whether they photographed the seized items. In fact, they failed to produce any such photograph. This is either sloppy police work or utter refusal to comply with what is required of them. The prosecution should not have filed the case absent proof of compliance with what the law requires.

The Court has of course held that non-compliance with the procedural safeguards provided in Sec. 21 of R.A. 9165 and its IRR would not necessarily void the seizure and custody of the dangerous drugs for as long as there is a justifiable ground for it and the integrity and the evidentiary value of the seized items are properly preserved. Here, however, the buy-bust team did not bother to show that they "intended to comply with the procedure but where thwarted by some justifiable reason or consideration."[16] Accordingly, despite the presumption of regularity in the performance of official duty, this Court stresses that the step-by-step procedure outlined under R.A. 9165 is a matter of substantive law, which cannot be simply brushed aside as a simple procedural technicality.[17]

Due to the gross disregard of the buy-bust team of the procedural safeguards mandated by Sec. 21 of R.A. 9165 and its IRR and its failure to give justifiable reasons for it, this Court is led to conclude that the integrity and identity of the *corpus delicti* have been compromised.

WHEREFORE, the Court **REVERSES and SETS ASIDE** the Court of Appeals Decision of February 22, 2011 in CA-G.R. CR-HC 04099 as well as the Regional Trial Court Decision of August 7, 2009 in Criminal Cases 3529-M-2003 and 3530-M-2003 and **ACQUITS** the accused-appellant Ferdinand Bautista *y* Sinaon of the charges against him of violation of Sections 5 and 11, Article II of Republic Act 9165 due to the failure of the prosecution to establish his guilt beyond reasonable doubt.

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[16] *People v. Martin*, G.R. No. 193234, October 19, 2011, 659 SCRA 783, 792.

[17] *Supra* note 13, at 338.

Further, the Court **DIRECTS** the immediate release from detention of Ferdinand Bautista *y* Sinaon, *a.k.a.* Ferdie, unless he is detained for some lawful cause. The Director of the Bureau of Corrections is **ORDERED** to implement this Decision immediately and report his action to this Court within 10 days from receipt of this Decision.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Mendoza, and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 198389. December 11, 2013]

VIVENCIO ROALLOS *Y* TRILLANES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; COMPLAINT OR INFORMATION; THE REAL NATURE OF THE CRIMINAL CHARGE IS DETERMINED NOT FROM THE CAPTION OR PREAMBLE OF THE INFORMATION, OR FROM THE SPECIFICATION OF THE PROVISION OF LAW ALLEGED TO HAVE BEEN VIOLATED, WHICH ARE MERE CONCLUSIONS OF LAW, BUT BY THE ACTUAL RECITAL OF THE FACTS IN THE COMPLAINT OR INFORMATION.— Roallos' claim that the Information filed against him is duplicitous as it charged him with the commission of two crimes is plainly untenable. The designation of the crime in the Information is clear – Roallos was charged with the crime of acts of lasciviousness in relation to Section 5(b), Article III of R.A. No. 7610. The mention of the phrase "acts

of lasciviousness" in the Information does not mean that Roallos was charged with the felony of acts of lasciviousness under Article 336 of the RPC. The charge of acts of lasciviousness against Roallos is specifically delimited to that committed in relation to Section 5(b), Article III of R.A. No. 7610. In any case, "the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere conclusions of law, but by the actual recital of the facts in the complaint or information."

2. CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION, AND DISCRIMINATION ACT (RA NO. 7610); SEXUAL ABUSE UNDER SECTION 5 (B), ARTICLE III THEREOF; ELEMENTS; ESTABLISHED.— The recital of the ultimate facts and circumstances in the Information that was filed against Roallos clearly makes out a case for the offense of sexual abuse under Section 5(b), Article III of R.A. No. 7610. The elements of sexual abuse under Section 5(b), Article III of R.A. No. 7610 are as follows: 1. The accused commits the act of sexual intercourse or **lascivious conduct**[;] 2. The [said] act is performed with a child exploited in prostitution or **subjected to other sexual abuse**[; and] 3.The child, whether male or female, is below 18 years of age. The Information that was filed against Roallos alleged that he committed lascivious acts towards AAA, *i.e.*, that he mashed the breasts and kissed the cheeks of the latter. It likewise alleged that AAA, at the time she was subjected to sexual abuse by Roallos, was only 15 years of age. Clearly, all the elements of sexual abuse under Section 5(b), Article III of R.A. No. 7610 are set out in the Information that was filed against Roallos. In this regard, the Court likewise finds that the CA and the RTC did not err in finding Roallos criminally liable for violation of Section 5(b), Article III of R.A. No. 7610. It is undisputed that AAA was only 15 years old at the time of the incident. Further, the prosecution was able to establish beyond reasonable doubt the committed lascivious conduct towards AAA, who is a child subjected to sexual abuse within the purview of Section 5(b), Article III of R.A. No. 7610.

3. REMEDIAL LAW; APPEALS; 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; EXCEPTIONS NOT PRESENT.— That Roallos did in fact commit lascivious conduct towards AAA is a finding of fact by the lower courts, which this Court cannot simply disregard. 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. The Court finds no reason to overturn the factual findings as the lower courts in this case.

4. CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION, AND DISCRIMINATION ACT (RA NO. 7610); CHILD PROSTITUTION AND OTHER SEXUAL ABUSE UNDER SECTION 5(B), ARTICLE III THEREOF; APPLIES NOT ONLY TO A CHILD SUBJECTED TO PROSTITUTION BUT ALSO TO A CHILD SUBJECTED TO OTHER SEXUAL ABUSE; A CHILD IS DEEMED SUBJECTED TO "OTHER SEXUAL ABUSE" WHEN HE OR SHE INDULGES IN LASCIVIOUS CONDUCT UNDER THE COERCION OR INFLUENCE OF ANY ADULT".— Roallos' assertion that he is not liable for sexual abuse under Section 5(b), Article III of R.A. No. 7610 since AAA is not a child engaged in prostitution is plainly without merit. "[T]he law covers not only a situation in which a child is abused for profit but also one in which a child, through coercion or intimidation, engages in any lascivious conduct. The very title of Section 5, Article III (Child Prostitution and Other Sexual Abuse) of R.A. No. 7610 shows that it applies not only to a child subjected to prostitution but also to a child subjected to other sexual abuse. A child is deemed subjected to "other sexual abuse" when he or she indulges in lascivious conduct under the coercion or influence of any adult."

5. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; THE ACCUSED IS ESTOPPED FROM ASSAILING ANY

IRREGULARITY ATTENDING HIS ARREST SHOULD HE FAIL TO MOVE FOR THE QUASHAL OF THE INFORMATION AGAINST HIM ON THIS GROUND PRIOR TO ARRAIGNMENT.— [R]oallos' claim that he was denied due process since he was arrested without any warrant of arrest and that he was not afforded a preliminary investigation is likewise untenable. In *Miclat, Jr. v. People*, the Court emphasized that the accused is estopped from assailing any irregularity attending his arrest should he fail to move for the quashal of the information against him on this ground prior to arraignment, *viz*: At the outset, it is apparent that petitioner **raised no objection to the irregularity of his arrest before his arraignment. Considering this and his active participation in the trial of the case, jurisprudence dictates that petitioner is deemed to have submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest.** An accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.

6. ID.; ID.; PRELIMINARY INVESTIGATION; THE ACCUSED IS DEEMED TO HAVE WAIVED HIS RIGHT TO A PRELIMINARY INVESTIGATION WHEN HE ENTERED HIS PLEA AND ACTIVELY PARTICIPATED IN THE TRIAL WITHOUT RAISING THE LACK OF A PRELIMINARY INVESTIGATION.— [I]n *Villarin v. People*, the Court stressed that the absence of a proper preliminary investigation must be timely raised. The accused is deemed to have waived his right to a preliminary investigation by entering his plea and actively participating in the trial without raising the lack of a preliminary investigation. Thus: **Moreover, the absence of a proper preliminary investigation must be timely raised and must not have been waived.** This is to allow the trial court to hold the case in abeyance and conduct its own investigation or require the prosecutor to hold a reinvestigation, which, necessarily "involves a re-examination and re-evaluation of the evidence already submitted by the complainant and the accused, as well as the initial finding of probable cause which

led to the filing of the Informations after the requisite preliminary investigation." Here, it is conceded that Villarin raised the issue of lack of a preliminary investigation in his Motion for Reinvestigation. However, when the Ombudsman denied the motion, he never raised this issue again. He accepted the Ombudsman's verdict, entered a plea of not guilty during his arraignment and actively participated in the trial on the merits by attending the scheduled hearings, conducting cross-examinations and testifying on his own behalf. It was only after the trial court rendered judgment against him that he once again assailed the conduct of the preliminary investigation in the Motion for Reconsideration. Whatever argument Villarin may have regarding the alleged absence of a preliminary investigation has therefore been mooted. **By entering his plea, and actively participating in the trial, he is deemed to have waived his right to preliminary investigation.** It is undisputed that, at the time of his arraignment, Roallos did not raise any objection to the supposed illegality of his arrest and the lack of a proper preliminary investigation. Indeed, he actively participated in the proceedings before the RTC. Thus, he is deemed to have waived any perceived irregularity in his arrest and has effectively submitted himself to the jurisdiction of the RTC. He is likewise deemed to have waived his right to preliminary investigation.

7. ID.; ID.; RIGHTS OF THE ACCUSED; RIGHT TO SPEEDY TRIAL; WHEN VIOLATED; IN ORDER FOR THE GOVERNMENT TO SUSTAIN ITS RIGHT TO TRY THE ACCUSED DESPITE A DELAY, IT MUST SHOW THAT THE ACCUSED SUFFERED NO SERIOUS PREJUDICE BEYOND THAT WHICH ENSUED FROM THE ORDINARY AND INEVITABLE DELAY AND THAT THERE WAS NO MORE DELAY THAT IS REASONABLY ATTRIBUTABLE TO THE ORDINARY PROCESSES OF JUSTICE.— Roallos failed to substantiate his claim that his right to speedy trial was violated. The right to speedy trial is violated only when the proceedings are attended by vexatious, capricious and oppressive delays. In the determination of whether said right has been violated, particular regard must be taken of the facts and circumstances peculiar to each case. The conduct of both the prosecution and defendant, the length of the delay, the reasons for such delay, the assertion or failure to assert such

right by the accused, and the prejudice caused by the delay are the factors to consider and balance. In order for the government to sustain its right to try the accused despite a delay, it must show two things: *first*, that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and *second*, that there was no more delay that is reasonably attributable to the ordinary processes of justice. As aptly ruled by the CA, Roallos failed to show that the proceedings below were attended by vexatious, capricious, and oppressive delays. The postponements sought for by the prosecution did not, in any way, seriously prejudice Roallos. If at all, the delay in the proceedings below is only attributable to the ordinary processes of justice.

8. ID.; ID.; COMPLAINT OR INFORMATION; FAILURE OF THE RAPE VICTIM OR THE MOTHER THEREOF TO SIGN THE INFORMATION FILED AGAINST THE ACCUSED WILL NOT RENDER THE CHARGE AGAINST HIM DEFECTIVE, ESPECIALLY WHEN IT WAS SHOWN THAT THEY VIGOROUSLY PURSUED THE INDICTMENT AGAINST THE ACCUSED.— [T]hat neither AAA nor BBB signed the Information filed against Roallos would not render the charge against the latter defective; it does not signify that they did not conform to the filing of the Information against Roallos. AAA and BBB vigorously pursued the indictment against Roallos. Likewise, contrary to Roallos' claim, AAA executed a complaint-affidavit for the indictment of Roallos. The foregoing circumstances clearly indicate the conformity of both AAA and BBB to the charge against Roallos.

9. CRIMINAL LAW; ACTS OF LASCIVIOUSNESS UNDER SECTION 5(B) ARTICLE III OF RA NO. 7610; PROPER PENALTY.— For acts of lasciviousness performed on a child under Section 5(b), Article III of R.A. No. 7610, the penalty prescribed is *reclusion temporal* in its medium period to *reclusion perpetua*. Notwithstanding that R.A. No. 7610 is a special law, Roallos may enjoy the benefits of the Indeterminate Sentence Law. Applying the Indeterminate Sentence Law, Roallos shall be entitled to a minimum term to be taken within the range of the penalty next lower to that prescribed by R.A. No. 7610. The penalty next lower in degree is *prision mayor* medium to *reclusion temporal* minimum, the range of which

is from eight (8) years and one (1) day to fourteen (14) years and eight (8) months. On the other hand, the maximum term of the penalty should be taken from the penalty prescribed under Section 5(b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period to *reclusion perpetua*, the range of which is from fourteen (14) years, eight (8) months and one (1) day to *reclusion perpetua*. The minimum, medium and maximum term of the same is as follows: minimum – fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months; medium – seventeen (17) years, four (4) months and one (1) day to twenty (20) years; and maximum – *reclusion perpetua*. Considering that there are neither aggravating nor mitigating circumstances extant in this case, both the RTC and the CA correctly imposed on Roallos the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium as the minimum term to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* as the maximum term. The Court likewise upholds the fine imposed by the lower courts in the amount of ₱15,000.00.

10. ID.; ID.; CIVIL LIABILITY OF ACCUSED-PETITIONER.— The Court hereby modifies the amount of moral damages and civil indemnity awarded by the CA. The RTC directed Roallos to pay AAA moral damages in the amount of ₱20,000.00. The CA increased the amount of moral damages awarded by the RTC to ₱50,000.00 and imposed an additional award for civil indemnity in the amount of ₱50,000.00. In line with recent jurisprudence, the Court deems it proper to reduce the award of moral damages from ₱50,000.00 to ₱15,000.00, as well as the award of civil indemnity from ₱50,000.00 to ₱20,000.00. 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.

APPEARANCES OF COUNSEL

Castro Castro & Associates for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

REYES, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated April 29, 2011 and the Resolution[3] dated August 19, 2011 of the Court of Appeals (CA) in CA-G.R. CR No. 32192. The CA affirmed with modification the Decision[4] dated July 26, 2007 of the Regional Trial Court (RTC) of Quezon City, Branch 88, finding Vivencio Roallos *y* Trillanes (Roallos) guilty beyond reasonable doubt of the offense of sexual abuse punished under Section 5(b), Article III of Republic Act No. 7610 (R.A. No. 7610), otherwise known as the "Special Protection of Children Against Abuse, Exploitation, and Discrimination Act."

The Facts

Roallos was charged in an Information[5] for the crime of sexual abuse under Section 5(b), Article III of R.A. No. 7610, docketed as Criminal Case No. Q-02-108825 before the RTC, *viz*:

> The undersigned accuses VIVENCIO ROALLOS *Y* TRILLANES of the crime of Acts of Lasciviousness in relation to Sec. 5(b)[,] Art. III of R.A. 7610, committed as follows:
>
> That on or about the 15th day of April, 2002, in Quezon City, Philippines, the said accused, with lewd design, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously commit acts of lasciviousness upon the person of one

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[1] *Rollo*, pp. 7-98.

[2] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Josefina Guevara-Salonga and Franchito N. Diamante, concurring; *id.* at 215-235.

[3] *Id*. at 252-253.

[4] Issued by Presiding Judge Rosanna Fe Romero-Maglaya; *id.* at 173-186A.

[5] *Id*. at 101-102.

[AAA][6], a minor, 15 years of age, by then and there mashing her breast and kissing her cheek, against her will which act debases, degrades or demeans the intrinsic worth and dignity of said [AAA] as a human being.

CONTRARY TO LAW.[7]

Upon arraignment, Roallos pleaded "not guilty" to the offense charged.[8] On June 24, 2002, the pre-trial conference was deemed terminated. Trial on the merits ensued thereafter.[9]

Roallos, a retired officer of the Armed Forces of the Philippines, was the Executive Director of the Aguinaldo Vets and Associates Credit Cooperative (AVACC). BBB, AAA's mother, worked as the secretary and treasurer of Roallos.

On April 15, 2002, at around 1:00 p.m., AAA went to BBB's office at Camp Aguinaldo, Quezon City; BBB, however, was then out running office errands. AAA decided to stay in her mother's office and wait for the latter to return. At that time, two women were talking to Roallos inside the AVACC office.

AAA alleged that, after the two women left, Roallos went by the door of the office, looked outside to see if anybody was around, and then locked it. He then approached AAA and asked her if there was any pain bothering her; the latter replied that her tooth ached. Thereupon, Roallos held AAA's hand and intermittently pressed it. He then asked AAA if there is anything else aching in her body. AAA said none. Roallos then placed his left hand on the table while his right hand was on AAA's right shoulder. At this point, AAA was seated on a chair without a backrest while Roallos was standing behind her. Roallos then

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[6] 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.

[7] *Rollo*, p. 101.

[8] *Id*. at 173.

[9] *Id*. at 174.

slid his hand towards AAA's right breast and mashed it. AAA asked Roallos why he is touching her. Roallos ignored her. He then mashed AAA's left breast. AAA shouted "*Ano ba!,*" but Roallos still ignored her and, instead slid his hand towards AAA's abdomen. AAA then stomped her feet and pushed her chair towards Roallos. Roallos then left the office.

Thinking that her mother would soon return, AAA stayed inside the office. However, after about ten minutes, Roallos returned to the office and approached AAA. He then asked AAA if she was hungry, the latter told him that she would just wait for BBB to return. Roallos then offered to give money to AAA for her to buy food, but the latter refused the offer. AAA then felt Roallos' body pressing against her back. Thereafter, Roallos attempted to kiss AAA. AAA was unable to escape as there was no space in front of her; she just turned her face to avoid his kiss. He then held AAA's right cheek, pulled her face towards him, and kissed her left cheek. AAA then stomped her feet, still trying to free herself from the grasp of Roallos. Roallos then left the office. This time, AAA decided to stay outside the AVACC office and wait for her mother to return.

Upon her return to the office, BBB saw AAA crying. She asked AAA why she was crying. AAA then relayed what Roallos did to her. BBB then confronted Roallos about the incident. Roallos, however, denied having done anything to AAA. BBB and AAA thereafter left the office. However, BBB saw that Roallos was following them. Fearing that Roallos would do something to harm them, BBB and AAA immediately entered the office of the Department of National Defense (DND) in Camp Aguinaldo. They were then advised by the employees therein to go to DND's legal department office, where they were advised to report the incident to the police authorities.

AAA and BBB went to the police station where a report regarding the incident was prepared. They then referred the report to the provost marshal for proper coordination and to effect the arrest of the accused. Thereafter, the police and the provost marshal brought Roallos to the police station for investigation.

In his defense, Roallos denied that he molested AAA. He claimed that, on the date of the incident, he merely stayed with AAA in the AVACC office while the latter waited for her mother; that he went out of the office twice to meet clients of AVACC. Roallos further claimed that his arrest was illegal since the same was effected *sans* any warrant of arrest. He likewise averred that he was not informed of his rights when he was arrested nor was he made to undergo any preliminary investigation.

On July 26, 2007, the RTC rendered a Decision[10] finding Roallos guilty beyond reasonable doubt of violation of Section 5(b), Article III of R.A. No. 7610, *viz*:

> **WHEREFORE**, premises considered, accused VIVENCIO ROALLOS *Y* TRILLANES is hereby found GUILTY beyond reasonable doubt of violation of Section 5 (b) of Republic Act 7610 and he is hereby sentenced to an indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY of *prision mayor* medium as minimum to SEVENTEEN (17) YEARS FOUR (4) MONTHS and ONE (1) DAY of *reclusion temporal* maximum as maximum; to indemnify [AAA] in the amount of [₱]20,000.00 by way of moral damages; and pay the fine of [₱]15,000.00.
>
> SO ORDERED.[11]

Roallos' Amended Motion for Reconsideration[12] was denied by the RTC in its Order[13] dated June 30, 2008.

On appeal, the CA rendered the Decision dated April 29, 2011 which affirmed the RTC Decision dated July 26, 2007, albeit with the modification that the awards of moral damages and civil indemnity were both increased to ₱50,000.00.

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[10] *Id.* at 173-186A.

[11] *Id.* at 186A.

[12] *Id.* at 128-134.

[13] *Id.* at 136-139.

Roallos sought a reconsideration of the CA Decision dated April 29, 2011,[14] but it was likewise denied by the CA in its Resolution[15] dated August 19, 2011.

In support of the instant petition, Roallos claims that the CA erred in affirming his conviction considering that the Information filed against him was defective since it charged two crimes, *i.e.*, acts of lasciviousness under Article 336 of the Revised Penal Code (RPC) and sexual abuse under Section 5(b), Article III of R.A. No. 7610. He further argues that he was denied due process as he was not made to undergo a preliminary investigation. Roallos also asserts that his arrest was illegal considering that the same was effected *sans* any warrant of arrest. Moreover, he alleges that the charge against him should have been dismissed considering the unreasonable delay in the prosecution of the case.

Further, Roallos avers that the charge against him was defective since neither AAA nor BBB signed the Information that was filed against him and, thus, Roallos claims that the prosecutor had no authority to file the said Information and, accordingly, the charge against him was defective.

Furthermore, Roallos alleges that the offense of sexual abuse under Section 5(b), Article III of R.A. No. 7610 only applies when the victim is a child engaged in prostitution or when they indulge in lascivious conduct due to the coercion of an adult or a syndicate. Thus, he claims that he is not liable for sexual abuse under Section 5(b), Article III of R.A. No. 7610 since AAA is not a child engaged in prostitution. In any case, he avers that the evidence adduced by the prosecution is not sufficient to establish his guilt beyond reasonable doubt of the offense charged.

Issue

Essentially, the issue presented for the Court's resolution is whether the CA erred in affirming Roallos' conviction for the

[14] *Id.* at 237-250.

[15] *Id.* at 252-253.

offense of sexual abuse under Section 5(b), Article III of R.A. No. 7610.

The Court's Ruling

The petition is bereft of any merit.

First, Roallos' claim that the Information filed against him is duplicitous as it charged him with the commission of two crimes is plainly untenable. The designation of the crime in the Information is clear – Roallos was charged with the crime of acts of lasciviousness in relation to Section 5(b), Article III of R.A. No. 7610.

The mention of the phrase "acts of lasciviousness" in the Information does not mean that Roallos was charged with the felony of acts of lasciviousness under Article 336 of the RPC. The charge of acts of lasciviousness against Roallos is specifically delimited to that committed in relation to Section 5(b), Article III of R.A. No. 7610.

In any case, "the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere conclusions of law, but by the actual recital of the facts in the complaint or information."[16]

The recital of the ultimate facts and circumstances in the Information that was filed against Roallos clearly makes out a case for the offense of sexual abuse under Section 5(b), Article III of R.A. No. 7610. The elements of sexual abuse under Section 5(b), Article III of R.A. No. 7610 are as follows:

1. The accused commits the act of sexual intercourse or **lascivious conduct**[;]
2. The [said] act is performed with a child exploited in prostitution or **subjected to other sexual abuse**[; and]

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[16] See *People v. Valdez*, G.R. No. 175602, January 18, 2012, 663 SCRA 272, 287, citing *Lacson v. The Executive Secretary*, 361 Phil. 251, 279 (1999).

3. The child, whether male or female, is below 18 years of age.[17] (Emphasis supplied)

The Information that was filed against Roallos alleged that he committed lascivious acts towards AAA, *i.e.*, that he mashed the breasts and kissed the cheeks of the latter. It likewise alleged that AAA, at the time she was subjected to sexual abuse by Roallos, was only 15 years of age. Clearly, all the elements of sexual abuse under Section 5(b), Article III of R.A. No. 7610 are set out in the Information that was filed against Roallos.

In this regard, the Court likewise finds that the CA and the RTC did not err in finding Roallos criminally liable for violation of Section 5(b), Article III of R.A. No. 7610. It is undisputed that AAA was only 15 years old at the time of the incident. Further, the prosecution was able to establish beyond reasonable doubt the committed lascivious conduct towards AAA, who is a child subjected to sexual abuse within the purview of Section 5(b), Article III of R.A. No. 7610.

That Roallos did in fact commit lascivious conduct towards AAA is a finding of fact by the lower courts, which this Court cannot simply disregard. 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.[18] The Court finds no reason to overturn the factual findings as the lower courts in this case.

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[17] *Navarrete v. People*, 542 Phil. 496, 510 (2007), citing *People v. Jalosjos*, 421 Phil. 43, 90 (2001).

[18] *Seguritan v. People*, G.R. No. 172896, April 19, 2010, 618 SCRA 406, 418.

Roallos' assertion that he is not liable for sexual abuse under Section 5(b), Article III of R.A. No. 7610 since AAA is not a child engaged in prostitution is plainly without merit. "[T]he law covers not only a situation in which a child is abused for profit but also one in which a child, through coercion or intimidation, engages in any lascivious conduct. The very title of Section 5, Article III (Child Prostitution and Other Sexual Abuse) of R.A. No. 7610 shows that it applies not only to a child subjected to prostitution but also to a child subjected to other sexual abuse. A child is deemed subjected to "other sexual abuse" when he or she indulges in lascivious conduct under the coercion or influence of any adult."[19]

Second, Roallos' claim that he was denied due process since he was arrested without any warrant of arrest and that he was not afforded a preliminary investigation is likewise untenable. In *Miclat, Jr. v. People*,[20] the Court emphasized that the accused is estopped from assailing any irregularity attending his arrest should he fail to move for the quashal of the information against him on this ground prior to arraignment, *viz*:

> At the outset, it is apparent that petitioner **raised no objection to the irregularity of his arrest before his arraignment. Considering this and his active participation in the trial of the case, jurisprudence dictates that petitioner is deemed to have submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest.** An accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.[21] (Citations omitted and emphasis ours)

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[19] See *Navarrete v. People*, *supra* note 17, at 511, citing *People v. Larin*, 357 Phil. 987, 998 (1998) and *Olivarez v. Court of Appeals*, 503 Phil. 421, 432 (2005).

[20] G.R. No. 176077, August 31, 2011, 656 SCRA 539.

[21] *Id.* at 549.

Similarly, in *Villarin v. People*,[22] the Court stressed that the absence of a proper preliminary investigation must be timely raised. The accused is deemed to have waived his right to a preliminary investigation by entering his plea and actively participating in the trial without raising the lack of a preliminary investigation. Thus:

> **Moreover, the absence of a proper preliminary investigation must be timely raised and must not have been waived.** This is to allow the trial court to hold the case in abeyance and conduct its own investigation or require the prosecutor to hold a reinvestigation, which, necessarily "involves a re-examination and re-evaluation of the evidence already submitted by the complainant and the accused, as well as the initial finding of probable cause which led to the filing of the Informations after the requisite preliminary investigation."
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> Here, it is conceded that Villarin raised the issue of lack of a preliminary investigation in his Motion for Reinvestigation. However, when the Ombudsman denied the motion, he never raised this issue again. He accepted the Ombudsman's verdict, entered a plea of not guilty during his arraignment and actively participated in the trial on the merits by attending the scheduled hearings, conducting cross-examinations and testifying on his own behalf. It was only after the trial court rendered judgment against him that he once again assailed the conduct of the preliminary investigation in the Motion for Reconsideration. Whatever argument Villarin may have regarding the alleged absence of a preliminary investigation has therefore been mooted. **By entering his plea, and actively participating in the trial, he is deemed to have waived his right to preliminary investigation.**[23] (Citations omitted and emphases ours)

It is undisputed that, at the time of his arraignment, Roallos did not raise any objection to the supposed illegality of his arrest and the lack of a proper preliminary investigation. Indeed, he actively participated in the proceedings before the RTC. Thus, he is deemed to have waived any perceived irregularity in his arrest and has effectively submitted himself to the jurisdiction

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[22] G.R. No. 175289, August 31, 2011, 656 SCRA 500.

[23] *Id.* at 514.

of the RTC. He is likewise deemed to have waived his right to preliminary investigation.

Third, Roallos failed to substantiate his claim that his right to speedy trial was violated. The right to speedy trial is violated only when the proceedings are attended by vexatious, capricious and oppressive delays. In the determination of whether said right has been violated, particular regard must be taken of the facts and circumstances peculiar to each case. The conduct of both the prosecution and defendant, the length of the delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay are the factors to consider and balance.[24] In order for the government to sustain its right to try the accused despite a delay, it must show two things: *first*, that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and *second*, that there was no more delay that is reasonably attributable to the ordinary processes of justice.[25]

As aptly ruled by the CA, Roallos failed to show that the proceedings below were attended by vexatious, capricious, and oppressive delays. The postponements sought for by the prosecution did not, in any way, seriously prejudice Roallos. If at all, the delay in the proceedings below is only attributable to the ordinary processes of justice.

Lastly, that neither AAA nor BBB signed the Information filed against Roallos would not render the charge against the latter defective; it does not signify that they did not conform to the filing of the Information against Roallos. AAA and BBB vigorously pursued the indictment against Roallos. Likewise, contrary to Roallos' claim, AAA executed a complaint-affidavit

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[24] *Mendoza-Ong v. Sandiganbayan*, 483 Phil. 451, 454 (2004), citing *Dimayacyac v. CA*, G.R. No. 136264, May 28, 2004, 430 SCRA 121, *Rodriguez v. Sandiganbayan*, 468 Phil. 374 (2004), and *Ty-Dazo v. Sandiganbayan*, 424 Phil. 945, 950-951 (2002).

[25] *Corpuz v. Sandiganbayan*, 484 Phil. 899, 922 (2004).

for the indictment of Roallos.[26] The foregoing circumstances clearly indicate the conformity of both AAA and BBB to the charge against Roallos.

For acts of lasciviousness performed on a child under Section 5(b), Article III of R.A. No. 7610, the penalty prescribed is *reclusion temporal* in its medium period to *reclusion perpetua*. Notwithstanding that R.A. No. 7610 is a special law, Roallos may enjoy the benefits of the Indeterminate Sentence Law. Applying the Indeterminate Sentence Law, Roallos shall be entitled to a minimum term to be taken within the range of the penalty next lower to that prescribed by R.A. No. 7610. The penalty next lower in degree is *prision mayor* medium to *reclusion temporal* minimum, the range of which is from eight (8) years and one (1) day to fourteen (14) years and eight (8) months. On the other hand, the maximum term of the penalty should be taken from the penalty prescribed under Section 5(b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period to *reclusion perpetua*, the range of which is from fourteen (14) years, eight (8) months and one (1) day to *reclusion perpetua*. The minimum, medium and maximum term of the same is as follows: minimum – fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months; medium – seventeen (17) years, four (4) months and one (1) day to twenty (20) years; and maximum – *reclusion perpetua*.[27]

Considering that there are neither aggravating nor mitigating circumstances extant in this case, both the RTC and the CA correctly imposed on Roallos the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium as the minimum term to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* as the maximum term. The Court likewise upholds the fine imposed by the lower courts in the amount of ₱15,000.00.

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[26] *Rollo*, p. 16.

[27] See *People v. Leonardo*, G.R. No. 181036, July 6, 2010, 624 SCRA 166, 203.

Nevertheless, the Court hereby modifies the amount of moral damages and civil indemnity awarded by the CA. The RTC directed Roallos to pay AAA moral damages in the amount of ₱20,000.00. The CA increased the amount of moral damages awarded by the RTC to ₱50,000.00 and imposed an additional award for civil indemnity in the amount of ₱50,000.00. In line with recent jurisprudence,[28] the Court deems it proper to reduce the award of moral damages from ₱50,000.00 to ₱15,000.00, as well as the award of civil indemnity from ₱50,000.00 to ₱20,000.00.

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.[29]

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DENIED**. The Decision dated April 29, 2011 and the Resolution dated August 19, 2011 of the Court of Appeals in CA-G.R. CR No. 32192 are hereby **AFFIRMED WITH MODIFICATION** in that Vivencio Roallos *y* Trillanes is ordered to pay ₱15,000.00 as moral damages and ₱20,000.00 as civil indemnity. He is likewise ordered to pay 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 satisfied.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[28] *Garingarao v. People*, G.R. No. 192760, July 20, 2011, 654 SCRA 243; *People v. Fragante*, G.R. No. 182521, February 9, 2011, 642 SCRA 566.

[29] *People v. Veloso*, G.R. No. 188849, February 13, 2013, 690 SCRA 586, 600.

FIRST DIVISION

[G.R. No. 198800. December 11, 2013]

JOSE T. RAMIREZ, *petitioner, vs.* **THE MANILA BANKING CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; MORTGAGE; ACT NO. 3135 (AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES); UNLESS THE PARTIES STIPULATE, PERSONAL NOTICE TO THE MORTGAGOR IN EXTRAJUDICIAL FORECLOSURE PROCEEDINGS IS NOT NECESSARY BECAUSE SECTION 3 OF ACT NO. 3135 ONLY REQUIRES THE POSTING OF THE NOTICE OF SALE IN THREE PUBLIC PLACES AND THE PUBLICATION OF THAT NOTICE IN A NEWSPAPER OF GENERAL CIRCULATION; FAILURE TO SEND THE NOTICE OF EXTRAJUDICIAL FORECLOSURE SALE TO THE MORTGAGOR AS REQUIRED IN THE REAL ESTATE MORTGAGE ENTERED INTO BY THE PARTIES RENDERED THE EXTRAJUDICIAL FORECLOSURE SALE NULL AND VOID.— The CA erred in ruling that absence of notice of extrajudicial foreclosure sale to Ramirez as required by paragraph N of the real estate mortgage will not invalidate the extrajudicial foreclosure sale. We rule that when respondent failed to send the notice of extrajudicial foreclosure sale to Ramirez, it committed a contractual breach of said paragraph N sufficient to render the extrajudicial foreclosure sale on September 8, 1994 null and void. Thus, we reverse the assailed CA Decision and Resolution. In *Carlos Lim, et al. v. Development Bank of the Philippines*, we held that **unless the parties stipulate**, personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary because Section 3 of Act No. 3135 only requires the posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation. In this case, the parties stipulated in paragraph N of the real estate mortgage

that all correspondence relative to the mortgage including notifications of extrajudicial actions shall be sent to mortgagor Ramirez at his given address. Respondent had no choice but to comply with this contractual provision it has entered into with Ramirez. The contract is the law between them. Hence, we cannot agree with the bank that paragraph N of the real estate mortgage does not impose an additional obligation upon it to provide personal notice of the extrajudicial foreclosure sale to the mortgagor Ramirez.

2. ID.; DAMAGES; AWARD OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES DELETED; REASONS.— We note that the trial court awarded moral and exemplary damages, attorney's fees and costs of suit to Ramirez. In granting said monetary awards, the trial court noted that if the bank followed strictly the procedure in the extrajudicial foreclosure of the real estate mortgage and had not filed prematurely an unlawful detainer case against Ramirez, he would not have been forced to litigate and incur expenses. We delete aforesaid monetary awards, except the award of costs of suit. Nothing supports the trial court's award of moral damages. There was no testimony of any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury suffered by Ramirez. The award of moral damages must be anchored on a clear showing that Ramirez actually experienced mental anguish, besmirched reputation, sleepless nights, wounded feelings or similar injury. Ramirez's testimony is also wanting as to the moral damages he suffered. Similarly, no exemplary damages can be awarded since there is no basis for the award of moral damages and there is no award of temperate, liquidated or compensatory damages. Exemplary damages are imposed by way of example for the public good, in addition to moral, temperate, liquidated or compensatory damages. We likewise delete the trial court's award of attorney's fees since the trial court failed to state in the body of its decision the factual or legal reasons for said award. Indeed, even the instant petition does not offer any supporting fact or argument for us to affirm the award of moral and exemplary damages and attorney's fees.

3. ID.; ID.; COSTS OF SUIT; AWARD THEREOF, PROPER; COSTS SHALL BE ALLOWED TO THE PREVAILING

PARTY AS A MATTER OF COURSE UNLESS OTHERWISE PROVIDED IN THE RULES OF COURT.— [W]e agree, with the trial court's award of costs of suit to Ramirez. Costs shall be allowed to the prevailing party as a matter of course unless otherwise provided in the Rules of Court. These costs Ramirez may recover are those stated in Section 10, Rule 142 of the Rules of Court. For instance, Ramirez may recover the lawful fees he paid in docketing his action for annulment of sale before the trial court. We add thereto the amount of ₱3,530 or the amount of docket and lawful fees paid by Ramirez for filing this petition before this Court. We deleted the award of moral and exemplary damages; hence, the restriction under Section 7, Rule 142 of the Rules of Court would have prevented Ramirez to recover any cost of suit. But we certify, in accordance with said Section 7, that Ramirez's action for annulment of sale involved a substantial and important right such that he is entitled to an award of costs of suit. Needless to stress, the purpose of paragraph N of the real estate mortgage is to apprise the mortgagor, Ramirez, of any action that the mortgagee-bank might take on the subject properties, thus according him the opportunity to safeguard his rights.

APPEARANCES OF COUNSEL

Teodoro C. Alegro, Jr. for petitioner.
Puyat Jacinto & Santos for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

We have consistently held that **unless the parties stipulate**, personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary because Section 3[1] of Act No.

[1] SEC. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

3135[2] only requires the posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation.[3]

Before us is a petition for review on *certiorari* under Rule 45 of the Decision[4] dated November 26, 2010 and Resolution[5] dated September 28, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 80616.

The facts of the case are as follows:

Petitioner Jose T. Ramirez mortgaged two parcels of land located at Bayanbayanan, Marikina City and covered by Transfer Certificate of Title (TCT) Nos. N-10722[6] and N-23033[7] in favor of respondent The Manila Banking Corporation to secure his ₱265,000 loan. The real estate mortgage provides that all correspondence relative to the mortgage including notifications of extrajudicial actions shall be sent to petitioner Ramirez at his given address, to wit:

> N) All correspondence relative to this MORTGAGE, including demand letters, summons, subpoenas or notifications of any judicial or extrajudicial actions shall be sent to the MORTGAGOR at the address given above or at the address that may hereafter be given in writing by the MORTGAGOR to the MORTGAGEE, and the mere act of sending any correspondence by mail or by personal delivery

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[2] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES, approved on March 6, 1924.

[3] *Carlos Lim, et al. v. Development Bank of the Philippines*, G.R. No. 177050, July 1, 2013, p. 16.

[4] *Rollo*, pp. 25-39. Penned by Associate Justice Amelita G. Tolentino with the concurrence of Associate Justices Normandie B. Pizarro and Ruben C. Ayson.

[5] *Id*. at 54-55. Penned by Associate Justice Amelita G. Tolentino with the concurrence of Associate Justices Normandie B. Pizarro and Marlene B. Gonzales-Sison.

[6] *Id*. at 108-110.

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

to the said address shall be valid and effective notice to the MORTGAGOR for all legal purposes and the fact that any communication is not actually received by the MORTGAGOR, or that it has been returned unclaimed to the MORTGAGEE, or that no person was found at the address given, or that the address is fictitious or cannot be located, shall not excuse or relieve the MORTGAGOR from the effects of such notice.[8]

Respondent filed a request for extrajudicial foreclosure of real estate mortgage[9] before Atty. Hipolito Sañez on the ground that Ramirez failed to pay his loan despite demands. During the auction sale on September 8, 1994, respondent was the only bidder for the mortgaged properties.[10] Thereafter, a certificate of sale[11] was issued in its favor as the highest bidder.

In 2000, respondent demanded that Ramirez vacate the properties.[12]

Ramirez sued respondent for annulment of sale and prayed that the certificate of sale be annulled on the ground, among others, that paragraph N of the real estate mortgage was violated for he was not notified of the foreclosure and auction sale.[13]

In its answer, respondent claimed that the foreclosure proceedings were valid.

The trial court ruled that the extrajudicial foreclosure proceedings were null and void and the certificate of sale is invalid. The *fallo* of the Decision[14] dated June 30, 2003 of the Regional Trial Court, Branch 193, Marikina City, in Civil Case No. 2001-701-MK reads:

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[8] *Id*. at 115-116.

[9] *Id*. at 112-A-118.

[10] *Id*. at 122-123.

[11] *Id*. at 127-128.

[12] *Id*. at 124.

[13] *Id*. at 56-58.

[14] *Id*. at 75-85. Penned by Judge Alice C. Gutierrez.

Premises considered, judgment is hereby rendered in favor of the plaintiff [Ramirez] and against the defendant [bank], whose counterclaim is hereby dismissed, declaring the Certificate of Sale of the properties covered by TCT Nos. N-10722 and N-23033, as null and void and ordering the defendant [bank] to pay the following:

1) One Hundred Thousand (₱100,000.00) Pesos as moral damages;

2) Fifty Thousand (₱50,000.00) Pesos as exemplary damages;

3) Fifty Thousand (₱50,000.00) Pesos as Attorney's fees; and

4) Costs of suit.

SO ORDERED.[15]

The CA reversed the trial court's decision and ruled that absence of personal notice of foreclosure to Ramirez as required by paragraph N of the real estate mortgage is not a ground to set aside the foreclosure sale.[16] The *fallo* of the assailed CA Decision reads:

WHEREFORE, the appealed decision dated June 30, 2003 of the Regional Trial Court of Marikina, Branch 193 is hereby ***REVERSED*** and ***SET ASIDE***, and a new one is entered ***AFFIRMING*** the validity of the Certificate of Sale of the properties covering TCT Nos. N-10722 and N-23033.

SO ORDERED.[17]

Ramirez's motion for reconsideration was denied in the assailed CA Resolution.

Hence, this petition raising a lone issue:

What is the legal effect of violating paragraph N of the deed of mortgage which requires personal notice to the petitioner-mortgagor by the respondent-mortgagee bank?[18]

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[15] *Id*. at 84-85.

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

[17] *Id*. at 37.

[18] *Id*. at 13.

Ramirez insists that the auction sale as well as the certificate of sale issued to respondent are null and void since no notice of the foreclosure and sale by public auction was personally given to him in violation of paragraph N of the real estate mortgage which requires personal notice to him of said extrajudicial foreclosure.[19]

In its comment, respondent counters that under Section 3 of Act No. 3135, no personal notice to the mortgagor is required in case of a foreclosure sale. The bank claims that paragraph N of the real estate mortgage does not impose an additional obligation to it to provide personal notice to the mortgagor Ramirez.[20]

We agree with Ramirez and grant his petition.

The CA erred in ruling that absence of notice of extrajudicial foreclosure sale to Ramirez as required by paragraph N of the real estate mortgage will not invalidate the extrajudicial foreclosure sale. We rule that when respondent failed to send the notice of extrajudicial foreclosure sale to Ramirez, it committed a contractual breach of said paragraph N sufficient to render the extrajudicial foreclosure sale on September 8, 1994 null and void. Thus, we reverse the assailed CA Decision and Resolution.

In *Carlos Lim, et al. v. Development Bank of the Philippines*,[21] we held that **unless the parties stipulate**, personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary because Section 3 of Act No. 3135 only requires the posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation. In this case, the parties stipulated in paragraph N of the real estate mortgage that all correspondence relative to the mortgage including notifications of extrajudicial actions shall be sent to mortgagor Ramirez at his given address. Respondent had no choice but to comply with this contractual provision it has

[19] *Id*. at 14.

[20] *Id*. at 96.

[21] *Supra* note 3.

entered into with Ramirez. The contract is the law between them. Hence, we cannot agree with the bank that paragraph N of the real estate mortgage does not impose an additional obligation upon it to provide personal notice of the extrajudicial foreclosure sale to the mortgagor Ramirez.

As we explained in *Metropolitan Bank v. Wong*,[22] the bank's violation of paragraph N of the real estate mortgage is sufficient to invalidate the extrajudicial foreclosure sale:

> [A] contract is the law between the parties and … absent any showing that its provisions are wholly or in part contrary to law, morals, good customs, public order, or public policy, it shall be enforced to the letter by the courts. Section 3, Act No. 3135 reads:
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> "Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality and city."
>
> The Act only requires (*1*) the posting of notices of sale in three public places, and (*2*) the publication of the same in a newspaper of general circulation. Personal notice to the mortgagor is not necessary. *Nevertheless*, the parties to the mortgage contract are not precluded from exacting additional requirements. In this case, petitioner and respondent in entering into a contract of real estate mortgage, agreed *inter alia*:
>
> "all correspondence relative to this mortgage, including demand letters, summonses, subpoenas, or notifications of any judicial or extra-judicial action shall be sent to the MORTGAGOR…."
>
> Precisely, the purpose of the foregoing stipulation is to apprise respondent of any action which petitioner might take on the subject property, thus according him the opportunity to safeguard his rights. When petitioner failed to send the notice of foreclosure sale to respondent, he committed a contractual breach sufficient to render the foreclosure sale on November 23, 1981 null and void.

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[22] 412 Phil. 207, 216-217 (2001).

We reiterated the *Wong* ruling in *Global Holiday Ownership Corporation v. Metropolitan Bank and Trust Company*[23] and recently, in *Carlos Lim, et al. v. Development Bank of the Philippines*.[24] Notably, all these cases involved provisions similar to paragraph N of the real estate mortgage in this case.

On another matter, we note that the trial court awarded moral and exemplary damages, attorney's fees and costs of suit to Ramirez. In granting said monetary awards, the trial court noted that if the bank followed strictly the procedure in the extrajudicial foreclosure of the real estate mortgage and had not filed prematurely an unlawful detainer case against Ramirez, he would not have been forced to litigate and incur expenses.[25]

We delete aforesaid monetary awards, except the award of costs of suit. Nothing supports the trial court's award of moral damages. There was no testimony of any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury[26] suffered by Ramirez. The award of moral damages must be anchored on a clear showing that Ramirez actually experienced mental anguish, besmirched reputation, sleepless nights, wounded feelings or similar injury.[27] Ramirez's testimony[28] is also wanting as to the moral damages he suffered.

Similarly, no exemplary damages can be awarded since there is no basis for the award of moral damages and there is no award of temperate, liquidated or compensatory damages.[29]

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[23] G.R. No. 184081, June 19, 2009, 590 SCRA 188, 196-197.

[24] *Supra* note 3, at 16-17.

[25] *Rollo*, p. 84.

[26] CIVIL CODE, Article 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury....

[27] *Philippine Savings Bank v. Mañalac, Jr.*, G.R. No. 145441, April 26, 2005, 457 SCRA 203, 222.

[28] *Rollo*, pp. 78-79.

[29] *Gatmaitan v. Dr. Gonzales*, 525 Phil. 658, 672 (2006).

Exemplary damages are imposed by way of example for the public good, in addition to moral, temperate, liquidated or compensatory damages.[30]

We likewise delete the trial court's award of attorney's fees since the trial court failed to state in the body of its decision the factual or legal reasons for said award.[31]

Indeed, even the instant petition[32] does not offer any supporting fact or argument for us to affirm the award of moral and exemplary damages and attorney's fees.

However, we agree, with the trial court's award of costs of suit to Ramirez. Costs shall be allowed to the prevailing party as a matter of course unless otherwise provided in the Rules of Court.[33] These costs Ramirez may recover are those stated in Section 10, Rule 142 of the Rules of Court.[34] For instance,

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[30] CIVIL CODE, Article 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

[31] *Ledda v. Bank of the Philippine Islands*, G.R. No. 200868, November 21, 2012, 686 SCRA 285, 296-297.

[32] *Rollo*, pp. 13-20.

[33] RULES OF COURT, Rule 142, Section 1. *Costs ordinarily follow results of suit*. – Unless otherwise provided in these Rules, costs shall be allowed to the prevailing party as a matter of course….

[34] *Id.*, SEC. 10. *Costs in Regional Trial Courts*. – In an action or proceeding pending in a Regional Trial Court, the prevailing party may recover the following costs, and no other:

(a) For the complaint or answer, fifteen pesos;

(b) For his own attendance, and that of his attorney, down to and including final judgment, twenty pesos;

(c) For each witness necessarily produced by him, for each day's necessary attendance of such witness at the trial, two pesos, and his lawful traveling fees;

(d) For each deposition lawfully taken by him, and produced in evidence, five pesos;

(e) For original documents, deeds, or papers of any kind produced by him, nothing;

(f) For official copies of such documents, deeds, or papers, the lawful fees necessarily paid for obtaining such copies;

Ramirez may recover the lawful fees he paid in docketing his action for annulment of sale before the trial court. We add thereto the amount of ₱3,530 or the amount of docket and lawful fees paid by Ramirez for filing this petition before this Court.[35] We deleted the award of moral and exemplary damages; hence, the restriction under Section 7, Rule 142 of the Rules of Court[36] would have prevented Ramirez to recover any cost of suit. But we certify, in accordance with said Section 7, that Ramirez's action for annulment of sale involved a substantial and important right such that he is entitled to an award of costs of suit. Needless to stress, the purpose of paragraph N of the real estate mortgage is to apprise the mortgagor, Ramirez, of any action that the mortgagee-bank might take on the subject properties, thus according him the opportunity to safeguard his rights.[37]

WHEREFORE, we **GRANT** the petition, **REVERSE** and **SET ASIDE** the Decision dated November 26, 2010 and Resolution dated September 28, 2011 of the Court of Appeals in CA-G.R. CV No. 80616. The extrajudicial foreclosure proceedings and auction sale conducted by Atty. Hipolito Sañez on September 8, 1994 and the Certificate of Sale over

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(g) The lawful fees paid by him in entering and docketing the action or recording the proceedings, for the service of any process in action, and all lawful clerk's fees paid by him.

[35] *Id.*, SEC. 11. *Costs … in Supreme Court.* – In an action or proceeding pending … in the Supreme Court, the prevailing party may recover the following costs, and no other:

x x x x x x x x x

(c) All lawful fees charged against him by the clerk xxx of the Supreme Court, in entering and docketing the action….

[36] *Id.*, SEC. 7. *Restriction of costs.* – If the plaintiff in any action shall recover a sum not exceeding ten pesos as debt or damages, he shall recover no more costs than debt or damages, unless the court shall certify that the action involved a substantial and important right to the plaintiff in which case full costs may be allowed.

[37] See *Global Holiday Ownership Corporation v. Metropolitan Bank and Trust Company*, *supra* note 23, at 198.

the mortgaged properties covered by TCT Nos. N-10722 and N-23033, issued in favor of respondent The Manila Banking Corporation, are hereby **DECLARED NULL** and **VOID**.

Costs against respondent The Manila Banking Corporation.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Reyes, JJ.*, concur.

FIRST DIVISION

[G.R. No. 198904. December 11, 2013]

DELIA INES RINGOR, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES**, *respondent.*

SYLLABUS

1. CRIMINAL LAW; QUALIFIED THEFT; ELEMENTS; PRESENT.— [T]he elements of qualified theft punishable under Article 310 in relation to Article 308 of the RPC are as follows: (1) there was a taking of personal property; (2) the said property belongs to another; (3) the taking was done without the consent of the owner; (4) the taking was done with intent to gain; (5) the taking was accomplished without violence or intimidation against person, or force upon things; and (6) the taking was done under any of the circumstances enumerated in Article 310 of the RPC, *i.e.*, with grave abuse of confidence. All elements for the felony of qualified theft under Article 310 in relation to Article 308 of the RPC are present in this case.

2. ID.; ID.; ID.; ACTUAL GAIN IS IRRELEVANT IN THE CRIME OF QUALIFIED THEFT AS THE IMPORTANT CONSIDERATION IS THE INTENT TO GAIN; INTENT TO

GAIN IS PRESUMED FROM THE UNLAWFUL TAKING BY THE OFFENDER OF THE THING SUBJECT OF ASPORTATION.— Intent to gain on the part of the petitioner was likewise established. Intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation. Actual gain is irrelevant as the important consideration is the intent to gain. Intent to gain on the part of the petitioner is readily apparent from the testimonies of the prosecution's witnesses. Particularly, Ibarra, Ingan's brother, testified that the petitioner told him and his sister that she lost the money she collected from LACS. At first, the petitioner claimed that she was robbed. Later, she changed her story and claimed that she lost the money when she rode a mini-bus. Curiously, once Ingan discovered that her story did not check out, the petitioner no longer reported for work. The foregoing circumstances, coupled with the fact that the petitioner took the money paid by LACS and failed to remit the same to PCS, clearly evince intent to gain on the part of the petitioner.

3. ID.; ID.; ID.; THE ELEMENT OF GRAVE ABUSE OF DISCRETION MUST BE THE RESULT OF THE RELATION BY REASON OF DEPENDENCE, GUARDIANSHIP, OR VIGILANCE, BETWEEN THE APPELLANT AND THE OFFENDED PARTY THAT MIGHT CREATE A HIGH DEGREE OF CONFIDENCE BETWEEN THEM WHICH THE APPELLANT ABUSED.— Grave abuse of confidence, as an element of the felony of qualified theft, must be the result of the relation by reason of dependence, guardianship, or vigilance, between the appellant and the offended party that might create a high degree of confidence between them which the appellant abused. The element of grave abuse of confidence is present in this case. Verily, the petitioner, as sales clerk/agent of PCS, is duty-bound to remit to Ingan the payments which she collected from the customers of PCS. She would not have been able to take the money paid by LACS if it were not for her position in PCS. In failing to remit to Ingan the money paid by LACS, the petitioner indubitably gravely abused the confidence reposed on her by PCS.

4. REMEDIAL LAW; APPEALS; 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.— [T]he Court yields to the factual findings of the RTC which were affirmed by the CA, there being no compelling reason to disregard the same. 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.

5. CRIMINAL LAW; QUALIFIED THEFT; PROPER PENALTY. — The penalty for qualified theft is *reclusion temporal* in its medium and maximum periods. Considering, however, that the petitioner stole ₱66,860.90 from PCS, the imposable penalty on the petitioner should be the maximum period of *reclusion temporal* medium and maximum and an incremental penalty of one year for every ₱10,000.00 in excess of ₱22,000.00, but the same shall not exceed 20 years. Applying the Indeterminate Sentence Law, the minimum term shall be *prision mayor* in its maximum period to *reclusion temporal* in its minimum period or within the range of ten (10) years and one (1) day to fourteen (14) years and eight (8) months. The maximum term of the penalty to be imposed on the petitioner is twenty (20) years. Accordingly, the CA correctly imposed on the petitioner the indeterminate penalty of ten (10) years and one (1) day of *prision mayor* as minimum to twenty (20) years of *reclusion temporal* as maximum.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

REYES, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated August 12, 2011 and the Resolution[3] dated October 5, 2011 of the Court of Appeals (CA) in CA-G.R. CR No. 32945, which found Delia Ines Ringor (petitioner) guilty beyond reasonable doubt of qualified theft punished under Article 310 of the Revised Penal Code (RPC).

The Facts

The petitioner was charged in an Information for *estafa* under paragraph 1(b), Article 315 of the RPC, docketed as Criminal Case No. 2278-K before the Regional Trial Court (RTC) of Cabugao, Ilocos Sur, which reads:

> That on or about the 24th day of March, 2003, in the municipality of Sinait, province of Ilocos Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then employed as Sales Clerk belonging to Peoples Consumer[,] Inc., with intent to gain and with abuse of confidence, did then and there, willfully, unlawfully and feloniously by means of deceit defraud one Annelyn I. Ingan in the following manner, to wit: The said accused was assigned as Sales Clerk/Agent for the purpose of collecting sales for goods delivered to different customers one LA Currimao Inc. as in fact did collect sales in the total amount of SIXTY-SIX THOUSAND EIGHT HUNDRED SIXTY PESOS and NINETY CENTAVOS ([₱]66,860.90) with the obligation to turn over the same to owner/complainant but said accused once in possession of said amount, with abuse of confidence, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the same for her own personal use and benefit and

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[1] *Rollo*, pp. 9-28.

[2] Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio, concurring; *id.* at 68-94.

[3] *Id.* at 101.

despite repeated demands made upon her by the owner to turn the amount of [₱]66,860.90 said accused had deliberately refused and still refuses to deliver the same up to the present, to the damage and prejudice of the offended party in the amount of [₱]66,860.90, Philippine currency.[4]

Upon arraignment on October 21, 2004, the petitioner entered a plea of not guilty to the offense charged. On November 4, 2004, the pre-trial conference was deemed terminated. Trial on the merits ensued thereafter.

The petitioner was employed as sales clerk/agent of Peoples Consumer Store (PCS) – a merchandise distributor owned by Honesto Ibarra and managed by Annelyn Ingan (Ingan). As PCS's sales clerk/agent, the petitioner scouts the towns of Sinait, Badoc, Currimao, and Batac, Ilocos Sur to look for customers, takes note of their orders, and submits the said orders to Ingan for approval. Once approved, the petitioner, together with a driver and a helper, delivers the ordered merchandise to the customers. After delivery, the petitioner turns over the delivery receipts to Ingan. Seven days after delivery, the petitioner would then collect the payment from their customers and remit the same to Ingan.

On March 24, 2003, the petitioner booked an order of grocery products from L.A. Currimao Store (LACS) in the amount of ₱68,622.90; the value, however, of the delivered merchandise to LACS only amounted to ₱66,860.90 as one item in the order was not available at that time. After delivering the merchandise to LACS, the petitioner gave a handwritten delivery receipt to Ingan.

Seven days thereafter, the petitioner informed Ingan and her brother Nestor Ibarra (Ibarra) that she lost the money she collected from LACS, claiming that she was a victim of a robbery. Later, the petitioner claimed that she lost the amount collected from LACS in a mini bus. However, upon inquiry by Ingan, the driver of the said mini bus said that the petitioner's claim was impossible since they only had a few passengers then.

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[4] *Id*. at 44.

After the incident, the petitioner no longer reported back to work. Neither did the petitioner remit the amount she collected from LACS. Ingan alleged that, during a meeting between her and the petitioner in a police station, in response to inquiries regarding the unremitted amount to PCS, the petitioner stated that she no longer have the amount which she collected from LACS and that she would just have to go to jail.

On the other hand, the petitioner denied that she was a sales clerk/agent of PCS, claiming that she was merely a sales lady therein. While she admitted that she solicited orders from prospective customers in various towns in Ilocos Sur, the petitioner alleged that she was not the only one who received the payments from PCS's customers. Likewise, the petitioner admitted that she delivered the merchandise to LACS, but claimed that the latter has yet to pay for the same.

The RTC Decision

On September 8, 2009, the RTC rendered a Decision[5] finding the petitioner guilty beyond reasonable doubt of *estafa* under paragraph 1(b), Article 315 of the RPC, *viz*:

> WHEREFORE, premises considered, the guilt of accused DELIA RINGOR having been proven beyond reasonable doubt of the crime of *Estafa*, defined and penalized under paragraph 1(b) of Article 315 of the Revised Penal Code, the Court hereby sentences her to suffer an indeterminate penalty of 4 years and 2 months of *prision correccional* as minimum to 10 years, 8 months and 21 days of *prision mayor* as maximum.
>
> Accused is hereby ordered to indemnify the Peoples Consumer Store the sum of [₱]66,860.90 as actual damages.
>
> SO ORDERED.[6]

The RTC opined that the petitioner received the merchandise to be delivered to LACS in trust for PCS, with the corresponding duty to remit to PCS the amount to be paid by LACS. The

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[5] *Id*. at 44-49.

[6] *Id*. at 49.

RTC held that the failure of the petitioner to account for the amount paid by LACS is evidence of misappropriation, which indubitably prejudiced PCS.

The CA Decision

On appeal, the CA rendered the Decision dated August 12, 2011, which affirmed with modification the RTC Decision dated September 8, 2009. Thus:

> **WHEREFORE**, the trial court's Decision dated September 8, 2009 is **AFFIRMED**, subject to the **MODIFICATION** that accused appellant Delia Ringor is convicted of qualified theft and sentenced to suffer an indeterminate penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum. The award of actual damages to private complainant in the amount of ₱66,860.90 is **AFFIRMED**.
>
> **SO ORDERED**.[7]

The CA opined that the petitioner only had physical possession of the merchandise that were to be delivered to LACS and not juridical possession. Thus, even if there was proof of misappropriation, the CA held that the petitioner could not be convicted of the felony of *estafa* under paragraph 1(b), Article 315 of the RPC. Be that as it may, the CA averred that the petitioner is nevertheless liable for qualified theft under Article 310 in relation to Article 308 of the RPC, pointing out that the Information that was filed against her sufficiently alleged all the elements of the said felony.

The petitioner sought a reconsideration of the CA Decision dated August 12, 2011,[8] but it was denied by the CA in its Resolution dated October 5, 2011.

In support of the instant petition, the petitioner claims that the CA erred in convicting her of the felony of qualified theft; that the prosecution failed to establish all the elements for the

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[7] *Id*. at 93-94.

[8] *Id*. at 95-99.

said felony. She alleges that the prosecution failed to present direct evidence showing that she indeed took the amount that was paid by LACS. In the same vein, the petitioner avers that the prosecution was not able to establish that it was indeed part of the petitioner's job description to collect the payments from PCS's customers. The foregoing circumstances, the petitioner asserts, engenders reasonable doubt as to her guilt for the felony charged.

Issue

Essentially, the issue presented for the Court's resolution is whether the CA erred in convicting the petitioner for the felony of qualified theft under Article 310 in relation to Article 308 of the RPC.

The Court's Ruling

The petition is bereft of any merit.

The felony of theft is defined under Article 308 of the RPC, *viz*:

> Article 308. *Who are liable for theft.*—Theft is committed by any person who, with intent to gain but without violence, against, or intimidation of neither persons nor force upon things, shall take personal property of another without the latter's consent.
>
> Theft is likewise committed by:
>
> 1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
> 2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or objects of the damage caused by him; and
> 3. Any person who shall enter an enclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or other forest or farm products.

On the other hand, Article 310 of the RPC reads:

> Article 310. *Qualified Theft*.—The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, **or with grave abuse of confidence**, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. (Emphasis ours)

In précis, the elements of qualified theft punishable under Article 310 in relation to Article 308 of the RPC are as follows: (1) there was a taking of personal property; (2) the said property belongs to another; (3) the taking was done without the consent of the owner; (4) the taking was done with intent to gain; (5) the taking was accomplished without violence or intimidation against person, or force upon things; and (6) the taking was done under any of the circumstances enumerated in Article 310 of the RPC, *i.e.*, with grave abuse of confidence.[9]

All elements for the felony of qualified theft under Article 310 in relation to Article 308 of the RPC are present in this case. As to the first element, the prosecution was able to establish that the petitioner, as part of her duty as sales clerk/agent of PCS, received the payment from LACS in the amount of ₱66,860.90 for the merchandise delivered to it and that she failed to remit the same to Ingan. This fact was testified to by Ibarra during the proceedings before the RTC, thus:

> Q: What about her failure to remit the value of the goods she delivered? Why do you know of this fact?
> A: I was at home when she came and she did not remit any amount, ma'am.

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[9] See *Matrido v. People*, G.R. No. 179061, July 13, 2009, 592 SCRA 534, 541, citing *People v. Bago*, 386 Phil. 310, 334-335 (2000).

Q: And so[,] what happened when she informed you ……. Who was with you when she came to your house?
A: My sister, ma'am.

Q: And so[,] what happened upon having been informed, what did Delia Ringor do?
A: She informed us that she lost the money, ma'am.

Q: Did she inform you why she lost the money?
A: At first she claimed that she was a victim of a hold-up but when we were about to go and look for it she claimed again that she lost it in a mini bus, ma'am.

Q: When was that information given to you by Delia Ringor, Mr. Witness?
A: After she reported telling us that she lost the money, ma'am.

Q: So that will [be] how many days after the delivery was made by the accused?
A: About seven (7) days after the delivery, ma'am.

x x x x x x x x x[10]

Further, Ingan testified that:

Q: When the accused failed to report back for duty and failed to remit the amount, what did you do?
A: I informed her, sir.

Q: When you said you informed her, what form of information?
A: I called her mother because she disappeared and she fixed a date at the police station for us to talk over the matter, sir.

Q: And were you able to talk the same with the office of the police?
A: Yes, sir.

Q: What transpired during your talk at the police?
A: She told me: "That is no longer existing, I just go to jail," sir.

x x x x x x x x x[11]

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[10] *Rollo*, pp. 85-86.

[11] *Id*. at 88.

The foregoing testimonies clearly prove that the petitioner received the amount paid by LACS for the merchandise delivered to it and that she failed to remit the same to PCS.

The second, third and fifth elements of qualified theft were likewise established by the prosecution; that the amount paid by LACS, taken by the petitioner without authority and consent, belongs to PCS, and that the taking was accomplished without the use of violence or intimidation against persons, or force upon things, is not disputed.

Anent the fourth element, intent to gain on the part of the petitioner was likewise established. Intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation. Actual gain is irrelevant as the important consideration is the intent to gain.[12]

Intent to gain on the part of the petitioner is readily apparent from the testimonies of the prosecution's witnesses. Particularly, Ibarra, Ingan's brother, testified that the petitioner told him and his sister that she lost the money she collected from LACS. At first, the petitioner claimed that she was robbed. Later, she changed her story and claimed that she lost the money when she rode a mini-bus. Curiously, once Ingan discovered that her story did not check out, the petitioner no longer reported for work. The foregoing circumstances, coupled with the fact that the petitioner took the money paid by LACS and failed to remit the same to PCS, clearly evince intent to gain on the part of the petitioner.

As regards the sixth element, the petitioner claims that the prosecution failed to show that there was grave abuse of confidence on her part. She pointed out that there was no evidence that it was indeed her duty, as an employee of PCS, to personally collect the payments from the customers of PCS.

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[12] *People v. Bustinera*, G.R. No. 148233, June 8, 2004, 431 SCRA 284, 296.

The petitioner asserts that the failure of the prosecution to show evidence that it was indeed part of her duty, as sales clerk/agent of PCS to personally collect payments from PCS's customers negates the element of grave abuse of confidence.

The Court does not agree. The petitioner's claim is belied by the allegations in the appellant's brief[13] she filed with the CA. Thus:

> **Delia Ringor** (DELIA for brevity), is a 43-year old sales lady and a resident of Barangay Duyayat, Sinait, Ilocos Sur. She denied the allegation imputed against her and maintained that since 1989, she had been working as a sales lady of Peoples Consumer Store. As such, she would go out to collect orders from customers in different towns of Ilocos. She would list the orders and give the same to Alma Agbayani, who in turn, submits it to Annelyn for approval. **Delia would then deliver the goods to the customers and collect the payments thereon on her next delivery.**[14] (Emphasis ours)

Grave abuse of confidence, as an element of the felony of qualified theft, must be the result of the relation by reason of dependence, guardianship, or vigilance, between the appellant and the offended party that might create a high degree of confidence between them which the appellant abused.[15] The element of grave abuse of confidence is present in this case. Verily, the petitioner, as sales clerk/agent of PCS, is duty-bound to remit to Ingan the payments which she collected from the customers of PCS. She would not have been able to take the money paid by LACS if it were not for her position in PCS. In failing to remit to Ingan the money paid by LACS, the petitioner indubitably gravely abused the confidence reposed on her by PCS.

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[13] *Rollo*, pp. 30-43.

[14] *Id*. at 35.

[15] See *People v. Tanchanco*, G.R. No. 177761, April 18, 2012, 670 SCRA 130, 144; *Astudillo v. People*, 538 Phil. 786, 811-812 (2006).

In sum, the Court yields to the factual findings of the RTC which were affirmed by the CA, there being no compelling reason to disregard the same. 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.[16]

Under Article 310 of the RPC, the penalty for qualified theft is two degrees higher than that specified in Article 309. Article 309 of the RPC, in part, provides that:

> Article 309. *Penalties.*—Any person guilty of theft shall be punished by:
>
> 1. **The penalty of *prision mayor* in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos, but if the value of the thing stolen exceeds the latter amount the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years**. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.
>
> x x x (Emphasis ours)

Thus, the penalty for qualified theft is *reclusion temporal* in its medium and maximum periods. Considering, however, that the petitioner stole ₱66,860.90 from PCS, the imposable penalty on the petitioner should be the maximum period of *reclusion temporal* medium and maximum and an incremental penalty of one year for every ₱10,000.00 in excess of ₱22,000.00, but the same shall not exceed 20 years.

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[16] *Seguritan v. People*, G.R. No. 172896, April 19, 2010, 618 SCRA 406.

Applying the Indeterminate Sentence Law, the minimum term shall be *prision mayor* in its maximum period to *reclusion temporal* in its minimum period or within the range of ten (10) years and one (1) day to fourteen (14) years and eight (8) months. The maximum term of the penalty to be imposed on the petitioner is twenty (20) years.[17] Accordingly, the CA correctly imposed on the petitioner the indeterminate penalty of ten (10) years and one (1) day of *prision mayor* as minimum to twenty (20) years of *reclusion temporal* as maximum.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DENIED**. The Decision dated August 12, 2011 and the Resolution dated October 5, 2011 of the Court of Appeals in CA-G.R. CR No. 32945 are hereby **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

[17] Considering that the amount stolen by the petitioner exceeded ₱22,000.00, the penalty to be imposed on her should be taken from the maximum period of the penalty of *reclusion temporal* medium and maximum, *i.e.*, eighteen (18) years, two (2) months and twenty-one (21) days to (20) twenty years, plus an additional four (4) years as incremental penalty for the excess ₱40,000.00 in excess of the ₱22,000.00 threshold amount under Article 309 of the RPC. However, considering that the penalty to be imposed on the petitioner, together with the incremental penalty, would already exceed twenty (20) years, the maximum term of the indeterminate penalty to be imposed on the petitioner should be set to twenty (20) years.

FIRST DIVISION

[G.R. No. 199868. December 11, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DALTON LAURIAN, JR. *Y* PUGSOT,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; GUIDING PRINCIPLES IN A PROSECUTION FOR RAPE; ABSENT ANY PLAUSIBLE DEMONSTRATION ON THE PART OF THE APPELLANT THAT BOTH THE TRIAL COURT AND THE COURT OF APPEALS OVERLOOKED A MATERIAL FACT THAT OTHERWISE WOULD CHANGE THE OUTCOME OR MISAPPRECIATED A CIRCUMSTANCE OF CONSEQUENCE, THERE IS NO COMPELLING BASIS TO DEVIATE FROM WHAT HAS ALREADY BEEN FACTUALLY ESTABLISHED IN THE CASE.— In a prosecution for rape, we have consistently held that 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. We likewise emphasized in jurisprudence that, by the very nature of the crime of rape, conviction or acquittal depends almost entirely on the credibility of the complainant's testimony because of the fact that, usually, only the participants can directly testify as to its occurrence. Furthermore, we have, time and again, reiterated this Court's practice of giving great weight to the trial court's assessment of the credibility of witnesses especially when it is affirmed by the appellate court. x x x. Guided by the aforementioned principles, we find no cogent reason to depart from the factual findings of the trial court. Consequently, we sustain the conclusions derived by the trial court on the basis of said findings. While, admittedly, the testimonies of the prosecution and defense witnesses contradict and contrast each other on several aspects of the common narrative, we are guided by both practicality and precedent to relegate the resolution of such points of contention to the astute inferences made by the trial court judge who was in the best position to perform the very personal task of gauging the

credibility of witnesses. Absent any plausible demonstration on the part of the appellant that both the trial court and the Court of Appeals overlooked a material fact that otherwise would change the outcome, or misappreciated a circumstance of consequence, there is no compelling basis to deviate from what has already been factually established in this case.

2. CRIMINAL LAW; RAPE; USE OF FORCE OR INTIMIDATION; PHYSICAL RESISTANCE NEED NOT BE ESTABLISHED WHEN INTIMIDATION IS BROUGHT TO BEAR ON THE VICTIM AND THE LATTER SUBMITS OUT OF FEAR; THE FAILURE TO SHOUT OR OFFER TENUOUS RESISTANCE DOES NOT MAKE VOLUNTARY THE VICTIM'S SUBMISSION TO THE CRIMINAL ACTS OF THE ACCUSED.— [A]ppellant is accused of having carnal knowledge of AAA through the use of force or intimidation. A review of the transcript of AAA's testimony made in open court reveals that she was clear and straightforward in her assertion that appellant raped her in the manner described in the criminal charge. x x x. Contrary to appellant's insistence that the essential element of the use of force or intimidation was not present in this case because AAA never exhibited an adequate amount of resistance despite the fact that appellant was drunk and unarmed, the x x x text of AAA's testimony clearly showed otherwise. It is evident from the transcript that appellant used his physical superiority to intimidate and force AAA into coming with him inside a dark classroom and later to knock AAA unconscious which facilitated the consummation of his felonious carnal desire. Moreover, AAA's narration disclosed that she was not able to successfully resist appellant because she was simply overpowered by fear and by the physical force employed against her. Nevertheless, it matters not whether AAA strongly resisted appellant's unwanted purpose for it is jurisprudentially settled that physical resistance need not be established when intimidation is brought to bear on the victim and the latter submits out of fear – the failure to shout or offer tenuous resistance does not make voluntary the victim's submission to the criminal acts of the accused. Furthermore, we have previously held that force or violence required in rape cases is relative – it does not need to be overpowering or irresistible and it is present when it allows the offender to consummate his purpose. In other words, the degree of force

or violence required to be proven in a rape charge varies because it is dependent upon the age, size and strength of the parties and their relation to each other.

3. ID.; ID.; WE CANNOT EXPECT FROM THE IMMATURE AND INEXPERIENCED RAPE VICTIM TO MEASURE UP TO THE SAME STANDARD OF CONDUCT AND REACTION THAT WE WOULD EXPECT FROM ADULTS WHOSE MATURITY IN AGE AND EXPERIENCE COULD HAVE BROUGHT THEM TO STAND UP MORE QUICKLY TO THEIR INTEREST.— With respect to AAA's actions immediately following the rape incident at issue as well as her delay in reporting the crime which appellant both characterized as indicative of the falsity of her accusation, we observe that such arguments are not novel in rape cases and have been shot down repeatedly by our pronouncements in jurisprudence. In *People v. Buado, Jr.*, we dealt with these twin issues in this manner: Verily, there has never been any uniformity or consistency of behavior to be expected from those who had the misfortune of being sexually molested. The Court has pointed out that some of them have found the courage early on to publicly denounce the abuses they experienced, but that there were others who have opted to initially keep their harrowing ordeals to themselves and to just move on with their lives as if nothing had happened, until the limits of their tolerance were reached. AAA belonged to the latter group of victims, as her honest declarations to the trial court revealed. Also, we cannot expect from the immature and inexperienced AAA to measure up to the same standard of conduct and reaction that we would expect from adults whose maturity in age and experience could have brought them to stand up more quickly to their interest. Lastly, long silence and delay in reporting the crime of rape to the proper authorities have not always been considered as an indication of a false accusation.

4. ID.; ID.; RAPE CHARGE BECOMES DOUBTFUL ONLY WHEN THE DELAY OR INACTION IN REVEALING ITS COMMISSION IS UNREASONABLE AND UNEXPLAINED. — [T]here is jurisprudence which states that a rape charge becomes doubtful only when the delay or inaction in revealing its commission is unreasonable and unexplained. Those conditions do not obtain in the case at bar since, during the

trial, AAA testified that she did not tell anyone in her boarding house about what happened to her right after the terrible encounter with appellant because she was afraid of her father. This candid statement from the victim not only discloses a plausible justification for the delay but it also further manifests her youth or immaturity which is a personal circumstance that has never prevented this Court from upholding the credibility of a witness. Instead, such a condition has been considered as a cornerstone of a testimony that is worthy of belief.

5. ID.; ID.; THE CRYING OF A VICTIM DURING HER TESTIMONY IS EVIDENCE OF THE TRUTH OF THE RAPE CHARGES, FOR THE DISPLAY OF SUCH EMOTION INDICATES THE PAIN THAT THE VICTIM FEELS WHEN ASKED TO RECOUNT HER TRAUMATIC EXPERIENCE.— [I]t is also worthy to note that, when AAA relived her ordeal at the witness stand, she broke down in tears more than once. This only serves to bolster her credibility considering that we have consistently held that the crying of a victim during her testimony is evidence of the truth of the rape charges, for the display of such emotion indicates the pain that the victim feels when asked to recount her traumatic experience.

6. REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL; DENIAL CANNOT PREVAIL OVER THE POSITIVE AND CATEGORICAL TESTIMONY AND IDENTIFICATION OF AN ACCUSED BY THE COMPLAINANT AND THAT MERE DENIAL, WITHOUT ANY STRONG EVIDENCE TO SUPPORT IT, CAN SCARCELY OVERCOME THE POSITIVE DECLARATION BY THE VICTIM OF THE IDENTITY AND INVOLVEMENT OF APPELLANT IN THE CRIME ATTRIBUTED TO HIM.— It is well-settled in jurisprudence that denial, just like alibi, cannot prevail over the positive and categorical testimony and identification of an accused by the complainant and that mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crime attributed to him. In the case at bar, the only supporting evidence that appellant has presented to back up his assertion that no rape took place during the time he spent with AAA inside the unlit classroom was the unreliable

testimony of Rodel Benito. The testimony of said witness cannot be taken as credible because Benito is a close friend and drinking buddy of appellant and jurisprudence instructs us that testimonies of close relatives and friends are necessarily suspect and cannot prevail over the unequivocal declaration of a complaining witness. Contrary to Benito's statement that he was alert and awake during the entire period in which appellant and AAA were together, AAA emphatically testified that Benito was drunk and asleep the whole time.

7. CRIMINAL LAW; RAPE; A LOVE AFFAIR DOES NOT JUSTIFY RAPE FOR A MAN DOES NOT HAVE THE UNBRIDLED LICENSE TO SUBJECT HIS BELOVED TO HIS CARNAL DESIRES AGAINST HER WILL.— With regard to the testimony of the other defense witnesses, we have determined that they are immaterial and only intended to shore up appellant's claims that he and AAA knew each other prior to the rape incident at issue and that he had been courting AAA, implying they were sweethearts. Granting without conceding that this thesis holds true, the damning declaration made by AAA that she was raped by appellant on that fateful night still stands undiminished. The use of force or intimidation in sexual intercourse is not necessarily ruled out by the mere claim of an amorous relationship. Jurisprudence tells us that a love affair does not justify rape for a man does not have the unbridled license to subject his beloved to his carnal desires against her will.

8. ID.; ID.; PENALTY OF *RECLUSION PERPETUA*, IMPOSED; CIVIL LIABILITY OF ACCUSED-APPELLANT.— We therefore affirm the conviction of appellant for simple rape with a penalty of *reclusion perpetua*. The award of ₱50,000.00 as civil indemnity as well as ₱50,000.00 as moral damages is upheld. However, the award of exemplary damages is increased from ₱25,000.00 to ₱30,000.00 in line with jurisprudence. Moreover, the amounts of damages thus awarded are subject further to interest of 6% per annum from the date of finality of this judgment until they are fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal from a Decision[1] dated January 27, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01492, entitled *People of the Philippines v. Dalton Laurian, Jr. y Pugsot*, which affirmed the Decision[2] dated April 15, 2005 of the Regional Trial Court (RTC) of La Trinidad, Benguet, Branch 9 in Criminal Case No. 02-CR-4443. The trial court convicted appellant Dalton P. Laurian, Jr. of one (1) count of rape defined under Article 266-A of the Revised Penal Code.

The Office of the Provincial Prosecutor of Benguet charged appellant with rape in an Information[3] dated February 27, 2002, the accusatory portion of which states:

> That on or about the 28th day of September 2001, at Poblacion, Municipality of Buguias, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA[4]], a minor, who is sixteen (16) years, three (3) months and four (4) days old, and under 18 years of age, against her will and consent, to her damage and prejudice.

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[1] *Rollo*, pp. 2-16; penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Andres B. Reyes, Jr. and Japar B. Dimaampao, concurring.

[2] CA *rollo*, pp. 8-28.

[3] Records, pp. 1-2.

[4] The Court withholds the real name of the victim-survivor and uses fictitious initials instead to represent her. Likewise, 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 not to be disclosed. (See *People v. Cabalquinto*, 533 Phil. 703 [2006].)

Appellant was arraigned on April 29, 2002 and he pleaded "NOT GUILTY" to the charge against him.[5] During the subsequent pre-trial conference, appellant admitted the jurisdiction of the trial court and the minority of AAA.[6]

In the Plaintiff-Appellee's Brief, the prosecution summed the factual antecedents of this case in this wise:

About 9:00 o'clock in the evening of September 28, 2001, victim [AAA], together with her friend [BBB], were on their way home after attending a fellowship at the Assembly of God Church, Poblacion, Buguias, Benguet. Along the way, appellant Dalton Laurian, Jr. suddenly pulled [AAA] by the hand and led her towards the store of a certain Lydia Pagaling.

[AAA] resisted by pulling away her hands, and grabbing [BBB], but appellant did not let go. At the store, appellant assured them that they would not stay for long and that they would be allowed to leave soon. [BBB], however, upon finding an opportunity, was able to run away.

Appellant dragged [AAA] to a nearby clinic, then to a playground. During this time, [AAA] was not able to shout, out of fear of the appellant who was drunk. The threat continued, with appellant saying that he would throw a stone at anyone who would come near them. Just then, [AAA] heard the voice of her landlady, Mrs. Felisa Cabaling, calling her name on the road adjacent to the playground. [Appellant] ordered her to hide. She did so - - fear having overwhelmed her.

When [AAA]'s landlady stopped calling for her name, appellant again lugged [AAA] to a classroom at the Baguias Central School. Appellant pushed her inside, made her lie down, and went on top of her. He unhooked her bra, held her breasts, and kissed her. [AAA] tried to push away the set chairs where she was made to lie down, but appellant pinned down her head. Due to this struggle, [AAA] bumped her head and lost consciousness.

It was already 3 o'clock in the morning when [AAA] regained consciousness. She felt pain in her head, vagina and feet. Her pants were unzipped, and she saw blood in her underwear when she went

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[5] Records, p. 31.

[6] *Id*. at 53-54.

to the comfort room to urinate. After crying in the comfort room, she went outside, only to find the appellant. He pulled her into the room, and thereafter let her go home.

Out of fear, [AAA] never told anyone of the incident. It was only when her landlady wrote her mother, informing her of her disappearance on that fateful night that she eventually told her mother what happened.

After learning of the incident, [AAA] was immediately referred to a psychologist and to Dr. Vladimir Villaseñor for medical check-up. The examination conducted by Dr. Villaseñor, Medico-legal Officer III of the PNP Regional Crime Laboratory, revealed shallow healed lacerations at 3 and 7 o'clock positions and deep healed lacerations at 9 o'clock positions of the hymen. Likewise, the examination found the presence of sexual abuse, upon his examination of [AAA]. On the other hand, Psychologist Christine Golocan, after a series of psychological tests found [AAA] to be below average. She likewise found her to be suffering intense anxiety, inferred to be due to her traumatic experience of sexual abuse.

Thereafter, [AAA] filed a criminal complaint against appellant. Upon learning of the case filed by [AAA], appellant Dalton went to the house of [AAA]'s grandfather five (5) times to offer marriage to victim [AAA] as a form of settlement. [AAA] was then sixteen (16) years old.[7] (Citations omitted.)

On the other hand, the defense offered an alternate narrative which was recounted by the trial court, thus:

At 2 o'clock in the afternoon of September 28, 2001, [appellant] was with Rodel Benito at the store of Jane Atas where they drank one bottle of round post gin while conversing with each other. They spent four (4) hours there and thereafter, went out and proceeded to the store of Conchita Bayas. Because they did not have anymore the money to buy drinks, they just stood at the doorway of the store of Conchita Bayas and continued conversing for about 30 minutes. When [appellant] went to answer the call of nature, Rodel Benito went away so he proceeded to the front of the closed store of Lydia Pagaling where he came upon John Lesino, Roy Menzi, Rodel Benito

[7] CA *rollo*, pp. 139-142.

and Jane Macay conversing about his brother being mauled. *After about thirty (30) minutes, he met [AAA] who just came from the Jesus is Alive Church fellowship with [BBB]. [Appellant] held [AAA]'s hands and led her to the closed Lydia's store. [AAA] sat with him and thereafter, they stood up and proceeded to the RHU. While [appellant] was holding [AAA] by the hand, the latter never resisted. Since there were many people inside the clinic, they were able to see his brother only through the window. After a while, they proceeded to the school playground and they sat on the first waiting shed where he courted her. They transferred to the second waiting shed about ten (10) meters away and they continued their conversations when they heard Mrs. Felisa Cabaling about 20 meters away calling for [AAA]. [Appellant] told [AAA] to respond but [AAA] went instead to hide at the back of the cemented waiting shed. When they can no longer hear the shout of Mrs. Cabaling, [AAA] returned to him and they went to the classroom of his mother at the Buguias Elementary School. [Appellant] was informed that Mrs. Cabaling was with [BBB].* While they were in the second waiting shed, [appellant] never heard [AAA] shout for help. [Appellant] never forced [AAA] to go with him inside the classroom. That they were able to enter the classroom of his mother because [appellant] was able to get the key to the classroom. After getting inside the classroom, [appellant] went out locked the door and passed through the window in going back inside. [Appellant] saw Rodel Benito, went out through the window and shouted for him. [Appellant] went back inside and saw [AAA] seated on the desk and then Rodel Benito came inside through the window. *While [AAA] was seated, [appellant] arranged four desks and there, he and [AAA] lie down while Rodel Benito also lied down at the front desk. When [AAA] felt going to the comfort room, she woke [appellant] up because he [fell] asleep. [Appellant] denied having hit the head of [AAA] with something or the desk and that [AAA] never lost consciousness while they were inside the classroom. At 3 o'clock in the early morning the following day, [AAA] told him that she would be going home. [Appellant] told her that he will accompany her to their boarding house but when they were at the waiting shed, [AAA] told him that she will go alone so he returned to the classroom and continued to sleep.* When [appellant] went back to the classroom, Rodel Benito was no longer there. [Appellant] was able to see [AAA] three (3) days after September 28, 2001 at the Buguias Central School. [Appellant] came only to know of this case filed against him by [AAA]

through his mother three weeks later and he scolded his mother saying it was not true. When [appellant] received a subpoena from Fiscal Gondayao and he said that the charges were not true, Fiscal Gondayao advised him to go to the house of [AAA] and settle matters together so he went to the house of [AAA] five (5) times but the family of [AAA] did not like. x x x.[8]

After hearing the testimonies of the witnesses and examining the evidence presented in this case, the trial court rendered a guilty verdict on April 15, 2005, the dispositive portion of which states:

WHEREFORE, accused **DALTON LAURIAN, JR.** is hereby pronounced guilty of the crime charged and hereby sentenced to suffer the penalty of ***Reclusion Perpetua***.

Moreover, accused is ordered to indemnify the private complainant the amount of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.

Meanwhile, let the records of this case be transmitted to the Court of Appeals for automatic review in view of the nature of the penalty imposed.

No pronouncement as to costs.[9]

Appellant appealed his case to the Court of Appeals but the appellate court merely upheld the lower court's judgment in the assailed January 27, 2011 Decision, the dispositive portion of which is reproduced here:

WHEREFORE, the instant appeal is **DISMISSED**. The *Decision* dated 15 April 2005 of the Regional Trial Court of La Trinidad, Benguet, Branch 9, in Criminal Case No. 02-CR-4443 is hereby **AFFIRMED**.[10]

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

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

[10] *Rollo*, p. 15.

Thus, the appellant, through the instant appeal, pleads his innocence before this Court by reiterating the following arguments in his brief:

(A)

THE TRIAL COURT ERRED IN APPRECIATING THE EVIDENCE IN FAVOR OF THE COMPLAINANT-APPELLEE AND IN RULING THAT THE PUBLIC PROSECUTOR HAS PROVED THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

(B)

THE TRIAL COURT GRAVELY ABUSED ITS DISCRETION IN NOT ACQUITTING THE ACCUSED DESPITE COMPLAINANT'S MANIFESTLY DOUBTFUL ACCOUNT OF THE ALLEGED RAPE ON SEPTEMBER 28, 2001.

(C)

THE TRIAL COURT ERRED IN RESOLVING TO CONVICT THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE WEAKNESS OF THE EVIDENCE OF THE PROSECUTION.[11]

Appellant subsequently submitted a supplemental brief which assigned the following errors to the findings of the Court of Appeals:

I

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE INSUFFICIENCY OF EVIDENCE PRESENTED BY THE PROSECUTION.

II

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE UNDER ART. 266-A, PARAGRAPH 1(A) DESPITE THE FACT THAT BASED ON THE EVIDENCE PRESENTED, THE VICTIM WAS THEN UNCONSCIOUS WHEN THE ALLEGED RAPE WAS COMMITTED.

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[11] CA *rollo*, p. 46.

III

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE CLEAR VIOLATION OF ACCUSED RIGHT TO DUE PROCESS.[12]

In fine, appellant argues that he deserves to be acquitted of the charge of rape made against him because the trial court erroneously relied on insufficient evidence to convict him. He insists that his guilt was not proven beyond reasonable doubt because the trial court gave unwarranted credence on the incredible and inconsistent testimony of AAA while downplaying, if not totally disregarding, the abundant testimonial evidence that supported his innocence. Furthermore, he questions the validity of his conviction of the felony of rape under Article 266-A, paragraph 1(a) of the Revised Penal Code, purportedly committed through force, threat and intimidation, despite the fact that, based on her own testimony, AAA was unconscious when the alleged rape was committed.

After a careful and painstaking reexamination of the records of this case, we are convinced that there is no merit in the present appeal.

In a prosecution for rape, we have consistently held that 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] We likewise emphasized in jurisprudence that, by the very nature of the crime of rape, conviction or acquittal depends almost entirely on the credibility of the complainant's testimony because of the fact that, usually, only the participants can directly testify as to its occurrence.[14]

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[12] *Rollo*, pp. 35-36.

[13] *People v. Bustamante*, G.R. No. 189836, June 5, 2013.

[14] *People v. Penilla*, G.R. No. 189324, March 20, 2013, 694 SCRA 141, 149.

Furthermore, we have, time and again, reiterated this Court's practice of giving great weight to the trial court's assessment of the credibility of witnesses especially when it is affirmed by the appellate court. In *People v. Piosang*,[15] we restated this principle in this manner:

> [F]indings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court. As a general rule, on the question whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. The trial court is, thus, in the best position to weigh the conflicting testimonies and to discern if the witnesses were telling the truth. x x x.

Guided by the aforementioned principles, we find no cogent reason to depart from the factual findings of the trial court. Consequently, we sustain the conclusions derived by the trial court on the basis of said findings. While, admittedly, the testimonies of the prosecution and defense witnesses contradict and contrast each other on several aspects of the common narrative, we are guided by both practicality and precedent to relegate the resolution of such points of contention to the astute inferences made by the trial court judge who was in the best position to perform the very personal task of gauging the credibility of witnesses. Absent any plausible demonstration on the part of the appellant that both the trial court and the Court of Appeals overlooked a material fact that otherwise would change the outcome, or misappreciated a circumstance of consequence, there is no compelling basis to deviate from what has already been factually established in this case.

Article 266-A of the Revised Penal Code defines when and how the felony of rape is committed, to wit:

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[15] G.R. No. 200329, June 5, 2013.

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.

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.

In the case at bar, appellant is accused of having carnal knowledge of AAA through the use of force or intimidation. A review of the transcript of AAA's testimony made in open court reveals that she was clear and straightforward in her assertion that appellant raped her in the manner described in the criminal charge. The pertinent portions of AAA's testimony are reproduced as follows:

[PROSECUTOR PATARAS]

Q And what was that unusual incident that happened while you were going home?
A While we were walking home along the road, there was [appellant] and he got hold of my left hand.

Q Do you know of any reason why [appellant] held your left hand?
A None, sir.

Q Now, when [appellant] held your hand, did he say anything, Madam Witness?
A None, sir. He pulled me to the store of Lydia.

Q How about your companion [BBB], where was she when [appellant] held your hand and pulled you to the store?
A I pulled her along with me.

Q Now, Madam Witness, what happened, if any, when [appellant] pulled you to the store?
A He made us sit down on the chair and I was trying to pull my hand so that we will go home but he just held my hand.

Q And what was your reaction, if any, when [appellant] held your hand?
A I was pulling my hand and my body backwards but he didn't let me go.

Q And after [appellant] made you sit, what happened next, if any?
A He said that we are going to leave in a while and I was trying to pull myself and my hand backwards but he did not let me go.

Q How about [BBB], where was she when [appellant] made you sit down?
A We sat down and after a while [BBB] ran away.

Q And what happened when [BBB] ran away?
A He pulled me to the clinic because he wants to see his older brother who was injured.

x x x x x x x x x

Q And what did you do, if any, while [appellant] was pulling you towards the clinic?
A I was pulling myself but he did not want to let go of me.

x x x x x x x x x

Q While [appellant] was pulling you, you did not shout, Madam Witness?
A No, sir, because he was drunk and I am afraid of him.

Q Why are you afraid of [appellant] being drunk?

COURT:

Let it be of record that it takes her a hard time in answering the question. Reform the question.

PROS. PATARAS:

Have you known [appellant] before that incident on September 28, 2001?

A No, sir.

x x x x x x x x x

Q And while you were being pulled by [appellant] towards the playground from the clinic, what were you doing, if any?

A I was pulling myself and my hand because I wanted to go home.

x x x x x x x x x

Q Now, you said that he let you sit down at the waiting shed, what happened next when [appellant] let you sit down at the waiting shed?

A He let me sit down and he picked a stone.

Q Do you know of any reason why he picked a stone?

A He said that if somebody comes here, he will throw the stone at him.

Q And after [appellant] picked up the stone, what happened next, if any?

A Then I heard Mrs. Cabaling shouting.

COURT:

Make it of record that the witness is shedding tears.

PROS. PATARAS:

Q Who is this Mrs. Cabaling, Madam Witness?

A My landlady, sir.

Q And what was she shouting when you heard her?

A She was calling my name, sir.

Q And what did you do, if any, when you heard Mrs. Cabaling shouting your name?

A [Appellant] said for me to hide, sir.

x x x x x x x x x

Q And what did you do when [appellant] told you to hide?

A I followed what he said because I was afraid of him.

Q Now, why are you again afraid of him?
A Because he was drunk and he was holding a stone.

x x x x x x x x x

Q Now, what happened next after you went to hide at the post of the waiting shed?
A When Mrs. Cabaling stopped shouting, he pulled me again to the classroom of his mother.

x x x x x x x x x

Q And what happened next when he pulled you to the room of his mother at Buguias Elementary School?
A He was unlocking the door of the classroom while holding my hand. I was pulling myself away but he pushed me in front of him and he opened the door and he pushed me inside.

Q And what happened next after you were pushed inside the said classroom?
A He fixed the chairs and he made it face me.

Q And after [appellant] fixed the said chairs facing you, what happened next?
A When I was looking for a way out he pulled me and he made me lie down on the chair.

Q And what happened next, after [appellant] made you lie down on the chair?
A He went on top of me, sir.

PROS. PATARAS

May we just put on record that the witness continued to cry. May we know from the witness if she could continue to testify?
A Yes, sir.

Q And what happened when [appellant] went on top of you, if any?
A He went on top of me and he removed the hook of my bra and he held my breast.

Q And after holding your breast, what did he do next, if any?
A He kissed me.

Q What particular part of your body was kissed by this [appellant]?
A (The witness is pointing to her right cheek and to her neck.)

Q After he kissed you on your cheek and neck, what happened next?
A I was trying to push away the chairs and he put his hand on my head and he was fixing the chairs with his feet and all of a sudden my head was bumped and when I woke up it was already 3 o'clock in the morning.

COURT:

So, you had no consciousness when your head was bumped?
A None, sir. When I woke up it was already 3 o'clock in the morning.

PROS. PATARAS:

So, you want to tell this Honorable Court that you lost consciousness after your head was bumped to a hard object, is that your testimony?
A Yes, sir.

Q Now, after gaining your consciousness at about 3 o'clock in the morning, what did you feel, if any?
A My head was painful including my vagina and my feet.

Q How about your clothes, Madam Witness, what did you observe of them when you regained consciousness, if any?
A My zipper was unzipped.

Q Aside from noticing that your zipper was unzipped, what else did you observe with your clothes?
A When I went to the CR, I saw blood, sir.

Q Where did you see blood?
A In my panty, sir.

x x x x x x x x x

Q Now, Madam Witness, what do you think happened to you on that particular night of September 28, 2001?
A What I know is that he raped me, sir.

Q What made you say that he raped you?
A Because my body was painful.

x x x x x x x x x

Q For how long did you stay inside the CR?
A I just urinated and I saw the blood and I cried and then I intended to go home.

Q Now, you mentioned of blood, do you know where that blood came from?
A From my vagina.[16] (Emphases supplied.)

Contrary to appellant's insistence that the essential element of the use of force or intimidation was not present in this case because AAA never exhibited an adequate amount of resistance despite the fact that appellant was drunk and unarmed, the cited text of AAA's testimony clearly showed otherwise. It is evident from the transcript that appellant used his physical superiority to intimidate and force AAA into coming with him inside a dark classroom and later to knock AAA unconscious which facilitated the consummation of his felonious carnal desire. Moreover, AAA's narration disclosed that she was not able to successfully resist appellant because she was simply overpowered by fear and by the physical force employed against her.

Nevertheless, it matters not whether AAA strongly resisted appellant's unwanted purpose for it is jurisprudentially settled that physical resistance need not be established when intimidation is brought to bear on the victim and the latter submits out of fear – the failure to shout or offer tenuous resistance does not make voluntary the victim's submission to the criminal acts of the accused.[17]

Furthermore, we have previously held that force or violence required in rape cases is relative – it does not need to be overpowering or irresistible and it is present when it allows the

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[16] TSN, November 25, 2002, pp. 5-13.

[17] *People v. Lomaque*, G.R. No. 189297, June 5, 2013.

offender to consummate his purpose.[18] In other words, the degree of force or violence required to be proven in a rape charge varies because it is dependent upon the age, size and strength of the parties and their relation to each other.

Thus, we quote with approval the Court of Appeals' detailed discussion on this particular aspect of the case:

> Records show that AAA was only 16 years old and 5 feet 3 inches in height when she was raped, while appellant was 21 years old and 5 feet and 7 inches in height. The psychologist Golocan's report found AAA to be functioning intellectually below average level with an estimated IQ of 86 and appears to be lacking in perception, communication skills and discrimination. Understandably, a girl of such young age could only cower in fear and yield into submission to such an adult. Rape, after all, is nothing more than a conscious process of intimidation by which a man keeps a woman in a state of fear and humiliation. Thus, it is not even impossible for a victim of rape not to make an outcry against an unarmed assailant.[19] (Citations omitted.)

With respect to AAA's actions immediately following the rape incident at issue as well as her delay in reporting the crime which appellant both characterized as indicative of the falsity of her accusation, we observe that such arguments are not novel in rape cases and have been shot down repeatedly by our pronouncements in jurisprudence. In *People v. Buado, Jr.*,[20] we dealt with these twin issues in this manner:

> Verily, there has never been any uniformity or consistency of behavior to be expected from those who had the misfortune of being sexually molested. The Court has pointed out that some of them have found the courage early on to publicly denounce the abuses they experienced, but that there were others who have opted to initially keep their harrowing ordeals to themselves and to just move on with

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[18] *People v. Funesto*, G.R. No. 182237, August 3, 2011, 655 SCRA 110, 116.

[19] *Rollo*, p. 14.

[20] G.R. No. 170634, January 8, 2013, 688 SCRA 82, 101-102.

their lives as if nothing had happened, until the limits of their tolerance were reached. AAA belonged to the latter group of victims, as her honest declarations to the trial court revealed. Also, we cannot expect from the immature and inexperienced AAA to measure up to the same standard of conduct and reaction that we would expect from adults whose maturity in age and experience could have brought them to stand up more quickly to their interest. Lastly, long silence and delay in reporting the crime of rape to the proper authorities have not always been considered as an indication of a false accusation. (Citations omitted.)

In addition, there is jurisprudence which states that a rape charge becomes doubtful only when the delay or inaction in revealing its commission is unreasonable and unexplained.[21] Those conditions do not obtain in the case at bar since, during the trial, AAA testified that she did not tell anyone in her boarding house about what happened to her right after the terrible encounter with appellant because she was afraid of her father.[22] This candid statement from the victim not only discloses a plausible justification for the delay but it also further manifests her youth or immaturity which is a personal circumstance that has never prevented this Court from upholding the credibility of a witness. Instead, such a condition has been considered as a cornerstone of a testimony that is worthy of belief.

In *People v. Bonaagua*,[23] we held that:

It is well entrenched in this jurisdiction that when the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true. A young girl would not usually

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[21] *People v. Cabungan*, G.R. No. 189355, January 23, 2013, 689 SCRA 236, 244.

[22] TSN, November 25, 2002, p. 14.

[23] G.R. No. 188897, June 6, 2011, 650 SCRA 620, 632.

concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her. x x x. (Citations omitted.)

Interestingly, when appellant was asked in open court whether he knew of any other motive which could have impelled AAA to accuse him of raping her, appellant only tersely replied that he had no knowledge of such things.[24]

Lastly, it is also worthy to note that, when AAA relived her ordeal at the witness stand, she broke down in tears more than once. This only serves to bolster her credibility considering that we have consistently held that the crying of a victim during her testimony is evidence of the truth of the rape charges, for the display of such emotion indicates the pain that the victim feels when asked to recount her traumatic experience.[25]

In the face of the serious accusation leveled against him, appellant interposed the defense of denial which was ineffectively supported by corroboration from witnesses who are composed of his friends and acquaintances.

It is well-settled in jurisprudence that denial, just like alibi, cannot prevail over the positive and categorical testimony and identification of an accused by the complainant and that mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crime attributed to him.[26]

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[24] TSN, July 27, 2004, p. 25.

[25] *People v. Batula*, G.R. No. 181699, November 28, 2012, 686 SCRA 575, 585.

[26] *Pielago v. People*, G.R. No. 202020, March 13, 2013, 693 SCRA 476, 486.

In the case at bar, the only supporting evidence that appellant has presented to back up his assertion that no rape took place during the time he spent with AAA inside the unlit classroom was the unreliable testimony of Rodel Benito. The testimony of said witness cannot be taken as credible because Benito is a close friend and drinking buddy of appellant and jurisprudence instructs us that testimonies of close relatives and friends are necessarily suspect and cannot prevail over the unequivocal declaration of a complaining witness.[27] Contrary to Benito's statement that he was alert and awake during the entire period in which appellant and AAA were together, AAA emphatically testified that Benito was drunk and asleep the whole time.[28]

With regard to the testimony of the other defense witnesses, we have determined that they are immaterial and only intended to shore up appellant's claims that he and AAA knew each other prior to the rape incident at issue and that he had been courting AAA, implying they were sweethearts. Granting without conceding that this thesis holds true, the damning declaration made by AAA that she was raped by appellant on that fateful night still stands undiminished. The use of force or intimidation in sexual intercourse is not necessarily ruled out by the mere claim of an amorous relationship. Jurisprudence tells us that a love affair does not justify rape for a man does not have the unbridled license to subject his beloved to his carnal desires against her will.[29]

In view of the foregoing, we therefore affirm the conviction of appellant for simple rape with a penalty of *reclusion perpetua*. The award of ₱50,000.00 as civil indemnity as well as ₱50,000.00 as moral damages is upheld. However, the award of exemplary damages is increased from ₱25,000.00

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[27] *People v. Cabanilla*, G.R. No. 185839, November 17, 2010, 635 SCRA 300, 318.

[28] TSN, December 2, 2002, p. 15.

[29] *People v. Banig*, G.R. No. 177137, August 23, 2012, 679 SCRA 133, 149 citing *People v. Cias*, G.R. No. 194379, June 1, 2011, 650 SCRA 326, 341.

to ₱30,000.00 in line with jurisprudence.[30] Moreover, the amounts of damages thus awarded are subject further to interest of 6% per annum from the date of finality of this judgment until they are fully paid.[31]

WHEREFORE, premises considered, the Decision dated January 27, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01492, affirming the conviction of appellant Dalton Laurian, Jr. in Criminal Case No. 02-CR-4443, is hereby **AFFIRMED** with the **MODIFICATIONS** that:

(1) The exemplary damages to be paid by appellant Dalton Laurian, Jr. is increased from Twenty-Five Thousand Pesos (₱25,000.00) to Thirty Thousand Pesos (₱30,000.00); and

(2) Appellant Dalton Laurian, Jr. is ordered to pay the private offended party interest on all damages 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), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[30] *People v. Basallo*, G.R. No. 182457, January 30, 2013, 689 SCRA 616, 645.

[31] *People v. Vitero*, G.R. No. 175327, April 3, 2013, 695 SCRA 54, 69.

FIRST DIVISION

[G.R. No. 200515. December 11, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LINO PALDO,** *accused-appellant*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ABSENCE OF ELECTRICITY IN THE HOUSE CANNOT BE CONSIDERED A HINDRANCE TO THE RAPE VICTIM'S IDENTIFICATION OF ACCUSED-APPELLANT AS HER RAPIST, CONSIDERING THAT ACCUSED-APPELLANT IS HER FATHER, WITH WHOM SHE IS VERY FAMILIAR, EVEN WHEN IT WAS DARK.— The fact that the room was dark because there was no electricity in the house is insignificant. This cannot be considered a hindrance to AAA's identification of accused-appellant as her rapist, especially considering that accused-appellant is her father, with whom she is very familiar, even when it was dark. During rape incidents, the offender and the victim are as close to each other as is physically possible. In truth, a man and a woman cannot be physically closer to each other than during a sexual act. x x x There is miniscule possibility that AAA was only mistaken in identifying accused-appellant as the man who raped her. It should also be noted that after the rape, accused-appellant talked to AAA to warn her not to tell what had just happened to her mother.

2. ID.; ID.; OFFER AND OBJECTION; CERTIFICATIONS NOT FORMALLY OFFERED IN EVIDENCE CAN STILL BE CONSIDERED BY THE COURT AS LONG AS THEY HAD BEEN PROPERLY IDENTIFIED BY A WITNESS' DULY RECORDED TESTIMONY AND THE DOCUMENTS THEMSELVES HAD BEEN INCORPORATED IN THE RECORDS OF THE CASE.— Accused-appellant's claim that AAA was not in XXX at the time the rape took place as she was studying in ZZZ deserves little credit. Two certifications dated February 4, 2007 and February 5, 2007 issued by AAA's teachers reveal that AAA had transferred to XXX Elementary

School in January 2001, where she attended the third and fourth grading periods and took the periodical tests for the same school periods. While these two certifications were not formally offered in evidence, they can still be considered by the Court as long as they had been properly identified by a witness' duly recorded testimony and the documents themselves had been incorporated in the records of the case. The two certifications herein of AAA's teachers were duly identified by AAA when she testified before the RTC and subsequently incorporated as part of the records. Accused-appellant's counsel even cross-examined AAA regarding these certifications and, in fact, the defense marked the same as its own exhibits, although the defense did not include said certifications in its formal offer of evidence for the obvious reason that said documents were not favorable to its case.

3. ID.; ID.; CREDIBILITY OF WITNESSES; NO MOTHER IN HER RIGHT MIND WOULD USE HER OFFSPRING AS AN ENGINE OF MALICE; NEITHER WOULD SHE SUBJECT HER CHILD TO THE HUMILIATION, DISGRACE, AND EVEN THE STIGMA ATTENDANT TO THE PROSECUTION FOR RAPE UNLESS SHE IS MOTIVATED BY THE DESIRE TO BRING TO JUSTICE THE PERSON RESPONSIBLE FOR HER CHILD'S DEFILEMENT.— We likewise find baseless accused-appellant's contention that the rape charge was filed against him at his wife BBB's instigation so that BBB could carry on her purported illicit relation with a paramour. We are not convinced that there existed such resentment and ill will on the part of AAA and her mother against accused-appellant prior to the rape. Granting that there was already bad blood between accused-appellant and BBB, it is unfathomable for BBB, as AAA's mother, to concoct a story too damaging to the welfare and well-being of her own daughter. Certainly, it is inconceivable that a mother would draw her young daughter into a rape scam with all its attendant scandal and humiliation just because of a supposed feud with the father. No mother in her right mind would use her offspring as an engine of malice. She would not subject her child to the humiliation, disgrace, and even the stigma attendant to the prosecution for rape unless she is motivated by the desire to bring to justice the person responsible for her child's defilement. There appears to be no other reason

for AAA and her mother to have boldly initiated the present case but to seek justice for the bestial act committed by AAA's own father, accused-appellant.

4. ID.; ID.; ID.; COURTS USUALLY GIVE GREATER WEIGHT TO THE TESTIMONY OF A GIRL WHO IS A VICTIM OF SEXUAL ASSAULT, ESPECIALLY A MINOR, PARTICULARLY IN CASES OF INCESTUOUS RAPE, BECAUSE NO WOMAN WOULD BE WILLING TO UNDERGO A PUBLIC TRIAL AND PUT UP WITH THE SHAME, HUMILIATION AND DISHONOR OF EXPOSING HER OWN DEGRADATION WERE IT NOT TO CONDEMN AN INJUSTICE AND TO HAVE THE OFFENDER APPREHENDED AND PUNISHED.— [W]ell-established is the rule that testimonies of rape victims, especially child victims, are given full weight and credit. In this case, the victim AAA was barely eight years old when raped by accused-appellant. In a litany of cases, we have ruled that when a woman, more so if she is a minor, says she has been raped, she says, in effect, all that is necessary to prove that rape was committed. Youth and immaturity are generally badges of truth. Courts usually give greater weight to the testimony of a girl who is a victim of sexual assault, especially a minor, particularly in cases of incestuous rape, because no woman would be willing to undergo a public trial and put up with the shame, humiliation and dishonor of exposing her own degradation were it not to condemn an injustice and to have the offender apprehended and punished. Additionally, we held that the conduct of the victim immediately following the alleged sexual assault is of utmost importance in establishing the truth and falsity of the charge of rape. That AAA immediately narrated her ordeal to her mother upon the latter's return to their residence, and thereafter, straightaway reported the matter to the authorities, strengthen our belief that AAA had indeed been raped by accused-appellant.

5. ID.; ID.; DEFENSE OF ALIBI; TO PROSPER, IT IS NOT ENOUGH TO PROVE THAT THE DEFENDANT WAS SOMEWHERE ELSE WHEN THE CRIME WAS COMMITTED, BUT HE MUST LIKEWISE DEMONSTRATE THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO HAVE BEEN AT THE SCENE OF THE CRIME AT THAT TIME.— To counter the clear and categorical declarations of

AAA that accused-appellant raped her, accused-appellant proffered the defense of denial and alibi, totally denying that he was at their house in XXX when the rape happened. We had consistently held that for alibi to prosper, it is not enough to prove that the defendant was somewhere else when the crime was committed, but he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time. This, accused-appellant failed to do. Although defense witness Guinonoy testified that he was with accused-appellant in Chapeh on March 10, 2001, he also acknowledged that the travel time of one to two hours from Chapeh to XXX does not pose an insurmountable barrier for accused-appellant to actually take the trip from Chapeh to XXX and back after committing the crime. Clearly, it was not physically impossible for accused-appellant to be present at the scene of the crime at the time of its commission.

6. ID.; ID.; CREDIBILITY OF WITNESSES; THE APPELLATE COURTS GENERALLY WILL NOT OVERTURN THE FINDINGS OF THE TRIAL COURT WHEN IT COMES TO THE ISSUE OF CREDIBILITY OF WITNESSES.— It is an established rule that when it comes to the issue of credibility of witnesses, the appellate courts generally will not overturn the findings of the trial court. They are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court. In this case, we find no cogent basis to depart from the general rule.

7. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; MINORITY AND RELATIONSHIP; TO BE APPRECIATED, BOTH MUST BE SPECIFICALLY ALLEGED IN THE INFORMATION AND DULY PROVED DURING THE TRIAL WITH EQUAL CERTAINTY AS THE CRIME ITSELF.— Pursuant to Article 266-B(1) of the Revised Penal Code, as amended, the qualifying circumstances of minority and relationship must concur. As these circumstances raise the penalty of the crime to death, great caution must be exercised in their evaluation. For these circumstances to be appreciated, both must be specifically alleged in the information and duly proved during the trial with equal certainty as the crime itself.

8. ID.; ID.; GUIDELINES IN APPRECIATING AGE, EITHER AS AN ELEMENT OF THE CRIME OR AS QUALIFYING CIRCUMSTANCE; PRESENTATION OF THE BIRTH CERTIFICATE IS NOT AN ALL-EXCLUSIVE REQUISITE IN PROVING THE AGE OF THE VICTIM.— After noting the divergent rulings on the proof of the victim's age in rape cases, we laid down in *People v. Pruna* certain guidelines in appreciating age, either as an element of the crime or as qualifying circumstance x x x. To paraphrase *Pruna*, the best evidence to prove the age of a person is the original birth certificate or certified true copy thereof; in their absence, similar authentic documents may be presented such as baptismal certificates and school records. If the original or certified true copy of the birth certificate is not available, credible testimonies of the victim's mother or a member of the family may be sufficient under certain circumstances. In the event that both the birth certificate or other authentic documents and the testimonies of the victim's mother or other qualified relative are unavailable, the testimony of the victim may be admitted in evidence provided that it is expressly and clearly admitted by the accused. Hence, the presentation of the birth certificate is not an all-exclusive requisite in proving the age of the victim. Certainly, the victim's age may be proven by evidence other than that. x x x. In *People v. Boras* we further ruled that: The testimony of the mother as to the age of her child is admissible in evidence for who else would be in the best position to know when she delivered the child. Besides, the court could very well assess whether or not the victim is below twelve years old by simply looking at her physique and built.

9. ID.; QUALIFIED RAPE; PENALTY OF *RECLUSION PERPETUA* WITHOUT ELIGIBILITY FOR PAROLE, IMPOSED.— As the rape of AAA was qualified by AAA's minority and accused-appellant's paternity, the Court of Appeals was correct in determining that the penalty prescribed for such a crime under Article 266(B) of the Revised Penal Code, as amended, is death. However, as the appellate court also explained, Republic Act No. 9346 has prohibited the imposition of the death penalty, so that the proper penalty that can be imposed upon accused-appellant in lieu of the death penalty is *reclusion perpetua*, without eligibility for parole.

10. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— [W]e affirm the award to AAA of ₱75,000.00 civil indemnity, ₱75,000.00 moral damages, and ₱30,000.00 exemplary damages, in line with jurisprudence. In addition, we expressly impose an interest of 6% per annum on the aggregate amount of damages awarded from finality of this judgment until full payment of the same.

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.*:

For Our resolution is the appeal of accused-appellant Lino Paldo (Paldo) of the Decision[1] dated June 23, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04064, which affirmed with modification the Decision[2] dated May 27, 2009 of the Regional Trial Court (RTC) of Banaue, Ifugao, Branch 34, in Criminal Case No. 117, finding accused-appellant Lino Paldo guilty of raping AAA.[3]

Paldo was charged through an Information[4] filed before the RTC by the Office of the Provincial Prosecution of Ifugao on January 14, 2002, which reads:

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[1] *Rollo*, pp. 2-13; penned by Associate Justice Japar B. Dimaampao with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Jane Aurora C. Lantion, concurring.

[2] CA *rollo*, pp. 80-89; penned by Presiding Judge Ester L. Piscoso-Flor.

[3] The real name of the victim and all other identifying information are withheld to protect her identity and privacy pursuant to Section 29 of Republic Act No. 7610, Section 44 of Republic Act No. 9262, and Section 40 of A.M. No. 04-10-11-SC. See our ruling in *People v. Cabalquinto*, 533 Phil. 703 (2006).

[4] Records, p. 1.

That on the night of March 10, 2001 at [XXX], Banaue, Ifugao, and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the victim, DID then and there wilfully, unlawfully and feloniously, have carnal knowledge of [his] daughter, [AAA], who is eight years old.

When arraigned on November 8, 2004, Paldo pleaded not guilty.[5] The Pre-trial Order dated September 16, 2005 stated the following:

VI. STIPULATION OF FACTS

A. ADMITTED FACTS

1. That the accused Lino Paldo is the father of the victim;
2. That the victim is a minor but not aged eight (8);
3. That the accused goes home to their house with the qualification that the wife usually does not go home.

B. FACTS DISPUTED BY THE DEFENSE

1. That the incident complained of happened on the date, time and place alleged in the information;
2. That the victim is a minor aged eight (8) years old at the time the incident complained of happened[.]

C. FACTS DISPUTED BY THE PROSECUTION

1. That the wife is living with another man;
2. That the mother of the allege victim BBB is living together with one Mr. Vicente Lim as husband and wife at *Barangay* [ZZZ], Ifugao.

VII. EVIDENCES SUBMITTED AND MARKED BY THE PROSECUTION AND DEFENSE

A. FOR THE PROSECUTION

1. DOCUMENTARY EVIDENCE

1.a. The Sworn Statement of AAA as Exhibit "A" and her signature appearing therein as Exhibit "A-1";

1.b. The Supplemental Affidavit of AAA as Exhibit "B" and her signature appearing therein as Exhibit "B-1";

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[5] *Id*. at 16.

x x x x x x x x x

1.e. The Certificate of Live Birth of AAA issued by [the] Local Civil Registrar of Banaue, Ifugao as Exhibit "E";

1.f. The Medical Certificate issued as Exhibit "F" and the signature of the attending physician as Exhibit "F-1".[6]

During trial, the prosecution presented the victim AAA and her mother BBB. The version of events according to their testimonies is as follows:

In the evening of March 10, 2001, AAA, then eight years old, and her father, accused-appellant, were sleeping at their residence in XXX, Banaue, Ifugao. Suddenly, AAA was awakened by accused-appellant who removed AAA's pants and immediately thereafter, inserted his penis into AAA's vagina. After the incident, AAA felt pain in her stomach. Although there were no lights on, AAA knew it was accused-appellant who sexually assaulted her, being very familiar with her own father. Accused-appellant warned AAA not to tell her mother what had happened. AAA's mother, BBB, and sibling were not around that night as they were in ZZZ, Ifugao, to get their family's food supply. When BBB arrived home on March 12, 2001, AAA narrated to BBB what accused-appellant did to her. BBB was so angry and caused the filing of the complaint against her husband.

The testimony of another prosecution witness, Dr. Mae Diaz (Diaz), who conducted the physical examination of AAA, was dispensed with after the parties agreed to stipulate as to the existence and genuineness of Dr. Diaz's medical certificate, as well as on several other matters to be covered by Dr. Diaz's testimony, *viz*, (1) that AAA had healed hymenal lacerations; (2) that said hymenal lacerations could have been caused by objects other than a hard penis; and (3) that if said hymenal lacerations had been caused by a hard penis, it could have been the penis of a man other than the accused.

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[6] *Id*. at 53-54.

Despite finishing its presentation of evidence, the prosecution failed to make a formal offer of its documentary/object evidence.

For its part, the defense presented four witnesses: (1) accused-appellant himself, (2) Celestino Guinanoy (Guinanoy), (3) Maria Pin-ag (Pin-ag), and (4) Emilia Nitokyap (Nitokyap).

Accused-appellant denied AAA's accusations against him. He averred that from February to March 2001, he was working for Pin-ag in Kinakin, Chapeh, Banaue, Ifugao, a two-hour hike from XXX. On the night of the alleged rape, he did not go home to XXX but stayed in Chapeh. He was with his two friends, Guinanoy and Licyag, and the three of them slept in the hut owned by Pin-ag. Accused-appellant further asserted that he could not have raped AAA on March 10, 2001 since his daughter was not staying in XXX, but was living with her grandfather in ZZZ, where she was studying.

Pin-ag and Guinanoy corroborated accused-appellant's testimony. The other defense witness, Nitokyap, testified that on March 10, 2001, she travelled from her residence in Kinakin, Chapeh, to accused-appellant's house at XXX to offer the latter work. Accused-appellant was not around so Nitokyap waited for him. When it was already dark, Nitokyap decided to just sleep at accused-appellant's house and left the following day without seeing either accused-appellant or AAA.

On May 27, 2009, the RTC rendered its Decision finding accused-appellant guilty beyond reasonable doubt of raping AAA and sentencing him thus:

WHEREFORE, accused **LINO PALDO** is hereby found **guilty** beyond reasonable doubt of the offense charged and sentenced to ***reclusion perpetua*** and to pay **SEVENTY[-]FIVE THOUSAND PESOS (₱75,000.00) as civil indemnity, moral damages of SEVENTY[-]FIVE THOUSAND PESOS (₱75,000.00) and exemplary damages of TWENTY[-]FIVE THOUSAND PESOS (₱25,000.00)**.[7]

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[7] CA *rollo*, p. 89.

Accused-appellant appealed to the Court of Appeals. The appellate court, in its Decision dated June 23, 2011, affirmed the conviction of accused-appellant, and also increased the amount of exemplary damages awarded to AAA, to wit:

> **WHEREFORE**, the *Decision* dated 27 May 2009 of the Regional Trial Court, Second Judicial Region, Branch 34 of Banaue, Ifugao, Branch 34, in Criminal Case No. 117, is hereby **AFFIRMED** with the modification that the exemplary damages is increased to Thirty Thousand Pesos (₱30,000.00).[8]

Hence, this appeal with the same lone assignment of error raised before the Court of Appeals:

> THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[9]

Accused-appellant was charged with qualified rape under Article 266-A(1), in relation to Article 266-B(1), of the Revised Penal Code, as amended by Republic Act No. 8353. Said provisions read:

> Article 266-A. *Rape, When and How Committed*. – Rape is committed -
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat or intimidation;
>
> b) When the offended party is deprived of reason or is otherwise unconscious.
>
> c) By means of fraudulent machination or grave abuse of authority;
>
> 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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[8] *Rollo*, p. 13.

[9] CA *rollo*, p. 68.

ART. 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

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The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

Much of accused-appellant's arguments focus on the purported inconsistencies in AAA's testimony which cast doubt on her credibility, specifically: (1) There was no electric light inside their house on March 10, 2001, when the alleged rape took place, so AAA could not have seen the face of her rapist and she could have been mistaken in identifying accused-appellant; and (2) According to AAA, she was staying at XXX, where she was allegedly raped on March 10, 2001, but her school records reveal that she was studying in ZZZ for school year 2000-2001. Accused-appellant also claim that the rape case was filed against him at the instigation of his wife BBB since if he would be imprisoned, BBB could freely live with her paramour.

Accused-appellant's appeal is without merit.

The fact that the room was dark because there was no electricity in the house is insignificant. This cannot be considered a hindrance to AAA's identification of accused-appellant as her rapist, especially considering that accused-appellant is her father, with whom she is very familiar, even when it was dark. During rape incidents, the offender and the victim are as close to each other as is physically possible. In truth, a man and a woman cannot be physically closer to each other than during a sexual act.[10] As AAA testified:

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[10] *People v. Evina*, 453 Phil. 25, 40 (2003).

Q So how did you know that it was the accused who raped you?
A There was no [other person] around us except I and my father.

Q But you did not actually see the accused when he raped you is it not?
A I could identify my father since he is my father.

Q But you have neighbors in said place at Bangaan?
A Yes sir but a little bit farther.[11]

There is miniscule possibility that AAA was only mistaken in identifying accused-appellant as the man who raped her. It should also be noted that after the rape, accused-appellant talked to AAA to warn her not to tell what had just happened to her mother.

Accused-appellant's claim that AAA was not in XXX at the time the rape took place as she was studying in ZZZ deserves little credit. Two certifications dated February 4, 2007 and February 5, 2007 issued by AAA's teachers reveal that AAA had transferred to XXX Elementary School in January 2001, where she attended the third and fourth grading periods and took the periodical tests for the same school periods. While these two certifications were not formally offered in evidence, they can still be considered by the Court as long as they had been properly identified by a witness' duly recorded testimony and the documents themselves had been incorporated in the records of the case.[12] The two certifications herein of AAA's teachers were duly identified by AAA when she testified before the RTC and subsequently incorporated as part of the records.[13] Accused-appellant's counsel even cross-examined AAA regarding these certifications and, in fact, the defense marked the same as its own exhibits, although the defense did not include said certifications in its formal offer of evidence for the obvious reason that said documents were not favorable to its case.

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[11] TSN, May 17, 2006, p. 16.

[12] *People v. Libnao*, 443 Phil. 506, 519 (2003).

[13] TSN, February 6, 2007, pp. 7-9.

We likewise find baseless accused-appellant's contention that the rape charge was filed against him at his wife BBB's instigation so that BBB could carry on her purported illicit relation with a paramour. We are not convinced that there existed such resentment and ill will on the part of AAA and her mother against accused-appellant prior to the rape. Granting that there was already bad blood between accused-appellant and BBB, it is unfathomable for BBB, as AAA's mother, to concoct a story too damaging to the welfare and well-being of her own daughter. Certainly, it is inconceivable that a mother would draw her young daughter into a rape scam with all its attendant scandal and humiliation just because of a supposed feud with the father. No mother in her right mind would use her offspring as an engine of malice. She would not subject her child to the humiliation, disgrace, and even the stigma attendant to the prosecution for rape unless she is motivated by the desire to bring to justice the person responsible for her child's defilement.[14] There appears to be no other reason for AAA and her mother to have boldly initiated the present case but to seek justice for the bestial act committed by AAA's own father, accused-appellant.

Moreover, well-established is the rule that testimonies of rape victims, especially child victims, are given full weight and credit.[15] In this case, the victim AAA was barely eight years old when raped by accused-appellant. In a litany of cases, we have ruled that when a woman, more so if she is a minor, says she has been raped, she says, in effect, all that is necessary to prove that rape was committed. Youth and immaturity are generally badges of truth. Courts usually give greater weight to the testimony of a girl who is a victim of sexual assault, especially a minor, particularly in cases of incestuous rape, because no woman would be willing to undergo a public trial and put up with the shame, humiliation and dishonor of exposing her own degradation were it not to condemn an injustice and to have the offender apprehended and punished.[16]

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[14] *People v. Pruna*, 439 Phil. 440, 464 (2002).

[15] *People v. De Guzman*, 423 Phil. 313, 330 (2001).

[16] *Id.* at 331.

Additionally, we held that the conduct of the victim immediately following the alleged sexual assault is of utmost importance in establishing the truth and falsity of the charge of rape. That AAA immediately narrated her ordeal to her mother upon the latter's return to their residence, and thereafter, straightaway reported the matter to the authorities, strengthen our belief that AAA had indeed been raped by accused-appellant.

To counter the clear and categorical declarations of AAA that accused-appellant raped her, accused-appellant proffered the defense of denial and alibi, totally denying that he was at their house in XXX when the rape happened. We had consistently held that for alibi to prosper, it is not enough to prove that the defendant was somewhere else when the crime was committed, but he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time.[17] This, accused-appellant failed to do. Although defense witness Guinonoy testified that he was with accused-appellant in Chapeh on March 10, 2001, he also acknowledged that the travel time of one to two hours from Chapeh to XXX does not pose an insurmountable barrier for accused-appellant to actually take the trip from Chapeh to XXX and back after committing the crime. Clearly, it was not physically impossible for accused-appellant to be present at the scene of the crime at the time of its commission.

As for the testimonies of the other defense witnesses, the RTC aptly observed and we quote:

> For the second witness [Maria Pin-ag], her testimony showed that she had no actual knowledge who slept where, much less who did what during the night as she left the workplace at about 5:00 in the afternoon.
>
> As for the third witness [Emilia Nitokyap], her story is so implausible as to merit serious consideration, let alone belief as it runs counter to natural human behavior especially for people living in the rural areas. For one it is incredible that she, a resident of Kinakin, would not know that the person she is looking for had been

[17] *People v. Malejana*, 515 Phil. 584, 597 (2006).

working for a month or so in Kinakin, the *Barangay* where she lives, so that she had to go to his house to look for him. Further, one would not normally start a trip so she could arrive at night time in her destination in a place where hiking is the main means of mobility and where the destination is a few hours away. Still further, a female would not just sleep over in the house of somebody unrelated. Normally, people would rush back to their homes to avoid any intrigues and also to be with their family. It is also unnatural for this alleged visitor to estimate the age of one of the children she purportedly saw at the house and not the other one when she alleged that she slept there. It is quite obvious that she was no where near the house of Lino Paldo on the night of the incident.

As for the accused, his account that he had three visitors on that fateful day, two of whom did not go home to their families but instead slept with him is not worthy of belief. His fixation on the day of the incident, March 10, 2001[,] betrays a rehearsed testimony to fit with similarly manufactured testimonies of ill motivated witnesses. While the accused could remember the day of March 10, 2001, he could not tell what day came before. Nor could he remember the day he started work. Indeed it is difficult to etch into memory what did not transpire.[18]

It is an established rule that when it comes to the issue of credibility of witnesses, the appellate courts generally will not overturn the findings of the trial court. They are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court.[19] In this case, we find no cogent basis to depart from the general rule.

The guilt of accused-appellant having been established beyond reasonable doubt, we now discuss the penalty to be imposed upon him.

Pursuant to Article 266-B(1) of the Revised Penal Code, as amended, the qualifying circumstances of minority and relationship must concur. As these circumstances raise the

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[18] CA *rollo*, p. 87.

[19] *People v. Alo*, 401 Phil. 932, 943 (2000).

penalty of the crime to death, great caution must be exercised in their evaluation. For these circumstances to be appreciated, both must be specifically alleged in the information and duly proved during the trial with equal certainty as the crime itself.[20]

The Information filed against accused-appellant explicitly alleged that victim AAA was eight years old and that accused-appellant is her father. The next question to be resolved is whether these circumstances had been duly proven by the prosecution.

There seems to be no dispute as to the relationship of AAA and accused-appellant. During the pre-trial conference, one of the stipulations agreed upon by the parties was that accused-appellant is the father of AAA. During trial, AAA testified that accused-appellant was her father,[21] while BBB reiterated the fact in her own testimony.[22] Accused-appellant himself admitted on the witness stand that AAA is his daughter.[23]

As to AAA's age, it is incumbent upon the prosecution to establish that she was still a minor at the time of rape, meaning, she was under 18 years of age.

What the defense herein questioned at the pre-trial conference was whether AAA was actually eight years old at the time of the alleged rape, but it had actually agreed to stipulate that AAA was then a minor.

Also, the prosecution had a copy of AAA's birth certificate stating that she was born on February 8, 1993, making her eight years old when she was raped by accused-appellant on March 10, 2001. The birth certificate was marked as evidence for the prosecution during the pre-trial conference and was incorporated into the records of the case,[24] but the prosecution failed to formally offer the same as evidence to the court.

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[20] *People v. Antonio*, 447 Phil. 731, 743 (2003).

[21] TSN, May 17, 2006, p. 4.

[22] TSN, March 21, 2007, pp. 2-3.

[23] TSN, February 21, 2008, p. 3.

[24] Records, p. 6.

After noting the divergent rulings on the proof of the victim's age in rape cases, we laid down in *People v. Pruna*[25] certain guidelines in appreciating age, either as an element of the crime or as qualifying circumstance, to wit:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim. (Citation omitted.)

To paraphrase *Pruna*, the best evidence to prove the age of a person is the original birth certificate or certified true copy

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[25] *Supra* note 14 at 470-471.

thereof; in their absence, similar authentic documents may be presented such as baptismal certificates and school records. If the original or certified true copy of the birth certificate is not available, credible testimonies of the victim's mother or a member of the family may be sufficient under certain circumstances. In the event that both the birth certificate or other authentic documents and the testimonies of the victim's mother or other qualified relative are unavailable, the testimony of the victim may be admitted in evidence provided that it is expressly and clearly admitted by the accused.[26]

Hence, the presentation of the birth certificate is not an all-exclusive requisite in proving the age of the victim. Certainly, the victim's age may be proven by evidence other than that. As we held in *People v. Tipay*:[27]

> This does not mean, however, that the presentation of the certificate of birth is at all times necessary to prove minority. The minority of a victim of tender age who may be below the age of ten is quite manifest and the court can take judicial notice thereof. The crucial years pertain to the ages of fifteen to seventeen where minority may seem to be dubitable due to one's physical appearance. x x x.

In *People v. Boras*[28] we further ruled that:

> The testimony of the mother as to the age of her child is admissible in evidence for who else would be in the best position to know when she delivered the child. Besides, the court could very well assess whether or not the victim is below twelve years old by simply looking at her physique and built.

During trial, BBB, testified that her daughter AAA was born on February 9, 2001 and was eight years old at the time of the rape. AAA herself categorically stated in her Sworn Statement and Supplemental Sworn Statement, executed on June 1, 2001 and October 6, 2001, respectively, that she was then eight years old and a Grade III pupil. BBB's testimony and AAA's

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[26] *People v. Cayabyab*, 503 Phil. 606, 618 (2005).

[27] 385 Phil. 689, 718 (2000).

[28] 401 Phil. 852, 864 (2000).

declaration as to AAA's age are consistent with AAA's statement when she took the witness stand on May 17, 2006 that she was already 13 years old and a second year high school student. Even accused-appellant, in his testimony before the trial court, confirmed that AAA was 8 years old in March 2001.[29] Indeed, accused-appellant, having personal knowledge of his own daughter's age, offered unsolicited, independent, and categorical declaration on the same, that is in accord with the claim of AAA and BBB.

As the rape of AAA was qualified by AAA's minority and accused-appellant's paternity, the Court of Appeals was correct in determining that the penalty prescribed for such a crime under Article 266(B) of the Revised Penal Code, as amended, is death. However, as the appellate court also explained, Republic Act No. 9346 has prohibited the imposition of the death penalty, so that the proper penalty that can be imposed upon accused-appellant in lieu of the death penalty is *reclusion perpetua*, without eligibility for parole.

Lastly, we affirm the award to AAA of ₱75,000.00 civil indemnity, ₱75,000.00 moral damages, and ₱30,000.00 exemplary damages, in line with jurisprudence.[30] In addition, we expressly impose an interest of 6% per annum on the aggregate amount of damages awarded from finality of this judgment until full payment of the same.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 04064 is **AFFIRMED with MODIFICATION**, expressly subjecting the aggregate amount of damages awarded in AAA's favor to interest at the legal rate of 6% per annum from the date of finality of this Decision until it is fully paid.

SO ORDERED.

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

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[29] TSN, February 21, 2008, p. 12.

[30] *People v. Zafra*, G.R. No. 197363, June 26, 2013.

SECOND DIVISION

[G.R. No. 200602. December 11, 2013]

ACE FOODS, INC., *petitioner, vs.* **MICRO PACIFIC TECHNOLOGIES CO., LTD.,**[1] *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; IN THE CONSTRUCTION OR INTERPRETATION OF AN INSTRUMENT, THE INTENTION OF THE PARTIES IS PRIMORDIAL AND IS TO BE PURSUED, AND THAT THE DENOMINATION OR TITLE GIVEN BY THE PARTIES IN THEIR CONTRACT IS NOT CONCLUSIVE OF THE NATURE OF ITS CONTENT.— A contract is what the law defines it to be, taking into consideration its essential elements, and not what the contracting parties call it. The real nature of a contract may be determined from the express terms of the written agreement and from the contemporaneous and subsequent acts of the contracting parties. However, in the construction or interpretation of an instrument, **the intention of the parties is primordial and is to be pursued**. The denomination or title given by the parties in their contract is not conclusive of the nature of its contents.

2. ID.; ID.; ID.; CONTRACT OF SALE AND CONTRACT TO SELL, DISTINGUISHED; THE PARTIES IN CASE AT BAR AGREED TO A CONTRACT OF SALE, AND NOT TO A CONTRACT TO SELL.— The very essence of a contract of sale is **the transfer of ownership in exchange for a price paid or promised**. This may be gleaned from Article 1458 of the Civil Code which defines a contract of sale x x x. Corollary thereto, a contract of sale is classified as a **consensual contract**, which means that the sale is perfected by mere consent. No particular form is required for its validity. Upon perfection of the contract, the parties may reciprocally demand performance, *i.e.*, the vendee may compel transfer of ownership of the object of the sale, and the vendor may require the vendee

[1] "Micropacific Technologies, Co., Ltd." in some parts of the records.

to pay the thing sold. In contrast, a **contract to sell** is defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the property despite delivery thereof to the prospective buyer, binds himself to sell the property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, *i.e.*, the full payment of the purchase price. A contract to sell may not even be considered as a **conditional contract of sale** where the seller may likewise reserve title to the property subject of the sale until the fulfillment of a suspensive condition, because in a conditional contract of sale, the first element of consent is present, although it is conditioned upon the happening of a contingent event which may or may not occur. In this case, the Court concurs with the CA that the parties have agreed to a contract of sale and not to a contract to sell as adjudged by the RTC.

3. ID.; ID.; OBLIGATIONS; EXTINGUISHMENT OF OBLIGATION; NOVATION; CONCEPT THEREOF; NOVATION IS NEVER PRESUMED, AND THE *ANIMUS NOVANDI*, WHETHER TOTALLY OR PARTIALLY, MUST APPEAR BY EXPRESS AGREEMENT OF THE PARTIES, OR BY THEIR ACTS THAT ARE TOO CLEAR AND UNEQUIVOCAL TO BE MISTAKEN.— [T]he Court must dispel the notion that the stipulation anent MTCL's reservation of ownership of the subject products as reflected in the Invoice Receipt, *i.e.*, the title reservation stipulation, changed the complexion of the transaction from a contract of sale into a contract to sell. Records are bereft of any showing that the said stipulation novated the contract of sale between the parties which, to repeat, already existed at the precise moment ACE Foods accepted MTCL's proposal. To be sure, novation, in its broad concept, may either be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new obligation that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent it remains compatible with the amendatory agreement. In either case, however, novation is never presumed, and the *animus novandi*, whether totally or partially, must appear by express agreement of the parties, or by their acts that are too clear and unequivocal to be mistaken.

4. ID.; ID.; ID.; ID.; ABSENT ANY CLEAR INDICATION THAT THE TITLE RESERVATION STIPULATION WAS ACTUALLY AGREED UPON, THE COURT MUST DEEM THE SAME TO BE A MERE UNILATERAL IMPOSITION ON THE PART OF THE SELLER WHICH HAS NO EFFECT ON THE NATURE OF THE PARTIES' ORIGINAL AGREEMENT AS A CONTRACT OF SALE; CASE AT BAR.— In the present case, it has not been shown that the title reservation stipulation appearing in the Invoice Receipt had been included or had subsequently modified or superseded the original agreement of the parties. The fact that the Invoice Receipt was signed by a representative of ACE Foods does not, by and of itself, prove *animus novandi* since: (*a*) it was not shown that the signatory was authorized by ACE Foods (the actual party to the transaction) to novate the original agreement; (*b*) the signature only proves that the Invoice Receipt was received by a representative of ACE Foods to show the fact of delivery; and (*c*) as matter of judicial notice, invoices are generally issued at the consummation stage of the contract and not its perfection, and have been even treated as documents which are not actionable *per se*, although they may prove sufficient delivery. Thus, absent any clear indication that the title reservation stipulation was actually agreed upon, the Court must deem the same to be a mere unilateral imposition on the part of MTCL which has no effect on the nature of the parties' original agreement as a contract of sale. Perforce, the obligations arising thereto, among others, ACE Foods's obligation **to pay the purchase price** as well as **to accept the delivery of the goods**, remain enforceable and subsisting.

5. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; EACH PARTY MUST PROVE HIS OWN AFFIRMATIVE ALLEGATION; ONE WHO ASSERTS THE AFFIRMATIVE OF THE ISSUE HAS THE BURDEN OF PRESENTING AT THE TRIAL SUCH AMOUNT OF EVIDENCE REQUIRED BY LAW TO OBTAIN A FAVORABLE JUDGMENT, WHICH IN CIVIL CASES, IS BY PREPONDERANCE OF EVIDENCE.— It may not be amiss to state that the return of the subject products pursuant to a rescissory action is neither warranted by ACE Foods's claims of breach – either with respect

to MTCL's breach of its purported "after delivery services" obligations or the defective condition of the products – since such claims were not adequately proven in this case. The rule is clear: each party must prove his own affirmative allegation; one who asserts the affirmative of the issue has the burden of presenting at the trial such amount of evidence required by law to obtain a favorable judgment, which in civil cases, is by preponderance of evidence. This, however, ACE Foods failed to observe as regards its allegations of breach. Hence, the same cannot be sustained.

APPEARANCES OF COUNSEL

Abrenica Ardiente Abrenica & Partners Law Office for petitioner.

Ponce Enrile Reyes & Manalastas for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[2] are the Decision[3] dated October 21, 2011 and Resolution[4] dated February 8, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 89426 which reversed and set aside the Decision[5] dated February 28, 2007 of the Regional Trial Court of Makati, Branch 148 (RTC) in Civil Case No. 02-1248, holding petitioner ACE Foods, Inc. (ACE Foods) liable to respondent Micro Pacific Technologies Co., Ltd. (MTCL) for the payment of Cisco Routers and Frame Relay Products (subject products) amounting to ₱646,464.00 pursuant to a perfected contract of sale.

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[2] *Rollo*, pp. 23-54.

[3] *Id*. at 10-17. Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Stephen C. Cruz and Ramon A. Cruz, concurring.

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

[5] *Id*. at 87-93. Penned by Judge Oscar B. Pimentel.

The Facts

ACE Foods is a domestic corporation engaged in the trading and distribution of consumer goods in wholesale and retail bases,[6] while MTCL is one engaged in the supply of computer hardware and equipment.[7]

On September 26, 2001, MTCL sent a letter-proposal[8] for the delivery and sale of the subject products to be installed at various offices of ACE Foods. Aside from the itemization of the products offered for sale, the said proposal further provides for the following terms, *viz.*:[9]

> *TERMS : Thirty (30) days upon delivery*
> *VALIDITY : Prices are based on current dollar rate and subject to changes without prior notice.*
> *DELIVERY : Immediate delivery for items on stock, otherwise thirty (30) to forty-five days upon receipt of [Purchase Order]*
> *WARRANTY : One (1) year on parts and services. Accessories not included in warranty.*

On October 29, 2001, ACE Foods accepted MTCL's proposal and accordingly issued Purchase Order No. 100023[10] (Purchase Order) for the subject products amounting to ₱646,464.00 (purchase price). Thereafter, or on March 4, 2002, MTCL delivered the said products to ACE Foods as reflected in Invoice No. 7733[11] (Invoice Receipt). The fine print of the invoice states, *inter alia*, that "[t]itle to sold property is reserved in MICROPACIFIC TECHNOLOGIES CO., LTD. until full compliance of the terms and conditions of above and payment of the price"[12] (title reservation stipulation). After

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[6] *Id.* at 37.

[7] *Id.* at 571.

[8] *Id.* at 100-102.

[9] *Id.* at 102.

[10] *Id.* at 103.

[11] *Id.* at 104.

[12] *Id.*

delivery, the subject products were then installed and configured in ACE Foods's premises. MTCL's demands against ACE Foods to pay the purchase price, however, remained unheeded.[13] Instead of paying the purchase price, ACE Foods sent MTCL a Letter[14] dated September 19, 2002, stating that it "ha[s] been returning the [subject products] to [MTCL] thru [its] sales representative Mr. Mark Anteola who has agreed to pull out the said [products] but had failed to do so up to now."

Eventually, or on October 16, 2002, ACE Foods lodged a Complaint[15] against MTCL before the RTC, praying that the latter pull out from its premises the subject products since MTCL breached its "after delivery services" obligations to it, particularly, to: (*a*) install and configure the subject products; (*b*) submit a cost benefit study to justify the purchase of the subject products; and (*c*) train ACE Foods's technicians on how to use and maintain the subject products.[16] ACE Foods likewise claimed that the subject products MTCL delivered are defective and not working.[17]

For its part, MTCL, in its Answer with Counterclaim,[18] maintained that it had duly complied with its obligations to ACE Foods and that the subject products were in good working condition when they were delivered, installed and configured in ACE Foods's premises. Thereafter, MTCL even conducted a training course for ACE Foods's representatives/employees; MTCL, however, alleged that there was actually no agreement as to the purported "after delivery services." Further, MTCL posited that ACE Foods refused and failed to pay the purchase

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[13] *Id*. at 56. On September 3, 2002, MTCL sent a demand letter to ACE Foods, seeking payment for the said products in the amount of ₱646,464.00; *id.* at 105.

[14] *Id*. at 107.

[15] *Id*. at 94-99.

[16] *Id*. at 56 and 87.

[17] *Id*. at 87.

[18] *Id*. at 110-120.

price for the subject products despite the latter's use of the same for a period of nine (9) months. As such, MTCL prayed that ACE Foods be compelled to pay the purchase price, as well as damages related to the transaction.[19]

The RTC Ruling

On February 28, 2007, the RTC rendered a Decision,[20] directing MTCL to remove the subject products from ACE Foods's premises and pay actual damages and attorney fees in the amounts of ₱200,000.00 and ₱100,000.00, respectively.[21]

At the outset, it observed that the agreement between ACE Foods and MTCL is in the nature of a contract to sell. Its conclusion was based on the fine print of the Invoice Receipt which expressly indicated that "title to sold property is reserved in MICROPACIFIC TECHNOLOGIES CO., LTD. until full compliance of the terms and conditions of above and payment of the price," noting further that in a contract to sell, the prospective seller explicitly reserves the transfer of title to the prospective buyer, and said transfer is conditioned upon the full payment of the purchase price.[22] Thus, notwithstanding the execution of the Purchase Order and the delivery and installation of the subject products at the offices of ACE Foods, by express stipulation stated in the Invoice Receipt issued by MTCL and signed by ACE Foods, *i.e.*, the title reservation stipulation, it is still the former who holds title to the products until full payment of the purchase price therefor. In this relation, it noted that the full payment of the price is a positive suspensive condition, the non-payment of which prevents the obligation to sell on the part of the seller/vendor from materializing at all.[23] Since title remained with MTCL, the RTC therefore directed it to withdraw the subject products from ACE Foods's premises. Also, in view

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[19] *Id*. at 56 and 57.

[20] *Id*. at 87-93.

[21] *Id*. at 93.

[22] *Id*. at 90.

[23] *Id*. at 91.

of the foregoing, the RTC found it unnecessary to delve into the allegations of breach since the non-happening of the aforesaid suspensive condition *ipso jure* prevented the obligation to sell from arising.[24]

Dissatisfied, MTCL elevated the matter on appeal.[25]

The CA Ruling

In a Decision[26] dated October 21, 2011, the CA reversed and set aside the RTC's ruling, ordering ACE Foods to pay MTCL the amount of ₱646,464.00, plus legal interest at the rate of 6% per annum to be computed from April 4, 2002, and attorney's fees amounting to ₱50,000.00.[27]

It found that the agreement between the parties is in the nature of a contract of sale, observing that the said contract had been perfected from the time ACE Foods sent the Purchase Order to MTCL which, in turn, delivered the subject products covered by the Invoice Receipt and subsequently installed and configured them in ACE Foods's premises.[28] Thus, considering that MTCL had already complied with its obligation, ACE Foods's corresponding obligation arose and was then duty bound to pay the agreed purchase price within thirty (30) days from March 5, 2002.[29] In this light, the CA concluded that it was erroneous for ACE Foods not to pay the purchase price therefor, despite its receipt of the subject products, because its refusal to pay disregards the very essence of reciprocity in a contract of sale.[30] The CA also dismissed ACE Foods's claim regarding MTCL's failure to perform its "after delivery services" obligations

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[24] *Id*.

[25] *Id*. at 31.

[26] *Id*. at 55-62.

[27] *Id*. at 61.

[28] *Id*. at 59.

[29] *Id*.

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

since the letter-proposal, Purchase Order and Invoice Receipt do not reflect any agreement to that effect.[31]

Aggrieved, ACE Foods moved for reconsideration which was, however, denied in a Resolution[32] dated February 8, 2012, hence, this petition.

The Issue Before the Court

The essential issue in this case is whether ACE Foods should pay MTCL the purchase price for the subject products.

The Court's Ruling

The petition lacks merit.

A contract is what the law defines it to be, taking into consideration its essential elements, and not what the contracting parties call it.[33] The real nature of a contract may be determined from the express terms of the written agreement and from the contemporaneous and subsequent acts of the contracting parties. However, in the construction or interpretation of an instrument, **the intention of the parties is primordial and is to be pursued**. The denomination or title given by the parties in their contract is not conclusive of the nature of its contents.[34]

The very essence of a contract of sale is **the transfer of ownership in exchange for a price paid or promised**.[35] This may be gleaned from Article 1458 of the Civil Code which defines a contract of sale as follows:

Art. 1458. By the contract of sale one of the contracting parties obligates himself to transfer the ownership and to deliver a determinate

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[31] *Id*. at 59.

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

[33] *Tan v. Benolirao*, G.R. No. 153820, October 16, 2009, 604 SCRA 36, 48, citing *Quiroga v. Parsons Hardware Co*., 38 Phil. 501, 506 (1918).

[34] *Ayala Life Assurance, Inc. v. Ray Burton Development Corporation*, G.R. No. 163075, January 23, 2006, 479 SCRA 462, 467-468.

[35] See *Schmid & Oberly, Inc. v. RJL Martinez Fishing Corp.*, 248 Phil. 727, 735 (1988). (Citations omitted)

thing, and the other **to pay therefor a price certain in money or its equivalent**.

A contract of sale may be absolute or conditional. (Emphasis supplied)

Corollary thereto, a contract of sale is classified as a **consensual contract**, which means that the sale is perfected by mere consent. No particular form is required for its validity. Upon perfection of the contract, the parties may reciprocally demand performance, *i.e.*, the vendee may compel transfer of ownership of the object of the sale, and the vendor may require the vendee to pay the thing sold.[36]

In contrast, a **contract to sell** is defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the property despite delivery thereof to the prospective buyer, binds himself to sell the property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, *i.e.*, the full payment of the purchase price. A contract to sell may not even be considered as a **conditional contract of sale** where the seller may likewise reserve title to the property subject of the sale until the fulfillment of a suspensive condition, because in a conditional contract of sale, the first element of consent is present, although it is conditioned upon the happening of a contingent event which may or may not occur.[37]

In this case, the Court concurs with the CA that the parties have agreed to a contract of sale and not to a contract to sell as adjudged by the RTC. Bearing in mind its consensual nature, a contract of sale had been perfected at the precise moment ACE Foods, as evinced by its act of sending MTCL the Purchase Order, accepted the latter's proposal to sell the subject products in consideration of the purchase price of ₱646,464.00. From that point in time, the reciprocal obligations of the parties – *i.e.*, on the one hand, of MTCL to deliver the said products to ACE Foods, and, on the other hand, of ACE Foods to pay the purchase price therefor within thirty (30) days from delivery –

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[36] *Sps. Dalion v. CA*, G.R. No. 78903, 261 Phil. 1033, 1039 (1990).

[37] *Tan v. Benolirao*, *supra* note 33, at 48-49.

already arose and consequently may be demanded. Article 1475 of the Civil Code makes this clear:

> Art. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.
>
> From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts.

At this juncture, the Court must dispel the notion that the stipulation anent MTCL's reservation of ownership of the subject products as reflected in the Invoice Receipt, *i.e.*, the title reservation stipulation, changed the complexion of the transaction from a contract of sale into a contract to sell. Records are bereft of any showing that the said stipulation novated the contract of sale between the parties which, to repeat, already existed at the precise moment ACE Foods accepted MTCL's proposal. To be sure, novation, in its broad concept, may either be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new obligation that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent it remains compatible with the amendatory agreement. In either case, however, novation is never presumed, and the *animus novandi*, whether totally or partially, must appear by express agreement of the parties, or by their acts that are too clear and unequivocal to be mistaken.[38]

In the present case, it has not been shown that the title reservation stipulation appearing in the Invoice Receipt had been included or had subsequently modified or superseded the original agreement of the parties. The fact that the Invoice Receipt was signed by a representative of ACE Foods does not, by and of itself, prove *animus novandi* since: (*a*) it was not shown that the signatory was authorized by ACE Foods (the actual party to the transaction) to novate the original agreement; (*b*) the

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[38] *Ocampo-Paule v. CA*, G.R. No. 145872, 426 Phil. 463, 470 (2002), citing *Quinto v. People*, 365 Phil. 259, 267 (1999).

signature only proves that the Invoice Receipt was received by a representative of ACE Foods to show the fact of delivery; and (*c*) as matter of judicial notice, invoices are generally issued at the consummation stage of the contract and not its perfection, and have been even treated as documents which are not actionable *per se*, although they may prove sufficient delivery.[39] Thus, absent any clear indication that the title reservation stipulation was actually agreed upon, the Court must deem the same to be a mere unilateral imposition on the part of MTCL which has no effect on the nature of the parties' original agreement as a contract of sale. Perforce, the obligations arising thereto, among others, ACE Foods's obligation **to pay the purchase price** as well as **to accept the delivery of the goods**,[40] remain enforceable and subsisting.

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[39] "The charge invoices are **not actionable documents**.

Section 7 of Rule 8 of the Rules of Court states:

SEC. 7. Action or defense based on document. – Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading. x x x

Based on the foregoing provision, a document is actionable when an action or defense is grounded upon such written instrument or document. In the instant case, the Charge Invoices **are not actionable documents *per se* as these "only provide details on the alleged transactions."** These documents need not be attached to or stated in the complaint as these are evidentiary in nature. In fact, respondent's cause of action is not based on these documents but on the contract of sale between the parties.

x x x x x x x x x

But although the Charge Invoices are not actionable documents, we find that these, along with the Purchase Orders, **are sufficient to prove that petitioner indeed ordered supplies and materials from Highett and that these were delivered to petitioner**." (*Asian Construction and Development Corporation v. Mendoza*, G.R. No. 176949, June 27, 2012, 675 SCRA 284, 289; emphases supplied; citations omitted)

[40] Article 1582 of the Civil Code states:

Art. 1582. The vendee is bound to accept delivery and to pay the price of the thing sold at the time and place stipulated in the contract.

x x x x x x x x x

As a final point, it may not be amiss to state that the return of the subject products pursuant to a rescissory action[41] is neither warranted by ACE Foods's claims of breach – either with respect to MTCL's breach of its purported "after delivery services" obligations or the defective condition of the products – since such claims were not adequately proven in this case. The rule is clear: each party must prove his own affirmative allegation; one who asserts the affirmative of the issue has the burden of presenting at the trial such amount of evidence required by law to obtain a favorable judgment, which in civil cases, is by preponderance of evidence.[42] This, however, ACE Foods failed to observe as regards its allegations of breach. Hence, the same cannot be sustained.

WHEREFORE, the petition is **DENIED**. Accordingly, the Decision dated October 21, 2011 and Resolution dated February 8, 2012 of the Court of Appeals in CA-G.R. CV No. 89426 are hereby **AFFIRMED.**

SO ORDERED.

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

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[41] "Considering that the rescission of the contract is based on Article 1191 of the Civil Code, mutual restitution is required to bring back the parties to their original situation prior to the inception of the contract. x x x

Rescission creates the obligation to return the object of the contract. It can be carried out only when the one who demands rescission can return whatever he may be obliged to restore. To rescind is to declare a contract void at its inception and to put an end to it as though it never was. It is not merely to terminate it and release the parties from further obligations to each other, but to abrogate it from the beginning and restore the parties to their relative positions as if no contract has been made." (*Sps. Velarde v. CA*, 413 Phil. 360, 375 (2001); citations omitted)

[42] *Tongson v. CA*, G.R. No. 77104, November 6, 1992, 215 SCRA 426, 432-433.

[*] Designated Acting Member per Special Order No. 1627.

SECOND DIVISION

[G.R. No. 200713. December 11, 2013]

MARIO REYES, *petitioner, vs.* **HEIRS OF PABLO FLORO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT BY THE COURT OF APPEALS ARE FINAL AND CONCLUSIVE AND CANNOT BE REVIEWED ON APPEAL; EXCEPTION PRESENT.— [I]t must be stressed that only questions of law may be reviewed by this Court in an appeal by *certiorari*. Findings of fact by the Court of Appeals are final and conclusive and cannot be reviewed on appeal to this Court. However, this Court may disregard the factual findings of the CA when the appellate court's findings of facts conflict with those of the DARAB, as well as the PARAD, which are administrative bodies with expertise on matters within its specific and specialized jurisdiction.

2. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL TENANCY; TENANCY RELATIONSHIP; REQUISITES.— In determining tenancy relations between the parties, it is a question of whether or not a party is a *de jure* tenant. The essential requisites of a tenancy relationship are: (1) the parties are the landowner and the tenant; (2) the subject is agricultural land; (3) there is consent; (4) the purpose is agricultural production; (5) there is personal cultivation; and (6) there is sharing of harvests. All these requisites are necessary to create a tenancy relationship between the parties. The absence of one does not make an occupant, cultivator, or a planter, a *de jure* tenant. Unless a person establishes his status as a *de jure* tenant, he is not entitled to security of tenure nor is he covered by the Land Reform Program of the government under existing tenancy laws.

3. ID.; ID.; ID.; THE CERTIFICATIONS ISSUED BY ADMINISTRATIVE AGENCIES OR OFFICERS THAT A CERTAIN PERSON IS A TENANT ARE MERELY PROVISIONAL AND NOT CONCLUSIVE ON THE

COURTS.— The MARO certification is merely preliminary and does not bind the courts as conclusive evidence that Reyes is a lessee who cultivates the land for purposes of agricultural production. In *Bautista v. Araneta*, we held that certifications issued by administrative agencies or officers that a certain person is a tenant are merely provisional and not conclusive on the courts. Here, the certification from Bautista has little evidentiary value, without any corroborative evidence. The certification was not notarized and Bautista was not even presented as a witness. Similarly, Reyes was not included as a legitimate and properly registered agricultural tenant in the supposed Deed of Absolute Sale with Agricultural Tenants Conformity which Bautista executed in favor of Zenaida.

4. ID.; ID.; ID.; ID.; TENANCY RELATIONS IS NOT TERMINATED BY CHANGES OF OWNERSHIP IN CASE OF SALE, ALIENATION OR TRANSFER OF LEGAL POSSESSION; RULE NOT APPLICABLE WHERE EXISTENCE OF AGRICULTURAL TENANCY RELATIONSHIP WAS NOT PROVED.— Reyes insists that the consent of the Floros is not necessary since tenancy relations is not terminated by changes in ownership. In *Valencia v. Court of Appeals*, we held that while it is true that tenancy relations is not terminated by changes of ownership in case of sale, alienation or transfer of legal possession, as stated in Section 10 of RA 3844 x x x. This provision assumes that a tenancy relationship exists. In this case, no such relationship was ever created between Reyes and respondent heirs nor between Reyes and Zenaida because Zenaida is not the true and lawful owner of the agricultural land. Since Reyes' claim on his supposed tenancy rights is based on the leasehold contract, as well as the certifications from Bautista and the MARO, which were found to be inadequate to prove that an agricultural tenancy relationship exists, then Reyes' assertions must fail.

5. ID.; ID.; ID.; ONE CLAIMING TO BE A *DE JURE* TENANT HAS THE BURDEN TO SHOW, BY SUBSTANTIAL EVIDENCE, THAT ALL THE ESSENTIAL ELEMENTS OF A TENANCY RELATIONSHIP ARE PRESENT.— The certifications from Bautista and the MARO declaring Reyes to be a tenant are not enough evidence to prove that there is a tenancy relationship. One claiming to be a *de jure* tenant has

the burden to show, by substantial evidence, that all the essential elements of a tenancy relationship are present. Since Reyes is not a *de jure* tenant or lessee, he is not entitled to the benefits of redemption, pre-emption, peaceful possession, occupation and cultivation of the subject land, as provided under existing tenancy laws.

APPEARANCES OF COUNSEL

Joseph D. Sagampud, Jr. for petitioner.
Jacinto D. Jimenez for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before us is a petition for review on *certiorari*[1] assailing the Decision[2] dated 21 December 2010 and Resolution[3] dated 13 February 2012 of the Court of Appeals in CA-G.R. SP No. 100857, which affirmed the Resolution[4] dated 16 May 2007 of the Department of Agrarian Reform Adjudication Board in DARAB Case No. 14369 declaring petitioner was not a tenant and ordering him to vacate the property.

The Facts

The subject of the litigation involves a parcel of land identified as Lot 5 of the Consolidated Subdivision Plan (LRC) Pcs-25816 covered by Transfer Certificate of Title (TCT) No. 279800.[5]

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[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 99-113. Penned by Justice Amelita G. Tolentino with Justices Normandie B. Pizarro and Ruben C. Ayson, concurring.

[3] *Id.* at 7-13. Penned by Justice Amelita G. Tolentino with Justices Normandie B. Pizarro and Ricardo R. Rosario, concurring.

[4] *Id.* at 84-93.

[5] *Id.* at 53-54. TCT is in the name of Zenaida P. Reyes and is a transfer from TCT No. T-264134.

The land, primarily devoted to rice production and consisting of 62,186 square meters, is located in Longos, Malolos, Bulacan.

On 3 May 2004, petitioner Mario Reyes (Reyes) filed with the Provincial Agrarian Reform Adjudicator (PARAD) of Malolos City, Bulacan, a Complaint[6] for Pre-Emption and Redemption, Maintenance of Peaceful Possession, Occupation and Cultivation with prayer for the issuance of Restraining Order/Injunction against Zenaida Reyes (Zenaida); Sun Industrial Corporation (Sun Industrial); the Register of Deeds of Tabang, Guiginto, Bulacan; and respondents, heirs of Pablo Floro, namely: Elena F. Vichico, Valeriano L. Floro, Ernesto L. Floro, Victoria Floro-Basilio, Avelina C. Floro, Elsie C. Floro, Samuel C. Floro, Josephine C. Floro, Jerome C. Floro, and Pablito Floro.

In the Complaint, Reyes alleged that the land was formerly owned by Carmen T. Bautista (Bautista) under one lot title, TCT No. T-264134. On 16 September 1983, Bautista allegedly sold the land to Zenaida as evidenced by a Deed of Absolute Sale with Agricultural Tenants Conformity.[7] Before Bautista sold the land, Reyes was allegedly one of her tenant-lessees.

A day after the alleged sale, Bautista supposedly executed a document entitled *Pagpapatunay*[8] dated 17 September 1983 claiming that she was the original owner of the land and acknowledging Reyes as her tenant, even though not registered with the Department of Agrarian Reform. In the same document, Bautista attested that Reyes did not sign the deed of sale since he did not want to give up his tenancy rights. Thereafter, Zenaida registered the land in her name under TCT No. 279800. On 19 December 1983, Zenaida executed an Agricultural Leasehold Contract[9] with Reyes, her brother.

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[6] *Id*. at 46-48. Docketed as DARAB Case No. R-03-02-0433 2004.

[7] *Id*. at 164-165.

[8] *Id*. at 166.

[9] *Id*. at 159-160.

Reyes then recounted that sometime in January 2004, three unknown persons introduced themselves as brokers and claimed that the heirs of Floro and Sun Industrial were selling the land, which had already been transferred to their names, and demanded that Reyes vacate the premises or else they would be forced to evict him. Reyes stated that he was the agricultural lessee of Zenaida based on a Certification[10] dated 4 May 1995 issued by the Municipal Agrarian Reform Officer (MARO) of Sto. Rosario, Malolos, Bulacan. However, without Reyes' knowledge and consent, Zenaida conveyed and transferred ownership of the land in favor of the late Pablo Floro and executed a deed of assignment with waiver of rights in favor of Sun Industrial.

Reyes stated in the Complaint that as an agricultural lessee, he wanted to acquire the land according to the approved *Barangay* Committee on Land Production (BCLP) in the locality, by way of pre-emption and redemption, under Sections 11[11] and 12[12] of Republic Act No. (RA) 3844, as amended by RA

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[10] *Id*. at 52.

[11] Section 11. *Lessee's Right of Pre-emption* – In case the agricultural lessor decides to sell the landholding, the agricultural lessee shall have the preferential right to buy the same under reasonable terms and conditions: Provided, That the entire landholding offered for sale must be pre-empted by the Land Authority if the landowner so desires, unless the majority of the lessees object to such acquisition: Provided, further, That where there are two or more agricultural lessees, each shall be entitled to said preferential right only to the extent of the area actually cultivated by him. The right of pre-emption under this Section may be exercised within ninety days from notice in writing which shall be served by the owner on all lessees affected.

[12] Section 12. *Lessee's Right of Redemption* – In case the landholding is sold to a third person without the knowledge of the agricultural lessee, the latter shall have the right to redeem the same at a reasonable price and consideration: Provided, That the entire landholding sold must be redeemed: Provided, further, That where there are two or more agricultural lessees, each shall be entitled to said right of redemption only to the extent of the area actually cultivated by him. The right of redemption under this Section may be exercised within two years from the registration of the sale, and shall have priority over any other right of legal redemption.

6389,[13] or otherwise known as the Agricultural Land Reform Code.[14] Thus, Reyes implored that a restraining order be issued against defendants upon receipt of the Complaint and, after hearing, prayed for the following: (1) to make the restraining order/injunction permanent; (2) to declare the documents on the transfer of ownership of the land in the names of the respondent heirs and Sun Industrial null and void *ab initio;* (3) to pay the amount of the redemption price based on the approved BCLP in the locality under Section 12 of RA 3844; and (4) to order the Registry of Deeds of Tabang, Guiginto, Bulacan to cancel all existing TCTs issued in the name of the respondent heirs and Sun Industrial and to issue new TCTs in his favor by virtue of Sections 11 and 12 of RA 3844.[15]

On 28 May 2004, Zenaida filed her Answer with Counterclaim.[16] She alleged that since 1983 Reyes was the actual occupant, cultivator and agricultural tenant-lessee over the subject land. Zenaida also stated that: (1) she timely received Reyes' rental payments as agricultural tenant-lessee and he complied with the terms and conditions of the agricultural leasehold contract which they have entered into; (2) as registered owner of the land, she had all the legal rights to dispose of the land without Reyes' consent; (3) she had no knowledge that Reyes wanted to acquire the land and/or exercise his rights of pre-emption and redemption; and (4) she never tried to eject Reyes from the land; thus, the issuance of a temporary restraining order was unnecessary. As counterclaim, Zenaida asked for moral and exemplary damages.

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[13] Code of Agrarian Reforms of the Philippines which took effect on 10 September 1971.

[14] An Act to Ordain the Agricultural Land Reform Code and to Institute Land Reforms in the Philippines, including the Abolition of Tenancy and the Channeling of Capital into Industry, Provide for the Necessary Implementing Agencies, Appropriate Funds Therefor and for Other Purposes, which took effect on 8 August 1963.

[15] *Rollo*, p. 48.

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

On 17 November 2004, Sun Industrial filed its Answer denying the material allegations in the Complaint. Sun Industrial raised the defense that it was an innocent assignee and purchaser for value in good faith. Sun Industrial alleged that the subject land, now covered by TCT No. T-1188 in its name, has no tenant or agricultural lessee. Otherwise, such fact would have been annotated at the back of its title. Sun Industrial pointed out that the two previous titles of the land showed that it was not covered by Operation Land Transfer. Sun Industrial declared that it became the registered owner of the land on 11 September 1989 or several years before the alleged issuance of the MARO Certification dated 4 May 1995. Thus, since Zenaida ceased to be the owner of the land in 1995, she could no longer institute Reyes as tenant. Sun Industrial filed a counterclaim and prayed for the dismissal of the complaint and payment of attorney's fees and costs of suit.

On 6 December 2004, respondent heirs filed their Answer with special and affirmative defenses and damages. Respondent heirs maintained that they are the lawful owners of several parcels of land covered by TCT Nos. 51068, 85587, 85588, 51062, 51066, 51065 and 51069 registered with the Registry of Deeds of Bulacan. Respondent heirs asserted that before Sections 11 and 12 of RA 3844 may be applied, it must first be established that a tenancy or leasehold relationship existed between Reyes and Pablo Floro and/or his heirs. They added that while Zenaida is the alleged registered owner of the land in the Complaint, the same is not valid since she never acquired a valid and defensible title to the land. They averred that Zenaida was convicted of falsification of public documents by the Regional Trial Court (RTC) of Bulacan, Branch 22, in Criminal Case No. 9252-M. Since Zenaida falsified and forged the signature of Pablo Floro to transfer the subject land under her name, she could not validly enter into any voluntary dealings with anybody including Reyes and neither could they suffer for the misdeeds of Zenaida since they were also victims of an illegal transfer of ownership. Further, the respondent heirs alleged that Reyes did not cultivate the land since 1995 as certified by the *Punong Barangay* of Longos,

Malolos, Bulacan nor did Reyes tender a reasonable purchase price within 180 days from the transfer of the land. Thus, respondent heirs prayed for the dismissal of the complaint as well as the payment of moral and exemplary damages plus attorney's fees, litigation expenses and costs of suit.

In a Decision[17] dated 29 November 2005, the PARAD decided the case in favor of Reyes, as a tenant-lessee entitled to redemption. The PARAD added that Zenaida's conviction in a criminal case will not sever Reyes' tenancy relations, having been instituted by the previous owner, and thus entitled to security of tenure as guaranteed by law. The dispositive portion of the Decision states:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against defendants, and Order is hereby issued as follows:
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> 1. FINDING the plaintiff a legitimate tenant-lessee of the subject landholding;
> 2. GRANTING the right of the plaintiff to redeem the subject property from the defendant FLOROs and Sun Industrial Corporation;
> 3. Directing the plaintiff to pay the defendants the reasonable redemption price as follows:
>   a) Valeriano Floro is entitled to Php.10,821.00 over his two lots with an aggregate area of 14,967 sq.m. under TCT Nos. T-51062 and T-51066;
>   b) Avelina Floro, *et al*. are entitled to Php.10,821.00 over their two lots under TCT Nos. T-85588 and T-85587 with an aggregate area of 14,967 sq.m.;
>   c) Elena Vichico is entitled to Php.10,907.90 over her two titles under TCT Nos. T-51065 and T-51069 with an aggregate area of 15,087 sq.m.;
>   d) Victoria Floro-Basilio is entitled to Php.5,210.20 over her title covered by TCT No. T-51068 with an area of 7,288 sq.m.;
>   e) Sun Industrial Corporation is entitled to Php.5,411.65 for its 7,485 sq.m. embraced by TCT No. T-1188;

[17] *Id*. at 61-73.

4. Directing the Registry of Deeds of Bulacan to cancel TCT Nos. T-51062, T-51066, T-85588, T-85587, T-51065, T-51069, T-51068, and T-1188 issued in favor of the defendant FLOROs and Sun Industrial Corporation and issue a new title in the name of Mario Reyes after payment of the required legal fees pursuant to existing rules and regulations of the Land Registration Authority.

Claims and counterclaims are dismissed for lack of merit.

SO ORDERED.[18]

Respondent heirs filed an appeal[19] with the Department of Agrarian Reform Adjudication Board (DARAB). In a Decision[20] dated 11 December 2006, the DARAB affirmed the decision of the PARAD and denied the appeal for lack of merit.

Respondent heirs filed a Motion for Reconsideration. In a Resolution[21] dated 16 May 2007, the DARAB reconsidered and set aside its Decision dated 11 December 2006. The resolution declared that Reyes was not a tenant and ordered him to vacate the property.

The DARAB found that the PARAD failed to consider the following evidence submitted by respondent heirs to prove that they were the owners of the subject land: (1) the Deed of Reconveyance of Four (4) Parcels of Land dated 31 March 1986 executed by Zenaida in favor of Pablo Floro which provides:

WHEREAS, FIRST PARTY (defendant-appellee Zenaida Reyes) by means of false pretenses, strategy and stealth succeeded to take hold of SECOND PARTY'S owner's duplicate original copy of said Transfer Certificate of Title Annexes "A", "B", "C" and "D" hereof and on or about July 23, 1985 FIRST PARTY made it appear that SECOND PARTY (Pablo Floro) executed a certain "DEED OF

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[18] *Id*. at 72-73.

[19] Docketed as DARAB Case No. 14369 (Reg. Case No. R-03-02-0433'04).

[20] *Rollo*, pp. 74-83.

[21] *Id*. at 84-93.

ABSOLUTE SALE OF FOUR (4) PARCELS OF LAND" over the said above described Four (4) parcels of land covered by said Transfer Certificates of Title Annexes "A", "B", "C" and "D" hereof, purportedly in her favor for an alleged consideration of ₱35,000 and forged and falsified on said deed SECOND PARTY'S signature as vendor, a copy of said deed to the foregoing effect is hereto attached and marked as Annex "E" to form an integral part hereof.[22]

(2) the Decision dated 1 June 2001 of the RTC of Malolos, Bulacan, Branch 22 in Criminal Case No. 9252-M entitled "*People of the Philippines v. Zenaida Reyes*" for falsification of public documents, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, it can be deduced that the 62,000 square meters or the nine (9) titles originally belong to Pablo Floro and the accused somehow got hold of the four (4) land titles from Pablo Floro and transferred it to her name by signing the signature of Pablo Floro in the Deed of Absolute Sale dated July 23, 1985 (Exhs. "C" and "C-1"). Later on in the Deed of Reconveyance of four (4) Parcels of Land she executed (Exh. "N") she admitted having forged and falsified the signature of Pablo [Floro] in Exhs. "C" and "C-1".

Accused Zenaida Reyes is hereby found guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of four (4) months of *arresto mayor* as minimum to four (4) years and two (2) months of *prision correccional* as maximum and to pay a fine of Five Thousand Pesos (₱5,000.00).

SO ORDERED.[23]

and (3) the Decision dated 29 September 2004 of the Court of Appeals in "CA-G.R. CV No. 68557 entitled "*Victoria Floro-Basilio v. Zenaida Reyes"and Sun Industrial Corporation*" for annulment of title, where the CA found"that there is no dispute on Pablo Floro's ownership over the land and "declared the titles of Zenaida and Sun Industrial as void. The CA stated that Zenaida registered the land under her name by obtaining possession of the duplicate original of TCT No. T-280518 in

[22] *Id.* at 148.

[23] CA *rollo*, p. 215.

the name of Pablo Floro and executing a fictitious deed of absolute sale in her favor by forging the signature of Pablo Floro. Subsequently, Zenaida executed a deed of assignment and waiver of rights in favor of Sun Industrial which, despite the affidavit of adverse claim and notice of *lis pendens* annotated on the title, foreclosed the mortgage on the property and secured the issuance of TCT No. T-1188 in its name. The dispositive portion of the Decision provides:

> WHEREFORE, the appeal is granted and the trial court's Decision dated June 28, 2000 is set aside. TCT No. T-295804 in the name of Zenaida Reyes and the subsequent TCT No. T-1188 in the name of Sun Industrial Corporation are nullified. Defendant-appellee Zenaida Reyes is ordered to pay to plaintiff-appellant ₱50,000.00 as moral damages, ₱50,000.00 as exemplary damages and the costs of suit.
>
> SO ORDERED.[24]

Reyes filed a Motion for Reconsideration on 20 June 2007 and sought the reversal of the Resolution dated 16 May 2007. In an Order[25] dated 6 September 2007, the DARAB set aside the resolution and reinstated the PARAD's Decision dated 29 November 2005.

Respondent heirs then filed a petition for review with the Court of Appeals.

The Ruling of the Court of Appeals

In a Decision[26] dated 21 December 2010, the Court of Appeals reversed and set aside the DARAB's Decision dated 11 December 2006 and Order dated 6 September 2007. The appellate court ruled that Zenaida was never the owner of the land; thus, no tenancy relations existed between her and Reyes. The dispositive portion of the Decision states:

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[24] *Rollo*, p. 156.

[25] *Id*. at 94-97.

[26] *Supra* note 2.

WHEREFORE, premises considered, the appealed *decision* dated December 11, 2006 and the *order* dated September 6, 2007 of the DARAB are REVERSED and SET ASIDE. Accordingly, the resolution of the DARAB dated May 16, 2007 is REINSTATED.

SO ORDERED.[27]

Reyes filed a Motion for Reconsideration. In a Resolution[28] dated 25 July 2011, the appellate court granted Reyes' motion and affirmed the findings and conclusions of the PARAD Decision dated 29 November 2005, as sustained on appeal by the DARAB in its Decision dated 11 December 2006 and Order dated 6 September 2007.

The respondent heirs filed a Motion for Reconsideration. In a Resolution[29] dated 13 February 2012, the appellate court granted the motion. The 25 July 2011 Resolution was nullified and set aside and the 21 December 2010 Decision was reinstated.

Hence, the instant petition.

The Issue

The main issue for our resolution is whether or not Reyes is a *de jure* tenant or lessee who is entitled to redemption, pre-emption, peaceful possession, occupation and cultivation of the subject land.

The Court's Ruling

The petition lacks merit.

At the outset, it must be stressed that only questions of law may be reviewed by this Court in an appeal by *certiorari*. Findings of fact by the Court of Appeals are final and conclusive and cannot be reviewed on appeal to this Court. However, this Court may disregard the factual findings of the CA when the

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[27] *Rollo*, pp. 112-113.

[28] *Id*. at 116-120. Penned by Justice Amelita G. Tolentino with Justices Normandie B. Pizarro and Ricardo R. Rosario, concurring.

[29] *Supra* note 3.

appellate court's findings of facts conflict with those of the DARAB, as well as the PARAD, which are administrative bodies with expertise on matters within its specific and specialized jurisdiction.[30]

Reyes contends that (1) the *Pagpapatunay*[31] dated 17 September 1983 from Carmen Bautista, the original owner of the land, stating that Reyes was one of her tenants; and (2) the Certification[32] dated 4 May 1995 from the MARO stating that Reyes is an agricultural lessee over the land owned by Zenaida, are enough evidence to prove that he is a tenant. Reyes insists that the consent of the Floros is not necessary since tenancy relations is not terminated by changes in ownership in case of sale or transfer of legal possession.

Respondent heirs, on the other hand, maintain that Reyes is not an agricultural lessee because: (1) there was no valid contract between Reyes and Zenaida nor between Reyes and Bautista; (2) Reyes has not personally cultivated the parcel of land; (3) Reyes did not share any harvest with any landowner; and (4) the claim of Reyes is not supported by substantial evidence.

This Court takes judicial notice of two cases: (1) *Zenaida Reyes v. People of the Philippines*, G.R. No. 184728; and (2) *Sun Industrial Corporation v. Victoria Floro-Basilio*, G.R. No. 169674.

The first case, originally docketed as Criminal Case No. 9252-M, the RTC of Malolos, Bulacan, Branch 22, in a Decision dated 1 June 2001, convicted Zenaida of falsification of public documents as defined and penalized under Article 172 of the Revised Penal Code. On appeal, the CA, in CA-G.R. CV No. 26058, affirmed the RTC in a Decision dated 11 June 2008.

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[30] *Esquivel v. Atty. Reyes*, 457 Phil. 509 (2003); *Heirs of Jose Juanite v. Court of Appeals*, 425 Phil. 905 (2002).

[31] *Rollo*, p. 166.

[32] *Id.* at 52.

Elevated to this Court, we issued a Resolution[33] dated 8 December 2008, affirming the decision of the appellate court. The resolution attained finality on 5 May 2009.[34]

In the second case, Victoria Floro-Basilio, one of the respondents in the present case, filed a complaint for annulment of title against Zenaida and Sun Industrial with the RTC of Malolos, Bulacan, Branch 12, docketed as Civil Case No. 352-M-95. The RTC dismissed the complaint. On appeal, docketed as CA-G.R. CV No. 68557, the CA in a Decision[35] dated 29 September 2004 upheld the title of Pablo Floro and declared the titles of Zenaida and Sun Industrial as void. The CA stated that since the title of Zenaida was fraudulently acquired on the basis of a forged deed of sale, her title is null and void and the subsequent registration of the property in the name of Sun Industrial, as mortgage creditor of Zenaida, is also void. Sun Industrial appealed the CA's decision to this Court, which was denied in a Resolution[36] dated 21 November 2005. Likewise, the Motion for Reconsideration was denied with finality in a Resolution[37] dated 6 March 2006.

In determining tenancy relations between the parties, it is a question of whether or not a party is a *de jure* tenant. The essential requisites of a tenancy relationship are: (1) the parties are the landowner and the tenant; (2) the subject is agricultural land; (3) there is consent; (4) the purpose is agricultural production; (5) there is personal cultivation; and (6) there is sharing of harvests. All these requisites are necessary to create a tenancy relationship between the parties. The absence of one does not make an occupant, cultivator, or a planter, a *de jure* tenant. Unless a person establishes his status as a *de jure* tenant, he is not entitled to security of tenure nor is he covered

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[33] *Id.* at 139-141.

[34] *Id.* at 142.

[35] *Id.* at 143-156.

[36] *Id.* at 157.

[37] *Id.* at 158.

by the Land Reform Program of the government under existing tenancy laws.[38]

In the present case, there is no dispute that the property under litigation is an agricultural land. The controversy mainly lies on whether the parties are the true and legitimate landowner and tenant.

Reyes relies on the certifications from the MARO and Bautista, the alleged original owner, manifesting that he was a tenant of the subject land to prove that a tenancy relationship exists.

This is untenable.

The MARO certification is merely preliminary and does not bind the courts as conclusive evidence that Reyes is a lessee who cultivates the land for purposes of agricultural production. In *Bautista v. Araneta*,[39] we held that certifications issued by administrative agencies or officers that a certain person is a tenant are merely provisional and not conclusive on the courts. Here, the certification from Bautista has little evidentiary value, without any corroborative evidence. The certification was not notarized and Bautista was not even presented as a witness. Similarly, Reyes was not included as a legitimate and properly registered agricultural tenant in the supposed Deed of Absolute Sale with Agricultural Tenants Conformity which Bautista executed in favor of Zenaida.

Further, the genuineness of the agricultural leasehold contract that Zenaida entered into with Reyes is doubtful. The records show that respondent heirs submitted two documentary evidence with the PARAD which the provincial adjudicator disregarded: (1) a MARO Certification[40] dated 9 May 2005 manifesting that there is no copy on file, with the Municipal Land Reform Office of Malolos, Bulacan, of the supposed leasehold contract;

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[38] *Isidro v. Court of Appeals*, G.R. No. 105586, 15 December 1993, 228 SCRA 503.

[39] 383 Phil. 114 (2000), citing *Oarde v. Court of Appeals*, 345 Phil. 457 (1997).

[40] *Rollo*, p. 161.

and (2) a *Pagpapatunay*[41] dated 8 June 2004 from the *Punong Barangay* of Malolos, Bulacan attesting that since the year 1995 until the date of the affidavit, the subject land was not being used for farming, cultivation or any agricultural purpose. These evidence can only mean that the leasehold contract was falsified.

In addition, it should be kept in mind that Zenaida was convicted of falsification of public documents as affirmed in our Resolution dated 8 December 2008 in G.R. No. 184728. Zenaida registered and transferred to her name four land titles owned by Pablo Floro by forging the signature of Pablo Floro in a deed of sale. Likewise, in G.R. No. 169674 for annulment of title, we affirmed the ruling of the appellate court in declaring the titles issued in the name of Zenaida and Sun Industrial as void.

The findings of fact of the RTC of Malolos, Branch 22 in its Decision dated 1 June 2001 in Criminal Case No. 9252-M provide us a better understanding on who among the parties is the real owner of the subject land. The relevant portions of the decision provide:

> The accused is charged [with] falsification of public documents based on the Deed of Absolute Sale of four parcels of land dated July 23, 1985 allegedly executed by Pablo Floro in her (accused) favor.
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> x x x x x x x x x
>
> There was no document presented to prove the claim of the accused that she was the lawful owner of the properties subject matter of this case, particularly the original title of the 62,186 square meters agricultural land in Longos, Malolos, Bulacan before it was subdivided into nine (9) residential lots. Since all the records of the Register of Deeds from 1987 [onwards] were destroyed because of a fire that hit the said office in 1987. Only a certification dated July 8, 1987 (Exhibit "B") which was signed by Register of Deeds Elenita Corpuz certifying that the office of the Register of Deeds, Malolos, Bulacan together with all the titles, documents, office equipment

[41] *Id*. at 163.

and supplies have been totally burned during the fire conflagration on March 7, 1987 was presented.

Both counsels did not submit their memorandum despite orders of the court to do so.

Hence, for further clarification of this case, resort is made to the decision rendered by Judge Crisanto Concepcion (Exhibits "2", "2-a", "2-b" of this case) of Regional Trial Court of Malolos, Bulacan, Branch 12 in Civil Case No. 352-M-95 dated June 28, 2000 in the case of *Victoria Floro Basilio vs. Zenaida Reyes, et al.*, wherein the issue who between the late Pablo Floro and defendant Zenaida Reyes was the real owner of the parcel of land in question [as] to the same property now in litigation here in Criminal Case No. 9252-M. The following were resolved:

1) If the late Pablo Floro was the owner, it would be hard to believe that defendant Zenaida Reyes acquired her title from him legally.

2) Defendant Zenaida Reyes has shown how and from whom she originally acquired the 62,186 square meters agricultural land in Longos, Malolos, Bulacan as reflected in her Exhibit "1", the Deed of Absolute Sale with Agricultural Tenants Conformity executed by and between her, as vendee, and Carmen T. Bautisa, as vendor, before it was subdivided into nine separate residential lots in accordance with her accommodation to Pablo Floro to use them as collaterals in his name, so as to secure a much bigger bank loan. The Registry of Deeds file copy of this Deed of Sale, like all the nine titles registered in the name of Pablo Floro, as well as those of other registered related documents, must have been included in those burned and destroyed during the fire that hit the Registry on March 7, 1987, but there is no strong reason not to accept its faithfulness.

3) It is a clear history of the origin of the property in question, showing that its ownership was first transferred by the original owner Carmen T. Bautista to Zenaida P. Reyes before it was subdivided into nine lots to be used as bank loan collaterals in the name of the late Pablo Floro by way of accommodation only, for his mistress.

4) The facts shown by Zenaida Reyes are also consistent with her contention that her sale to Pablo Floro for that purpose and Pablo Floro's subsequent re-sale to her when they decided not to go on with the projected bank loan were all simulated. It was only unfortunate that when his heirs discovered his real property of nine

(9) lots in Bulacan in his name, they decided to partition them among themselves, perhaps thinking that all the while their father had after all real property in the province, including the first four (4) lots already resold in a simulated sale by the old man.

5) The Deed of Reconveyance (Exhibit "N" in this case) of the four (4) lots prepared by the lawyer and Corporate Secretary of the Floros and ostensibly signed by defendant Reyes who denied and belied it, cannot alter the credence of her side of the matter, particularly the origin of her ownership of the whole property before it was subdivided without her actually losing such right, until she finally gave it up in favor of her co-defendant Sun Industrial Corporation. She seemed to be an experienced businesswoman who would not just incriminate herself so recklessly in writing that "by means of false pretenses, strategy, and stealth" she obtained from a more experience[d] known industrialist, possession of the four land titles, including the title to Lot 5-C. Her explanation on how she re-obtained them as the true owner is more reliable that the generalized "means of false pretenses, strategy and stealth."

The facts stated in the aforesaid decision of Judge Crisanto Concepcion (although the decision is still pending appeal) jibed with the substantive facts stated by accused Zenaida Reyes in the instant case.

However, the Court notes that Zenaida Reyes' Exh. "1" – in Civil Case No. 352-M-95 which is the Deed of Absolute Sale with Agricultural Tenant[s] Conformity executed by and between her (Zenaida Reyes) as Vendee, and Carmen T. Bautista as Vendor, before it was subdivided into nine (9) separate residential lots in accordance with her accommodation to Pablo Floro to use them as collateral in his name, so as to secure a much bigger loan – was not presented as evidence in Court.

Likewise, it does not appear that the original of said Exh. "1" was ever presented in RTC, Branch 12 in the Civil Case as implied from the decision of RTC, Branch 12 that "the Registry of Deeds file copy of this Deed of Sale, like all the nine (9) titles registered in the name of Pablo Floro, as well as those of other related documents, must have been included in those burned and destroyed during the fire that hit the Registry on March 7, 1987, but there is no strong reason not to accept its faithfulness."

This Court however is of the belief that there are in fact strong reasons not to believe its faithfulness since there are other copies of the same which were not burned that should be presented to prove that there was in fact such a sale from Carmen T. Bautista to Zenaida Reyes to wit: 1) the Notary Public's copy; 2) the copy of the Court (Notary Publics [sic] are supposed to furnish copies of their notarized document to [the] Court that approved their application for Notary Public); 3) BIR copy for the payment of the Capital Gains Tax; 4) the copy of the Archives (National Library). These copies were never presented in this Court or in the RTC, Branch 12 nor explained as why they were not presented. This is therefore clearly suppression of evidence which would therefore be adverse if produced.

Likewise, when the accused testified in Court and admitted that he signed on the space provided in the Deed of Sale for the seller which is her name and she also signed in behalf of Don Pablo for the sale of the property to Don Pablo Floro because the bank requires the borrower to have a paying capacity and the property must be in the name of the mortgagor (Don Pablo), this Deed of Sale was never presented in Court. (This refers to the sale of the 62,000 square meters from Reyes to Floro before it was subdivided to nine (9) titles). Her testimony is not clear on this point.

This claim of the accused is uncorroborated since the Deed of Sale was not presented in Court nor a copy thereof which normally should be with 1) the Notary Public; 2) the Court (Notary Publics [sic] are supposed to furnish copies of their notarized document to the Court [that] approved their commission as notary public); 3) the BIR for the payment of the Capital Gains Tax; or 4) the Archives (National Library). Likewise, the subdivision plan and Deed for Partition of the 62,000 sq. meters since it was subdivided. This would show who really is the registered owner of the 62,000 sq. meters.

Furthermore, the accused testified that she only transferred four (4) titles back to her name because she doesn't have enough money to pay for the Register of Deeds for the nine (9) titles which she claimed to be her own. But why should she be the one to pay for the registration (transfer expenses for the nine (9) titles [from] Floro to her) according to her she simulatedly transferred those 9 titles to Floro for the latter's benefit to get a better loan? Should it not be Floro?

WHEREFORE, in view of all the foregoing, it can be deduced that the 62,000 square meters or the nine (9) titles originally belong to Pablo Floro and the accused somehow got hold of the four (4) land titles from Pablo Floro and transferred it to her name by signing the signature of Pablo Floro in the Deed of Absolute Sale dated July 23, 1985 (Exhs. "C" and "C-1"). Later on in the Deed of Reconveyance of four (4) Parcels of Land she executed (Exh. "N") she admitted having forged and falsified the signature of Pablo [Floro] in Exhs. "C" and "C-1".

Accused Zenaida Reyes is hereby found guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of four (4) months of *arresto mayor* as minimum to four (4) years and two (2) months of *prision correccional* as maximum and to pay a fine of Five Thousand Pesos (₱5,000.00).

SO ORDERED.[42] (Emphasis supplied; underscoring in the original)

Thus, from the findings of the lower court that Zenaida failed to submit concrete and reliable evidence to lend credence to her claim of ownership of the subject land, it has been clearly established that Zenaida is not the true and lawful owner and only concocted a story unworthy of belief. As a consequence, the agricultural leasehold contract which Reyes entered into with Zenaida is void.

Next, Reyes failed to submit any proof that he personally cultivated the land for agricultural production or that he shared the harvests with the landowner. Reyes only submitted a picture of a hut erected on the land as an incident to his right to cultivate the land as a tenant. This is not enough to prove that a leasehold relationship exists.

Lastly, Reyes insists that the consent of the Floros is not necessary since tenancy relations is not terminated by changes in ownership. In *Valencia v. Court of Appeals*,[43] we held that while it is true that tenancy relations is not terminated by

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[42] CA *rollo*, pp. 211-215.

[43] 449 Phil. 711, 733 (2003), citing *Endaya v. Court of Appeals*, G.R. No. 88113, 23 October 1992, 215 SCRA 109.

changes of ownership in case of sale, alienation or transfer of legal possession, as stated in Section 10 of RA 3844:

> Section 10. *Agricultural Leasehold Relation Not Extinguished by Expiration of Period, etc.* – The agricultural leasehold relation under this Code shall not be extinguished by mere expiration of the term or period in a leasehold contract nor by the sale, alienation or transfer of the legal possession of the landholding. In case the agricultural lessor sells, alienates or transfers the legal possession of the landholding, the purchaser or transferee thereof shall be subrogated to the rights and substituted to the obligations of the agricultural lessor.

this provision assumes that a tenancy relationship exists. In this case, no such relationship was ever created between Reyes and respondent heirs nor between Reyes and Zenaida because Zenaida is not the true and lawful owner of the agricultural land. Since Reyes' claim on his supposed tenancy rights is based on the leasehold contract, as well as the certifications from Bautista and the MARO, which were found to be inadequate to prove that an agricultural tenancy relationship exists, then Reyes' assertions must fail.

In sum, the certifications from Bautista and the MARO declaring Reyes to be a tenant are not enough evidence to prove that there is a tenancy relationship. One claiming to be a *de jure* tenant has the burden to show, by substantial evidence, that all the essential elements of a tenancy relationship are present. Since Reyes is not a *de jure* tenant or lessee, he is not entitled to the benefits of redemption, pre-emption, peaceful possession, occupation and cultivation of the subject land, as provided under existing tenancy laws.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 21 December 2010 and Resolution dated 13 February 2012 of the Court of Appeals in CA-G.R. SP No. 100857.

SO ORDERED.

Brion, del Castillo, Perlas-Bernabe, and *Leonen,*[*] *JJ.,* concur.

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[*] Designated acting member Special Order No. 1627 dated 6 December 2013.

FIRST DIVISION

[G.R. No. 201715. December 11, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **MANILA ELECTRIC COMPANY (MERALCO), and NATIONAL POWER CORPORATION (NPC),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC; THE COURTS OF LAW WILL NOT DETERMINE MOOT AND ACADEMIC QUESTIONS, FOR THEY SHOULD NOT ENGAGE IN ACADEMIC DECLARATIONS AND DETERMINE MOOT QUESTIONS; THE TRIAL COURT'S RENDITION OF DECISION ON THE MERITS OF THE CASE RENDERED ANY DETERMINATION OF THE ISSUE ON THE INTERLOCUTORY ORDERS WITHOUT ANY PRACTICAL VALUE.— In its assailed decision of October 14, 2011, the CA directed the RTC to proceed to the trial on the merits in Special Civil Action No. 3392, and to resolve the case with dispatch. It is worth mentioning at this juncture, therefore, that, as the petitioner indicated in its petition, the RTC complied and ultimately rendered its decision on the merits in Special Civil Action No. 3392 on May 29, 2012 granting MERALCO's petition for declaratory relief and declaring the Settlement Agreement between NAPOCOR and MERALCO as valid and binding, save for the pass-through provision that was reserved for the consideration and approval of the ERC. The petitioner has probably appealed the decision by now, for its petition for review expressly manifested the intention to appeal to the CA. With the intervening rendition of the decision on the merits, the challenge against the interlocutory orders of the RTC designed to prevent the RTC from proceeding with the pre-trial and the trial on the merits was rendered moot and academic. In other words, any determination of the issue on the interlocutory orders was left without any practical value. A case that is moot and academic because of supervening events ceases to present any justiciable controversy. The courts of law will not determine moot and

academic questions, for they should not engage in academic declarations and determine moot questions.

2. ID.; PROVISIONAL REMEDIES; INJUNCTIVE RELIEF; ABSENT ANY TEMPORARY RESTRAINING ORDER OR WRIT OF PRELIMINARY INJUNCTION STOPPING THE REGIONAL TRIAL COURT FROM PROCEEDING, THE MERE FILING OR PENDENCY OF THE SPECIAL CIVIL ACTIONS FOR *CERTIORARI, MANDAMUS* AND PROHIBITION WILL NOT INTERRUPT THE DUE COURSE OF THE PROCEEDINGS IN THE MAIN CASE.— The RTC's proceeding with the pre-trial set on November 24, 2010 was entirely in accord with the *Rules of Court*. While it is true that the OSG had filed on November 22, 2010 the petition for *certiorari*, prohibition and *mandamus*, the CA did not restrain the RTC from thus proceeding. Absent any TRO or WPI stopping the RTC from proceeding, the mere filing or pendency of the special civil actions for *certiorari*, *mandamus* and prohibition did not interrupt the due course of the proceedings in the main case. This is quite clear from the revised Section 7, Rule 65 of the *Rules of Court*, which mandated that the petition shall not interrupt the course of the principal case. As the foregoing rule also indicates, for the RTC not to proceed with the pre-trial on its scheduled date of November 24, 2010 despite the absence of any TRO or WPI enjoining it from doing so could have subjected its Presiding Judge to an administrative charge.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; EXPLAINED; NOT PRESENT; THE PETITIONER'S RIGHT TO PARTICIPATE IN THE PRE-TRIAL AND TO PRESENT EVIDENCE IS DEEMED WAIVED WHEN THE COUNSEL THEREOF DELIBERATELY REFUSED TO PARTICIPATE IN THE PROCEEDINGS.— We further concur with the holding of the CA that the RTC did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction in deeming the petitioner's right to participate in the pre-trial and its right to present evidence as waived through the third assailed pre-trial order dated November 24, 2010. The waiver appears to have been caused by the deliberate refusal of the petitioner's counsel to participate in the proceedings. x x x. From an objective view

of the proceedings, the RTC's deeming of the petitioner's right to participate in the pre-trial and its right to present evidence as waived was reasonable under the circumstances. Thus, it did not act arbitrarily, whimsically, or capriciously. The dismissal of the petition for *certiorari*, prohibition and *mandamus* was correct and justified, for grave abuse of discretion on the part of the RTC was not persuasively demonstrated by the petitioner. *Grave abuse of discretion* 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.

4. ID.; COURTS; REGIONAL TRIAL COURTS; THE PRIMARY COMPETENCE TO DETERMINE THE ENFORCEABILITY OF THE ARBITRATION CLAUSE OF THE CONTRACT FOR THE SALE OF ELECTRICITY (CSE) PERTAINED TO THE REGIONAL TRIAL COURT FOR THE SUPREME COURT TO YIELD TO THE REQUEST FOR INTERVENTION WOULD AMOUNT TO USURPING THE JURISDICTION OF THE REGIONAL TRIAL COURT.— The petitioner requests the Court's intervention to direct MERALCO and NAPOCOR to resolve their dispute through arbitration pursuant to the arbitration clause of the CSE. The Court declines the request, considering that the primary competence to determine the enforceability of the arbitration clause of the CSE pertained to the RTC in Special Civil Action No. 3392. Yielding to the request would have the Court usurping the jurisdiction of the RTC. Moreover, with the RTC having meanwhile rendered its decision declaring the Settlement Agreement valid, the recourse of the petitioner as to its request is probably an appeal in due course.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Angara Abello Concepcion Regala & Cruz for MERALCO.
Office of the General Counsel (NPC) for National Power Corp.

D E C I S I O N

BERSAMIN, *J.*:

The intervening rendition by the trial court of a decision on the merits of the case renders moot and academic the resolution of any issue raised on *certiorari* against interlocutory orders setting the pre-trial and declaring the petitioner to have waived its right to present its evidence. The resolution of the issue, having been pre-empted by the decision in the main action, ceased to have any practical value.

The Case

Under appeal via petition for review on *certiorari* is the decision promulgated on October 14, 2011 in C.A.-G.R. SP No. 116863 entitled *Republic of the Philippines, represented by the Office of the Solicitor General v. Hon. Franco T. Falcon, in his capacity as the Presiding Judge of Branch 71, Regional Trial Court, National Capital Region, Pasig City, Manila Electric Company and National Power Corporation*,[1] whereby the Court of Appeals (CA) dismissed the original and the supplemental petitions for *certiorari*, prohibition and *mandamus* of herein petitioner Republic of the Philippines, and in effect upheld the assailed interlocutory orders of November 3, 2010[2] and November 4, 2010,[3] and the pre-trial order of November 24, 2010,[4] all issued by the Regional Trial Court (RTC), Branch 71, in Pasig City in Special Civil Action No. 3392, an action for declaratory relief entitled *Manila Electric Company v. National Power Corporation, et al*. The CA further ordered the RTC, Branch 71, in Pasig City to proceed with the trial in Special Civil Action No. 3392, and to resolve the case with dispatch.

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[1] *Rollo*, at pp. 139-170; penned by Associate Justice Jane Aurora C. Lantion, with Presiding Justice Andres B. Reyes, Jr., Associate Justice Michael P. Elbinias and Associate Justice Agnes Reyes-Carpio, concurring, and Associate Justice Japar B. Dimaampao dissenting.

[2] *Id*. at 441-445.

[3] *Id*. at 446.

[4] *Id*. at 499-502.

Additionally, the petitioner prays that respondents Manila Electric Company (MERALCO) and National Power Corporation (NAPOCOR) be directed to resolve their dispute through arbitration pursuant to the arbitration clause of their contract for the sale of electricity (CSE).[5]

Antecedents

The decision of the CA sums up the following uncontested material antecedents.

MERALCO and NAPOCOR had entered into the CSE on November 21, 1994. The CSE would be effective for 10 years starting from January 1, 1995. Under the CSE, NAPOCOR was obliged to supply and MERALCO was obliged to purchase a minimum volume of electric power and energy from 1995 until 2004 at the rates approved by the Energy Regulatory Board (ERB), now the Energy Regulatory Commission (ERC). A provision of the CSE required MERALCO to pay minimum monthly charges even if the actual volume of the power and energy drawn from NAPOCOR fell below the stated minimum quantities.

In the years 2002, 2003 and 2004, due to circumstances beyond the reasonable control of the parties, MERALCO drew from NAPOCOR electric power and energy less than the minimum quantities stipulated in the CSE for those years. MERALCO did not pay the minimum monthly charges but only the charges for the electric power and energy actually taken. Thus, NAPOCOR served on MERALCO a claim for the contracted but undrawn electric power and energy starting the billing month of January 2002.

MERALCO objected to the claim of NAPOCOR, and served its notice of termination of the CSE. MERALCO submitted its own claim to NAPOCOR for, among others: (*a*) losses suffered due to the delay in the construction of NAPOCOR's transmission lines, which prevented it from fully dispatching the electricity contracted with independent power producers (IPPs) at their

[5] *Id*. at 131.

respective minimum energy quantities; and (*b*) unrealized revenues owing to NAPOCOR's continuing to supply electricity to directly-connected customers within MERALCO's franchise area in violation of the MERALCO franchise and the CSE.

Recognizing that any delays in the resolution of their dispute was inimical to public interest, MERALCO and NAPOCOR agreed to submit their dispute to mediation.[6] They appointed the late Ambassador Sedfrey A. Ordoñez and Antonio V. del Rosario as their mediators, and the mediation required about 20 meetings, during which NAPOCOR and the Government were represented by high-level officials (including then Energy Secretary Vincent S. Perez, Jr. and PSALM President Edgardo M. del Fonso). The mediation resulted in the execution on July 15, 2003 of a settlement (entitled *An Agreement Resolving The Issues In Mediation Between The National Power Corporation And The Manila Electric Company In Regard To The 1994 Contract For The Sale Of Electricity*),[7] hereafter referred to as Settlement Agreement for brevity.

The Settlement Agreement covered the charges being imposed by NAPOCOR and the National Transmission Corporation (TRANSCO) under Section 2.1 (Contract Demand and Contract Energy of MERALCO) in relation to Section 5.2 (Transmission Service) and Section 7 (Direct Connection within MERALCO's franchise area), all of the CSE. MERALCO therein agreed to pay to NAPOCOR ₱27,515,000,000.00 (*i.e.*, the equivalent of 18,222 gigawatt hours valued at ₱1.51 per kilowatt hour), which amount represented the value of the difference between the aggregate contracted energy for the years 2002, 2203 and 2004, on the one hand, and the total amount of energy MERALCO actually purchased from NAPOCOR from January 2002 until April 30, 2003 and the amount of energy MERALCO was scheduled to purchase thereafter and until December 31, 2004, on the other. NAPOCOR reciprocated by agreeing to give credit to MERALCO for the delayed completion of the transmission

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[6] *Id*. at 296.

[7] *Id.* at 216-229.

facilities as well as for the energy corresponding to NAPOCOR's sales to directly-connected customers located within MERALCO's franchise area. The credit, valued at ₱7,465,000,000.00, reduced the net amount payable by MERALCO to NAPOCOR under the Settlement Agreement to ₱20,050,000,000.00.

Mediators Amb. Ordoñez and del Rosario rendered their joint attestation to the Settlement Agreement, as follows:

> We, Ambassador Sedfrey A. Ordoñez and Antonio V. del Rosario, do hereby attest and certify that we have been duly appointed by the Parties and acted as Mediators in the foregoing Settlement and that the agreements contained therein are the results of the painstaking efforts exerted by the Parties to resolve the issues and differences between them through reasonable, fair and just solution that places above all considerations the highest concern for the welfare of the consumers. x x x[8]

It is noted that from the time the Settlement Agreement was executed on June 15, 2003 until December 31, 2004, MERALCO took further electricity from NAPOCOR, and made payments toward the total Minimum charge under the CSE that exceeded the parties' estimate. As a result, the net amount due to NAPOCOR under the Settlement Agreement was further reduced to about ₱14,000,000,000.00.

The Settlement Agreement contained a pass-through provision that allowed MERALCO to pay NAPOCOR the net settlement amount from collections recovered from MERALCO's consumers once the ERC approved the pass-through. The net amount due under the Settlement Agreement was to be paid by MERALCO to NAPOCOR over a period of five to six years, starting on the first billing month immediately following the ERC's approval of the pass-through of that amount to MERALCO's consumers, and ending 60 months after the last billing month. Spreading payment to NAPOCOR over a moving five- to six-year period was intended to minimize the impact of the adjustment on the consumers, which was estimated to be about ₱0.12 per kilowatt hour.

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[8] *Id.* at 221.

The Settlement Agreement was duly approved by the respective Boards of MERALCO and NAPOCOR.

Considering that the Settlement Agreement stipulated in its Section 3.1 that it would take effect "upon approval by the ERC of the recovery of the settlement amounts in this Agreement from consumers, for which the parties shall file a joint petition with the [ERC]," NAPOCOR and MERALCO filed on April 15, 2004 their joint application in the ERC,[9] seeking the approval of the pass-through provision of the Settlement Agreement, and a provisional authority to implement the pass-through provision subject to a final decision after hearing on the merits.

The joint application was set for initial hearing, with notice to the Office of the Solicitor General (OSG) with a request for the OSG to send a representative to participate in the proceedings. Hearings were conducted on the application from July 22, 2004 until October 7, 2005, at which NAPOCOR was represented by its OSG-designated counsel.

On July 10, 2006, MERALCO submitted its memorandum, and the case was deemed submitted for resolution.

However, on May 13, 2008, or almost two years after the case was submitted for resolution, the OSG, representing herein petitioner, filed in the ERC a motion for leave to intervene with motion to admit its attached opposition.[10] Considering the opposition by the OSG to the validity of the Settlement Agreement, the ERC suspended the proceedings and deferred the approval of the joint application. This prompted MERALCO to initiate on November 23, 2009 in the RTC in Pasig an action for declaratory relief (Special Civil Action No. 3392).[11]

On August 20, 2010, the petitioner filed its comment on the petition for declaratory relief,[12] praying for the stay of the

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[9] *Id.* at 230-240.

[10] *Id.* at 250-291.

[11] *Id.* at 292-308.

[12] *Id.* at 320-349.

proceedings and for NAPOCOR and MERALCO to be directed to resort to arbitration.

On September 16, 2010, the representative from the OSG appeared in the RTC and moved to suspend the proceedings, but the RTC denied the motion. Subsequently, on September 30, 2010, the OSG filed a motion to dismiss or to stay the proceedings, and to refer the parties to arbitration.

On October 28, 2010, the OSG presented an urgent supplemental motion to cancel the November 4, 2010 hearing. However, on November 3, 2010, the RTC denied the motion to dismiss or to stay the proceedings and to refer the parties to arbitration through the first assailed order,[13] stating in its pertinent portions as follows:

> The motions filed by the OSG raise a common issue: whether or not the parties, MERALCO and NPC, should be referred to arbitration?
>
> After a judicious evaluation of the arguments by the parties, this Court rules that MERALCO and NPC are not required to undergo arbitration.
>
> An examination of the Settlement Agreement, which is the subject matter of this petition for declaratory relief shows that it does not require the parties therein to resolve their dispute arising from said agreement through arbitration.
>
> The arbitration clause referred to by the OSG is found in the Contract for the Sale of Electricity (CSE). Said contract is not the one being litigated in this proceedings. The instant petition for declaratory relief does not concern the CSE. Besides, there is no unsettled dispute between MERALCO and NPC arising from the CSE that would require resort to arbitration.
>
> Further, the parties to the Settlement Agreement have not requested that any dispute between them should be resolved through arbitration. The OSG, who is not a party to the Settlement Agreement or to the CSE, has no standing to demand that MERALCO and NPC should proceed to arbitration consistent with the Supreme Court's ruling in *Ormoc Sugarcane Planter's Association vs. Court of Appeals*, G.R. No. 156660, August 24, 2009, were (sic) it ruled that-

[13] *Id.* at 441-445.

> By their own allegation, petitioners are associations duly existing and organized under Philippine law, *i.e.* they have juridical personalities separate and distinct from that of their member Planters. It is likewise undisputed that the eighty (80) milling contracts that were presented were signed only by the member Planter concerned and one of the Centrals as parties. In other words, none of the petitioners were parties or signatories to the milling contracts. This circumstance is fatal to petitioners' cause since they anchor their right to demand arbitration from the respondent sugar centrals upon the arbitration clause found in the milling contracts. There is no legal basis for petitioners' purported right to demand arbitration when they are not parties to the milling contracts, especially when the language of the arbitration clause expressly grants the right to demand arbitration only to the parties to the contract.

As for OSG's contention that the instant petition should be dismissed because it would not terminate the controversy between the parties due to the existing ERC Proceedings, this Court is mindful of the fact that the ERC itself has ruled in its order of September 14, 2009 that the issues raised by the OSG in the earlier proceedings before it are outside its jurisdiction. This means that these issues may be properly resolved by this Court and is in fact duty-bound to consider and rule the issues presented before it in this case.

This Court therefore holds that there is no impediment for it to continue this proceedings and to determine the validity of the Settlement Agreement.

WHEREFORE, the office (sic) Office of the Solicitor General's Motion to Dismiss or Stay the Proceedings and Refer the Parties to Arbitration and the Motion for Reconsideration (of the Honorable Court's Order dated September 16, 2010) are DENIED.

SO ORDERED.[14]

On November 4, 2010, the pre-trial was held, but the Presiding Judge of Branch 71 of the RTC ultimately reset it through the

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[14] *Id.* at 443-445.

second assailed order due to the non-appearance of the representative of the OSG,[15] *viz*:

> When this case was called, Atty. Jonas Emmanuel S. Santos, for the petitioner, Atty. Julieta S. Baccutan-Estamo, for defendant PNC, appeared.
>
> Over the vehement objection of Atty. Santos and Atty. Baccutan-Estamo on the Urgent Supplemental Motion to Cancel November 4, 2010 Hearing filed by the Office of the Solicitor General, considering that they were both ready, the pre-trial conference set for today is cancelled and reset to November 24, 2010 at 8:30 A.M., which is an intransferrable date. The manifestation of Atty. Baccutan-Estamo that if in the next hearing the respondent OSG still fails to appear they be declared as in default, is noted.
>
> SO ORDERED.

Upon learning that the next scheduled hearing would be on November 24, 2010, the OSG filed on November 22, 2010 a motion to cancel that pre-trial, and a motion for the inhibition of the RTC Judge. It set both motions for hearing on November 24, 2010.

Also on November 22, 2010, the petitioner brought in the CA a petition for *certiorari*, prohibition and *mandamus* (C.A.-G.R. SP No. 116863), with an application for a temporary restraining order (TRO) and writ of preliminary injunction (WPI), alleging that respondent RTC Judge had committed grave abuse of discretion: (*a*) in refusing to inhibit himself; (*b*) in refusing to order respondents MERALCO and NAPOCOR to resolve their dispute by arbitration; (*c*) in proceeding with the pre-trial of the case; and (*d*) in declaring the petitioner in default and at the same time deeming the petitioner to have waived its right to participate and present evidence.[16]

During the hearing of November 24, 2010, the representatives of the OSG (namely: State Solicitors Catalina A. Catral-Talatala and Donalita R. Lazo) appeared in the RTC to argue for the

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[15] *Id*. at 446.

[16] *Id*. at 454-484.

cancellation of the pre-trial of that date and to have the RTC Judge by reason of his perceived bias in favor of MERALCO. However, the RTC denied the motion to cancel the pre-trial and instead declared the petitioner to have waived the right to participate in the pre-trial and to present evidence.[17]

The CA granted the TRO on December 1, 2010,[18] and the WPI on February 3, 2011,[19] enjoining the RTC Judge from conducting further proceedings in Special Civil Action No. 3392 and from issuing orders and performing other acts that would render the case moot and academic effective during the pendency of C.A.-G.R. SP No. 116863.

On October 14, 2011, the CA promulgated its decision under review,[20] disposing thuswise:

> **IN VIEW OF ALL THE FOREGOING**, the instant Petition including its Supplemental Petition are hereby **DENIED**. The Regional Trial Court, Branch 71 of Pasig City is hereby **ORDERED** to proceed to trial in S.C.A. Case No. 3392, and to immediately resolve the same with dispatch.
>
> **SO ORDERED.**

The CA denied the petitioner's motion for reconsideration through its resolution promulgated on April 25, 2012.[21]

Hence, the petitioner has appealed.

Issues

The petitioner states as the ground for the allowance of its petition for review on *certiorari* that:

THE COURT OF APPEALS COMMITTED AN ERROR IN IGNORING FUNDAMENTAL ISSUES AT THE HEART OF THE

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[17] *Id.* at 499-502.

[18] *Id.* at 151.

[19] *Id.* at 152.

[20] *Supra* note 1.

[21] *Id.* at 184-186.

CONTROVERSY BETWEEN PETITIONER AND RESPONDENTS, AND THEREBY IMPROVIDENTLY ALLOWING THE TRIAL COURT TO PROCEED WITH S.C.A. CASE NO. 3392.[22]

The petitioner submits arguments in support of the foregoing, to wit:

I

THE DISPUTE BETWEEN MERALCO AND NPC SHOULD BE RESOLVED THROUGH ARBITRATION INSTEAD OF MEDIATION IN ACCORDANCE WITH THEIR ARBITRATION AGREEMENT UNDER THE CSE.

II

RESPONDENT JUDGE HAS NO JURISDICTION OVER THE SUBJECT MATTER RAISED IN S.C. A. CASE NO. 3392.

III

THE COURT OF APPEALS ERRED IN ALLOWING THE TRIAL COURT TO PROCEED WITH THE PRE-TRIAL AND SUBSEQUENT TRIAL IN S.C.A. CASE NO. 3392 IN DISREGARD OF PETITIONER'S RIGHTS. IN PARTICULAR, THE COURT OF APPEALS ERRED IN [i] FAILING TO ACKNOWLEDGE THE CIRCUMSTANCES OF PARTIALITY THAT WARRANTED RESPONDENT JUDGE'S INHIBITION FROM THE CASE; [ii] APPROVING THE TRIAL COURT'S PRECIPITATE ACTION TO PROCEED WITH THE PRE-TRIAL DESPITE INFORMATION THAT A PETITION FOR *CERTIORARI* HAD BEEN FILED BY PETITIONER, AND THEREUPON DECLARING THE PETITIONER TO HAVE WAIVED THE RIGHT TO PARTICIPATE THEREIN AND TO PRESENT EVIDENCE.

IV

THE SETTLEMENT IS GROSSLY DISADVANTAGEOUS AND PREJUDICIAL TO THE GOVERNMENT.

V.

THE PASS-ON PROVISION IMPOSED UNDER THE SETTLEMENT IS CONTRARY TO LAW, MORALS, PUBLIC INTEREST, AND PUBLIC POLICY.

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[22] *Id.* at 87.

VI

THE SETTLEMENT AGREEMENT WAS ENTERED INTO WITHOUT THE PARTICIPATION AND LEGAL GUIDANCE OF THE OFFICE OF THE SOLICITOR GENERAL.[23]

Ruling

We deny the petition for review, and affirm the decision of the CA.

I
RTC's intervening rendition of the decision on the merits has rendered this appeal moot

In its assailed decision of October 14, 2011, the CA directed the RTC to proceed to the trial on the merits in Special Civil Action No. 3392, and to resolve the case with dispatch. It is worth mentioning at this juncture, therefore, that, as the petitioner indicated in its petition,[24] the RTC complied and ultimately rendered its decision on the merits in Special Civil Action No. 3392 on May 29, 2012 granting MERALCO's petition for declaratory relief and declaring the Settlement Agreement between NAPOCOR and MERALCO as valid and binding, save for the pass-through provision that was reserved for the consideration and approval of the ERC. The petitioner has probably appealed the decision by now, for its petition for review expressly manifested the intention to appeal to the CA.[25]

With the intervening rendition of the decision on the merits, the challenge against the interlocutory orders of the RTC designed to prevent the RTC from proceeding with the pre-trial and the trial on the merits was rendered moot and academic. In other words, any determination of the issue on the interlocutory orders was left without any practical value.[26] A case that is moot and

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[23] *Id.* at 87-89.

[24] *Id.* at 956-969.

[25] *Id.* at 86.

[26] *Banco Filipino Savings and Mortgage Bank v. Tuazon, Jr.*, G.R. No. 132795, March 10, 2004, 425 SCRA 129, 134; *Desaville, Jr. v. Court*

academic because of supervening events ceases to present any justiciable controversy. The courts of law will not determine moot and academic questions, for they should not engage in academic declarations and determine moot questions.[27]

II
CA correctly ruled that RTC Judge did not commit grave abuse of discretion in issuing the assailed orders

Nonetheless, the Court considers it necessary to still deal with the contentions of the petitioner in the interest of upholding the observations of the CA on the propriety of the interlocutory orders of the RTC. Doing so will be instructive for the Bench and the practicing Bar who may find themselves in similar situations.

The petitioner assails the order of the RTC dated November 3, 2010 for denying its motion to dismiss or to stay proceedings and to refer the parties to arbitration, and the pre-trial order dated November 24, 2010 for declaring that the petitioner was being deemed to have waived the right to participate in the pre-trial and to present evidence in its behalf. It argues that the CA thereby erred, firstly, in ruling that the assailed orders of the RTC were not tainted with grave abuse of discretion, and, secondly, in ordering the RTC to proceed to the trial of Special Civil Action No. 3392, and to resolve the case with dispatch.

The Court cannot sustain the arguments of the petitioner.

The RTC's proceeding with the pre-trial set on November 24, 2010 was entirely in accord with the *Rules of Court*. While it is true that the OSG had filed on November 22, 2010 the petition for *certiorari*, prohibition and *mandamus*, the CA did not restrain the RTC from thus proceeding. Absent any TRO

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of Appeals, G.R. No. 128310, August 13, 2004, 436 SCRA 387, 391; *Malaluan v. Commission on Elections*, G.R. No. 120193, March 6, 1996, 254 SCRA 397, 403-404.

[27] *Barayuga v. Adventist University of the Philippines*, G.R. No. 168008, August 17, 2011, 655 SCRA 640, 654-655.

or WPI stopping the RTC from proceeding, the mere filing or pendency of the special civil actions for *certiorari*, *mandamus* and prohibition did not interrupt the due course of the proceedings in the main case. This is quite clear from the revised Section 7, Rule 65 of the *Rules of Court*,[28] which mandated that the petition shall not interrupt the course of the principal case, *viz*:

> Section 7. *Expediting proceedings; injunctive relief.* – The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. **The petition shall not interrupt the course of the principal case, unless a temporary restraining order or a writ of preliminary injunction has been issued, enjoining the public respondent from further proceeding with the case**.
>
> **The public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for *certiorari* with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration. Failure of the public respondent to proceed with the principal case may be a ground for an administrative charge.** (Emphasis supplied)

As the foregoing rule also indicates, for the RTC not to proceed with the pre-trial on its scheduled date of November 24, 2010 despite the absence of any TRO or WPI enjoining it from doing so could have subjected its Presiding Judge to an administrative charge.

We further concur with the holding of the CA that the RTC did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction in deeming the petitioner's right to participate in the pre-trial and its right to present evidence as waived through the third assailed pre-trial order dated November 24, 2010. The waiver appears to have been caused by the deliberate refusal of the petitioner's counsel to participate in the proceedings.

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[28] The revision was effective on December 4, 2007 (A.M. No. 07-7-12-SC).

The pre-trial, initially set on September 16, 2010,[29] was reset by the RTC on October 7, 2010 upon the motion of the OSG itself notwithstanding that both MERALCO and NAPOCOR had already submitted their pre-trial briefs and had manifested their readiness to proceed to the pre-trial. Yet, on October 7, 2010, the representative of the OSG again requested a resetting of the pre-trial. MERALCO expressed its strong opposition to the request, but the RTC granted the request and moved the pre-trial to November 4, 2010.[30] Prior to November 4, 2010, the OSG filed an omnibus motion, again requesting the RTC to cancel the pre-trial. On the scheduled pre-trial of November 4, 2010, the representative of the OSG did not appear for the petitioner, subsequently admitting that the non-appearance had been intentional. Nonetheless, the RTC reset the pre-trial on November 24, 2010 over the "vehement objection" of MERALCO's counsel, but the RTC expressly conditioned the new date as "intransferable."[31]

On November 24, 2010, however, the representative of the OSG appeared in court but only to move for the cancellation of the hearing. The recorded proceedings of that date were recounted in the assailed decision of the CA, which also rendered its cogent observations on the consequences of the actuations of the representative of the OSG, as follows:

> x x x While petitioner was initially present during the scheduled pre-trial conference on 24 November 2011, State Solicitor Lazo (one of petitioner's counsels) asked to be excused from participating thereat. Excerpts of the stenographic notes taken during the hearing *a quo* on 24 November 2010 reveals:
>
> "xxx
>
> COURT:
>
> Now, on the matter regarding the pre-trial conference which has been set today, the Court believes that in the absence of

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[29] *Rollo*, p. 921.

[30] *Id.* at 925.

[31] *Id.* at 499-502.

a TRO, we will proceed with the pre-trial conference as scheduled.

ATTY. LAZO:

Your Honor, may we ask for a written order resolving our motion to cancel hearing today and our motion for inhibition.

COURT:

The court has already made oral order. In the meantime, you be ready for the conduct of the pre-trial.

ATTY. LAZO:

Your Honor, may we be excused from participating with the pre-trial.

COURT:

It was your first stand during the first day when the pre-trial was set. In fact, one of the lawyers of OSG likewise stated that he will not participate. In the interest of substantial justice let us be more fair in the conduct of this proceedings, we (sic) all officers of the court, we are guided by the rules, we have to comply, we will proceed. The order will be made after the hearing, unless that we will suspend the hearing now then the stenographer will prepare the order so that you'll have a copy, what do you want, are we going to suspend the proceedings so that the written order will be given to you. Is that what you want? We will proceed.

This is one request which has never been done by the Court. An oral order of the Court is only released after the hearing, because it will be prepared by the stenographer. Are you agreeable to that statement of the Court or you want to suspend all proceedings of today so that you will be given a chance that your request will be granted. Are you not changing your motion?

ATTY. LAZO:

Your Honor, I submit to the discretion of this Court.

COURT:

When you submit then you wait, we will proceed. Second call.

ATTY. LAZO:

Can we have a copy of the same by registered mail because we have some urgent matters to attend to your Honor.

COURT:

Okay.

ATTY. LAZO:

May we be excused, your Honor.

COURT:

Okay.

What are we going to do?

ATTY. SANTOS:

Your Honor, we are ready to proceed with the pre-trial. We have our Pre-Trial Brief filed and so with the NPC, your Honor.

COURT:

Now, in the conduct of the pre-trial, you have to reiterate what you already mentioned in your Pre-Trial Briefs for purposes of this Court to come out with the pre-trial order based on the stipulations made by the parties.

xxx" (Emphasis supplied)

The above-quoted TSN belies petitioner's claim that despite its State Solicitor's appearance and objection to the holding of the said hearing of 24 November 2010, public respondent proceeded to declare petitioner in default. A *quo*, public respondent did not categorically declare petitioner in default, but instead, decreed petitioner to have waived its right to participate in the pre-trial and present evidence in its behalf which is in accordance with Section 5, Rule 18 of the Rules of Court for the apparent reason that State Solicitor Lazo himself **asked to be excused** from participating in the pre-trial conference. The case of *Development Bank of the Philippines vs. Court of Appeals, et al.* is enlightening on this point where the Supreme Court had the occasion to state therein that:

> "Consistently with the mandatory character of the pre-trial, the Rules oblige not only the lawyers but the parties as well to appear for this purpose before the Court, and when a party "fails to appear at a pre-trial conference (be) may be non-suited or considered as in default. **The obligation in** (sic) **appear denotes not simply the personal appearance, or the mere physical presentation by a party of one's self, but connotes as importantly, preparedness to go into the different subject assigned by law to a pre-trial**. (Emphasis supplied)

Petitioner's State Solicitors' initial attendance during the pre-trial conference could not be equated to the personal appearance mandated by Section 4, Rule 18 of the Rules of Court. The duty to appear during the pre-trial conference is not by mere initial attendance, but taking an active role during the said proceedings. Petitioner (as defendant a *quo*) has no valid reason to complain for its predicament now as it chose to withhold its participation during the pre-trial conference.[32]

From an objective view of the proceedings, the RTC's deeming of the petitioner's right to participate in the pre-trial and its right to present evidence as waived was reasonable under the circumstances. Thus, it did not act arbitrarily, whimsically, or capriciously. The dismissal of the petition for *certiorari*, prohibition and *mandamus* was correct and justified, for grave abuse of discretion on the part of the RTC was not persuasively demonstrated by the petitioner. *Grave abuse of discretion* 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.[33]

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[32] *Id*. at 36-38 (bold underscoring is part of the original text).

[33] *De los Santos v. Metropolitan Bank and Trust Company*, G.R. No. 153852, October 24, 2012, 684 SCRA 410, 422-423.

III
Validity of the Settlement Agreement is not an issue in this appeal

In hereby assailing the decision of the CA to uphold the challenged orders of the RTC, the OSG raises various arguments against the validity of the Settlement Agreement.

The Court believes and holds that it cannot address such arguments simply because the issue in this appeal concerns only the upholding by the CA of the propriety of the assailed interlocutory orders of the RTC. The validity of the Settlement Agreement is not an issue.

Moreover, the validity of the Settlement Agreement is properly within the competence of the RTC, the proper court for that purpose (except the matter of the pass-through provision, which was within the jurisdiction of the ERC).

IV
Mediation v. Arbitration

The petitioner requests the Court's intervention to direct MERALCO and NAPOCOR to resolve their dispute through arbitration pursuant to the arbitration clause of the CSE.

The Court declines the request, considering that the primary competence to determine the enforceability of the arbitration clause of the CSE pertained to the RTC in Special Civil Action No. 3392. Yielding to the request would have the Court usurping the jurisdiction of the RTC. Moreover, with the RTC having meanwhile rendered its decision declaring the Settlement Agreement valid, the recourse of the petitioner as to its request is probably an appeal in due course.

WHEREFORE, we **DENY** the petition for review on *certiorari*, and **AFFIRM** the decision promulgated by the Court of Appeals on October 14, 2011 in C.A.-G.R. SP No. 116863.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 202060. December 11, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FERDINAND BANZUELA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; GUIDELINES.— The guidelines to follow, when this Court is confronted with the issue of credibility of witnesses on appeal, are established in jurisprudence. In *People v. Sanchez*, we enumerated them as follows: ***First***, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses. ***Second***, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded. ***And third***, the rule is even more stringently applied if the CA concurred with the RTC.

2. ID.; ID.; ID.; THE DETERMINATION OF THE CREDIBILITY OF THE WITNESSES IS CORRECTLY ASSIGNED TO THE TRIAL COURT, WHICH IS IN THE BEST POSITION TO OBSERVE THE DEMEANOR AND BODILY MOVEMENTS OF ALL THE WITNESSES; RATIONALE.— It is well-settled in this jurisdiction that the determination of the credibility of the witnesses is correctly assigned to the trial court, which is in the best position to observe the demeanor and bodily movements of all the witnesses. Elucidating on the rationale for this rule, this Court, in *People v. Sapigao, Jr.*, said: It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude

under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court."

3. ID.; ID.; ID.; THE INCONSISTENCIES IN THE TESTIMONY OF THE RAPE VICTIM WHICH DO NOT HAVE BEARING IN THE DETERMINATION OF THE GUILT OR INNOCENCE OF THE ACCUSED, AND WHICH ARE TOO TRIVIAL IN CHARACTER, WILL NOT DAMAGE HER CREDIBILITY ESPECIALLY WHEN THE MATERIAL DETAILS OF THE RAPE WERE CLEARLY ESTABLISHED.— In the case at bar, both the RTC and the Court of Appeals found the testimonies of the witnesses to be credible. Furthermore, this Court's own independent examination of the records leads us to the same conclusion. As the Court of Appeals said, both AAA's and BBB's testimonies were straightforward, detailed, and consistent. Their credibility is further strengthened by their clear lack of ill motive to falsify such a charge against their cousin, who shattered their youth and innocence. The inconsistencies in AAA's testimony, as catalogued by Banzuela in his brief, have no bearing in the determination of his guilt or innocence, and are too trivial in character to damage AAA's credibility.

The material details of the rape were clearly established, and BBB corroborated AAA's testimony on every relevant point. As this Court stated in *People v. Saludo*: Rape is a painful experience which is oftentimes not remembered in detail. For such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving; rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget. Thus, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.

4. ID.; ID.; ID.; THE WORKINGS OF A HUMAN MIND PLACED UNDER EMOTIONAL STRESS CANNOT BE PREDICTED; AND PEOPLE CANNOT BE EXPECTED TO ACT AS USUAL IN AN UNFAMILIAR SITUATION.— BBB was likewise candid, straightforward, and detailed in her narration of not only how AAA was raped, but also of how she almost suffered the same fate. Her alleged unusual actions during AAA's ordeal, and later hers, are not enough to discredit her. It has been established that a victim of a heinous crime such as rape cannot be expected to act with reason or in conformity with society's expectations. This acquires greater significance where the victim is a child of tender age. The workings of a human mind placed under emotional stress cannot be predicted; and people cannot be expected to act as usual in an unfamiliar situation. Furthermore, it is not accurate to say that there is a standard reaction or norm of behavior among rape victims, as each of them had to deal with different circumstances.

5. CRIMINAL LAW; STATUTORY RAPE; IN ORDER TO SUCCESSFULLY CONVICT AN ACCUSED OF STATUTORY RAPE, THE PROSECUTION MUST PROVE THE AGE OF THE COMPLAINANT, THE IDENTITY OF THE ACCUSED, AND THE CARNAL KNOWLEDGE BETWEEN THE ACCUSED AND COMPLAINANT; ESTABLISHED.— Sexual intercourse with a woman below 12 years of age, whether she consented to it or not, is punishable as rape under our laws. As such, proof of force, threat, or intimidation is unnecessary in cases of statutory rape, they, not being elements of the crime. When the complainant is

below 12 years old, the absence of free consent is conclusively presumed as the law supposes that a woman below this age does not possess discernment and is incapable of giving intelligent consent to the sexual act. In order to successfully convict an accused of statutory rape, the prosecution must prove the following: 1. The age of the complainant; 2. The identity of the accused; and 3. The carnal knowledge between the accused and the complainant. The first element was established by the prosecution upon the presentation and submission to the court of a Certification from the Office of the Municipal Civil Registrar of Mandaluyong City dated August 24, 2004 stating that AAA was born on September 10, 1996. Hence, she was only 6 years old when the rape was committed in February 2003. The second element was clearly satisfied when AAA positively and consistently identified Banzuela as her offender. As regards the third element, it is instructive to define "carnal knowledge" in the context it is used in the Revised Penal Code: '[C]arnal knowledge,' unlike its ordinary connotation of sexual intercourse, does not necessarily require that the vagina be penetrated or that the hymen be ruptured. The crime of rape is deemed consummated even when the man's penis merely enters the labia or lips of the female organ or, as once so said in a case, by the '*mere touching* of the external genitalia by a penis capable of consummating the sexual act. This element was proven when AAA detailed in open court how Banzuela forcefully inserted his sex organ into her genitalia in February 2003 and how she felt pain during her ordeal.

6. ID.; ID.; ID.; PROOF OF HYMENAL LACERATION IS NOT AN ELEMENT OF THE RAPE; AS LONG AS THE ATTEMPT TO INSERT THE PENIS RESULTS IN CONTACT WITH THE LIPS OF THE VAGINA, EVEN WITHOUT RUPTURE OR LACERATION OF THE HYMEN, THE RAPE IS CONSUMMATED.— Banzuela makes much of the fact that the medico-legal examination yielded negative results, *i.e.*, that AAA remained a virgin. This Court, in *People v. Boromeo*, suitably refuted that argument, *viz*: Proof of hymenal laceration is not an element of rape. An intact hymen does not negate a finding that the victim was raped. To sustain a conviction for rape, full penetration of the female genital organ is not necessary. It is enough that there is proof of entry of the male organ into the *labia of the pudendum* of the

female organ. Penetration of the penis by entry into the lips of the vagina, even without laceration of the hymen, is enough to constitute rape, and even the briefest of contact is deemed rape. As long as the attempt to insert the penis results in contact with the lips of the vagina, even without rupture or laceration of the hymen, the rape is consummated. x x x. Significantly, as this Court has held before, the pain that AAA suffered is, in itself, an indicator of the commission of rape. Moreover, AAA's ordeal was witnessed by BBB, who in fact was the one who told AAA's mother about the incident. Thus, contrary to Banzuela's assertions, this Court is convinced that the prosecution was able to establish that he had carnal knowledge of AAA, making him guilty beyond reasonable doubt of the crime of rape.

7. ID.; ATTEMPTED RAPE; TO CONVICT AN ACCUSED OF ATTEMPTED RAPE, HE MUST HAVE ALREADY COMMENCED THE ACT OF INSERTING HIS SEXUAL ORGAN IN THE VAGINA OF THE VICTIM, BUT DUE TO SOME CAUSE OR ACCIDENT, EXCLUDING HIS OWN SPONTANEOUS DESISTANCE, HE WASN'T ABLE TO EVEN SLIGHTLY PENETRATE THE VICTIM.— In an attempt to commit a felony, the offender commences the commission of such felony directly by overt acts, but does not perform all the acts of execution, which should produce the felony by reason of some cause or accident other than his own spontaneous desistance. In other words, a crime is in its attempted stage when the offender has already performed the acts preliminary to the consummation of the crime. However, because of some reason besides his own spontaneous desistance, he is not able to perform all the acts necessary to consummate the crime. The elements, therefore, of an attempted felony are as follows: 1.The offender commences the commission of the felony directly by overt acts; 2. He does not perform all the acts of execution which should produce the felony; 3. The offender's act be not stopped by his own spontaneous desistance; and 4. The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance. In the crime of rape, penetration, however slight, is an essential act of execution that produces such felony. Thus, for Banzuela to be convicted of the crime of attempted rape, he must have already commenced the act of inserting his sexual

organ in the vagina of BBB, but due to some cause or accident, excluding his own spontaneous desistance, he wasn't able to even slightly penetrate BBB.

8. ID.; ID.; ABSENT THE INTENT TO LIE WITH THE WOMAN, THERE CAN BE NO RAPE BUT ONLY ACTS OF LASCIVIOUSNESS; ABSENT THE COMMENCEMENT OF THE ACT OF SEXUAL INTERCOURSE BEFORE THE INTERRUPTION, ACCUSED CAN ONLY BE HELD LIABLE FOR THE CRIME OF ACTS OF LASCIVIOUSNESS, NOT ATTEMPTED RAPE.— It has not escaped this Court that rape and acts of lasciviousness are crimes of the same nature. However, the intent to lie with the woman is the fundamental difference between the two, as it is present in rape or attempt of it, and absent in acts of lasciviousness. "Attempted rape is committed when the 'touching' of the vagina by the penis is coupled with the intent to penetrate; otherwise, there can only be acts of lasciviousness." In this case, Banzuela's acts of laying BBB on the ground, undressing her, and kissing her, "do not constitute the crime of attempted rape, absent any showing that [Banzuela] actually commenced to force his penis into [BBB's] sexual organ." The fact that Banzuela employed on BBB the exact same tactics he used on AAA – from the invitation to go to the cemetery to visit their dead relatives, to the carrying of the child when she refused, to the laying down of the child, undressing her, and kissing her, cannot justify the presumption that he intended to rape BBB, just like he did AAA. "Such a presumption hardly constitutes proof beyond reasonable doubt of the crime of attempted rape. The gauge in determining whether the crime of attempted rape had been committed is the commencement of the act of sexual intercourse, *i.e.*, penetration of the penis into the vagina, before the interruption." Here, Banzuela was not even able to commence the act of sexual intercourse as he still had his pants on. What the prosecution was able to establish in Criminal Case No. MC03-918-FC-H is that Banzuela was able to lay down BBB, undress her, and kiss her, before the untimely arrival of a third party. Such acts, as the Court of Appeals said, constitute lascivious conduct.

9. ID.; ACTS OF LASCIVIOUSNESS; ELEMENTS; PRESENT; ACCUSED MAY BE CONVICTED OF THE CRIME OF

ACTS OF LASCIVIOUSNESS EVEN IF THE CRIME CHARGED AGAINST HIM WAS ATTEMPTED RAPE, FOR THE CRIME OF ACTS OF LASCIVIOUSNESS IS INCLUDED IN THE CRIME OF RAPE.— Article 336 of the Revised Penal Code provides for the crime of acts of lasciviousness as follows: Art. 336. *Acts of lasciviousness*. — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*. Its elements are: (1) That the offender commits any act of lasciviousness or lewdness; (2) That it is done under any of the following circumstances: a. By using force or intimidation; or b. When the offended party is deprived of reason or otherwise unconscious; or c. When the offended party is under 12 years of age; and (3) That the offended party is another person of either sex. The foregoing elements are clearly present in BBB's case, and were sufficiently established during trial. Although the crime charged against Banzuela was for attempted rape, convicting him for the crime of acts of lasciviousness does not violate any of his rights as such crime is included in the crime of rape.

10. ID.; RAPE; THE FAILURE OF THE OFFENDED PARTY TO MAKE A STRUGGLE OR OUTCRY IS IMMATERIAL IN THE RAPE OF A CHILD BELOW TWELVE YEARS OF AGE BECAUSE THE LAW PRESUMES THAT THE VICTIM ON ACCOUNT OF HER AGE DOES NOT AND CANNOT HAVE A WILL OF HER OWN.— Anent BBB's actions or inaction, suffice it to say that BBB was direct and consistent in narrating her own experience with Banzuela. The argument that she did not struggle, asked for help, or shout from when she was carried out of her house and brought to the cemetery is unavailing. "[F]ailure of the offended party to make a struggle or outcry is immaterial in the rape of a child below twelve years of age because the law presumes that the victim on account of her age does not and cannot have a will of her own."

11. REMEDIAL LAW; EVIDENCE; DEFENSE OF ALIBI; REQUISITES TO PROSPER; NOT ESTABLISHED.— We agree with the lower courts that Banzuela's defense of alibi hardly deserves credit. Such defense is one of the weakest

not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check or rebut. Thus, for alibi to succeed as a defense, the following must be established by clear and convincing evidence: 1. The accused's presence at another place at the time of the perpetration of the offense; and 2. The physical impossibility of the accused's presence at the scene of the crime. Banzuela himself admitted the proximity of his work place and his residence to the houses of AAA and BBB and the cemetery. As such, his alibi is negated by the fact that it was not physically impossible for him to have been at the cemetery where the crimes occurred.

12. ID.; ID.; ACCUSED'S ALIBI CANNOT PREVAIL OVER THE CREDIBLE TESTIMONIES AND POSITIVE IDENTIFICATION THAT HE WAS THE PERPETRATOR OF THE CRIMES, BY THE VICTIMS, WHO HAVE KNOWN HIM PRIOR TO THE INCIDENTS, AS THEIR COUSIN.— The presentation of Banzuela's DTRs is also unpersuasive for lack of corroboration. The DTRs were mere photocopies, Banzuela himself made the entries therein, and they bore no signature from any of his employers. If in fact the owner of the refilling station was no longer in the country, his former manager or the brother of the owner, from whom Banzuela's mother was able to procure the photocopied DTRs could have testified to confirm the veracity of the entries therein. Banzuela's alibi therefore cannot prevail over the credible testimonies and positive identification that he was the perpetrator of the crimes, by AAA and BBB, who have known him prior to the incidents, as their cousin.

13. CRIMINAL LAW; STATUTORY RAPE; PROPER PENALTY. — Article 266-A, paragraph (1)d of the Revised Penal Code, as amended by Republic Act No. 8353, which is the basis of statutory rape, provides as follows: 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: x x x 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. Undoubtedly, AAA was below 12 years old at the time she was raped. However, the law qualifies the crime of statutory rape when it is committed on a child below seven years old, to wit:

Article 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. x x x The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/ qualifying circumstances: x x x 5) When the victim is a child below seven (7) years old. For having been found guilty of the crime of qualified rape, AAA being a child below seven years of age when the crime occurred, the death penalty should have been imposed on Banzuela. However, Republic Act No. 9346, which took effect on June 24, 2006, prohibits the imposition of the death penalty. Under this Act, the lower courts correctly imposed upon Banzuela the penalty of *reclusion perpetua* without eligibility for parole in lieu of the death penalty.

14. ID.; SPECIAL PROTECTION AGAINST ABUSE, EXPLOITATION, AND DISCRIMINATION ACT (RA 7610); ACCUSED CANNOT BE CONVICTED OF THE CRIME OF ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 OF THE REVISED PENAL CODE IN RELATION TO SECTION 5 (B) OF RA 7610 ABSENT ALLEGATION IN THE INFORMATION THAT THE ACT IS PERFORMED WITH A CHILD EXPLOITED IN PROSTITUTION OR SUBJECTED TO OTHER SEXUAL ABUSE, AND PROOF OF THE ELEMENTS OF SEXUAL ABUSE; THE CHARACTER OF THE CRIME IS DETERMINED NEITHER BY THE CAPTION OR PREAMBLE OF THE INFORMATION, NOR BY THE SPECIFICATION OF THE PROVISION OF LAW ALLEGED TO HAVE BEEN VIOLATED, THEY BEING CONCLUSIONS OF LAW, BUT BY THE RECITAL OF THE ULTIMATE FACTS AND CIRCUMSTANCES IN THE INFORMATION.— The Court of Appeals convicted Banzuela of acts of lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of Republic Act No. 7610. For Banzuela to be convicted as such, both the requisites of acts of lasciviousness under Article 336 of the Revised Penal Code as earlier discussed, and sexual abuse under Section 5 of Republic Act No. 7610, must be met and established by the prosecution. x x x. A review of the Information filed against Banzuela reveals that there was no allegation of the second element of Section 5, Article III of Republic Act No. 7610 – that the act is performed with a child exploited in prostitution or **subjected to other**

sexual abuse. There was also no attempt to prove that element, as it would have been a violation of Banzuela's constitutional right to be informed of the nature and cause of the accusation against him. Although the Information stated that the crime being charged was in relation to Republic Act No. 7610, it is a well-settled rule that "the character of the crime is determined neither by the caption or preamble of the information[,] nor by the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the recital of the ultimate facts and circumstances in the information." Therefore, Banzuela can only be punished under Article 336 of the Revised Penal Code.

15. ID.; REVISED PENAL CODE, SECTION 336 THEREOF; ACTS OF LASCIVIOUSNESS; PROPER PENALTY.— The penalty for acts of lasciviousness under Article 336 of the Revised Penal Code is *prision correccional* in its full range. Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be taken from the full range of the penalty next lower in degree, *i.e.*, *arresto mayor*, which ranges from 1 month and 1 day to 6 months. The maximum of the indeterminate penalty shall come from the proper penalty that could be imposed under the Revised Penal Code for Acts of Lasciviousness. In this case, since there are neither aggravating nor mitigating circumstances, the imposable penalty is the medium period of *prision correccional*, which ranges from 2 years, 4 months and 1 day to 4 years and 2 months. Banzuela is hereby sentenced to suffer the penalty of 6 months of *arresto mayor*, as minimum, to 4 years and 2 months of *prision correccional*, as maximum.

16. ID.; STATUTORY RAPE AND ACTS OF LASCIVIOUSNESS; CIVIL LIABILITY OF ACCUSED-APPELLANT.— In line with prevailing jurisprudence, the Court increases the award of exemplary damages from ₱25,000.00 to ₱30,000.00 to AAA (rape); and awards ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱10,000.00 as exemplary damages to BBB (acts of lasciviousness).

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 accused-appellant Ferdinand Banzuela (Banzuela) challenges in this appeal the August 31, 2011 **Decision**[1] promulgated by the Court of Appeals in **CA-G.R. CR.-H.C. No. 03868**, wherein he was convicted for Rape and Acts of Lasciviousness.

On July 25, 2003, Banzuela was charged with Rape and Attempted Rape under Article 335 of the Revised Penal Code in relation to Republic Act No. 7610[2] before Branch 209, Regional Trial Court (RTC) of Mandaluyong City. The Informations read as follows:

I. For Rape (Criminal Case No. MC03-919-FC-H)

That sometime [i]n February 2003, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA[3]], minor (6 years old), against her will and consent, thus debasing and/or demeaning the intrinsic worth and dignity of the child as a human being.[4]

II. For Attempted Rape (Criminal Case No. MC03-918-FC-H)

That sometime in February 2003, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court,

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[1] *Rollo*, pp. 2-19; penned by Associate Justice Mario V. Lopez with Associate Justices Magdangal M. de Leon and Socorro B. Inting, concurring.

[2] An Act Providing For Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, Providing Penalties For Its Violation, And For Other Purposes.

[3] Under Republic Act No. 9262 also known as "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

[4] Records, p. 14.

the above-named accused, did then and there willfully, unlawfully and feloniously attempt to have carnal knowledge of [BBB], a girl seven (7) years of age, by then and there bringing her to a grassy portion of Mandaluyong Cemetery, made to lie down, undressed her, thus directly by overt acts but failed to perform all acts of execution when a third party helped the victim to get away from the accused.[5]

Banzuela pleaded not guilty to both charges during his arraignment on November 20, 2003.[6] After the completion of the pre-trial conference on January 22, 2004,[7] trial on the merits ensued.

The following narration of facts was made by the RTC and the Court of Appeals:

Version of the Prosecution

Sometime in February 2003, while six-year old AAA and seven-year old BBB were watching TV in AAA's house, Banzuela approached them and asked them to go with him to the nearby cemetery. AAA and BBB refused, but Banzuela carried AAA away prompting BBB to follow suit. Upon reaching the cemetery, Banzuela blindfolded BBB, who thereafter removed the blindfold and looked for AAA and Banzuela. Meanwhile, Banzuela laid AAA on a dirty tomb, pulled up her dress, and removed her underwear. He thereafter removed his shorts and briefs, mounted AAA, kissed her, inserted his penis in her vagina, and moved his body up and down against the crying AAA. He threatened to kill her entire family if she ever spoke of the incident. When BBB finally found them, Banzuela hurriedly pulled up his briefs and shorts and then ran away. BBB approached AAA and saw that there was blood on the tomb from AAA's vagina. They wiped the blood with a banana leaf, then proceeded to BBB's house, where AAA

[5] *Id.* at 1.

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

[7] *Id.* at 59-61.

washed her bloodied dress and underwear before going back to AAA's house.[8]

After the incident with AAA, Banzuela used the same method on BBB, the daughter of his mother's half-brother. One morning in February 2003, Banzuela asked BBB to go with him to the cemetery. When BBB refused, Banzuela carried her out of the house and brought her to the cemetery. BBB cried, but Banzuela proceeded to lay her down on the ground, pulled her dress up, removed her underwear, and kissed her. However, before Banzuela could do anything more, a man passed by causing Banzuela to flee the scene. The man thereafter instructed BBB to go home. Upon reaching her house, Banzuela, who was already there, threatened her against telling anyone of the incident, otherwise, he would kill everyone in their house.[9]

AAA, with her mother, submitted herself for examination but both the Initial Medico-Legal Report[10] and the Medico-Legal Report No. M-0914-03[11] stated that AAA was physically in a virgin state, and her hymen "intact."

Version of the Defense

Banzuela denied the accusations against him, claiming that he was working for at least twelve (12) hours a day at Bestflow Purified Drinking Water Refilling Station the whole month of February 2003. To prove this, he submitted photocopies of his Daily Time Record (DTR) from November 2002 to February 2003.[12] Banzuela added that he did not go to the cemetery the entire February of 2003.[13]

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[8] *Rollo*, pp. 3-4; CA *rollo*, p. 30; records, pp. 410-432; 558-562.

[9] CA *rollo*, p. 30; records, pp. 133-142, 553-565.

[10] Records, p. 25.

[11] *Id.* at 266.

[12] *Id.* at 347-350.

[13] CA *rollo*, p. 65; records, pp. 442-456.

Ruling of the RTC

On February 27, 2009, the RTC convicted Banzuela of the crimes of rape of AAA and attempted rape of BBB. The dispositive portion of the Decision[14] reads as follows:

> **WHEREFORE**, in view of the foregoing, judgment is hereby rendered as follows:
>
> 1. In Criminal Case No. MC03-919-FC-H, finding accused FERDINAND BANZUELA guilty beyond reasonable doubt of the crime of RAPE under Article 335 of the Revised Penal Code, as amended by R.A. 7659 and is hereby sentenced to suffer the penalty of ***RECLUSION PERPETUA*** and to indemnify the victim, [AAA], of the sum of FIFTY THOUSAND (₱50,000.00) PESOS as civil indemnity; [and]
>
> 2. In Criminal Case No. MC03-918-FC-H, finding accused FERDINAND BANZUELA guilty beyond reasonable doubt of the crime of ATTEMPTED RAPE, and there being no mitigating or aggravating circumstances and pursuant to Article 51, in relation to Article 335 of the Revised Penal Code, as amended, is hereby sentenced to suffer an indeterminate penalty of two (2) years, four (4) months and one (1) day of *pris[i]on correccional* as minimum to ten years and one (1) day of *prision mayor* as maximum and to indemnify the victim, [BBB] of the sum of FIFTEEN THOUSAND (₱15,000.00) PESOS.[15] (Emphases supplied.)

In AAA's charge of rape, the RTC deemed as insignificant the results of the medical examination that AAA's hymen was still intact. The RTC, invoking established jurisprudence, said that the mere touching of the labia consummates rape, and that a broken hymen is not an essential element of rape. The RTC added that a medical examination, in any event, was not essential in the prosecution of a rape case, being merely corroborative in character.[16]

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[14] *Id*. at 29-40.

[15] *Id*. at 39-40.

[16] *Id*. at 37.

The RTC also found the prosecution to have proved its charge of attempted rape against BBB as it was clear that Banzuela intended to have sexual congress with BBB had he not been unexpectedly disturbed.[17]

Anent Banzuela's defense of alibi, the RTC did not give it merit for being weak. The RTC shot down the DTRs Banzuela presented for not having been authenticated and verified, and for having been weakened by his own testimony.[18]

In essence, the RTC decided in favor of the prosecution due to AAA's and BBB's testimonies, to wit:

> The testimonies of AAA and BBB are worthy of credence as they were straightforward, spontaneous and "bore the hallmarks of truth." More notable is that they were able to withstand the rigors of cross-examination without wavering or being caught in inconsistencies. Indeed, it defies belief that these victims, who were below 12 years old, would fabricate a sordid tale of sexual abuse and indict their very own cousin. Their testimonies of the separate incidents of sexual abuse that happened to them recounted vivid details that could not have been concocted by girls of tender age. The testimony of the complainants are consistent, clear and free of serious contradictions.[19]

Ruling of the Court of Appeals

Having lost in the RTC, Banzuela appealed to the Court of Appeals,[20] which, on August 31, 2011, rendered a verdict no better than the RTC's, *viz*:

> **FOR THE STATED REASONS,** the assailed Decision of the Regional Trial Court (Branch 209) of Mandaluyong City is **AFFIRMED** with the following **MODIFICATION**:
>
> 1. In Criminal Case No. MC03-919-FC-H, Ferdinand Banzuela is sentenced to suffer the penalty of *reclusion*

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[17] *Id*. at 38.

[18] *Id*. at 39.

[19] *Id*. at 36.

[20] *Id*. at 41.

perpetua without parole and to indemnify AAA the amounts of ₱75,000.00 as civil indemnity *ex delicto*, ₱75,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

2. In Criminal Case No. MC03-918-FC-H, Ferdinand Banzuela is found guilty beyond reasonable doubt of acts of lasciviousness and sentenced to an indeterminate penalty of 12 years, and 1 day of *reclusion temporal*, as minimum, to 16 years, *reclusion temporal*, as maximum and to indemnify BBB the amounts of ₱25,000.00 as moral damages and ₱10,000.00 as exemplary damages.[21] (Citation omitted.)

In agreeing with the RTC's finding of guilt, the Court of Appeals said that Banzuela failed to destroy the victims' credibility or taint their straightforward and categorical testimonies.[22]

However, the Court of Appeals did not agree with the RTC's finding that Banzuela attempted to rape BBB. The Court of Appeals, alluding to jurisprudence, said that "[a]ttempted rape is committed when the 'touching' of the vagina by the penis is coupled with the intent to penetrate; otherwise, there can only be acts of lasciviousness." Thus, the Court of Appeals declared, that because Banzuela's intent to rape BBB was not clearly established, he could only be convicted of acts of lasciviousness.[23]

Issues

Undaunted, Banzuela elevated his case to this Court,[24] assigning the same errors he did before the appellate court, to wit:

ASSIGNMENT OF ERRORS

I

THE COURT *A QUO* GRAVELY ERRED IN GIVING WEIGHT TO THE MATERIALLY INCONSISTENT AND INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES.

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[21] *Rollo*, p. 18.

[22] *Id*. at 13.

[23] *Id*. at 15-16.

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

II

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[25]

Banzuela is attacking the credibility of the witnesses for being "highly inconsistent, unusual, doubtful and thus insufficient to sustain a conviction." Banzuela claimed that AAA's testimony was full of inconsistencies and contradictions, such as how she managed to remove his hand from her mouth and yet she did not shout for help, how Banzuela managed to blindfold BBB while still carrying her, and more importantly, how confused she was as to whether his penis actually penetrated her or simply touched her groin area. Banzuela argued that the fact that AAA was still a virgin was confirmed by the medico-legal examination, and as the medico legal officer said during his testimony, although the consensus was that it is possible for a woman to remain a virgin physically despite penetration, he himself has had no personal encounter of such a case.[26]

Moreover, Banzuela said, even BBB's actions were highly unusual, considering the circumstances of her situation. First, Banzuela said, BBB continued to follow him and AAA despite being blindfolded, instead of turning back and calling for help. Second, in view of what BBB witnessed happened to AAA earlier that month, it was contrary to human nature, Banzuela averred, that she did not resist or try to attract the attention of her neighbors when he brought her to the cemetery.[27]

Finally, Banzuela reasoned, the prosecution cannot profit from the weakness of his defense in light of their failure to establish his guilt beyond reasonable doubt. Thus, he said, he should be acquitted of the charges against him.[28]

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

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

[27] *Id*. at 71-72.

[28] *Id*. at 72-74.

Ruling of this Court

We find no reason to reverse the conviction of Banzuela.

In essence, Banzuela's appeal is hinged on the proposition that the victims were not credible witnesses for having made several inconsistent statements when they testified in court.

We do not agree.

Credibility of the witnesses

The guidelines to follow, when this Court is confronted with the issue of credibility of witnesses on appeal, are established in jurisprudence. In *People v. Sanchez*,[29] we enumerated them as follows:

> ***First***, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.
>
> ***Second***, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded.
>
> ***And third***, the rule is even more stringently applied if the CA concurred with the RTC. (Citations omitted.)

It is well-settled in this jurisdiction that the determination of the credibility of the witnesses is correctly assigned to the trial court, which is in the best position to observe the demeanor and bodily movements of all the witnesses.[30] Elucidating on the rationale for this rule, this Court, in *People v. Sapigao, Jr.*,[31] said:

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[29] G.R. No. 197815, February 8, 2012, 665 SCRA 639, 643.

[30] *Perez v. Court of Appeals*, 431 Phil. 786, 792 (2002).

[31] G.R. No. 178485, September 4, 2009, 598 SCRA 416, 425-426.

It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court." (Citations omitted.)

In the case at bar, both the RTC and the Court of Appeals found the testimonies of the witnesses to be credible. Furthermore, this Court's own independent examination of the records leads us to the same conclusion.[32] As the Court of Appeals said, both AAA's and BBB's testimonies were straightforward, detailed, and consistent.[33] Their credibility is further strengthened by their clear lack of ill motive to falsify such a charge against their cousin, who shattered their youth and innocence.[34]

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[32] *People v. Sanchez*, *supra* note 29 at 644.

[33] *Rollo*, p. 10.

[34] *People v. Sanchez*, *supra* note 29 at 644.

The inconsistencies in AAA's testimony, as catalogued by Banzuela in his brief,[35] have no bearing in the determination of his guilt or innocence, and are too trivial in character to damage AAA's credibility. The material details of the rape were clearly established,[36] and BBB corroborated AAA's testimony on every relevant point. As this Court stated in *People v. Saludo*:[37]

> Rape is a painful experience which is oftentimes not remembered in detail. For such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving; rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget. Thus, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone. (Citation omitted.)

BBB was likewise candid, straightforward, and detailed in her narration of not only how AAA was raped, but also of how she almost suffered the same fate. Her alleged unusual actions during AAA's ordeal, and later hers, are not enough to discredit her. It has been established that a victim of a heinous crime such as rape cannot be expected to act with reason or in conformity with society's expectations. This acquires greater significance where the victim is a child of tender age. The workings of a human mind placed under emotional stress cannot be predicted; and people cannot be expected to act as usual in an unfamiliar situation. Furthermore, it is not accurate to say that there is a standard reaction or norm of behavior among rape victims, as each of them had to deal with different circumstances.[38]

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[35] CA *rollo*, pp. 57-75.

[36] *People v. Sanchez*, *supra* note 29 at 644.

[37] G.R. No. 178406, April 6, 2011, 647 SCRA 374, 388.

[38] *Id.* at 394.

Crime of Rape proven beyond reasonable doubt

Sexual intercourse with a woman below 12 years of age, whether she consented to it or not, is punishable as rape under our laws. As such, proof of force, threat, or intimidation is unnecessary in cases of statutory rape, they, not being elements of the crime. When the complainant is below 12 years old, the absence of free consent is conclusively presumed as the law supposes that a woman below this age does not possess discernment and is incapable of giving intelligent consent to the sexual act.[39]

In order to successfully convict an accused of statutory rape, the prosecution must prove the following:

1. The age of the complainant;
2. The identity of the accused; and
3. The carnal knowledge between the accused and the complainant.[40]

The first element was established by the prosecution upon the presentation and submission to the court of a Certification from the Office of the Municipal Civil Registrar of Mandaluyong City dated August 24, 2004 stating that AAA was born on September 10, 1996.[41] Hence, she was only 6 years old when the rape was committed in February 2003.

The second element was clearly satisfied when AAA positively and consistently identified Banzuela as her offender.[42]

As regards the third element, it is instructive to define "carnal knowledge" in the context it is used in the Revised Penal Code:

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[39] *People v. Canares*, G.R. No. 174065, February 18, 2009, 579 SCRA 588, 601.

[40] *Id.* at 601-602.

[41] Records, p. 264.

[42] *Sinumpaang Salaysay*, Records, p. 10; TSN, September 13, 2005, Records, p. 435.

'[C]arnal knowledge,' unlike its ordinary connotation of sexual intercourse, does not necessarily require that the vagina be penetrated or that the hymen be ruptured. The crime of rape is deemed consummated even when the man's penis merely enters the labia or lips of the female organ or, as once so said in a case, by the '*mere touching* of the external genitalia by a penis capable of consummating the sexual act.[43] (Citations omitted.)

This element was proven when AAA detailed in open court how Banzuela forcefully inserted his sex organ into her genitalia in February 2003 and how she felt pain during her ordeal.

Banzuela makes much of the fact that the medico-legal examination yielded negative results, *i.e.*, that AAA remained a virgin. This Court, in *People v. Boromeo*,[44] suitably refuted that argument, *viz*:

Proof of hymenal laceration is not an element of rape. An intact hymen does not negate a finding that the victim was raped. To sustain a conviction for rape, full penetration of the female genital organ is not necessary. It is enough that there is proof of entry of the male organ into the *labia of the pudendum* of the female organ. Penetration of the penis by entry into the lips of the vagina, even without laceration of the hymen, is enough to constitute rape, and even the briefest of contact is deemed rape. As long as the attempt to insert the penis results in contact with the lips of the vagina, even without rupture or laceration of the hymen, the rape is consummated. x x x. (Citations omitted.)

Significantly, as this Court has held before,[45] the pain that AAA suffered is, in itself, an indicator of the commission of rape. Moreover, AAA's ordeal was witnessed by BBB, who in fact was the one who told AAA's mother about the incident. Thus, contrary to Banzuela's assertions, this Court is convinced that the prosecution was able to establish that he had carnal

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[43] *People v. Tampos*, 455 Phil. 844, 857-858 (2003).

[44] G.R. No. 150501, June 3, 2004, 430 SCRA 533, 542.

[45] *People v. Tampos*, *supra* note 43 at 859; *People v. Canares*, *supra* note 39 at 603; *People v. Boromeo*, *id.*

knowledge of AAA, making him guilty beyond reasonable doubt of the crime of rape.

Crime of Attempted Rape not established but crime of Acts of Lasciviousness proven beyond reasonable doubt

Upon appeal, the Court of Appeals found no evidence to prove with the moral certainty required by law that Banzuela intended to have carnal knowledge of BBB, thus, it modified the crime the RTC convicted Banzuela of from Attempted Rape under Article 266-A, paragraph 1(d) in relation to Article 51 of the Revised Penal Code, to Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Republic Act No. 7610.

This Court agrees with the Court of Appeals. In an attempt to commit a felony, the offender commences the commission of such felony directly by overt acts, but does not perform all the acts of execution, which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.[46] In other words, a crime is in its attempted stage when the offender has already performed the acts preliminary to the consummation of the crime. However, because of some reason besides his own spontaneous desistance, he is not able to perform all the acts necessary to consummate the crime. The elements, therefore, of an attempted felony are as follows:

1. The offender commences the commission of the felony directly by overt acts;
2. He does not perform all the acts of execution which should produce the felony;
3. The offender's act be not stopped by his own spontaneous desistance; and
4. The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.[47] (Citation omitted.)

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[46] REVISED PENAL CODE, Article 6.

[47] *People v. Mendoza*, 490 Phil. 737, 743 (2005).

In the crime of rape, penetration, however slight, is an essential act of execution that produces such felony. Thus, for Banzuela to be convicted of the crime of attempted rape, he must have already commenced the act of inserting his sexual organ in the vagina of BBB, but due to some cause or accident, excluding his own spontaneous desistance, he wasn't able to even slightly penetrate BBB.[48]

It has not escaped this Court that rape and acts of lasciviousness are crimes of the same nature. However, the intent to lie with the woman is the fundamental difference between the two, as it is present in rape or attempt of it, and absent in acts of lasciviousness.[49] "Attempted rape is committed when the 'touching' of the vagina by the penis is coupled with the intent to penetrate; otherwise, there can only be acts of lasciviousness."[50]

In this case, Banzuela's acts of laying BBB on the ground, undressing her, and kissing her, "do not constitute the crime of attempted rape, absent any showing that [Banzuela] actually commenced to force his penis into [BBB's] sexual organ."[51]

The fact that Banzuela employed on BBB the exact same tactics he used on AAA – from the invitation to go to the cemetery to visit their dead relatives, to the carrying of the child when she refused, to the laying down of the child, undressing her, and kissing her, cannot justify the presumption that he intended to rape BBB, just like he did AAA. "Such a presumption hardly constitutes proof beyond reasonable doubt of the crime of attempted rape. The gauge in determining whether the crime of attempted rape had been committed is the commencement of the act of sexual intercourse, *i.e.*, penetration of the penis into the vagina, before the interruption."[52] Here, Banzuela was

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[48] *Perez v. Court of Appeals*, *supra* note 30 at 793.

[49] *People v. Mendoza*, *supra* note 47 at 744.

[50] *People v. Dadulla*, G.R. No. 172321, February 9, 2011, 642 SCRA 432, 443.

[51] *People v. Dominguez, Jr.*, G.R. No. 180914, November 24, 2010, 636 SCRA 134, 155.

[52] *Id.* at 158.

not even able to commence the act of sexual intercourse as he still had his pants on. What the prosecution was able to establish in Criminal Case No. MC03-918-FC-H is that Banzuela was able to lay down BBB, undress her, and kiss her, before the untimely arrival of a third party. Such acts, as the Court of Appeals said,[53] constitute lascivious conduct.

Article 336 of the Revised Penal Code provides for the crime of acts of lasciviousness as follows:

> Art. 336. *Acts of lasciviousness*. — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

Its elements are:

(1) That the offender commits any act of lasciviousness or lewdness;

(2) That it is done under any of the following circumstances:

   a. By using force or intimidation; or

   b. When the offended party is deprived of reason or otherwise unconscious; or

   c. When the offended party is under 12 years of age; and

(3) That the offended party is another person of either sex.[54] (Citation omitted.)

The foregoing elements are clearly present in BBB's case, and were sufficiently established during trial. Although the crime charged against Banzuela was for attempted rape, convicting him for the crime of acts of lasciviousness does not violate any of his rights as such crime is included in the crime of rape.[55]

Anent BBB's actions or inaction, suffice it to say that BBB was direct and consistent in narrating her own experience with

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[53] *Rollo*, p. 16.

[54] *People v. Dominguez, Jr.*, *supra* note 51 at 158.

[55] *Perez v. Court of Appeals*, *supra* note 30 at 797.

Banzuela. The argument that she did not struggle, asked for help, or shout from when she was carried out of her house and brought to the cemetery is unavailing. "[F]ailure of the offended party to make a struggle or outcry is immaterial in the rape of a child below twelve years of age because the law presumes that the victim on account of her age does not and cannot have a will of her own."[56]

Banzuela's Defense

We agree with the lower courts that Banzuela's defense of alibi hardly deserves credit. Such defense is one of the weakest not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check or rebut.[57] Thus, for alibi to succeed as a defense, the following must be established by clear and convincing evidence:

1. The accused's presence at another place at the time of the perpetration of the offense; and
2. The physical impossibility of the accused's presence at the scene of the crime.[58]

Banzuela himself admitted the proximity of his work place and his residence to the houses of AAA and BBB and the cemetery. As such, his alibi is negated by the fact that it was not physically impossible for him to have been at the cemetery where the crimes occurred.[59]

The presentation of Banzuela's DTRs is also unpersuasive for lack of corroboration. The DTRs were mere photocopies, Banzuela himself made the entries therein, and they bore no signature from any of his employers. If in fact the owner of the refilling station was no longer in the country, his former manager or the brother of the owner, from whom Banzuela's

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[56] *People v. Lazaro*, 319 Phil. 352, 360 (1995).

[57] *People v. Palomar*, 343 Phil. 628, 663 (1997).

[58] *People v. Del Ayre*, 439 Phil. 73, 92-93 (2002).

[59] *Id.* at 93.

mother was able to procure the photocopied DTRs could have testified to confirm the veracity of the entries therein. Banzuela's alibi therefore cannot prevail over the credible testimonies and positive identification that he was the perpetrator of the crimes, by AAA and BBB, who have known him prior to the incidents, as their cousin.

Liability for Rape

Article 266-A, paragraph (1)d of the Revised Penal Code, as amended by Republic Act No. 8353,[60] which is the basis of statutory rape, provides as follows:

> 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:
>
> x x x x x x x x x
>
> 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.

Undoubtedly, AAA was below 12 years old at the time she was raped. However, the law qualifies the crime of statutory rape when it is committed on a child below seven years old, to wit:

> Article 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.
>
> x x x x x x x x x
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> x x x x x x x x x
>
> 5) When the victim is a child below seven (7) years old.

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[60] The Anti-Rape Law of 1997.

For having been found guilty of the crime of qualified rape, AAA being a child below seven years of age when the crime occurred, the death penalty should have been imposed on Banzuela. However, Republic Act No. 9346,[61] which took effect on June 24, 2006, prohibits the imposition of the death penalty. Under this Act, the lower courts correctly imposed upon Banzuela the penalty of *reclusion perpetua* without eligibility for parole[62] in lieu of the death penalty.[63]

Liability for Acts of Lasciviousness

The Court of Appeals convicted Banzuela of acts of lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of Republic Act No. 7610. For Banzuela to be convicted as such, both the requisites of acts of lasciviousness under Article 336 of the Revised Penal Code as earlier discussed, and sexual abuse under Section 5 of Republic Act No. 7610, must be met and established by the prosecution.[64] The following are the elements of sexual abuse under Section 5, Article III of Republic Act No. 7610:

> (1) The accused commits the act of sexual intercourse or lascivious conduct;
>
> (2) The said act is performed with **a child exploited in prostitution or subjected to other sexual abuse**; and
>
> (3) The child, whether male or female, is below 18 years of age.[65]

A review of the Information filed against Banzuela reveals that there was no allegation of the second element of Section 5, Article III of Republic Act No. 7610 – that the act is performed with a child exploited in prostitution or **subjected to other sexual abuse**. There was also no attempt to prove that element,

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[61] An Act Prohibiting the Imposition of the Death Penalty, June 24, 2006.

[62] *Id.*, Section 3.

[63] *Id.*, Section 2.

[64] *Cabila v. People*, 563 Phil. 1020, 1027 (2007).

[65] *Id.*

as it would have been a violation of Banzuela's constitutional right to be informed of the nature and cause of the accusation against him. Although the Information stated that the crime being charged was in relation to Republic Act No. 7610, it is a well-settled rule that "the character of the crime is determined neither by the caption or preamble of the information[,] nor by the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the recital of the ultimate facts and circumstances in the information."[66] Therefore, Banzuela can only be punished under Article 336 of the Revised Penal Code.

The penalty for acts of lasciviousness under Article 336 of the Revised Penal Code is *prision correccional* in its full range. Applying the Indeterminate Sentence Law,[67] the minimum of the indeterminate penalty shall be taken from the full range of the penalty next lower in degree,[68] *i.e.*, *arresto mayor*, which ranges from 1 month and 1 day to 6 months.[69] The maximum of the indeterminate penalty shall come from the proper penalty[70] that could be imposed under the Revised Penal Code for Acts of Lasciviousness.[71] In this case, since there are neither aggravating nor mitigating circumstances, the imposable penalty is the medium period of *prision correccional*, which ranges from 2 years, 4 months and 1 day to 4 years and 2 months.[72]

Banzuela is hereby sentenced to suffer the penalty of 6 months of *arresto mayor*, as minimum, to 4 years and 2 months of *prision correccional*, as maximum.[73]

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[66] *People v. Anguac*, G.R. No. 176744, June 5, 2009, 588 SCRA 716, 725.

[67] Republic Act No. 4103, as amended.

[68] *Id.*, Section 1.

[69] REVISED PENAL CODE, Articles 25 and 27.

[70] *Id.*, Article 64(1).

[71] Republic Act No. 4103, as amended, Section 1.

[72] REVISED PENAL CODE, Article 77.

[73] *People v. Dominguez, Jr.*, *supra* note 51 at 163.

In line with prevailing jurisprudence, the Court increases the award of exemplary damages from ₱25,000.00 to ₱30,000.00 to AAA (rape);[74] and awards ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱10,000.00 as exemplary damages to BBB (acts of lasciviousness).[75]

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 03868 is hereby **AFFIRMED with MODIFICATION**.

1. In Criminal Case No. MC03-919-FC-H, we find accused-appellant Ferdinand Banzuela **GUILTY** of Rape defined and penalized under Articles 266-A and 266-B of the Revised Penal Code, as amended. He is sentenced to *reclusion perpetua* without the possibility of parole; and is **ORDERED** to pay the victim, AAA, ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱30,000.00 as exemplary damages, all with interest at the rate of 6% *per annum* from the date of finality of this judgment; and

2. In Criminal Case No. MC03-918-FC-H, we find accused-appellant Ferdinand Banzuela **GUILTY** of Acts of Lasciviousness, defined and penalized under Article 336 of the Revised Penal Code, as amended. He is sentenced to an indeterminate prison term of 6 months of *arresto mayor*, as minimum, to 4 years and 2 months of *prision correccional*, as maximum; and is **ORDERED** to pay the victim, BBB, ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱10,000.00 as exemplary damages, all with interest at the rate of 6% *per annum* from the date of finality of this judgment.

SO ORDERED.

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

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[74] *People v. Mangune*, G.R. No. 186463, November 14, 2012, 685 SCRA 578, 590-591.

[75] *People v. Poras*, G.R. No. 177747, February 16, 2010, 612 SCRA 624, 647.

FIRST DIVISION

[G.R. No. 205442. December 11, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JONATHAN CON-UI and RAMIL MACA**, *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; KIDNAPPING FOR RANSOM; ELEMENTS; PROVED.— The Court reviewed the accused-appellants' case and found no compelling reason to overturn their judgment of conviction. The essence of the crime of kidnapping is the actual deprivation of the victim's liberty, coupled with indubitable proof of the intent of the accused to effect the same. Moreover, if the victim is a minor, or the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention becomes inconsequential. Ransom is the money, price or consideration paid or demanded for the redemption of a captured person that will release him from captivity. In proving the crime of Kidnapping for Ransom, the prosecution has to show that: (a) the accused was a private person; (b) he kidnapped or detained or in any manner deprived another of his or her liberty; (c) the kidnapping or detention was illegal; and (d) the victim was kidnapped or detained for ransom. All these were proven in the criminal case on review.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN THE CREDIBILITY OF A WITNESS IS IN ISSUE, THE FINDINGS OF FACT OF THE TRIAL COURT, ITS CALIBRATION OF THE TESTIMONIES OF THE WITNESSES AND ITS ASSESSMENT OF THE PROBATIVE WEIGHT THEREOF, AS WELL AS ITS CONCLUSIONS ANCHORED ON SAID FINDINGS ARE ACCORDED HIGH RESPECT IF NOT CONCLUSIVE EFFECT, ESPECIALLY IF SUCH FINDINGS WERE AFFIRMED BY THE APPELLATE COURT; EXCEPTIONS; NOT PRESENT.— The Court cannot sustain the accused-appellants' argument regarding the alleged unbelievable testimony of Marvelous or the lack of testimony by Alejandro as regards the "key incident".

The rule is that when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This holds truer if such findings were affirmed by the appellate court. Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed. In this case, there is nothing unbelievable in Marvelous' testimony. For one, the accused-appellants failed to show that the physical state of the victims, having been hogtied, rendered them immobile. For another, it is still quite possible for one to move around even if tied up as established in this instance where evidence shows that the victims, at gunpoint, actually even managed to walk out of the house, board the jeep and move further on foot to the mountains. Moreover, the fact that Alejandro did not testify that he saw Con-ui asked for the key to the drawer and took the money in it does not make his testimony as regards the latter's participation in the commission of the crime less believable. Neither does it negate the fact that it actually happened. It should be noted that the "key incident" was testified to by Marvelous and could have occurred only in the girls' presence.

3. CRIMINAL LAW; KIDNAPPING FOR RANSOM; PENALTY OF *RECLUSION PERPETUA* WITHOUT ELIGIBILITY FOR PAROLE, IMPOSED.— The Court also sustains the reduction of the penalty by the CA. Kidnapping for ransom is punishable by death; however, with the passage of Republic Act No. 9346, the imposition of the death penalty has been prohibited and the penalty of *reclusion perpetua* shall instead be imposed. Further, the same shall be without eligibility for parole.

4. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANTS.— The Court, however, finds that the damages awarded by the CA should be modified. Recent jurisprudence established the amount of damages to be awarded. In *People of the Philippines v. Halil Gambao y Esmail, et al.*, which also involves a Kidnapping for Ransom case, the Court set the **minimum** indemnity and damages where death is the penalty warranted

by the facts but is not imposable under present law, as follows: 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. The accused-appellants who are principals to the crime shall be jointly and severally liable for these amounts awarded in favor of **each** of the victims. Moreover, these amounts shall accrue interest at the rate of six percent (6%) *per annum*, to earn from the date of the finality of the Court's Resolution until fully paid.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

REYES, *J.*:

For review is the Decision[1] dated December 20, 2011 of the Court of Appeals (CA) in CA-G.R. HC No. 00462-MIN, which modified the Decision[2] dated May 24, 2006 rendered by the Regional Trial Court (RTC) of Tandag, Surigao del Sur, Branch 40, in Criminal Case No. 4327, finding Jonathan Con-ui (Con-ui) and Ramil Maca (Maca) (accused-appellants) guilty of the crime of Kidnapping. The dispositive portion of the CA decision provides:

WHEREFORE, the Decision dated May 24, 2006 of the court *a quo* in *Crim. Case No. 4327* is **MODIFIED**. Accused-appellant Ramil Maca and Jonathan Con-ui are hereby declared GUILTY beyond reasonable doubt of the crime of kidnapping for ransom and [are] hereby sentenced to *reclusion perpetua*, without eligibility for parole.

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[1] Penned by Associate Justice Abraham B. Borreta, with Associate Justices Romulo B. Borja and Melchor Quirino C. Sadang, concurring; CA *rollo*, pp. 92-105.

[2] Issued by Presiding Judge Vicente M. Luna, Jr., *id.* at 30-53.

Accused-appellants are further **ORDERED** to pay each of the victims, the following: moral damages in the amount of [₱]200,000.00; exemplary damages in the amount of [₱]100,000; and civil indemnity of [₱]75,000.00.

SO ORDERED.[3]

The accused-appellants, together with Kiking Mendoza (Mendoza) *alias* "Kiking Salahay", Arturo Umba *y* Antad *alias* "Lico-Licoan" and two John Does, were charged with the kidnapping and serious illegal detention of Alejandro Paquillo (Alejandro), Mae Paquillo (Mae), Marvelous Perez (Marvelous) and Marelie Perez (Marelie).[4] At the time of the kidnapping, all three girls – Mae, Marvelous and Marelie – were minors.

Based on the testimony of Alejandro, Con-ui has been going to his house for three consecutive nights, including the night of the abduction on October 14, 2001, offering to sell his property but he refused. On the night of October 14, while the two were talking at the terrace, five men suddenly went inside the house and pointed their guns at Alejandro. Someone then asked Con-ui what took him so long, and said that they were tired of waiting for him. At that time, the sisters Marvelous and Marelie were inside the bedroom of Mae, Alejandro's daughter and their cousin. While there, someone knocked on the bedroom door and ordered the girls to go out of the room. Maca and Mendoza then collared them and asked for the key to the drawer. Con-ui opened the drawer and took the money inside. Alejandro, Mae, Marvelous, Marelie and Con-ui were then hogtied.

They were brought outside the house and thereafter boarded Alejandro's jeepney. When the jeep broke down at the crossing of *Barangay* Castillo, San Miguel, they were forced to move on foot until they reached the mountains of Bagyangon, where they stopped for a rest.

The next day, Alejandro was ordered to go home and get ₱300,000.00 ransom money. When he was in his parents-in-

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[3] *Id*. at 104-105.

[4] *Id*. at 30.

law's house, their pastor arrived. Apparently, someone informed the pastor the night before that Alejandro and the girls were kidnapped. The pastor accompanied Alejandro to the bridge of NIA TRIP where they left clothes for the girls.

Meanwhile, in the mountains, Mendoza ordered Con-ui to buy food but the latter refused, so it was Maca who did the task. Maca's father then arrived and told them that there were military men on the road leading to Caromata and that Maca has been arrested. After a while, the group decided to free the girls.

In his defense, Con-ui denied the charges and claimed that he was also a victim. He admitted that he was in Alejandro's house on the night of the incident but claimed that he was there to negotiate the sale of his property to Alejandro. He was hogtied, together with Alejandro and the girls, but managed to escape from their abductors. He claimed that he asked his "co-asset" to report the incident to the police, and allegedly, he even helped the soldiers search for the victims but failed to locate them.

Maca, meanwhile, claimed *alibi* as defense. He claimed that he was helping in the construction of a waiting shed in *Purok* 4, which was being supervised by *Barangay* Captain Felicula Gran (Gran). He said that on the night of October 14, he was with some construction co-workers and *barangay* officials in *Purok* 4, having a drinking spree. He also claimed that he went to work at 8:00 a.m. of October 15. On October 16, he was hired as an agricultural hand by Gran and worked the entire day. He was arrested on October 17, 2001 by the CAFGUs. Gran testified in the defense of Maca.

The RTC did not give credence to the defense of the accused-appellants and convicted them of Kidnapping.[5] The dispositive portion of the RTC's judgment of conviction provides:

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[5] The case against Mendoza was dismissed per Order dated November 8, 2005. *See* CA Decision dated December 20, 2011; *id.* at 93.

WHEREFORE, premises considered, the Court finds accused ***Ramil Maca Meniano*** and ***Jonathan Con-ui*** guilty beyond reasonable doubt of the crime of Kidnapping and sentences each of them to suffer the penalty of death. No cost.

SO ORDERED.[6]

The CA, however, modified the judgment, convicted the accused appellants of Kidnapping for Ransom and reduced the penalty to *reclusion perpetua* without eligibility for parole. The CA also awarded civil indemnity, and moral and exemplary damages in favor of each of the victims.

In their appeal, the accused-appellants persistently argue that the prosecution failed to prove their guilt beyond reasonable doubt.[7] They point out that the statement of Marvelous that they were first hogtied and then later gave the key to their abductors is unbelievable as they were tied up and could not have handed over the key. The accused-appellants also contend that Alejandro did not testify that the kidnappers asked for the key to the drawer and took the money in it. Con-ui also claims that the RTC overlooked the fact that he was also hogtied and abducted along with the others. Maca, on the other hand, claims that the RTC ignored the testimony of Gran corroborating his claim that he was working on the construction of the waiting shed at the time of the incident and that he also worked on her farm thereafter.[8]

The Court reviewed the accused-appellants' case and found no compelling reason to overturn their judgment of conviction.

The essence of the crime of kidnapping is the actual deprivation of the victim's liberty, coupled with indubitable proof of the intent of the accused to effect the same. Moreover, if the victim is a minor, or the victim is kidnapped and illegally

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[6] *Id.* at 53.

[7] Both the accused-appellants and the OSG manifested that they are no longer filing supplemental briefs and are adopting their respective main briefs before the CA.

[8] CA *rollo*, pp. 23-25.

detained for the purpose of extorting ransom, the duration of his detention becomes inconsequential. Ransom is the money, price or consideration paid or demanded for the redemption of a captured person that will release him from captivity.[9]

In proving the crime of Kidnapping for Ransom, the prosecution has to show that: (a) the accused was a private person; (b) he kidnapped or detained or in any manner deprived another of his or her liberty; (c) the kidnapping or detention was illegal; and (d) the victim was kidnapped or detained for ransom.[10]

All these were proven in the criminal case on review.

The testimony of Alejandro and Marvelous sufficiently established the commission of the crime and the accused-appellants' culpability. Maca was positively identified by Marvelous as one of the men who collared her, Marelie and Mae by the bedroom, tied them up and brought them to the mountains of Bagyangon. He was also identified as the one who left the group when they were on the mountains to buy food after Con-ui refused. Con-ui, on the other hand, was identified by Alejandro as the one who was addressed by one of the abductors with the statement, "[w]hy did it take you so long in coming back? We were already tired of waiting for you."[11] Con-ui was also identified by Marvelous as the one who took the key to the drawer, opened it and took the money in it.

Their testimony also established the fact that they were deprived of their liberty when they were all hogtied and forcibly brought out of the house and into the mountains. That the deprivation of their liberty was for the purpose of extorting

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[9] *People v. Mostrales*, G.R. No. 184925, June 15, 2011, 652 SCRA 261, 274-275, citing *People v. Bringas*, G.R. No. 189093, April 23, 2010, 619 SCRA 481, 509.

[10] *People v. Ganih*, G.R. No. 185388, June 16, 2010, 621 SCRA 159, 165.

[11] CA *rollo*, p. 35.

ransom was confirmed by Alejandro who testified that the abductors asked him for money and even let him off so he can come up with the ₱300,000.00 ransom.

The Court cannot sustain the accused-appellants' argument regarding the alleged unbelievable testimony of Marvelous or the lack of testimony by Alejandro as regards the "key incident". The rule is that when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This holds truer if such findings were affirmed by the appellate court. Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed.[12] In this case, there is nothing unbelievable in Marvelous' testimony. For one, the accused-appellants failed to show that the physical state of the victims, having been hogtied, rendered them immobile. For another, it is still quite possible for one to move around even if tied up as established in this instance where evidence shows that the victims, at gunpoint, actually even managed to walk out of the house, board the jeep and move further on foot to the mountains. Moreover, the fact that Alejandro did not testify that he saw Con-ui asked for the key to the drawer and took the money in it does not make his testimony as regards the latter's participation in the commission of the crime less believable. Neither does it negate the fact that it actually happened. It should be noted that the "key incident" was testified to by Marvelous and could have occurred only in the girls' presence.

The Court also notes and upholds the finding made by the CA sustaining the observation of the RTC, to wit:

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[12] *People v. Basco*, G.R. No. 189820, October 10, 2012, 683 SCRA 529, 543, citing *Decasa v. CA*, 554 Phil. 160, 180 (2007) and *Nueva España v. People*, 499 Phil. 547, 556 (2005).

What is also compelling is the apt observation of the trial court that the accused-appellant [Con-ui] had an opportunity to escape from the kidnappers when he was directed to look for food, yet for reasons only known to him, he refused to oblige. Accused-appellant testified that he was able to escape from the kidnappers while they were arguing. This Court finds the testimony of accused-appellant self-serving. If[,] indeed, he intended to escape, he would have taken with him the three minors, who were admittedly, his relatives. Moreover, if indeed escaping was on his mind, he could have done this at the earliest opportunity, and at the most convenient excuse, that is when he was directed to look for food by one of the kidnappers.[13]

The Court also finds that the RTC properly disregarded the testimony of Gran, who said that she saw Maca on the date of the incident, October 14, and on October 15. As correctly ruled by the RTC, the testimony of Gran merely established that she saw Maca only on certain hours of October 14 and 15, 2001.[14] Thus, on October 14, she visited the construction site only at 10:00 a.m. and left at lunch time, and went back to the site at 4:00 p.m. and left at 8:00 p.m. She was not on site the entire day of October 14, which raises the possibility that she could not have seen Maca physically present at the construction site at all times or that Maca left during the period when she was not on site. Moreover, her testimony that she saw Maca on October 15 at the same times that she visited on October 14 is belied by the testimony of Police Inspector Judy Jumanoy (Jumanoy). According to Jumanoy, he reported for duty on October 15 and after receiving a call from *barangay* officials of Caromata, he went to Caromata where a *barangay* official and a CAFGU commander presented Maca to him. He was also informed by the officials that it was Maca who bought food for the victims, and upon investigation, Maca admitted his complicity in the crime.[15]

Given the foregoing, the Court finds no reason to disturb the accused- appellants' judgment of conviction.

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[13] CA *rollo*, p. 103.

[14] *Id.* at 47.

[15] *Id*. at 38.

The Court also sustains the reduction of the penalty by the CA. Kidnapping for ransom is punishable by death;[16] however, with the passage of Republic Act No. 9346,[17] the imposition of the death penalty has been prohibited and the penalty of *reclusion perpetua* shall instead be imposed.[18] Further, the same shall be without eligibility for parole.[19]

The Court, however, finds that the damages awarded by the CA should be modified. Recent jurisprudence established the amount of damages to be awarded. In *People of the Philippines v. Halil Gambao y Esmail, et al.*,[20] which also involves a Kidnapping for Ransom case, the Court set the **minimum** indemnity and damages where death is the penalty warranted by the facts but is not imposable under present law, as follows:

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.[21]

The accused-appellants who are principals to the crime shall be jointly and severally liable for these amounts awarded in favor of **each** of the victims. Moreover, these amounts shall accrue interest at the rate of six percent (6%) *per annum*, to earn from the date of the finality of the Court's Resolution until fully paid.[22]

WHEREFORE, the Decision dated December 20, 2011 of the Court of Appeals in CA-G.R. HC No. 00462-MIN is **MODIFIED**.

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[16] REVISED PENAL CODE, Article 267.

[17] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[18] *Id.* at Section 2.

[19] *Id.* at Section 3.

[20] G.R. No. 172707, October 1, 2013.

[21] *Id.*

[22] *People v. Cabungan*, G.R. No. 189355, January 23, 2013, 689 SCRA 236, 249.

Accused-appellants Jonathan Con-ui and Ramil Maca 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. They are also ordered to jointly and severally indemnify each of the victims in the following amounts: (1) ₱100,000.00 as civil indemnity; (2) ₱100,000.00 as moral damages; and (3) ₱100,000.00 as exemplary damages, all of which shall earn interest at the rate of six percent (6%) *per annum* from the date of the finality of the Court's Resolution until fully paid.

In all other respects, the assailed decision of the Court of Appeals is **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 206738. December 11, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ERLINDA MALI *Y* QUIMNO a.k.a. "Linda"**, *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL SALE OF PROHIBITED DRUGS; ELEMENTS; PROVED.— Illegal sale of prohibited drugs, like *shabu*, is committed upon the consummation of the sale transaction which happens at the moment the buyer receives the drug from the seller. If a police officer goes through the operation as a buyer, the crime is consummated when he makes

an offer to buy that is accepted by the accused, and there is an ensuing exchange between them involving the delivery of the dangerous drugs to the police officer. In any case, the successful prosecution of the offense must be anchored on a proof beyond reasonable doubt of two elements, to wit: (a) the identity of the buyer and the seller, the identity of the object and the consideration of the sale; and (b) the delivery of the thing sold and of the payment for the thing. What is material is the proof showing that the transaction or sale actually took place, coupled with the presentation in court of the thing sold as evidence of the *corpus delicti*. The confluence of the above requisites is unmistakable from the testimony of the poseur-buyer herself, PO1 Montuno, who positively testified that the illegal sale actually took place when she gave the ₱100.00 marked money to the accused-appellant in exchange for the *shabu* x x x. The straightforward testimony of PO1 Montuno about the details of her transaction with the accused-appellant passed the "objective" test in buy-bust operations. It is clear from her narration that the following elements occurred: the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration and the consummation of the sale by the delivery of the illegal drug subject of the sale.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE EVALUATION BY THE TRIAL COURT OF THE CREDIBILITY OF WITNESSES IS ENTITLED TO THE HIGHEST RESPECT AND WILL NOT BE DISTURBED ON APPEAL; EXCEPTIONS; NOT PRESENT.— The Court cannot accord merit to the accused-appellant's claim that the x x x events did not take place because she was actually framed-up. Such argument brings to the fore the appreciation by the trial court of the credibility of witnesses, a matter it is most competent to perform having had the first hand opportunity to observe and assess the conduct and demeanor of witnesses. Settled is the rule that the evaluation by the trial court of the credibility of witnesses is entitled to the highest respect and will not be disturbed on appeal. 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 circumstances obtain in the present case and thus, there is no compelling reason for the Court to review or overturn the RTC's factual findings and evaluation of the testimony of witnesses. At any rate, we have examined the records of the case and found that the prosecution's narration vividly replicates the actual event that preceded the accused-appellant's arrest and indictment.

3. ID.; ID.; DEFENSE OF FRAME-UP; TO PROSPER, THE EVIDENCE MUST BE CLEAR AND CONVINCING AND MUST SHOW THAT THE MEMBERS OF THE BUY-BUST TEAM WERE INSPIRED BY ANY IMPROPER MOTIVE OR WERE NOT PROPERLY PERFORMING THEIR DUTY OTHERWISE THE POLICE OFFICERS' TESTIMONIES ON THE OPERATION DESERVE FULL FAITH AND CREDIT.— [A]llegations of frame-up are susceptible to fabrication and are thus assessed with caution by courts. To substantiate such defense, the evidence must be clear and convincing and must show that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty otherwise the police officers' testimonies on the operation deserve full faith and credit. Here, the accused-appellant did not even ascribe any ill motive to PO1 Montuno that could have induced her to falsely testify against the former. Neither do the records indicate any distorted sense of duty on the part of the buy-bust team. Thus, with corroborative documentary evidence to back up the testimonies of prosecution witnesses, the presumption that PO1 Montuno and the rest of the buy-bust team regularly performed their duties must be upheld.

4. CRIMINAL LAW; ILLEGAL SALE OF PROHIBITED DRUGS; CHAIN OF CUSTODY RULE; MARKING UPON IMMEDIATE CONFISCATION OF THE PROHIBITED ITEMS CONTEMPLATES EVEN THAT WHICH WAS DONE AT THE NEAREST POLICE STATION OR OFFICE OF THE APPREHENDING TEAM.— [T]he fact that PO1 Montuno marked the plastic sachet seized from the accused-appellant at the Zamboanga City Police Station and not at the crime scene did not impair its admissibility as evidence or

the integrity of the chain of custody. As clarified in *People v. Angkob*, marking upon "immediate" confiscation of the prohibited items contemplates even that which was done at the nearest police station or office of the apprehending team.

5. ID.; ID.; ID.; FAILURE TO PHOTOGRAPH THE CONFISCATED SACHET OF *SHABU* IS IMMATERIAL TO THE LEGITIMACY OF THE BUY-BUST OPERATION FOR IT IS ENOUGH THAT IT IS ESTABLISHED THAT THE OPERATION WAS INDEED CONDUCTED AND THAT THE IDENTITY OF THE SELLER AND DRUGS SUBJECT OF THE SALE ARE PROVED.— Anent the failure of the buy-bust team to take photographs of the confiscated plastic sachet of *shabu*, it must be noted that while Section 21, paragraph 1, Article II of R.A. No. 9165 dictates the procedural safeguards that must be observed in the handling and custody of confiscated drugs, the implementing rules and regulations (IRR) of the law provides for a qualification such that non-compliance with the procedure will not nullify the confiscation of the drugs x x x. In the recent *People v. Cardenas*, we underscored the *proviso* by stressing that R.A. No. 9165 and its IRR do not require strict compliance with the chain of custody rule: The arrest of an accused will not be invalidated and the items seized from him rendered inadmissible on the sole ground of non-compliance with Sec. 21, Article II of RA 9165. We have emphasized that **what is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused**." Briefly stated, non-compliance with the procedural requirements under RA 9165 and its IRR relative to the custody, photographing, and drug-testing of the apprehended persons, is not a serious flaw that can render void the seizures and custody of drugs in a buy-bust operation. The failure to photograph the confiscated sachet of *shabu* is not fatal to the totality of the evidence for the prosecution. Such fact is immaterial to the legitimacy of the buy-bust operation for it is enough that it is established that the operation was indeed conducted and that the identity of the seller and drugs subject of the sale are proved.

6. ID.; ID.; ID.; THE NON-PRESENTATION OF THE FORENSIC CHEMIST IN ILLEGAL DRUG CASES IS AN

INSUFFICIENT CAUSE FOR ACQUITTAL FOR THE *CORPUS DELICTI* IN CRIMINAL CASES ON PROHIBITED DRUGS HAS NOTHING TO DO WITH THE TESTIMONY OF THE LABORATORY ANALYST.— [T]he failure of the forensic chemist to testify in court did not undermine the case for the prosecution. The non-presentation of the forensic chemist in illegal drug cases is an insufficient cause for acquittal. This is because the *corpus delicti* in criminal cases on prohibited drugs has nothing to do with the testimony of the laboratory analyst. The *corpus delicti* in dangerous drugs cases constitutes the dangerous drug itself. To sustain conviction, its identity must be established in that the substance bought during the buy-bust operation is the same substance offered in court as exhibit. The chain of custody requirement performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.

7. ID.; ID.; ID.; LINKS IN THE CHAIN OF CUSTODY IN A BUY-BUST OPERATION; ESTABLISHED.— In *People v. Arriola*, we enumerated the different links that the prosecution must establish with respect to the chain of custody in a buy-bust operation, *to wit*: (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 by the forensic chemist to the court. Tested against the foregoing guidelines, the Court finds that the prosecution adequately established that there was no break in the chain of custody over the *shabu* seized from the accused-appellant.

8. ID.; ID.; PENALTY OF LIFE IMPRISONMENT AND FINE, IMPOSED.— [T]here exists no reason for the Court to overturn the courts *a quo* in finding the accused-appellant guilty beyond reasonable doubt of the offense of illegal sale of *shabu* as defined and penalized in Section 5, Article II of R.A. No. 9165. Pursuant to the same provision, the RTC and the CA were correct in imposing the penalty of life imprisonment and ₱500,000.00 fine upon the accused-appellant.

APPEARANCES OF COUNSEL

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

D E C I S I O N

REYES, *J.*:

For review is the Decision[1] dated January 31, 2013 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00863-MIN which affirmed the Decision[2] dated August 11, 2010 of the Regional Trial Court (RTC) of Zamboanga City, Branch 13, in Criminal Case No. 5228 (20390), convicting Erlinda Mali *y* Quimno *a.k.a.* "Linda" (accused-appellant) of illegally selling methamphetamine hydrochloride or *shabu*.

The Antecedents

On January 26, 2004, a buy-bust operation was carried out in Sucabon, Zone II, Zamboanga City, by the members of the Task Group Tumba Droga, now the Anti-Illegal Drugs Special Operations Task Force,[3] of the Philippine National Police (PNP) in Zamboanga City. The operation led to the arrest of the accused-appellant[4] who was charged of violating Section 5, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, under the following criminal information, *viz*:

That on or about January 26, 2004, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above- named accused, not being authorized by law to sell, deliver,

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[1] Penned by Associate Justice Jhosep Y. Lopez, with Associate Justices Edgardo T. Lloren and Henri Jean Paul B. Inting, concurring; CA *rollo*, pp. 107-119.

[2] Issued by Presiding Judge Eric D. Elumba; *id.* at 33-42.

[3] TSN, May 10, 2005, p. 8.

[4] Affidavits of Police Officers Hilda Montuno and Amado Mirasol, Jr.; records, pp. 4-5.

transport, distribute or give away to another any dangerous drug, did then and there willfully, unlawfully and feloniously, SELL and DELIVER to PO1 Hilda D. Montuno, a member of the PNP, who acted as buyer, one (1) small size heat-sealed transparent plastic pack weighing 0.0188 grams of white crystalline substance which when subjected to qualitative examination, gave positive result to the tests for METHAMPHETAMINE HYDROCHLORIDE (*shabu*), knowing [the] same to be a dangerous drug.

CONTRARY TO LAW.[5]

On March 17, 2004, an ocular inspection was conducted, whereby the *shabu* stated in the criminal information was presented before the RTC and the accused-appellant by the Forensic Chemist of the PNP Regional Crime Laboratory, Zamboanga City, Police Chief Inspector (PC/Insp.) Mercedes D. Diestro (Diestro). The presentation was witnessed by a representative from the Philippine Drug Enforcement Agency, Senior Police Officer (SPO) 4 Bonifacio Morados.[6] In the ensuing arraignment, the accused-appellant entered a "Not Guilty" plea. Thereafter, pre-trial and trial were held.

The prosecution presented the testimonies of the police officers who participated in the buy-bust operation, Police Officer (PO) 1 Hilda D. Montuno (Montuno) and SPO 1 Amado Mirasol, Jr. (Mirasol), as well as the investigator in charge of the case, PO3 Efren A. Gregorio (Gregorio), and PC/Insp. Ramon Manuel, Jr. (Manuel), Officer-in-Charge of the PNP Crime Laboratory Office.

Documentary and object evidence were likewise submitted, such as: Request for Laboratory Examination,[7] Chemistry Report No. D-024-2004,[8] Affidavit of Poseur-buyer,[9] Affidavit of

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[5] *Id.* at 1.

[6] RTC Order dated March 17, 2004; *id.* at 11.

[7] Exhibits Folder, Exhibit "A".

[8] *Id.*, Exhibit "C".

[9] *Id.*, Exhibit "D".

Arresting Officer,[10] Complaint Assignment Sheet No. 1234,[11] Acknowledgment Receipt of the buy-bust money,[12] Case Report,[13] Forwarding Report,[14] one piece small size heat- sealed transparent plastic sachet containing *shabu*,[15] six strips of folded aluminum foils[16] and marked money consisting of one ₱100.00 bill with serial number KM678788.[17]

Taken collectively, the foregoing evidence showed that:

On January 26, 2004, at around 1:00 p.m., a confidential informant arrived at the Zamboanga City Police Station and reported to PO1 Montuno about illegal drug activities in Sucabon, Zone II, by a woman known as "Linda". PO1 Montuno forthwith relayed the information to Police Senior Inspector (PS/Insp.) Ricardo M. Garcia (Garcia) who, thereafter, summoned the members of the Task Group Tumba Droga for a briefing. They came up with an entrapment plan to be staged by a buy-bust team composed of PS/Insp. Garcia, SPO1 Mirasol, PO2 Rudy Deleña, PO2 Ronald Cordero, and PO1 Montuno, who was designated as the poseur-buyer.[18] PS/Insp. Garcia prepared and gave Montuno ₱100.00 as marked money[19] with serial

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[10] *Id*., Exhibit "E".

[11] *Id*., Exhibit "F".

[12] *Id*., Exhibit "I".

[13] *Id*., Exhibit "J".

[14] *Id*., Exhibit "K".

[15] Submitted to the custody of the RTC for safekeeping and final disposition; *see* Certification dated October 11, 2010 by Branch Clerk of Court Maricel B. Lahi; *id.*, Exhibit "B".

[16] Submitted to the custody of the RTC for safekeeping and final disposition; *id.*, Exhibit "G".

[17] Submitted to the custody of the RTC for safekeeping and final disposition; *id.*, Exhibit "H".

[18] TSN, May 10, 2005, pp. 10-14, 64-67.

[19] *Id*. at 14.

number KM678788 for which she signed an Acknowledgment Receipt.[20]

At around 2:15 p.m., the team proceeded to Sucabon on board an L-300 van which they parked in front of the Bureau of Fire before walking towards the inner portion of Sucabon. PO1 Montuno and the informant sauntered in front of the group with SPO1 Mirasol trailing behind from a distance of about eight to ten meters while the rest of the team followed.[21]

When they reached the target area, the informant pointed to a lady in brown sleeveless shirt and pants waiting by a table and identified her as Linda.[22] PO1 Montuno and the informant approached Linda who, upon recognizing the latter, asked how much they intended to buy. PO1 Montuno answered "*piso lang*", which in street lingo means one hundred pesos. Linda then took out a small transparent plastic sachet containing white crystalline substance from her pocket and handed the same to PO1 Montuno, who in turn gave the ₱100.00 marked money.[23] Immediately thereafter, PO1 Montuno executed the pre-arranged signal by extending her left hand sideward.[24]

Upon seeing PO1 Montuno's signal, SPO1 Mirasol, who positioned himself at a nearby billiard hall, approached them.[25] PO1 Montuno introduced herself as a police officer to Linda and placed her under arrest by asking her to sit. She then frisked Linda and was able to recover from her a small plastic sachet containing six strips of aluminum foil. Afterwards, she informed Linda of her violation and apprised her of her constitutional rights.[26]

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[20] Exhibits Folder, Exhibit "I".

[21] TSN, May 10, 2005, pp. 16-17, 69-70.

[22] *Id*. at 20.

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

[24] *Id*. at 15, 25, 68-69.

[25] *Id*. at 73-77.

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

Linda was taken to the Zamboanga City Police Station where it was learned that her full name is Erlinda Mali *y* Quimno.[27] PO1 Montuno marked the plastic sachet suspected as containing *shabu* with her initials "HM" as well as the sachet containing strips of aluminum foil. She also wrote her initials "HDM" on the ₱100.00 marked money.[28]

PO1 Montuno turned over the confiscated items, the marked money and the person of accused-appellant to PO3 Gregorio.[29] Upon receipt, PO3 Gregorio wrote his initials "EG" on the plastic sachet suspected as containing *shabu* and "EAG" on the other sachet of aluminum foil strips.[30]

Subsequently, PO3 Gregorio prepared the Request for Laboratory Examination and personally brought the same together with the seized evidence to the PNP Crime Laboratory Office.[31] Forensic chemist, PC/Insp. Diestro conducted a laboratory examination on the specimen subject of the request and it tested positive for the presence of methamphetamine hydrochloride or "*shabu*" as shown in Chemistry Report No. D-024-2004.[32]

PC/Insp. Diestro was unable to take the witness stand because at the time of trial, she was on official study leave in Manila. Instead, it was PC/Insp. Manuel as the Officer-in-Charge of the Crime Laboratory Office who brought a copy of the chemistry report to the court. The actual evidence custodian of the report is PO1 Christopher Paner who was, however, dispatched to Basilan hence unavailable to testify.[33]

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[27] *Id*. at 31.

[28] *Id*. at 30, 32-36.

[29] *Id*. at 30.

[30] TSN, May 11, 2005, pp. 6-14.

[31] *Id*. at 17-18.

[32] Exhibits Folder, Exhibit "C".

[33] TSN, March 16, 2005, pp. 5-10.

For her part, the accused-appellant, interposed the defense of denial and frame-up. She and the other defense witness, Kalingalang Ismang (Ismang), claimed that there was no buy-bust operation actually conducted by the police and the prohibited drug presented as evidence was planted. They narrated that at around 2:00 p.m. of January 26, 2004, they were outside the accused-appellant's house in Sucabon playing *Rami-rami,* a cards game, with a certain Golpe. During the game, the accused-appellant left to urinate and when she came back, a woman arrived and asked Ismang who Erlinda was. In reply, Ismang pointed to the accused-appellant who just remained silent.[34]

The woman, who was with four male companions in civilian clothing but armed, then approached the accused-appellant, held her and brought her inside her house. The woman asked the accused-appellant who was selling *shabu*. The accused-appellant replied that she does not know. Thereafter, the woman's companions searched the accused-appellant's house but found nothing. They then brought the accused-appellant to the police station in Zamboanga City where she was again questioned about the peddler of *shabu* to which she gave the same reply. She was thereafter detained and then brought to the Hall of Justice.[35]

Ruling of the RTC

The RTC accorded more credence to the straightforward and consistent testimony of PO1 Montuno which proved all the elements for illegal sale of drugs. Her testimony also showed that the entrapment operation passed the objective test as she was able to narrate the complete details of the transaction, from how she acted as a buyer, to the consummation of the sale and the accused-appellant's eventual arrest. The RTC also noted that in view of the lack of a showing that the arresting officers were impelled by evil motive to indict the accused-appellant, they are presumed to have performed their duties in a regular manner and as such their positive testimonies carry more

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[34] TSN, November 11, 2009, pp. 4-8; TSN, November 12, 2009, pp. 3-6.

[35] TSN, November 12, 2009, pp. 6-9, 21.

evidentiary value than the accused-appellant's bare denial, an inherently weak and self-serving defense. Accordingly, the accused-appellant was convicted of the crime charged and sentenced as follows in the RTC Decision[36] dated August 11, 2010, *viz*:

> WHEREFORE, in the light of the foregoing, this Court finds ERLINDA MALI *y* QUIMNO guilty beyond reasonable doubt for violating Section 5, Article II of R.A. 9165 and is sentenced to suffer the penalty of life imprisonment and pay a fine of five hundred thousand pesos (₱500,000[.00]) without subsidiary imprisonment in case of insolvency.
>
> The methamphetamine hydrochloride used as evidence in this case is hereby ordered confiscated and the Clerk of Court is directed to turn over the same to the proper authorities for disposition.
>
> SO ORDERED.[37]

Ruling of the CA

On appeal to the CA, the accused-appellant argued that the totality of the evidence for the prosecution did not support a finding of guilt beyond reasonable doubt due to the following errors, *viz*: (1) no buy-bust operation transpired and the prohibited drug presented by the prosecution as subject of the alleged illegal sale was planted; (2) the arresting officers did not comply with the chain of custody rule under Section 21 of R.A. No. 9165 when they failed to mark, inventory and photograph the prohibited drug allegedly seized from her; (3) the chemistry report was not properly identified during trial by the forensic chemist; and (4) no evidence was presented as to what happened to the sachet from the time it was submitted to the crime laboratory until it was presented in court.

In its Decision[38] dated January 31, 2013, the CA denied the appeal and concurred with the RTC's findings and conclusions.

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[36] CA *rollo*, pp. 33-42.

[37] *Id.* at 42.

[38] *Id.* at 107-119.

The CA upheld the veracity of the buy-bust operation. Anent the supposed non-compliance with the marking, inventory and photography requirements in R.A. No. 9165, the CA remarked that the accused-appellant is considered to have waived any objections on such matters since she failed to raise the same before the RTC. At any rate, non-compliance with Section 21 of R.A. No. 9165 is not necessarily fatal to the admissibility of the seized prohibited drug because the apprehending team was able to preserve their evidentiary value and integrity when they immediately turned over the effects of the crime and the buy-bust money to the police investigator on the same day. This, the CA concluded, manifests the prudence of the arresting officers in securing the integrity and probative value of the items confiscated from the accused appellant. Moreover, non-compliance with Section 21 of R.A. No. 9165 concerns not the admissibility of evidence but rather its evidentiary weight or probative value, which, in this case was correctly ruled by the RTC to heavily favor the prosecution.

The CA's judgment is now subject to the Court's automatic review.[39] In a Resolution[40] dated July 8, 2013, the Court required the parties to file their supplemental briefs. Instead of so filing, however, the parties manifested that they are instead adopting their respective Briefs before the CA where their legal arguments and positions have already been fully expounded and amplified.[41] The Manifestations are hereby noted and we shall resolve accordingly.

The Issue

For the Court's resolution is whether or not the guilt of the accused-appellant for illegal sale of methamphetamine hydrochloride or *shabu* was proved beyond reasonable doubt.

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[39] Pursuant to *People v. Mateo*, G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 653-658.

[40] *Rollo*, p. 23.

[41] *Id*. at 24-26, 35-36.

The Court's Ruling

We affirm the accused-appellant's conviction and the penalties meted her.

Illegal sale of prohibited drugs, like *shabu*, is committed upon the consummation of the sale transaction which happens at the moment the buyer receives the drug from the seller. If a police officer goes through the operation as a buyer, the crime is consummated when he makes an offer to buy that is accepted by the accused, and there is an ensuing exchange between them involving the delivery of the dangerous drugs to the police officer.[42]

In any case, the successful prosecution of the offense must be anchored on a proof beyond reasonable doubt of two elements, to wit: (a) the identity of the buyer and the seller, the identity of the object and the consideration of the sale; and (b) the delivery of the thing sold and of the payment for the thing. What is material is the proof showing that the transaction or sale actually took place, coupled with the presentation in court of the thing sold as evidence of the *corpus delicti*.[43]

The confluence of the above requisites is unmistakable from the testimony of the poseur-buyer herself, PO1 Montuno, who positively testified that the illegal sale actually took place when she gave the ₱100.00 marked money to the accused-appellant in exchange for the *shabu*, thus:

PROSECUTOR ORILLO:

x x x x x x x x x

Q: And, what happened next, after the briefing, which according to you, took for, more or less, thirty (30) minutes?
A: We proceeded, at or about 2:15, to the area at Sucabon.[44]

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[42] *People v. Bartolome*, G.R. No 191726, February 6, 2013, 690 SCRA 159, 167, citing *People v. Unisa*, G.R. No. 185721, September 28, 2011, 658 SCRA 305, 324-325.

[43] *People v. Brainer*, G.R. No. 188571, October 10, 2012, 683 SCRA 505, 517.

[44] TSN, May 10, 2005, p. 15.

x x x x x x x x x

Q: So, what happened next?
A: When we reached near the area, we stopped, because the Informant pinpointed to me that "the lady waiting there, at the wooden table, wearing brown sleeveless shirt and pants is your target".

x x x x x x x x x

Q: After the Informant pointed to you the place where that certain Linda was, what did you do next?
A: We approached Linda.

x x x x x x x x x

Q: So, when you approached, you and the Informant approached Linda, what happened next?
A: Since the Informant and Linda, they know each other already, it was Linda who said, *"cuanto tu compra?"*("how much will you buy?")

Q: And, then?
A: And, then, I replied, "[₱]100.00"; *"piso lang"*.

Q: At that time, when your Informant was conversing with Linda, how far were you from Linda and the Informant?
A: More or less, myself to the Stenographer's table (estimated at 1 ½ meters)

Q: Now, what happened next, Madam Witness, after you replied, *"piso lang"*?
A: Then she got something from her pocket (witness demonstrated by gesturing as if getting something from her right front pocket).

Q: And, then, what happened next, after she got something from her pocket?
A: She gave it to me; the suspect gave it to me, and she demanded for money.

Q: What was that something given?
A: Small heat-sealed transparent plastic containing suspected *shabu*.

Q: And, you said, she demanded for the money?
A: Yes, Sir.

Q: What did you do?
A: I gave it to her.

Q: How did you give it?
A; When I got the *shabu*, I inspected it, I tried to check, then, I gave the money to her (witness is demonstrating by motioning the act of giving money, pretending to hold something and extending her right hand forward).

PROSECUTOR ORILLO:

Q: And, is that money the money, the marked money that was given to you by P/S Insp[.] Garcia during the briefing?
A: Yes, Sir.

Q: What does it consist of?
A: It is a [₱]100.00 bill.

Q: And, you gave it to Linda?
A: Yes, Sir.

Q: The marked money?
A: Yes, Sir.

Q: Did she receive it?
A: Yes, Sir.[45] [sic]

The straightforward testimony of PO1 Montuno about the details of her transaction with the accused-appellant passed the "objective" test in buy-bust operations. It is clear from her narration that the following elements occurred: the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration and the consummation of the sale by the delivery of the illegal drug subject of the sale.[46]

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[45] *Id*. at 15, 20-24.

[46] In *People v. Doria*, this Court laid down the objective test in evaluating buy-bust operations:

We therefore stress that the "objective" test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately

The Court cannot accord merit to the accused-appellant's claim that the foregoing events did not take place because she was actually framed-up. Such argument brings to the fore the appreciation by the trial court of the credibility of witnesses, a matter it is most competent to perform having had the first hand opportunity to observe and assess the conduct and demeanor of witnesses.[47] Settled is the rule that the evaluation by the trial court of the credibility of witnesses is entitled to the highest respect and will not be disturbed on appeal.[48]

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.[49] However, none of these circumstances obtain in the present case and thus, there is no compelling reason for the Court to review or overturn the RTC's factual findings and evaluation of the testimony of witnesses.

At any rate, we have examined the records of the case and found that the prosecution's narration vividly replicates the actual event that preceded the accused-appellant's arrest and indictment.

Moreover, allegations of frame-up are susceptible to fabrication and are thus assessed with caution by courts. To substantiate such defense, the evidence must be clear and convincing and

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shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. 361 Phil. 595, 621 (1999).

[47] *People v. De Jesus,* G.R. No. 191753, September 17, 2012, 680 SCRA 680, 687, citing *People v. Bautista*, G.R. No. 191266, June 6, 2011, 650 SCRA 689, 700.

[48] *People v. Reynaldo "Andy" Somoza y Handaya,* G.R. No. 197250, July 17, 2013.

[49] *People v. De Jesus*, *supra* note 47.

must show that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty otherwise the police officers' testimonies on the operation deserve full faith and credit.[50] Here, the accused-appellant did not even ascribe any ill motive to PO1 Montuno that could have induced her to falsely testify against the former. Neither do the records indicate any distorted sense of duty on the part of the buy-bust team. Thus, with corroborative documentary evidence to back up the testimonies of prosecution witnesses, the presumption that PO1 Montuno and the rest of the buy-bust team regularly performed their duties must be upheld.

The courts *a quo* correctly rejected the accused-appellant's contention that the chain of custody rule was not fulfilled.

First, the fact that PO1 Montuno marked the plastic sachet seized from the accused-appellant at the Zamboanga City Police Station and not at the crime scene did not impair its admissibility as evidence or the integrity of the chain of custody. As clarified in *People v. Angkob*,[51] marking upon "immediate" confiscation of the prohibited items contemplates even that which was done at the nearest police station or office of the apprehending team.[52]

The allegation that no inventory of the items seized from the accused-appellant was made is belied by the Complaint Assignment Sheet No. 1234 signed by PS/Insp. Garcia enumerating the items confiscated from the accused-appellant during the buy-bust operation: "one (1) small size heat sealed transparent plastic pack containing suspected *shabu* (methamphetamine hydrochloride), marked money of one hundred peso bill with SN KM678788 and six (6) strips/fol[d]ed aluminum foil."[53]

Anent the failure of the buy-bust team to take photographs of the confiscated plastic sachet of *shabu*, it must be noted that

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[50] *People v. Brainer, supra* note 43, at 522.

[51] G.R. No. 191062, September 19, 2012, 681 SCRA 414.

[52] *Id.* at 426.

[53] Exhibits Folder, Exhibit "F".

while Section 21, paragraph 1, Article II of R.A. No. 9165[54] dictates the procedural safeguards that must be observed in the handling and custody of confiscated drugs, the implementing rules and regulations (IRR) of the law provides for a qualification such that non-compliance with the procedure will not nullify the confiscation of the drugs, thus:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]**[55] (Emphasis ours)

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[54] Sec. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

x x x x x x x x x

[55] IRR of R.A. No. 9165, Article II, Section 21.

In the recent *People v. Cardenas*,[56] we underscored the *proviso* by stressing that R.A. No. 9165 and its IRR do not require strict compliance with the chain of custody rule:

> The arrest of an accused will not be invalidated and the items seized from him rendered inadmissible on the sole ground of non-compliance with Sec. 21, Article II of RA 9165. We have emphasized that **what is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused**."
>
> Briefly stated, non-compliance with the procedural requirements under RA 9165 and its IRR relative to the custody, photographing, and drug-testing of the apprehended persons, is not a serious flaw that can render void the seizures and custody of drugs in a buy-bust operation.[57] (Emphasis supplied)

The failure to photograph the confiscated sachet of *shabu* is not fatal to the totality of the evidence for the prosecution. Such fact is immaterial to the legitimacy of the buy-bust operation for it is enough that it is established that the operation was indeed conducted and that the identity of the seller and drugs subject of the sale are proved.[58]

Second, the failure of the forensic chemist to testify in court did not undermine the case for the prosecution. The non-presentation of the forensic chemist in illegal drug cases is an insufficient cause for acquittal. This is because the *corpus delicti* in criminal cases on prohibited drugs has nothing to do with the testimony of the laboratory analyst.[59]

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[56] G.R. No. 190342, March 21, 2012, 668 SCRA 827.

[57] *Id*. at 837, citing *People v. Ara*, G.R. No. 185011, December 23, 2009, 609 SCRA 304, 325.

[58] *Imson v. People*, G.R. No. 193003, July 13, 2011, 653 SCRA 826, 835, citing *People v. Campos*, G.R. No. 186526, August 25, 2010, 629 SCRA 462, 468.

[59] *People v. Quebral*, G.R. No. 185379, November 27, 2009, 606 SCRA 247, 255.

The *corpus delicti* in dangerous drugs cases constitutes the dangerous drug itself. To sustain conviction, its identity must be established in that the substance bought during the buy-bust operation is the same substance offered in court as exhibit. The chain of custody requirement performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.[60]

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 which implements R.A. No. 9165 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[.]

In *People v. Arriola*,[61] we enumerated the different links that the prosecution must establish with respect to the chain of custody in a buy-bust operation, *to wit*: (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 by the forensic chemist to the court.[62]

Tested against the foregoing guidelines, the Court finds that the prosecution adequately established that there was no break

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[60] *People v. Brainer, supra* note 43, at 523-524.

[61] G.R. No. 187736, February 8, 2012, 665 SCRA 581.

[62] *Id.* at 598.

in the chain of custody over the *shabu* seized from the accused-appellant.

During the buy-bust operation, the accused-appellant gave PO1 Montuno a small transparent plastic sachet containing white crystalline substance in exchange for the latter's payment of ₱100.00.[63] After arresting the accused-appellant, PO1 Montuno held on to the confiscated plastic sachet until they reached the Zamboanga City Police Station where she marked the same with her initials "HM".[64] Thereat, an inventory of the items seized from the accused-appellant, including the small transparent plastic sachet containing white crystalline substance, was also made in the Complaint Assignment Sheet signed by the team leader of Task Force Tumba Droga, PS/Insp. Garcia.[65]

Thereafter, PO1 Montuno turned over the marked plastic sachet to the investigating officer,[66] PO3 Gregorio, who in turn, also wrote his initials "EG" thereon.[67]

Within the same day, PO3 Gregorio prepared the Request for Laboratory Examination and personally brought the marked plastic sachet to the PNP Crime Laboratory Office where it was received by PO2 Danilo Cabahug.[68] Based on her Chemistry Report No. D-024-2004, forensic chemist, PC/Insp. Diestro received the plastic sachet with marking EG HM and examined its contents which tested positive for the presence of *shabu*.[69]

Lastly, the same small transparent plastic sachet with markings EG HM and the white crystalline substance it contains were identified in open court by PO1 Montuno and she confirmed

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[63] TSN, May 10, 2005, pp. 23-24.

[64] *Id*. at 30, 54-55.

[65] Exhibits Folder, Exhibit "F".

[66] TSN, May 10, 2005, p. 30.

[67] TSN, May 11, 2005, pp. 10-12.

[68] *Id*. at 17-18.

[69] Exhibits Folder, Exhibit "C".

that the marking she placed at the police station is the same marking on the plastic sachet presented as evidence in court, *viz*:

PROSECUTOR ORILLO:

x x x x x x x x x

Q How about the *shabu*, which you said, you bought from the accused, and can you still identify it?
A Yes, because I placed my marking before turning it over.

Q Will you describe to this Honorable Court the condition of this item?
A A very small heat-sealed plastic sachet.

Prosecutor Orillo:

Q I am showing to you, Madam Witness, a small heat-sealed transparent plastic pack containing *shabu*, will you go over this and tell the Honorable Court what is this, in relation to the *shabu* that you bought from the accused, using the marked money?
A This is the very one, because I placed marking on it, the one I bought from the suspect.

Q And, you said, you placed your marking on it?
A Yes, Sir.

Q When you turned it over to your Police Station?
A Yes, Sir.

Q Where is your marking?
A These letters, HM; this is covered by the masking tape (witness pointing to the initial "HM", where "H" is covered by the white masking tape).[70]

The details by which PO1 Montuno was able to identify her markings leave no room for doubt that indeed, the heat-sealed plastic sachet of *shabu* presented during trial was the exact item sold to her by the accused-appellant during the buy-bust operation. As a matter of fact, even during cross-examination, PO1 Montuno was able to declare another distinct feature of

[70] TSN, May 10, 2005, pp. 32-34.

the marking she placed on the confiscated sachet containing *shabu* amidst rigid cross-examination by the defense, thus:

ATTY. TALIP:

x x x x x x x x x

Q If shown to you another very or small sachet of about the same size with the same marking, HM, would you know the difference between one to the other?
A Yes, Ma'am, after we placed the marking, we brought it already to the crime laboratory.

Q Were you the one who brought it?
A No, Ma'am.

Q You have no knowledge of that?
A As far as the purpose of the investigation only.

Q Exactly, that's why I am asking you, because your knowledge of the sachet only stops there, on the sachet with marking HM. So, I am asking you, if shown another set of sachet of about the same size with the same marking, would you be able to distinguish one from the other?
A Yes, it depends on the marking.

Q Similar marking, HM; anyone could write those letters.
A Because I am particular with my marking, because I wrote it with a blue pilot pen.[71]

Indeed, PO1 Montuno's meticulous identification of the small heat-sealed transparent plastic sachet containing *shabu* precludes any misgivings of tampering from the time it was submitted to the crime laboratory until it was presented in court.

All told, there exists no reason for the Court to overturn the courts *a quo* in finding the accused-appellant guilty beyond reasonable doubt of the offense of illegal sale of *shabu* as defined and penalized in Section 5, Article II of R.A. No. 9165.[72]

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[71] *Id.* at 56-57.

[72] Sec. 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

Pursuant to the same provision, the RTC and the CA were correct in imposing the penalty of life imprisonment and ₱500,000.00 fine upon the accused-appellant.

WHEREFORE, premises considered, the Decision dated January 31, 2013 of the Court of Appeals in CA-G.R. CR-HC No. 00863-MIN is **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 208290. December 11, 2013]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **THE HONORABLE JUANITO C. CASTANEDA, JR., HONORABLE CAESAR A. CASANOVA, HONORABLE CIELITO N. MINDARO-GRULLA, AS ASSOCIATE JUSTICES OF THE SPECIAL SECOND DIVISION, COURT OF TAX APPEALS; and MYRNA M. GARCIA and CUSTODIO MENDOZA VESTIDAS, JR.,** *respondents.*

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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.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE 60-DAY PERIOD TO FILE THE PETITION IS GENERALLY INEXTENDIBLE TO AVOID ANY UNREASONABLE DELAY THAT WOULD VIOLATE THE CONSTITUTIONAL RIGHTS OF PARTIES TO A SPEEDY DISPOSITION OF THEIR CASE; EXCEPTION; CASE AT BAR.— Section 4, Rule 65 of the 1997 Rules of Civil Procedure is explicit in stating that *certiorari* should be instituted within a period of 60 days from notice of the judgment, order or resolution sought to be assailed. The 60-day period is inextendible to avoid any unreasonable delay that would violate the constitutional rights of parties to a speedy disposition of their case. While there are recognized exceptions to such strict observance, there should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules. In the case at bench, no convincing justification for the belated filing of the petition was advanced to warrant the relaxation of the Rules. Notably, the records show that **the petition was filed** only on August 12, 2013, or **almost a month late from the due date** which fell on July 16, 2013. To excuse this grave procedural lapse will not only be unfair to the other party, but it will also sanction a seeming rudimentary attempt to circumvent standing rules of procedure. Suffice it to say, the reasons proffered by the petitioner do not carry even a tinge of merit that would deserve leniency. The late filing of the petition was borne out of the petitioner's failure to monitor incoming court processes that needed to be addressed by the office. Clearly, this is an admission of inefficiency, if not lack of zeal, on the part of an office tasked to effectively curb smuggling activities which rob the government of millions of revenue every year.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; LAWYERS REPRESENTING THE OFFICES UNDER THE EXECUTIVE BRANCH REMAIN AS OFFICERS OF THE COURT FROM WHOM A HIGH SENSE OF COMPETENCE AND FERVOR IS EXPECTED.— The display of patent violations of even the elementary rules leads the Court to suspect that the case against

Garcia and Vestidas Jr. was **doomed by design** from the start. The failure to present the certified true copies of documentary evidence; the failure to competently and properly identify the misdeclared goods; the failure to identify the accused in court; and, worse, the failure to file this petition on time challenging a judgment of acquittal, are tell-tale signs of a reluctant and subdued attitude in pursuing the case. This stance taken by the lawyers in government service rouses the Court's vigilance against inefficiency in the administration of justice. Verily, the lawyers representing the offices under the executive branch should be reminded that they still remain as officers of the court from whom a high sense of competence and fervor is expected. The Court will not close its eyes to this sense of apathy in RATS lawyers, lest the government's goal of revenue enhancement continues to suffer the blows of smuggling and similar activities. Even the error committed by the RATS in filing a motion for reconsideration with the CTA displays gross ignorance as to the effects of an acquittal in a criminal case and the constitutional proscription on double jeopardy. Had the RATS been eager and keen in prosecuting the respondents, it would have, in the first place, presented its evidence with the CTA in strict compliance with the Rules.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHILE A JUDGMENT OF ACQUITTAL IN A CRIMINAL CASE MAY BE ASSAILED IN A PETITION FOR *CERTIORARI*, IT MUST BE SHOWN THAT THERE WAS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION OR A DENIAL OF DUE PROCESS; GRAVE ABUSE OF DISCRETION AND DENIAL OF DUE PROCESS NOT PRESENT IN CASE AT BAR.— [E]ven if the Court decides to suspend the rules and permit this recourse, the end result would remain the same. While a judgment of acquittal in a criminal case may be assailed in a petition for *certiorari* under Rule 65 of the Rules of Court, it must be shown that there was grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process. In this case, a perusal of the challenged resolutions of the CTA does not disclose any indication of grave abuse of discretion on its part or denial of due process. The records are replete with indicators that the petitioner actively participated during the trial and, in fact, presented its offer of

evidence and opposed the demurrer. Grave abuse of discretion is defined as capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Here, the subject resolutions of the CTA have been issued in accordance with the rules on evidence and existing jurisprudence.

4. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; APPLIES ALSO TO LAWYERS IN GOVERNMENT SERVICE IN THE DISCHARGE OF THEIR OFFICIAL TASKS.— [T]he Court deems it proper to remind the lawyers in the Bureau of Customs that the canons embodied in the Code of Professional Responsibility equally apply to lawyers in government service in the discharge of their official tasks. Thus, RATS lawyers should exert every effort and consider it their duty to assist in the speedy and efficient administration of justice.

R E S O LU T I O N

***PER CURIAM*:**

This is a petition for *certiorari* under Rule 65 of the Rules of Court seeking to review the March 26, 2013[1] and May 15, 2013[2] Resolutions of the Court of Tax Appeals *(CTA)* in CTA Crim. Case No. 0-285, ordering the dismissal of the case against the private respondents for violation of Section 3602[3] in

[1] *Rollo*, pp. 30-45.

[2] *Id*. at 62-64.

[3] Various Fraudulent Practices Against Customs Revenue. - Any person who makes or attempts to make any entry of imported or exported article by means of any false or fraudulent invoice, declaration, affidavit, letter, paper or by any means of any false statement, written or verbal, or by any means of any false or fraudulent practice whatsoever, or knowingly effects any entry of goods, wares or merchandise, at less than true weight or measures thereof or upon a false classification as to quality or value, or by the payment

relation to Sections 2503 and 2530 (f) (i) and 1, (3) (4) and (5) of the Tariff and Customs Code of the Philippines, as amended, on the ground of insufficiency of evidence.

The antecedents as culled from the records:

Private respondents Myrna M. Garcia *(Garcia)* and Custodio Mendoza Vestidas, Jr. *(Vestidas Jr.)* were charged before the CTA under an Information which reads:

That on or about November 5, 2011, or prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Myrna M. Garcia and Custodio Mendoza Vestidas, Jr. as owner/proprietress and broker of Plinth Enterprise respectively, conspiring and confederating with each other, with intent to defraud the government, did then and there willfully, unlawfully and fraudulently import into the Port of Manila, 858 cartons of 17,160 pieces of Anti-Virus Software Kaspersky Internet Security Premium 2012, subject to customs duties, by misdeclaration under Import Entry No. C-181011 and Bill of Lading No. PFCMAN1715, filed with the Bureau of Customs (BOC), covering One Forty Footer (1x40) container van shipment bearing No. KKFU7195683 which was falsely declared to contain 40 pallets/1,690 cartons of CD kit cleaner and plastic CD case, said imported items having customs duties amounting to Three Million Three Hundred Forty One Thousand Two Hundred Forty Five Pesos (Php 3,341,245) of which only the amount of One Hundred Thousand Three Hundred Sixty Two Pesos (Php100,362) was paid, in violation of the above-captioned law, and to the prejudice and damage of the Government in the amount of Three Million Two Hundred Forty Thousand Eight Hundred Eighty Three Pesos (Php3,240,883).[4]

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of less than the amount legally due, or knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback or refund of duties upon the exportation of merchandise, or makes or files any affidavit abstract, record, certificate or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties on the exportation of merchandise, greater than that legally due thereon, or who shall be guilty of any willful act or omission shall, for each offence, be punished in accordance with the penalties prescribed in the preceding section.

[4] *Rollo,* p. 31.

In a hearing held on August 1, 2012, Garcia and Vestidas Jr. pleaded "Not Guilty" to the aforementioned charge. Thereafter, a preliminary conference was held on September 5, 2012 followed by the pre-trial on September 13, 2012. Both the prosecution and the defense agreed to adopt the joint stipulations of facts and issues entered in the course of the preliminary conference.

Thereafter, trial ensued.

The prosecution presented a number of witnesses who essentially observed[5] the physical examination of Container Van No. KKFU 7195638 conducted[6] by the Bureau of Customs (BOC) and explained[7] the process of electronic filing under the Electronic to Mobile (E2M) Customs Systems of the BOC and the alleged misdeclared goods therein.

Subsequent to the presentation of witnesses, the prosecution filed its Formal Offer of Evidence on December 10, 2012.

On January 15, 2013, Garcia and Vestidas, Jr. filed their Omnibus Motion to File Demurrer to Evidence with Leave of Court to Cancel Hearing Scheduled on January 21, 2013, which was granted by the CTA. Thereafter, they filed the Demurrer to Evidence, dated January 13, 2012, claiming that the prosecution failed to prove their guilt beyond reasonable doubt for the following reasons:

a) The pieces of documentary evidence submitted by the prosecution were inadmissible in court;

b) The object evidence consisting of the allegedly misdeclared goods were not presented as evidence; and

c) None of the witnesses for the prosecution made a positive identification of the two accused as the ones responsible for the supposed misdeclaration.

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[5] Rhoderick L. Yuchongco, X-Ray Inspector Bureau of Customs.

[6] Jose A. Saromo, Customs Operations Officer III, Bureau of Customs.

[7] Nomie V. Gonzales, Chief of the Systems Management Division, Bureau of Customs.

Despite opposition, the CTA dismissed the case against Garcia and Vestidas Jr. in its March 26, 2013 Resolution, for failure of the prosecution to establish their guilt beyond reasonable doubt.

According to the CTA, "no proof whatsoever was presented by the prosecution showing that the certified true copies of the public documents offered in evidence against both accused were in fact issued by the legal custodians."[8] It cited Section 26, Rule 132 of the Revised Rules of Court, which provides that "when the original of a document is a public record, it should not generally be removed from the office or place in which it is kept."[9] As stated in Section 7, Rule 130,[10] its contents may be proven using secondary evidence and such evidence may pertain to the certified true copy of the original document issued by the public officer in custody thereof. Hence, the CTA wrote that the certified true copies of the public documents offered in evidence should have been presented in court.

Anent its offer of private documents,[11] the prosecution likewise failed to comply with Section 27, Rule 132 of the Rules of Court, which reads, "[a]n authorized public record of a private document may be proved by the original record, or by a copy thereof, attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody." Considering that the private documents were submitted and filed with the BOC, the same became part of public records. Again, the records show that the prosecution failed to present the certified true copies of the documents.

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[8] *Rollo*, p. 41.

[9] *Id*.

[10] When the original of document is in the custody of public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof.

[11] Certified True Copy of Import Entry No. C-181011, Certified True Copy of Bill of Lading PFCFMAN1715 and Certified True Copy of Invoice No. 309213.

The CTA noted that, in its Opposition to the Demurrer, the prosecution even admitted that none of their witnesses ever positively identified the accused in open court and that the alleged misdeclared goods were not competently and properly identified in court by any of the prosecution witnesses.

The prosecution filed its motion for reconsideration, but it was denied by the CTA in its May 15, 2013 Resolution, stressing, among others, that to grant it would place the accused in double jeopardy.[12]

On July 24, 2013, the Run After the Smugglers (RATS) Group, Revenue Collection Monitoring Group (RCMG), as counsel for the BOC, received a copy of the July 15, 2013 Resolution of the CTA ordering the entry of judgment in the case.

Hence, this petition for *certiorari*, ascribing grave abuse of discretion on the part of the CTA when in ruled that: 1) the pieces of documentary evidence submitted by the prosecution were inadmissible in evidence; 2) the object evidence consisting of the alleged misdeclared goods were not presented as evidence; and 3) the witnesses failed to positively identify the accused as responsible for the misdeclaration of goods.

The Court agrees with the disposition of the CTA.

At the outset, it should be noted that the **petition** was filed **beyond the reglementary period** for the filing thereof under Rule 65. The petition itself stated that a copy of the May 15, 2013 Resolution was received by the BOC two (2) days after its promulgation, or on May 17, 2013. Nonetheless, the RATS was only alerted by the developments in the case on July 24, 2013, when Atty. Danilo M. Campos Jr. *(Atty. Campos)* received the July 15, 2013 Resolution of the CTA ordering the entry of judgment in the case, considering that no appeal was taken by any of the parties. According to Atty. Campos, it was only on that occasion when he discovered the May 15, 2013 Resolution of the CTA. Thus, it was prayed that the petition be given due course despite its late filing.

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[12] *Rollo,* pp. 62-64.

This belated filing cannot be countenanced by the Court.

Section 4, Rule 65 of the 1997 Rules of Civil Procedure is explicit in stating that *certiorari* should be instituted within a period of 60 days from notice of the judgment, order or resolution sought to be assailed. The 60-day period is inextendible to avoid any unreasonable delay that would violate the constitutional rights of parties to a speedy disposition of their case.[13] While there are recognized exceptions[14] to such strict observance, there should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.[15]

In the case at bench, no convincing justification for the belated filing of the petition was advanced to warrant the relaxation of the Rules. Notably, the records show that **the petition was filed** only on August 12, 2013, or **almost a month late from the due date** which fell on July 16, 2013. To excuse this grave procedural lapse will not only be unfair to the other party, but it will also sanction a seeming rudimentary attempt to circumvent standing rules of procedure. Suffice it to say, the reasons proffered by the petitioner do not carry even a tinge of merit that would deserve leniency. The late filing of the petition was

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[13] *Republic v. St. Vincent de Paul Colleges, Inc.*, G.R. No. 192908, August 22, 2012, 678 SCRA 738, citing *Labao v. Flores*, G.R. No. 187984, November 15, 2010, 634 SCRA 723.

[14] (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances.

[15] *Supra* note 13.

borne out of the petitioner's failure to monitor incoming court processes that needed to be addressed by the office. Clearly, this is an admission of inefficiency, if not lack of zeal, on the part of an office tasked to effectively curb smuggling activities which rob the government of millions of revenue every year.

The display of patent violations of even the elementary rules leads the Court to suspect that the case against Garcia and Vestidas Jr. was **doomed by design** from the start. The failure to present the certified true copies of documentary evidence; the failure to competently and properly identify the misdeclared goods; the failure to identify the accused in court; and, worse, the failure to file this petition on time challenging a judgment of acquittal, are tell-tale signs of a reluctant and subdued attitude in pursuing the case. This stance taken by the lawyers in government service rouses the Court's vigilance against inefficiency in the administration of justice. Verily, the lawyers representing the offices under the executive branch should be reminded that they still remain as officers of the court from whom a high sense of competence and fervor is expected. The Court will not close its eyes to this sense of apathy in RATS lawyers, lest the government's goal of revenue enhancement continues to suffer the blows of smuggling and similar activities.

Even the error committed by the RATS in filing a motion for reconsideration with the CTA displays gross ignorance as to the effects of an acquittal in a criminal case and the constitutional proscription on double jeopardy. Had the RATS been eager and keen in prosecuting the respondents, it would have, in the first place, presented its evidence with the CTA in strict compliance with the Rules.

In any case, even if the Court decides to suspend the rules and permit this recourse, the end result would remain the same. While a judgment of acquittal in a criminal case may be assailed in a petition for *certiorari* under Rule 65 of the Rules of Court, it must be shown that there was grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process. In this case, a perusal of the challenged resolutions of the CTA does not disclose any indication of grave abuse of

discretion on its part or denial of due process. The records are replete with indicators that the petitioner actively participated during the trial and, in fact, presented its offer of evidence and opposed the demurrer.

Grave abuse of discretion is defined as capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[16] Here, the subject resolutions of the CTA have been issued in accordance with the rules on evidence and existing jurisprudence.

On a final note, the Court deems it proper to remind the lawyers in the Bureau of Customs that the canons embodied in the Code of Professional Responsibility equally apply to lawyers in government service in the discharge of their official tasks.[17] Thus, RATS lawyers should exert every effort and consider it their duty to assist in the speedy and efficient administration of justice.[18]

WHEREFORE, the petition is **DISMISSED** and the assailed March 26, 2013 and May 15, 2013 Resolutions of the Court of Tax Appeals are **AFFIRMED**.

The Office of the Ombudsman is hereby ordered to conduct an investigation for possible criminal or administrative offenses committed by the Run After the Smugglers (RATS) Group, Revenue Collection Monitoring Group (RCMG), Bureau of Customs, relative to the filing and handling of the subject complaint for violations of the Tariff and Customs Code of the Philippines.

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[16] *De Vera v. De Vera*, G.R. No. 172832, April 7, 2009, 584 SCRA 506, 515.

[17] Canon 6, Chapter I, Code of Professional Responsibility.

[18] Canon 12, Chapter III, Code of Professional Responsibility.

Let copies of this resolution be furnished the Office of the President, the Secretary of Finance, the Collector of Customs, and the Office of the Ombudsman for their guidance and appropriate action.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, Mendoza, and *Leonen, JJ.,* concur.

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CONTRACTS

Interpretation — The decisive factor in evaluating the agreement is the intention of the parties, as shown not necessarily by the terminology used in the contract but by their conduct, words, actions and deeds prior to, during and immediately after executing the agreement. (Ace Foods, Inc. *vs*. Micro Pacific Technologies Co., Ltd., G.R. No. 200602, Dec. 11, 2013) p. 742

— The denomination or title given by the parties in their contract is not conclusive of the nature of its contents. *(Id.)*

CORPORATIONS

Corporate president — Presumed to have an authority to act within the domain of the general objectives of the corporation's business and within the scope of his usual duties in the absence of a charter or by-laws provision to the contrary. (Advance Paper Corp. *vs*. Arma Traders Corp., G.R. No. 176897, Dec. 11, 2013) p. 401

Doctrine of apparent authority — Provides that a corporation will be estopped from denying the agent's authority if it knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, and it holds him out to the public as possessing the power to do those acts. (Advance Paper Corp. *vs*. Arma Traders Corp., G.R. No. 176897, Dec. 11, 2013) p. 401

DAMAGES

Costs of Suit — Costs shall be allowed to the prevailing party as a matter of course unless otherwise provided in the Rules of Court. (Ramirez *vs*. The Manila Banking Corporation, G.R. No. 198800, Dec. 11, 2013) p. 674

DENIAL OF THE ACCUSED

Defense of — A weak defense in a Dangerous Drugs Act violation. (People *vs*. Taculod, G.R. No. 198108, Dec. 11, 2013) p. 627

EVIDENCE

Burden of proof — Each party must prove his own affirmative allegation and one who asserts the affirmative of the issue has the burden of presenting at the trial such amount of evidence required by law to obtain a favorable judgment, which in civil cases is by preponderance of evidence. (Ace Foods, Inc. *vs.* Micro Pacific Technologies Co., Ltd., G.R. No. 200602, Dec. 11, 2013) p. 742

Documentary evidence — Failure to present the originals raises the presumption that evidence willfully suppressed would be adverse if produced. (Loon *vs.* Power Master, Inc., G.R. No. 189404, Dec. 11, 2013) p. 515

Hearsay evidence — Evidence is hearsay when its probative force depends on the competency and credibility of some persons other than the witness by whom it is sought to be produced. (National Power Corp. *vs.* YCLA Sugar Dev't., G.R. No. 193936, Dec. 11, 2013) p. 616

Offer of evidence — Evidence offered but not objected to may be deemed admitted and validly considered by the court. (Advance Paper Corp. *vs.* Arma Traders Corp., G.R. No. 176897, Dec. 11, 2013) p. 401

EVIDENT PREMEDITATION

As a qualifying circumstance — 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.* Sabangan, G.R. No. 191722, Dec. 11, 2013) p. 591

EXEMPLARY DAMAGES

Award of — Imposed by way of example for the public good, in addition to moral, temperate, liquidated or compensatory damages. (Ramirez *vs.* The Manila Banking Corporation, G.R. No. 198800, Dec. 11, 2013) p.674

— In deciding administrative cases against erring judges or justices, the Court has to strike a balance between the need for accountability and integrity in the Judiciary, on one hand, with the need to protect the independence and efficiency of the Judiciary from a vindictive and enterprising litigant, on the other hand. *(Id.)*

— Parties are not entitled to be notified of any mandatory disqualification or voluntary inhibition of the justice who has participated in any action of the court. (*Re*: Letters of Lucena B. Rallos for Alleged Acts/Incidents/Occurrences Relative to the Resolution(s) Issued in CA-G.R. SP No. 06676, IPI No. 12-203-CA-J, Dec. 10, 2013) p. 1

— There are two kinds of inhibition: (1) mandatory inhibition, where the disqualified Justice must notify the Raffle Committee and the members of the Division of the decision to inhibit; and (2) voluntary inhibition, where the inhibiting Justice must inform the other members of the Division, the Presiding Justice, the Raffle Committee, and the Division Clerk of Court of the decision to inhibit and the reason for the inhibition. *(Id.)*

KIDNAPPING FOR RANSOM

Civil liabilities of accused — Accused shall be liable for (1) civil indemnity; (2) moral damages; and (3) exemplary damages. (People *vs.* Con-ui, G.R. No. 205442, Dec. 11, 2013) p. 827

Commission of — Elements of the crime are: (1) the offender is a private individual; (2) he kidnaps or detains another or in any other manner deprives the latter of is liberty; (3) the act of detention or kidnapping is illegal; and (4) the victim was kidnapped or detained for ransom. (People *vs.* Con-ui, G.R. No. 205442, Dec. 11, 2013) p. 827

Imposable penalty — Applying R.A. No. 9346, death penalty is reduced to *reclusion perpetua* without eligibility for parole. (People *vs.* Con-ui, G.R. No. 205442, Dec. 11, 2013) p. 827

— The *animus novandi*, whether totally or partially, must appear by express agreement of the parties, or by their acts that are too clear and unequivocal to be mistaken. *(Id.)*

PARTY-LIST SYSTEM (R.A. NO. 7941)

Proportional representation — A sectoral party which was not benefitted or injured by the formula used by the COMELEC to determine the proportional representation of the party-list candidates in the House of Representatives has no legal standing to question the validity of such formula. (Alliance for Rural and Agrarian Reconstruction, Inc. *vs*. COMELEC, G.R. No. 192803, Dec. 10, 2013) p. 160

— In determining the party-list group representation in the House of Representatives, not all votes cast in the elections should be included in the divisor to determine the 2% threshold. *(Id.)*

— The formula in determining the proportion or percentage of votes garnered by the party-list would be the number of votes of the party-list divided by the total number of valid votes for the party-list candidates. *(Id.)*

— The party-list group in the ballot that has been disqualified with finality and whose final disqualification was made known to the electorate by the COMELEC should not be included in the divisor. *(Id.)*

— The total votes cast for the party-list system should include valid votes cast for party-list organizations disqualified with finality after the day of the elections but not those disqualified with finality before the day of the elections. (Alliance for Rural and Agrarian Reconstruction, Inc. *vs*. COMELEC, G.R. No. 192803, Dec. 10, 2013; *Velasco, Jr., J., concurring and dissenting opinion*) p. 160

— Total votes cast for the party-list system should mean all the votes validly cast for all the candidates listed in the ballot. (Alliance for Rural and Agrarian Reconstruction, Inc. *vs*. COMELEC, G.R. No. 192803, Dec. 10, 2013) p. 160

— Refers to the trial stage or period during which the employer examines the competency and qualification of job applicants, and determines whether they are qualified to be extended permanent employment status. *(Id.)*

Termination of — Aside from just or authorized causes of termination, additional ground is provided under Article 295 of the Labor Code, *i.e.* he may also be terminated for failure to qualify as a regular employee in accordance with the reasonable standards made known by the employer to the employee at the time of the engagement. (Herrera-Manaois *vs*. St. Scholastica's College, G.R. No. 188914, Dec. 11, 2013) p. 495

PROSECUTION OF OFFENSES

Complaint or information — The real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of the law alleged to have been violated, which are mere conclusions of law, but by the actual recital of the facts in the complaint or information. (People *vs*. Banzuela, G.R. No. 202060, Dec. 11, 2013) p. 797

(Roallos *vs*. People, G.R. No. 198389, Dec. 11, 2013) p. 655

PUBLIC LAND ACT (C.A. NO. 141)

Application — Remains the existing general law governing the classification and disposition of lands of the public domain, other than timber and mineral lands. (Rep. of the Phils. *vs*. Roxas, G.R. No. 157988, Dec. 11, 2013) p. 279

Homestead settlement — Only alienable and disposable agricultural lands of the public domain can be acquired by homestead. (Rep. of the Phils. *vs*. Roxas, G.R. No. 157988, Dec. 11, 2013) p. 279

Reversion — May be granted for reasons other than fraud, like mistake or oversight was committed on the part of the applicant as well as the Government, resulting in the grant of homestead patent over inalienable forest land. (Rep. of the Phils. *vs*. Roxas, G.R. No. 157988, Dec. 11, 2013) p. 279

— Public lands not shown to have been reclassified as alienable agricultural land or alienated to a private person by the State remain part of the inalienable public domain. *(Id.)*

REGIONAL TRIAL COURT

Jurisdiction — The Regional Trial Court has the primary competence to determine the enforceability of the arbitration clause of the contract for the sale of electricity. (Rep. of the Phils. *vs*. Manila Electric Co., G.R. No. 201715, Dec. 11, 2013) p. 776

RIGHTS OF THE ACCUSED

Right to speedy trial — In order for the Government to sustain its right to try the accused despite a delay, it must show that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay and that there was no more delay that is reasonably attributable to the ordinary processes of justice. (Roallos *vs*. People, G.R. No. 198389, Dec. 11, 2013) p. 655

RULES OF PROCEDURE

Construction — Rules may be relaxed in meritorious cases to relieve a litigant of an injustice not commensurate with the degree of his thoughtfulness in not complying with the procedure prescribed. (Davao New Town Dev't. Corp. *vs*. Sps. Saliga, G.R. No. 174588, Dec. 11, 2013) p. 353

SALES

Contract of sale — To be valid, it requires: (1) meeting of minds of the parties to transfer ownership of the thing sold in exchange for a price; (2) the subject matter, which must be a possible thing; and (3) the price certain in money or its equivalent. (Ace Foods, Inc. *vs*. Micro Pacific Technologies Co., Ltd., G.R. No. 200602, Dec. 11, 2013) p. 742

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

TENANT EMANCIPATION DECREE (P.D. NO. 27)

Application — Covers only private agricultural lands primarily devoted to rice and corn production. (Davao New Town Dev't. Corp. *vs*. Sps. Saliga, G.R. No. 174588, Dec. 11, 2013) p. 353

Stages of land transfer — First, the issuance of a certificate of land transfer (CLT) and second, the issuance of an emancipation patent (EP). (Davao New Town Dev't. Corp. *vs*. Sps. Saliga, G.R. No. 174588, Dec. 11, 2013) p. 353

Tenancy relationship — All the requisite conditions for its existence must be proven, to wit: (1) the parties are the landowner and the tenant; (2) the subject is agricultural land; (3) there is consent by the landowner; (4) the purpose is agricultural production, (5) there is personal cultivation; and (6) there is sharing of harvest. (Reyes *vs*. Floro, G.R. No. 200713, Dec. 11, 2013) p. 755

(Jopson *vs*. Mendez, Jr., G.R. No. 191538, Dec. 11, 2013) p. 580

(Davao New Town Dev't. Corp. *vs*. Sps. Saliga, G.R. No. 174588, Dec. 11, 2013) p. 353

— Not terminated by changes of ownership in case of sale, alienation or transfer of legal possession. (Reyes *vs*. Floro, G.R. No. 200713, Dec. 11, 2013) p. 755

— One claiming to be a *de jure* tenant has the burden to show by substantial evidence that all the essential elements of a tenancy relationship are present. *(Id.)*

— The certification issued by administrative agencies or officers that a certain person is a tenant are merely provisional and not conclusive on the courts. *(Id.)*

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